

## WHOLESALE BROKER AGREEMENT

This Wholesale Broker Agreement (“Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ by and between \_\_\_\_\_ (“Broker”) and Bay Equity LLC (“Lender”). Lender and Broker are hereinafter collectively referred to as the “Parties” and individually as a “Party”. The rights, privileges, and duties defined herein shall inure to the benefit of Lender.

WHEREAS, Broker is engaged in the business of taking applications of residential mortgage loans; aiding and assisting borrowers in the pre-qualification for mortgage loans, choosing a mortgage product and completing an application; and processing those applications on behalf of others in exchange for a fee or other consideration; and

WHEREAS, Lender, as part of its regular business activities, purchases, from time to time, Mortgage Loans meeting certain criteria; and

WHEREAS, Broker desires to originate and sell to Lender and Lender desires to purchase from Broker certain residential Mortgage Loans, pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual undertakings contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### Article 1. Definitions

“Borrower” means the person or persons who submit a Mortgage Loan application to Broker, receive a Mortgage Loan, and are liable on a Note to a Lender.

“Closing” means the funding of a Mortgage Loan by Lender.

“Mortgage” means the document or documents evidencing security in the collateral securing repayment of the Note, including, without limitation, any mortgage, deed of trust, deed to secure debt, or security deed.

“Mortgaged Property” means the residential property improved by a one- to four- family dwelling securing repayment of the related Mortgage Loan.

“Mortgage Loan” means a loan secured by a first or second lien on the Mortgage Property which is the subject of this Agreement, evidenced by a Note, Mortgage, and any other documents or instruments evidencing Borrower’s indebtedness.

“Mortgage Loan Program” means the criteria established by Lender from time to time by the terms of Lender’s rate sheets and underwriting guidelines prescribing certain Mortgage Loans which can be offered to prospective Borrowers as a Mortgage Loan eligible for Closing in accordance with the terms of this Agreement.

“Note” means the promissory note evidencing Borrower’s obligation to repay a Mortgage Loan.

“Underwrite” or “Underwriting” means the examination of the Borrower’s application, credit history, income, and financial resources for the purpose of determining whether to extend credit to a Borrower.

## **Article 2. Duties of Broker**

2.1 Broker shall take applications for Mortgage Loans at its offices in its own name through its employees and agents.

2.2 Broker shall comply with the procedures established by Lender from time to time for the submission of Mortgage Loan Applications under the Mortgage Loan Programs made available to Broker. Broker shall be solely responsible for determining whether each Mortgage Loan application meets the terms and requirements of the available Mortgage Loan Programs, and Lender shall have no obligation to accept submission of any Mortgage Loan which does not fully comply with the terms and requirements of the applicable Mortgage Loan Program.

2.3 Broker shall provide to Lender, for each Mortgage Loan submitted, the Mortgage Loan application signed by the applicant and such credit, financial, and other information necessary for Lender to investigate, Underwrite, and fully review the Mortgage Loan application. Broker shall assist Lender in obtaining any additional information needed by Lender or to otherwise facilitate the Closing of the Mortgage Loan transaction. The contents of all Mortgage Loan applications and other documents submitted to Lender in connection therewith will immediately become Lender’s property. All information contained in the Mortgage Loan application and other information submitted to Lender is subject to Lender’s independent verification and may be rejected in Lender’s sole discretion. Broker has no authority to negotiate any terms or conditions of a Mortgage Loan on a Lender’s behalf.

2.4 In addition to performing the duties described in Sections 2.1 – 2.3, Broker shall:

2.4.1 Analyze the applicant’s income and indebtedness, and determine the maximum reasonable Mortgage Loan obligations that the applicant can bear;

2.4.2 Educate the applicant in the home buying and financing process, advising the applicant about the different types of Mortgage Loan products available, and explain to the applicant how closing costs and monthly payments would vary under each Mortgage Loan product;

2.4.3 Collect financial information (including, but not limited to, tax returns and bank statements) and all other related documents that are required under the Mortgage Loan Program;

2.4.4 Initiate and order verifications of employment and verifications of deposits;

2.4.5 Initiate and order requests for mortgage and other loan verifications;

2.4.6 Initiate and order appraisals in accordance to the HVCC guidelines as of 5/1/09;

2.4.7 Initiate and order inspections or engineering reports;

2.4.8 Provide any and all disclosures to the applicant as required by state and federal law, including, without limitation, a good faith estimate as required under the Real Estate Settlement Procedures Act of 1974, 12 USC 2601 et seq (“RESPA”) and any disclosures required under the Truth in Lending Act, 12 USC 1601 et set (“TILA”) and the Fair Credit Reporting Act, 15 USC 1681 et seq.;

2.4.9 Keep the applicant apprised of the status of the application and communicate any changes in the loan terms within a reasonable timeframe;

2.4.10 Assist the applicant in understanding and clearing credit problems;

2.4.11 Maintain regular contact with the applicant, real estate agents and Lender, as needed, between application and Closing to apprise them of the status of the application and to gather any additional information as needed;

2.4.12 Order legal documents;

2.4.13 Determine whether the Mortgaged Property is located in a flood zone or order the service by which determination shall be made, unless this process is agreed to be completed by the Lender;

2.4.14 Participate in, and be available to assist with, the Closing; and

2.4.15 Perform any other service as Lender may from time to time reasonably request.

2.5 Broker shall, both in the conduct of its business generally, and, in particular, in its handling of each application, comply fully, completely and in a timely manner with every requirement of all applicable federal and state laws dealing with the origination of Mortgage Loans, including, without limitation, upon the generality of the foregoing, the Consumer Credit Protection Act, 15 USC 1601 et seq. (“CCPA”); the Equal Credit Opportunity Act, 15 USC 1691 et seq. (“ECOA”) and Regulation B promulgated there under; TILA; Regulation X of RESPA; and all applicable state or federal statutes or regulations governing fraud, consumer credit transactions, predatory and abusive lending, and mortgage banks and brokers in general. In connection with ECOA and Regulation B thereof, Broker shall not discourage or pre-screen any applicant or in any other manner violate the terms of ECOA and Regulation B. Broker shall maintain, available for Lender’s inspection, and shall deliver to Lender upon demand, evidence of compliance with all such requirements.

2.6 Upon execution of this Agreement and from time to time as requested by Lender, Broker shall furnish to Lender evidence of any fidelity bond coverage and/or errors and omissions insurance coverage that is maintained by Broker. Broker shall also promptly notify Lender of any changes thereto or cancellations thereof.

### **Article 3. Duties of Lender**

3.1 Lender shall Underwrite or cause to be Underwritten every Mortgage Loan submitted pursuant to this Agreement. Lender shall have no obligation to issue a commitment for or close a Mortgage Loan which it determines, in its sole discretion, does not meet Lender's underwriting requirements. In making its determination, Lender expressly disclaims any judgment inference or other conclusion Broker may draw as to the general quality of or acceptability of the Mortgage Loan application. Lender, in its sole discretion, may reject any Mortgage Loan which it determines does not comply with the terms and conditions of this Agreement and shall notify Broker promptly of such rejection. Lender and Broker agree that Lender may rely on the materials supplied to it by Broker and the authenticity and accuracy of all signatures and information submitted to Lender in connection with each Mortgage Loan. Lender's failure to conduct an independent investigation with respect to such materials, signatures and information shall not affect or modify the representations and warranties made by Broker under Article 6 below or the rights available to Lender for any breach thereof.

3.2 If Lender determines that the application meets its underwriting standards, it shall issue a commitment in its name to the Borrower setting forth the terms and conditions under which it will close the Mortgage Loan and advance its funds. If Lender determines that the Mortgage Loan does not meet its underwriting standards, it will issue a notice of rejection to the Borrower in compliance with applicable laws and regulations. Lender will have no obligation or liability to Broker for any Mortgage Loan which is not approved by Lender nor for any delays in determining whether a Mortgage Loan meets its underwriting standards.

3.3 Upon the issuance of a commitment in its name to the Borrower, Lender shall proceed with Closing of the Mortgage loan under the terms and conditions of its commitment to the Borrower, and Broker shall provide such assistance in this regard as required by Lender so as to close the Mortgage Loan in a timely and efficient manner.

### **Article 4. Rates and Lock-Ins**

Broker shall be required to comply with the guidelines which may be distributed from time to time concerning interest rates and lock-ins which apply to any particular Mortgage Loan Program offered by Lender.

### **Article 5. FHA and VA Mortgage Loans**

5.1 Lender may, at its sole option, sponsor Broker as a FHA Authorized Agent, a FHA Loan Correspondent, and/or a VA Agent. Unless Lender has so sponsored Broker, the provisions of this Article 5 shall not be applicable to the relationship with Broker. Lender may at any time, with or without cause, notify Broker that Lender will terminate Lender's sponsorship of Broker. As of the effective date of the termination, Lender shall cease accepting Loan Application Packages with respect to FHA/VA Mortgage Loans, but shall continue to process, Close and fund FHA/VA Mortgage Loans for previously submitted Loan Application packages.

5.2 FHA Mortgage Loans. In accordance with Lender's participation in the FHA Direct Endorsement Program, Broker is authorized to act as Lender's Loan Correspondent or FHA Authorized Agent solely for the purpose of processing, originating, and insuring FHA Loans submitted to Lender for Underwriting and Closing. With respect to the origination of any FHA Loan, Broker is authorized to act as Lender's loan correspondent only upon submission of such Mortgage Loan Package to Lender for Underwriting; prior to such time, Broker shall be acting as an independent mortgage broker when

performing all functions with respect to such Mortgage Loan. This relationship shall be solely for the benefit of the Broker and Lender and not for the benefit of any third party. Broker shall not hold itself out to any third party as Lender's loan correspondent and shall not advertise, publicize, or discuss, in any manner whatsoever, the fact that Broker is acting as Lender's loan correspondent with respect to the origination of any FHA Loan, without Lender's express written consent.

5.2.1 Mortgage Insurance Premium. With respect to each FHA Loan funded by Lender, Lender shall deduct from the Mortgage Loan proceeds the mortgage insurance premium and shall forward to HUD such premium together with the completed mortgage insurance package. In the event HUD issues to Broker the OTMIP Statement of Account, the MIC, or a suspense letter with regard to the issuance of a MIC, Broker shall forward the same to Lender immediately. Broker agrees to cooperate with Lender in resolving any issues relating to suspension of HUD insurance.

5.4 VA Mortgage Loans. In accordance with Lender's participation as an approved mortgage lender for the VA, Broker is authorized to act as Lender's agent for the sole purpose of processing and originating VA Loans submitted to Lender for Underwriting and Closing. With respect to the origination of any VA Loan, Broker is authorized to act as Lender's agent only upon submission of such Mortgage Loan Package to Lender for Underwriting; prior to such time, Broker shall be acting as an independent mortgage broker when performing all functions with respect to such Mortgage Loan. This relationship shall be solely for the benefit of Broker and Lender and not for the benefit of any third party. Broker shall not hold itself out to any third party as Lender's agent and shall not advertise, publicize or discuss, in any manner whatsoever, the fact that Broker may be acting as Lender's agent with respect to the origination of any VA Loan without Lender's express prior written consent.

5.4.1 With respect to each VA Loan funded by Lender, Lender shall promptly prepare and submit to the VA the loan guaranty package and VA funding fee. Broker agrees to cooperate with Lender in resolving any issues relating to suspension of the guaranty.

## **Article 6. Representations, Warranties, and Covenants of Broker**

Broker hereby makes the following representations, warranties, and covenants to Lender, all of which are deemed to be made as of the date hereof and as of the date each Mortgage Loan is funded and closed.

6.1 Broker, and whosoever executes and delivers this Agreement on behalf of Broker, has all requisite power and authority to execute and enter into this Agreement, and to perform the obligations required hereunder. The execution and delivery of this Agreement and all documents, instruments, and agreements required to be executed by Broker pursuant hereto, and the consummation of the transactions contemplated hereby, have each been duly and validly authorized by all necessary actions of Broker. This Agreement constitutes a valid, legal, and binding agreement of Broker, enforceable by Lender in accordance with its terms subject to bankruptcy, insolvency, reorganization, receivership, or other laws affecting the rights of creditors generally, and general equity principles.

6.2 Broker is: (i) a duly organized and validly existing entity in good standing under the laws of its state of inception; (ii) is qualified and duly licensed to do business in each state in which it accepts an application for a Mortgage Loan or any other jurisdiction in which it is required; and (iii) is in compliance with any and all necessary licensing and lending requirements of the laws of all such states.

6.3 The execution, delivery and performance of this Agreement by Broker, and its compliance with the terms hereof and consummation of the transactions contemplated hereby will not

violate, conflict with, result in the breach of, give rise to any right of termination, cancellation, or acceleration under, constitute a default under, be prohibited by, or require additional approval under (i) Broker's charter, by-laws, partnership agreement, operating agreement, or other organizational documents; (ii) any other material instrument or agreement to which Broker is a party or by which Broker is bound or which affects this Agreement; or (iii) any and all state or federal laws, orders, injunctions, or decrees applicable to Broker.

6.4 In connection with each Mortgage Loan submitted or to be submitted to Lender pursuant to this Agreement, no Borrower has been or will be encouraged or required to select a Mortgage Loan product which is a higher cost product designated for less creditworthy borrowers unless, at the time of application, such Borrower did not qualify, taking into account credit history and debt-to-income ratios, for lower cost credit then offered by Lender.

6.5 Neither this Agreement nor any Mortgage Loan application, statement, report or other document furnished or to be furnished by Broker pursuant to this Agreement or in connection with any transaction contemplated hereby contains any untrue statement of fact or omits to state a fact necessary to make the statements contained therein not misleading.

6.6 Broker possesses and will maintain at all times while this Agreement is in effect any and all necessary licenses and/or filings and permits required by any and all applicable laws and regulations governing the conduct of the business contemplated by the terms of this Agreement. Further, Broker represents that it employs or will employ a sufficient number of knowledgeable and capable individuals to perform the services required by this Agreement.

6.7 Except as previously disclosed in writing to Lender, with respect to Broker, there is not pending or, to the best of Brokers knowledge, threatened any suit, action, arbitration, proceeding (legal, administrative, or otherwise), or governmental investigation (including or precipitated by allegations of fraud by another lender against Broker or its current or former owners, agents, or employees) which could (i) have a material adverse effect on Broker's business, assets, financial condition, or reputation or (ii) affect Broker's ability to perform its obligations under this Agreement (collectively, "Material Claims"). During the term of this Agreement, Broker will immediately disclose to Lender the initiation or threat of any Material Claim.

6.8 No consent, approval, authorization, or order of any court, government body, or any other person or entity is required for execution, delivery, and performance by Broker of this Agreement.

6.9 Broker (i) is not a party to, bound by, or in breach or violation of any agreement or instrument and (ii) is not subject to or in violation of any statute, order or regulation of any court, regulatory body, administrative agency, or governmental body having jurisdiction over it, such that Broker's ability to perform its obligations under this Agreement is materially and adversely affected or may in the future be materially and adversely affected.

6.10 Broker has entered into a written services agreement with each Mortgage Loan applicant if required by applicable federal or state law.

6.11 Except as otherwise disclosed to and approved by Lender, neither Broker nor any officer, director, or employee of Broker (i) has or will have any direct or indirect ownership interest in any Mortgage Property intended to secure or securing any contemplated Mortgage Loan nor (ii) has or will have any direct or indirect ownership interest in, or familial relationship with, the Borrower, the seller,

real estate agent, inspector, appraiser, or any person or entity performing any settlement service in connection with the Mortgage Loan application or the Mortgage Loan.

#### **Article 7. Warranties and Representations Regarding Individual Mortgage Loans**

Broker represents, warrants, and covenants to Lender that the following are true and correct with respect to each Mortgage Loan as of the date such Mortgage Loan is funded and closed:

7.1 The Note and Mortgage are genuine and each is the legal, valid, and binding obligation of the maker thereof, enforceable in accordance with its respective terms;

7.2 The Mortgage Loan and the related Note and Mortgage comply in all respects with the terms and conditions of this Agreement.

7.3 All representations and warranties made by Broker and all information contained in any documents submitted by Broker to Lender with respect to the Mortgage Loan are true, correct, and currently valid and genuine in all material respects. The Closing of a Mortgage Loan by Lender shall in no way relieve Broker from or constitute a waiver of any of the requirements of this Agreement for the Mortgage Loan or from the representations and warranties made as to the Mortgage Loan under the terms of this Agreement;

7.4 Broker has complied with all applicable federal, state, and local laws, rules, and regulations, including, without limitation, RESPA, TILA, ECOA, the CCPA, the Flood Disaster Protection Act, the Federal Fair Housing Act, the Home Ownership and equity Protection Act, the Gramm-Leach-Bliley Act, and all applicable federal and state statutes or regulations governing fraud, consumer credit transactions, consumer protection and consumer privacy, unconscionability, interest or other charges, mortgage licensing, and mortgage insurance as applicable to the Mortgage Loan;

7.5 In connection with each Mortgage Loan Program requiring an appraisal, the Mortgage Loan file for each Mortgage Loan contains an appraisal of the Mortgaged Property which was signed by a qualified appraiser who has no interest, direct or indirect, in the Mortgaged Property or in the Mortgage Loan or in the security thereof. The appraiser did not receive compensation which was affected by or dependent in any way on the approval or disapproval of the Mortgage Loan and the appraiser signed the appraisal report prior to Lender's approval of the Mortgage Loan. The appraisal was completed in compliance with the HVCC guidelines effective as of 5/1/09, the Uniform Standard of Professional Appraisal Practice and all applicable federal and state laws and regulations, including, without limitation, Title XI of the Financial Institutions Reform, Recover, and Enforcement Act of 1989 and the regulations related thereto;

7.6 No error, omission, misrepresentation, negligence, fraud, or similar occurrence with respect to a Mortgage Loan, including, without limitation, the related documentation, has taken place on the part of any person, including, but not limited to, the Broker, any agent, employee, or officer of the Broker, the Borrower, any appraiser, any builder or developer, or any other party involved in the origination of the Mortgage Loan or in the application of any insurance in relation to such Mortgage Loan; and

7.7 To the best of Broker's knowledge, there are no facts, circumstances, or conditions with respect to any Mortgage Loan, the Mortgaged Property, or the Borrower's credit standing that can be reasonably expected to (a) cause private institutional investors to regard any Mortgage Loan as an

unacceptable investment, (b) cause any Mortgage Loan to become delinquent, or (c) adversely affect the value or marketability of any Mortgage Loan.

7.8 Survival of Representations and Warranties. All representations and warranties contained in this Agreement shall survive (i) any investigation made by or on behalf of the Lender, (ii) any foreclosure or liquidation of the Mortgage Loan, (iii) any sale of a Mortgage Loan by Lender, (iv) any repurchase of a Mortgage Loan by Lender, and (v) any termination of this Agreement or any similar event. All representations and warranties contained in this Agreement shall inure to the benefit of the Lender, its successors, affiliates, and assigns.

#### **Article 8. Fees**

Any and all fees, commissions, and other consideration to be paid to Broker by Lender, in connection with any approved Mortgage Loan application registered with Lender, will be paid by Lender after deducting all fees and charges due Lender as specified in its price and fee schedules. Broker shall accept no direct or indirect compensation of any type from any third party with respect to a Mortgage Loan, including, without limitation, payments involving the sale transaction or “settlement services” (as defined in RESPA). No consideration of any kind shall be due or payable to Broker on any Mortgage Loan transaction unless and until funded and Closed by Lender.

#### **Article 9. Events of Default**

Any one or more of the following shall constitute an event of default (“Breach”) on the part of the Broker:

9.1 Broker’s failure to perform or observe any of its obligations, covenants, or agreements set forth in this Agreement for a period of ten (10) business days or more (or three (3) business days or more for an obligation respecting the payment of money) after the date upon which Lender gives written notice of such failure to Broker (the “Cure Period”); provided, however, that such Breach shall be deemed immediate (regardless of the Cure Period) with respect to any such failure which, in Lender’ sole discretion, is incurable or cannot be reasonably cured within the applicable Cure Period.

9.2 Any representation or warranty made by or on behalf of Broker in this Agreement shall prove to have been false or incorrect in any material respect at the time it was made;

9.3 Broker’s failure to meet any capital, leverage, or other financial standard imposed by any applicable regulatory authority; any material adverse change occurs in the financial condition of Broker; or Broker fails to provide any information, including information regarding Broker’s financial condition, as reasonably requested by Lender;

9.4 Broker misrepresenting or misleading Borrowers or other persons about obligations of Lender under this Agreement; misrepresenting the relationship between Lender and Broker; engaging in or aiding and abetting another in any fraudulent or deceptive practices; or breaching its contractual duties in conducting its responsibilities in connection with this Agreement, including, without limitation, participation or encouragement by Broker in providing false or misleading information or documentation to Lender in connection with any loan application, appraisal report, credit report, or other loan documentation.

9.5 A decree or order of a court, agency, or supervisory authority having jurisdiction for the appointment of a trustee, conservator, receiver or liquidator in any bankruptcy, insolvency, readjustment

of debt, marshalling of assets and liabilities or similar proceedings, or for the winding-up or liquidation of its affairs, shall have been entered against Broker and such decree or order shall have remained in force undischarged and unstayed for a period of thirty (30) days;

9.6 Broker providing consent to the appointment of a trustee, conservator, receiver, liquidator, or liquidating committee in any bankruptcy, insolvency, readjustment of debt, marshalling of assets and liabilities, voluntary liquidation or similar proceedings of or relating to Broker or relating to all or substantially all of its property;

9.7 Broker admitting in writing its inability to pay its debts generally as they become due; filing a petition to take advantage of any applicable insolvency, bankruptcy, or reorganization statute; making an assignment for the benefit of its creditors; or voluntarily suspending payment of its obligations;

9.8 Broker attempting to assign its rights under this Agreement without Lender's prior written consent or failure to comply with the requirements of this Agreement restricting transfers of interest;

9.9 Any of Brokers licenses, authorities, permits, or approvals shall be revoked, suspended, cancelled, or shall expire without renewal;

9.10 Broker is placed on any debarment, limited denial of participation, exclusionary or similar list of any governmental agency or government sponsored enterprise; or

9.11 Broker violates any local, state, or federal laws or regulations, or violates any industry standard, including, without limitation, codes of ethics or professionalism, written or implied by practice.

#### **Article 10. Repurchase and Indemnification**

10.1 Upon the occurrence of any Repurchase Obligation (as defined below), Broker shall be obligated to repurchase the related Mortgage Loan and indemnify Lender for such Mortgage Loan in accordance with the terms and conditions contained herein. At Lender's sole option, Lender shall have the right to require Broker to (i) repurchase the related Mortgage Loan, (ii) indemnify Lender for such related Mortgage Loan and/or (iii) enter into an Indemnification Agreement (as defined below) in lieu of repurchasing the related Mortgage Loan, in any case, in accordance with the terms and conditions contained herein.

10.2 Any of the following circumstances shall be considered a "Repurchase Obligation":

10.2.1 Lender determines that Broker failed to observe or perform or has breached or breaches or it has been alleged that Broker has breached, any of the representations, warranties, covenants or agreements contained in this Agreement or any applicable procedures with respect to any Mortgage Loan.

10.2.2 Lender receives a repurchase notification from any third party investor and the repurchase request is based on actual or alleged fraud or misrepresentation with respect to the Mortgage Loan.

10.2.3 Lender determines that Broker has been materially negligent in conducting its responsibilities under this Agreement with respect to a Mortgage Loan.

10.2.4 Lender determines that Broker committed fraud or misrepresentation with respect to a Mortgage Loan or otherwise aided, abetted, or assisted in the commission of fraud or misrepresentation by any third party with respect to the Loan

10.2.5 Lender determines that any third party fraud or misrepresentation has occurred with respect to the loan.

10.3 In the event of an occurrence of any Repurchase Obligations, upon the request of the Lender, Broker hereby agrees to repurchase the related Mortgage Loan (or if the related Mortgage Loan has been foreclosed, the related Mortgage Property) within thirty (30) days after Broker's receipt of Lender's written demand therefore for an amount equal to the Repurchase Price (as defined below). For the purpose hereof, the term "foreclosure" shall include judicial foreclosure, non-judicial foreclosure, deed in lieu of foreclosure, or any other mechanism of obtaining title to the Mortgaged Property by the Lender.

10.3.1 The "Repurchase Price" for any Mortgage Loan which Lender has requested Broker to repurchase shall be an amount equal to the sum of (a) the current unpaid principal balance of the Mortgage Loan at the time of repurchase (or at the time of the foreclosure sale date if the related Mortgage Loan has been foreclosed); (b) accrued but unpaid interest on such principal balance at the Note rate from the paid-to-date of the Mortgage Loan through and including the last day of the month in which the Repurchase Price is paid; (c) all costs and expenses, including, without limitation, reasonable fees and expenses of counsel, incurred by Lender as a result of Broker's breach of this Agreement or enforcing the terms of the Loan; (d) any premium paid by Lender in excess of the principal balance of the Mortgage Loan at the time of purchase (excluding the service release premium) if Lender has not sold the Mortgage Loan at the time of Broker's repurchase or if Lender has sold the Mortgage Loan and it is required to reimburse the purchaser the premium that the purchaser paid to Lender; (e) any unreimbursed advances made by Lender, including, without limitation, taxes or insurance or payments authorized by the Note or the Mortgage or law to protect Lender's interest in the Mortgage Loan or related Mortgage Property; and (f) any other fees, costs, or amounts relating thereto. The Repurchase Price shall be reduced by (1) any proceeds of mortgage insurance collected by the Lender with respect to the Mortgage Loan that have not been applied to the unpaid principal balance; and (2) if the Mortgage Loan has been foreclosed and the Mortgage Property has been sold to a third party, the proceeds of the sale price received by Lender net of all advances, costs and expenses, including, but not limited to, reasonable fees and expenses of counsel, incurred by Lender in connection with such sale.

10.3.2 Upon Lender's receipt of the Repurchase Price from Broker, Lender shall execute and deliver to Broker (i) an assignment of the Mortgage, an endorsement to the Note, and the related Loan files and other loan documents, each without representation, warranty or recourse, and (ii) if Lender previously foreclosed the Mortgage Loan and at such time then owns the Mortgage Property, a deed to the Mortgaged Property, without representation, warranty or recourse, and (iii) if Lender previously foreclosed the Loan but either sold the Mortgaged Property or another buyer purchased the Mortgaged Property at the foreclosure, an assignment of all deficiency obligations of the Mortgagor/Borrower, without representation, warranty, or recourse. With respect to the servicing of any Mortgage Loan repurchased by Broker, Lender shall transfer such servicing, or cause such servicing to be transferred, to Broker or its designee. If the Broker is unable to service any Mortgage Loan or does not have a designee for such

servicing, Lender may, at its sole option, service such Mortgage Loan for a fee equal to Lender's then current rate until such time as Broker is capable of servicing such Mortgage Loan or designates a successor servicer. All costs of transferring servicing of any repurchased Mortgage Loan from Lender to Broker or its designee shall be borne by Broker and Broker shall reimburse Lender for any costs incurred in connection therewith.

10.3.3 Broker's Repurchase Obligation with respect to a Loan shall not be eliminated, reduced, or otherwise modified as a result of any modification, workout, or assumption of a Mortgage Loan.

10.3.4 At Lender's sole option and in lieu of repurchasing the related Mortgage Loan subject to a Repurchase Obligation, Lender may require the Broker to enter into a written indemnification agreement in a form acceptable to Lender ("Indemnification Agreement") which requires the Broker to indemnify Lender, including, without limitation, reimbursing Lender for any losses incurred by Lender as a result of such Repurchase Obligation with respect to the related Mortgage Loan.

10.4 Indemnification. Upon the request of Lender, Broker hereby agrees to indemnify and hold Lender and its officers, directors, employees, agents, shareholders, and representatives harmless from and against any and all claims, demands, liabilities, causes of action and expenses, including attorney's fees actually incurred, relating to, or arising out of in connection with Broker's breach or alleged breach of any representation, warranty or covenant contained herein; provided, however, that Broker shall have no obligation to indemnify Lender to the extent the claim for indemnification is based on (i) Lender's gross negligence or willful misconduct or (ii) Broker's breach of an obligation that is or was the responsibility of Lender under any processing agreement entered into between the parties.

10.5 Right to Offset. In addition to any other rights and remedies available to Lender, including, without limitation, the rights and remedies of Lender under this Agreement, Lender shall have the right, at any time, and from time to time without notice, to offset and to appropriate or apply any and all deposits of money or property or any other indebtedness at any time held or owing by Lender to or for the credit of the account of Broker against and on account of the obligations and liabilities of Broker under this Agreement or any other agreement between Broker and Lender and/or between Broker and any of Lender's affiliates and/or subsidiaries, irrespective of whether or not Lender or its affiliates shall have made any demand hereunder and whether or not said obligations and liabilities shall have matured. For purposes of the foregoing right to offset, the determination as to whether the Broker has any obligations and liabilities shall be made by Lender in its sole and reasonable discretion.

10.6 Notwithstanding anything to the contrary, in no event shall a full credit bid made by Lender or any related party at a foreclosure sale of any Mortgage Loan affect in any way the rights and remedies of Lender and/or the obligations of Broker under this Agreement, including, without limitation, the obligations of the Broker to repurchase and indemnify Lender as provided herein.

10.7 The provisions of Article 10 shall survive any Mortgage Loan Closing and assignment thereof.

#### **Article 11. Early Payoff**

If any Mortgage Loan is prepaid within 150 days following the date of Closing, Broker shall refund to Lender all compensation received from Lender. In the event that the prepayment is due to a refinance by the same Broker and the loan is delivered back to Lender, part or all of the above requirements may be waived upon the sole discretion of the Lender.

## **Article 12. Books and Records; Access**

12.1 During the term of this Agreement and within five (5) years after termination of this Agreement upon twenty-four (24) hours notice, Broker shall give Lender (including Lender's employees, representatives, or designees) full access, during normal business hours, to audit and inspect (i) the files of any Mortgage Loan documents; (ii) the books, records, reports, statistics, and other documents of Broker relating to the Mortgage Loans and to Broker's Closing and quality control procedures; and (iii) Brokers communications with Lender.

12.2 Broker and Lender shall keep and maintain a complete and accurate account satisfactory to Lender, of all funds collected and paid relating to Mortgage Loans.

## **Article 13. Termination**

13.1 This Agreement may be terminated with or without cause by Lender or Broker upon ten (10) days written notice to the other Party. Termination under this Section 13.1 shall not terminate Broker's obligation to submit and Lender's obligation to accept for review those loan applications and related documents which, prior to the effective date of termination, have been registered by Broker with the interest rate locked-in; provided that such loan applications continue to meet the requirements of this Agreement, Lender's Underwriting standards, and the applicable Mortgage Loan Program.

13.2 Lender may terminate this Agreement immediately if Lender determines that Broker has committed a Breach. Termination under this Section 13.2 shall release Lender from any and all obligations to accept, underwrite, close, purchase, or fund any Mortgage Loans after the effective date of termination, including Mortgage Loans registered with interest rate locks prior to the effective date of the termination.

13.3 During the course of a pending investigation for any claimed Breach (or any act, event, or circumstance which, with the giving of notice or the passage of time, or both, would constitute a Breach) on the part of Broker, in addition to any other right or remedy Lender may have, Lender may, at its sole discretion, temporarily suspend or restrict Broker's eligibility to participate under this Agreement. During the course of such suspension or restriction, Lender shall have no obligation to purchase any Mortgage Loans from Broker nor to accept any Mortgage Loan applications from Broker. During the period of suspension or restriction, Lender may nonetheless, in its sole discretion and without waiving any rights under this Agreement, continue to purchase such Mortgage Loans or acquire such Mortgage Loan applications previously registered with Lender as it shall deem appropriate.

13.4 Termination of this Agreement shall not affect Broker's obligations with respect to Mortgage Loans already delivered to Lender.

13.5 Broker's representations, warranties, covenants, and other obligations and agreements contained in this Agreement, including, without limitation, Broker's repurchase and indemnification obligations, shall survive any termination of this Agreement, any investigation by Lender or its agents or the subsequent transfer of any Mortgage Loan by Lender to a third party. The foregoing is true notwithstanding (i) any restrictive or qualified endorsement on any Mortgage Note or assignment of the Mortgage, (ii) Mortgage Loan approval, or (iii) other examination of or failure by Lender to examine any related Mortgage Loan file.

## **Article 14. Solicitation**

For a period of one (1) year following the Closing of any Mortgage Loan under this Agreement, neither Broker nor any of its affiliates, officers, employees, or agents shall directly or indirectly solicit or

cause to be solicited, by direct mail, telephone, email, personal solicitation, or otherwise, any Borrower for the purpose of prepaying, refinancing or modifying such Mortgage Loan in whole or in part, except with the written permission of Lender. It is understood and agreed that promotions undertaken by Broker or any affiliate of Broker which are directed at the general public at large, including (i) newspaper, radio, and television advertisements; (ii) unsolicited calls made by customers to Broker or any affiliate thereof; or (iii) mass mailings based on commercially acquired mailing lists, shall not constitute solicitation under this provision.

#### **Article 15. Prohibition against use of name or affiliation**

Nothing in this Agreement shall be construed to appoint Broker as a joint venturer, partner, representative, employee, or agent of Lender, and Broker shall not hold itself out as such. Broker shall not use Lender's name or any of the product names, trade names, symbols, or trademarks of Lender or Lender's subsidiaries in any advertising or other written or broadcast material without Lender's express prior written consent. This prohibition shall not prevent Broker from using any advertising media provided to it by Lender for use by Broker and containing any copyrighted and/or trademarked Lender name or logo. Such copyrighted and/or trademarked name or logo shall remain in place and shall not be removed from any materials provided by Lender to Broker.

#### **Article 16. Confidentiality**

Broker acknowledges that certain items and types of confidential and proprietary information (collectively "Confidential Information"), including, without limitation, this Agreement, Underwriting guidelines, pricing terms, trade and service marks of the Lender, and the forms, disclosures, and other documents provided to Broker in connection with this Agreement, are owned and controlled by Lender and constitute valuable assets and trade secrets of Lender. Broker shall not disclose any Confidential Information to (a) any person or entity, except to directors, officers, and employees of Broker who are required to have knowledge of such information in the course of Broker's exercise of its rights and obligations under this Agreement, or (b) pursuant to a subpoena or order issued by a court of competent jurisdiction or administrative or legislative body. Further, Broker will comply with all applicable federal, state, and local privacy laws, rules, regulations, and ordinances, including, without limitation, Title V of the Gramm-Leach-Bliley Act and the regulations promulgated thereunder. To the extent that any such privacy laws, rules, regulations, or ordinances require additional or modified security, privacy, or confidentiality agreements between Lender and Broker, Broker agrees to execute such additional or modified agreements as requested from time to time by Lender.

#### **Article 17. Privacy**

17.1 All customer information in the possession of either Party ("Customer Information") is and shall remain confidential and proprietary information of each Party except as otherwise set forth in this Agreement and information independently obtained by the Parties and not derived in any manner from information obtained under or in connection with this Agreement.

17.2 The Parties agree to comply with any and all federal, state, and local statutes, regulations, and rules applicable to the protection and privacy of consumer information, including, without limitation, the privacy provisions of the Gramm-Leach-Bliley Act and the regulations promulgated there under (the "Privacy Requirements") and implementation of appropriate measures designed to safeguard Customer Information.

17.3 The Parties shall not disclose any Customer Information to any person or entity other than the employees, agents, contractors, and affiliates of the Parties who have a need to know such information.

17.4 The Parties shall assess, manage, and control risks relating to the security and confidentiality of Customer Information and shall implement the standards relating to such risks in the manner set forth in the Interagency Guidelines Establishing Information Security Standards, Section 216 of the Fair and Accurate Transaction Act (including implementing regulations), as well as any amendments thereto or other applicable regulations, enacted, or released by any regulatory agency having jurisdiction over Broker, governing the safeguarding of information.

17.5 Without limiting the scope of the above, the Parties shall use at least the same physical and other security measures to protect all Customer Information in such Parties' possession or control as the Parties use to protect their own confidential information.

17.6 If Lender provides an account number to Broker to enable the Parties to carry out the purposes of this Agreement, Broker shall use such account number only for such specific purpose and for not other purpose and destroy all records relating to such account number upon Lender's request.

17.7 In no event shall Broker use any account number to market any product or service of Broker to any other person or entity (other than Lender) or initiate charges to customer's loan account.

17.8 From time to time upon Lender's request, Broker shall allow Lender during normal business hours to inspect Broker's books and records relating to Broker's compliance with the Privacy Requirements and their measures designed to safeguard Customer Information.

17.9 The Parties shall comply with all Privacy Requirements and shall immediately notify the other Party if there is a breach of its security related to the customers of the other Party so that such customers may be notified in accordance with any applicable Privacy Requirements.

## **Article 18. Miscellaneous**

18.1 Governing Law. This Agreement shall be governed by, and construed in accordance with Lender's state of formation.

18.2 Entire Agreement. This Agreement and any agreement, document, or instrument attached hereto or referred to herein integrates all the terms and conditions mentioned herein or incidental hereto and supersedes all oral negotiations or prior writings in respect to the subject matter hereof and thereof. In the event of any conflict between the terms, conditions, and provisions of this Agreement and any such agreement, document, or instrument, the terms, conditions, and provisions of this Agreement shall control.

18.3 Accrual of Cause of Action. Lender's rights and Broker's obligations under this Agreement, including, without limitation, those related to indemnification, shall not be affected by Lender taking any of the following actions, with or without notice to Broker: (i) liquidation, repayment, retirement, sale, or resale of any Mortgage Loan; (ii) foreclosure of any Mortgage Loan (in which case the amount bid at any foreclosure sale shall not in itself be used in measuring the extent of Lender's Loss); or (iii) sale or resale of the property securing any Mortgage Loan.

18.4 Term. The term of this Agreement shall commence as of the date Broker designates Broker's desire to conduct business with Lender, and shall extend until the termination of this Agreement pursuant to Article 13 of this Agreement.

18.5 Modification and Waiver. No termination, cancellation, modification, amendment, deletion, addition, or other change to this Agreement, or any provision hereof, or waiver of any right or remedy herein provided, shall be effective for any purpose unless specifically set forth in writing, signed by the Party or Parties to be bound thereby. The waiver of any right or remedy in respect of any one occasion shall not be deemed a waiver of such right or remedy in respect of such occurrence or event on any other occasion.

18.6 Jurisdiction. Any action arising out of this Agreement or the transactions contemplated hereby may be instituted in any state or federal court located in the state of inception of the Lender, without regard to choice of law provisions thereof; further, each party expressly waives any obligation which such Party may have to the laying of venue of any such action, and irrevocably submits to the jurisdiction of any such court and agrees to be fully bound by any final unappealed decision of those courts.

18.7 Severability. If any provision or part of this Agreement is deemed invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be fully enforceable to the extent of the valid portions thereof.

18.8 Agreement Fairly Construed. This Agreement shall be construed fairly as to both Parties and not in favor of or against either Party, regardless of which Party prepared this Agreement.

18.9 Good Faith Dealing. The Parties hereto agree to deal in good faith with each other at all times.

18.10 Further Assurances. Subject to the terms and conditions of this Agreement, each party agrees to use its best efforts to do, or cause to be done, all things necessary, proper or advisable under applicable laws, rules, and regulations to consummate and post-Close the transactions contemplated by this Agreement as expeditiously as practicable, including, without limitation, the performance of such further acts or the execution and delivery of any additional instruments or documents as either party may reasonably request in order to carry out the purposes of this Agreement and the transaction contemplated thereby.

18.11 No Exclusive Remedy. No remedy under this Agreement is exclusive of any other available remedy, but each remedy shall be cumulative and shall be in addition to other remedies given under this Agreement or existing at law or in equity, including specific performance and injunctive relief. Any foreclosure or delay by a Party to this Agreement in exercising any right or remedy under this Agreement or otherwise afforded by applicable law shall not be a waiver or preclude the exercise of that or any other right or remedy.

18.12 Notices. All notices and other communications under this Agreement shall be in writing or by email. Notices in writing shall be deemed to have been duly given if delivered by hand, by overnight courier, or by registered or certified mail, return receipt requested, postage prepaid, addressed to the parties at the addresses provided to Comergence Compliance Maintenance, LLC (or at such other addresses as shall be specified by like notice). Notices sent by email shall be delivered when the receiving

party electronically views the notice, as determined by server log files, an electronic return receipt, or other electronic proof of delivery.

18.13 Assignment. Broker may not assign its rights or delegate its duties or obligations under this Agreement without the prior written consent of Lender. This Agreement shall be binding on and inure to the benefit of the permitted successors and assigns of the Parties hereto. Nothing contained herein shall be construed as conferring upon Broker any right to in any way obstruct Lender's free assignment of its rights and duties arising under this Agreement.

18.14 Financial Statements/Annual Certification. Lender may require that Broker provide to Lender on an annual basis fiscal year-end, audited financial statements and an annual certification in form and substance satisfactory to Lender certifying Broker's compliance with the terms of this Agreement. Broker shall immediately advise Lender of any material change in Broker's circumstances, financial or otherwise, including, without limitation, a change in Broker's ownership.

18.15 Attorney's Fees and Expenses. If any party hereto shall bring any action or proceeding against the other as a result of any alleged breach or failure by the other party to fulfill or perform any covenants or obligations under this Agreement, then the prevailing party obtaining a final award in such action or proceeding shall be entitled to receive from the non-prevailing party reasonable attorney's fees and expense incurred by reason of such action.

18.16 Waiver of Jury Trial. The Parties expressly waive their right to a jury trial as to any claims arising under or related to this agreement.

18.17 Defined Terms. As used in this Agreement, "knowledge" means that which is actually known to Broker, including its officers, agents, directors, and employees, or that which, through the exercise of reasonable care or diligence, should have been known to any of such persons. The term "days", unless otherwise specifically indicated, means calendar days.

18.18 Interpretation. Any ambiguities in this Agreement shall not be strictly construed against the drafter of the language concerned, but instead shall be resolved by applying the most reasonable interpretation under the circumstances giving full consideration to the intentions of the Parties at the time of contracting. This Agreement shall not be construed against any party by reason of its preparation.

18.19 Relationship; Non-Exclusivity. Nothing contained in this Agreement shall be deemed to create a joint venture, partnership, agency, employment, or borrower/lender relationship between Broker and Lender. Broker shall at all times be deemed an independent contractor in connection with the origination of Mortgage Loans and any Mortgage Loan application. Each party shall conduct its business under its own name, and neither party shall represent that it is the agent of the other. Lender does not assume any liability of or incur any obligations to Broker by the execution of this Agreement. It is the intention of the parties that no part of the consideration to be paid for any Mortgage Loan will be considered a fee paid for the goodwill of Broker. Furthermore, nothing contained in this Agreement shall obligate Broker to submit all Mortgage Loans processed and originated by Broker to Lender or restrict Lender from entering into a similar agreement with other originators. Both parties acknowledge and agree that this Agreement imposes no requirement that (i) either Broker register any Mortgage Loan application with lender or (ii) Lender accept for registration any Mortgage Loan application from Broker.

18.20 No Third Party Beneficiaries. Except to the extent expressly set forth above with respect to Lender's third party purchasers, this Agreement is intended for the benefit of Lender and Broker only, and there will be no third party beneficiaries to this Agreement.

18.21 Changes, Updates, and Amendments to Agreement. From time to time, and upon at least thirty (30) days notice to Broker, Lender may change, update, or amend the terms and conditions of this Agreement. Broker will be bound by such changes, updates or amendments upon the effective date of such notice without further need for acknowledgement or signature by Broker. Upon request, Lender shall provide the most current version of this Agreement to Broker for Broker's reference.

18.22 General Interpretive Principles. For purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires: (1) the terms defined in this Agreement have the meanings assigned to them in this Agreement and include the plural as well as the singular, and the use of any gender herein shall be deemed to include the other gender; (2) accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles; (3) references herein to "Articles," "Sections," "Subsections," "Paragraphs," and other subdivisions without reference to a document are to designated Articles, Sections, Subsections, Paragraphs, and other subdivisions of this Agreement; (4) reference to a Subsection without further reference to a Section is a reference to such Subsection as contained in the same Section in which the reference appears, and the rule shall also apply to Paragraphs and other subdivisions; (5) the words "herein," "hereof," "hereunder," and other words of similar import refer to this Agreement as a whole and not to any particular provision, and (6) the term "include" or "including" shall mean without limitation by reason of enumeration.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and sealed as of the day and year first above written.

Broker Attestation

Company Name: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_