

(COMPANY NAME) MORTGAGE PURCHASE AGREEMENT

THIS CORRESPONDENT LENDING MORTGAGE PURCHASE AGREEMENT (“Agreement”) is entered into as of this _____ day of _____, 200____, by

and between (COMPANY NAME) MORTGAGE (“(Company Name) or (COMPANY NAME)”), a licensed mortgage lender whose principal office is located at _____, _____, _____,

its successors and/or assigns, and _____ (“Seller”), a _____ whose principal office is located at _____

RECITALS

WHEREAS, the Seller desires to originate and sell to (Company Name) and (Company Name) desires to purchase from Seller certain residential Mortgage Loans (as hereinafter defined), pursuant to the terms of this Agreement and the (Company Name) Mortgage Correspondent Seller’s Guide incorporated herein by reference, as amended, supplemented, or otherwise modified, from time to time (“Guide”).

WHEREAS, (Company Name), as part of its regular business activities purchases, from time to time, Mortgage Loans meeting certain criteria.

WHEREAS, Seller is in the business of originating and selling Mortgage Loans and desires to sell and assign Mortgage Loans, servicing released, to (Company Name) which are to be underwritten pursuant to

(Company Name)’s underwriting guidelines in effect at the time of each sale.

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 I

DEFINITIONS

In addition to the words and terms elsewhere defined in this Agreement, the following words and terms shall have the following meanings:

Agency or Agencies means the Federal National Mortgage (“Fannie Mae”), Federal Home Loan Mortgage Corporation (“Freddie Mac”), Government National Mortgage Association (“Ginnie Mae”), Federal Housing Administration (“FHA”), Veterans Administration (“VA”), Department of Housing and Urban Development (“HUD”), or any other federal or state agency which purchases mortgage loans.

Assignment of Mortgage means an assignment by Seller to (Company Name) of the beneficial and legal interest in a Mortgage, or applicable equivalent sufficient under the laws of state in which the property is located to provide adequate notice in the appropriate public records of the sale, transfer, and conveyance of the Mortgage to (Company Name).

Borrower means the person or persons who submit an application to Seller, receive a Mortgage Loan, and are obligated to pay under the terms of the Note.

Business Day means any day on which (Company Name) is open to the public for business.

Closing means the time when the Borrower signs a Note evidencing a Mortgage Loan and the Mortgage securing payment of said Note.

Closing Package means the group of documents and other information or materials as defined in the Guide, which must be delivered to (Company Name) under the terms set forth herein.

Commitment means the written correspondence issued by (Company Name) to Seller which indicates (Company Name) agrees to purchase a specific Mortgage Loan if all conditions stated in the Commitment, this Agreement, the Guide, and Agency guidelines are met.

Disbursement Date means the date that funds for a Closing, evidenced by an executed Note, are disbursed on behalf of the Borrower by the settlement agent.

Guide or Seller's Guide means all policies, procedures, and requirements of (Company Name) made available to the Seller and applicable to the registration, underwriting, closing and funding of Mortgage Loans pursuant to this Agreement. (Company Name) may modify the Guide in part or in whole at any time with or without notice to Seller. The Guide, and all revisions thereto, are expressly incorporated herein by this reference and made a part of this Agreement in all respects, and shall be binding upon the parties; provided, however, that the Seller shall be entitled to sell Mortgage Loans to (Company Name) only if, and for so long as, Seller shall have been authorized to do so by (Company Name) in writing. Specific reference in this Agreement to particular provisions of the Guide and not to other provisions does not mean that those provisions of the Guide not specifically

cited in this Agreement are not applicable. All terms used herein shall have the same meaning as such terms have in the Guide, unless the context clearly requires otherwise.

Laws means all federal, state, county, local and foreign laws, regulations, licensing requirements, ordinances, codes, rules, and orders that may be applicable to Seller's business and ability to perform its obligations hereunder, all as may be amended or supplemented from time to time.

Mortgage means a valid and enforceable mortgage, deed of trust, or other security instrument pledging property as security for payment of the Note.

Mortgage Loan means a loan secured by a first lien on a one to four family dwelling which is the subject of this Agreement, evidenced by a Note and secured by a Mortgage, and including the Mortgage Loan Documents and all other instruments evidencing a Borrower's indebtedness.

Mortgage Loan Amount means the face amount of the Note for all Mortgage Loans delivered under this Agreement.

Mortgage Loan Documents means the Closing Package and any and all other documents creating, evidencing, or securing a Mortgage Loan, which are required to be maintained or prepared by Seller pursuant to this Agreement or the Guide.

Mortgage Loan Program means a type of Mortgage Loan, the terms and conditions of which are described in the Guide, and which can be offered to prospective Borrowers as an eligible Mortgage Loan under the terms of this Agreement.

Mortgaged Property means the property encumbered by the Mortgage.

Note means the valid, binding, and enforceable instrument, which evidences a Borrower's obligation to repay a Mortgage Loan secured by a Mortgage.

Original Credit Documents means all original application, appraisal, credit, and underwriting documents for all Mortgage Loans delivered under the terms of this Agreement.

Purchase Price means the price paid by (COMPANY NAME) for a Mortgage Loan, including all Servicing Rights, as describe in Section 2.3 hereinafter.

Repurchase Price means the price for repurchase pursuant to Section 5.1 herein and shall be as follows:

- (a) the unpaid principal balance of the Mortgage Loan;
- (b) plus all accrued but unpaid interest due (Company Name) on the date of repurchase;
- (c) plus all expenses, including but not limited to reasonable attorney fees incurred by (Company Name) in enforcing Seller's obligation to repurchase such Mortgage Loan;
- (d) plus any premiums paid to Seller for purchase of Mortgage Loan.

Servicing Rights means those rights associated with a Mortgage Loan, to among other things, collect the monthly payments of principal and interest and escrow accounts.

Underwrite or **Underwriting** means the examination of a Borrower's application for the purposes of determining whether to purchase a Mortgage Loan from Seller.

ARTICLE II PURCHASE AND SALE OF MORTGAGE LOANS

2.1 Eligible Loans

(a) Seller hereby agrees to offer for sale all of its rights, title and interest (including servicing rights) in residential Mortgage Loans. (COMPANY NAME) hereby agrees

to purchase Mortgage Loans from Seller in (COMPANY NAME)'S sole discretion pursuant to the terms and conditions stated herein.

(b) (Company Name) will purchase only those Mortgage Loans eligible for the Mortgage Loan Programs offered by (Company Name) set forth in the Guide, and fully complying with the standards established by (Company Name) in the Guide. Seller acknowledges that (Company Name) reserves the right to alter, add, or delete Mortgage Loan programs from time to time by amending the Guide, with or without notice to Seller, and Seller accepts responsibility for knowing what Mortgage Loan Programs are offered by (Company Name) at any given time.

(c) Notwithstanding anything in this Agreement to the contrary, (COMPANY NAME) shall only be obligated to purchase a Mortgage Loan i.) if a Commitment to purchase the Mortgage Loan was issued by (Company Name), and ii.) if Seller and the Mortgage Loan strictly conform with the terms of the Commitment and this Agreement, and iii.) if the Mortgage Loan is salable to Fannie Mae, Freddie Mac, or a prudent investor in the recognized secondary market, or, if underwritten by (Company Name), conforms with all of (Company Name)'s portfolio underwriting requirements; and iv.) if all documents relating to the Mortgage Loan are complete and acceptable to (Company Name) in its sole and absolute discretion.

(d) Broker shall be responsible for assuring that each Application submitted to (COMPANY NAME) complies with all the terms and conditions of the applicable Mortgage Loan Program at the time Broker submits the Mortgage Loan with (COMPANY NAME).

(e) (Company Name) shall determine, in its sole discretion, whether a Mortgage Loan meets the requirements set forth in this Agreement and the Guide. Seller is under no obligation to submit, and (Company Name) is under no obligation to purchase, a specific

number of Mortgage Loans under this Agreement.

2.2 Submission and Approval

(a) Seller shall originate all Mortgage Loans offered for purchase under the Agreement at its offices and in its own name. Seller shall be responsible for providing loan applications and related disclosures required by any and all Laws to loan applicants and for obtaining executed loan applications and disclosure forms.

(b) Seller shall obtain appraisal, credit, and all other documentation required by (Company Name) for each Mortgage Loan for which an individual borrower has authorized Seller to provide financing. Seller shall present the loan application to (Company Name) for its underwriting review, along with property and credit information as specified in the Guide.

(c) The appraisal must be performed by an approved (Company Name) appraiser. The appraisal cannot be performed by an employee, agent or affiliate of the Seller.

(d) All loans shall be underwritten for purchase on an individual basis by (Company Name). Upon acceptance and approval of any such purchase, (Company Name), in its sole discretion, shall issue a Commitment to Seller for the purchase of the Mortgage Loan stating, where applicable, terms and conditions of purchase subject to which (Company Name) will buy the Mortgage Loan. Decisions as to the acceptability of Mortgage Loans for purchase by (Company Name) shall be solely at the discretion of (Company Name). (Company Name) shall have no responsibility to purchase any Mortgage Loan until all underwriting and closing conditions have been met.

(e) Any Commitment issued by (COMPANY NAME) is voidable by (COMPANY NAME) if (COMPANY NAME) believes that Seller breached any material term or condition of the Agreement as to any Mortgage Loan offered by Seller

for purchase, or as to any Mortgage Loan actually purchased by (Company Name) from Seller in the past.

2.3 Lock-In

(a) (COMPANY NAME) may, in its sole discretion, provide to Seller a fifteen (15), thirty (30), fifty (50), or seventy (70) day lock-in which shall protect the price, terms, rate, loan program, loan limit, loan-to-value ratio, points and fees for each Mortgage Loan. (COMPANY NAME) shall honor the terms of any Mortgage Loan that has been locked-in provided, however, that Seller complies with the terms of this Agreement. (COMPANY NAME) reserves the right to change the terms and conditions of new programs for new loans to be locked-in from time to time in its sole discretion.

(b) (COMPANY NAME) shall issue to Broker on a periodic basis Rate Sheets and/or other pricing information applicable to Mortgage Loan Programs offered by (COMPANY NAME). Such Rate Sheets and/or pricing information shall be issued by (COMPANY NAME) by facsimile, electronic mail, or by posting on the applicable (COMPANY NAME) website, and shall be subject to change by (COMPANY NAME) without notice. Broker covenants to (COMPANY NAME) that Broker shall comply with Applicable Requirements (including, without limitation, any applicable Guidelines concerning interest rates and Rate-Locks that apply to the particular Mortgage Loan Programs offered by (COMPANY NAME)). In the event that a Rate-Lock expires prior to the closing of the related (prospective) Mortgage Loan, and such expiration is not due to any negligent act or omission of (COMPANY NAME), (COMPANY NAME) shall have no further obligations with respect to such Mortgage Loan, and Broker shall take no action suggesting otherwise.

(c) Seller agrees to either "best efforts" or "mandatory" delivery on all Mortgage

Loans locked-in with (COMPANY NAME). Seller also agrees, however, that delivery of Mortgage Loans *closed* by Seller that are locked-in with (COMPANY NAME) is mandatory. If either i.) Seller fails to deliver a Mortgage Loan locked-in under mandatory deliver, or ii.) Seller does not deliver a Mortgage Loan locked-in with (COMPANY NAME) that actually closes, then (COMPANY NAME) may require Seller to pay a pair-off fee in accordance with the Guide. If either i.) Seller has been advised the Mortgage Loan cannot be approved by (COMPANY NAME), or ii.) the Borrower withdraws its Mortgage Loan application and does not close the loan with the Seller and Seller provides satisfactory documentation of said withdrawal to (COMPANY NAME), then a pair-off fee will not be charged.

(d) Should (COMPANY NAME) discover that Seller has delivered a Mortgage Loan(s) previously locked-in with (COMPANY NAME) to other institution(s), (COMPANY NAME) may, in its sole discretion, immediately declare an event of default under this Agreement and, notwithstanding any other remedies declared in this Agreement, declare all outstanding Commitments void, and Seller shall be liable to (COMPANY NAME) for any losses either direct, indirect, or consequential caused by acts of Seller including but not limited to (COMPANY NAME)'S attorney fees.

(e) A marketing fee, to be determined in (COMPANY NAME)'s discretion, will be assessed pursuant to the terms of the Guide for any loan that is saleable but not in compliance with the Commitment or lock-in.

2.4 Closing and Delivery

(a) Seller represents, covenants and warrants that all Mortgage Loans shall be closed by a title agency or settlement attorney approved by (Company Name) and that no officer, employee or agent of Seller shall close any

Mortgage Loan. Furthermore, all Mortgage Loans will close in the name of the Seller with funds provided by the Seller.

(b) Seller shall deliver to (Company Name) no later than the lock-in expiration date the Closing Package containing all of the Mortgage Loan Documents required by the Guide. Failure to deliver all Mortgage Loan Documents according to the procedures in the Guide may cause Mortgage Loan to be subject to re-pricing at such price to be determined by (Company Name) in its sole discretion.

(c) (Company Name) shall conduct a post closing review of each Mortgage Loan Agreement prior to purchasing loan from Seller to determine if the Mortgage Loan Documents have been properly executed and that the Mortgage Loan has been closed in accordance with the Commitment, the Guide, and this. (Company Name), in its sole discretion, may reject any Mortgage Loan which does not comply with the terms and conditions of the Commitment, the Guide, or this Agreement, or may place such Mortgage Loan in a post closing suspense status if it substantially conforms to (Company Name)'s requirements, but does not fully meet all of (Company Name)'s requirements mentioned herein. The Purchase Price of Mortgage Loans placed in a post closing suspense status shall be adjusted as set forth in the Guide.

(d) (Company Name) shall, after its post closing review, purchase the Mortgage Loan from Seller at the Purchase Price established, which includes any applicable adjustments described by Article 2.3(b), 2.3(c), 2.3(g), or 2.4(c) hereof.

(e) The payment of the Purchase Price by (Company Name) for any Mortgage Loan shall in no way relieve Seller from or constitute a waiver of any of the requirements of the Guide, or from the representations and warranties made as to every Mortgage Loan under the terms of this Agreement, or from the obligations to repurchase said Mortgage Loan under Article V hereof.

(f) All Mortgage Loans sold to Buyer pursuant to this Agreement shall be sold with all Servicing Rights release to (Company Name).

ARTICLE III DUTIES OF BROKER

3.1 Taking of Applications; Disclosures.

Broker shall take applications for Mortgage Loans in its own name through its employees. Broker shall provide to each Page 3 of 9 (1/04) Applicant, contemporaneously with the taking of such application, broker disclosure(s) that comply with Applicable Requirements and the Guidelines. All Applications must have been originated and processed by Broker. Broker shall not submit third party originations under this Agreement.

3.2 Registration; Application. Broker shall Register each Application with (COMPANY NAME) as set forth in the Guidelines. Broker shall submit for each Application Registered with (COMPANY NAME) (a) the fully completed broker disclosure(s) which have been signed as of the date of application by the Applicant and by Broker; (b) the actual Application signed by the Applicant; and (c) such credit, financial and other information as set forth in this Agreement and/or the Guidelines, including, with respect to any government-sponsored loan, any information required by the procedures and guidelines of the sponsoring Agency. Broker shall assist (COMPANY NAME) in obtaining any additional information needed or desired by (COMPANY NAME) to facilitate the underwriting and closing of the loan transaction.

3.3 Performance of Broker Services. In addition to taking the information from the Applicant, filling out the Application, and providing and explaining the broker disclosure(s), Broker shall, for every loan, perform certain additional services, including (but not limited to) at least eight

(8) of the following services (except to the extent that such services are not required in connection with the applicable Mortgage Loan Program, or are specified in the Guidelines as services to be provided by (COMPANY NAME) or a third party): (a) analyzing the Applicant's income and debt and pre-qualifying the Applicant to determine the maximum Mortgage Loan that the Applicant can afford; (b) educating the Applicant in the home buying and financing process, advising the Applicant about the different types of loan products available, and demonstrating how closing costs and monthly payments would vary under each product; (c) collecting financial information (tax returns, bank statements) and other related documents that are part of the application process; (d) initiating/ordering VOEs (verifications of employment) and VODs (verifications of deposits); (e) initiating/ordering requests for mortgage and other loan verifications; (f) initiating/ordering appraisals; (g) initiating/ordering inspections or engineering reports; (h) providing disclosures (Truth in Lending, Good Faith Estimate, others) to Applicants, as required by Applicable Requirements and the Guidelines; (i) assisting prospective Borrowers in understanding and addressing credit problems; (j) maintaining regular contact with Applicants, real estate agents, and (COMPANY NAME), between application and closing to apprise them of the status of the Application and to gather any additional information as needed; (k) ordering legal documents (*e.g.*, title reports); (l) determining whether the Mortgaged Property is located in a flood zone or ordering such service; (m) participating in the loan closing; (n) analyzing the information provided by Borrower and confirming that the Borrower's application complies with Applicable Requirements and the Guidelines; and (o) providing such other services as may be required in connection with a particular loan transaction.

3.4 Representations and Warranties Regarding Mortgage Loans

(a) Seller warrants that all Mortgage Loan Documents submitted by Seller for each Mortgage Loan are in every respect valid and genuine, being what they support to be and all information submitted in each Mortgage Loan Document is true and accurate. The Mortgage Loan Documents have been duly executed by Borrower, acknowledged and sent for recording; the Borrower is the true and only obligor on the Mortgage Loan and is the real party in interest thereon, and there is no verbal understanding or written modification which would affect the terms of the Note or Mortgage.

(b) The full principal amount of the Mortgage Loan has been advanced on behalf of the Borrower by the Settlement Agent at the time of assignment to (Company Name). The unpaid balance of the Mortgage Loan is as represented by Seller. All costs, fees, and expenses incurred in making, closing, and recording the Mortgage Loan have been paid.

(c) Each Mortgage Loan assigned to (Company Name) is at the time of assignment a valid first lien on the Mortgage Property described in the Mortgage. The Mortgage Property is free and clear of all encumbrances and liens having priority over the lien of such Mortgage, and no part of the Mortgage Property has been released from the lien of the Mortgage. Each Mortgage is duly executed and has been sent for recording. The Mortgage Property is real estate upon which is located a one-to-four unit residential dwelling. Seller warrants, to the best of its knowledge, that the Mortgage Property is free from damage (including but not limited to any damage by fire, windstorm, or other casualty) and in good condition. Sellers will defend the Mortgage Loan against all claims whatsoever, and it has full right, title and authority to transfer the same.

(d) Seller is the sole originator of the Mortgage Loan. Seller has the authority to sell, transfer, and assign such Mortgage Loan on the terms herein set forth. There has been no assignment, sale or pledge thereof by Seller, and as of the date of purchase by (Company Name), the Mortgage Loan will be free and clear of claims or encumbrances of any type.

(e) Seller shall close in own name unless required or otherwise authorized by (Company Name) to close in (Company Name)'s name. Seller agrees to: i.) close all loans on a MERS (mortgage electronic registry system) Security Instrument and ii.) endorse the original Note without recourse to (Company Name) Mortgage. Seller acknowledges that any executed agreement, power of attorney, or consent resolution that grants (Company Name) the authority to execute, assign, or endorse Mortgage Loan Documents on behalf of the Seller does not release Seller from the responsibilities listed herein.

(f) A title insurance commitment and title insurance policy on currently prescribed American Land Title Association ("ALTA") forms (or such other form approved in writing by (Company Name) and acceptable to Fannie Mae or Freddie Mac) will be furnished to (Company Name) and will insure (Company Name), its successors and/or assigns, without exceptions, as holding the first lien against the Mortgage Property for the full amount of the Mortgage Loan.

(g) There is in force for each Mortgage Loan a hazard insurance policy meeting the requirements of (Company Name) as set forth in the Guide. There is in force such flood insurance policy as is required under the Flood Disaster Protection Act of 1973, as amended, and its implementing regulations.

(h) All necessary steps have been taken by Seller to make and keep all guarantees and insurance as required by (Company Name) valid and enforceable, including, without limitation, the payment by Seller of all

initial up-front mortgage insurance. Seller shall make (Company Name) the loss payee on each title policy, mortgage insurance policy, hazard insurance policy, and flood insurance policy. With respect to mortgage insurance, Seller agrees there are no captive reinsurance agreements or similar arrangements in place with any mortgage insurance provider with regard to any Mortgage Loan sold under this Agreement. Furthermore, Seller agrees to compensate (Company Name) for under disclosure of mortgage insurance coverage as required by the Commitment issued by (Company Name) on Mortgage Loans delivered to (Company Name).

(i) Seller shall have all final recorded documents and title policies delivered to (Company Name) within 180 days of closing. Failure to do so may result in additional Final Document Recovery fees being assessed to seller.

(j) Any and all Laws applicable to the Mortgage Loans have been complied with, including but not limited to: i.) the Federal Truth in Lending Act of 1969 (“TILA”), and Federal Reserve Regulation Z there under; ii.) the Federal Equal Credit Opportunity Act (“ECOA”), and Federal Reserve Regulation B Real Estate Settlement Procedures Act of 1974 (“RESPA”), and Regulation X thereunder; v.) the Flood Disaster Protection Act of 1973; vi.) the Fair Housing Act; vii.) the Home Mortgage Disclosure Act; viii.) the Financial Institutions Reform Recovery and Enforcement Act of 1989; ix.) the Homeowners Protection Act of 1998; x.) the Privacy of Consumer Financial Information Act; xi.) any and all licensing requirements relating to Seller’s rights to originate and sell Mortgage Loans; xii.) the requirements of any agency that regulates Seller; xiii.) any and all laws, rules, ordinances, and regulations relating to adjustable rate mortgages, negative amortization, and graduated payment mortgages. The Seller shall maintain in its possession, available for inspection by (Company Name), the Office

of Thrift Supervision (“OTS”), and the Federal Deposit Insurance Corporation (“FDIC”), and shall deliver to (Company Name), upon request, evidence of compliance with all such requirements.

(k) Seller understands (Company Name) intends to sell the Mortgage Loans to investors in the secondary market. Seller represents, covenants, and warrants that in submitting Mortgage Loans to (Company Name) that it is in full compliance with all pertinent requirements of Fannie Mae, Freddie Mac, Ginnie Mae, FHA, and VA.

(l) Seller has no knowledge of any circumstance or conditions with respect to any Mortgage Loan, Mortgage Property, the Borrower, or the Borrower’s credit standing that can be reasonably expected to cause private institutional investors, Fannie Mae, Freddie Mac, or Ginnie Mae to regard the loan as an unacceptable investment, cause the Mortgage Loan to become delinquent or adversely affect the value or marketability of the Mortgage Loan.

(m) All Mortgage Loan Documents prepared by Seller or Seller’s agent are genuine, accurate, and complete and meet the requirements and specifications established by Fannie Mae/Freddie Mac and product descriptions and underwriting guidelines listed in the Guide. All Mortgage Loan Documents are the current version required by Fannie Mae/Freddie Mac.

(n) For each individual Mortgage Loan, Borrower shall execute appropriate documentation acknowledging that each such Borrower has received all necessary disclosures required by state and federal laws and regulations, including (if applicable) adjustable and balloon rate mortgage disclosures.

(o) Seller warrants that each Mortgage Loan is not 15 days or more delinquent and there are no defaults in complying with the terms of any Mortgage Loan, and all taxes, governmental assessments, insurance premiums, water, sewage, and municipal charges relating to any Mortgage Loan which previously became due and owing

have been paid, or an escrow of funds has been established in an amount sufficient to pay for every such item which remains unpaid. Seller represents and warrants that it has not advanced funds, or induced, solicited, or knowingly received any advance of funds by a party other than the borrower, directly or indirectly, for the payment of any amount required by the Mortgage Loan. The collection practices used by each entity that has serviced the Mortgage Loan have been in all respects legal, proper, prudent, and customary in the mortgage servicing business. With respect to escrow deposits and payments in those instances where such were required, there exist no deficiencies in connection therewith for which customary arrangements for repayment thereof have not been made, and no escrow deposits or payments or other charges have been capitalized under the Mortgage or the Mortgage Note.

(p) Borrower has no rights of rescission, setoffs, counter-claims, or defenses to the Note or Mortgage securing the Note arising from the acts and/or omissions of the Seller in the origination, processing, or closing of the Mortgage Loan.

(q) No mortgage brokers or other consultants or finders were consulted or contacted in connection with or in bringing about this Mortgage or this mortgage sale transaction that would be due a fee.

(r) Seller covenants and agrees that compensation received by Seller shall not exceed the fair market value of its services. Seller agrees that it shall not accept any fee or other compensation except as permitted by applicable law and regulation, and that it has disclosed any fee or other compensation in writing to the Borrower and (Company Name) as required by applicable law and regulation.

(s) Seller warrants that total points and revenue fees are less than or equal to 5% of the Mortgage Loan Amount. Fees for bona fide loan services that are passed through a non-affiliated third party may be excluded from the 5% limitation mentioned herein.

(Company Name) will not be required to purchase any Mortgage Loan which, in its sole discretion, has exceeded the aforementioned % limitation.

(t) Seller warrants that each Mortgage Loan sold to (Company Name) is not a "High Cost Loan" or "predatory loan" as defined by the following: i.) Home Ownership and Equity Protection Act of 1994, specific Section 32 of Regulation Z; ii.) any state law or municipal ordinance.

(u) At no time within 120 days of date a Mortgage Loan is purchased by (Company Name) shall Seller, its agents, affiliates, or subsidiaries, take any action, including but not limited to the solicitation of the Borrower, to refinance or satisfy a Mortgage Loan. Notwithstanding anything to the contrary contained herein, if any Mortgage Loan sold to (Company Name) is paid-in-full within 120 days following the date of purchase by (Company Name), Seller shall pay to (Company Name) a penalty fee of not less than one percent (1%) of the original Mortgage Loan Amount as listed in the Guide.

(v) Seller shall be responsible for 1098 reporting of origination fees, discount points, and pre-paid interest to the Internal Revenue Service for Mortgage Loans originated by Seller under the terms of this Agreement.

(w) Each of the above representations and warranties i.) applies to all Mortgage Loans sold by Seller to (Company Name), ii.) is for the benefit of (Company Name) and its successors and/or assigns, iii.) continues in full force and effect for so long as the Mortgage Loan remains outstanding and for such time that (Company Name) is subject to any risk of loss or liability as to any Mortgage Loan purchased from Seller, and iv.) is in addition to any other specific representations and warranties contained elsewhere herein.

Article III REPRESENTATIONS, WARRANTIES, COVENANTS & COMMUNICATION WITH

APPLICANTS

3.5 Representations and Warranties Regarding the Seller

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

(b) Seller is duly organized, validly existing and in good standing under the laws of the jurisdiction where it is organized. Seller has all licenses necessary to carry on its business as now being conducted, and is licensed and qualified to transact business and is in good standing in the states where the mortgaged property is located, if the laws of such state require licensing or qualification in order to conduct business of the type conducted by the Seller.

(c) The execution, delivery, and performance of this Agreement by Seller, its compliance with the terms hereof and consummation of the transactions contemplated hereby will not violate, conflict with, result in a breach of, give rise to any right of termination, cancellation or acceleration under, be prohibited by or require any additional approval under i.) Seller's charter, by-laws, partnership agreement or other organizational documents, or any other material instrument or agreement to which Seller is a party or by which Seller is bound or which affects this

Agreement; or ii.) any and all Laws, orders, injunctions, or decrees applicable to Seller.

(d) No approval of the transactions contemplated by this Agreement from any entity, public or private, or any regulatory authority having jurisdiction over Seller is required, or if required, such approval has been obtained. There are no actions or proceedings pending, affecting Seller or any Mortgage Loans, which would adversely affect its ability to perform hereunder.

(e) There is no claim, litigation, investigation or proceeding pending or threatened against or otherwise materially adversely affecting Seller's business, performance of its obligations under this Agreement or the validity or enforceability of this Agreement or any Mortgage Loan sold under this Agreement and Seller has no knowledge of any circumstance indicating that any such suit, investigation, or proceeding is likely or imminent.

(f) Seller has never been disqualified, excluded or suspended from i.) selling loans to Fannie Mae or Freddie Mac, ii.) being able to originate loans intended to be guaranteed or insured by HUD, the VA or any other governmental agency.

(g) Seller has not in connection with this Agreement entered into any agreement, incurred any obligation, made any commitment or taken any action which might result in a claim for or an obligation to pay a sales or brokerage commission, finder's fee or similar fee or compensation with respect to this Agreement or the transactions contemplated hereby. Seller shall hold (Company Name) harmless from and against any claim off any broker, agent, finder or other person who makes such a claim.

(h) Seller shall provide (Company Name) its signed current profit and loss statement and balance sheet by March 31st every year. Seller shall provide (Company Name) a copy of its license at every renewal. Seller shall provide (Company Name) and its representatives with any necessary

information and data concerning the affairs of Seller as (Company Name) may reasonably request.

(i) Seller shall cooperate with (Company Name) in furnishing of documents and information as requested from time to time by (Company Name) and shall comply with all procedures established by (Company Name) for closing Mortgage Loans pursuant to this Agreement.

(j) If Seller participates in (Company Name)'s Paperless Underwriting Program, whereby Seller faxes directly to (Company Name) the Original Credit Documents to create an image exact duplicate of the faxed documents on (Company Name)'s computer system, Seller agrees to retain and act as the custodian of the Original Credit Documents, for 25 months or as required by local state regulations which ever is greater. Seller shall segregate and maintain custody and control of the Original Credit Documents on behalf of (Company Name). Seller shall warrant that the Original Credit Documents are not or will not be altered from their original form, except for any inventory control marking, and shall keep all information contained within the Original Credit Documents confidential. Seller shall immediately deliver and relinquish custody and control to (Company Name) any and all Original Credit upon request.

(k) Neither this Agreement nor any statement, report or other document furnished or to be furnished pursuant to this Agreement or in connection with the transactions contemplated hereby contains any material untrue statement of fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading.

(l) Seller agrees that it will maintain satisfactory lock and underwriting fallouts. Lock and underwriting ratios in excess of 25% may prompt (Company Name) to place seller into a watch or probation status. If seller fails to maintain acceptable fallout ratios in (Company Name)'s sole determination (Company Name), may in its

sole discretion, terminate this agreement as provided herein.

3.6 Representations and Warranties Regarding (Company Name)

(a) (Company Name) is duly organized, validly existing and in good standing under the laws governing its formation and existence, has all licenses necessary to carry on its business as now being conducted, and is duly authorized and qualified to transact in each applicable state any and all business contemplated by this Agreement. (Company Name) has all requisite power and authority to execute and deliver this Agreement and to perform all obligations required of it hereunder.

(b) Any necessary approval of the transactions contemplated by this Agreement from each federal or state regulatory authority having jurisdiction over (Company Name) has been obtained. There are no actions or proceedings pending or affecting (Company Name), which would adversely affect its ability to perform hereunder.

(c) The consummation of the transactions contemplated by this Agreement are in the ordinary course of business of (Company Name) and will not result in the breach of any term or provision of the charter or bylaws of (Company Name), or result in the breach of any term or provision of, or conflict with, or constitute a default under, or result in the acceleration of any obligation under, any agreement, indenture, loan or credit agreement or other instrument to which (Company Name) or its property is subject, or result in the violation of any Law to which (Company Name) or its property is subject.

3.7 Communications with Applicants.

Except as may be otherwise provided in the Guidelines, Broker shall be responsible for all communications with Applicants. Broker shall promptly deliver to such Applicants any documents prepared by (COMPANY

NAME) and intended for delivery to Applicants.

3.8 Loan Rescission, Reimbursement of Fees. If Broker has collected any fees from a Borrower, including any fees payable to a third party, in connection with a Mortgage Loan that is rescinded by the Borrower pursuant to applicable state or federal law or regulation, Broker shall promptly refund all such fees that are required to be refunded to the Borrower. Broker shall also pay to Borrower any other amounts to which Borrower is entitled, whether or not those amounts were ever paid to or through Broker.

ARTICLE IV INDEMNIFICATION & DUTIES OF (COMPANY NAME)

4.1 Indemnification of (Company Name) by Seller

(a) Seller hereby agrees to indemnify and hold harmless (Company Name), its successors and/or assigns, from any and all losses, liabilities, claims, damages, or costs of any nature, including without limitation attorneys' fees and costs, and actions suffered or incurred by (Company Name) which arise out of, result from, or relate to: i.) The breach by the Seller of any covenant, condition, term, obligation, representation or warranty contained in this Agreement, the Guide, or in any written statement, certificate, or Mortgage Loan Document furnished by the Seller pursuant to this Agreement or the guide; or ii.) Any material act or omission of Seller or any employee or agent of Seller which adversely affects any Mortgage Loan registered with and funded by (Company Name) hereunder. This indemnification shall survive any termination or cancellation of this Agreement.

(b) Without limiting Section 5.1 (a), Seller's obligation under this Article shall include costs and expenses associated with

(Company Name)'s efforts to require Seller to repurchase Mortgage Loans in accordance with Article V hereof. In all actions with third parties in which (Company Name) has the right to be indemnified hereunder, (Company Name) shall have the complete and exclusive right to determine the conduct and defense of such legal proceeding or investigation with such third party including, without limitation, the right to compromise, settle, defend, or continue any such action.

(c) Seller agrees to indemnify (Company Name) from and against any errors and/or omissions committed by any user, including, but not limited to Seller's agents, that Seller provides access to (Company Name)'s systems and /or authorizes to order funds or documents on said agent's behalf from (Company Name)'s systems.

4.2 Underwriting of Registered Applications. (COMPANY NAME) or its agent shall Underwrite every Application Registered pursuant to this Agreement. (COMPANY NAME) shall have no obligation to approve or close a Mortgage Loan which in its sole discretion does not meet (COMPANY NAME)'s Underwriting requirements. In making its determination, (COMPANY NAME) expressly disclaims any conclusions Broker may draw as to the general quality or acceptability of the related Application. (COMPANY NAME) retains sole and absolute discretion to reject any Application that does not comply with the terms and conditions of this Agreement or the guidelines, or for any reason whatsoever (except any reason prohibited by law), and to set the terms and conditions of any approval of an Application. (COMPANY NAME) shall notify Broker of the disposition of an Application as set forth in the Guidelines. Broker may not represent that (COMPANY NAME) has approved or will approve any Application until (COMPANY NAME) informs Broker in writing that it has done so. If (COMPANY NAME) declines any Application, Broker

shall notify the Applicant promptly upon receipt of notice of (COMPANY NAME)'s decision and deliver the required adverse action notice to the Applicant in accordance with Applicable Requirements. Broker shall also maintain evidence that any adverse action notice required to be received by the applicant was in fact received. (COMPANY NAME) will have no obligation or liability to Broker for any mortgage loan that is not closed by (COMPANY NAME) nor for any delays in the processing of any Application.

ARTICLE V REPURCHASE

5.1 Repurchase of Mortgage Loans by Seller. Seller agrees that upon written request Seller shall immediately repurchase, at the Repurchase Price, any Mortgage Loan sold to (Company Name) pursuant to this Agreement for any of the following reasons:

(a) Failure by Seller to deliver to (Company Name) the proper Mortgage Loan Documents pursuant to Section 2.4 and the Guide.

(b) (Company Name) reveals any evidence of fraud in the origination and closing of the Mortgage Loan by i.)

The Seller or its employees, directors, officers, agents and independent contractors (including without limitation, sellers or brokers of the Seller); or ii.) the Borrower.

(c) If (Company Name) determines the Mortgage Loan is not eligible under the Mortgage Loan Program for which it was registered and delivered by the Seller.

(d) Seller fails to observe or perform or breaches in any material respect any of the representations, warranties or agreements contained in this Agreement, the Guide, or Agency guidelines with respect to a particular Mortgage Loan.

(e) If (Company Name) determines the Mortgage Loan to be a "High Cost Loan" as defined by Section 3.1(r) or 3.1(s) hereof.

(f) (Company Name) is required to repurchase said Mortgage Loan from Fannie Mae, Freddie Mac, or any other third party

investor for any reason involving the origination or closing of the Mortgage Loan.

ARTICLE VI TERMINATION

6.1 Conditions of Termination.

(a) This Agreement may be terminated by either party at any time with or without just cause upon five (5) days prior written notice. Termination shall not affect or change the obligations of the parties with respect to outstanding Commitments to sell or purchase Mortgage Loans or limit Seller's duties or obligations to (Company Name) under this Agreement with respect to Mortgage Loans already purchased by (Company Name).

(b) Notwithstanding anything to the contrary herein, (Company Name) may terminate this Agreement immediately, upon written notice to Seller, if Seller defaults in the performance of this Agreement, breaches any of its representations or warranties, or if Seller acts negligently, or if fraud is discovered as to any Mortgage Loan. Upon such termination for cause (Company Name)'s obligation under any existing Commitment shall terminate, although (Company Name) may continue to honor any outstanding Commitment in its sole discretion.

ARTICLE VII MISCELLANEOUS

7.1 Relationship of Parties. Seller is an independent contractor and this Agreement and transactions entered into pursuant hereto shall not create between Seller and (Company Name) a relationship of agency, legal representation, joint venture, partnership, debtor/creditor, or employment. Seller and (Company Name) agree that neither party is in anyway authorized to make any contract, agreement, warranty, or representation, or to create any obligation, express or implied, on behalf of the other.

7.2 Assignment. This Agreement shall be binding and inure to the benefit of and be

binding upon the parties hereto and their successors and assigns. This Agreement is not assignable by Seller without the prior written consent of (Company Name). A change in ownership, merger, or consolidation of Seller shall be considered an assignment for purposes of this Agreement.

7.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan and any applicable federal laws. Each of the parties irrevocably submits to personal jurisdiction in the state court located in Oakland County, Michigan, or the United States District Court for the Eastern District of Michigan over any action, suit, or proceeding to enforce or defend any right under this Agreement or otherwise arising from any transaction existing in connection with this Agreement.

SELLER EXPRESSLY WAIVES THE RIGHT TO TRIAL BY JURY.

7.4 Section Headings. Section headings are for reference only and shall not effect the interpretation or meaning of any provision of this Agreement.

7.5 Entire Agreement. This Agreement, any addendums attached hereto and executed by all parties, and the Guide 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.

7.6 Severability. Any provision of this Agreement that is prohibited or unenforceable in a jurisdiction, shall be deemed ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction, and, to this end, the provisions hereof are severable. This Agreement may be executed in counterparts, all of which taken together shall constitute one and the same instrument.

7.7 Survival of Warranties. The representations, warranties, covenants,

agreements and every other obligation contained in this Agreement shall survive the termination of this agreement and the transactions provided for herein and shall be fully applicable whether or not (Company Name) relies thereon or has knowledge of any facts at variance therewith.

7.8 Modification and Waiver. (Company Name) shall have the right to amend this Agreement with written notice to Seller. At (Company Name)'s request, Seller shall acknowledge changes to the Agreement in writing, but Seller's failure to provide written acknowledgement of any amendment shall not impair the enforceability of such amendment. Nothing in this paragraph shall be interpreted to restrict (Company Name)'s right to modify the Guide as provided for elsewhere in this Agreement.

7.9 No Third Party Benefits. This Agreement is made for the express benefit of Seller and (Company Name), not for the benefit or interest of any other persons or entities, and accordingly, no third party shall obtain or acquire any rights or interest in this Agreement or by reason of the performance or failure of performance of either of the parties hereto or of their respective rights, privileges, duties or obligations arising hereunder.

7.10 Confidentiality. Seller understands that all information provided to Seller in connection with this

Agreement is confidential and proprietary to (Company Name). Seller shall not, at any time during or following termination of this Agreement, regardless of the manner, reason, time or cause of such termination, directly or indirectly disclose or furnish to any person not entitled to receive the same for the immediate benefit of (Company Name) (except to the extent actually required in connection with any litigation between the parties arising out of the Agreement or by applicable law), any confidential information including, but not limited to, information related to (Company

Name)'s business operations, credit policies, procedures, customers, and the Guide.

7.11 Limited Power of Attorney. Seller hereby irrevocably appoints (Company Name), its successors and assigns, its attorney-in-fact, with full power of substitution in the name of Seller or otherwise, whether in relation to real, personal, tangible, or intangible property, to do any or all of the following: (a) to demand, sue for, receive, collect, sign, endorse, assign or compromise any and all promissory notes, checks, money orders or monies due on any Mortgage Loans sold to (Company Name) (except a Mortgage Loan which has been repurchased by seller pursuant to Article V hereof), and to receive, sign, endorse, or assign any orders, certificates, insurance policies and all benefits under any other instruments or documents as from time to time may be necessary or appropriate to accomplish the sales and transfers provided for by this Agreement; (b) to enforce, cancel, release or discharge the Mortgage Loans; and (c) to exercise or perform any act, power or duty that Seller has or would have in connection with the Mortgage Loans purchased by (Company Name) or which are reasonable in order to protect (Company Name)'s interest in the Mortgaged Property. Seller agrees that the foregoing powers are irrevocable and coupled with an interest. Seller will, at (Company Name)'s request, execute appropriate separate instruments evidencing the foregoing powers.

7.12 Modification of Borrower Obligations. (Company Name) may, without any notice to Seller, extend, compromise, renew, release, modify, adjust or alter, by operation of law or otherwise, any of the obligations of a borrower or other persons obligated under a Mortgage Loan without releasing or otherwise affecting the obligations of Seller with respect to such Mortgage Loan or otherwise under this Agreement.

7.13 Right of Setoff. (Company Name) may deduct or setoff any and all amounts owed

by Seller to (Company Name) from or against any amounts payable by (Company Name) to Seller, including but not limited to any yield-spread premium.

7.14 Advertising and Trademark. Seller shall not engage in any form of advertising whatsoever utilizing either the name of (Company Name) or any subsidiaries or affiliates of (Company Name) or any of the product names, trade names, symbols or trademarks of any of (Company Name)'s Mortgage Loan Programs, unless specifically licensed to do so in writing by (Company Name).

7.15 Expenses. Each party shall pay its own expenses incident to this Agreement and the transactions contemplated hereby, including but not limited to, all fees of its counsel and accountants, whether or not any of the transactions contemplated shall be consummated.

7.16 Brokers. Each party represents and warrants that there are no claims for brokerage commissions or finders' fees or other claims for money from any agent or similar intermediary in connection with Seller's entering into this Agreement with (Company Name), and each party agrees to indemnify and hold harmless the other party with respect to any and all liability for any such fee or commission which is required to be paid to any such agent or broker.

7.17 Faxing and E-mailing. By executing this agreement Seller agrees to receive facsimile or e-mail advertisements from (Company Name) Bank

7.18 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.

7.19 Non-Discrimination. By executing this agreement Seller certifies that it will comply with all applicable provisions of Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (38 U.S.C. 4212) and

implementing regulations at 41 CFR Chapter 60.

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

7.21 Controlled Business Arrangement. (Please check one of the boxes below)

Seller represents and warrants that it that it has a controlled business arrangement ("CBA"), as defined in 24 CFR 3500, with the following business entities:

Name: _____

Address: _____

Name: _____

Address: _____

Name: _____

Address: _____

Seller represents and warrants that it does not have a CBA with any business entity.

Seller agrees that it shall notify (Company Name) in writing within five (5) days of any change in its relationship with any CBA.

7.20 Principal Officers. As of the date hereof the principal officer(s) of the Seller are:

Name: _____

Title: _____

Name: _____

Title: _____

Name: _____

Title: _____

7.21 Notices. Any notice or demand that is required or permitted to be given by a provision of this Agreement shall be deemed to have been sufficiently given if either served personally or sent by prepaid first class, registered, or certified mail, addressed to the party at its address set forth below:

SELLER: (COMPANY NAME):

(Company Name) Mortgage

Main Street 513

Attn: _____ Attn:
Operations Manager or Compliance Dept.

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.

SELLER
Company:

By:

Name:

(please print)

Its: _____

(COMPANY NAME)

Company: (COMPANY NAME)

MORTGAGE

By:

Name: _____

(please print)

Its: _____

Sample Preview
Sample Preview