



## Victoria Funding Services

Operations Center: 20 S. Santa Cruz Ave., #101, Los Gatos, CA 95030, Attn: Broker Approval Dept.

Office: (408) 399-0103

Fax: (866) 573-4227

### WHOLESALE BROKERAGE AGREEMENT

THIS WHOLESALE BROKERAGE AGREEMENT is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Victoria Funding Services ("Lender), and \_\_\_\_\_ ("Broker"), with reference to the following facts:

- A. Lender is engaged in, among other things, mortgage lending, and desires to approve, close and fund loans secured by a first or second priority lien on residential real property which are submitted to Lender by third party originators.
- B. This Agreement is entered into by the parties in order to establish the terms and conditions for the origination and funding of first or second lien residential mortgage loans and the relationship and responsibilities of Lender and Broker with respect thereto.

NOW, THEREFORE, in consideration of the foregoing matters and the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. Approval of Broker. Subject to the terms, conditions and limitations hereinafter set forth, Lender hereby approves Broker as a residential loan correspondent, and agrees to review applications for first- or second-lien residential mortgage loans ("Loans") submitted to Lender by Broker.

2. Broker's Submission Responsibilities. Broker shall use its best efforts to solicit and complete loan application packages, including credit and employment verifications, an appraisal, title insurance, and, based on a loan request program, income verification; and all other information and documentation required by Lender ("Loan Application Package") for submission to Lender. Each Loan Application Package, and Broker's activities hereunder, shall be subject to, and shall comply with, the terms and conditions of this Agreement and Lender's Loan Submission Guidelines (the "Guidelines"), as the same may be amended from time to time.

3. Loan Programs. All Loan Application Packages submitted by Broker to Lender hereunder shall be submitted only for those types of residential mortgage loan programs as are offered by Lender under this Agreement from time to time. Lender will publish a list of program guidelines from time to time, which may include provisions for eligible property types, loan limits, loan-to-value ratios, interest rates, points and fees. Notwithstanding the foregoing provisions, Broker acknowledges that the interest rates, points, fees and other terms of such loan programs are subject to change and that Lender reserves the right to modify, add or discontinue loan programs subject to this Agreement.

4. Submission, Registration and Rate Lock Protection. The procedures for the submission and registration of each Loan Application Package and for the protection of the interest rate and points of each Loan to be funded hereunder are set forth in the Guidelines, as amended by Lender in its sole discretion from time to time.

5. Appraisals and Credit Reports. Broker shall provide an appraisal for each Loan Application Package, which appraisal shall be performed by an appraiser (a) whose qualifications are approved by Lender in writing, (b) who holds a valid certification or registration from the applicable state authority with oversight of appraiser's activities, and (c) who has no interest, direct or indirect, in the real property subject to the appraisal, and (d) who will not receive compensation which is affected by the approval or declination of the applicable loan. All appraisals submitted by broker will be reviewed using Lender's appointed appraisal company for desk or field reviews. All credit reports submitted in connection with Loan Application Packages must be provided from Broker. Lender will run a merged credit report (three repositories) for loan underwriting. The cost of all appraisals and credit reports submitted in connection or ordered by Lender with any Loan Application Package shall be borne by Broker, and Lender shall have no responsibility for such cost.

6. Underwriting. Notwithstanding any other provision of this Agreement to the contrary, the decision whether any Loan shall be approved for funding, and the terms of such Loan, shall be the sole responsibility, and at the sole discretion of, Lender. Lender will, by written notification, approve or decline each loan application submitted in accordance with Lender's then-current lending and underwriting policies. Each Loan Application Package shall be underwritten in accordance with the then-current guidelines as they pertain to the loan program requested. Lender shall have no obligation, express or implied, to fund any Loan which is not approved in writing by Lender. Broker shall be responsible for informing each loan applicant of the matters set forth in this Paragraph.

7. Funding. All Loans shall be closed in the name of, and shall be funded by, Lender. Broker hereby releases all interest in the loans, including, without limitation, all servicing rights, to Lender.

8. Compensation to Broker. If the submission of a Loan Application Package by Broker to Lender results in the closing (funding) of a loan by Lender, then Lender shall pay the Broker a fee in an amount to be determined based on policy and loan programs of Lender then in effect. Any compensation earned by or otherwise owing to Broker for any services in connection with Broker's activities pursuant to this Agreement shall be payable solely by the loan applicant. Notwithstanding the foregoing provisions, Broker shall fully, accurately and promptly disclose such fees or charges to Lender in order that Lender may make any required disclosures to the loan applicant, and to verify the accuracy thereof.

9. Non-exclusive Relationship. In its sole discretion, Lender may use other loan brokers, and Broker may submit loan applications to lenders other than Lender. Nothing contained herein shall be construed as granting to Broker any exclusive right, whether with respect to time, territory or subject matter.

10. Independent Contractor. In the performance of its obligations under this Agreement, Broker shall be deemed to be acting as an independent contractor and agent and representative of the loan applicant, and not of Lender. There shall be no partnership, franchise, joint venture or any other association between Lender and Broker arising hereunder.

11. Limitations on Broker's Authority. Broker's authority pursuant to the Agreement shall consist solely of offering Lender's approved first and second lien residential mortgage loan programs and processing Loan Application Packages pursuant to this Agreement at its own expense and risk. Broker has no authority, express or implied, to bind Lender in any manner whatsoever. No statement or representation of Broker shall be binding upon Lender unless such statement or representation is in writing and signed, printed or published by an authorized employee of Lender.

12. Broker's Compliance Obligations. Broker shall maintain at all times in good standing any and all required business and professional licenses, and shall comply with all business tax requirements and all state and federal laws, rules and regulations which apply to Broker because of Broker's activities as a mortgage broker for its loan applicant clients, including, but not limited to, the Fair Credit Reporting Act, the Equal Credit Opportunity Act, the Truth in Lending Act, the Real Estate Settlement Procedures Act, the Home Mortgage Disclosure Act, state licensing laws, all regulations promulgated in connection therewith, and government monitoring regulations and disclosure laws in connection with Broker's solicitation and processing of Loan Application Packages.

13. Broker's Warranties. Broker hereby warrants and represents to Lender as follows, which representations and warranties shall be deemed to be made as of the date of this Agreement, as of the date each Loan Application package is submitted to Lender, and as of the date each Loan is funded:

- a) Broker is a corporation, duly organized, validly existing and in good standing under the laws of jurisdiction in which it is organized, or is a sole proprietorship validly registered to do business under the name set forth in this Agreement, has all licenses necessary to conduct its business as it is now being conducted, and is licensed and qualified to transact business and is in good standing in the states in which the property to be encumbered in connection with the Loan(s) is located. Broker has the power and authority to own its assets and to carry on its business as it is now being conducted and is in compliance with all applicable laws governing the business of residential mortgage lending.
- b) This Agreement has been duly authorized, executed and delivered to Lender and constitutes the valid and legally binding obligation of Broker, enforceable in accordance with its terms, except as to the effect of bankruptcy, insolvency and other laws affecting the rights of creditors generally.
- c) The performance by Broker of Broker's obligations hereunder will not violate any provisions of the articles of incorporation or bylaws of Broker, or of any instrument relating to the conduct of Broker's business or of any other instrument or agreement to which Broker is a party.
- d) There is no action, suit, proceeding or investigation pending or threatened against Broker which, either in any one instance or in the aggregate, may result in any material adverse change in the business, operations, financial condition, properties or assets of Broker, or in any material impairment of the right or ability of Broker to conduct its business substantially as it is now being conducted, or which would draw into question the validity of this Agreement, the Loans or any action taken or to be taken in connection with the obligations of Broker contemplated by this Agreement, or which would be likely to impair materially the ability of Broker to perform its obligations under this Agreement.
- e) Broker has obtained, and will maintain in full force and effect during the term of this Agreement, all licenses and authorizations necessary to do business and perform its obligations under this Agreement in all appropriate jurisdictions.
- f) No person or entity other than Broker or Lender is involved in the taking or processing of each Loan Application Package.

- g) All information regarding Broker, which is furnished from time to time by Broker to Lender, is true and correct in all material respects as of the date or dates such information is furnished.
- h) Broker has full right and authority to assign and transfer each Loan Application Package to Lender, and such right to assign and transfer is not subject to any other person's or entity's interest or to an agreement with any other person or entity.
- i) Each Loan Application Package was taken and processed by Broker, and any compensation due Broker is in compliance with all applicable federal, state, and local laws, rules and regulations, including but not limited to state usury laws, state licensing laws, the Fair Credit Reporting Act, the Equal Credit Opportunity Act, the Truth in Lending Act, and the Real Estate Settlement Procedures Act.
- j) To the best of Broker's knowledge, after due inquiry, there does not exist any circumstance or condition with respect to the Loan Application Package, the property to be encumbered, the loan applicant, or the loan applicant's credit standing which (i) can be reasonably expected to cause private institutional investors to regard the Loan as unacceptable for investment purposes, (ii) may cause the Loan to become delinquent, or (iii) may adversely affect the value or marketability of the Loan.
- k) Each Loan Application Package submitted by Broker to Lender is true and correct in all material respects and does not fail to include any information required to be stated or necessary to make each such Loan Application Package not misleading.
- l) No Loan Application Package registered with Lender is or will be registered with another lender unless Lender issues an underwriting declination or the Loan Application Package is withdrawn for non-pricing reasons.
- m) The knowledge of Lender of any breach of any of the foregoing warranties at the time of acceptance of any Loan Application Package or closing of any Loan shall not impair or constitute a waiver of any obligation of Broker with respect thereto. The representations and warranties set forth in this paragraph shall survive delivery to and funding by Lender of the related Loan and shall survive the termination of this Agreement.

14. Lender's Warranties. Lender hereby represents and warrants to Broker as follows:

- a) Lender is a corporation, duly organized, validly existing and in good standing under the laws of the State of California, holds licenses and is registered to conduct its business as it is now being conducted, and is licensed and registered to transact business and is in good standing in the states in which the property to be encumbered in connection with the loan is located. Lender has the power and authority to own its assets and to carry on its business as it is now being conducted and is in compliance with all applicable laws governing the business of residential mortgage lending.
- b) This Agreement has been duly authorized, executed and delivered to Broker and constitutes the valid and legally binding obligation of Lender, enforceable in accordance with its terms, except as to the effect of bankruptcy, insolvency and other laws affecting the rights of creditors generally.
- c) The performance by Lender of Lender's obligations hereunder will not violate any provisions of the articles of incorporation or bylaws of Lender, or of any instrument

relating to the conduct of Lender's business or of any other instrument or agreement to which Lender is a party.

The representations and warranties set forth in this paragraph shall survive the termination of this Agreement.

15. Broker Agrees to indemnify, defend and hold harmless Lender and its directors, officers, agents and employees from any liability or loss whatsoever, including but not limited to, damages, penalties, fines, costs, expenses and attorneys' fees arising out of or connected with (a) any breach of any representation, warranty or obligation of Broker contained in this Agreement, the Guidelines or any other documentation delivered in connection with this Agreement, (b) any negligent or willful act or omission by Broker in the performance of Broker's obligations under this Agreement, or (c) any violation by Broker of any federal, state or local law or regulation pertaining to the activities contemplated by this Agreement. All rights and remedies provided in this Agreement to Lender shall inure to the benefit of Lender, its successors and assigns and any assignee of or participant in any Loan, and shall survive the termination of this Agreement or the repurchase of any Loan by Broker.

16. Repurchase. At Lender's option, if there has been a breach of any term, condition, representation or warranty contained in this Agreement or the Guidelines, Broker shall pay the amount as the Lender may be required to pay, in part or in full, to repurchase the Loan from any subsequent investor. Broker shall pay to Lender, upon demand, the repurchase price for such Loan, which shall be the greater of the funding amount advanced by Lender plus any unpaid accrued interest fees, if any, principal reductions received by Lender. The repurchase remedy contained in this paragraph shall not constitute Lender's exclusive remedy, and Lender shall have recourse to all other available remedies hereunder, at law and in equity. Broker shall repurchase any Mortgage Loan required to be repurchased pursuant to this Agreement within thirty (30) calendar days of receipt of written notice from Buyer.

16a. Remedy for First Payment Default. If borrower fails to make the entire first payment due to the Servicer by the close of business on the date which the second payment was due, regardless of whether such payment is subsequently paid by borrower, such loan shall be considered a "30-day delinquent loan" and, at Lender's option, this "30-day delinquent loan" may trigger the above repurchase remedy.

16b. Broker will not solicit for refinance any loan(s) funded by Lender for a period of one (1) year. If borrower(s) request a refinance from Lender, Broker agrees to give Lender first right of approval and funding of the new Mortgage Loan. If Broker does not offer first right for the refinance loan to Lender, Broker will be subject to repayment of any premium pricing paid to Broker on the original loan being refinanced. Broker may also be responsible to reimburse Lender for any penalties or service release premiums (SRP) assessed or any other fee or cost by Lender's investors.

17. Termination. Except as otherwise provided herein, this Agreement may be terminated at any time by either Lender or Broker. Such termination shall be effective upon receipt of written notice of termination, but in no event later than five (5) days following the issuance of written notice. The obligations of the parties with respect to Loan Application Packages which have been registered with Lender prior to receipt of such written notice of termination shall survive the termination of this Agreement, Lender may terminate this Agreement effective immediately without notice to Broker in the event of a breach by Broker of any of Broker's obligations, representations or warranties contained in this Agreement or the Guidelines.

18. Inspection and Maintenance of Records. Broker shall permit, at Lender's option, Lender, Lender's regulators, internal auditors or independent auditors chosen by Lender, or any officer of Lender to investigate Broker's operations and business, and to investigate and copy its files pertaining to Loan

Application Packages. Broker shall maintain in its possession, available for such inspection and copying, all documentation and records relating to Broker's compliance with the terms of this Agreement. Broker agrees to retain all documentation and correspondence pertaining to this Agreement and any transactions hereunder for the period required by applicable federal or state laws and regulations or in accordance with Lender's record keeping guidelines, whichever provides for the longer retention period.

19. No Third Party Beneficiaries. This Agreement is made for the sole protection and benefit of the parties hereto, and no other person shall have any right of action under this Agreement as a third party beneficiary or otherwise.

20. Notices. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon actual delivery or upon the mailing thereof by registered or certified mail, return receipt requested, postage prepaid, to the address for each party set forth below or to such other address as Lender or Broker shall specify in writing to the other:

If to Lender::

Victoria Funding Services  
Attn: General Counsel  
20 S. Santa Cruz Ave., #101  
Los Gatos, CA 95030  
(408) 399-0103

21. Miscellaneous. Modifications, waivers and approvals required from or given by either party hereto shall be effective only if in writing and signed by such party, provided, however, that nothing set forth in this paragraph shall affect Lender's right to review, amend or revoke the materials described herein as expressly being subject to such right. Broker may not assign its rights or obligations under this Agreement. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and permitted assigns. In the event that a court of competent and final jurisdiction shall hold any provision of this Agreement to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of this Agreement. The captions inserted in this Agreement are for the sake of convenience only and in no way define, limit, extend or interpret the scope of this Agreement or of any particular paragraph hereof. If it is determined in a judicial proceeding that a party has failed to perform under any provision of this Agreement, then the prevailing party shall be entitled to recover from the losing party, on demand, reasonable attorneys' fees and other reasonable out-of-pocket expenses incurred in connection with such dispute.

22. This Agreement is governed by, and shall be construed in accordance with, the laws of the State of California. In the event that any legal action should be filed by either party against the other, the venue and forum for such action shall be the Superior Court of the State of California for the County of Santa Clara. Each of the persons and entities who are shareholders or partners of Broker, if any, also agrees to said venue and forum and further agrees that, if they are not resident of said county at the time of such action, service of process may be had on them by delivery to them via United State registered or certified mail. This Agreement and the Loan Submission Guidelines constitute the entire agreement between the parties and supersede any and all prior written or oral agreements between the parties as to the subject matter hereof.

(Signature page follows.)

IN WITNESS WHEREOF, the parties hereto have caused this Wholesale Brokerage Agreement to be executed by their duly authorized representatives as of the date set forth above.

[Corporate Seal]  
(if none so state)

ATTEST:      BROKER

\_\_\_\_\_  
(Name of Company)

By: \_\_\_\_\_  
(Signature of Principal or Authorized Officer if Incorporated)

Name: \_\_\_\_\_  
(Typed)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:      LENDER:

Victoria Funding Services

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Typed)

Title: \_\_\_\_\_

Date: \_\_\_\_\_