



WHOLESALE AGREEMENT

This Wholesale Agreement regarding the underwriting, closing and funding of mortgage loans secured by real property ("Loans") is entered into as of the date set forth below between Wintrust Mortgage Corporation ("WMC") and the mortgage originator specified below ("Broker").

- 1) **Loan Programs.** WMC shall furnish to Broker from time to time a schedule of available loan funding programs ("Loan Programs"), with such interest rates, points and other terms as WMC may determine in its sole discretion. Prior to originating any loan to be funded by WMC, Broker shall be responsible for reverifying the availability of the WMC Loan Program and the related underwriting requirements intended for the particular loan, because WMC may amend or delete its Loan Programs at any time without prior notice.
- 2) **Offered Loans.** Broker shall have the right from time to time, but not obligation, to originate and offer loans to be funded by WMC. WMC shall have the right, but no obligation, to accept and fund loans originated and offered to WMC by Broker.
- 3) **Representations, Warranties and Covenants.** With respect to each loan offered by Broker and accepted for funding by WMC under this Agreement, Broker represents, warrants and covenants to and with WMC as follows:
 - A) At the time of the origination and closing of the loan, Broker will have all necessary state and federal licenses to originate and broker mortgage loans. Broker shall provide copies of those licenses to WMC promptly upon request.
 - B) Broker certifies as of this date the Broker has not been terminated or suspended from any Wholesale or Correspondent Lender's programs. If so, details are attached.
 - C) Broker will produce at its expense and submit to WMC a loan application package for each loan (an "Application Package"). The Application Package will include a loan application, verifications of employment and bank deposits, a tri-merge credit report, a Good Faith Estimate, a Truth-in-Lending Act disclosure, an HVCC compliant appraisal from a licensed independent appraiser, a fully executed and completed Loan Brokerage Agreement, and other such documents and supporting information as WMC may require. At the time an Application Package is submitted to WMC and at the time of the closing of the loan, the Application Package will be complete and free of any inaccuracies.
 - D) Broker and each loan will comply with the WMC "Lending Manual" and /or "Procedure Summary" (as they may be amended from time to time) including all WMC posted bulletins, announcements, matrices, and guidelines, and with all applicable federal, state, and local laws, including without limit RESPA, TILA, the Equal Credit Opportunity Act, and the Fair Credit Reporting Act.
 - E) Broker is and will remain familiar with all mortgage-underwriting and regulatory requirements applicable to loans funded by WMC, including without limit the underwriting requirements of FHA, VA, FNMA, GNMA, FHLMC, and WMC's private investors. Each FHA, VA, FNMA, GNMA, and FHLMC loan will meet all of the underwriting requirements of the applicable government agency in all respects. Each non-government agency loan shall meet in all respects all of the underwriting requirements set forth by WMC and its investors. Broker shall adhere to all guidelines published in the then current Fannie Mae Selling Guide/Freddie Mac Single-Family Seller/Servicer Guide, as well as guidelines of the particular Investor whose rules the loan is being underwritten to.

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- F) The following Early Payment Default (EPD) penalties will apply if any of the first four (4) payments due to WMC or its subsequent investors becomes 90 or more days delinquent. The Broker will be subject to an indemnification amount of \$3,000.00 for insured FHA, VA, or USDA loans, and \$1,500.00 for conventional loans plus a refund of any "service-release premium" or "yield-spread premium" paid to Broker by WMC.
- G) If any loan submitted by Broker to WMC is prepaid in full before the receipt of five (5) scheduled monthly payments, then Broker shall promptly refund to WMC, upon demand, the amount of any "service-release premium" and/or "yield spread premium fee" (as those terms are defined for federal disclosure purposes) previously paid to Broker by WMC with respect to such loan. The obligation of Broker set forth in this paragraph shall apply regardless of whether the Broker is involved in the subsequent payoff transactions.
- H) Amount owed by Broker to WMC under this Agreement may, at WMC's option and in its sole discretion, be offset by WMC against any payments then or thereafter owed by WMC to Broker. Any such offset shall not constitute an accord and satisfaction unless agreed to in writing by the parties.
- 4) **Good Faith Estimate Disclosure Procedures.** Broker and WMC hereby Acknowledge that:
- The Real Estate Settlement Procedures Act of 1974, as amended ("RESPA") and regulations promulgated thereunder by the U.S. Department of Housing and Urban Development have been amended, effective as to loan applications received on or after January 1, 2010 (the "New RESPA Rules"); and
 - The New RESPA Rules, among other things: (1) require the use of a new form of Good Faith Estimate ("GFE"). And (2) provide that if certain settlement charges required to be disclosed on the GFE exceed certain tolerance limits ("Tolerance Violations") the Lender will be required to cure the Tolerance Violations

Broker will issue the initial GFE in compliance with the New RESPA Rules to each mortgage loan applicant within 3 business days of receipt of the application for loans it is or will be brokering on behalf of WMC.

In the event that WMC is required to cure a Tolerance Violation with respect to any initial or subsequent GFE issued by Broker, Broker (i) authorizes WMC to deduct and retain the amount necessary to cure such Tolerance Violation from the compensation otherwise due to Broker in connection with such loan, or otherwise due to or to become due to Broker under the terms of this Agreement. Or (ii) agrees to reimburse WMC in such amount if insufficient compensation is due to Broker.

- 5) **Lock-Ins and Delivery.** Broker shall use its best efforts to close locked-in loans prior to the expiration of the lock period. Delivery of a locked-in loan to WMC is expected, regardless of whether the loan closes within the lock period. Failure to maintain an acceptable closing rate may subject the broker to the termination of this wholesale relationship. Closing rates of locked and registered loans will be reviewed monthly.
- 6) **Mortgage Fraud.** Broker acknowledges that it is WMC's policy and intent to support the elimination of mortgage loan fraud and misrepresentation within the residential lending industry. Broker is hereby advised that it bears responsibility for all actions performed in the course of its business by its employees and representatives. The submission of a loan application containing false or misrepresented information is a crime. The consequences of mortgage loan fraud and/or misrepresentation are extensive and costly. Broker acknowledges and agrees that WMC may vigorously pursue any and all remedies available to it in the event of any such fraud or misrepresentation including, without limitation, the remedies set forth in this Agreement, and reporting any instances of fraud or misrepresentation or alleged fraud or misrepresentation in connection with a loan submitted by Broker to WMC for funding to appropriate federal, state and local regulatory authorities or law enforcement agencies, including such authorities or agencies responsible for criminal or civil prosecution and/or revocation of licenses.

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7) Indemnification/Remedies

- In the event that any loan does not meet the requirements of the Agreement, WMC may (i) decline to fund the loan (if the loan has not yet closed), (ii) require Broker to purchase the loan, within 30 days of demand by WMC, for an amount equal to the outstanding principal balance, plus accrued interest plus any premium paid by WMC (if the loan has closed), and/or (iii) seek damages and/or pursue any other remedies allowed by law. In any event, Broker shall pay or reimburse WMC for any attorney's fees and other expenses incurred by WMC in connection with the deficiency, whether or not suit or arbitration is initiated.
 - Broker hereby agrees to hold WMC harmless and to defend and indemnify WMC and its past, present, and future directors, officers, shareholders, employees, attorneys, agents, representatives, subsidiaries, affiliates, successors and assigns (collectively, the "Indemnified Parties") from and against, and will reimburse the Indemnified Parties with respect to, any losses, liabilities, damages, demands, claims, costs, and expenses, including, without limitation, reasonable attorney's fees and cost of investigation (collectively, "Losses"), from any cause whatsoever, that are directly or indirectly out of or by virtue of, or are directly or indirectly connected with this Agreement.
 - Broker agrees that Losses payable by Broker to WMC hereunder shall include, without limitation, Losses resulting from: (i) the liquidation of any loan or the security for any loan the application of which was submitted by WMC to Broker; and/or (ii) amounts owed by WMC to a third party, including a party to whom the loan was sold in the secondary mortgage market, resulting from any repurchase, indemnity or other obligations of WMC to such party, including any damages or losses of such third party, refunds, early payoff or prepayment fees or penalties, or administrative or legal fees owed such party by WMC under the terms of the applicable loan purchase agreement or otherwise.
 - Broker acknowledges and understands that WMC is not in the business of servicing loans and that to the extent WMC funds a loan it does so with the intent to sell the loan into the secondary mortgage market. As a result, in addition to any other remedies set forth herein and Losses payable by Broker to WMC hereunder, in the event WMC is unable to sell a loan into the secondary mortgage market or WMC is required by or deems it advisable to repurchase a loan from any party to whom a loan has been sold because of any breach of this Agreement by Broker or fraud or misrepresentation in connection with a loan application.
 - Broker's obligations to fully indemnify WMC under this Agreement shall not be affected by WMC or any third party taking or failing to take any of the following actions, with or without notice to Broker: (i) liquidation, repayment, retirement, or sale or resale of any loan; (ii) foreclosure of any loan; or (iii) sale or resale of the property securing a loan.
 - In addition to Broker's obligations to fully indemnify WMC under this Agreement, including Broker's obligations set forth in this agreement, Broker shall refund to WMC any fees or compensation paid by WMC to Broker in connection with a loan in the event such loan becomes the subject of indemnity claim by WMC.
- 8) **VA Authorized Agent Lending Program.** Brokers participating in VA's Authorized Agent Lending Program agree to reimburse WMC for any invoice WMC must pay on behalf of Broker under the VA Authorized Agent program. If WMC advances funds to pay VA appraisers three times, the broker will no longer be sponsored under the Authorized Agent Program.
- 9) **Miscellaneous.** This Agreement sets forth the entire understanding of the parties with respect to its subject matter, and all prior related negotiations and agreements are merged herein. This Agreement may not be amended and no provision hereof may be waived absent a writing signed by the party against whom enforcement of the amendment or waiver is sought. The laws of Illinois shall govern this Agreement. This Agreement may not be assigned by Broker. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties and their respective heirs, successors and assigns. Broker is an independent contractor, not an employee, partner, agent, servant or affiliate of WMC. Broker shall make no credit or other contractual commitments on behalf of WMC. Broker shall not use WMC or its name in any of Broker's marketing activities.
- 10) **Nondisclosure of Confidential Information.** Each party recognizes that due to the nature of this Agreement, it may have access to the confidential or proprietary information in strictest confidence

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and not to disclose it or allow it to be disclosed, directly or indirectly, to any person or entity, except as otherwise may be required by law or upon the prior written consent of such other party. Each party further agrees to return any confidential or proprietary information or other materials of the other party provided to it, together with any copies thereof, promptly upon the request of such other party or the termination of this Agreement. This paragraph shall survive the termination of this Agreement. Notwithstanding the foregoing, nothing herein shall be deemed to prohibit WMC from disclosing information about Broker to appropriate federal, state or local authorities or agencies in the event of actual or suspected mortgage loan fraud or misrepresentation.

- 11) **Termination.** This Agreement may be terminated at any time by either party, with or without cause, on at least ten days prior written notice. No termination shall effect either party's outstanding obligations as to loans already closed or already accepted for funding by WMC.
- 12) **Arbitration.** Any controversy between the parties related to a loan or otherwise arising out of this Agreement shall be submitted to mandatory arbitration in Cook County, Illinois pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Any resulting award shall be final and binding on both parties, and judgment thereon may be entered in any court of competent jurisdiction.

BROKER ACCEPTANCE: *If ownership is >33%, each owner is required to sign and execute the Wholesale Agreement

Company Name: _____

Address: _____

Phone: _____ Fax: _____ Date: _____

Signature: _____ Percentage of Ownership* (if applicable): ____

Print Name: _____ Title: _____

Signature: _____ Percentage of Ownership* (if applicable): ____

Print Name: _____ Title: _____

Signature: _____ Percentage of Ownership* (if applicable): ____

Print Name: _____ Title: _____

Signature: _____ Percentage of Ownership* (if applicable): ____

Print Name: _____ Title: _____

WINTRUST MORTGAGE CORPORATION:

Approved By: _____ Title: _____ Date: _____