



# WHOLESALE BROKER AGREEMENT

THIS WHOLESALE BROKER AGREEMENT ("Agreement") is made on \_\_\_\_\_, \_\_\_\_\_ by and between Carrington Mortgage Services, LLC, a Delaware Corporation with its corporate office located at 1600 South Douglass Road, Suites 110 & 200-A, Anaheim, California 92806 ("Lender") and \_\_\_\_\_, a(n) [State/Entity Type], with its principal place of business located at \_\_\_\_\_ ("Broker", Lender and Broker are hereinafter collectively referred to as the "Parties" and individually as a "Party").

## RECITALS

1. Broker is a duly licensed mortgage broker engaged in the business of taking mortgage loan applications from consumers for residential mortgage loans, aiding and assisting consumers in the pre-qualification for residential mortgage loans, choosing a mortgage product, completing a mortgage loan application and processing those applications on behalf of consumers in exchange for a fee.
2. Broker desires to submit residential mortgage loan applications and obtain mortgage loans from Lender for its applicants.
3. Lender extends credit to qualified applicants for mortgage loans secured by first and/or second liens on residential real property.
4. Lender and Broker desire to establish a relationship whereby Broker may submit residential mortgage loan application packages to Lender for possible acceptance of such applications in accordance with the terms and conditions set forth in this agreement.

NOW THEREFORE, in consideration of the promises and mutual covenants contained in this agreement, Lender and Broker agree as follows:

## ARTICLE 1 DEFINITIONS

**"Applicant"** means the person(s) who submit an Application to Broker that Broker subsequently submits to Lender and who, if Lender agrees to fund the Mortgage Loan, will be liable to Lender as the borrower on a Mortgage and Note, upon Closing.

**"Application"** means a completed credit application for a Mortgage Loan, the terms and conditions of which Lender shall specify and provide to Broker, including without limitation, terms and conditions relating to the principal amount, credit terms, rates, security and other requirements.

**"Broker"** means the loan originator identified above who generates Application(s) and submits them to Lender.

**"Closing," "Close" or "Closed"** means the funding of a Mortgage Loan by Lender.

**"Fee Agreement"** means a written disclosure and fee agreement between Broker and an Applicant establishing Broker's compensation for its services and the payment thereof.

**"Investor"** means the owner of a Mortgage Loan after it is sold on the secondary market.

**"Lender"** means Carrington Mortgage Services, LLC, the mortgage company identified above that may agree to fund Mortgage Loan(s).

**"Lender's and/or Investors' Guidelines"** (sometimes also the "Guidelines") means the Underwriting criteria established by Lender and/or an Investors, as reflected on Lender's website as identified by its web or Uniform Resource Locator (URL) address. The Guidelines are incorporated herein by reference, and made a part hereof. Lender also reserves the right, in the exercise of its reasonable and good faith discretion, to revise the Guidelines at any time. Lender, however, will notify Broker promptly of all such revisions in writing at least ten (10) business days prior to their effective date, and the Guidelines that are in effect at the time Broker takes a loan application to be delivered pursuant to this Agreement, and prior to such notice and effective date shall apply to such Loan(s). Capitalized terms used in this Agreement shall have the meanings specified herein and in the Guidelines. Unless specifically stated otherwise herein, the terms and conditions of this Agreement shall prevail in the event of a discrepancy or conflict between the Guidelines and the Agreement.

**“Mortgage”** means the document(s) evidencing a security interest in or lien on the Mortgaged Property and any other collateral securing repayment of the Note, including without limitation any mortgage, deed of trust, deed to secure debt or security deed. **“Mortgage Loan(s)”** means a residential mortgage loan secured by a first or second lien on the Mortgaged Property, evidenced by a Note, Mortgage, and any other documents or instruments evidencing the borrower’s indebtedness and the collateral securing repayment thereof, under this Agreement.

**“Mortgage Loan Program”** means the criteria established by Lender and/or an Investor, as reflected by Lender’s and/or Investors’ Guidelines, setting forth those Mortgage Loans available to eligible, prospective borrowers for Closing in accordance with the terms of this Agreement.

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

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

**“Underwrite”** or **“Underwriting”** means the examination of an Applicant’s Application, credit history, income and financial resources, assets and appraisal for the purpose of determining whether to extend credit to the Applicant, under applicable Guidelines

## ARTICLE 2 DUTIES OF BROKER

- 2.1 Broker shall take Applications and collect financial information for Applicants at its offices in its own name through its employees, agents, affiliates, and contractors.
- 2.2 If Broker contracts out for services through a third party service, such as contract processing, Broker shall ensure that such third parties are in compliance with all applicable laws and this Agreement. Broker shall be ultimately responsible for the actions, errors and omissions of contract processor’s actions relative to the loan file, loan documents, financial documents and the Applicant. Lender reserves the right, in its reasonable discretion, to notify Broker to remove any third party performing services in connection with Applications submitted to Lender in which case Broker shall immediately remove such third party from performing services in connection with Applications submitted to Lender.
- 2.3 Broker shall comply with the procedures established by Lender for the submission of Applications under the Mortgage Loan Programs available to Broker. Broker shall be responsible for determining whether each Application meets the terms and requirements of the available Mortgage Loan Programs, and Lender shall have no obligation to accept submission of any Application for Underwriting that does not fully comply with the terms and requirements of the applicable Mortgage Loan Program.
- 2.4 Broker shall provide to Lender, at its sole cost and expense for each Mortgage Loan submitted, the Application signed by Applicant, the appraisal, such credit and financial information necessary to investigate, Underwrite and fully review the Application, and any and all other documents required or requested by Lender. Broker shall assist Lender in obtaining any additional information needed by Lender in order to facilitate the Closing of the Mortgage Loan. The Application and all other documents submitted to Lender in connection with a proposed Mortgage Loan shall become the property of Lender, except as otherwise provided under this Agreement. Such property and/or Confidential Information, as defined under this Agreement shall not include: (a) information that was already within the public domain at the time the information was acquired by a Party, or (b) information that subsequently becomes public through no act or omission by a Party. In addition, the Parties shall not use the other’s name, brand, trademark, intellectual property or any other reference to that Party without the other Party’s express written consent. All information submitted to the Lender shall be independently verified and may be declined at Lender’s sole discretion. Broker shall have no authority whatsoever to negotiate any terms or conditions of a Mortgage Loan on Lender’s behalf without the Lender’s express written consent.
- 2.5 Broker shall analyze Applicant’s income and indebtedness, and determine the maximum reasonable Mortgage Loan obligations that Applicant can bear that provide benefit to Applicant. Broker shall explain to Applicant how the housing costs and

monthly payments would vary under each Mortgage Loan Program and shall assist Applicant in determining the appropriate Mortgage Loan Program.

- 2.6 Broker shall keep the Applicant apprised of Applicant's status with their Application and communicate any changes within a reasonable amount of time. Broker shall assist the Applicant with understanding and addressing any credit problems and maintain regular contact with the Applicant, real estate agents and Lender.
- 2.7 Broker has no authority to obligate, commit or bind Lender to any agreement for any purpose without Lender's prior written consent, and Broker shall not represent or warrant to any Applicant that Lender has finally approved, or will approve or Close, any Mortgage Loan under this Agreement until Lender so notifies Broker in writing.
- 2.8 To the extent approved by Lender, Broker shall provide to Applicant any and all federal, state and local disclosures required by law, rule or regulation, including without limitation the Loan Estimate, as applicable and required under the Real Estate Settlement and Procedures Act of 1974, 12 U.S.C. §§ 2601 et seq. as implemented by Regulation X ("RESPA") and the Truth in Lending Act, 15 U.S.C. §§ 1601 et seq., as implemented by Regulation Z ("TILA"), the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 et seq. ("FCRA"), and the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691 et seq., as implemented by Regulation B ("ECOA").
- 2.9 The Parties shall comply with all federal, state and local laws, rules and regulations, including the disclosure requirements and prohibitions contained therein, applicable to the conduct of their respective businesses, including, without limitation, the following: (i) ECOA and Regulation B, (ii) the Fair Housing Act, 42 U.S.C. §§ 3601 et seq. ("FHA") and the regulations promulgated pursuant thereto, (iii) the Home Mortgage Disclosure Act, 12 U.S.C. §§ 2801 et seq., ("HMDA") and Regulation C, (iv) FCRA, (v) RESPA and Regulation X, (vi) TILA and Regulation Z, (vii) the Home Ownership and Equity Protection Act, 15 U.S.C. §§ 1601 et seq., (viii) the Flood Disaster Protection Act, 42 U.S.C. §§ 4001 et seq., (ix) the Gramm-Leach-Bliley Act, (x) state, county and municipal anti-predatory lending laws and ordinances, (xi) state mortgage broker laws, and (xii) any and all other laws, rules and regulations applicable to Broker, including those governing fraud, compensation, consumer credit transactions, predatory and abusive lending and mortgage banks and brokers. In connection with ECOA and Regulation B, Broker shall not discourage or pre-screen any Applicant or in any other manner violate the terms of the ECOA or Regulation B. The Parties shall ensure that all compensation they receive in connection with any transaction under this Agreement complies with the loan origination compensation requirements set forth in Regulation Z. Broker shall make available for inspection to Lender and any regulatory agency with supervisory authority over Lender, and shall deliver to Lender upon demand, evidence of compliance with all federal, state and local requirements. Lenders right to inspect such records shall be limited only to records that pertain to Mortgage Loan(s) brokered under this Agreement or compliance with the terms of this Agreement. The Parties' obligation to protect and safeguard any Confidential Information, as defined under this Agreement, shall survive the termination of this Agreement.
- 2.10 Broker warrants that it understands the distinction between an "application" and an "inquiry" within the meaning of HMDA and ECOA, and that, unless otherwise set forth in this Agreement, or unless notified by Lender, it is responsible for complying with the recordkeeping and disclosure requirements of those laws with respect to "applications" that it receives. Broker shall timely notify Lender of all "applications" that it has placed with Lender. Broker shall be responsible for determining if an Application is "incomplete" or has been "withdrawn" as those terms are construed under HMDA and ECOA, and shall timely apprise Lender of these decisions. In such circumstances, Broker will complete and send the appropriate notice to Applicant in accordance with ECOA and all applicable law, with a copy to Lender. In the event that Lender decides that it will not approve a particular Mortgage Loan submitted by Broker, Lender will not deliver to any Applicant an "Adverse Action" notice. Rather, Lender shall deliver a completed Adverse Action notice to Broker specifying the reasons Lender has declined to Close the Mortgage Loan. Broker shall then send the Adverse Action notice to Applicant in compliance with ECOA and any other applicable federal, state and local laws.

- 2.11 Broker shall promptly notify Lender if (A) any substantial change in the ownership, financial condition or management of Broker occurs, within thirty (30) days of the change, (B) Broker relocates their office(s); notification will occur within fifteen (15) days, (C) Broker knows or has reason to know that any information in any Application or other document delivered to Lender under this Agreement becomes untrue or fails to disclose any material fact, (D) any government or other agency has made any adverse finding or taken any adverse action(s) with respect to Broker, or its owners, directors, officers or employees.
- 2.12 Broker shall execute and deliver all instruments required under this Agreement and take all such actions as Lender may reasonably request from time to time in order to effect the purposes of this Agreement and to consummate the transactions contemplated hereby. Without limiting the generality of the foregoing, Broker shall cooperate, to the extent permitted by applicable law, with Lender with respect to a submitted Mortgage Loan after Closing, if Lender requests Broker's assistance with a non-performing or defaulted Mortgage Loan.

Broker's obligations under this Section 2.12 are continuing and shall survive the termination of this Agreement, to the extent allowed by this Agreement or law

### ARTICLE 3 DUTIES OF LENDER

- 3.1 Lender shall Underwrite or cause to be Underwritten every eligible Application submitted pursuant to this Agreement. Lender shall have no obligation to issue a commitment, or other comparable document for, or to Close, a Mortgage Loan which it determines, in its sole discretion, does not meet Lender's or Investors' Underwriting requirements. Lender, in its sole discretion, may decline any Application that does not comply with the terms of this Agreement or does not meet Lender's or Investors' Guidelines. Lender shall notify Broker promptly of such declination in writing within thirty (30) days of the decision.
- 3.2 Lender and Broker agree that Lender may rely on the information, authenticity and accuracy of all signatures and information supplied to it by Broker in connection with each Mortgage Loan, including without limitation any Application. Lender's decision not to conduct an independent investigation with respect to the information, authenticity and accuracy of all signatures and information provided to it by Broker shall not affect or modify the representations, warranties and covenants made by Broker under Article 5 or the rights available to Lender for any breach thereof.
- 3.3 If Lender determines that the Application meets its Underwriting standards, it may, in its sole discretion, issue a commitment or other comparable document in its name to Applicant setting forth the terms and conditions under which it will Close the Mortgage Loan, provided that nothing in this Agreement shall be construed as creating any obligation on the part of Lender to accept or approve such Application or to Close any such Mortgage Loan. If Lender determines that the Mortgage Loan does not meet its Underwriting standards, it will issue a notice of declination to the Applicant in compliance with all federal, state and local laws, rules and regulations, and copy Broker. Lender shall have no obligation or liability to Broker for any Mortgage Loan which is not approved by Lender or for any reasonable delays in determining whether a Mortgage Loan meets Underwriting standards.
- 3.4 Upon the issuance of a commitment or other comparable document in Lender's name to Applicant, Lender shall proceed with the Closing of the Mortgage Loan under the terms and conditions of its commitment or other comparable document to Applicant, and Broker shall provide such assistance in this regard as reasonably required by Lender so as to Close the Mortgage Loan within any applicable time period set by this Agreement.

### ARTICLE 4 RATES AND LOCK-INS

Broker shall comply with the Lender's and/or Investors' Guidelines that Lender may distribute from time to time concerning interest rates and lock-ins that apply to a particular Mortgage Loan Program offered by Lender.

## ARTICLE 5 REPRESENTATIONS, WARRANTIES, AND COVENANTS OF BROKER

As an inducement to Lender to enter into this Agreement and to consummate the Closing of each Mortgage Loan from an Application submitted by Broker, Broker hereby represents, warrants and covenants to Lender, as of the date of execution of this Agreement, as of the date that Broker submits each Application to Lender for approval and as of the date of Closing of each Mortgage Loan, as follows:

- 5.1 Broker is a natural person or an entity, as the case may be, as set forth in the first paragraph of this Agreement. If an entity, Broker is duly organized, validly existing and in good standing under the laws of the state of its organization. Broker has the full legal power, capacity and authority to enter into this Agreement and any related agreements and instruments and to perform its obligations thereunder. The execution and delivery of this Agreement and any related agreements and instruments, and the consummation of the transactions contemplated thereby, have been duly and validly authorized by all necessary action. This Agreement and any related agreements and instruments constitute the legal, valid and binding obligations of Broker and are enforceable against Broker in accordance with their terms.
- 5.2 Broker is properly licensed, or is exempt from licensing, and is qualified to do business in all jurisdictions where it originates Mortgage Loans, where it conducts the activities contemplated by this Agreement and where its business or operations otherwise require such qualification, and is in full compliance with the Secure and Fair Enforcement for Mortgage Licensing Act, 12 U.S.C. §§ 5101 et seq., to the extent applicable. Broker has obtained and shall maintain in good standing all lender's and/or broker's licenses to originate first and/or subordinate lien residential mortgage loans, filings, permits, foreign qualifications, business licenses and other licenses as may be required by applicable, federal, state or local laws, rules or regulations. Copies of all lender's and/or broker's licenses held by Broker and that authorize Broker to engage in the business of brokering residential mortgage loans have been, and renewals will be, provided to Lender, as reasonably requested by Lender. Broker shall promptly notify Lender of the cancellation, renewal or issuance of any lender's and/or broker's licenses to broker and shall upon receipt promptly provide a copy thereof to Lender.
- 5.3 Except as previously disclosed in writing to Lender, there are no lawsuits, arbitrations, legal proceedings, governmental actions, threatened or otherwise pending or filed against Broker, which, either individually or in the aggregate, could have a material adverse effect on Broker's business assets, financial condition, or reputation that would affect Broker's ability to perform its obligations under this Agreement. Broker shall promptly disclose to Lender any initiation, threat or actual filing of any of the items listed in this Section 5.3.
- 5.4 No representation, warranty or written statement made by or on behalf of Broker in this Agreement, or in any written or verbal communication made to Lender in connection with the transactions contemplated hereby, contains, or will contain, any untrue statement or material fact, or omits to state a material fact necessary to make the statements contained therein not misleading.

## ARTICLE 6 REPRESENTATIONS, WARRANTIES AND COVENANTS REGARDING INDIVIDUAL MORTGAGE LOANS

As an inducement to Lender to enter into this Agreement and to consummate the Closing of each Mortgage Loan from an Application submitted by Broker, Broker represents, warrants and covenants to Lender that the following are true and correct with respect to each Mortgage Loan as of the date of execution of this Agreement, as of the date that Broker submits each Application to Lender for approval, and as of the date of Closing and/or date of purchase of each Mortgage Loan, as follows:

- 6.1 No loan package will be submitted that has been referred or brokered to Broker by a broker who will receive compensation from Broker, directly or indirectly, except for a purchase and sale transaction with express prior approval from Carrington Mortgage Services, LLC. Broker warrants that the Loan was not originated by a person other than the Broker.

- 6.2 All representations and warranties made by Broker and all information contained in any documents submitted to Lender by Broker with respect to the Mortgage Loan are true, correct and complete and do not omit any material information.
- 6.3 Broker has complied with, and each Application has been or will be submitted to Lender in compliance with, the requirements of this Agreement and all applicable federal, state and local laws, rules and regulations. There are no facts, circumstances or conditions, with respect to any Application or Applicant which Broker believes or has reason to believe could be expected to cause the Mortgage Loan (i) to become delinquent or adversely affect the value or marketability of such Mortgage Loan, or (ii) to be considered a “high cost,” “threshold” or “predatory loan” within the meaning of any applicable federal, state or local law, rule or regulation. Broker has committed no act or omission under this Agreement that will impair or invalidate Lender’s interest in, or the enforceability of, any Mortgage Loan. At all relevant times, as defined by this Agreement, Broker represents that it has not adversely selected Mortgage Loans for submission to Lender. Broker further warrants that it will not commit any fraudulent acts in connection with its brokering of any Mortgage Loan to Lender and that all information and documents by or on behalf of an Applicant to Broker and by Broker to Lender pursuant to this Agreement are genuine and the information contained in such documents is true, accurate and complete. In particular, Broker represents that to its knowledge, after a review of the entire loan application package, no fraudulent information or documentation is present in the loan application package or in the origination process used to generate the loan application package. Broker has used its best efforts to assure that nothing contained in any loan application package, whether obtained, derived or requested by the Applicant, Broker or otherwise, is not untrue, erroneous, misrepresented or misleading. The examination of any document (original or copy) by Lender or its affiliates shall not constitute a waiver of any kind.
- 6.4 The file submitted by Broker to Lender 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. The appraisal was completed in compliance with 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, Recovery and Enforcement Act of 1989 and the regulations related thereto. At the time that the appraisal was made, and to Broker’s knowledge, the appraiser was in compliance with all applicable licensing and certification requirements in the state in which the Mortgaged Property is located. To Broker’s knowledge, the appraisal contains no false or intentionally misleading statement of material fact, and the appraiser has not intentionally withheld information necessary to prevent any material fact from being misleading. The appraisal is in a form customarily accepted by investors in residential mortgage loans.
- 6.5 Broker has complied with the anti-steering provisions of Regulation Z, 12 C.F.R. § 1026.36(e), and the related Official Staff Commentary and any amendments thereto. Broker presented Applicant with sufficient information to satisfy the safe harbor (anti-steering) provision which includes Mortgage Loan options for each type of transaction in which Applicant expressed an interest and the Mortgage Loan options included (1) a Mortgage Loan with the lowest interest rate, (2) a Mortgage Loan with the lowest interest rate without negative amortization, a prepayment penalty, interest-only payments, a balloon payment in the first seven years, a demand feature, shared equity or shared appreciation, and (3) a Mortgage Loan with the lowest total dollar amount of origination points/fees and discount points. The Mortgage Loan options presented to Applicant were obtained from a number of lenders with which Broker regularly does business and for each option presented, the Broker had a good faith belief that the Applicant would likely qualify for the Mortgage Loan presented.
- 6.6 Broker has complied with the fair lending requirements of the FHA and all regulations promulgated pursuant thereto and with all other applicable federal, state and local laws, rules and regulations pertaining to fair lending. With respect to each Applicant, Broker has not discriminated in the provision of or in the availability of financial

assistance because of the consideration of (A) trends, characteristics or conditions in the neighborhood or geographic area surrounding a housing accommodation, unless Broker can demonstrate in the particular case that such consideration is required to avoid an unsafe and unsound business practice, or (B) race, color, religion, sex, handicap, marital status, domestic partnership, national origin or ancestry. Further with respect to each Applicant, Broker has not considered the racial, ethnic, religious or national origin composition of a neighborhood or geographic area surrounding a housing accommodation or whether or not such composition is undergoing change, or is expected to undergo change, in appraising a housing accommodation or in determining whether or not, or under what terms and conditions, to provide financial assistance.

- 6.7 In connection with each Application submitted to Lender pursuant to this Agreement, no Applicant was 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 the Application, such Applicant did not qualify, taking into account credit history and debt-to-income ratios, for lower cost credit then offered by Lender.
- 6.8 If required by Lender or by applicable laws, rules or regulations, Broker has entered into a written Fee Agreement with each Applicant. All fees paid to Broker, whether by Lender or Applicant, are reasonably related to the value of goods or facilities actually furnished or services actually delivered by Broker. Broker has performed services of a type and in the quantity required under applicable law to receive such compensation. Broker has disclosed, and shall disclose, such compensation to the Applicant for each Mortgage Loan where such compensation is paid, or is expected to be paid, pursuant to applicable law. No fees of any kind, other than a reasonable credit report fee not exceeding the actual cost of the credit report, have been charged to or collected from Applicant by Broker, or any employee or agent of Broker, prior to the Applicant's receipt of the initial disclosures from Lender, as required under Regulation Z and Regulation X.
- 6.9 Except as otherwise disclosed to Lender and approved by Lender in writing prior to Closing, Broker does not have, and shall not have, any direct or indirect ownership interest, or any familial relationship interest, in any Mortgaged Property intended to secure a proposed Mortgage Loan.

## ARTICLE 7 FEES & RIGHT OF OFFSET

- 7.1 Lender may, consistent with its policies and procedures, pay Broker a fee for services actually rendered to Applicant in accordance with any Fee Agreement or other arrangement with Applicant, provided that Broker performs the services set forth in Article 2 of this Agreement. No fee or other compensation will be due and payable to Broker by Lender with respect to any Application where the Mortgage Loan is not accepted and Closed by Lender, under the terms of this Agreement. In no event shall Broker receive compensation directly from an Applicant and also compensation, directly or indirectly, from Lender for the same Mortgage Loan.
- 7.2 If required by Lender or by applicable laws, rules or regulations, Broker and each Applicant shall execute a Fee Agreement for each Application submitted or to be submitted to Lender for approval. Any such Fee Agreement shall be in form and content acceptable to Lender. In addition, the form and content shall conform to the applicable provisions of RESPA and its implementing regulations and interpretive rules published by the Consumer Financial Protection Bureau and the requirements prescribed by any other applicable federal, state or local law, rule or regulation. At a minimum, any such Fee Agreement shall accurately and adequately disclose (A) Broker's status as an independent contractor in relation to Lender and (B) the agreed amount and terms of Broker's compensation to be paid for Broker's services in connection with the Mortgage Loan and whether such compensation will be paid entirely by Lender or entirely by Applicant. Any compensation paid under such Fee Agreement, or otherwise, shall at all times comply with the requirements of Regulation Z, including the 12 C.F.R. § 1026.36(d)-(e). As such, in no event shall compensation be paid that is based, directly or indirectly, on a term of a transaction, the terms of multiple transactions, or proxies for terms. A "term of a transaction" is any right or obligation of any of the parties to a credit transaction and includes, but is not limited

to, the interest rate or fees charged in connection with the Mortgage Loan. A “proxy” is a factor that is not itself a term of a transaction but consistently varies with that term over a significant number of transactions, and the loan originator has the ability, directly or indirectly, to add, drop, or change the factor in originating the transaction.

- 7.3 If required by Lender or by applicable laws, rules or regulations, Broker and Applicant shall execute the Fee Agreement as soon as practicable during the Application process, but in any event prior to the Broker’s acceptance from Applicant of a non-refundable deposit for payment of Broker’s compensation. If Lender or any applicable law, rule or regulation requires a Fee Agreement, Broker’s delivery to Lender of a duly executed Fee Agreement shall constitute a condition precedent to Lender’s acceptance of the related Application for Underwriting, under this Agreement. The Parties may agree to modify the Fee Agreement on a going-forward basis at any time, but no more often than once every two months.
- 7.4 The Parties agree that the total aggregate compensation paid (i) by Lender to Broker and (ii) by Applicant to Broker for the services set forth herein shall not be greater than the “reasonable value” of the goods, facilities and services provided by the Broker. Broker and Lender agree that the compensation paid by Lender to Broker pursuant to this Agreement is to compensate Broker primarily for the services set forth in Article 2 as well as for the purchase of all of Broker’s right, title and interest in and to each Mortgage Loan Closed by Lender and in recognition of the value to Lender of the use of Broker’s staff and facilities in connection with the origination of the Mortgage Loan. No compensation shall be owed by Lender to Broker for any Application that Lender does not accept or for any Mortgage Loan that is not Closed, under the terms of this Agreement.

Lender may, in its sole discretion under this Agreement, require that Broker take the following actions with respect to any Mortgage Loan upon Broker’s receipt of Lender’s notice of conditional approval and prior to Lender’s final approval and Closing: (A) deliver to Applicant a notice, in such form as Lender may provide to Broker from time to time, with regard to Lender, Broker or both Parties charging a premium interest rate to defray the costs of Broker compensation or other third party service provider fees and charges, (B) obtain the written acknowledgment of Applicant thereof and (C) deliver a duly acknowledged copy thereof to Lender prior to Closing.

- 7.5 Any and all fees, commissions, and other consideration paid to Broker by Lender in connection with any Application approved by Lender, shall be paid by Lender after deducting all fees and charges due Lender as specified in its price and fee schedules, under this Agreement. Broker shall not accept any direct or indirect compensation of any type from any third party with respect to a Mortgage Loan, including but not limited to, payments involving a 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 unless and until Closed by Lender, pursuant to the terms of this Agreement.
- 7.6 In addition to any other rights and remedies available to Lender under this Agreement, Lender shall have the right, with reasonable prior written notice, to offset and to appropriate or apply any and all fees or deposits of money owing by Lender to Broker against and on account of the obligations and liabilities of Broker under this Agreement, including any indemnification obligations under Section 12.1.

## ARTICLE 8 BOOKS AND RECORDS; QUALITY CONTROL

- 8.1 During the term of this Agreement, Broker shall maintain a complete and accurate account of all funds collected and paid relating to the Mortgage Loans Closed with Lender, under this Agreement. Lender or its agent shall have the right to present themselves during normal business hours, upon reasonable prior written notice, to examine and audit the books, records, correspondence, collections, quality control and collection procedures, internal audit reports and other papers and electronically-stored information relating to a Mortgage Loan or to the matters contemplated by this Agreement and to make copies of any of the foregoing. The Parties shall pay their own travel, copying, and other expenses associated with such a visit. And, the respective right of a party to retrieve such documents and be present on the other’s



property shall again be limited only to records that pertain to Mortgage Loan(s) brokered under this Agreement or compliance with the terms of this Agreement. The Parties' obligation to protect and safeguard any Confidential Information, as defined under this Agreement, and that may be contained in and it observes in the business site facilities it visits, however, under this Agreement, shall survive the termination of this Agreement.

- 8.2 In accordance with Regulation Z, Lender shall maintain records sufficient to evidence all compensation it pays to Broker and the compensation agreement(s) that governs those payments for three years after the date of payment.
- 8.3 Broker shall establish a quality control program to ensure that its policies, procedures and practices conform to the requirements of this Agreement and to all applicable laws, rules and regulations. Broker shall conduct periodic internal audits to determine if its practices conform to its own policies and procedures, to the requirements of this Agreement and to the requirements of all applicable laws, rules and regulations. Such internal audits shall occur not less frequently than annually. If an internal audit reveals any material deficiency in its policies, procedures or practices, Broker shall immediately notify Lender of all such deficiencies and shall promptly undertake remedial actions to cure such deficiencies. Broker shall document the results of such internal audits and any remedial actions undertaken and shall retain such documentation in its books and records for inspection by Lender pursuant to Section 8.1. Upon Lender's request, Broker shall deliver a copy of such documentation to Lender without charge.
- 8.4 Lender or its agent shall have the right to conduct its own independent audit of Broker to ascertain if the policies, procedures and practices of Broker conform to the requirements of this Agreement and to all applicable laws, rules and regulations. Lender or its agent may conduct such independent audits at such times during normal business hours no more than once per year, at their own expense, and only upon reasonable prior written notice to the other. And, the respective right of a party to conduct such an independent audit and be present on the other's property shall be limited only to those matters that pertain to Mortgage Loan(s) brokered under this Agreement or compliance with the terms of this Agreement. The Parties' agree to provide each other a free copy of any such independent audit, if requested by either party. The obligation to protect and safeguard any Confidential Information, however, as defined under this Agreement, and that may be contained in and it observes in the business site facilities it visits, however, under this Agreement, shall survive the termination of this Agreement.

## ARTICLE 9 EVENTS OF DEFAULT AND REMEDIES

- 9.1 Broker shall be in default under this Agreement upon the occurrence of any one or more of the following events or conditions: (A) Broker fails to pay when due any amounts owed to Lender hereunder, (B) any representation, warranty or covenant made by or on behalf of Broker in this Agreement is false or incorrect in any material respect when made or furnished, (C) a material adverse change occurs in the financial or operating condition of Broker, or Broker fails to meet any capital or other financial standards imposed by any applicable regulatory authority, (D) Broker misrepresents or misleads any Applicant or any other person about the obligations of Lender under this Agreement, misrepresents the relationship between Lender and Broker, engages in, aids or abets another in fraudulent or deceptive practices, or breaches its contractual duties in conducting its responsibilities in connection with this Agreement, including but not limited to participation or encouragement by Broker in providing false or misleading information or documentation to Lender in connection with any Application, appraisal report, credit report or other loan documentation, (E) Broker terminates its existence, dissolves or files a petition in bankruptcy, or a court, agency or supervisory authority appoints a conservator, receiver or custodian for the benefit of creditors for Broker, or any case or proceeding is commenced under any bankruptcy or insolvency law by or against Broker or any of its subsidiaries that is not dismissed within 60 days of its filing, (F) any of Broker's licenses, permits or approvals are revoked, suspended, cancelled or not renewed, (G) Broker violates any federal, state or local law, rule or regulation or violates any industry standard or (H)

Broker fails to perform or to observe any other obligation, covenant or agreement set forth in this Agreement, which failure is not cured within three (3) business days after notice by Lender.

- 9.2 Upon the occurrence of an event of default, Lender may, in the exercise of its reasonable and good faith discretion, undertake one or more of the following remedies: (A) terminate this Agreement, (B) upon a default under Section 9.1(B) based on a representation, warranty or covenant set forth in Article 6 with respect to a particular Mortgage Loan, require Broker to purchase such Mortgage Loan from Lender within three (3) business days at a price equal to the sum of (i) the unpaid principal balance of the Mortgage Loan, (iii) all interest accrued and owing through the date of purchase, pursuant to a purchase and sale transaction under Section 6, (ii) all advances made under the Mortgage Loan or the Note and/or Mortgage, including without limitation taxes and insurance, (iv) all expenses of collection on the Mortgage Loan, including without limitation attorney's fees and costs of foreclosure, and (v) any compensation paid by Lender to Broker with respect to such Mortgage Loan, and (C) exercise all rights available at law or in equity. All remedies shall be cumulative, not alternative, and the exercise of one or more remedies shall not preclude the exercise of one or more of the others.

## ARTICLE 10 TERMINATION AND SUSPENSION

- 10.1 Either Party may terminate this Agreement upon written notice at any time for any reason, which shall be effective immediately upon receipt by such other Party, and upon the expiration of any applicable period to cure under this Agreement. Lender shall not be obligated to Close any Mortgage Loan once it has provided notice of termination to Broker.
- 10.2 In the event that any government or agency initiates an investigation of Broker, Lender may suspend Broker's eligibility, in addition to any other right or remedy Lender may have, until the investigation is complete. Such suspension shall not operate as a termination of this Agreement under Section 10.1 unless Lender subsequently so elects. During the period of suspension, Lender may, in the exercise of its reasonable and good faith discretion, continue to Underwrite Mortgage Loans without waiving any of its rights under this Agreement, including its rights under this Article 10. No such suspension shall operate in any way to terminate or otherwise limit the other obligations of the Parties under this Agreement, nor shall it operate to excuse or relieve the Parties from the continuing performance of each of their respective obligations under this Agreement.
- 10.3 Termination of the Agreement under this Article 10 shall not affect (A) Broker's representations, warranties and covenants, as of the relevant and applicable Agreement execution date, Application submission date, Closing date, and/or date of purchase for a given Mortgage Loan, (B) Broker's Mortgage Loan purchase obligations under Section 9.2(B), (C) Broker's obligations with respect to Mortgage Loans previously Closed, whether owned by Lender or Investors or (D) any other rights of Lender with respect to any obligations of Broker that expressly survive the termination of this Agreement, including without limitation Broker's indemnification obligations under Article 12.

## ARTICLE 11 SOLICITATION

If Lender shall approve an Application hereunder, then for a period of six (6) months after the later of (A) the date of Closing of such Mortgage Loan and (B) the date such Mortgage Loan is sold to an Investor, neither Broker nor any of its affiliates, officers, employees or agents shall directly or indirectly solicit or encourage, or cause to be solicited or encouraged, by direct mail, telephone, e-mail, internet, personal solicitation or otherwise, the related borrower for the purpose of pre-paying, refinancing or modifying such Mortgage Loan in whole or in part, except with the written permission of Lender. As used in this Section, the term "solicitation" shall not be deemed to include general advertising or general solicitations by Broker that are issued in the normal and general course of business, directed to the general public at large, and are not targeted or directed specifically to a borrower or obligor under any related Mortgage Loan.

Broker can also respond to unsolicited requests or inquiries made by a borrower or an agent of a borrower; that also is not "solicitation."

## ARTICLE 12 INDEMNIFICATION

- 12.1 In addition to any other remedies that Lender may have at law or in equity, Broker shall indemnify and hold Lender harmless from and against any and all liabilities, lawsuits, costs, damages, losses, fees, penalties, fines, forfeitures and claims, including but not limited to reasonable attorney's fees and expenses, where any of the foregoing arise out of or in connection with (A) any breach of Broker's obligations under the terms of this Agreement, (B) any breach or inaccuracy in any representation, warranty or covenant made by Broker, (C) any negligence, fraud or material omission on the part of the Broker in connection with any Mortgage Loan submitted to Lender under this Agreement or (D) Broker's failure to comply with any applicable federal, state or local law, rule, regulation, order or other legal requirement.

The obligations of Broker under this Article 12 are continuing and shall survive the termination of this Agreement, to the extent allowed by this Agreement and under law.

## ARTICLE 13 PREMIUM RECAPTURE

- 13.1 In the event that any Mortgage Loan is refinanced within six (6) months immediately following the Closing, if Broker initiates, solicits, participates or in any way assists financing the borrower, Lender may, in the exercise of its reasonable and good faith discretion, require Broker to refund to Lender one hundred percent (100%) of the amount of any compensation paid to Broker in connection with that Mortgage Loan and any additional costs charged by the Investor, payable within fifteen (15) days of receiving notice of a loan pre-payment.

- 13.2 In all actions involving third parties arising under this Article 13, Lender shall have the complete and exclusive right to determine the conduct and defense of such actions including the right to assign the right of collections to a third party.

The obligations of Broker under this Article 13 are continuing and shall survive the termination of this Agreement, to the extent allowed by this Agreement or law.

## ARTICLE 14 PROHIBITION AGAINST USE OF NAME OR AFFILIATION

Nothing in this Agreement shall be construed to appoint Broker as a joint venturer, partner, employee, agent or representative of Lender, and Broker shall not hold itself out as such. Lender does not assume any liability or incur any obligation of Broker by execution of this Agreement. The Parties intend that Broker shall have the legal status of independent contractor in relation to Lender. Broker shall not use Lender's name or logo for any purpose and Lender shall not use Broker's name or logo for any purpose, except as provided by this Agreement or otherwise mutually agreed to by the Parties in writing.

## ARTICLE 15 CONFIDENTIALITY & PRIVACY

- 15.1 The protection and safeguarding of Confidential Information, as defined in in this Agreement, is a mutual obligation. Each Party shall keep confidential, and will cause its respective employees, contractors, affiliates and agents to keep confidential, any and all information obtained from the other, whether in written, electronic or oral form, which Lender has designated as confidential. Without the prior written consent of the other, each Party shall not use or disclose any such information for any purposes other than those authorized by this Agreement and shall make such information available only to those with a need to view such information in order to carry out the purposes authorized in this Agreement. Without limiting the generality of the foregoing, the Parties agree that the following categories of information are designated as confidential: (A) the terms of this Agreement, (B) the Mortgage Loan Programs, (C) any agreement to fund any Mortgage Loan hereunder, (D) any identifying information regarding any Mortgage Loan originated, acquired or disposed of by Lender, whether or not submitted to Lender by Broker, and (E) any other non-public information relating to either Party, including any proprietary information

concerning each party's respective products and processes, information obtained by visiting other's facilities and reviewing products, equipment or other assets, and all analyses, compilations, data, studies or other documents prepared by each Party or its employees, contractors, affiliates and agents. Parties shall not disclose any consumer information to any person or entity that is not directly involved in the loan process pursuant to this Agreement.

The Parties shall comply with the privacy requirements of the Gramm-Leach-Bliley Act, the FTC Privacy Safeguards Rule and all other applicable federal, state or local laws, rules or regulations governing consumer protection and consumer privacy now or hereafter in effect. The Parties shall implement appropriate procedural and technological safety measures to safeguard consumer information in accordance with such laws, rules or regulations. The Parties shall as soon as practicable notify each other if there is a breach of its security related to customers so that such consumers may be notified in accordance with all federal, state and local laws, rules and regulations. As defined herein, the Parties specifically agree that these provisions equally apply to and extend to their respective proprietary software, other confidential, proprietary or trade secret information of the other that is identified in writing (including, but not limited to, electronically) as such at the time of its disclosure; all other confidential, proprietary or trade secret information of the other, which a reasonable person employed in the financial services industry would recognize as such or is recognized as such under applicable law, including Customer Information, as defined in herein, under law; and compilations, notes or summaries that contain or reflect Confidential Information. The Parties also each specifically acknowledge and agree that the term Confidential Information shall not include: (a) information that was already within the public domain at the time the information was acquired by a Party, or (b) information that subsequently becomes public through no act or omission by a Party. The mutual obligation to protect and safeguard Confidential Information shall survive the termination of this Agreement. Lender and Broker shall not use the other Party's name, brand, trademark, intellectual property or any other reference to that Party without the other Party's express written consent.

The obligations of Broker under this Article 15 are continuing and shall survive the termination of this Agreement, to the extent allowed by this Agreement or law.

## ARTICLE 16 MISCELLANEOUS

- 16.1 **California Law:** This Agreement is made and entered into in the State of California, and shall in all respects be interpreted, enforced and governed under the laws of the State of California (not the law of conflicts). The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning. The venue for this Agreement or any other action related to this Agreement shall be in the County of Orange in the State of California.
- 16.2 **Invalidity:** If any provision of this Agreement be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby, and said illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement.
- 16.3 **Entire Agreement:** This Agreement sets forth the entire Agreement between the Parties hereto with respect to the subject matter hereof, and fully supersedes any and all prior or contemporaneous agreements or understandings, inducements or conditions, express or implied, oral, written or otherwise, except as set forth herein.
- 16.4 **Modifications:** Any modification of the terms of this Agreement shall be invalid unless evidenced by a writing signed by the Parties hereto.
- 16.5 **Independent Representation:** Broker acknowledges, represents and warrants that it has retained legal counsel in connection with the negotiation, preparation and execution of this Agreement and it has been given the opportunity to read this Agreement in full and understands and voluntarily consents to each and every provision contained herein.
- 16.6 **No Third Party Beneficiaries:** Nothing in this Agreement shall be construed to confer any benefits or rights on any person or entity that is not a Party to this Agreement.

- 16.7 **Waiver:** No delay in exercising, and no failure to exercise, any right, power or remedy under this Agreement, whether upon a breach of any provision hereof or upon a default, shall operate as a waiver of such breach or default or prevent that Party thereafter from enforcing each and every other provision of this Agreement. No waiver, whether by conduct or otherwise, of any prior breach or default, and no delay or failure to exercise any right, power or remedy upon any future similar breach or default, in any one or more instances, shall operate as a waiver of such future breach or default. Without limiting the generality of the foregoing, the Closing of a Mortgage Loan by Lender shall in no way relieve Broker from, or constitute a waiver of, any of the representations, warranties and covenants made as to the Mortgage Loan under this Agreement, as applicable under the terms of this Agreement.
- 16.8 **Severability:** If any provision or part of this Agreement is determined to be invalid or unenforceable, the remainder of the Agreement shall not be affected and shall be fully enforceable to the extent of the valid portions thereof.
- 16.9 **Notices:** All notices and other communications under this Agreement shall be in writing or by e-mail sent to the other Party at the address set forth below or at such other address as such Party may hereafter designate by like notice. Written notices shall be effective upon receipt when delivered by hand, by overnight courier with evidence of an air bill, by U.S.P.S. certified or registered mail, postage pre-paid and deposited in a postal mailbox. Email notices shall be effective as determined by server log files or an electronic return receipt.

Notices to Lender: Carrington Mortgage Services, LLC

1600 South Douglass Road,

Suites 110 & 200-A

Anaheim, California 92806

E-mail: \_\_\_\_\_

Notices to Broker: \_\_\_\_\_

- 16.10 **Assignment:** Broker may not assign its rights or delegate its duties or obligations under this Agreement without the prior written consent of Lender.
- 16.11 **Annual Certification:** Lender will require that Broker - comply with Lender's Recertification requirements within thirty (30) days.
- 16.12 **Approved Closing Agents:** Escrow/Settlement owned by a Broker must go through a separate review and approval process.
- 16.13 **Counterparts:** This Agreement may be executed in one or more counterparts, including facsimile counterparts, each of which, when executed shall be deemed to be an original and which together shall constitute one and the same Agreement.



# WHOLESALE BROKER AGREEMENT

IN WITNESS WHEREOF, each of the undersigned parties has caused this Agreement to be duly executed.

|                                   |                          |       |
|-----------------------------------|--------------------------|-------|
| _____                             | _____                    | _____ |
| Broker Name                       | Broker/Officer Signature | Date  |
|                                   |                          |       |
| _____                             | _____                    | _____ |
| Carrington Mortgage Services, LLC |                          | Date  |