

# SANTA CRUZ HOME FINANCE

## WHOLESALE MORTGAGE BROKER AGREEMENT

### PARTIES

The parties to this Wholesale Broker Agreement (hereinafter referred to as the “Agreement”), entered into in \_\_\_\_\_, \_\_\_\_\_, this \_\_\_\_ Day of \_\_\_\_\_, 20\_\_\_\_, are Santa Cruz Home Finance a California corporation, with principal offices located in Santa Cruz, CA, (hereinafter referred to as “Lender”), and \_\_\_\_\_ (hereinafter referred to as “Broker” and if Broker is a corporation or limited liability company, insert also the state or territory under the laws of which Broker was formed and exists) \_\_\_\_\_, with a principal place of business located in (insert in the following space the name of the city and the state or territory of Broker’s primary place of business). \_\_\_\_\_ .

### SUBJECT MATTER OF AGREEMENT

Lender is a mortgage banker, engaged in the business or, among other things, receiving loan application packages from mortgage brokers, such as Broker, for funding consideration. The purpose of this Agreement is to set forth the parties’ rights and obligations with respect to such loan application packages as Broker may from time to time submit to Lender for funding consideration.

### INTEGRATED AGREEMENT

This Agreement, including any and all other materials which are incorporated into this Agreement by reference as set forth below, is intended to, and does, set forth the entire understanding between the parties with regard to the subject matter of this Agreement, and it replaces and supersedes all other prior or contemporaneous agreements or understandings between the parties, whether written or oral, with regard to said subject matter. Except as expressly provided otherwise elsewhere in this Agreement, no amendments, supplements, addenda or waivers of any term of provision of this Agreement shall be valid or have any force or effect whatsoever unless set forth in writing which is signed by an authorized representative of each of the parties to this Agreement.

### NON-EXCLUSIVE AGREEMENT

Nothing contained herein shall obligate Broker to submit all the loan application packages it creates or generates to Lender, it being expressly understood by and between Lender and Broker that this is a nonexclusive Agreement.

## **INDEPENDENT CONTRACTOR RELATIONSHIP**

Nothing contained herein shall constitute a partnership or joint venture between or among Lender and Broker. The parties hereby expressly agree and acknowledge that, with regard to the subject matter of this Agreement, they are, and at all times governed by this Agreement shall be, operating as independent contractors. Broker shall at no time and under no circumstances represent or hold itself out to any third party, either expressly or impliedly, as an agent or employee of Lender. Broker shall at no time make use of any trade or services mark or logo of Lender without the express and specific written consent of Lender. Broker has no authority, wither expressly or impliedly, under this Agreement or otherwise, to enter into any contract or agreement with any third party by or on behalf of Lender.

## **GOVERNING LAW**

This Agreement is entered into under, and shall be governed and construed according to, the laws of the State of California.

## **RESPONSIBILITY OF BROKER**

In consideration for the agreement of Lender hereunder, to receive from Broker and consider for funding such loan application packages as Broker may from time to time submit to Lender, Broker hereby agrees as follows:

- a. Each such loan application package that Broker submits to Lender on behalf of the potential borrower(s) for whom Broker is working shall be completed and submitted to Lender at the sole and exclusive expense of Broker and/or the potential borrower(s) on whose behalf Broker is working;
- b. Each such submission of a loan application package to Lender by Broker shall be made under such programs, procedures, and fee schedules as Lender may from time to time establish;
- c. At the time of submission of each such loan application package, Broker shall have properly prepared, and shall then furnish to Lender in the form required, such items or documents as Lender may require, and shall thereafter provide any additional documentation requested by Lender, including without limitation such information and/or documentation as Lender may require in order to comply with such laws and/or regulations as may be applicable to Lender and/or the loan application package and/or Lender's consideration thereof for funding;
- d. Broker shall furnish Lender with such information and/or documentation as may be required, and shall provide Lender with such information and/or documentation as Lender may request, which Lender may, in its sole and exclusive discretion determine, that it requires in order for it to ensure to its

satisfaction that each such loan application package Broker has submitted to Lender will, if the loan applied for is funded, result in a loan that will be saleable by Lender in the secondary market for such loans;

- e. The contents of each such loan application package submitted to Lender shall become the property of Lender immediately upon submission, and all information contained therein is, but is not required by this Agreement to be, subject to independent verification by Lender;
- f. Broker has not made any false, misleading, incomplete statements or omissions to Lender either in connection with Broker's application for approval by Lender or with respect to each such loan application package submitted to Lender under the terms of this Agreement;
- g. Broker will make such investigations and inquiries as needed to verify the truthfulness and completeness of all information provided in each such loan application package submitted to Lender, including without limitation that information relating to the creditworthiness of the potential borrower(s) and the value of the real property to be encumbered by the instrument securing the loan being applied for by the potential borrower(s), and Broker represents and warrants to Lender with regard to each such loan application package submitted to Lender hereunder that, as of the date of the loan being applied for is closed and funded by Lender, all such information is true, accurate and complete and that Broker has not omitted any material information either from the loan application package as originally submitted or as it may have been supplemented by Broker, either in response(s) to Lender's request(s), if any, for additional information and/or documentation, or otherwise;
- h. Broker neither has nor is aware of any adverse information and/or documentation concerning any potential borrower(s) on whose behalf it submits a loan application package to lender which it has not communicated to Lender, and broker represents and warrants to Lender that all documents and instruments prepared or submitted by Broker, either with the loan application package as originally submitted or as it may have been supplemented by Broker, either in response to Lender's request(s), if any, for additional information and/or documentation, or otherwise, are valid and genuine in every respect;
- i. If at any time during the period between the original submission of a loan application package and the closing and funding of the loan applied for Broker learns or has reason to believe that any of the information or documentation submitted by Broker either with the loan application package as originally submitted or as it may have been supplemented by Broker, either in response(s) to Lender's request(s) if any, for additional information and/or documentation, or otherwise, or if any of Broker's representations and/or warranties with regard thereto, either were when submitted or made, or

thereafter have become, not true and/or not valid and/or not genuine, Broker shall immediately give written notice thereof to Lender;

- j. No appraisal, or title company controlling, controlled by, or under common control with Broker shall be used in connection with the origination or closing of any loan resulting from a loan application package submitted to Lender under the terms and provisions of this Agreement;
- k. Broker has fully disclosed to Lender in writing the existence of any and all past or present claims, actions, lawsuits, legal or administrative proceedings, arbitrations, and dispute resolution proceedings of any kind or nature, regardless of whether they are or were civil, criminal, quasi-criminal, administrative, or otherwise, as well as all un-filed claims, including without limitation repurchase requests or indemnification or “make whole” claims, by any licensing or law enforcement authority or by any other lenders against Broker or any of Broker’s salespersons, employees, partners, associates, shareholders or members, whether presently or formerly associated with Broker;
- l. All salespersons and employees of Broker, and all other persons associated with broker, who will provide services in conjunction with the submission of each such loan application package submitted to Lender under the terms of this Agreement have, in so doing, act in compliance with the requirements applicable to broker under this section of the Agreement with regard to each such submission of a loan application package to Lender, and Broker shall bear full responsibility for any instance of noncompliance with the terms of this section of the Agreement by any such person;
- m. Broker is now, and at all times during this Agreement shall be and remain, duly licensed under the laws of the state(s) in which Broker does business, in possession of all necessary licenses to originate and close loans secured by deeds of trust or mortgages encumbering real property in such state(s), and possessed of all necessary permits for and the legal authority to engage in the activities contemplated by this Agreement, and all persons, employed by or associated with Broker to carry on the business contemplated under this Agreement shall at all times hereunder either be able to validly do so under the licenses and permits held by or issued to Broker or shall have their own valid and duly issued license(s) and permit(s) to do so;
- n. If Broker is other than a sole proprietorship, Broker is, and throughout the terms of this Agreement will remain, duly organized and existing as a corporation, limited liability company, partnership or other form of business organization in good standing under the laws of the jurisdiction in which Broker was formed and organized and Broker has and will continue to have the requisite power and authority to enter into and perform the terms of this Agreement;

- o. Broker shall at all times comply with all applicable Federal, State, and Local laws regarding the processing and origination of mortgage loans, including but not limited to the Equal Credit Opportunity Act, Real Estate Settlement Procedures Act, Truth-in-Lending Act, Fair Housing Act, Fair Credit Reporting Act, Federal Consumer Credit Protection Act, Gramm, Leach, Bliley Act and any and all applicable Predatory Lending Laws;
- p. Broker understands and agrees that Lender may report information about any loan application package that Lender believes may contain misrepresentations and/or irregularities to the applicable regulatory agency and to any mortgage industry background database. Broker agrees that it and its employees may be named as the originating entity or loan officer(s) on any such loan. Broker acknowledges that importance of Lender's right and necessity to disclose such information, and without limiting any other release provisions in the Agreement, on behalf of itself and its directors, officers and employees, and their, and each of their, respective successors and assigns, Broker hereby releases Lender, its officers, directors, agents, employees, successors and assigns from the any and all damage, loss, liability, cost, actions, causes of action, claims, demands or expense, both direct and indirect, including without limitation reasonable legal and accounting fees and expenses, that may arise from the reporting or use by any database subscriber of any information submitted by Lender with regard to Broker and its employees to any mortgage industry background database;
- q. No obligation of Broker under the terms of this Agreement may be assigned or delegated by Broker to any third party without the express written consent of Lender.

## **TERM AND TERMINATION**

The term of this Agreement shall be indefinite, and shall commence with the effective date as provided in the Effective Date Section. Lender reserves the right to terminate this Agreement at any time, and for any reason, which termination shall be effective upon notification to broker by authorized representative of Lender.

## **INDEMNIFICATION**

Broker agrees to indemnify Lender and against any and all claims, demands, liabilities, causes of action, and expenses whatsoever, including without limitation attorney's fees and court costs, relating to or arising out of, or in connection with Broker's actions or inactions hereunder. In the event any fraudulent "information" is submitted by Broker with respect to a loan application package, and such loan is closed and/or funded and/or purchased by Lender, Broker agrees to repurchase such a loan immediately upon written demand therefore and to compensate Lender for any costs and expenses incurred by

Lender in connection with the origination or purchase or sale of that loan and/or the repurchase of it by Lender or Broker. For purposes of this provision of the Agreement, “information” shall mean and all information obtained from the potential borrower(s) or any reference source that would, according to standard practices and procedures in the mortgage lending industry, be within the control or knowledge of Broker, as well as any appraisal related information which is the result of, or is communicated because of, any relationship or transaction between the appraiser and Broker.

## **EARLY PAYOFF POLICY**

During the term of the Agreement, Lender shall maintain an Early Payoff Policy (hereinafter referred to as “EPO policy”) with regard to loans resulting from loan application packages Lender receives from Broker.

The EPO Policy shall come into effect whenever a loan resulting from loan application package it received from broker is sold to or funded by Lender and that loan pays off or the principal balance is paid down by more than 20% of the original principal balance within one hundred and twenty (120) days of funding, regardless of whether that pay off or pay down is from a refinance by or through Lender as the result of another loan application package submitted by Broker, or from a refinance on a loan application package submitted to Lender by or through another broker or lender, or from a non-brokered refinance by Lender or any other lender. Any principal reduction in excess of 20% of the original loan balance, if made within the first 120 days of funding, triggers the EPO Policy.

On all mortgage loans falling within the EPO Policy, Lender may require Broker to repay to Lender all monies paid to Broker by Lender with regard thereto, including without limitation the premium price or service release premium. No portion of the repayment of any premium price or service release premium, pursuant to the EPO Policy, may be charged back to any borrower by Broker.

Lender will issue to Broker a billing statement each month detailing any applications of the EPO Policy and the amount required to be reimbursed to Lender. Payment to Lender in full of any reimbursement amount owed by Broker under the EPO Policy will be required within thirty (30) days of Broker’s receipt of a billing statement reflecting a reimbursement amount due to Lender. Lender may, in its sole discretion, take an offset against any monies due from Lender to Broker for any reimbursement amount due from Broker to Lender as a result of any application of the EPO Policy.

Throughout the term of this Agreement, Lender will monitor the application of the EPO Policy to loans resulting from loan application packages submitted to Lender by Broker under the provision of this Agreement. Should Lender determine, in its sole and exclusive discretion, as a result of such monitoring, that the frequency of the application of the EPO Policy to Broker demonstrates a “churning” activity on the part of the Broker, including without limitation restricting the maximum amount of compensation which may be paid to Broker on refinance transaction.

Lender may, in its sole and exclusive discretion, implement such additional policies and procedures in the future as may be necessary or appropriate to further address early payoff issues.

### **REIMBURSEMENT OF CONSUMERS UPON RESCISSION**

Broker shall promptly reimburse Loan Applicant for all fees and costs incurred by Loan Applicant in applying for or obtaining a loan (other than fees paid to an retained by Lender), including, without limitation, any appraisal fees, credit report charges, title and escrow charges, Broker fees and points and other fees and charges for which Loan Applicant is entitled to reimbursement as a result of exercising its right to rescind or cancel a loan for any reason, including without limitation, under the provisions of Regulation Z.

Broker shall provide a copy of the reimbursement check and the accounting information related thereto to Lender. In the event Broker fails to reimburse Loan Applicant, Lender or otherwise, Lender may, but need not, reimburse such amounts directly to Loan Applicant and Broker shall with thirty (30) days of Broker's receipt of Lender's demand reimburse Lender for such amounts. In the event that Lender requires Broker to return fees to the Loan Applicant, those fees may be deducted from the fees to be paid to the Lender in a recession claim.

### **WAIVERS OF REMEDIES**

Lender's failure or delay to audit any loan prior to funding and closing, or Lender's failure to or delay in giving notice to broker of any material loan application or documentation discrepancy discovered after funding or Lender's failure or delay to exercise any right or remedy available under this Agreement or at law or equity, shall not act as a waiver of any right or remedy, nor shall any single or partial exercise of any right preclude any other or further exercise thereof. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver. All remedies shall be cumulative and nonexclusive.

### **JURISDICTION AND VENUE**

The parties hereby agree and consent that jurisdiction and venue for any dispute arising out of this Agreement shall be in the Superior Court of the State of California and the County of Santa Cruz.

### **NOTICES**

Any notices required under the terms of the Agreement to be given shall be given in writing and shall be transmitted by overnight delivery service to the party to whom the

notice is to be given, with a copy of the notice also deposited with the U.S. Mail, addressed to the party to whom notice is to be given, with First Class Postage thereon fully prepaid, on the same date that the original notice is submitted for delivery to the overnight delivery service. Any notice so given will be presumed to have been received one (1) business day from the date it has been submitted for delivery to the overnight delivery service. The presumption of receipt may, however be rebutted upon the challenge of the party to who notice is given if the party giving the notice cannot produce documentation of actual delivery thereof by the overnight delivery service to the party to whom notice is given. Notices to Lender shall be transmitted to:

Mary Ann Kirch, President  
Santa Cruz Home Finance  
1535 Seabright Ave.  
Santa Cruz, CA 95062

**ATTORNEYS FEES**

In any action or proceeding arising out of this Agreement, the prevailing party therein shall be entitled to an award of its reasonable attorneys' fees as an item of costs

**SERVERABILITY**

If any provision of this Agreement is held invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.

**EXECUTION OF AGREEMENT**

The Agreement shall be of no force and effect unless and until it is executed by both of the parties hereto.

**EFFECTIVE DATE OF AGREEMENT**

The effective date of this Agreement shall be the date of its execution by the last of the parties to execute it.

I have read, understand and agree to all the above terms and conditions of the Wholesale Mortgage Broker Agreement:

BROKER OF RECORD (print) \_\_\_\_\_ Date \_\_\_\_\_

(Signature) \_\_\_\_\_

Broker License \_\_\_\_\_ Exp. Date \_\_\_\_\_

PRINCIPAL OFFICER (print) \_\_\_\_\_ Date \_\_\_\_\_

(Signature) \_\_\_\_\_

OWNER (print) \_\_\_\_\_ Date \_\_\_\_\_

(Signature) \_\_\_\_\_

Lender Name: Santa Cruz Home Finance

NAME and TITLE: Mary Ann Kirch, President

(Signature) \_\_\_\_\_ Date \_\_\_\_\_