

# WHOLESALE BROKER AGREEMENT

This Wholesale Broker Agreement (the "Agreement") is entered into as of 2/1/06 (the "Effective Date") between Countrywide Home Loans, Inc., a New York corporation ("Countrywide") and TBD Diversified ("Broker").

## Recitals

From time to time, Broker may submit to Countrywide, for underwriting and funding by Countrywide, single family residential first and second lien mortgage loans (the "Loans") that meet the eligibility requirements of those mortgage loan programs offered by Countrywide.

Broker agrees to submit such Loans to Countrywide, and Countrywide agrees to underwrite and fund such Loans, in accordance with the terms and conditions set forth below.

Now, therefore, the parties agree as follows:

## **ARTICLE 1** **RESPONSIBILITIES OF BROKER**

- 1.1 **Duties of Broker.** With respect to each Loan submitted by Broker to Countrywide for underwriting and funding, Broker shall:
- (a) have and maintain the exclusive ongoing contact with Loan applicant(s) (collectively "Applicant") from the time of application until closing;
  - (b) undertake all direct and face-to-face personal interviews with Applicant;
  - (c) educate and assist Applicant in understanding the home buying and financing process;
  - (d) discuss the different types of loan products available, explain the qualification and eligibility requirements for each product, and demonstrate how closing costs and monthly payments may vary under each product;
  - (e) gather all information and documentation needed to complete the Loan application including applicable information required by applicable state and federal law and any regulations related thereto;
  - (f) assist Applicant in filling out all Loan applications;
  - (g) collect and analyze financial information and related documents and assist Applicant in determining the mortgage that Applicant can afford;
  - (h) assist Applicant in identifying potential credit problems and obtaining letters of explanation;
  - (i) provide and discuss with Applicant the documents required by the Federal Housing Administration ("FHA") and Department of Veterans Affairs ("VA"), if applicable;

- (j) keep Applicant apprised of the status of Applicant's application and communicate any changes in the loan terms within a reasonable timeframe;
- (k) maintain regular contact with Applicant, real estate agents and Countrywide, as needed;
- (l) deliver to Applicant a good faith estimate meeting the requirements of the Real Estate Settlement Procedures Act ("RESPA") within three (3) days of receipt of the Loan application;
- (m) provide to Applicant such additional disclosures as are required to be provided by Broker, Countrywide or applicable federal or state law, including, but not limited to, disclosures required by Countrywide or applicable law in connection with fees and charges, including mortgage insurance and broker compensation (including yield spread premiums), disclosures required by federal and state truth in lending laws, and disclosures required by states laws that govern and regulate mortgage broker conduct;
- (n) collect the fees for the property appraisal or the VA Certificate of Reasonable Value, if applicable, and credit report and if required by applicable law, deposit such fees in a trust account;
- (o) request the property appraisal and gather preliminary materials from Applicant including, if applicable, the VA Certificate of Eligibility;
- (p) participate in the Loan closing, if applicable; and
- (q) perform any other service as Countrywide may from time to time reasonably request.

1.2 **Pricing.** Countrywide shall provide Broker with Loan pricing information by telephone or facsimile. Broker may register a Loan with Countrywide and/or lock-in an interest rate with Countrywide by telephone, facsimile or such other means as Countrywide may from time to time specify.

1.3 **Loan Application Package.** Broker shall provide, or cause to be provided to Countrywide, an application package ("Mortgage Loan Package") for each Loan submitted to Countrywide for underwriting and funding. Each Mortgage Loan Package shall include the following:

- (a) applicable Loan submission form, as required by Countrywide;
- (b) a completed Uniform Residential Loan Application (Form 1003) signed by Applicant and all disclosures as required by applicable federal or state law;
- (c) the initial good faith estimate of the dollar amount and/or a range for each settlement charge (including any yield spread premiums) that Applicant is likely to incur in connection with the Loan;
- (d) all supporting documentation required by the applicable loan program, including, but not limited to, credit reports, verifications of employment and deposit, title work and property appraisals; and
- (e) such other documents as Countrywide may from time to time reasonably request.

Broker shall be responsible for causing each Loan application and supporting documentation, as may be required by Countrywide, to be prepared accurately and in accordance with Countrywide's policies and procedures in effect at the time such application is made. The property appraisal included in each Mortgage Loan Package shall be conducted by an licensed real estate appraiser acceptable to Countrywide and, if such Loan is a VA Loan or FHA Loan (as defined below), in accordance with VA or FHA appraisal procedures. It is understood and agreed that Countrywide will not collect, hold or be responsible for the disbursement of any Applicant trust funds.

- 1.4 **Points and Fees.** Broker shall include on the good faith estimate provided to Countrywide pursuant to Section 1.3(c) above, all amounts Broker will charge Applicant or earn in connection with the Loan, including any applicable yield spread premium. Notwithstanding anything to the contrary contained herein, Broker shall not charge Applicant any amount that exceeds the applicable pricing policy, as published by Countrywide from time to time, and such amount must be set forth on the good faith estimate or otherwise shown to have been properly disclosed to Applicant in full compliance with all federal and state laws and regulations. Broker shall not serve as a real estate agent or earn a sales commission on any transaction for which Broker is serving as the mortgage broker without the written consent of Countrywide. Broker must notify Countrywide in writing if it is serving in such dual capacity at the time Broker submits the application to Countrywide and must submit to Countrywide a copy of any disclosure of its dual capacity that Broker is required by applicable law to provide to Applicant.
- 1.5 **Processing Services.** Broker and Countrywide may enter into a separate written agreement pursuant to which Countrywide shall undertake, on behalf of Broker, certain processing activities with respect to the Loans to be submitted by Broker to Countrywide for underwriting and funding (the "Processing Agreement").
- 1.6 **Quality Control Program.** Broker shall implement and maintain a quality control program (the "Quality Control Program"), which such Quality Control Program shall be acceptable to, and comply with all applicable requirements of, Countrywide. Countrywide reserves the right to change its requirements for such Quality Control Program at any time and for any reason, which such changes shall be effective upon notice to Broker, and to conduct an audit of Broker to verify the existence and implementation of such Quality Control Program. As Countrywide may from time to time request, including, without limitation, during the initial due diligence and approval of Broker, Broker shall promptly provide Countrywide with a detailed written description of its Quality Control Program.
- 1.7 **Fidelity Bond and/or Errors and Omissions Policy.** As may be required by Countrywide, Broker shall obtain and maintain at its sole cost and expense a blanket fidelity bond and/or errors and omissions policy, both of which shall be acceptable to Countrywide. Any such policies shall provide for coverage of Broker and its employees, agents, independent contractors and other personnel and shall name Countrywide as an additional insured.
- 1.8 **Compliance With Conflict of Interest Policy; Compliance With All Other Policies and Procedures.** In addition to the responsibilities of Broker contained in this Article 1 and this Agreement, Broker shall comply with Countrywide's conflict of interest policy and disclose in writing to Countrywide, and Applicant as may be required by applicable law, such information as may be required by Countrywide and applicable law, including, without limitation, the name, address, primary manager and participating or ownership interest that Broker has in any company and/or service,

regardless if such company and/or service may or may not be providing products and/or services related to any loan transaction contemplated hereunder. Broker shall not use any such company and/or service to provide products and/or services related to any loan transaction contemplated hereunder unless approved in writing by Countrywide and in no event shall Countrywide's receipt of information from Broker related to any such company and/or constitute Countrywide's approval of such company and/or service. Further, Broker shall comply with all other applicable policies and procedures of Countrywide, as such policies and procedures may currently exist or hereafter created and as may be altered, changed, amended, including, without limitation, the [www.cwbc.com](http://www.cwbc.com) Terms and Conditions of use, the [www.cwbc.com](http://www.cwbc.com) On-Site Management policy, the WLD Quality Control policy, any fair lending policies and procedures of Countrywide relating to fair lending, predatory lending and zero tolerance with respect to maximum fees and points (collectively, "Policies and Procedures").

- 1.9 **Countrywide's Broker Website.** If Broker is provided access to Countrywide's Broker website, currently, [www.cwbc.com](http://www.cwbc.com), Broker shall comply with any and all requirements of applicable law and any and all applicable policies and procedures and/or terms and conditions of use of Countrywide related thereto, including, without limitation, any policies and procedures, and/or terms and conditions of use, such as the [www.cwbc.com](http://www.cwbc.com) On-Site Management Policy regarding the protection of passwords and maintenance of security regarding access and use of Countrywide's Broker website. Notwithstanding the foregoing, Broker may be required to consent to such policies and procedures and such terms and conditions of use regarding Countrywide's website via a "click-through" agreement, in which case, Broker agrees that by clicking acceptance of such, Broker shall be legally bound thereby. Further, Broker expressly agrees that Countrywide may change the policies and procedures and/or terms and conditions of use governing Countrywide's Broker website at any time and for any reason upon notice to Broker and any such change shall be effective on the date specified in such notice.
- 1.10 **Document Retention.** Broker shall implement and maintain a sufficient document retention program for Loans submitted to Countrywide for funding, regardless if such loan is actually funded by Countrywide. Such document retention program shall, at a minimum, provide for the retention of documents related to Loans for the period(s) of time required by applicable state and federal law and shall otherwise comply with all applicable laws. To the extent Broker retains, or is required to retain, possession of any document related to a Loan and Countrywide determines that it needs such document, upon request of Countrywide, Broker shall promptly provide such document to Countrywide.
- 1.11 **Review of Broker.** As may be required by Countrywide from time to time, Broker shall cooperate with and provide all information, documents and reports requested by Countrywide so that Countrywide may conduct a review of Broker and its operation. Such information, documents and reports may include, but shall not be limited to, financial reports (including the most recent audited financial statements of Broker), copies of any required bonds or insurance coverages (including those which may be required by Countrywide pursuant to Section 1.7 hereof) and any approvals with applicable governmental agencies.
- 1.12 **Compliance with Requests for Missing or Additional Documentation.** Broker shall comply with any requests by Countrywide for missing, corrected and/or additional documentation related to a Loan. Broker shall comply with any such requests as soon as possible, regardless of whether the request was made prior to or after the closing of the related Loan, but, unless otherwise agreed by

Countrywide, Broker shall comply with any such request no later than ten (10) business days after its receipt of a request from Countrywide therefor.

## **ARTICLE 2 UNDERWRITING**

- 2.1 **Underwriting the Loans.** Upon receipt from Broker of a complete Mortgage Loan Package, Countrywide shall evaluate the risk of making such Loan using Countrywide's underwriting guidelines applicable to the type of loan being sought, as same may be amended by Countrywide from time to time. Countrywide shall notify Broker of any Loan underwriting and documentation deficiencies or problems with respect to any Mortgage Loan Package. Countrywide and Broker agree that Countrywide may rely on the materials contained in the Mortgage Loan Package supplied to it by Broker and the authenticity and accuracy of all signatures and information contained therein. Countrywide's failure to conduct an independent investigation with respect to such materials, signatures and information shall not affect or modify the representations and warranties made by Broker under Article 6 below or the rights and remedies available to Countrywide for a breach thereof.
- 2.2 **No Liability.** Countrywide shall have no liability to Broker for Countrywide's failure to underwrite any Loan in accordance with the applicable guidelines except to the extent such failure constitutes willful misconduct by Countrywide.

## **ARTICLE 3 LOAN APPROVAL AND FUNDING**

- 3.1 **Approval of Loans by Countrywide.** Notwithstanding anything to the contrary contained in this Agreement, Countrywide shall have no obligation to fund any Loan submitted to it by Broker and may reject any Loan that, in Countrywide's sole discretion, does not meet the applicable underwriting guidelines. With respect to any Loan approved by Countrywide for funding, Countrywide may require Broker to comply with certain conditions, as set forth in writing to Broker, prior to funding of the Loan by Countrywide. Countrywide shall not fund any Loan until all such conditions have been satisfied.
- 3.2 **Notice of Adverse Action.** If Countrywide rejects a Loan for funding or makes a counteroffer to Applicant, Countrywide shall, within ten (10) business days after its decision to deny such application, prepare in Countrywide's name and deliver to Broker a notification of adverse action in accordance with the Equal Credit Opportunity Act. Broker shall be responsible for delivering the notification of adverse action to Applicant within the time specified by law.
- 3.3 **Closing.** All Loans approved by Countrywide for funding shall be closed in accordance with Countrywide's written closing instructions and on closing documents prepared by Countrywide or any Countrywide approved document vendor. Countrywide shall provide Broker with the appropriate closing documents as soon as practicable after all applicable conditions to closing have been satisfied. Broker is responsible for ensuring that all closing documents are properly signed by Applicant, Broker or a third party and contain authentic signatures.
- 3.4 **Funding.** Each Loan approved by Countrywide for funding may be closed in the name of Countrywide or if Broker obtains the prior written consent of Countrywide, the name of Broker, unless Broker is prohibited by any law, regulation or certifying

agency from closing in its own name or using a certain funding method. If a Loan is to be closed in the name of Countrywide, the closing documents may be prepared in the name of "America's Wholesale Lender" if permitted by the applicable Countrywide mortgage loan program and state and federal law.

- (a) Loans Closed in the Name of Countrywide. If a Loan is closed in the name of Countrywide, Countrywide will fund such Loan as soon as practicable following receipt of all closing documents, properly completed and signed, including, but not limited to:
  - (i) mortgage, deed of trust, or other security instrument, naming Countrywide or America's Wholesale Lender, as applicable, as the lender or beneficiary;
  - (ii) mortgage note naming Countrywide or America's Wholesale Lender, as applicable, as the payee;
  - (iii) all required property and casualty insurance policies naming Countrywide or America's Wholesale Lender, as applicable, and its successors and assigns as an additional loss payee; and
  - (iv) all required disclosure statements.
  
- (b) Loans Closed in the Name of Broker. If a Loan is closed in Broker's name, concurrently therewith, Broker shall assign to Countrywide all of Broker's right, title and interest in and to the Loan, and Countrywide shall assume all such rights and obligations as the holder of the Loan. Countrywide will fund such Loan as soon as practicable following receipt of all closing documents, properly completed and signed, including, but not limited to:
  - (i) mortgage, deed of trust, or other security instrument, naming Broker as the lender or beneficiary;
  - (ii) unrecorded, but recordable, assignment of mortgage, deed of trust, or other security instruction, from Broker to Countrywide;
  - (iii) mortgage note duly endorsed without recourse to Countrywide;
  - (iv) all required property and casualty insurance policies naming Broker or Countrywide and its successors and assigns as an additional loss payee; and
  - (v) all required disclosure statements.

#### **ARTICLE 4** **FHA LOANS**

This Article 4 shall apply to Broker to the extent Broker intends to originate loans that are eligible to be insured by the FHA ("FHA Loans").

##### **4.1 FHA Loan Correspondent**

- (a) Relationship of the Parties. In accordance with Countrywide's participation in the FHA Direct Endorsement Program and pursuant to the regulations promulgated by the Department of Housing and Urban Development ("HUD")

including, but not limited to, 24 C.F.R. Section 203.5, Broker is authorized to act as Countrywide's loan correspondent solely for the purpose of processing, originating and insuring FHA Loans submitted to Countrywide for underwriting and funding. With respect to the origination of any FHA Loan, Broker is authorized to act as Countrywide's loan correspondent only upon submission of such Mortgage Loan Package to Countrywide for underwriting; prior to such time, Broker shall be acting as an independent mortgage broker when performing all functions with respect to such Loan. This loan correspondent relationship shall be solely for the benefit of Broker and Countrywide and not for the benefit of any third party. Broker shall not hold itself out to any third party as Countrywide's loan correspondent and shall not advertise, publicize or discuss, in any manner whatsoever, the fact that Broker is acting as Countrywide's loan correspondent with respect to the origination of any FHA Loan, without Countrywide's express prior written consent.

(b) **Application and Fees.** Broker shall, with Countrywide's assistance, prepare for submission to HUD all paperwork required to complete the loan correspondent application. Broker shall be responsible for the payment of any application fees, annual fees and territorial fees that are required by HUD in order to maintain Broker's status as an FHA loan correspondent in all territories in which it originates FHA Loans.

4.2 **Mortgage Insurance Premium.** With respect to each FHA Loan funded by Countrywide, Countrywide shall deduct from the Loan proceeds the mortgage insurance premium and shall forward to HUD such premium together with the completed mortgage insurance package. In the event that HUD issues to Broker the OTMIP Statement of Account, the MIC or a suspense letter with regard to the issuance of a MIC, Broker shall forward same to Countrywide immediately. Broker agrees to cooperate with Countrywide in resolving any issues relating to suspension of HUD insurance.

## **ARTICLE 5 VA LOANS**

This Article 5 shall apply to Broker to the extent Broker intends to originate loans that are eligible to be guaranteed by the VA ("VA Loans").

5.1 **Relationship of the Parties.** In accordance with Countrywide's participation as an approved mortgage lender for the VA, Broker is authorized to act as Countrywide's agent, as defined in Section 1.07 of the VA Lender's Handbook, for the sole purpose of processing and originating VA Loans submitted to Countrywide for underwriting and funding. With respect to the origination of any VA Loan, Broker is authorized to act as Countrywide's agent only upon submission of such Mortgage Loan Package to Countrywide for underwriting; prior to such time, Broker shall be acting as an independent mortgage broker when performing all functions with respect to such Loan. This relationship shall be solely for the benefit of Broker and Countrywide and not for the benefit of any third party. Broker shall not hold itself out to any third party as Countrywide's agent and shall not advertise, publicize or discuss, in any manner whatsoever, the fact that Broker may be acting as Countrywide's agent with respect to the origination of any VA Loan without Countrywide's express prior written consent.

5.2 **VA Funding Fee.** With respect to each VA Loan funded by Countrywide, Countrywide shall promptly prepare and submit to the VA the loan guaranty package

and VA funding fee. Broker agrees to cooperate with Countrywide in resolving any issues relating to suspension of the guaranty.

**ARTICLE 6**  
**WARRANTIES AND REPRESENTATIONS OF BROKER**

- 6.1 **Warranties and Representations Regarding the Broker.** Broker represents, warrants and covenants to Countrywide that, with respect to itself, including each office or branch operated by Broker and any third party originating Loans under Broker's license to originate mortgage loans ("Loan Originators") and the Loans, the following are true and correct as of the date hereof and shall remain true and correct during the term of this Agreement:
- (a) Broker and each Loan Originator is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is qualified and/or licensed as necessary to transact business in each state where property securing a Loan is located;
  - (b) Broker and each Loan Originator is, and shall at all times remain, knowledgeable and in compliance with all federal, state and local laws and regulations applicable to it and the operation of its business and as an FHA loan correspondent and/or VA authorized agent (if applicable), including, but not limited to, the RESPA, the Home Ownership and Equity Protection Act of 1974, the Fair Credit Reporting Act, the Fair Housing Act, the Equal Credit Opportunity Act, the Truth in Lending Act, the Home Mortgage Disclosure Act and all regulations promulgated under each such law;
  - (c) This Agreement, and all actions provided for herein, have been duly authorized by the Broker's board of directors, if Broker is a corporation, or by such individual(s) empowered and authorized to bind Broker, and Broker shall, upon execution of this Agreement, provide Countrywide with evidence reasonably satisfactory to Countrywide for such authorization. Neither the execution of this Agreement nor the consummation of the transactions contemplated herein, nor the fulfillment of or compliance with the terms and conditions of this Agreement will conflict with or result in the breach of any term, condition or provision of Broker's certificate of incorporation or by-laws, any license held by Broker or governing Broker's activities or any agreement to which Broker is a party or by which Broker is bound, or constitute a material default or result in an acceleration under any of the foregoing;
  - (d) There is no suit, action, arbitration or legal, administrative or other hearing that would affect the Broker's ability to perform its obligations hereunder;
  - (e) Broker has not entered into any agreement, commitment or understanding and has no plans to enter into any agreement, commitment or understanding to merge with or into, or sell all or substantially all of its assets to, any other person or entity or dissolve, liquidate or otherwise terminate its corporate rights, existence or franchise;
  - (f) Broker has entered into a written services agreement with each Applicant if required by applicable federal or state law;
  - (g) All Loans have been closed using closing documents prepared or otherwise approved by Countrywide;

- (h) All documents submitted by Broker or Loan Originator in connection with any Mortgage Loan Package are in every respect valid and genuine, being on their face what they purport to be and all signatures on each promissory note and deed of trust or mortgage are the true signatures of the appropriate Applicant; and
- (i) All information, reports and/or other documents furnished or to be furnished by Broker to Countrywide pursuant to this Agreement or furnished by Broker to Countrywide in connection with Countrywide's review and approval of Broker are true, correct and accurate and no such information, reports and/or other documents contain any untrue statement of fact or omits to state a fact necessary to make the statements contained herein or therein not misleading.

6.2 **Warranties and Representations Regarding Individual Loans.** Broker represents, warrants and covenants to Countrywide that the following are true and correct with respect to each Loan as of the date Countrywide acquires or funds such Loan:

- (a) The mortgage note (the "Note"), the deed of trust or mortgage (the "Mortgage") and assignment of mortgage or deed of trust (collectively, the "Collateral Documents") are genuine and each is the legal, valid and binding obligation of the maker thereof, enforceable in accordance with its respective terms. The terms the Note or the Mortgage have not been impaired, waived, altered or modified in any respect, except by written instruments which have been disclosed to, and approved by, Countrywide (and any primary mortgage insurer, if applicable) in writing and which have been, or will be recorded if necessary to protect the interests of Countrywide;
- (b) The Loan and the related Collateral Documents comply in all respects with the terms and conditions of this Agreement;
- (c) All representations and warranties made by Broker and all information contained in any documents submitted by Broker to Countrywide with respect to the Loan are true and correct in all material respects;
- (d) If the Loan is a FHA Loan or VA Loan, it has been originated in conformance with all applicable FHA or VA requirements, as applicable. If the Loan is not a FHA Loan or VA Loan, it has been originated in accordance with the requirements set forth by Countrywide.
- (e) If the Loan is a conventional conforming Loan, it has been originated in conformance with all applicable Countrywide requirements and all applicable requirements of the Federal National Mortgage Association or any successor ("Fannie Mae") or Federal Home Loan Mortgage Corporation or any successor ("Freddie Mac") for sale to Fannie Mae or Freddie Mac and inclusion in a Fannie Mae or Freddie Mac mortgage backed securities pool, as applicable.
- (f) If the Loan is closed in the name of Broker, Broker has good and marketable title to the Loan, and has full right to transfer or assign the Loan to Countrywide free and clear of any encumbrance, equity, lien, pledge, charge, claim or security interest and has full right and authority, subject to no interest or participation of, or agreement with, any other party, to sell and assign the Loan to Countrywide pursuant to this Agreement;

- (g) The Loan is a valid first or second lien (as applicable for the Loan Program under which the Loan was delivered) on the property that secures the Loan (the "Mortgaged Property"), and the Mortgaged Property is free and clear of all encumbrances and liens having priority over the lien of such Loan, subject to (i) the approved first lien, if any, (ii) the lien of current real property taxes and assessments not yet due and payable, (iii) covenants, conditions and restrictions, rights of way, easements and other matters of the public record as of the date of recording being acceptable to mortgage lending institutions generally and specifically referred to in the lender's title insurance policy delivered to the originator of the Loan and which do not adversely affect the appraised value of the Mortgaged Property, and (iv) other matters to which like properties are commonly subject which do not materially interfere with the benefits of the security intended to be provided by the Mortgage or the use, enjoyment, value or marketability of the related Mortgaged Property. No Mortgagor has been released, in whole or in part, from the obligations set forth in the Note or Mortgage;
- (h) No action has been taken or failed to be taken, no event has occurred and no state of facts exists or has existed (whether or not known to Broker) that has resulted or will result in an exclusion from, denial of, or defense to coverage under (i) any primary mortgage insurance policy, if applicable; or (ii) if the Loan is a FHA Loan or VA Loan, any MIC or LGC, as applicable (including, without limitation, any exclusions, denials or defenses which would limit or reduce the availability of the timely payment of the full amount of the loss otherwise due thereunder to the insured or the holder of the MIC or LGC, if applicable) whether arising out of actions, representations, errors, omissions, negligence or fraud of Broker, the related Mortgagor or any party involved in the application for such coverage or the origination of the Loan or related document, including the appraisal, plans and specifications and other exhibits or any other document, or for any other reason under such coverage, or the MIC or LGC, if applicable;
- (i) All applicable federal, state and local laws, rules and regulations, including without limitation, the Real Estate Settlement Procedures Act, the Flood Disaster Protection Act, the Federal Consumer Credit Protection Act including the Truth-in-Lending and Equal Credit Opportunity Acts, the Federal Fair Housing Act, the Home Ownership and Equity Protection Act, Gramm Leach Bliley Act and all applicable federal and state statutes or regulations governing fraud, lack of consideration, unconscionability, consumer credit transactions, consumer protection and consumer privacy, interest or other charges, licensing and mortgage insurance applicable to the Loan, including without limitation, the origination, servicing and collection thereof, have been complied with in all respects. The Loan is not subject to the Federal Trade Commission's "Preservation of Consumer's Claims and Defenses Rule", 16 C.F.R. part 433;
- (j) The Loan file for each Loan which the related Loan program requires an appraisal 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 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 Loan and the appraiser signed the appraisal prior to Countrywide's approval of the 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, Recover and Enforcement Act and the regulations related thereto; and

- (k) No error, omission, misrepresentation, negligence, fraud or similar occurrence with respect to a Loan, including without limitation, the related documentation has taken place on the part of any person, including without limitation, the Broker, the Mortgagor, any appraiser, any builder or developer, or any other party involved in the origination of the Loan or in the application of any insurance in relation to such Loan.

## **ARTICLE 7**

### **REPURCHASE AND INDEMNIFICATION**

7.1 **Repurchase and Indemnification.** Upon the occurrence of any Repurchase Obligation (as defined below), Broker shall be obligated to repurchase the related Loan(s) and indemnify Countrywide for such related Loans(s) in accordance with the terms and conditions contained herein. At Countrywide's sole option, Countrywide shall have the right to require Broker to (i) repurchase the related Loan(s), (ii) indemnify Countrywide for such related Loan(s) and/or (iii) enter into an Indemnification Agreement (as defined below) in lieu of repurchasing the related Loan(s), in any case, in accordance with the terms and conditions contained herein.

7.2 **Repurchase Obligations.** Any of the following circumstances shall be considered a "Repurchase Obligation":

- (a) Countrywide determines that Broker failed to observe or perform or has breached or breaches, or it has been alleged that Broker has breached, any of the representations, warranties, covenants or agreements contained in this Agreement or any applicable Policies and Procedures with respect to any Loan.
- (b) Countrywide receives a repurchase notification from any third party investor and the repurchase request is based on actual or alleged fraud or misrepresentation with respect to the Loan.
- (c) Countrywide determines that Broker has been materially negligent in conducting its responsibilities under this Agreement with respect to the Loan.
- (d) Countrywide determines that Broker committed fraud or misrepresentation with respect to the Loan or otherwise aided, abetted or assisted in the commission of fraud or misrepresentation by any third party with respect to the Loan.
- (e) Countrywide determines that any third party fraud or misrepresentation has occurred with respect to the Loan.

7.3 **Request for Repurchase; Repurchase Price; Repurchase Procedures.**

- (a) **Request for Repurchase.** In the event of an occurrence of any Repurchase Obligation, upon the request of Countrywide, Broker hereby agrees to repurchase the related Loan(s) (or, if the related Loan(s) has been foreclosed, the related Mortgaged Property) within thirty (30) days after Broker's receipt of Countrywide's written demand therefor for an amount equal to the Repurchase Price (as defined below). For the purpose hereof, the term "foreclosure" shall include judicial foreclosure, non-judicial foreclosure, deed in lieu of foreclosure, or any other mechanism of obtaining title to the Mortgaged Property.

- (b) **Repurchase Price.** The repurchase price for any Loan which Countrywide has requested Broker to repurchase (the "Repurchase Price") shall be an amount equal to the sum of (a) the current unpaid principal balance of the Loan at the time of repurchase (or at the time of the foreclosure sale date if the related Loan has been foreclosed); (b) accrued but unpaid interest on such principal balance at the Note rate from the paid-to-date of the Loan through and including the last day of the month in which the Repurchase Price is paid; (c) all costs and expenses, including without limitation, reasonable fees and expenses of counsel, incurred by Countrywide as a result of Broker's breach of this Agreement or enforcing the terms of the Loan; (d) any premium paid by Countrywide in excess of the principal balance of the Loan at the time of purchase (excluding the service release premium) if Countrywide has not sold the Loan at the time of Broker's repurchase or if Countrywide has sold the Loan and it is required to reimburse the purchaser the premium that the purchaser paid to Countrywide; (e) any unreimbursed advances made by Countrywide, including without limitation taxes or insurance or payments authorized by the Note or the Mortgage or law to protect Countrywide's interest in the Loan or related Mortgaged Property and (f) any other fees, costs or amounts relating thereto. The Repurchase Price shall be reduced by (i) any proceeds of mortgage insurance collected by Countrywide with respect to the Loan that have not been applied to the unpaid principal balance; and (ii) if the Loan has been foreclosed and the Mortgaged Property has been sold to a third party, the proceeds of the sale price received by Countrywide net of all advances, costs and expenses, including but not limited to reasonable fees and expenses of counsel, incurred by Countrywide in connection with such sale.
- (c) **Repurchase Procedures.** Upon Countrywide's receipt of the Repurchase Price, Countrywide shall execute and deliver to Broker (x) an assignment of the Mortgage, an endorsement to the Note, and the related Loan files and other loan documents, each without representation, warranty or recourse, and (y) if Countrywide previously foreclosed the Loan and at such time then owns the Mortgaged Property, a deed to the Mortgaged Property, without representation, warranty or recourse, and (z) if Countrywide previously foreclosed the Loan but either sold the Mortgaged Property or another buyer purchased the Mortgaged Property at the foreclosure, an assignment of all deficiency obligations of the Mortgagor, without representation, warranty or recourse. With respect to the servicing of any Loan(s) repurchased by Broker, Countrywide shall transfer such servicing, or cause such servicing to be transferred, to Broker or its designee. If the Broker is unable to service any Loan(s) or does not have a designee for such servicing, Countrywide may, at its sole option, service such Loan(s) for a fee equal to Countrywide's then current rate until such time as Broker is capable of servicing such Loan(s) or designates a successor servicer. All costs of transferring servicing of any repurchased Loan(s) from Countrywide to Broker or its designee shall be borne by Broker and Broker shall reimburse Countrywide for any costs incurred in connection therewith. Broker's Repurchase Obligation with respect to a Loan shall not be eliminated, reduced or otherwise modified as a result of any modification, workout or assumption of the Loan.

7.4 **Request for Indemnification; Indemnification Agreement in lieu of Repurchase.**

- (a) **Request for Indemnification.** Upon the request of Countrywide, Broker hereby agrees to indemnify and hold Countrywide and its officers, directors, employees, agents, shareholders and representatives harmless from and

against any and all claims, demands, liabilities, causes of action and expenses, including attorneys' fees actually incurred, relating to, arising out of or in connection with Broker's breach or alleged breach of any representation, warranty or covenant contained herein; provided, however, that Broker shall have no obligation to indemnify Countrywide to the extent the claim for indemnification is based on (i) Countrywide's gross negligence or willful misconduct or (ii) Broker's breach of an obligation that is or was the responsibility of Countrywide under any Processing Agreement entered into between the parties.

- (b) **Indemnification Agreement in lieu of Repurchase.** At Countrywide's sole option and in lieu of repurchasing the related Loan(s) subject to a Repurchase Obligation, Countrywide may require the Broker to enter into a written indemnification agreement in a form acceptable to Countrywide (the "Indemnification Agreement") which requires the Broker to indemnify Countrywide, including, without limitation, reimbursing Countrywide for any losses incurred by Countrywide as a result of such Repurchase Obligation with respect to the related Loan(s).

- 7.5 **Right of Offset.** In addition to any other rights and remedies available to Countrywide, including, without limitation, the rights and remedies of Countrywide under this Agreement, Countrywide shall have the right, at any time, and from time to time, without notice, to offset and to appropriate or apply any and all deposits of money or property or any other indebtedness at any time held or owing by Countrywide to or for the credit of the account of Broker against and on account of the obligations and liabilities of Broker under this Agreement or any other agreement between Broker and Countrywide and/or between Broker and any of Countrywide's affiliates and/or subsidiaries, irrespective of whether or not Countrywide or its affiliates shall have made any demand hereunder and whether or not said obligations and liabilities shall have matured. For purposes of the foregoing right to offset, the determination as to whether Broker has any obligations and liabilities under this Agreement or any other agreement between Broker, Countrywide or its affiliates and the extent of such obligations and liabilities shall be made by Countrywide in its sole and reasonable discretion.
- 7.6 **Full Credit Bid At Foreclosure Sale.** Notwithstanding anything to the contrary, in no event shall a full credit bid made by Countrywide or any related party at a foreclosure sale of any Loan affect in any way the rights and remedies of Countrywide and/or the obligations of Broker under this Agreement, including, without limitation, the obligations of Broker to repurchase and indemnify Countrywide as provided herein.
- 7.7 **Survival.** The provisions of this Article 7 shall survive any Loan closing and assignment thereof.

## **ARTICLE 8** **TERMINATION**

- 8.1 **Termination.** Either party may terminate this Agreement at any time with or without cause, which termination shall be effective immediately upon the other party's receipt of written notice thereof. All representations and warranties made herein and the parties' rights and obligations under Section 2.2 and Articles 6 and 7 of this Agreement shall remain in full force and effect notwithstanding any termination of this Agreement. Unless otherwise agreed to in writing by the parties, Countrywide shall complete underwriting of any Mortgage Loan Package submitted by Broker prior to

the date of termination and shall approve or reject funding of such Loans in accordance with the terms of this Agreement.

- 8.2 **Notification of Change in Status.** Broker shall immediately notify Countrywide in the event (a) Broker changes the name and/or address under or from which it conducts business; (b) there is a change of control of Broker; (c) Broker fails to be in compliance with qualification or licensing laws of any jurisdiction where it conducts business; or (d) Broker files for bankruptcy protection or is a party to any similar proceeding.

## **ARTICLE 9** **GENERAL**

- 9.1 **Loan Originators.** Broker shall notify Countrywide in the event Broker intends to originate Loans through multiple locations or branches or Loan Originators. Broker agrees to provide Countrywide with such information as Countrywide may reasonably request regarding such locations and Loan Originators and to cause each Loan Originator to sign, prior to originating any Loans hereunder, a statement whereby Loan Originator agrees to comply with and be subject to the terms and conditions of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, Broker shall be liable for the acts and omissions of its officers, employees and agents, including, without limitation, Loan Originators.
- 9.2 **Relationship of the Parties.** Countrywide and Broker acknowledge and agree that at all times they are operating as independent parties. This Agreement is for the sole and exclusive benefit and obligation of the parties hereto and nothing contained herein shall be construed to give any party, other than Countrywide and Broker, any legal or equitable right, remedy or claim under or in connection with any provision of this Agreement. Nothing contained herein shall constitute a partnership or joint venture between Countrywide and Broker and neither party shall at any time hold itself out to any third party to be an agent or employee of the other.
- 9.3 **Countrywide's Trademarks.** Broker shall not use Countrywide's name, trademarks or service marks in any manner, including, without limitation, in any advertising or marketing materials.
- 9.4 **Non-Exclusive Arrangement.** Broker shall not be obligated to submit any or all loan funding requests that it brokers to Countrywide, it being understood that this is a non-exclusive agreement.
- 9.5 **Governing Law.** This Agreement shall be governed by and construed and enforced under the laws of the State of California, without regard to its conflict of laws principles. In the event of any lawsuit or other proceeding relating to this Agreement, each party hereby consents to jurisdiction in the state and federal courts located in the County of Los Angeles, State of California.
- 9.6 **Notices.** Except where telephonic instructions or notices are authorized herein to be given, all notices, demands, instructions and other communications required or permitted to be given to or made upon any party hereto shall be in writing and mailed (registered or certified mail, return receipt requested, postage prepaid), sent by overnight courier (charges prepaid), or sent by facsimile (and confirmed by return facsimile), or personally delivered, addressed to the respective party at the address or facsimile number set forth below:

To Countrywide: Countrywide Home Loans, Inc.  
8511 Fallbrook Avenue, MS WH-82  
West Hills, California 91304  
Attn.: Broker Approval Department  
Telephone: (800) 700-0795  
Facsimile: (818) 225-4144

To Broker: TBD Diversified  
3183 Barton Cir  
Corona CA 92882

Attn.: Donna M. Beltz  
Telephone: 951) 372-0273  
Facsimile: 951) 346-3696  
Electronic Mail: Donna@TBDDiv.com

Notices delivered personally shall be effective upon delivery. Notices transmitted by facsimile shall be effective when transmitted. Notices delivered by registered or certified mail shall be effective on the date set forth on the receipt of registered or certified mail, or the third business day after mailing, whichever is earlier. Each party shall provide written notice to the other of a change in its address, telephone number or facsimile number.

- 9.7 **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Broker may not transfer or assign any of its obligations, rights or interests under this Agreement without the prior written consent of Countrywide and any attempted or purported assignment without such consent shall be null and void.
- 9.8 **Severability.** If any term, clause or provision of this Agreement shall be deemed invalid or unenforceable for any reason, the remainder of this Agreement shall remain valid and enforceable in accordance with its terms. The invalidity or unenforceability of any term, clause or provision in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
- 9.9 **Waiver.** No waiver of any provision of this Agreement or of the rights and obligations of the parties shall be effective unless in writing and signed by an authorized representative of the party waiving compliance. Any such waiver shall be effective only in the specific instance and for the specific purpose stated in such writing.
- 9.10 **Attorneys' Fees.** If any claim, legal action or any arbitration or other proceeding is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that claim, action or proceeding, in addition to any other relief to which such party may be entitled.
- 9.11 **Cooperation.** The parties hereto each agree to use commercially reasonable efforts to cooperate fully with each other to perform all their duties hereunder and effectuate the purposes and intents of this Agreement; such cooperation shall include, but shall not be limited to, the correction of errors that may have arisen in connection with the origination of any Loan and provision of any and all information

that may be requested regarding any of the Loans underwritten pursuant to this Agreement.

- 9.12 **Entire Agreement.** This Agreement is the final and exclusive statement of all agreements and understandings between the parties with respect to the subject matter described herein and all oral and written correspondence relating to the subject matter hereof, and any previous agreements entered into between Broker and Countrywide, are superseded by this Agreement. No change, modification or alteration of this Agreement shall be effective unless in writing and signed by both parties.
- 9.13 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one instrument. Facsimile signatures shall be deemed valid and binding to the same extent as the original.
- 9.14 **Due Diligence and Information Related to Broker.** Broker acknowledges and agrees that any information obtained by Countrywide from Broker or otherwise in connection with Countrywide's review and approval of Broker or any Loan submitted to Countrywide for funding may be provided by Countrywide to any of its subsidiaries and/or affiliates. With respect to any information related to a Loan submitted to Countrywide for funding, Broker expressly consents to the release of such information by Countrywide to its subsidiaries and/or affiliates which may have a need to know such information. Further, any other information provided by Broker to Countrywide in connection with this Agreement, including, without limitation, any financial reports with respect to Broker, may be shared with and used by such subsidiaries and/or affiliates for similar purposes.
- 9.15 **Changes, Updates and Amendments to Agreement.** From time to time, and upon at least thirty (30) days prior notice to Broker, Countrywide may change, update and/or amend the terms and conditions of this Agreement. Broker will be bound by such changes, updates and/or amendments upon the effective date of such notice without further need for acknowledgement or signature by Broker. Countrywide may, from time to time, provide the most current version of this Agreement on the Countrywide Broker website for Broker's reference.
- 9.16 **Communications with Broker.** Broker acknowledges and agrees that Countrywide may communicate with Broker and provide Broker with information related to this Agreement or otherwise by any means legally permissible, including, without limitation, telephone, electronic mail and facsimile. To the extent Countrywide is required by applicable law to obtain Broker's prior consent to receive such communications from Countrywide via any such means, Broker hereby grants Countrywide such prior consent for any such applicable law and Countrywide shall not be required to obtain any additional consents from Broker. By way of example but not limitation, Broker consents and agrees that Countrywide may provide Broker with Loan pricing information and other information related to Countrywide's Loan programs to the electronic email address and/or facsimile number provided by Broker in Section 9.6 herein or any other electronic email address and/or facsimile number that Broker may provide to Countrywide for such purpose and that Countrywide shall not be required to obtain any additional consents from Broker.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

**COUNTRYWIDE HOME LOANS, INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**BROKER**

By:  \_\_\_\_\_

Name: Donna M. Betz

Its: Broker/owner



# CORPORATE RESOLUTION

1. The following is a true and complete copy of resolutions duly adopted by the Board of Directors of \_\_\_\_\_ (at a meeting thereof duly held on \_\_\_\_\_, 20\_\_ ) (pursuant to a Unanimous Written Consent to Action in Lieu of Meeting dated \_\_\_\_\_, 20\_\_ signed by all of the directors of \_\_\_\_\_).

This resolution is in full force and effect on the date hereof in the form in which adopted and no other resolutions have been adopted by the Board of Directors of \_\_\_\_\_ relating to the subject matter referred to in such resolution.

(Copy of Resolution authorizing various officers to sign documents on behalf of the corporation)

2. Since \_\_\_\_\_, 20\_\_, the following person(s) have at all times been and now are duly qualified and acting \_\_\_\_\_ (name of office(s) held by signing individuals) of \_\_\_\_\_ duly elected or appointed to the office(s) set forth opposite (his) (her) (their respective) name(s), and each such person is empowered to execute documents binding \_\_\_\_\_ with regard to the sale of mortgage loans to Countrywide Home Loans, Inc. Witness my hand and seal of office \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Secretary Signature

\_\_\_\_\_  
Secretary Print Name

