



## **FPF WHOLESALE BROKER AGREEMENT (THIRD PARTY ORIGINATIONS)**

This Broker Agreement ("Agreement") is entered into as effective \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ ("Broker") and FPF Wholesale.

### **Broker Agrees**

Broker represents and warrants that it is a duly organized and validly existing entity in good standing under applicable laws and regulations of the United States and the State of \_\_\_\_\_.

Broker warrants and represents that Broker is a duly licensed mortgage broker in good standing with the pertinent licensing authority and that it has all required legal and/or regulatory approval, licenses, and/or authority to conduct the business of brokering loans in all jurisdictions in which it operates.

Broker represents, warrants, and covenants that it will notify FPF Wholesale immediately upon the suspension, revocation, expiration or other termination of any license, or of the taking of any action by any regulatory or licensing authority against Broker.

Broker represents and warrants that it has the requisite corporate authority, power, and capacity to enter into this agreement and that Broker's compliance with the terms and conditions of this agreement will not violate the terms of any governing organizational instrument of Broker or any other instrument or agreement to which Broker/ is a party.

### **Broker Relationship**

Except as expressly provided in this paragraph, nothing contained in this Agreement or in connection with Broker's submission of any loan application to FPF Wholesale shall create or be deemed to create a partnership, joint venture, agency or employment relationship between Broker and FPF Wholesale.

Broker shall be exclusively responsible for all of its own costs and expenses in connection with Broker's business and loan processing. Broker represents and warrants to FPF Wholesale that Broker has not in any way represented or implied to any loan applicant that Broker is in any way affiliated with or connected to FPF Wholesale including any representation that Broker's office is an office or branch of FPF Wholesale. In addition, Broker covenants and agrees that Broker shall not in any way represent or imply to any loan applicant that Broker is in any way affiliated or connected with FPF Wholesale or that Broker has any power or authority to bind FPF Wholesale, including any representation that Broker's office is an office or branch of FPF Wholesale; provided, however, that Broker shall act as FPF Wholesale's "Special Agent," within the meaning of California Civil Code Section 2297, for the sole and limited purpose of directly engaging an appraiser to conduct and complete an appraisal, which appraiser has no direct or indirect interest, financial or otherwise, in the property or loan transaction for which the appraisal is prepared, and which appraiser and appraisal satisfy all requirements. Except as specifically provided herein, Broker shall have no agency, power or authority to undertake any other act or transaction on behalf of or as agent of FPF Wholesale.

Broker intends from time to time to offer FPF Wholesale conventional mortgage loans that it has originated, and for which it has obtained appraisal and credit documentation. Until this agreement is cancelled by either FPF Wholesale or Broker, FPF Wholesale will make available to Broker conventional loan programs at terms and interest rates subject to change by FPF Wholesale on a daily basis.



The following are the terms under which FPF Wholesale will accept, underwrite and close approved loan applications offered by Broker:

1. FPF Wholesale will provide a list of the programs and types of loans it will accept, which will include interest rates, loan limits, loan-to-value ratios, points and fees. Approvals will take the form of written commitments covering only the particular loan(s) submitted by Broker for approval. FPF Wholesale is under no obligation to accept any minimum number or percentage of loans, or any loans at all.
2. Broker represents and warrants that with regard to Broker's activities in general and the loan applications it submits to FPF Wholesale in particular, Broker will comply with all applicable Federal, State, and Local laws, rules, and regulations, including, but not limited to, the Federal Truth in Lending Act of 1986 as amended, and Regulation Z thereunder; the Federal Fair Credit Reporting Act, and Regulation B thereunder; the Federal Real Estate Settlement Procedures Act of 1974 as amended, and Regulation X thereunder; the Federal Equal Credit Opportunity Act; the California Civil Code; the California Housing Financial Discrimination Act; the Flood Disaster Protection Act, and the regulations thereunder; and State and Federal Fair Lending regulations.
3. Broker understands FPF Wholesale intends to sell closed loans to Investors in the Secondary Market. Broker warrants that the applications submitted to FPF Wholesale are in full compliance with all requirements and warranties of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation or such other Investors as FPF Wholesale may identify.
4. Broker understands that all loans submitted to FPF Wholesale pursuant to this agreement will be underwritten in accordance with Secondary Market standards. FPF Wholesale will approve or decline loan applications in accordance with its current underwriting policies. FPF Wholesale, at its sole discretion, shall make underwriting determination.
5. FPF Wholesale shall communicate to Broker by telephone or in writing FPF Wholesale's approval or disapproval of the application. FPF Wholesale shall approve or disapprove each application solely for its own benefit and account; and in making such determination FPF Wholesale expressly disclaims any inference Broker may draw as to the general quality or acceptability of the underlying application. At no time will FPF Wholesale communicate with Broker's client, (either by written or verbal communication). FPF Wholesale offer to lend will be evidenced by a "Loan Commitment Notice." After consultation with Broker's client, Broker shall advise FPF Wholesale of the client's acceptance or non-acceptance of such offer. Upon acceptance of FPF Wholesale offer, either by written or verbal communication, a formal offer will be issued as evidenced by FPF Wholesale loan documents.
6. FPF Wholesale shall pay Broker its brokerage fee (the "Fee"), in consideration of Broker's preparation of the completed application package for the loan, only upon the actual closing by FPF Wholesale of the Loan. Broker's brokerage fee shall be calculated pursuant to the terms for such fees disclosed by FPF Wholesale in its sole discretion.
7. Broker understands that FPF Wholesale reserves the right to conduct a complete quality control audit on all loans and will re-verify credit documentation, appraisals and any other information or application materials submitted by Broker as required by our numerous Investors, or otherwise.
8. In addition to any right now or hereafter granted under this Agreement, FPF Wholesale is hereby authorized at any time, without presentment, demand, protest, or other notice of any kind to Broker or to any other person, any such notice being expressly waived, to set off and to appropriate and apply any and all amounts at any time owing by the Broker to or for the credit or the account of the Broker against and on account of the obligations and liabilities of the Broker to FPF Wholesale under this Agreement, irrespective of whether or not FPF Wholesale shall have made any demand thereof.
9. With respect to any loan submitted by Broker that is closed and funded by FPF Wholesale, if said loan pays off at any time during the first five (5) monthly mortgage payments that is due to FPF Wholesale or its investors since funding, Broker will refund, upon demand, to FPF Wholesale all SRP's and/or rebates paid on the loan (also known as yield spread premium).



**Breach of Representations and Warranties**

Broker agrees that upon breach of any of the representations, warranties or covenants contained in this Agreement, or upon discovery by FPF Wholesale that any fact represented by Broker, its agents, employees or any borrowers under a Loan or application or other information relating to a loan are not true, the repurchase provisions set forth in the paragraph below shall apply. All representations or warranties shall survive the funding, closing, and purchase of each loan by a third party investor and shall be deemed to be for the benefit of FPF Wholesale and its successors and/or assigns.

Broker hereby agrees to indemnify FPF Wholesale for, and hold FPF Wholesale harmless from and against, any claim, loss, damage, demands, costs or other liability, including reasonable attorney’s fees, arising out of any breach by Broker of any of Broker’s covenants, representations, warranties, agreements, duties and/or obligations arising under this Agreement. In addition to, and not in limitation to, the foregoing, Broker agrees that upon written demand by FPF Wholesale it shall promptly repurchase from FPF Wholesale (FPF Wholesale may allow a financial indemnification at it’s own discretion), any closed loan that is found to have an early payment default (which are loans that have any of its first four payments over 30 days delinquent), or to be fraudulent, intentionally misrepresented, not in compliance with the proper licensing, regulations and requirements pertaining to their type of business and the State and Counties they elect to conduct business in or as required by preceding paragraphs. The repurchase price shall be equal to the unpaid principal balance of the loan(s), plus the accrued amount of the interest shortfall (negative amortization), if any, due FPF Wholesale, plus any accrued, but unpaid interest due FPF Wholesale on the date of repurchase, and less the escrow balance held by FPF Wholesale, as calculated by FPF Wholesale on the date of repurchase. In addition to other remedies set forth in this Agreement, if Broker does not immediately comply with FPF Wholesale request for repurchase, this agreement shall be cancelled automatically and FPF Wholesale shall have no further obligation to Broker to fund any other loan(s), even if such loans have been submitted to, or approved by, FPF Wholesale

To Broker’s Knowledge, no loan will be classified as a (i) “high cost loan under the Home Ownership and Equity Protection Act of 1994 (HOEPA) or (ii) “high cost”, “predatory”, “covered”, “abusive” or “threshold” loan under any other Applicable Law. No abusive or deceptive lending practices, including but not limited to, the extension of credit without regard for a borrower’s ability to repay the loan and the extension of credit to a borrower which has no apparent tangible net benefit to the borrower, were engaged in connection with the origination of a loan. Broker has not mislead the borrower about the costs or benefits of the loan, or any features of the loan, such as prepayment charges, type of interest rate and manner of adjustment thereto, and closing costs and fees.

**Notices**

All notices required to be given pursuant to this Agreement will be given in writing and will be deemed given when personally delivered or when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to such party as follows:

**FPF Wholesale:**

**FPF Wholesale**  
Attn: Broker Approval  
4 Hutton Centre Drive, #500  
Santa Ana, CA 92707  
(714) 513-7777

**Broker:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**General Provisions:**

This Agreement constitutes the entire agreement between the parties with respect to this subject matter hereof. There are no representations or warranties other than contained herein. No waiver or modification of this Agreement shall be valid unless executed in writing with the same formality as this instrument. Waiver or breach of any term or condition of this Agreement will not be deemed a waiver of any other or subsequent breach, whether of a like or different nature. In the event of litigation between the parties related to this Agreement, the prevailing party shall be entitled to recover its attorney's fees. Any and all disputes arising out of this agreement and/or the lender/broker relationship shall be construed under the laws of the State of California and applicable Federal and State mortgage lending regulations. In the event of litigation, Broker expressly agrees that venue will lie solely in the Superior Court of California in and for the County of Orange, or in the Federal District Court, Central District of California, Southern Division. Broker expressly consents to said venue and the jurisdiction of the court and expressly waives application of diversity of citizenship and expressly waives application of inconvenient forum to any litigation.

Each party hereto agrees to execute any and all documents and writings, which may be necessary or expedient and to do such other acts as will further the purposes of this Agreement. FPF Wholesale and Broker expressly agree that this agreement will be in force and effective upon execution by authorized persons. Broker expressly agrees that a copy or copies of this agreement, and/or facsimile reproductions of this agreement may be used for any and all purposes and such copies and/or facsimile reproduction will have the same force and effect of a fully executed, original document. Nothing herein contained shall be construed to create a joint venture, partnership or agency relationship. FPF Wholesale reserves the right to terminate this Agreement at any time for any reason.

**In Witness Whereof**, the parties hereto have executed this Agreement as of the day and date first above written.

**"BROKER"**

**FPF WHOLESALE**

\_\_\_\_\_  
(Name of Institution)

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

\_\_\_\_\_  
(Signature of Broker of Record)

\_\_\_\_\_  
(Name of Authorized Representative)

\_\_\_\_\_  
(Typed/Printed Name of Broker of Record)

\_\_\_\_\_  
(Signature of Owner)

\_\_\_\_\_  
(Typed/Printed Name of Owner)

\_\_\_\_\_  
(Company's Tax Identification number)



**COMPANY RESOLUTION  
(Execution of Broker Agreement)**

The undersigned hereby certifies that the following was adopted by the \_\_\_\_\_  
\_\_\_\_\_(Board of Directors/Members/Partners) of  
\_\_\_\_\_(Company Name) a  
\_\_\_\_\_(Corporation/Limited Liability Company/Partnership)  
("Broker") on \_\_\_\_\_.  
(Date)

1. Broker is authorized to enter into the Broker Agreement ("Agreement") with FPF Wholesale. ("Lender"), and has the power and authority to comply with and be bound by the terms and conditions of the Agreement;
2. Lender can rely upon Broker's authority, as described above, as of the date hereof and as of the date of any subsequent transactions under the Agreement;
3. As of the date hereof, any one of the officers, members or partners of Broker, as applicable, expressly noted below, are authorized to make, execute, and deliver on behalf of Broker, this Agreement, the Broker Application in connection herewith, and any and all assignments, conveyance instruments, documents and forms required to be executed in order for Broker to comply with and by bound by the terms and conditions of the Agreement:

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

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

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

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

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

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

IN WITNESS WHEREOF, I have hereunto affixed my hand this \_\_\_\_ day of \_\_\_\_\_ of 200\_\_.

SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_

(Corporate Seal, as applicable)