



first community mortgage



## NON-DELEGATED CORRESPONDENT AGREEMENT

This Non-Delegated Correspondent Mortgage Purchase Agreement ("Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between First Community Mortgage, Inc. ("FCM"), and \_\_\_\_\_ (hereinafter referred to as "Seller"). The physical address of the Seller is \_\_\_\_\_. The email address of Seller is \_\_\_\_\_.

From time to time pursuant to this Agreement, Seller shall sell and FCM shall buy mortgage loans on residential real estate (hereinafter collectively called the "Mortgage Loans" and individually a "Mortgage Loan"). This Agreement shall govern the sale and transfer of such Mortgage Loans by Seller to FCM and each such Mortgage Loan shall be subject to the warranties, representations, and agreements set forth herein, subject, however, to the terms and conditions of any separate written offering or commitment letters applying to the Mortgage Loans.

All future purchases of Mortgage Loans by FCM shall be governed by the terms contained herein unless the parties shall agree in writing before or at the time such purchases are made. The purchase price and any servicing release premium paid for each Mortgage Loan shall be established by written agreement between the parties. The terms and conditions of any separate offering or commitment letter signed by the parties hereto and pursuant to which FCM shall agree to buy and Seller shall agree to sell any Mortgage Loan shall survive and be deemed to be a part of this Agreement. In this Agreement, the term "Buyer" shall refer to FCM. This Agreement, and any and all representations, warranties or covenants of Seller hereunder, may be enforced against Seller by FCM and/or its successors and assigns.

**1. LOANS ELIGIBLE FOR PURCHASE:** Seller may offer for sale to Buyer eligible VA, FHA, USDA, or Conventional Mortgage Loans. All such Mortgage Loans shall be sold with servicing released to Buyer. All such Mortgage Loans shall be originated and closed according to standard agency regulations as established, and amended from time to time, by the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), the Government National Mortgage Association ("GNMA"), the Federal Housing Administration ("FHA"), the Veterans Administration (VA), and/or the US Department of Agriculture Rural Housing Service ("RHS"). It is hereby understood and agreed, for purposes of this Agreement, that the aforementioned standard agency regulations are incorporated in and made a part hereof. All Mortgage Loans offered by Seller must be secured by residential first-lien mortgages or deeds of trust. Seller shall be responsible for ensuring the compliance of Mortgage Loans sold hereunder with the applicable agency regulations which may exist at the time of purchase.

Any Loans specifically identified as being non-conforming (Jumbo, Non-QM, etc.), shall be originated and closed in accordance with the specifications as outlined in the FCM's Lending Requirements (hereinafter referred to as the "Lender Requirements").

**2. PAYMENT FOR LOANS:** Payment for Loans will be made following receipt and review of closing documentation, including evidence of compliance with Lender Requirements, including underwriting requirements, FHA, VA and/or RHS requirements, rules and regulations, as well as all Federal and State statutes, rules and regulations, including but not limited to the Federal Truth-In-Lending Act, the Equal Credit Opportunity Act, the Fair Housing Act and the Real Estate Settlement Procedures Act. Payment for Loans will be made via the Federal Reserve Wire Transfer System to the party directed by the Seller. Any amounts collected by Seller for maintenance or improvements to the property, for the escrow of taxes or insurance not yet due, or for other reserves shall be deducted from the wire amount.

**3. DELIVERY OF DOCUMENTS:** Seller agrees to do all acts necessary to perfect title to the Mortgage Loans to Buyer and shall sell, assign and deliver to Buyer, with respect to the purchase of each such Mortgage Loan, the documents set forth in the Lender Requirements, all subject to the approval of Buyer and its legal counsel as to proper form and execution. No later than sixty (60) days from the date of purchase, Seller shall deliver to Buyer the required final documentation. Should Seller fail to satisfy, within the aforesaid sixty (60) days, the requirements for document delivery with respect to any Mortgage Loan purchased, Buyer reserves the right to withhold service release premiums on subsequent Mortgage Loan purchases if required documentation is not received in a timely manner. Buyer also reserves the right to charge a fee to Seller in the event that Seller fails to meet delivery timelines. Buyer's right to withhold payment of service release premiums shall be in addition to and not in lieu of Buyer's other remedies hereunder including the remedy of repurchase as provided in Paragraph 7 hereof.



# ***NON-DELEGATED CORRESPONDENT AGREEMENT***

## **4. GENERAL REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER:**

Seller represents warrants and covenants as follows:

- (a) Seller is and shall remain duly organized and a validly existing entity in good standing in the jurisdiction under whose laws Seller's Company is formed. Seller is and shall be duly qualified to conduct its business in each jurisdiction in which such qualification is required.
- (b) Seller has, and shall maintain, all licenses necessary to carry on its business as now being conducted, including all licenses necessary to conduct the mortgage brokerage/lending business (if applicable) contemplated by this Agreement. Seller is, unless otherwise exempt, licensed, registered, qualified and in good standing in each state in which: (i) real property securing repayment of a Loan is located; and/or (ii) the laws of such state require licensing, registration or qualification in order to engage in mortgage loan origination. Seller covenants to maintain all licenses, registrations and qualifications current and in good standing, and to keep itself, and those of its employees, agents or representatives engaged in residential mortgage loan origination, licensed, registered and qualified with all applicable regulatory and supervisory agencies during the term of this Agreement. Seller covenants to adhere to and comply with any state or federal record retention requirements. Seller further covenants to notify First Community Mortgage, Inc. immediately upon the suspension, revocation, expiration or other termination of any licenses, registrations or qualifications of it or its loan originators, or of the taking of any formal or informal administrative or judicial action by any regulatory or supervisory agency against Seller or its loan originators that could adversely affect Seller's licenses, registrations and qualifications.
- (c) Seller has the full power, authority and capacity to enter into this Agreement; and this Agreement has been duly authorized, executed and delivered by Seller and constitutes a valid and binding obligation of Seller, including its officers, directors, employees, representatives and agents, enforceable in accordance with its terms. No consent, approval, authorization or order of any court or governmental agency or body is required for the execution, delivery and performance by Seller of, or compliance by Seller with, this Agreement or the consummation of the transactions contemplated by this Agreement or, if required, such consent approval or authorization has been obtained. Seller's compliance with the terms and conditions of this Agreement will not violate any provisions of its charter documents, if any, any instrument relating to the conduct of its business, or any other agreement, law or regulation to which it may be a party or under which it may be governed.
- (d) Except as previously disclosed by Seller to First Community Mortgage, Inc. in a writing to be attached to this Agreement as Exhibit B, there is not pending or, to Seller's knowledge threatened any suit, action, arbitration, or legal, administrative, or other proceeding or investigation, including an allegation of fraud by another lender, against Seller or its current or former officers, directors, shareholders, employees, representatives and/or agents that would prevent the execution, delivery and performance by Seller of its obligations under this Agreement or which could have material adverse effect upon Seller's business, assets, financial condition or reputation, or upon any loan submitted for sale to First Community Mortgage, Inc.
- (e) Seller shall make prompt, timely, full, accurate and truthful disclosure to FCM of all facts, information and documentation that Seller knows, suspects or has notice of that could affect, or has affected, the eligibility, validity, collectability, collateral value, security, or enforceability of any loan sold to First Community Mortgage, Inc. All information set forth in loans prepared by Seller including all written attachments thereto, is and shall be true, correct, currently valid and genuine. Seller is not aware of any errors, omission, misrepresentation, negligence, fraud or similar occurrence with respect to any loan that has taken place on the part of any person or entity, including, without limitation, Seller's loan officers and its officers, directors, employees, representatives and agents, the borrower, any appraiser, any builder or developer, or any person involved in the preparation of loans to the First Community Mortgage, Inc. or the origination of a Loan.
- (f) Seller has maintained direct and indirect possession and control of all credit, income or deposit verification documentation submitted to FCM with respect to any loan sold.
- (g) In connection with origination of any loans sold pursuant to this Agreement, Seller, for itself and on behalf of every other person or entity involved in the loan transaction, covenants and agrees that it and they has complied fully and in a timely manner with all applicable state and federal consumer protection and disclosure laws, including, but not necessarily limited to, the following: (i) the Truth-in-Lending Act, and Regulation Z; (ii) the Equal Credit Opportunity Act, and

# ***NON-DELEGATED CORRESPONDENT AGREEMENT***

Regulation B; (iii) the Home Mortgage Disclosure Act, and Regulation C; (iv) the Real Estate Settlement Procedures Act (RESPA), and Regulation X; (v) the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (vi) the Gramm-Leach-Bliley Act, and Regulation P; (vii) the SAFE Mortgage Licensing Act, and Regulation G; (viii) the Mortgage Acts and Practices-Advertising Act, Regulation N; (ix) the federal Fair Housing Act, and similar state and federal nondiscrimination housing laws and regulations; and (x) all other federal and state laws, rules and regulations as they relate to fair lending, consumer credit disclosures and notices, broker related notices and disclosures, privacy rights, and record retention requirements. At all times Seller represents and warrants, for itself, and every other person or entity involved in the Loan transaction, that it and they shall be in compliance with First Community Mortgage, Inc.'s Fair Lending policy, procedures and any amendments thereto. Seller covenants and warrants to provide compliance training pertaining to all aforesaid laws, regulations and rules, and any amendments thereto, on a continuing basis throughout the term of this Agreement, including compliance with the Lender Requirements. Seller is in full compliance with all residential mortgage lending or other regulatory or supervisory agencies having jurisdiction over Seller's activities to the extent necessary to ensure the enforceability of its loans.

- (h) When applicable pursuant to agency and/or investor guidelines, all financial statements required to be submitted by Seller to Buyer have been prepared in accordance with Generally Accepted Accounting Practices applied on a consistent basis by an independent Certified Public Accountant or other individual acceptable to Buyer; and
- (i) Seller has not and shall not utilize any real estate appraiser, credit reporting agency or other settlement service providers or vendors in connection with any loan that does not comply in all respects with all applicable state and federal laws and such standards as may be set forth in the Lender Requirements.
- (j) Seller shall order its appraisals in accordance with all applicable federal and state laws, regulations and rules regarding appraiser and valuation independence.
- (k) Seller has established and implemented a written Anti-Money Laundering ("AML") program that is reasonably designed to prevent Seller from being used to facilitate money laundering or the financing of terrorism. Seller represents and warrants that its AML program, at a minimum:
  - i. incorporates policies and procedures and internal controls for complying with the Bank Secrecy Act ("BSA");
  - ii. designates a Compliance Officer responsible for ensuring that the AML program is implemented effectively, and includes regular and ongoing monitoring of Seller's employees and agents to ensure compliance with that program;
  - iii. provides for ongoing AML training of Seller's employees and agents;
  - iv. provides for an independent audit of Seller's AML program every 12-18 months.
  - v. In addition, Seller represents and warrants that it has implemented policies and procedures to ensure that Suspicious Activity Reports ("SAR's") are filed electronically, and in a timely manner, in connection with loan transactions of \$5,000 or more if Seller knows, or has reason to suspect, that the transaction:
    - i. involves funds derived from illegal activity;
    - ii. is designed to evade the BSA or Seller's AML program;
    - iii. has no apparent business or lawful purpose; or,
    - iv. is intended to facilitate criminal activity.
- (l) Seller maintains an effective quality control program and Compliance Management System ("CMS") designed to prevent violations of federal consumer financial law, and associated consumer harm. Seller shall make available, upon the request of Lender:
  - i. copies of Seller's written policies, procedures, internal controls and training materials relative to Seller's employees and/or agents that have consumer contact and/or any consumer compliance responsibilities in connection with residential mortgage loan origination; and,
  - ii. permit First Community Mortgage, Inc. access, during normal business hours, to the offices of Seller in order that First Community Mortgage, Inc. may make appropriate on-site reviews, as necessary to confirm the propriety and effectiveness of Seller's CMS, including an examination of Seller's internal controls and procedures that are designed to protect against a violation of federal consumer financial law and/or consumer harm. Seller agrees to report to First Community Mortgage, Inc. within three (3) days:

# ***NON-DELEGATED CORRESPONDENT AGREEMENT***

- i. any consumer complaint which in any way involves any of the services contemplated by this Agreement or an Application Package submitted to First Community Mortgage, Inc. for funding consideration;
- ii. any consumer complaint which involves federal consumer financial law, whether or not related to the services contemplated by this Agreement;
- iii. any legal or regulatory action which alleges a violation of federal consumer financial law; and/or,
- iv. any changes in senior management.

It is understood and agreed that any failure of Seller to fully perform, in whole or in part, any of the terms of this section shall constitute a material breach of this Agreement and the grounds for its immediate termination.

(m) **Tax Reporting Requirements.** Section 6050H of the United States Internal Revenue Code and regulations promulgated thereunder (collectively, the “Reporting Requirements”) require an information return using Form 1098 to be made to the United States Internal Revenue Service, and a statement to be furnished to the Payer of Record (as defined in the Reporting Requirements), in connection with the transaction. Seller desires to designate First Community Mortgage, Inc. as the “Reporting Person” (as defined in the Reporting Requirements) with respect to the transaction as permitted by the applicable Internal Revenue Code.

## **5. SELLER’S REPRESENTATIONS, WARRANTIES, COVENANTS REGARDING MORTGAGE LOANS**

With respect to every Mortgage Loan offered by Seller to Buyer hereunder, Seller represents, warrants, and covenants as follows:

- (a) The security agreement, mortgage, deed of trust or other document securing the Mortgage Loan (the “Mortgage”) has been executed, on the date stated in the Mortgage (the “Closing Date”) by any and all person(s) necessary to create and convey a valid and legally enforceable first lien obligation in favor of the Seller with respect to the Mortgage Note that is superior to all other liens or other claims, and the note evidencing the Mortgage Loan (the “Mortgage Note”) is payable to Seller as payee and has been duly executed by the person or person(s) (the “Mortgagor”, whether one or more) to whom, or for whose benefit, Seller has disbursed the entire proceeds of the Mortgage Note and who is/are the true and actual person(s) who submitted an application to Seller and who have been approved by Seller and/or Buyer to receive the Mortgage Loan represented by the Mortgage Note and Mortgage; and
- (b) The sale of the Mortgage Loan is in Seller’s ordinary course of business and will not result in (i) the breach of any term or provision of Seller’s charter or bylaws, (ii) the breach of any term or provision of, or conflict with or constitute a default of or result in the acceleration of any obligation under any agreement, indenture, loan or credit agreement, or other instrument to which Seller or any of its property is subject, or (iii) the violation of any law, rule, regulation, order, judgment, or decree to which Seller or any of its property is subject; and
- (c) The entire proceeds of the Mortgage Loan were used by the Mortgagor to finance or refinance the purchase or initial construction of the one to four family residential dwelling permanently affixed to that real property described in the Mortgage (the “Mortgaged Property”), and the Mortgaged Property is or will be used by the Mortgagor as his/her/their principal or secondary residence or for such other purpose as is permitted by investor guidelines or under the Lender Requirements; and
- (d) The Mortgage contains enforceable provisions that give the Mortgage holder rights and remedies to realize against the Mortgaged Property as expeditiously as applicable law allows, including, without limitation, the power of sale; and
- (e) Seller has good and merchantable title to the Mortgage Loan as of the Closing Date and the assignment of the Mortgage Loan from Seller to Buyer is valid, sufficient, enforceable and conveys good title to such Mortgage Loan to Buyer, free and clear of any liens, claims, or encumbrances upon such Mortgage Loan; and Seller has not affected any assignment, sale or hypothecation of the Mortgage Loan, except in favor of Buyer; and
- (f) Seller will execute and deliver to Buyer all instruments necessary to convey to Buyer all rights, titles and interests in and to each Loan and all documents evidencing insuring, guaranteeing or securing each Loan; and
- (g) All taxes and governmental assessments that became due and owing prior to the Closing Date in respect to the Mortgaged Property have been paid; and

# ***NON-DELEGATED CORRESPONDENT AGREEMENT***

- (h) An escrow of funds in an amount sufficient, in accordance with industry standards or any applicable HUD regulations, to cover a portion of one (1) calendar year's payments of taxes and governmental assessments, hazard insurance and, if applicable, mortgage insurance premiums or guaranty fees on the Mortgaged Property, has been established; and
- (i) The unpaid principal balance of the Mortgage Loan is as stated; no part of the Mortgaged Property has been released from the lien securing each Loan; the terms of the Loan have in no way been changed or modified; and the Loan is current and not in default and no condition or circumstance exists that, with the passage of time, would or with notice and the expiration of any grace or cure period, would constitute a default, breach, violation, or event of acceleration, and neither Seller nor its predecessors have waived any default, violation, or event of acceleration.
- (j) Seller is the sole owner of each Mortgage Loan to be sold under this Agreement and has the requisite power and authority to sell, transfer, and assign such Mortgage Loan on the terms herein set forth, free and clear of all liens, claims and encumbrances upon such Mortgage Loan; and
- (k) Each Mortgage Loan is eligible for sale to the Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, or non-conforming (Jumbo) Investor whose Mortgage Loan eligibility specifications are outlined in the Lender Requirements; and
- (l) The Mortgage Loan was properly closed in accordance with the requirements of the Lender Requirements, and all applicable agencies rules and regulations. The Mortgage Loan complies with all applicable federal and state laws, rules, and regulations, as from time to time amended, including but not limited to the following: applicable usury limitations, the applicable laws and regulations governing lending, federal, state and local predatory lending laws, Home Ownership Equity and Protection Act, Bank Secrecy Act, Anti Money Laundering regulations, the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, the Flood Disaster Protection Act, the Fair Housing Act, the Truth-in-Lending Act of 1968, the Depository Institutions Deregulation and Monetary Control Act of 1980, the Garn-St. Germain Depository Institutions Act of 1982 and all applicable regulations issued pursuant thereto; and that all conditions as to the validity, transferability and continuation of any FHA Insurance Contract, VA Loan Guaranty Certificate, or RHS Loan Note Guaranty if any, as required by the National Housing Act of 1934, the Servicemen's Readjustment Act of 1944, as amended, or the Cranston-Gonzales National Affordable Housing Act of 1990, and the rules and regulations thereunder, or by the FHA, VA or RHS have been properly satisfied, the right to obtain a FHA Insurance Contract, VA Loan Guaranty Certificate, or RHS Loan Note Guaranty, on each Mortgage Loan will be valid and enforceable by Buyer; and
- (m) The Seller has complied with all applicable anti-money laundering laws and regulations, including without limitation the USA Patriot Act of 2003, and the laws and regulations administered by the U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC"), which prohibits dealings with certain countries, territories, entities, and individuals named in OFAC's Sanction Programs and on Specially Designated Nationals and Blocked Persons lists (collectively, the "Anti-Money Laundering Laws"). The Seller has established an anti-money laundering compliance program to the extent required by the Anti-Money Laundering Laws, has conducted the requisite due diligence in connection with the origination of each Loan for purposes of the Anti-Money Laundering Laws, including with respect to the legitimacy of the applicable Borrower and the origin of the assets used by said Borrower to purchase the property in question, and maintains, and will maintain sufficient information to identify the applicable Borrower for purposes of the Anti-Money Laundering Laws.
- (n) The Mortgagor has duly executed and delivered appropriate evidence indicating that the Mortgagor has received any and all disclosure materials as required by applicable law and regulations; and
- (o) The full original principal amount of each Mortgage Loan has been advanced to the Mortgagor, either by direct payment, or by payment made on the Mortgagor's request or approval; and all costs, fees, and expenses incurred in making, closing and recording the Mortgage Loan, have been paid; and
- (p) There is in force a paid-up Mortgagee Policy of Title Insurance on the Mortgage Loan in an amount not less than the outstanding principal balance of the Loan, affirming that the Mortgagor has fee simple, indefeasible title to the Mortgaged Property and insuring the validity and priority of Seller's first lien securing the Mortgage Loan, and such Mortgagee Policy of Title Insurance does not contain any exceptions to or defects in title not otherwise disclosed to and approved in advance by Buyer in writing; and



# ***NON-DELEGATED CORRESPONDENT AGREEMENT***

- (q) There is a valid paid-up hazard insurance policy in force, at the time of the purchase of the Mortgage Loan by Buyer issued or written by an insurance company with a Best's Key Rating Guide financial size category of Class III or better, in an amount equal to at least the full replacement value of the improvements on the property secured by the Mortgage. The policy shall be of a type at least as protective as fire and extended coverage and shall contain a mortgagee clause and loss payable clause to the Buyer in the form of the standard New York mortgage clause, and shall contain suitable provisions for payment on all present and future mortgages on such premises in order of precedence. For properties in a special flood hazard area, there is in force a paid-up flood insurance policy. For properties located in a condominium or PUD project, Seller will provide a certificate of insurance naming Buyer as the insured plus a certified true copy of the Master Hazard and Liability Policy; and
- (r) All documents submitted or delivered are genuine, and all other representations as to each Mortgage Loan sold are true and correct and meet the requirements and specifications of all parts of this Agreement and the Lender Requirements; and
- (s) The Mortgage, Mortgage Note, and all other Mortgage Loan documents executed by the Mortgagor create a legal, valid and binding obligations of the Mortgagor, enforceable in accordance with their terms, there exists as of the Closing Date no right of offset, defense, right of rescission, homestead right, or counterclaim with respect to the Mortgage Note or any of the other documents, and there is no pending or threatened litigation that might affect the validity or enforceability of the Mortgage Note or the Mortgage; and
- (t) The Mortgaged Property is either free of damage and in good repair or the proceeds of the Mortgage Loan will be used to purchase and rehabilitate the Mortgaged Property, there is no proceeding pending or threatened for a partial or total condemnation or partition of the Mortgaged Property, and either there are no mechanic's or similar liens or claims that have been filed for work, labor or material (and no rights are outstanding that under applicable law could give rise to such a lien or claim) affecting the Mortgaged Property or such liens and claims have been insured against under the final Mortgagee Policy of Title Insurance; and
- (u) As of the Closing Date, to the best of Seller's knowledge, after reasonable inspection, the mortgaged property was not affected by any condition arising from the presence of any dangerous, toxic or hazardous pollutants, chemicals, wastes, or substances; and
- (v) All improvements on the Mortgaged Property, including new construction, have been or will be completed in full compliance with any applicable laws, regulations, or building codes and standards, and that the improvements comply with the laws, regulations, or building codes and standards in effect; and
- (w) With respect to each appraisal delivered to Buyer in connection with a prospective Mortgage Loan, the appraisal has been prepared by an Approved Appraiser, Seller has reviewed the appraisal and found the appraisal acceptable in accordance with the standards set forth in the Lender Requirements, and Seller shall, upon Buyer's request, provide Buyer with any information Seller has in its possession regarding the appraiser or appraisal; and
- (x) In addition to those representations, warranties, and covenants specifically set forth above, Seller makes all representations, warranties, and covenants expressed by Seller to Buyer orally or in writing with respect to any particular Mortgage Loan, and expressly makes any and all additional representations, warranties, or covenants that are normally or customarily made in connection with a mortgage loan of the same type and terms as the Mortgage Loan.

**6. NO SOLICITATION.** Loans sold to Buyer cannot be solicited by Seller for refinance for a period of 6 months or 180 days from the date the Loan is purchased by Buyer.

**7. LENDER REQUIREMENTS:** In addition to all of the obligations, agreements, representations and warranties specifically set forth herein, Seller hereby agrees to perform all obligations and agreements, make all representations and warranties, and comply with all the provisions of the Lender Requirements (including any policies and procedures contained in program announcements, memoranda, or other similar communication) delivered to Seller, as may be modified or amended from time to time. Modifications and additions to the Lender Requirements shall become effective upon the date received by Seller. All provisions of the Lender Requirements are hereby incorporated into this Agreement by reference.

**8. REPURCHASE OF LOANS:** Seller hereby agrees to repurchase any Mortgage Loan sold to Buyer at any time during the life

# ***NON-DELEGATED CORRESPONDENT AGREEMENT***

of such Mortgage Loan, upon the occurrence of any of the following events:

- (a) Any false statement, misstatement, or act of omission of material fact contained in the Mortgage Loan documentation resulting from Seller's negligence or failure to exercise due diligence as disclosed by actual inspection by Buyer or its representative, or otherwise disclosed; or
- (b) Buyer cannot obtain FHA insurance, VA or RHS guaranty, private mortgage insurance, or if such insurance or guaranty lapses or for any reason becomes unavailable, as a result of any negligent act or omission by Seller, or the failure by Seller to obtain such insurance or guaranty within sixty (60) days from the date of purchase; or
- (c) Buyer is required to repurchase any Loan sold by it to GNMA, FNMA, FHLMC, or any other investor, by reason of a deficiency in or omission with respect to the Mortgage Loan documents, instruments, and agreements, pertaining to any Mortgage Loan; or
- (d) Any representation or warranty made by Seller under this Agreement or the Lender Requirements with respect to any Mortgage Loan shall, in the reasonable opinion of Buyer, be false at the time when made by Seller or become false upon the occurrence of subsequent events; or
- (e) Any material fraud, misrepresentation or act of omission with respect to the information submitted on a particular Mortgage Loan is determined to exist by Buyer or another investor. This includes, but is not limited to, Mortgagor or other third-party fraud or misrepresentation, and any misrepresentation of Mortgagor's income, funds on deposit, or employment, or of the occupancy status of the Mortgaged Property;
- (f) Seller's breach of any covenant or obligation to Buyer with respect to the Mortgage Loan under this Agreement or the Lender Requirements, specifically including, without limitation, Seller's obligations under Section 3, 4, or 5 hereof. The repurchase price for any Mortgage Loan that Seller is required to repurchase from Buyer shall be an amount equal to its then unpaid principal balance of the Mortgage Loan on the date of repurchase, plus accrued interest, any servicing release premium paid, and direct expenses (including attorney's fees) incurred by Buyer for any actions taken by it concerning, as a result of, or in connection with, any of the events or circumstances set forth herein as cause for repurchase. Buyer's exercise of its right to have Seller repurchase any Mortgage Loan hereunder shall be in addition to, and not in lieu of, any other rights or remedies which Buyer may have against Seller hereunder or under applicable law; or,
- (g) Borrower[s] fail[s] to make any of the first four (4) monthly payments subsequent to the loan purchase date, as described in the loan documents at the time of closing.

**9. INDEMNIFICATION:** Seller shall protect, indemnify, and hold Buyer harmless from and in respect to, any and all losses, liabilities, reasonable costs, and expenses (including attorneys' fees) that may be incurred by Buyer with respect to, or proximately resulting from any breach of, any representation, warranty, or covenant of Seller hereunder. Buyer shall be entitled to rely upon Seller as assembler and preparer of all Mortgage Loan documents and is under no duty whatsoever to investigate or confirm any of the information set forth therein as to its honesty, accuracy, or completeness. Seller hereby agrees to indemnify and hold Buyer harmless from any claim, loss or other damage to Buyer including reasonable attorneys' fees resulting in whole or in part from any inaccuracy or incompleteness in the Mortgage Loan documents or any act or omission by Seller, its agents and employees, including but not limited to failure to comply with applicable state, federal and local statutes or regulations. To the extent Seller, its agents or employees, commits an actual wrong, or makes some error or omission in the preparation of any Mortgage Loan or its documents and as a result thereof, and based thereon, Buyer commits an act or omission for which it becomes liable to the Mortgage(s) or any third party and/or a claim or cause of action is instituted against Buyer, Seller shall and hereby agrees to indemnify and hold Buyer harmless from any such loss or damage, including reasonable attorneys' fees, resulting therefrom.

## **10. REFUND OF SERVICE RELEASE PREMIUMS:**

- (a) If any Mortgage Loan becomes delinquent 60 days or borrower[s] fail to make payment on any of the first four (4) monthly payments due Buyer, Seller shall refund to Buyer all service release premiums received from Buyer with respect to that Mortgage Loan plus an indemnification fee of \$1,000 on conventional loans and \$2,000 on government loans.
- (b) In the event a loan is refinanced or prepaid within 6 months of the purchase date, Seller may be responsible for

# ***NON-DELEGATED CORRESPONDENT AGREEMENT***

repayment of any and all Service Release Premium paid on the Loan as follows:

In the event that the borrower refinances, prepays the loan in full, or makes a Principal Reduction payment equal to or greater than 30% of the unpaid principal balance prior to making the first six (6) payments due to Buyer and/or its assigns following the Purchase Date, Seller shall promptly reimburse Buyer for the total Servicing Released Premium paid as published on the Loan Purchase Advice, or calculated internally by Buyer. A payment for which Buyer deducted funds at the time it purchased the Loan from Seller shall not be considered one of the first six (6) payments due Buyer.

Within ten (10) business days following receipt of written notice from Buyer, Seller shall pay Buyer the full amount of such any service release premiums.

**11. NOTICES:** All notices required hereunder shall be in writing, delivered to the last known addresses of the parties, as may be amended from time to time by written notice, and shall be deemed to have been given, made, and received only: (a) upon personal delivery to a Party; (b) one (1) business day after the date of deposit if delivered by a nationally recognized courier service offering guaranteed overnight delivery; or (c) five (5) business days after deposit in the United States first class mail, certified mail, postage prepaid, return receipt requested, and;

- (a) The Parties agree that First Community Mortgage, Inc. may deliver the Lender Requirements and/or the Agreement, and all amendments thereto, by posting a copy of the current version of the Agreement and Lender Requirements and such amendments at a website identified by Lender or by transmitting an electronic version of the Lender Requirements and/or the current version of the Agreement and such amendments to an e-mail address provided by Seller.
- (b) Unless an electronic communication specifically contains a statement that the communication is intended as an electronic signature or consent by First Community Mortgage, Inc., such communication shall not constitute an electronic signature or consent by First Community Mortgage, Inc. pursuant to the Electronic Signatures in Global and National Commerce Act or comparable state or federal laws or regulations.
- (c) Entire Agreement; Amendment. This Agreement, together with all Exhibits, the Approval Letters and the most current version of the Lender Requirements, constitutes the entire understanding and agreement of the Parties hereto with respect to the subject matter hereof, and any other agreements, express or implied, entered into prior to this Agreement are hereby null and void and of no force or effect. Lender may amend the terms of this Agreement by delivering Seller an amended Agreement in accordance with Section 11 of this Agreement by personal delivery, mail or email. Such amendment(s) shall constitute the current version of the Agreement and shall be deemed accepted and incorporated into this Agreement if Seller submits an Application Package to First Community Mortgage, Inc. subsequent to the date that the amended Agreement is delivered to Seller. Seller may not supplement, modify or amend this Agreement unless such supplement, modification or amendment is agreed to in writing by an authorized representative of First Community Mortgage, Inc.

**12. FINANCIAL STATEMENTS AND RIGHT TO AUDIT:** When applicable, pursuant to agency and/or investor guidelines, Seller agrees to provide annual audited financial statements to Buyer within ninety (90) days after the close of its fiscal year prepared by independent certified public accountants in accordance with generally accepted accounting principles. Seller will also submit copies of current Mortgage Licenses (where applicable) and a copy of a current Fidelity Bond and E & O Insurance Policy. If Buyer is the Sponsor of the Seller under the FHA Loan Correspondent program, Seller agrees to allow Buyer access to their office facilities and loan records during normal business hours for an on-site compliance audit in accordance with HUD quality control requirements.

**13. INSURANCE:** Seller shall maintain in full force Errors and Omissions Insurance and a Fidelity Bond, Mortgage Banker Bond or Mortgage Originator Policy in such amounts as Buyer may reasonably require indemnifying Buyer from any loss or damage incurred in connection with this Agreement. Buyer must be named as a "loss payee" and must have the right to file a claim directly with the insurer if Seller fails to file a claim for a covered loss that Buyer incurs. The insurer must agree to notify Buyer at least 30 days before it cancels, reduces or modifies the Seller's coverage for any reason or within 10 days after it receives a request from Seller to cancel or reduce any coverage.

**14. RELATIONSHIP OF THE PARTIES:** Buyer and Seller hereby agree that neither this Agreement nor any purchase of



# ***NON-DELEGATED CORRESPONDENT AGREEMENT***

Mortgage Loans pursuant hereto shall constitute any agency relationship, legal representation, joint venture, partnership or employment. Buyer and Seller agree that neither party is in any way authorized to make any contract, agreement, warranty, or representation, or to create any obligation, express or implied, on behalf of the other.

**15. EVENTS OF DEFAULT:** Each of the following shall constitute an Event of Default on the part of Seller under this Agreement: (i) any breach by Seller of any of Seller's representations, warranties, or covenants set forth in this Agreement or the Lender Requirements; (ii) the failure of Seller to perform any of its obligations under this Agreement or the Lender Requirements; (iii) the occurrence of any act of insolvency or bankruptcy concerning Seller; (iv) Seller's failure to meet any capital, leverage, or other financial standard imposed by any applicable regulatory authority, warehouse lender, or in Buyer's sole opinion, any material adverse change occurs in the financial condition of Seller; (v) any federal or state regulatory authority or licensing agency shall cancel, rescind, or fail to renew Seller's license or institute any action against Seller for fraud or criminal conduct.

**16. RIGHT OF OFFSET:** Buyer shall have the right to deduct any premiums, penalties, fees, taxes, or other charges or obligations of any kind owed by Seller to Buyer from the amount to be paid for any Mortgage Loan purchased by Buyer hereunder.

**17. SURVIVAL OF PROVISIONS; SEVERABILITY:** All of the covenants, agreements, representations and warranties made herein by the parties hereto shall survive and continue in effect after the termination of the Agreement or the consummation of the transactions contemplated hereby. Any provisions of the Agreement that are prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidation of the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. This Agreement may be executed in counterparts, all of which taken together shall constitute one and the same instrument.

**18. ASSIGNMENT:** This Agreement may not be assigned or transferred by Seller without the prior written consent of Buyer.

**19. AMENDMENT/TERMINATION:** Buyer shall have the right to amend this Agreement with written notice to the Seller. At Buyer's request, Seller shall acknowledge changes to the Agreement in writing, but Seller's failure to provide written acknowledgment of any amendment shall not impair the enforceability of such amendment. This Agreement may also be terminated with respect to future purchases of Mortgage Loans by either party at any time by giving written notice of termination to the other party. Upon the occurrence of any Event of Default as described in Paragraph 15(i), 15(ii), 15(iv) or 15(v) hereof, Buyer may either terminate this Agreement upon notice to Seller or, without affecting any other rights or remedies available to Buyer under this Agreement or at law or in equity, immediately suspend all registrations and lock-ins and may refuse to fund any or all Mortgage Loans, pending the cure, to Buyer's satisfaction, of such Event of Default. Upon the occurrence of an Event of Default under Paragraph 15(iii), this Agreement shall terminate automatically. Termination of this Agreement shall not in any respect change, alter, or modify the obligations of Buyer and Seller with respect to Mortgage Loans that have been purchased by Buyer from Seller prior to the date of such termination.

**20. ENTIRE AGREEMENT:** This Agreement and the Lender Requirements contain the entire agreement of the parties with respect to the subject matter hereof, and there are no representations, inducements, or other provisions other than those expressed in writing and included herein. All changes, addendum, additions, or deletions to this Agreement must be made in writing and signed by each of the parties hereto. This Agreement restates and supersedes any and all prior Mortgage Purchase Agreements between the parties.

**21. GOVERNING LAW; INTERPRETATION:** It is mutually understood and agreed that this Agreement shall be governed by the laws of the State of Tennessee as to both interpretation and performance. All terms of this Agreement shall be construed and interpreted according to their plain meaning and no term shall be more strictly construed against Buyer merely because Buyer has drafted this Agreement.

**22. CONFIDENTIALITY:** During the term of this Agreement, Buyer and Seller shall each have available confidential or proprietary information related to the other party. Both parties shall maintain and preserve to the maximum extent permitted by law the confidentiality of any such information and shall be entitled to obtain injunctive relief as required to enforce these provisions. In addition, both parties agree that "nonpublic" personal information (as defined in 12 CFR 40.3) about each borrower furnished to the other party hereunder is furnished upon the express condition that the information will be kept confidential by the receiving party. All such confidential, proprietary, and non-public personal information, except as may be otherwise required by statute, by court order or as may be necessary, in the reasonable judgment of the receiving party, to the performance of the services required under this Agreement, shall be held in confidence. Both parties have established

# NON-DELEGATED CORRESPONDENT AGREEMENT

and maintain policies, procedures and safeguards designed to protect the security, confidentiality of this non-public personal information about each borrower and agree to comply with the provisions of the Gramm-Leach-Bliley Act and all implementing rules and regulations regarding consumer financial privacy, to the extent applicable to each of their actions and responsibilities hereunder.

**23. ACCEPTANCE:** This Agreement shall become binding upon acceptance and execution by Buyer.

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Agreement as set forth above on this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
(Seller Name)

\_\_\_\_\_  
Signature Date

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
First Community Mortgage, Inc.

\_\_\_\_\_  
Signature Date

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

\_\_\_\_\_  
Title