

**AMERICAN FINANCIAL RESOURCES, INC.**  
**CORRESPONDENT ORIGINATION AND SALES AGREEMENT**  
**CLOSED LOAN PURCHASES**

The Whole Loan Purchase Agreement made as of \_\_\_\_\_, (“this Agreement”) by and between **American Financial Resources, Inc.** (AFR) a Corporation duly organized and existing under the laws of the **State of New Jersey** with its principal place of business at **9 Sylvan Way, Parsippany, NJ 07054** and \_\_\_\_\_ a duly organized and validly existing \_\_\_\_\_ corporation with its principal place of business at \_\_\_\_\_ (the “Correspondent”).

**BACKGROUND**

This Agreement governs the origination, sale, and transfer of certain residential Mortgage Loans including the transfer of Servicing Rights. From time to time, Correspondent may offer to sell and American Financial Resources, Inc may agree to buy Mortgage Loans which meet AFR’s requirements in accordance with the terms set forth herein.

In consideration of the mutual promises, covenants, and agreements contained herein, the parties agree as follows:

**ARTICLE 1**

**SUBMISSION AND APPROVAL**

**SECTION 1.1 Submission**

Correspondent may, from time to time, submit a Credit File or Loan File to AFR for approval in accordance with AFR’s published product or loan program guidelines.

**SECTION 1.2 Acceptance/Rejection of Mortgage Loan**

Following receipt by AFR of a Credit File or Loan File, AFR may accept or reject any proposed Mortgage Loan based on applicable underwriting, origination or approval guidelines, or for any reason as determined by AFR.

**SECTION 1.3 Rate Lock and Delivery**

Correspondent may request a rate quotation and rate reservation in accordance with AFR’s rate lock policies as described in its published guidelines. In order to receive payment for a purchased loan based on a rate locked, Correspondent must deliver to AFR the applicable loan file and credit file, including any required fees and any additional information concerning the Property, the Mortgage Loan and/or the applicant which AFR may deem necessary, prior to the expiration date as shown on the written lock confirmation. In the event that timely delivery of a closed Mortgage Loan is not made, AFR reserves the right to adjust the rate and/or the purchase price for the Mortgage Loan.

## **SECTION 1.4 Sale, Not Financing**

Correspondent and AFR hereby confirms (i) that the purchases and sales and conveyances of Mortgage Loans pursuant to this Agreement constitute purchases and sales for all purposes (including tax and financial accounting purposes) and are not financing transactions or loans and (ii) that is the intention of the parties that such transaction shall constitute sales and not financing transactions or loans. If a conveyance of Mortgage Loans from the Correspondent to AFR is characterized as a pledge, a financing transaction or a loan and not a sale, then the Correspondent's right, title and interest in, to and under the obligations of the Correspondent deemed to be secured by said pledge; and it is the intention of this Agreement that this Agreement shall constitute a security agreement under applicable laws that the Correspondent shall also be deemed to have granted to American Financial Resources, Inc. a first priority security interest in all of the Correspondent's right, title, and interest in, to and under the Mortgage Loans, all payment of principal of or interest on such Mortgage Loans and all proceeds thereof and American Financial Resources, Inc. shall be deemed to be an independent custodian for purposes of perfection of the interest granted to American Financial Resources, Inc.

## ARTICLE 2

### DELIVERY, INSPECTION, AND PAYMENT OF PURCHASE PRICE

#### Section 2.1 Timely Delivery of Mortgage Loans

For each Mortgage Loan purchased by AFR, Correspondent shall deliver the Loan File and Credit File on or before the Expiration Date as shown on the rate lock confirmation. Correspondent shall do all required acts necessary to perfect AFR's title to and security for each such Mortgage Loan and or execute and deliver any additional documents reasonably required by AFR. Correspondent acknowledges that delivery of all Mortgage Loans under a Mandatory Commitment and locked and closed by Correspondent under a Best Efforts Commitment is mandatory and that time is of the essence. Correspondent acknowledges and understands that AFR has executed forward commitments to sell and acknowledges and understands that AFR has executed forward commitments to sell and immediately deliver Mortgage Loans to third parties. All trailing documents required to be delivered to AFR shall be delivered in accordance with the AFR's instructions. In the event of a defect to a trailing document which, in AFR's sole discretion, is reasonably capable of being cured, Correspondent shall complete such cure, to AFR's satisfaction within the time frame set by AFR in its written notice of deficiency. In addition to any other rights available to AFR hereunder, Correspondent shall further reimburse American Financial Resources for any and all costs, losses or expenses incurred by AFR in the event AFR at its sole discretion, takes action to obtain recorded or perfected documents which Correspondent failed to deliver in the manner required hereunder. Correspondent covenants and agrees to reimburse, upon AFR's written demand, for any and all including pair-off losses, hedging losses, legal fees and costs, incurred by American Financial Resources as a result of Correspondent's failure to deliver any Mortgage Loan or any document or file as required herein. Such reimbursements shall be in addition to any and all legal and equitable remedies available to AFR.

#### SECTION 2.2 Payment of Purchase Price

AFR shall pay Correspondent the Purchase Price for each Mortgage Loan in accordance with the written lock confirmation. AFR will pay the Purchase Price to Correspondent or, if applicable, to the warehouse lender as instructed by an appropriate bailee agreement. In order to receive payment of the Purchase Price, Correspondent must comply with all document delivery requirements established by AFR. For rescindable Mortgage Loans, payment of the Purchase Price shall be made only after the rescission period has elapsed. Payment of any fee to Correspondent does not evidence the acceptability of the Loan File or the Credit File. Ownership of, and title to, a Mortgage Loan will be vested in AFR only when a Mortgage Loan is accepted and purchased by AFR.

Unless earlier agreed in writing by AFR, no fees, commissions, or any other consideration shall be paid to Correspondent for any Mortgage Loan submitted to for purchase. Correspondent covenants and agrees (i) the compensation received by Correspondent shall not exceed the fair market value of its services, (ii) it shall not accept any fee or other compensation except as permitted by Applicable Law and regulation; and (iii) it has disclosed any fee or other compensation in writing to the applicant and AFR, as required by Applicable Law and regulation.

The Correspondent acknowledges and agrees that AFR may, in its discretion, deduct or withhold from the Purchase Price any amounts to be remitted to AFR as a result of Correspondent's breach or non-fulfillment of Correspondent's obligations under this Agreement or any other agreement between Correspondent and AFR, if such breach results in a billing or demand to Correspondent and such billing or demand remains unpaid for a period of 60 days. Any such amounts deducted from the Purchase Price shall result in a forgiveness of certain debt due from the Correspondent to AFR and therefore constitute valuable consideration paid to Correspondent in the amount of such deduction. Such forgiveness, together with the remainder of the purchase proceeds, constitutes payment to Correspondent of the Purchase Price. Any such deduction and forgiveness of debt by American Financial Resources, Inc. shall not in any way waive or forgive any other indebtedness due

AFR by Correspondent and shall not waive any other rights due or remedies available to AFR under such applicable agreement or under this Agreement.

### **SECTION 2.3 Investor Rights and Servicing Rights**

The Purchase Price of each Mortgage Loan shall include all Investor Rights and Servicing Rights and benefits pertaining to such Mortgage Loan. Correspondent shall execute and deliver all such documents sufficient to transfer all Investor Rights and Servicing Rights from Correspondent to AFR free and clear of all claims, liens and encumbrances, and to enable AFR (or its designated representative) to own, sell and service such Mortgage Loan.

### **SECTION 2.4 Inspection of Loan Files**

American Financial Resources, Inc. reserves the right to inspect all Loan Files and Credit Files and satisfy itself that all Mortgage Loans comply with the applicable Commitment, and Correspondent's representations concerning the Mortgage Loans. The Loan Files and Credit Files shall evidence compliance with all federal and state rules, order and regulations affecting the Mortgage Loans.

### **SECTION 2.5 Recordation of assignments of Mortgage; Loss Payee Status**

Except with respect to MERS Designated Mortgage Loans, to the extent permitted by Applicable Law, each of the Assignments of Mortgage is subject to recordation in all appropriate public offices for real property records in all the counties or their comparable jurisdictions in which any or all of the Mortgaged Properties are situated, and in any other appropriate public recording office or elsewhere, such recordation to be effected by Correspondent, at Correspondent's expense in the event recordation is either necessary under Applicable Law or requested by AFR at its sole option. Such of the purchase of the respective Mortgage Loan. Correspondent shall make AFR or its designee the loss payee of each hazard and flood insurance policy.

## ARTICLE 3

### REPRESENTATIONS, WARRANTIES AND COVENANTS OF CORRESPONDENT

#### SECTION 3.1 Covenants of Correspondent

Correspondent covenants and agrees with AFR as follows:

- A. Correspondent shall timely deliver to each applicant a completed Regulation Z statements, good faith estimate of closing costs, federally mandated fixed rate, or adjustable rate mortgage disclosure and HUD booklets. Correspondent shall be responsible for compliance with aggregate accounting requirements relating to escrow account statements and escrow accounting procedures mandated by RESPA. Correspondent shall also be responsible for compliance with ECOA concerning notification of adverse action to an applicant whose Mortgage Loan AFR does not accept (AFR may, at its option, deliver notice of adverse action to Correspondent for further delivery to applicant). Correspondent shall comply with Regulation Z concerning return of all monies paid by the applicant to Correspondent should the applicant rescind and Correspondent shall not seek reimbursement from AFR for such refund.
- B. Correspondent shall deliver evidence, in a form satisfactory to AFR, of such compliance, including but not limited to, copies of any notice or disclosure form furnished to an applicant, including but not limited to, items listed in Section 3.1 (A)
- C. Correspondent utilizes and shall utilize only licensed real estate appraisers that meet the requirements set forth by AFR, and whose approval and appointment is in compliance with the regulations and standards contained in the Financial Institutions Reform Recovery and Enforcement Act or, in the case of FHA, VA, USDA loans by appraisers approved by FHA, VA, or USDA, respectively.
- D. At all times during the term of this Agreement, Correspondent shall maintain a complete set of files and records of all business activities and operations records shall be maintained in a neat, orderly and organized manner. For a period of not less than twenty-five (25) months from and after the date of termination or expiration of this reasonably accessible location. Alternatively, Correspondent may deliver to AFR all such files and records. At all times during the term of this Agreement and at all times during the twenty-five (25) month period following expiration or termination of this Agreement, AFR, its public offering (such as rating agencies) and federal and state regulatory agencies which business hours, to audit, inspect and copy and any of the foregoing records, reports, files and related materials of Correspondent, and Correspondent shall cooperate and assist in any such audit or inspection.
- E. Within one hundred twenty (120) days following the end of each fiscal year of Correspondent, and/or at the request of AFR's request to re-certify, Correspondent shall deliver to American Financial Resources, Inc. financial statements of Correspondent covering such fiscal period including a balance sheet as of the end of such fiscal year, and income statement for such fiscal year, and related statements of changes in comparative form, figures for the previous fiscal year, all in reasonable detail and, unless otherwise agreed by AFR, such financial statements shall be audited and certified by an independent firm of certified public accountants. In addition, if required from time to time by AFR, within forty-five (45) days following the end of each quarterly period of the fiscal year of Correspondent, Correspondent shall deliver to American Financial Resources, Inc. un-audited financial statements of Correspondent for such quarterly period, including a balance sheet, an income statement setting forth in each case, in comparative form, figures for the same quarter of the previous fiscal year, all in reasonable detail, which statement shall be certified by the chief financial operations of Correspondent as of and for such quarterly period. Correspondent shall also provide (i) any additional information reasonably requested by AFR, from time to time including, but not limited to, proof of adequate licensing and bonding and; (ii) upon AFR's request, such corporate structure, and/or financial information, including without limitation, any of the financial information referenced in this Section E, as AFR may request from time to time with respect to Correspondent's parent company or holding company. Upon AFR's request, the Correspondent shall permit AFR to perform reasonable and relevant on-site due diligence reviews, in the manner

reasonably required by AFR during the term of this Agreement, during regular business hours, provided that AFR shall not unreasonably disrupt correspondent's business or operations.

- F. No officer, loan originator or other personnel of Correspondent shall have been indicted, arraigned, convicted or shall be under investigation for any criminal offenses or any fraudulent activity related to the origination, servicing and/or sale of mortgage loans.
- G. The Correspondent shall notify AFR of any changes in the Principal Ownership of the company. Such notification shall be in writing and made within 30 days of the change.
- H. The Correspondent shall pay any commissions due its sales staff and the legal fees and expenses of its attorneys. The Correspondent shall pay the cost of delivering the Mortgage Loan, the cost of recording the Assignments of Mortgage fees incurred in connection with the release of any Mortgage Loan documents as may be required hereunder. All other costs and expenses incurred in connection with the transfer and delivery of the Mortgage Loan including, fees for recording of the Mortgage, fees for obtaining service contracts and the legal fees and expenses of its attorneys shall be paid by the Correspondent.

## ARTICLE 4

### REMEDIES, PURCHASES, INDEMNIFICATION

#### SECTION 4.1 Breach of Representation of Warranty

Upon discovery of a breach of any of the representations, warranties, covenants or agreements set forth in this Agreement, the party discovering such breach shall promptly give written notice to the other. Correspondent shall have sixty (60) days following its discovery or its receipt of notice of any such breach, to cure such breach to the reasonable satisfaction of AFR. If in the reasonable judgment of AFR such breach cannot be cured within such six (60) days period, or is incapable of being cured, or if Correspondent fails to cure such breach within sixty (60) day period, Correspondent shall, at the request of American Financial Resources, promptly repurchase the affected Mortgage Loan at the related Repurchase Price.

#### SECTION 4.2 Repurchase of Mortgage Loans by Correspondent

Upon the occurrence of any of the following events Correspondent agrees to immediately repurchase the related Mortgage Loan (or the related Property, if the title thereto is held by AFR), at the Repurchase Price if:

- A. Correspondent fails to provide all of the documentation required to be delivered to AFR under this Agreement and/or fails to satisfy all other requirements of this Agreement which Correspondent is required to perform as of the Purchase Date within one hundred twenty (120) days following the Purchase Date. At AFR's discretion, such date may be extended to a date one hundred eighty (180) days following the Purchase Date for documents sent out for recording, but not yet returned due to delays solely within applicable recording office. Such extension, shall solely be at the discretion of AFR upon receipt of Correspondent's written request for an extension, with documented verification of such delay within the applicable recording office;
- B. With regard to Mortgage Loans that require private mortgage insurance or, as applicable, an FHA and/or VA certificate, (a) Correspondent fails to deliver to AFR the appropriate certificate of insurance or other evidence of insurance issued by the insurer, including evidence that the required private mortgage insurance has been paid and that a policy is in full force and effect for any loan sold to AFR or (b) the appropriate certificate, loan guaranty or other evidence of insurance cannot be obtained, in the reasonable judgment of AFR or any required certificate, loan guaranty and/or private mortgage insurance lapses, is rescinded, or a claim thereon is denied or not paid.
- C. AFR repurchases any Mortgage Loan previously conveyed, transferred, or assigned by AFR to any third party due to a defect which existed prior to, or arose as a result of any action, inaction or occurrence on or before the Purchase Date;
- D. The Loan File or Credit File contains any Fraudulent Document or AFR determines that a Mortgage Loan is subject to any fraud or misrepresentation, involved in the origination or sale of such Mortgage Loan regardless of whether or not such Mortgage Loan is delinquent;
- E. A loan constitutes a "high cost home loan" or "predatory loan, or a similarly defined as those or similar terms are defined in the HOEPA, as amended from time to time, or a New York subprime home loan, or any similar state or local statutes, ordinances or regulations related to high cost Mortgage loans or predatory lending.
- F. AFR receives a demand for repurchase or indemnification in lieu of repurchase for a Mortgage Loan by an Agency or owner and holder of a Mortgage Loan, or its successor in interest who then has an ownership interest in the Mortgage Loan (such demand to be deemed a breach of the related representation, warranty, covenant or agreement of the Correspondent hereunder).

### **SECTION 4.3 Reconveyance of Mortgage Loan Following Repurchase by Correspondent**

Upon repurchase by Correspondent, AFR will endorse the Mortgage Note without recourse and execute a recordable assignment of the Mortgage and reasonably cooperate in the transfer of the Mortgage Loan and all information relating thereto to the Correspondent.

### **SECTION 4.4 Early Pay Off of Loans Sold**

Correspondent agrees that in the event a loan purchased under this Agreement by AFR is paid off in full within 180 days of purchase. The Correspondent will be required to reimburse AFR for all sums paid over par plus any amounts paid for servicing released premiums.

### **SECTION 4.5 Early Payment Default**

Correspondent agrees to pay AFR the sum of all amounts paid to Correspondent by AFR over par plus any amounts paid by AFR to Correspondent for servicing released premium plus an administrative fee of \$3,000 if any of the first four payments due to AFR or its assignee, become ninety or more days delinquent.

### **SECTION 4.6 Indemnification**

In addition to any other remedies available to AFR, Correspondent hereby agrees to indemnify and hold harmless AFR, its successors and assigns, from and against any and all losses, damages, fines, costs or expenses of any nature, including loss of marketability and attorney's fees and costs, resulting from, in connection with or related to:

- (a) Any breach of a representation or warranty by Correspondent, or the non-fulfillment of any covenant or condition of Correspondent contained in this Agreement.
- (b) Any act or omission, or alleged act or omission, fraud and or error, of Correspondent or any employee, agent or representative acting on behalf of Correspondent, with respect to the origination, underwriting, closing, or sale of any of the Mortgage Loans or any document, agreement or instrument relating thereto, occurring on or prior to the Purchase Date. Such errors may include improper action or failure to act when required to do so;
- (c) Litigation existing, settled or threatened involving any of the Mortgage Loans and relating to events occurring prior to the Purchase Date; or
- (d) Any failure to have received from Correspondent, within the timeframes set forth in this Agreement any Mortgage Loan documents, disclosures required by state or federal law to be in the possession of Correspondent under applicable requirements.

## ARTICLE 5

### Termination of this Agreement

#### SECTION 5.1 Conditions of Termination

This Agreement may be terminated by either party upon fifteen (15) days' prior written notice. If prior to the effective date of termination, a rate lock confirmation has been issued by AFR to Correspondent, or Correspondent has transmitted a credit File or Loan File, or any part thereof, to AFR, then, in accordance with the terms and conditions of this Agreement, AFR shall accept the loan provided at its discretion provided such Mortgage Loan conforms to AFR's customary underwriting and origination guidelines, and AFR did not terminate this Agreement for cause.

AFR may, at its option, terminate this Agreement, and any obligations to purchase or accept assignment of any Mortgage Loan, immediately for cause in the event AFR determines any of the following have occurred:

- (a) A breach of any term, condition or obligation of Correspondent, following any applicable cure period, and in such event, AFR is not obligated to purchase any loan already registered or rate locked at the time of such termination.
- (b) AFR determines that the Correspondent lacks the financial ability to fulfill in its indemnification or repurchase obligations set forth herein;
- (c) AFR determines that there has been deception, fraud, concealment, non-performance, or material misrepresentation by Correspondent in any of its duties, obligations, responsibilities or actions in connection with this Agreement;
- (d) Correspondent, or its parent, has been subject to a suspension or termination by an Agency as an approved seller and/or servicer
- (e) Correspondent defaults under any mortgage loan repurchase arrangement or under any warehouse lending or correspondent lending arrangement which may support its residential mortgage loan program;
- (f) The initiation of any investigation of Correspondent, or its parent, by any state or federal agency, which, in AFR's reasonable determination, is likely to have a material effect on Correspondent's ability to perform its obligations under this Agreement;
- (g) A decree or order of a court or agency or supervisory authority of insolvency, bankruptcy, readjustment of debt, entered against Correspondent, or its parent;
- (h) In AFR's determination and judgment, there has been a material adverse change in the capitalization, liquidity, nonperforming assets, reverses or other material financial or performance metrics of Correspondent, or its parent, following the date of this Agreement;
- (i) Correspondent defaults under or materially breaches any agreement with AFR.

Notwithstanding any termination of *this* agreement, the representations and warranties, covenants, agreements, and obligations of Correspondent, including but not limited to its continuing responsibility to promptly supply AFR with outstanding documentation regarding Mortgage Loans previously submitted for approval, and its obligation to repurchase Mortgage Loans previously submitted for approval, and its obligation to repurchase Mortgage Loans and to indemnify; American Financial Resources, Inc. as provided herein shall remain in full force and effect.

## ARTICLE 6

### Miscellaneous Provisions

#### SECTION 6.1 Assignment

Correspondent may not assign, or delegate any of its rights, duties, and/or obligations hereunder without the written permission of AFR which may be withheld in its sole discretion. A change in ownership, merger, or consolidation of Correspondent shall be considered an assignment for purposes of this Agreement.

#### SECTION 6.2 Relationship between Parties

No exclusive relationship between Correspondent and AFR shall result from this Agreement. Correspondent is an independent contractor and nothing herein shall be construed to make Correspondent a partner, joint venture, employee or agent of AFR. Correspondent shall not make any statement which leads any third party to reasonably believe that it is an agent of AFR, and shall have no authority to bind or make any representations on behalf of AFR. Correspondent shall not use or refer to AFR's name in any form of advertising, written materials or circulars except as may be required by law. Correspondent agrees that American Financial Resources, Inc. may discontinue making purchases under this Agreement at any time. This discontinuance may occur irrespective of whether Correspondent is performing satisfactorily under this Agreement. Because of the foregoing, Correspondent understands that it is advisable for it to obtain additional sources of funding for its business and the Correspondent hereby agrees that AFR will not be liable for damages from AFR's discontinuance of making purchases.

#### SECTION 6.3 Entire Agreement

This Agreement, together with any exhibits hereto and any riders, amendments, addenda hereto, constitute the entire understanding of the parties regarding the subject matter. Any additions, changes, amendments or modification of this Agreement must be in writing and executed by an authorized officer of AFR.

#### SECTION 6.4 Notice

Any notice required to be given to a party hereto under the provision of this Agreement must be in writing and delivered either personally, or by certified mail to the other party at the addresses indicated herein.

#### SECTION 6.5 Non-Solicitation

Correspondent covenants and agrees that it will not, directly or indirectly, take any action, or cause any action to be taken by any of its agents, contractors, employees or affiliates, to solicit the prepayment of, refinance of any Mortgage Loan sold to AFR under the terms of this Agreement.

## **SECTION 6.6 Governing Law**

This Agreement and the interpretation of its terms shall be governed by the laws of the State of New Jersey without giving effect to its principles of conflicts of law.

## **SECTION 6.7 Attorney Fees**

In connection with any litigation or court proceeding arising out of the enforcement of this Agreement, AFR be entitled to recover from Correspondent, all cost incurred, including attorneys' fees incurred for services rendered before suit is brought, prior to trial, at trial, or appeal, or in federal bankruptcy proceeding.

## **SECTION 6.8 Set-Off**

Correspondent agrees that AFR may, at its option, and without prior notice to Correspondent, deduct, set-off and appropriate form (a) any payment due Correspondent, (b) any deposit held by AFR or (c) any other amounts in AFR's possession or control, any monies paid by AFR on behalf of Correspondent, incurred by AFR or in AFR's determination likely to be incurred by AFR or due to AFR, in connection with Correspondent's failure to perform under the terms of this Agreement.

**IN WITNESS/WHEREOF**, American Financial Resources, Inc. and the Correspondent have caused this Correspondent Origination and Sales Agreement to be executed and effective as of (date) this document is executed by American Financial Resources, Inc. as set forth below (the “Effective date”). One or more of the parties may execute this Origination and Sales Agreement by executing a separate document containing such parties’ acknowledgement that execution of such document constitutes execution of this Agreement. In such event, the effective date of this Agreement shall be the effective date of such separate document

By: \_\_\_\_\_  
(Correspondent)

By: \_\_\_\_\_  
(American Financial Resources, Inc.)

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_