

## Mortgage Loan Purchase and Sale Agreement

This Mortgage Loan Purchase and Sale Agreement (this "Agreement") is entered into as of [ ] [ ], 2021, by and between Maxwell Capital Partners, LLC ("MaxCap"), a Delaware Limited Liability Company, with its principal place of business at 950 17<sup>th</sup> St. suite 950 Denver, CO 82020 and [ ] a [Form of Entity and State or Federal Organization], with its principal place of business at [ ] ("Seller").

### **WITNESSETH:**

**WHEREAS**, Seller is in the business of originating, closing, and funding first lien mortgage loans secured by residential real property (each, a "Mortgage Loan") for sale into the secondary market, and MaxCap is in the business of purchasing such Mortgage Loans;

**WHEREAS**, from time to time, Seller agreed to sell Mortgage Loan(s) to MaxCap and MaxCap has agreed to purchase from Client from time to time, mortgage loans originated by Client ("Loans"), individually or as pools or groups of whole loans, on a servicing released basis, pursuant to the terms and conditions provided herein; and

**WHEREAS** each of the Mortgage Loans will be secured by a mortgage, deed of trust or other security instrument creating a first lien on a residential property located in the jurisdiction indicated on the related Mortgage Loan Schedule which will be annexed to a Purchase Advice (a form of which is attached hereto as Exhibit A) on the related Closing Date; and

WHEREAS this preamble is part of and incorporated into this Client Contract; and

**WHEREAS** Seller wishes to sell to MaxCap and MaxCap wishes to purchase such Mortgage Loans on the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the premises and mutual agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, MaxCap and Seller hereby agree as follows:

### **ARTICLE 1. DEFINITIONS AND INITIAL RESPONSIBILITIES**

#### **1.1 Definitions.**

Capitalized terms used in this Agreement and not defined herein shall have the meaning ascribed to them in the Seller Guide defined below.

**1.2 The Seller Guide.** The parties expressly understand and agree that the complete written MaxCap Correspondent Seller Guide, available at [www.himaxwell.com](http://www.himaxwell.com), as amended from time to time by MaxCap in its sole discretion, and including any notices, announcements or bulletins issued by MaxCap from time to time (the "Seller Guide") is incorporated into this Agreement by reference and forms a critical and inseparable part hereof. Client understands and agrees that MaxCap reserves the right to amend, restate, supplement or otherwise modify the Seller Guide at any time and from time to time. Client agrees to all terms and conditions of Seller Guide, including the representations, warranties and covenants set forth therein.

**1.3 Commitment Confirmations.** Client may enter into one or more commitments for the delivery of loan(s) to MaxCap which may include Rate Lock Commitment(s), Forward Commitment(s), Bulk Commitment(s), or other commitments. A Commitment Confirmation is MaxCap's written

communication to the Client confirming that the Client's commitment request is accepted and outlining the terms and conditions applicable to MaxCap's potential purchase of the loan. Max Cap will not be deemed to have accepted an offer to enter into a commitment until it has sent a written Commitment Confirmation.

**1.4 Incorporation by Reference.** The Seller Guide, Commitment Confirmation(s), and any related documents (together with this Agreement, the "Program Documents") are incorporated by reference into this Application t as if fully set forth herein.

**1.5 Governing Agreement.** The terms and conditions of this Agreement will control in the event of a conflict between the terms of this Agreement and the Seller Guide. The terms and conditions of a Commitment Confirmation will control in the event of any direct conflict between (i) this Agreement and the Commitment Confirmation, or (ii) the Seller Guide and the Commitment Confirmation.

**1.6 Directors' Resolution.** Together with the execution of this Agreement, Client must deliver to MaxCap (i) a certified resolution (or its equivalent if Client is an entity other than a corporation) authorizing the execution, delivery and performance of this Agreement, (ii) such other evidence of existence, good standing and authority as MaxCap may require, and (iii) such other documents as MaxCap may require, in each case in form and substance satisfactory to MaxCap.

**1.7 Seller Responsibilities.**

As to each Mortgage Loan (as defined herein) submitted by Seller to MaxCap for purchase, Seller shall furnish to MaxCap, at Seller's expense, the Mortgage Loan Documents and such additional items as MaxCap may from time to time require prior to making a decision on whether to purchase a Mortgage Loan and in order to service the Loan during the Interim Servicing Period.

**1.8 Due Diligence & Oversight.**

Seller shall provide to MaxCap evidence of its license and qualification to conduct business in each jurisdiction in which Seller conducts the business subject to this Agreement, together with such financial statements; proof of any errors and omissions insurance or bond coverage; and other documents or information MaxCap requests in order to ensure Seller's ongoing compliance with this Agreement or as required by Applicable Law. Upon fourteen (14) days' prior written notice, Seller shall grant MaxCap access to its offices and records during normal business hours so that MaxCap may audit and monitor Seller's performance under this Agreement.

**1.5 Communications Received by Seller.**

Within five (5) days of receipt by Seller, Seller shall forward to MaxCap all communications, inquiries and remittances which Seller may receive with reference to any Mortgage Loan serviced or sold pursuant to this Agreement. Seller shall promptly provide such other information as MaxCap may reasonably request.

**1.6 Endorsement of Instruments and Power of Attorney.**

Seller hereby irrevocably authorizes and empowers MaxCap, without notice to Seller, whether in its name or in the name of Seller, to endorse in the name of Seller any checks, drafts or other orders payable to Seller for application to the respective Loan, and for Loans MaxCap purchases, this authority shall be irrevocable until the Loan has been fully paid and discharged. Seller hereby appoints MaxCap its attorney-in-fact specifically limited to carrying out MaxCap's purposes of this Agreement and Seller shall execute a Limited Power of Attorney in the form attached hereto as Exhibit B, simultaneous with the execution of this Agreement and in substantially the form of the attached, which is incorporated into this Agreement, as and when requested by MaxCap subsequent to the execution of this Agreement.

## **ARTICLE 2. PURCHASE AND SALE OF MORTGAGE LOANS**

**2.1 Loans Eligible for Purchase.** Seller may offer to MaxCap, from time to time, and MaxCap may agree to purchase certain Mortgage Loans which conform to the Seller Guided, the Program Documents, and Applicable Law. The Mortgage Loan types eligible for purchase are subject to change from time to time in MaxCap's sole discretion. The decision to purchase a Mortgage Loan shall be made by MaxCap in its sole discretion. The fact that MaxCap has conducted or has not conducted any partial or complete examination of the Mortgage Loan Documents shall not affect MaxCap's or any of its successors' rights to demand repurchase or other relief or remedy provided for in this Agreement.

**2.2 Agreement to Purchase.** Client, in exchange for the payment of the applicable Purchase Price by MaxCap on the related Purchase Date (defined below) shall, from time to time, sell, transfer, assign, set over and convey to MaxCap, without recourse, but subject to the terms of this Agreement and the Seller Guide, all of its rights, title and interest in and to the Loans (on a servicing released basis), including the related Servicing Rights, the related Note and Security Instrument, in a Loan or group of Loans having a stated principal balance in an amount as set forth in the related Confirmation. Purchase Date means, with respect to each purchase of Mortgage Loans, the date upon which the Purchase Price is advanced to the Seller.

### **2.3 Purchase Price.**

The Purchase Price for the Loan(s) being acquired on a Purchase Date shall be set forth on the related Purchase Advice, which shall be paid on the related Purchase Date by wire transfer of immediately available funds (as defined in Exhibit A).

### **2.4 Transfer of Ownership.**

Upon the Purchase Date, the ownership of the Mortgage Loan Documents and Servicing Rights for each Mortgage Loan shall be vested in MaxCap and the ownership of all other records and documents with respect to the Mortgage Loan prepared by or which come into the possession of Seller shall vest in MaxCap. Within five (5) days of receipt by Seller, Seller shall deliver to MaxCap any documents that come into its possession required to be contained in the Mortgage Loan Documents following the sale of the Loan to MaxCap. All documents with respect to any Mortgage Loan in the possession of Seller following the sale of the Mortgage Loan to MaxCap shall be held by Seller for the benefit of MaxCap, its successors and assigns.

Record title to each Loan as of the related Funding Date shall be in the name of MaxCap or any such other name designated by MaxCap. With respect to each Loan purchased, MaxCap will own and be entitled to receive (a) all payments of principal on the Loan, (b) all payments of interest on the Loan, (c) all other amounts paid or realized on the Loan, and (d) the related Servicing Rights.

### **2.5 Assignments of Mortgage.**

In connection with the assignment of any MERS Loan, Seller agrees that, within ten (10) days after the Purchase Date, it will cause the MERS System to indicate that such Mortgage Loan and the related Servicing Rights have been assigned to MaxCap by Seller as the beneficial owner and servicer of the Mortgage Loan.

### **2.7 Repurchase.**

In the event that such original or copy of any documents submitted for recordation to the appropriate public recording office is not so delivered to MaxCap or its designee within one hundred twenty (120) days following the related Purchase Date, and in the event that Seller does not cure such failure within sixty (60) days after receipt of written notification of such failure from MaxCap, the related Mortgage Loan shall, upon the request of MaxCap, be repurchased by Seller at the Repurchase Price. The foregoing repurchase obligation shall not apply in the event Seller cannot deliver such original or clerk-certified copy of any document submitted for recordation to the appropriate public recording office within the specified period due to a delay caused by the recording office in the applicable jurisdiction; provided that Seller shall instead deliver a recording receipt of such recording office or, if such recording receipt is not available, an officer's certificate of a servicing officer of Seller, confirming that such document has been accepted for recording and that Seller shall immediately deliver such document upon receipt; and, provided further, that if Seller cannot deliver such original or clerk certified copy of any document submitted for recordation to the appropriate public recording office within the specified time for any reason within twelve (12) months after receipt of written notification of such failure from MaxCap, Seller shall immediately repurchase the related Mortgage Loan at the Repurchase Price. Notwithstanding the foregoing, in the event that MaxCap is required to repurchase a Mortgage Loan by a third party on the secondary market prior to expiration of the notices provided above, Seller be required to repurchase such Mortgage Loan from MaxCap.

### **2.8 Post-Sale original documents received by Seller.**

Seller shall immediately forward to MaxCap or its designee, any original documents evidencing an assumption, modification, consolidation or extension of any Mortgage Loan sold to MaxCap under this Agreement.

## **ARTICLE 3. INTERIM SERVICING.**

### **3.1 Temporary Servicing of Loans.**

MaxCap appoints Seller to act as MaxCap's servicer of Mortgage Loans for the Interim Servicing Period. Seller's interim servicing obligations may be performed by Seller, or its designated subservicer(s), and limited to such servicing and collection activities as are necessary to preserve MaxCap's and any Mortgage Loan purchaser's interest in the Mortgage Loans on a temporary basis during the Interim Servicing Period as governed by this Article 3. All funds received pursuant to each Mortgage Loan during the Interim Servicing Period that are payable to MaxCap shall be applied to each Mortgage Loan in accordance with the related Mortgage Loan Documents and Applicable Law. For amounts Seller receives after the Interim Servicing Period, it shall (a) retain such amount for its own account if Seller owns the related Mortgage Loan, or (b) remit such amount to MaxCap if MaxCap owns the related Mortgage Loan. Seller, as an independent contractor, shall service the Mortgage Loans in accordance with the Mortgage Loan Documents and Applicable Law during the Interim Servicing Period. Seller may perform its servicing responsibilities through agents or independent contractors. Mortgage Loan payments may be commingled with payments of others prior to remittance to MaxCap.

### **3.2 Directions by Seller During Interim Servicing Period.**

During the Interim Servicing Period Seller shall not waive, modify or vary any term of any Mortgage Loan without the prior written approval of MaxCap. Seller may exercise its discretion in determining whether or not to advance any amount in connection with a Mortgage Loan and shall not be obligated to make any advance during the Interim Servicing Period without the prior written approval of MaxCap. During the Interim Servicing Period if any payment due under any Mortgage Loan is not paid when the same becomes due and payable or Seller becomes aware that the Mortgagor failed to perform any obligation under the

Note or Mortgage and such failure continues beyond any applicable grace period, Seller shall notify MaxCap and take such action as directed by MaxCap in writing.

### **3.3 Mortgage Loan Documents.**

Mortgage Loan Documents delivered to Seller during the Interim Servicing Period and in connection with its servicing of the related Loan shall be held by Seller in trust for the benefit of MaxCap as the owner of such Mortgage Loan and shall be available for review by MaxCap at its reasonable request. Seller's possession of any Mortgage Loan Document while MaxCap is the owner of the related Mortgage Loan is at the will of MaxCap and in a custodial capacity only.

### **3.4 Limitation on Liability of MaxCap.**

The duties and obligations of Seller, or its designated subservicer(s), in its capacity as the interim servicer of the Mortgage Loans shall be determined solely by the express provisions of this Article 3. Seller shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Article 3 and no implied covenants or obligations shall be read into this Agreement against Seller as interim servicer.

Seller shall not be liable to MaxCap for any action taken or for refraining from the taking of any action in accordance with the Mortgage Loan Documents and Applicable Law and otherwise in good faith pursuant to this Agreement or for errors in judgment.

Seller may rely on any document of any kind which it in good faith reasonably believes to be genuine and to have been adopted or executed by the proper authorities respecting any matters arising hereunder.

## **ARTICLE 4. WARRANTIES, REPRESENTATIONS AND COVENANTS OF SELLER.**

Seller hereby acknowledges and agrees to the warranties, representations and covenants set forth in the Seller Guide related to (i) Seller and any (ii) Mortgage Loan sold by Seller to MaxCap pursuant to this Agreement. In connection therewith, Seller shall provide an Officer's Certificate in substantially the form provided hereto as Exhibit D prior to the initial purchase of any Mortgage Loan by MaxCap, to be updated or certified at any such further time as requested by MaxCap.

## **ARTICLE 5. REMEDIES.**

### **5.1 Repurchase and Indemnification.**

Upon the occurrence of any Repurchase Obligation (as defined below), Seller shall be obligated to repurchase the Mortgage Loan and indemnify MaxCap for such Mortgage Loan in accordance with the terms and conditions herein. At MaxCap's sole option, MaxCap shall have the right to require Seller to (i) repurchase the Mortgage Loan, (ii) indemnify MaxCap for the Loan, (iii) or enter into an Indemnification Agreement (as defined below) in lieu of repurchasing the Mortgage Loan; in any case, in accordance with the terms and conditions herein and in the Seller Guide. MaxCap's prior knowledge of any fact at any time concerning the Mortgage Loan, or any delay by MaxCap in making demand or request for repurchase or indemnification hereunder, shall neither impair MaxCap's rights nor constitute a waiver of Seller's obligations hereunder. In the event of a repurchase or indemnification, MaxCap may require Seller to pay an administrative fee equal to three thousand five hundred dollars (\$3,500.00), in addition to all other amounts due.

### **5.3.1 Request for Repurchase.**

In the event of an occurrence of a Repurchase Obligation, upon the request of MaxCap, Seller hereby agrees to repurchase the Mortgage Loan (or, if the Mortgage Loan has been foreclosed, to repurchase the Property) within ten (10) days after the expiration of any cure period, if applicable. Except for any Mortgage Loan in which a First Payment Default, Early Payment Default, or Early Payoff occurs, said Repurchase Obligation is subject to MaxCap providing Seller with written notice providing Seller the opportunity to cure within thirty (30) days after Seller's receipt of the written notice. If Seller cures the default, Seller shall be relieved from repurchasing the Mortgage Loan for such specific instance giving rise to the event of default described in the written notice from MaxCap. In this section, the term "foreclosure" includes judicial foreclosure, non-judicial foreclosure, deed in lieu of foreclosure, or any other mechanism of obtaining title to the Property. With respect to any of the representations and warranties set forth herein that are made to the best of or based on the Seller's knowledge or belief, if it is discovered that the substance of such representation and warranty is inaccurate, then, notwithstanding the Seller's lack of knowledge with respect to the substance of such representation and warranty being inaccurate at the time the representation and warranty was made, such inaccuracy shall be deemed a breach of the applicable representation or warranty and MaxCap shall be entitled to all the remedies to which it would be entitled for a breach of representation or warranty, including without limitation, the repurchase and indemnification requirements contained herein, notwithstanding the Seller's lack of knowledge with respect to the inaccuracy at the time the representation was made.

Seller understands and agrees that by submitting Mortgage Loan(s) using MaxCap's nondelegated Jumbo or Non-QM product portfolio, MaxCap's obligation to underwrite specific Mortgage Loans as provided herein is conditioned upon Seller's strict compliance with this Agreement including but not limited to Section 1.2 above. Seller understands and agrees to pay MaxCap an underwriting diligence fee (the "Underwriting Diligence Fee") for each Loan submitted for underwriting services. The Underwriting Fee shall be due and owing to MaxCap on the applicable Purchase Date and MaxCap shall net the Underwriting Fee for each Mortgage Loan from the applicable Purchase Advice. Seller acknowledges and agrees that the Underwriting Diligence Fee is in addition to, and not in lieu of, any and all other fees, expenses, and other amounts that may be due and owing under the terms of this Agreement.

### **5.3.3 Repurchase Procedures.**

Upon MaxCap's receipt of the Repurchase Price, MaxCap shall execute and deliver to Seller an endorsement or allonge to the Note and an Assignment of Mortgage, together with the related Mortgage Loan file and other Mortgage Loan Documents, each without representation, warranty or recourse or (i) if the Mortgage Loan has been foreclosed and MaxCap then owns the Property, then a deed to the Property, without representation, warranty or recourse or (ii) if the Mortgage Loan has been foreclosed, but the Property was purchased at the foreclosure by a third-party or the Property was sold to a third-party after foreclosure sale, then an assignment of all deficiency obligations of the Mortgagor, without representation, warranty or recourse. With respect to the servicing of any Mortgage Loan repurchased by Seller, MaxCap shall cause such servicing to be transferred to Seller or Seller's designee. If the Seller is unable to service a Loan, MaxCap may, at its sole option, continue to service such Mortgage Loan for a fee equal to MaxCap's then current rate, or the current rate of MaxCap's subservicer, until such time as Seller is capable of servicing such Mortgage Loan or designates a successor servicer. All costs of transferring servicing of any repurchased Loan from MaxCap to Seller or its designee shall be borne by Seller and Seller shall reimburse MaxCap for any costs incurred in connection therewith within ten (10) calendar days of demand by

MaxCap. Seller's Repurchase Obligation as to any Mortgage Loan shall not be relieved, reduced or otherwise modified as a result of any modification, workout or assumption of the Loan.

#### **5.3.4 Effect of Foreclosure.**

Seller's Repurchase Obligation shall not be relieved or reduced by a foreclosure of the Property or sale of the Property at the foreclosure sale or any time thereafter. Notwithstanding anything to the contrary, a full credit bid made by MaxCap, its successors, assigns, designee or any related party, at a foreclosure sale shall not affect Seller's obligations or the rights and remedies of MaxCap as provided herein.

### **ARTICLE 6. INDEMNIFICATION.**

#### **6.1 Indemnification.**

Seller hereby agrees to protect, indemnify and hold harmless MaxCap from and against any and all losses, liabilities, costs, and expenses (including reasonable attorneys' fees), judgments, damages, claims, counterclaims, demands, actions or proceedings, by whomsoever asserted in whatsoever jurisdiction or forum, by any person or entity who prosecutes or defends any actions or proceedings, including any representative of or on behalf of a class or interested group, or any governmental body, agency, department or commission having jurisdiction pursuant to any Applicable Law or the settlement or compromise of any of the foregoing relating to, arising out of or in connection with Seller's adverse and material breach of any representation, warranty, covenant, duty or term contained in this Agreement.

#### **6.2 Indemnification Agreement in lieu of Repurchase.**

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

#### **6.3 Indemnification for Reporting.**

If MaxCap has identified misrepresentations or a violation of Applicable Law, MaxCap Guidelines, or the Guidelines relating to any Mortgage Loan, Seller understands and acknowledges that MaxCap may report such information to the appropriate governmental body, regulatory agency, including Fannie Mae and Freddie Mac, or any mortgage industry database, including, but not limited to, databases operated by Mortgage Asset Research Institute, Inc., such as the Mortgage Industry Data Exchange ("MIDEX") or any cooperative industry database. Seller acknowledges that Seller and any owner, officer, agent or employee may be named as the loan originator or creditor on any such Mortgage Loan and Seller, for itself and its directors, officers, and employees and their respective successors and assigns and Mortgage Asset Research Institute, Inc., indemnifies and holds MaxCap and its officers, directors, employees, shareholders, representatives, successors, assigns, agents and affiliates from any and all damage, loss, liability, cost, actions, causes of action, claims, demands and expenses both direct and indirect (including without limitation reasonable legal and accounting fees and expenses actually incurred) that may arise from the reporting or use by any database subscriber or any governmental body or agency of any information submitted by MaxCap with respect to Seller and any owner, officer, agent or employee to any mortgage industry database, including MIDEX.

#### **6.4 Right of Offset.**

MaxCap may offset or recoup against the Purchase Price, or against any other amounts due and/or owed by the Seller to MaxCap pursuant to this Agreement or any other contract or instrument between the Seller and MaxCap, any outstanding amounts due and/or owed to MaxCap by the Seller.

**ARTICLE 7. NON SOLICITATION.**

Seller shall not solicit or encourage, directly or indirectly, the refinancing of a Mortgage Loan purchased by MaxCap for a period of six (6) months immediately following the Purchase Date of such Mortgage Loan. However, a solicitation under this section shall not mean promotions that are directed to the general public at large (including, without limitation, mass mailing based on commercially acquired mailing lists, newspaper, radio and television advertisements), provided that no such promotions are targeted to Mortgagors.

**ARTICLE 8. Sale and Conveyance from Client to MaxCap**

:

**8.1 Examination of Loan Files.** Client shall, consistent with the terms of the Seller Guide, deliver, or cause to be delivered, the Loan file(s) and all related Loan Documents to MaxCap (or its designee in escrow), at a reasonable time prior to the applicable Purchase Date, for examination and retention, with respect to each Loan to be purchased on the related Funding Date. Such examination may be made by MaxCap or its designee at any reasonable time before or after the related Purchase Date. MaxCap may, at its option and without notice to Client, purchase any Loan without conducting any partial or complete examination. Client is responsible for all costs associated with the shipment of the related Loan files to MaxCap or its designee.

**8.2 Books and Records.** It is the express intention of the parties that the transactions contemplated by this Agreement be, and be construed as, a sale of the Loans by Client and not a pledge of the Loans by Client to MaxCap to secure a debt or other obligation of Client. Consequently, the sale of each Loan shall be reflected as a sale on Client's business records, tax returns and financial statements.

**8.3 Possession of Loan Files.** On the related Purchase Date, the ownership of each Note, Security Instrument and all Loan Documents is vested in MaxCap and the ownership of all records and Loan Documents prepared by, or which come into the possession of Client will immediately vest in MaxCap and will be delivered to MaxCap (or its designee) in accordance with the terms of the Seller Guide. Originals of Loan Documents not delivered to MaxCap or its designee on or prior to the Purchase Date are and shall be held in trust by Client for the benefit of MaxCap as the owner thereof and shall be available for review by MaxCap upon request. Copies of any Loan Documents retained by Client with respect to each Loan pursuant to this Agreement or the Seller Guide shall be appropriately identified in Client's computer system to reflect clearly the ownership of such related Loan by MaxCap.

.

**ARTICLE 10. CLOSING.**

**10.1 Each Closing.** The closing for the purchase and sale of each Loan or group of Loans shall take place on the respective Purchase Date. The closing shall be either by telephone, confirmed by letter,



electronic mail or wire as the parties hereto shall agree, or conducted in person, at such place as the parties hereto shall agree.

**10.2 Closing Conditions.** Closing shall be subject to satisfaction of each of the following conditions:

- a) Client shall have delivered to MaxCap an executed copy of this Agreement, the related Funding Documents, and each Loan file;
- b) all of the representations and warranties of Client under the Seller Guide shall be true and correct as of the related Purchase Date in all respects;
- c) no default shall have occurred under the Seller Guide or the Program Documents; and
- d) all other terms and conditions set forth in the Seller Guide and Program Documents to be satisfied by Client shall have been performed.

**10.3 Payment.** Upon satisfaction of the foregoing conditions, MaxCap shall pay to Client on such Purchase Date the Purchase Price for the related Loan(s).

## **ARTICLE 9. MISCELLANEOUS.**

### **9.1 Notification to MaxCap.**

In addition to Seller's other notification duties in this Agreement, Seller shall provide notice to MaxCap as soon as reasonably practical but no later than five (5) days after any of the following:

- (a) Any material change in the ownership, financial condition, or management of Seller, including a change in control as defined by any jurisdiction in which it conducts business.
- (b) Seller changes its name (including the use of a D/B/A) or address of its principal place of business.
- (c) Seller, or any owner or principal, files a bankruptcy petition or is a party to any similar proceeding.
- (d) Seller is notified or has reason to believe that any Mortgage Loan submitted by Seller to MaxCap was originated in violation of Applicable Law, MaxCap Guidelines, and/or the Guidelines.
- (e) Seller knows or has reason to believe that any information in any Mortgage Loan Document or other document submitted to MaxCap is or becomes untrue or fails to state any material fact or constitutes a misrepresentation.
- (f) Seller is notified or has reason to know of any complaint related to any Mortgage Loan submitted by Seller to MaxCap, whether made by a Mortgagor or by any federal, state or local regulatory agency.
- (g) Seller is notified or has reason to know of a Mortgagor's request to rescind a Loan under this Agreement.
- (h) Any breach of a representation, warranty or covenant set forth in this Agreement.

**9.2 Costs.** Client shall pay any commissions due its salesmen and the legal fees and expenses of its attorneys. Except as otherwise specified herein, each of the Client and MaxCap shall bear its own costs and pay its own expenses and fees in connection with the execution and performance of this Agreement and any transaction undertaken pursuant hereto.

**9.3 Further Agreements.** Client and MaxCap each agree to execute and deliver to the other such reasonable and appropriate additional documents, instruments or agreements as may be necessary or appropriate to effectuate the purposes of this Agreement and the Program Documents.

**9.3 Non-Exclusive.**

This Agreement is a non-exclusive arrangement and Seller shall not be obligated to submit any or all mortgage loans to MaxCap nor shall MaxCap be obligated to purchase any or all such loans.

**9.4 Relationship of the Parties.** The parties 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. Except as expressly stated in this Agreement, nothing contained herein shall be construed to give any party other than MaxCap and Seller, 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, joint venture or agency relationship between MaxCap and Seller and neither party shall at any time hold itself out to any third party to a partner, joint venture, agent or employee of the other. Neither Party may make a representation to the contrary to any other person.

MaxCap is not a party to the origination of loans by Client. Client’s decision to originate any loan or to deny any loan application is an independent decision and shall not be contingent upon a rate lock pursuant to the Seller, or upon MaxCap’s decision to purchase or not to purchase, or upon the price MaxCap may offer to pay for any such loan, if originated.

**9.5 Cooperation.** The parties agree to cooperate 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 Mortgage Loan and provision of any and all information that may be requested regarding any of the Mortgage Loans sold pursuant to this Agreement. Upon request by MaxCap, Seller shall use its best efforts to obtain any necessary correction to any document related to a Mortgage Loan.

**9.6 Legal Notices.** Except where MaxCap has authorized notice in any other form, all legal 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 (certified mail, return receipt requested, postage prepaid), sent by overnight courier (charges prepaid), or personally delivered, addressed to the respective party at the address set forth below:

If to MaxCap:  
Maxwell Capital Partners, LLC  
ATTN: Office of the President  
518 17<sup>th</sup> Street, Suite 950  
Denver, CO 80202  
Copy to: [legal@himaxwell.com](mailto:legal@himaxwell.com)

If to Seller:  
[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]

Either party may send a copy of any notice by electronic means to the email address listed above, provided that any email shall not be considered notice under this Agreement and must be accompanied by another

form of notice, which may be mailed (certified mail, return receipt requested, postage prepaid), sent by overnight courier (charges prepaid), or personally delivered, addressed to the respective party at the address set forth above. Each party shall promptly provide written notice to the other of a change in its address, telephone number, or designated email address. Notices delivered personally or by overnight courier shall be effective upon delivery. Notices delivered by certified mail shall be effective on the date set forth on the receipt of certified mail, or the third Business Day after mailing, whichever is earlier.

**9.7 Communication with Seller.** The Seller acknowledges and agrees that MaxCap may provide Seller with information related to this Agreement or otherwise by any means legally permissible, including, without limitation, telephone, email, facsimile, and online portal. Seller expressly consents to receive such communications from MaxCap via any such means and shall not revoke such consent without providing alternative or substitute contact information.

**9.8 Due Diligence and Information Related to Seller.** Seller acknowledges and agrees that any information obtained by MaxCap from Seller or otherwise in connection with MaxCap's review and approval of Seller or any Mortgage Loan submitted to MaxCap for purchase may be provided by MaxCap to any of its parent entities, subsidiaries or affiliates, if permitted by Applicable Law. With respect to any information related to a Mortgage Loan submitted to MaxCap, Seller expressly consents to the release of such information by MaxCap to its parent entities, subsidiaries or affiliates which may have a need to know such information. Further, any other information provided by Seller to in connection with this Agreement, including, without limitation, any financial reports with respect to Seller, may be shared with and used by such parent entities, subsidiaries or affiliates for similar purposes.

**9.9 Confidentiality.** The parties agree that the terms and conditions of this Agreement are confidential and shall not be divulged by the parties to any person without the prior express written consent of the other party. The obligations under this section are continuing and shall survive any termination of this Agreement. (a) Confidential Information (as defined below) shall not be disclosed by either party to any person who is not an officer, employee, or agent of the other party. Each party shall restrict the disclosure of Confidential Information only to its employees, officers, and agents who have a need to know the Confidential Information. The parties shall only use Confidential Information in connection with the purposes of this Agreement.

(b) "Confidential Information" is defined to include all information supplied to one party by, or at the direction of, the other party, including any list of persons that are precluded from participating in Seller's or MaxCap's programs, all information, data, and material prepared for, or at the direction of either party, any information relating to Mortgagors or customers (past, current and prospective), the Mortgage Loans, this Agreement, accounts, vendors, marketing activities or plans, business plans, employees, pricing, financial matters, financial statements, the financial condition of the parties, any information revealed to third parties under any confidentiality agreement, understanding or duty, any information generally regarded as confidential in the consumer and commercial credit industries, and any information treated as confidential information or non-public personal information under the Gramm-Leach-Bliley Act, as amended, related regulations, and state privacy laws.

(c) The party disclosing either on behalf of itself or any of its affiliates or representatives any item of Confidential Information (as defined above) to a party or its affiliates or representatives shall be identified as the "Disclosing Party" or collectively, the "Disclosing Parties" in this Agreement with respect to such Confidential Information, and the party receiving Confidential Information shall be identified as the "Receiving Party" or collectively, the "Receiving Parties" in this Agreement. Upon termination of this Agreement and upon request from the Disclosing Party, the Receiving Party shall promptly return all

materials, data, forms, discs, charts, spreadsheets, and all other materials and information provided by the Disclosing Party, relating to any information used to determine the eligibility of any person or entity for lending purposes, or, at the Disclosing Party's option, the Receiving Party shall destroy all such materials and information and certify in writing that such Confidential Information has been destroyed. Any other Confidential Information shall be returned to Disclosing Party, or destroyed if requested by the Disclosing Party, within ten (10) days of the Disclosing Party's request, except that the Receiving Party may retain one copy of Loan information if required by Applicable Law. Notwithstanding any other provisions of this Agreement, the Receiving Party shall not be required to return or destroy machine-readable archival copies of Confidential Information, Confidential Information that is archived as part of the Receiving Party's disaster recovery or information technology backup processes, or Confidential Information that is inaccessible or that must be restored, de-fragmented, or reconstructed. The Receiving Party and/or its auditors or legal counsel may retain a copy of Confidential Information for the sole purpose of establishing what Confidential Information has been received or for tax, legal, or regulatory purposes.

(d) Should disclosure of any information or material covered by this Agreement be sought by way of subpoena, court order, administrative decree or by any means while the same is in the possession of the Receiving Party, the Receiving Party, or anyone acting for, or at the direction of, the Receiving Party, shall promptly advise the Disclosing Party in writing. In addition, it shall provide the most expeditious means available with copies of any papers seeking the disclosure of such information together with copies of all material sought if the same exist and are under the Receiving Party's control. Neither party shall disclose any information voluntarily in such circumstances and shall, if requested by the Disclosing Party, take appropriate action to protect the confidentiality of such information including, but not limited to, at the Disclosing Party's expense, seeking a protective order of a court of competent jurisdiction.

(e) Each party shall safeguard the Confidential Information from disclosure to any third party using the same precautions that it uses to safeguard its own confidential information, but in no event will such precautions be less than reasonable or less than as required by law. The parties represent and warrant that they each have and will have an information security program reasonably designed to (i) ensure the security and confidentiality of the Confidential Information, (ii) protect against any anticipated threats or hazards to the security or integrity of the Confidential Information, and (iii) protect against unauthorized access to or use of such Confidential Information. Both Seller and MaxCap will advise one another of all of its procedures designed to safeguard Confidential Information. MaxCap may request additional security procedures be implemented by Seller and if so requested, Seller shall undertake such steps promptly.

(f) Each party shall require all of its employees, agents, independent contractors, licensees and other personnel performing services for purposes of this Agreement, to abide by the terms of this Agreement prior to being given access to any Confidential Information.

(g) Both parties recognize that no remedy at law for damages is adequate to compensate for breach of the covenants contained in this section. In addition to any other remedies available to the parties in this Agreement, the non-breaching party shall be entitled to seek temporary and permanent injunctive relief against breaches of this section without the necessity of proving damages or posting bond. Such permanent or temporary injunctive relief shall in no way limit any other remedies that may result from the breach of this Agreement.

#### **9.10 Waiver; Amendment.**

Notwithstanding any provision to the contrary in this Agreement, any waiver regarding this Agreement may be made only by a writing executed by the parties and specifying that such writing is such a waiver.

#### **9.11 Successors and Assigns.**

This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Seller may not transfer or assign any of its obligations, rights or interests under this Agreement without the prior express written consent of MaxCap and any attempted or purported assignment without such consent shall be null and void. MaxCap may assign this Agreement or any of the related Mortgage Loans sold hereunder to any of its affiliated entities, including, but not limited to, one (1) or more Delaware Statutory Trusts.

#### **9.12 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.

#### **9.13 Counterparts.**

This Agreement may be executed in counterparts with electronic signatures and delivered as an electronic image by email or facsimile. Each counterpart shall be deemed an original and all together shall constitute one instrument.

#### **9.14 Governing Law.**

This Agreement shall be governed by, construed, and enforced under the substantive and procedural laws of the State of New York, without regard to its conflict of laws principles. The parties' consent to jurisdiction and venue in the federal or state courts located in Denver, Colorado.

**9.15 Jurisdiction and Venue. At the sole option of MaxCap, this Agreement shall be enforced in any state or federal court within the State of Colorado. Client consents to the jurisdiction and venue of those courts and waives any objection to the jurisdiction or venue of any of those courts, including the objection that venue in those courts is not convenient. Any such suit, action or proceeding may be commenced and instituted by service of process upon Client by first class registered or certified mail, return receipt requested, addressed to Client at its address provided in this Agreement. Client's consent and agreement under this section does not affect MaxCap's right to accomplish service of process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against Client in any other jurisdiction or court. In the event Client commences any action in another jurisdiction or venue under any theory arising directly or indirectly from the relationship created by this Agreement MaxCap at its option may have the case transferred to a state or federal court within the State of Colorado or, if a transfer cannot be accomplished under applicable law, may have Client's action dismissed without prejudice.**

**9.16 Waiver of Jury Trial. Client and MaxCap each promise and agree not to elect a trial by jury of any issue so triable, and knowingly, intentionally and irrevocably waive any right to trial by jury to the extent that any such right now exists or arises after the date of this Agreement. MaxCap and Client are each authorized and directed to submit the Program Documents to any court having jurisdiction over the subject matter and the parties to this Agreement as conclusive evidence of this waiver of the right to trial by jury. Further, Client and MaxCap each certify that no representative or agent or the other party's counsel has represented, expressly or otherwise, to any of its representatives or agents that the other party will not seek to enforce the waiver of right to trial by jury.**

**9.17 Waiver of Punitive, Consequential, Special or Indirect Damages.** Client waives any right it may have to seek punitive, consequential, special or indirect damages from MaxCap or any of MaxCap's affiliates, officers, directors, employees or agents with respect to any and all issues presented in any action, proceeding, claim or counterclaim brought by Client against MaxCap or any of MaxCap's affiliates, officers, directors, employees or agents with respect to any matter arising out of or in connection with the Agreement. This waiver of the right to seek punitive, consequential, special or indirect damages is knowingly and voluntarily given by Client and is intended to encompass each instance and each issue for which the right to seek punitive, consequential, special or indirect damages would otherwise apply. MaxCap is authorized and directed to submit this Agreement to any court having jurisdiction over the subject matter and the parties to this Agreement as conclusive evidence of Client's waiver of the right to seek punitive, consequential, special or indirect damages.

**9.18 Force Majeure.** Notwithstanding Client's satisfaction of the conditions set forth in this Agreement or the existence of an outstanding commitment by MaxCap to purchase loan(s), MaxCap has no obligation to purchase any loan if fire, earthquake, flood, hurricane or other severe weather event, failure of power, strike, lockout or other labor trouble, banking moratorium, suspension or disruption of the trading, settlement or clearing of securities, embargo, sabotage, confiscation, condemnation, riot, civil disturbance, insurrection, act of terrorism, war or other activity of armed forces, epidemic, pandemic, act of God, or other similar national or international calamity or emergency prevents MaxCap from obtaining funds necessary to purchase loans or renders it impossible or impracticable to proceed with the proposed transaction.

**9.19 Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to the matters and transactions contemplated by this Agreement and supersedes any previous agreements between the parties. The article and section headings of this Agreement are intended solely for convenience of reference and shall be used in the interpretation of any of the provisions hereof.

**9.20 Severability.** If any provision of this Agreement is declared to be illegal or unenforceable in any respect, that provision is null and void and of no force and effect to the extent of the illegality or unenforceability and does not affect the validity or enforceability of any other provision of the Agreement.

**9.21 Counterparts; Facsimile Signatures.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original, and all of which together constitute one and the same instrument. Electronic, facsimile, Portable Document Format (PDF) or similar signatures, including scanned and e-mailed signatures, shall be deemed valid and binding to the same extent as originals.

**9.22 Reproduction of Documents.** This Agreement, the Program Documents, and all documents relating thereto, including, without limitation, (a) consents, waivers, amendments or modifications which may hereafter be executed, (b) documents received by any party at the closing of a sale of loans conducted pursuant to the Agreement, and (c) financial statements, certificates and other information previously or hereafter furnished pursuant to the Agreement may be reproduced by any photographic, photostatic, microfilm, micro-card, miniature photographic or other similar process. The parties hereto agree that any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding, whether or not the original is in existence and whether or not such

reproduction was made by a Party hereto in the regular course of business, and any enlargement, facsimile or further reproductions of such reproduction shall likewise be admissible in evidence.

**9.16 Effective Date.** The Effective Date shall be the date executed by MaxCap on the signature page below.

9.17 Termination. This Agreement may be terminated by either party at any time and for any reason, which termination shall be effective thirty (30) days after the other party's receipt of a written notice of termination from the terminating party. Notwithstanding any such termination, this Agreement shall continue to apply with respect to any Mortgage Loan which has been submitted to or otherwise committed to MaxCap, including Seller's warranties and representations and MaxCap's remedies.

**8.2 Survival.** Notwithstanding anything to the contrary contained herein, all representations, warranties, covenants and agreements of the parties shall survive termination and bind the parties until the earlier of (i) payment in full or (ii) liquidation of a Loan.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]  
[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed under seal by their duly authorized representatives as of the date written below.

SELLER:

[\_\_\_\_\_]

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

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

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

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

PURCHASER:

MAXWELL CAPITAL PARTNERS, LLC

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

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

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

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



**EXHIBIT A**

**FORM OF PURCHASE ADVICE**

Form of Correspondent Operations Purchase Advice

Correspondent #: \_\_\_\_\_ Interest Rate: \_\_\_\_\_

Correspondent Name: \_\_\_\_\_ Loan Type: \_\_\_\_\_

Client Loan #: \_\_\_\_\_ Term: \_\_\_\_\_

Correspondent Contact Name: \_\_\_\_\_ CLTV: \_\_\_\_\_

Our Loan #: \_\_\_\_\_ Registration Date: \_\_\_\_\_

Master Commitment: \_\_\_\_\_ Lock Expiration: \_\_\_\_\_

Commitment Number: \_\_\_\_\_ Purchase Date: \_\_\_\_\_

Commitment Type: \_\_\_\_\_ Wire Date: \_\_\_\_\_

Borrower Name: \_\_\_\_\_ Wire Confirmation: \_\_\_\_\_

Property Address: \_\_\_\_\_ Bank Name: \_\_\_\_\_

\_\_\_\_\_

Bank Account: \_\_\_\_\_

Bank ABA: \_\_\_\_\_

Loan Amount: \_\_\_\_\_ Note 1st Payment Date: \_\_\_\_\_

Paid to Date: \_\_\_\_\_

1st Payment due us: \_\_\_\_\_

Current Principal

Pricing

Reconciliations:

\_\_\_\_\_ Current Impounds: \_\_\_\_\_

Buy Price: \_\_\_\_\_

Additional Adjusters:

Late Fee Price Adjust: \_\_\_\_\_

Final Buy Price: \_\_\_\_\_

SRP Percentage \_\_\_\_\_

Purchase Details:

Purchased Principal: \_\_\_\_\_

Interest: \_\_\_\_\_ Days: \_\_\_\_\_

Impounds: \_\_\_\_\_

Final Buy Amount: \_\_\_\_\_

SRP Amount: \_\_\_\_\_

Remaining Buydown: \_\_\_\_\_

Late Fee: \_\_\_\_\_

Additional Fee(s): \_\_\_\_\_

Total Due: \_\_\_\_\_