



**CLIENT CONFIDENTIALITY/NON-DISCLOSURE/NON-CIRCUMVENTION AGREEMENT**

This Agreement (“Agreement”) is entered into on \_\_\_\_\_, by and between \_\_\_\_\_ (hereinafter referred to as “\_\_\_\_\_”) and Del Toro Loan Servicing, Inc. (hereinafter referred to as “Del Toro”) as a part of, and in conjunction with the Loan Servicing Agreement between \_\_\_\_\_ and Del Toro dated \_\_\_\_\_.

**RECITALS**

A. \_\_\_\_\_ is engaged in the business of trust deed investments and loan originations with its principal place of business located at:

B. Del Toro is engaged in the business of servicing loans and maintains an office at: 2434 Southport Way, Ste. F, National City CA 91950.

C. Certain oral and written information, including but not limited to evaluation material, analysis, compilations and studies, will be provided by Del Toro to \_\_\_\_\_ and \_\_\_\_\_ may provide valuable written and verbal information to Del Toro and,

D. The Parties acknowledge and agree that the aforementioned oral and written information is a valuable asset of \_\_\_\_\_ and that it has competitive value and is of a confidential nature; and

E. In transacting these prospective business dealings it is essential that the Parties mandate specific provisions pertaining to confidentiality and non-solicitation of \_\_\_\_\_’s business sources and Proprietary Information.

F. Del Toro will expend substantial resources in completing these business dealings on behalf of \_\_\_\_\_.

G. Del Toro may agree from time to time do business with each other; both parties may exchange confidential information or trade secrets with each other as a consequence of doing business with each other; and both parties are desirous that the following terms are to govern any future business relationship.

THEREFORE, for valuable consideration, the receipt and sufficiency of which is acknowledged, including the recitals which are made a part hereof, the Parties agree to the following:



## **AGREEMENT**

### **I. STATUS OF THE PARTIES**

The parties agree and intend nothing in this Agreement shall be construed to establish a partnership, joint venture or agency between the parties. Del Toro, its agents, and employees shall, under no circumstances, be deemed agents or representatives of \_\_\_\_\_, or vice versa.

### **II. TERM OF AGREEMENT**

The term of this Agreement shall be from \_\_\_\_\_ to \_\_\_\_\_. Either party may terminate this Agreement prior to the expiration of this Agreement without cause by the giving of written notification of its intention to terminate the Agreement not less than thirty (30) days prior to the effective date of such termination. However, all information obtained by a party to this Agreement throughout the duration of the Agreement from the other party shall continue to be private and confidential and shall not be disclosed or used by the other party. The Covenant Not to Disclose and the agreements by the parties not to disclose and/or use any confidential or private information from the other party shall survive this Agreement and the underlying Loan Service Agreement.

**III. COVENANT NOT TO DISCLOSE.** \_\_\_\_\_ shall not directly or indirectly contact, deal with, solicit or otherwise attempt to transact business with the source introduced by Del Toro to \_\_\_\_\_ at any time, in any manner or for any reason other than the reason without the prior written consent and authorization of Del Toro.

### **IV. CONFIDENTIAL INFORMATION PROVIDED TO \_\_\_\_\_**

Except as provided below, “Confidential Information” means any proprietary and confidential information, including, without limitation, any proprietary and confidential technical, marketing or financial information, software (including, but not limited to, any methods, concepts or processes utilized in any software or related documentation), inventions, research and development information, and any information relating to the present and future business operations or financial condition of Del Toro and any of its subsidiaries and affiliates, whether such information is written, oral or in electronic, digital, magnetic or other tangible form, and whether such information was provided prior or subsequent to the execution of this Agreement, which is disclosed by Del Toro to \_\_\_\_\_, whether designated as confidential by Del Toro or otherwise.

The Confidential Information shall (a) be kept confidential by \_\_\_\_\_, (b) not be used by \_\_\_\_\_ in any way and (c) not be used by \_\_\_\_\_ other than in connection with this



Agreement. \_\_\_\_\_ may disclose the Confidential Information only to those representatives (the “Representatives”) who need to know the Confidential Information in connection with this Agreement. \_\_\_\_\_ will (a) inform each of its Representatives receiving Confidential Information of the confidential nature of the Confidential Information and of this Agreement, (b) direct its Representatives to treat the Confidential Information confidentially and not to use it other than in connection with this Agreement, and (c) be responsible for any improper use of the Confidential Information by \_\_\_\_\_ or the Representatives (including without limitation, the Representatives who, subsequent to the first date of disclosure of Confidential Information hereunder, become his former Representatives). Without the prior written consent of Del Toro, \_\_\_\_\_ will not, and will direct its Representatives not to, disclose to any person that the Confidential Information has been made available to it or use the Confidential Information for his or the Representative’s benefit.

Notwithstanding the foregoing, \_\_\_\_\_ is requested or required (by a court having jurisdiction, oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process, or in the case of disclosures required by applicable laws, including securities laws) to disclose any Confidential Information supplied to them by Del Toro pursuant to this Agreement, \_\_\_\_\_ shall provide Del Toro with prompt written notice of such request(s) so that Del Toro may seek an appropriate protective order and/or waive compliance with the provisions of this Agreement. \_\_\_\_\_ agrees to cooperate with Del Toro, at Del Toro’s expense, in obtaining such protective order. If Del Toro does not obtain such protective order or provides a waiver of this obligation within a reasonable time after such notice, \_\_\_\_\_ may disclose only that portion of the Confidential Information necessary to comply with such request without liability hereunder, provided that \_\_\_\_\_ has complied with the notice provisions of this Agreement, and provided further that, if so requested by Del Toro and at \_\_\_\_\_’s expense, \_\_\_\_\_ has received an opinion of counsel that concludes that such disclosure is legally required.

#### **IV. MAINTENANCE OF AND SAFE RETURN OF CONFIDENTIAL INFORMATION**

If applicable, \_\_\_\_\_ shall at all times comply with applicable state and federal privacy laws with regard to any Confidential Information received hereunder, including the provisions of the Gramm-Leach-Bliley Act of 1999 and in the current enabling regulations issued by the Federal Trade Commission. \_\_\_\_\_ will have in place an information security program, which program shall be designed to: (i) ensure the security, integrity, and confidentiality of all Confidential Information; (ii) protect against hazards to the security, integrity, and confidentiality of all Confidential Information; and (iii) protect against unauthorized access to or use of the Confidential Information.



Upon the written request of Del Toro, \_\_\_\_\_ shall return to Del Toro, or in the case of electronic, magnetic or digital media, to erase or render unreadable, all Confidential Information of Del Toro (including without limitation, documents, drawings, models, prototypes, sketches, designs, lists, papers, magnetic media and other tangible media) and, if requested by Del Toro, shall deliver a certificate to Del Toro to the effect that the foregoing has been done.

#### **V. LICENSES AND OWNERSHIP OF INTELLECTUAL PROPERTY**

Neither the execution of this Agreement nor the furnishing of any Confidential Information under this Agreement shall be construed as granting \_\_\_\_\_ or any of its subsidiaries, affiliates or Representatives, either expressly or by implication, estoppel or otherwise, any license or right to use any Confidential Information for its own benefit (other than in connection with this Agreement) or the benefit of any other person, firm or entity, and each party expressly agrees not to so use any such information. Nothing contained in this Agreement shall be construed as conferring on \_\_\_\_\_ any rights, by license or otherwise, to any patent, invention, idea, discovery, or improvement of the other party, whether made, conceived or acquired prior to, during or after the date of this Agreement.

The Confidential Information and all intellectual property rights fixed, embodied or otherwise subsisting therein or arising therefrom, are, and will remain the sole and exclusive property of its owner, over which the owner retains all ownership and all right, title and interest. Neither anything in this Agreement, nor the furnishing of any Confidential Information hereunder shall be construed as granting any right or license, whether express or implied, under any intellectual property rights to any person or entity.

All information is provided “AS IS” and without any warranty, express or implied, including, without limitation, the warranty of merchantability, and warranty of fitness for a particular purpose unless otherwise required by applicable law.

#### **VI. CLIENT INFORMATION PROVIDED TO DEL TORO**

It is understood between the parties that during the term of this agreement, Del Toro may from time to time be provided information regarding clients belonging to \_\_\_\_\_. All such client information, which includes the clients’ names, addresses, telephone number and account information is the property of \_\_\_\_\_ and shall be kept private and confidential by Del Toro. Del Toro agrees that it will not use or disclose in full or in any part thereof such client information to any person, firm, corporation, association, or any other entity for any reason or purpose whatsoever, without the written consent of \_\_\_\_\_.



**VII. LIQUIDATED DAMAGES**

It is understood between the parties that damages to \_\_\_\_\_ as a result of a failure by Del Toro or any of its agents or employees, would be difficult to ascertain. Therefore, the parties hereto agree that each disclosure of each individual confidential item will result in payment by Del Toro to \_\_\_\_\_ of \$25,000.00.

It is also understood between the parties that damages to Del Toro for disclosing or using the Confidential Information by \_\_\_\_\_ or its Representatives would be difficult to ascertain. Therefore, the parties agree that each disclosure of each individual Confidential Information will result in payment by \_\_\_\_\_ to Del Toro of \$25,000.00.

**VIII. ASSIGNMENT**

Neither this Agreement nor any rights or interests in this Agreement may be assigned by either \_\_\_\_\_ or Del Toro.

**IX. ENTIRE AGREEMENT**

This written Agreement contains the sole and entire agreement between the parties and shall supersede any and all other agreements between the parties. The parties acknowledge and agree that neither of them has made any representation with respect to the subject matter of this Agreement or any representations inducing the execution and delivery of this Agreement, except such representations as are specifically set forth in this Agreement and each of the parties acknowledge that it has relied on its own judgment in entering into this Agreement. The parties further acknowledge that any statements or representations that may have previously been made by either of them to the other are void and of no effect and that neither of them has relied thereon in connection with its dealings with the other. The parties both agree that the contract shall be construed as if both parties actually drafted this Agreement.

**X. SEVERABILITY**

In the event that any one or more of the provisions and/or portions of the provisions of this Agreement shall for any reason be held invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provisions and/or portions of the provisions of this Agreement and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions or portions of the provisions had never been contained herein.

**XI. SUCCESSORS AND ASSIGNS**

Subject to the provision regarding this assignment, this Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the respective parties.



**XII. ATTORNEY'S FEES**

If any action or proceeding for legal or equitable relief is brought to enforce or interpret any provision(s) of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and experts' fees in addition to any other relief to which he or it may be entitled.

**XIII. GOVERNING LAW; JURISDICTION**

California law governs the construction and application of the terms of this Agreement. Jurisdiction and venue for any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, or any other interaction between Del Toro and \_\_\_\_\_, shall be in San Diego, California, and any party making a claim against Del Toro in whatever form hereby submits to personal jurisdiction in that forum for any and all purposes.

**XIV. MODIFICATIONS**

No modification, amendment or waiver of any of the provisions contained in this Agreement, or any future representations, promise or condition with the subject matter of this Agreement, shall be binding upon any party hereto unless made in writing and signed by such party or by duly authorized officer or agent of such party.

**XV. RIGHTS**

This Agreement is not intended to, nor shall it be construed to, create or confer any rights or benefits in anyone not a party hereto except as expressly provided herein.

**XVI. ORIGINAL AGREEMENT**

This Agreement may be executed in any number of copies by the parties hereto in several counterparts, and when each party has signed and delivered at least one (1) such counterpart to the other parties hereto, each counterpart shall be deemed an original, and taken together, shall constitute the same agreement, which shall be binding and effect as to one and all the parties hereto.

**XVII. ARBITRATION**

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PHONE: 619-474-5400

DEL TORO LOAN SERVICING, INC

FAX: 877-335-8676

2434 Southport Way Ste. F National City, CA 91950

[www.DelToroLoanServicing.com](http://www.DelToroLoanServicing.com)



Any dispute relating to or arising out of this Agreement shall be subject to arbitration pursuant to the Federal Arbitration Act and the commercial arbitration rules of JAMS or the American Arbitration Association in the County of Los Angeles. This paragraph shall be narrowly construed to include only those disputes this Agreement reasonably contemplates and not the general business relationship between Del Toro and \_\_\_\_\_ or other Agreements entered into by Del Toro and \_\_\_\_\_.

**XVIII. NOTICES**

Any notice/demand required to be given hereunder shall be in writing sent by registered or certified mail, return receipt requested, to \_\_\_\_\_ or \_\_\_\_\_ at the address listed below: