



Broker Recertification Form

Business Name: _____

DBA: _____

Address: _____

Phone: _____ Contact: _____

Fax: _____ Email: _____

Did your address or phone number change? _____

Have there been any changes to ownership in the past 12 months? _____

Has your company been suspended from selling or servicing mortgages by an investor in the last 12 months?
If yes, please provide explanation: _____

Has your company and/or principals or corporate officers, been named as defendant in a lawsuit for alleged fraud or misrepresentation in connection with any real estate related activity in the last 12 months? *If yes, please provide explanation:* _____

Has your company ever been involved in the last 12 months or is currently involved in any litigation? *If yes, please provide explanation:* _____

Has your company, and/or principals or corporate officers, been named as defendant in a criminal proceedings/complaint/conviction for alleged fraud or misrepresentation in connection with any real estate related activity in the last 12 months? *If yes, please provide explanation:* _____

Has your company, and/or principals or corporate officers, filed for protection from creditors under any provision of the bankruptcy laws within the past 12 months? *If yes, please provide explanation:* _____

Has your company, and/or principals or corporate officers, ever had a real estate or other professional license suspended, revoked or received any other disciplinary action from a regulatory agency in the last 12 months? *If yes, please provide explanation:* _____

Has any lender enforced, or attempted to enforce, the Hold Harmless or Repurchase clause of their correspondent or broker agreement with your company and/or any principals or corporate officers in the last 12 months? *If yes, please provide explanation:* _____

Broker/Owner/Corporate Officer Signature: _____ Date: _____

PLEASE ATTACH THE FOLLOWING ITEMS:

- COPY OF YOUR CURRENT BROKER AND CORPORATE DRE LICENSE
- MOST RECENT BALANCE SHEET AND PROFIT AND LOSS STATEMENT
- CREDIT REPORT FOR ALL OWNERS AND BROKER OF RECORD DATED WITHIN 90 DAYS OR SIGNED CREDIT AUTHORIZATION FORM

Please return all items by fax to 310-524-0817 or email to jwithers@acbnonline.com.

**AKT AMERICAN CAPITAL CORPORATION
WHOLESALE BROKER AGREEMENT**

This Wholesale Broker Agreement (“the Agreement”) is entered into as of _____ (the “Effective Date”) between AKT American Capital Inc., a California Corporation (AKT American Capital Corporation”) and _____ (“Broker”).

Recitals

From time to time, Broker may submit to AKT American Capital Corporation, for underwriting and funding by AKT American Capital Corporation, residential first and second lien mortgage loans (the “Loans”) that meet the eligibility requirements of those mortgage loan programs offered by AKT American Capital Corporation.

Broker Agrees to submit such Loans to AKT American Capital Corporation, and AKT American Capital Corporation agrees to underwrite and fund such Loans, in accordance with the term and conditions set forth below.

Now, therefore, the parties agree as follows:

**ARTICLE 1
RESPONSIBILITIES OF BROKER**

1.1 Duties of Broker. With respect to each Loan submitted by Broker to AKT American Capital Corporation for underwriting and funding, Broker shall:

- (a) have and maintain the exclusive ongoing contact with Loan applicant(s) (collectively “Applicant”) from the time of application until closing;
- (b) undertake all direct and face-to-face personal interviews with Applicant;
- (c) educate and assist Applicant in understanding the home buying and financing process;
- (d) discuss the different types of loan products available, explain the qualification and eligibility requirements for each product, and demonstrate how closing costs and monthly payments may vary under each product;
- (e) gather all information and documentation needed to complete the Loan application including applicable information required by applicable state and federal law and any regulations related thereto;
- (f) assist Applicant in filling out all Loan applications
- (g) collect and analyze financial information and related documents and assist Applicant in determining the mortgage that Applicant can afford;
- (h) assist Applicant in identifying potential credit problems and obtaining letters of explanation;
- (i) keep Applicant apprised of the status of Applicant’s application and communicate any changes in the loan terms within a reasonable timeframe;
- (j) maintain regular contact with applicant, Real Estate agents and AKT American Capital Corporation as needed;
- (k) deliver to applicant a good faith estimate meeting the requirements of the Real Estate Settlement Procedures Act (“ RESPA”) within (3) days of receipt of the loan application;
- (l) provide to Applicant such additional disclosures as are required to be provided by Broker, AKT American Capital Corporation or applicable federal or state law, including, but not limited to, disclosures required by AKT American Capital Corporation or applicable law in connection with fees and charges, including mortgage insurance and broker compensation (including yield spread premiums) required by states laws that govern and regulate mortgage broker conduct);
- (m) collect the fees for the property appraisal, and credit report and if required by applicable law, deposit such fees in a trust account;

- (n) request the property appraisal and gather preliminary materials from Applicant;
- (o) participate in the Loan closing, and
- (p) perform any other service as AKT American Capital Corporation may from time to time reasonably request to complete the loan funding and loan sale process.

1.2 Pricing. AKT American Capital Corporation shall provide Broker with pricing options via Marksman or our products specialists.

1.3 Loan Application Package. Broker shall provide, or cause to be provided to AKT American Capital Corporation, an application package (“Mortgage Loan Package”) for each Loan submitted to AKT American Capital Corporation for underwriting and funding. Each Mortgage Loan Package shall include the following:

- (a) applicable Loan submission form, as required by AKT American Capital Corporation
- (b) a completed Uniform Residential Loan Application (Form 1003) signed by Applicant and all disclosures as required by applicable federal state law;
- (c) the initial good faith estimate of the dollar amount and/or a range for each settlement charge (including any yield spread premiums) that Applicant is likely to incur in connection with the Loan;
- (d) all supporting documentation required by the applicable loan program, including, but not limited to, credit reports, verification of employment and deposit, title work and property appraisals; and
- (e) such other documents as AKT American Capital Corporation may from time to time reasonably request. Broker shall be responsible for causing each Loan application and supporting documentation, as may be required by AKT American Capital Corporation, to be prepared accurately and in accordance with AKT American Capital Corporation policies and procedures in effect at the time such application was made. The property appraisal included in each Mortgage Loan Package shall be conducted by an licensed Real Estate appraiser acceptable to AKT American Capital Corporation. It is understood and agreed that AKT American Capital Corporation will not collect, hold or be responsible for the disbursement of any Applicant trust funds.

1.4 Points and Fees. Broker shall include on the good faith estimate provided to AKT American Capital Corporation pursuant to section 1.3(c) above, all amounts Broker will charge Applicant or earn in connection with the Loan, including any applicable yield spread premium. Notwithstanding anything to the contrary contained herein, Broker shall not charge Applicant any amount that exceeds the applicable pricing policy, as published by AKT American Capital Corporation or correspondent lender from time to time, and such amount must be set forth on the good faith estimate or otherwise shown to have been properly disclosed to Applicant in full compliance with all federal and state laws and regulations. Broker shall not serve as a Real Estate agent or earn a sales commission on any transactions for which Broker is serving as the mortgage broker without the written consent of AKT American Capital Corporation. Broker must notify AKT American Capital Corporation in writing if it is serving in such dual capacity at the time Broker submits the application to AKT American Capital Corporation and must submit a copy of any disclosure of its dual capacity that Broker is required by applicable law to provide to Applicant.

1.5 Quality Control Program. Broker shall implement and maintain a quality control program (the Quality Control Program”), which such Quality Control Program shall be acceptable to, and comply with all applicable requirements of AKT American Capital Corporation. AKT American Capital Corporation reserves the right to change its requirements for such Quality Control Program at any time and for any reason, which such changes shall be effective upon notice to Broker, and to conduct an audit of broker to verify the existence and implementation of such Quality Control Program. As AKT American Capital Corporation may from time to time request, including, without limitation, during the initial diligence and approval of Broker, Broker shall promptly provide AKT American Capital Corporation with a detailed written description of its Quality Control Program.

1.6 Fidelity Bond and/or Errors and Omissions Policy. As may be required by AKT American Capital Corporation, Broker shall obtain and maintain at its sole cost and expense a blanket fidelity bond and or errors and omissions policy, both of which shall be acceptable to AKT American Capital Corporation. Any such policies shall provide for coverage of Broker and its employees, agents, independent contractors and other personal and shall name AKT American Capital as an additional insured.

1.7 Compliance With Conflict of Interest Policy; Compliance with all other Policies and Procedures. In addition to the responsibilities of Broker contained in this Article 1 and this Agreement, Broker shall comply with AKT American Capital Corporation’s conflict of interest policy and disclose in writing to AKT American Capital Corporation, and

Applicant as may be required by applicable law, such information as may be required by AKT American Capital Corporation and applicable law, including without limitation, the name, address, primary manager and participating or ownership interest that Broker has in any company and/or service, regardless if such company and/or service may or may not be providing products and/or services related to any loan transaction contemplated hereunder. Broker shall not use any such company and/or service to provide products and/or services related to any loan transaction contemplated hereunder unless approved in writing by AKT American Capital Corporation and in no event shall AKT American Capital Corporation's receipt of information from Broker related to any such company and/or constitute AKT American Capital Corporation approval of such company and/or service. Further, Broker shall comply with all other applicable policies and procedures of AKT American Capital Corporation, as such policies and procedures may currently exist or hereafter created and as may be altered, changed, or amended, including, without limitation, the Quality Control policy, rate lock policy, any fair lending policies and procedures relating to fair lending, predatory lending and zero tolerance with respect to maximum fees and points (collectively, "Policies and Procedures").

- 1.8 Document Retention.** Broker shall implement and maintain a sufficient document retention program for Loans submitted to AKT American Capital Corporation for funding, regardless if such loan is actually funded by AKT American Capital Corporation. Such document retention program shall, at a minimum, provide for the retention of documents related to Loans for the period(s) of time required by applicable state and federal law and shall otherwise comply with all applicable laws. To the extent broker retains, or is required to retain, possession of any document related to a loan and AKT American Capital Corporation determines that it needs such document, upon request of AKT American Capital Corporation, Broker shall promptly provide such document to AKT American Capital Corporation.
- 1.9 Review of Broker.** As may be required by AKT American Capital Corporation from time to time, Broker shall cooperate with and provide all information, documents and reports requested by AKT American Capital Corporation so that AKT American Capital Corporation may conduct a review of Broker and its operation. Such information, documents and reports may include, but shall not be limited to, financial reports (including the most recent audited financial statements of Broker), copies of any required bonds or insurance coverage's (including those which may be required by AKT American Capital Corporation pursuant to Section 1.7 hereof) and any approvals with applicable governmental agencies.
- 1.10 Compliance With Request for Missing or Additional Documentation.** Broker shall comply with any request by AKT American Capital Corporation for missing, corrected and/or additional documentation related to a Loan. Broker shall comply with any such requests as soon as possible, regardless of whether the request was made prior to or after the closing of the related Loan, but, unless otherwise agreed by AKT American Capital Corporation, broker shall comply with any such request no later than five (5) business days after its receipt of a request from AKT American Capital Corporation therefore.

ARTICLE 2 UNDERWRITING

- 2.1 Underwriting the Loans.** Upon receipt from Broker of a complete Mortgage Loan Package, AKT American Capital Corporation shall evaluate the risk of making such Loan using AKT American Capital Corporation's underwriting guidelines applicable to the type of Loan being sought, as same may be amended by AKT American Capital Corporation from time to time. AKT American Capital Corporation shall notify Broker of any Loan underwriting and documentation deficiencies or problems with respect to any Mortgage Loan Package. AKT American Capital Corporation and Broker agree that AKT American Capital Corporation may rely on the materials contained in the Mortgage Loan Package supplied to it by Broker and the authenticity and accuracy of all signatures and information contained therein. AKT American Capital Corporation's failure to conduct an independent investigation with respect to such materials, signatures and information shall not affect or modify the representations and warranties made by Broker under Article 4 below or the rights and remedies available to AKT American Capital Corporation for a breach thereof.
- 2.2 No Liability.** AKT American Capital Corporation shall have no liability to Broker for AKT American Capital Corporation's failure to underwrite any Loan in accordance with the applicable guidelines except to the extent such failure constitutes willful misconduct by AKT American Capital Corporation.

ARTICLE 3 LOAN APPROVAL AND FUNDING

- 3.1 Approval of Loans by AKT American Capital.** Notwithstanding anything to the contrary contained in this Agreement, AKT American Capital Corporation shall have no obligation to fund any Loan submitted to it by Broker and may reject any Loan that, in AKT American Capital Corporation sole discretion, does not meet the applicable underwriting guidelines. With respect to any Loan approved by AKT American Capital Corporation for funding, AKT American Capital Corporation may require broker to comply with certain conditions, as set forth in writing to Broker,

prior to funding of the Loan by AKT American Capital Corporation. AKT American Capital Corporation shall not fund any Loan until all such conditions have been satisfied.

- 3.2 Notice of Adverse Action.** If AKT American Capital Corporation rejects a Loan for funding or makes a counteroffer to Applicant, AKT American Capital Corporation shall, within ten (10) business days after its decision to deny such application, prepare in AKT American Capital Corporation's name and deliver to Broker a notification of adverse action in accordance with the Equal Credit Opportunity Act. Broker shall be responsible for delivering the notification of adverse action to Applicant within the time specified by law.
- 3.3 Closing.** All Loans approved by AKT American Capital Corporation for funding shall be closed in accordance with AKT American Capital Corporation's written closing instructions and on closing documents prepared by AKT American Capital Corporation or any AKT American Capital Corporation's approved document vendor. AKT American Capital Corporation shall provide Broker with the appropriate closing documents as soon as practicable after all applicable conditions to closing have been satisfied. Broker is responsible for ensuring that all closing documents are properly signed by Applicant, Broker or third party and contain authentic signatures.
- 3.4 Funding.** Each Loan approved by AKT American Capital Corporation for funding must be closed in the name of AKT American Capital Corporation. AKT American Capital Corporation will fund such Loan as soon as practicable following receipt of all closing documents, properly completed and signed, including, but not limited to:
- (i) mortgage, deed of trust, or other security instrument, naming AKT American Capital Corporation as the lender or beneficiary;
 - (ii) mortgage note naming AKT American Capital Corporation as the payee;
 - (iii) all required property and casualty insurance policies naming AKT American Capital Corporation, and its successors and assigns as an additional loss payee; and
 - (iv) all required disclosure statements.

ARTICLE 4 WARRANTIES AND REPRESENTATIONS OF BROKER

- 4.1 Warranties and Representations Regarding the Broker.** Broker represents, warrants and covenants to AKT American Capital Corporation that, with respect to itself, including each office or branch operated by Broker and any third party originating Loans under Broker's license to originate mortgage loans ("Loan Originators") and the Loans, the following are true and correct as of the date hereof and shall remain true and correct during the term of this agreement:
- (a) Broker and each Loan Originator is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is qualified and/or licensed as necessary to transact business in each state where property securing a Loan is located;
 - (b) Broker and each Loan Originator is, and shall at all times remain, knowledgeable and in compliance with all federal, state and local laws and regulation applicable to it and the operation of its business, including, but not limited to, the RESPA, the Home Ownership and Equity Protection Act of 1974, the Fair Credit Reporting Act, the Fair Housing Act, the Equal Credit Opportunity Act, the Truth in Lending Act, the Home Mortgage Discloser Act and all regulations promulgated under each such law;
 - (c) This Agreement, and all actions provided for herein, have been duly authorized by the Broker's board of directors, if broker is a corporation, or by such individual(s) empowered and authorized to bind Broker, and Broker shall, upon execution of this Agreement, provide AKT American Capital Corporation with evidence reasonably satisfactory to AKT American Capital Corporation for such authorization. Neither the execution of this Agreement nor the consummation of the transactions contemplated herein, nor the fulfillment of a compliance with the terms and conditions of this Agreement, will conflict with or result in the breach of any term, condition or provision of Broker's certificate of incorporation or by-laws, any license held by Broker or governing Broker's activities or any agreement to which Broker is a party or by which Broker is bound, or constitute a material default or result in an acceleration under any of the foregoing;
 - (d) There is no suit, action, arbitration or legal, administrative or other hearing that would affect the Broker's ability to perform its obligations hereunder;
 - (e) Broker has not entered into any agreement, commitment or understanding and has no plans to enter into any agreement, commitment or understanding to merge with or into, or sell all or substantially all of its assets to

any other person or entity or dissolve, liquidate or otherwise terminate its corporate rights, existence or franchise;

- (f) Broker has entered into a written services agreement with each applicant if required by applicable federal or state law;
- (g) All Loans have been closed using closing documents prepared by AKT American Capital Corporation;
- (h) All documents submitted by broker or Loan Originator in connection with any Mortgage Loan Package are in every respect valid and genuine, being in their face what they purport to be and all signatures on each promissory note and deed of trust or mortgage are the true signatures of the appropriate Applicant and;
- (i) All information, reports and/or other documents furnished or to be furnished by Broker to AKT American Capital Corporation in connection with AKT American Capital Corporation's review and approval of Broker are true, correct and accurate and no such information, reports and/or other documents contain any untrue statement of fact or omits to state a fact necessary to make the statement contained herein or therein not misleading.

4.2 Warranties and Representations Regarding Individual Loans. Broker represents, warrants and covenants to AKT American Capital Corporation that the following are true and correct with respect to each Loan as of the date AKT American Capital Corporation acquires or funds such Loan:

- (a) The mortgage note (the "Note"), the deed of trust of mortgage (the "Mortgage") and assignment of mortgage or deed of trust (collectively, the "Collateral Document") are genuine and each is the legal, valid and binding obligation of the maker thereof, enforceable in accordance with its respective terms. The terms the Note or the Mortgage have not been impaired, waived, altered or modified in any respect, except by written instructions which have been disclosed to, and approved by, AKT American Capital Corporation (and any primary mortgage insurer, if applicable) in writing and which have been, or will be recorded if necessary to protect the interests of AKT American Capital Corporation;
- (b) The Loan and the related Collateral Documents comply in all respects with the terms and conditions of this Agreement;
- (c) All representations and warranties made by Broker and all information contained in any documents submitted by Broker to AKT American Capital Corporation with respect to the Loan are true and correct in all materials respects;
- (d) If the Loan is a conventional conforming Loan, it has been originated in conformance with all applicable AKT American Capital Corporation requirements and all applicable requirements of the Federal National Mortgage Association or any successor ("Fannie Mae") or Federal Home Loan Mortgage Corporation or any successor ("Freddie Mac") for sale to Fannie Mae or Freddie Mac and inclusion in a Fannie Mae or Freddie Mac mortgage backed securities pool, as applicable.
- (e) The Loan is a valid first or second lien (as applicable for the Loan program under which the Loan was delivered) on the property that secures the Loan (the "Mortgaged Property"), and the Mortgaged Property is free and clear of all encumbrances and liens having priority over the lien of such Loan, subject to (i) the approved first lien, if any, (ii) the lien of the current real property taxes and assessments not yet due and payable, (iii) covenants, conditions and restrictions, rights of way, easements and other matters of the public record as of the date of recording being acceptable to mortgage lending institutions generally and specifically referred to in the lender's title insurance policy delivered to the originator on the Loan and which do not adversely affect the appraised value of the Mortgaged Property, and (iv) other matters to which like properties are commonly subject which do not materially interfere with the benefits of the security intended to be provided by the Mortgage or the use, enjoyment, value or marketability of the related mortgaged property. No Mortgagor has been released, in whole or in part, from the obligations set forth in the Note or Mortgage;
- (f) No action has been taken or failed to be taken, no event has occurred and no state of facts exists or has existed (whether or not known to Broker) that has resulted or will result in an exclusion from, denial of, or defense to coverage under any primary mortgage insurance policy, if applicable;
- (g) All applicable federal, state and local laws, rules and regulations, including without limitation, the Real Estate Settlement Procedures Act, the Flood Disaster Protection Act, the Federal Consumer Credit Protection Act

including the Truth-in-Lending and Equal Credit Opportunity Acts, the Federal Fair Housing Act, the Home Ownership and Equity Protection Act, Gramm Leach Bliley Act and all applicable federal and state statutes or regulation governing fraud, lack of consideration, unconscionability, consumer credit transactions, consumer protection and consumer privacy, interest or other charges, licensing and mortgage insurance applicable to the Loan, including without limitation, all origination, servicing and collection thereof, have been complied with in all respects. The Loan is not subject to the Federal Trade Commission's "Preservation of Consumer's Claims and Defenses Rule," 16 C.F.R part 433;

- (h) The Loan file for each Loan which the related Loan program requires an appraisal contains an appraisal of the Mortgaged Property which was signed by a qualified appraiser who has no interest, direct or indirect, in the Mortgaged Property or in the Loan or in the security thereof. The appraiser did not receive compensation which was affected by or dependent in any way on the approval or disapproval of the Loan and the appraiser signed the appraisal prior to AKT American Capital Corporation's approval of the Loan. The appraisal was completed in compliance with the Uniform Standard of Professional Appraisal Practice and all applicable federal and state laws and regulations, including without limitation, Title XI of the Financial Institutions Reform, Recovery and Enforcement Act and the regulations related thereto; and
- (i) No error, omission, misrepresentation, negligence, fraud or similar occurrence with respect to a loan, including without limitation, the related documentation has taken place on the part of any person, including without limitation, the Broker, the mortgagor, any appraiser, any builder or developer, or any other party involved in the origination of the Loan or in the application of any insurance in relation to such loan.

ARTICLE 5 REPURCHASE AND INDEMNIFICATION

5.1 Repurchase and Indemnification. Upon the occurrence of any repurchase obligation (as defined below), Broker shall be obligated to repurchase the related Loan(s) and indemnify AKT American Capital Corporation for such related Loan(s) in accordance with the terms and conditions contained herein. At AKT American Capital Corporation's sole option, AKT American Capital Corporation shall have the right to require Broker to (i) repurchase the related Loan(s), (ii) indemnify AKT American Capital Corporation for such related Loan(s) and/or (iii) enter into an indemnification Agreement (as defined below) in lieu of repurchasing the related Loan(s), in any case, in accordance with the terms and conditions contained herein.

5.2 Repurchase Obligations. Any of the following circumstances shall be considered a "Repurchase Obligation":

- (a) AKT American Capital Corporation determines that broker failed to observe or perform or has breached or breaches, or it has been alleged that Broker has breached any of the representations, warranties, covenants or agreements contained in this Agreement of any applicable policies and procedures with respect to any Loan.
- (b) AKT American Capital Corporation receives a repurchase notification from any third party investor and the repurchase request is based on fraud or misrepresentation by the Broker with respect to the Loan.
- (c) AKT American Capital Corporation determines that Broker has been materially negligent in conducting its responsibilities under this Agreement with respect to the Loan.
- (d) AKT American Capital Corporation determines that Broker committed fraud or misrepresentation with respect to the Loan or otherwise aided, abetted or assisted in the commission of fraud or misrepresentation by any third party with respect to the Loan.

5.3 Request for Repurchase; Repurchase Price; Repurchase Procedures.

- (a) **Request For Repurchase.** In the event of an occurrence of any repurchase obligation, upon the request of AKT American Capital Corporation, Broker hereby agrees to repurchase the related Loan(s) (or, if the related Loan(s) has been foreclosed, the related Mortgaged Property) within thirty (30) days after Broker's receipt of AKT American Capital Corporation's written demand therefore for an amount equal to the Repurchase Price (as defined below). For the purpose hereof, the term "foreclosure" shall include judicial foreclosure, non-judicial foreclosure, deed in lieu of foreclosure, or any other mechanism of obtaining title to the Mortgaged Property.

- (b) **Repurchase Price.** The repurchase price for any Loan which AKT American Capital Corporation has requested Broker to repurchase (“the Repurchase Price”) shall be in the amount equal to the sum of (a) the current unpaid principle balance of the Loan at the time of repurchase (or at the time of the foreclosure sale date if the related Loan has been foreclosed); (b) accrued but unpaid interest on such principle balance at the Note rate from the paid-to-date of the Loan through and including the last day of the month in which the Repurchase Price is paid; (c) all costs and expenses, including without limitation, reasonable fees and expenses of counsel, incurred by AKT American Capital Corporation as a result of Broker’s breach of this Agreement or enforcing the terms of the loan; (d) any premium paid by AKT American Capital Corporation in excess of the principle balance of the Loan at the of purchase if AKT American Capital Corporation has not sold the Loan at the time of Broker’s repurchase or if AKT American Capital Corporation has sold the Loan and it is required to reimburse the purchaser the premium that the purchaser paid to AKT American Capital Corporation; (e) any unreimbursed advances made by AKT American Capital Corporation, including without limitation taxes or insurance or payments authorized by the Note or the Mortgage or law to protect AKT American Capital Corporation’s interest in the Loan or related Mortgage Property and (f) any other fees reduced by (i) any proceeds or mortgage insurance collected by AKT American Capital Corporation with respect to the Loan that have not been applied to the unpaid principle balance; and (ii) if the Loan had been foreclosed and the Mortgaged Property has been sold to a third party, the proceeds of the sale price received by AKT American Capital Corporation net of all advances, costs and expenses, including but not limited to reasonable fees and expenses of counsel, incurred by AKT American Capital Corporation in connection with such sale.
- (c) **Repurchase Procedures.** Upon AKT American Capital Corporation’s receipt of the Repurchase Price, AKT American Capital Corporation shall execute and deliver to Broker (x) an assignment of the Mortgage, an endorsement to the Note, and the related Loan files and other loan documents, each without representation, warranty or recourse, and (y) if AKT American Capital Corporation previously foreclosed the Loan and at such time then owns the Mortgaged Property, a deed to the Mortgaged Property, without representation, warranty or recourse, and (z) if AKT American Capital Corporation previously foreclosed the Loan but either sold the Mortgaged Property or another buyer purchased the Mortgaged Property at the foreclosure, an assignment of all deficiency obligations of the Mortgagor, without representation, warrant or recourse. With respect to the servicing of any Loan(s) repurchased by Broker, AKT American Capital Corporation shall transfer such servicing, or cause such servicing to be transferred, to Broker or its designee. If the Broker is unable to service any Loan(s) or does not have a designee for such servicing, AKT American Capital Corporation may, at its sole option, service such Loan(s) for a fee equal to AKT American Capital Corporation’s then current rate until such time as Broker is capable of servicing such Loan(s) or designates a successor servicer. All costs of transferring servicing of any repurchased Loan(s) from AKT American Capital Corporation to Broker or its designee shall be borne by Broker and Broker shall reimburse AKT American Capital Corporation for any costs incurred in connection therewith. Broker’s Repurchase Obligation with respect to a Loan shall not be eliminated, reduced or otherwise modified as a result of any modification, workout or assumption of the Loan.

5.4 Request for Indemnification; Indemnification Agreement in lieu of Repurchase.

- (a) **Request for Indemnification.** Upon the request of AKT American Capital Corporation, Broker hereby agrees to indemnify and hold AKT American Capital Corporation and its officers, directors, employees, agents, shareholders and representatives harmless from and against any and all claims; demands, liabilities, causes of action and expenses, including attorney’s fees actually incurred, relating to, arising out of or in connection with Broker’s breach or alleged breach of any registration, warranty or covenant contained herein; provided, however, that Broker shall have no obligation to indemnify AKT American Capital Corporation to the extent the claim for indemnification is based on (i) AKT American Capital Corporation’s gross negligence or willful misconduct or (ii) Broker’s breach of an obligation that is or was the responsibility of AKT American Capital Corporation under any Agreement entered into between the parties.
- (b) **Indemnification Agreement in lieu of Repurchase.** At AKT American Capital Corporation’s sole option and in lieu of repurchasing the related Loan(s) subject to a Repurchase Obligation, AKT American Capital Corporation may require the Broker to enter into a written indemnification agreement in a form acceptable to AKT American Capital Corporation (the “Indemnification Agreement”) which requires the Broker to indemnify AKT American Capital Corporation, including, without limitation, reimbursing AKT American Capital Corporation for any losses incurred by AKT American Capital Corporation as a result of such Repurchase Obligation with respect to the related Loan(s)

5.5 Right of Offset. In addition to any other rights and remedies available to AKT American Capital Corporation, including, without limitation, the rights and remedies of AKT American Capital Corporation under this agreement, AKT American Capital Corporation shall have the right, at any time and from time to time, without notice, to offset and to appropriate or apply any and all deposits of money or property or any other indebtedness at any time held or owing by AKT American Capital Corporation to or for the credit of the account of Broker against and on account of the obligations and liabilities of Broker under this Agreement or any other agreement between Broker and AKT American Capital Corporation and/or between Broker and any of AKT

American Capital Corporation's affiliates and/or subsidiaries, irrespective of whether or not AKT American Capital Corporation or its affiliates shall have made any demand hereunder and whether or not said obligations and liabilities shall have matured. For purposes of the foregoing right to offset, the determination as to whether Broker has any obligations and liabilities under this Agreement or any agreement between Broker, AKT American Capital Corporation or its affiliates and the extent of such obligations and liabilities shall be made by AKT American Capital Corporation in its sole and reasonable discretion.

5.6 Full Credit Bid At Foreclosure Sale. Notwithstanding anything to the contrary, in no event shall a full credit bid made by AKT American Capital Corporation or any related party at a foreclosure sale of any Loan affect in any way the rights and remedies of AKT American Capital Corporation and/or the obligations of Broker under this Agreement including, without limitation, the obligations of Broker to repurchase and indemnify AKT American Capital Corporation as provided herein.

5.7 Survival. The provisions of this Article 5 shall survive any Loan closing and assignment thereof.

ARTICLE 6 Compensation

- 6.1** The compensation paid by AKT American Capital Corporation for the assignment of an Application Package shall be determined by reference to the specific investor's then current applicable rate sheets; provided, however, that such compensation shall not exceed the reasonable value for the services, goods and facilities provided by Broker to AKT American Capital Corporation. The parties agree that the compensation is intended to compensate Broker for, among other purposes, (i) the release of servicing rights that Broker is in the process of creating; (ii) the goods actually furnished from the assignment of the Application Package; (iii) the production cost savings realized by Broker as a result of the use of AKT American Capital Corporation's staff and facilities in lieu of the Broker's own "retail" branch office; and (iv) other services actually performed and facilities provided by AKT American Capital Corporation for Broker's benefiting the origination and assignment of the Mortgage Loan, the value and scope of which may vary for each transaction under this Agreement. The parties further agree that: (A) the rate sheet relies on the market value of comparable residential mortgage loans and mortgage backed securities in the secondary market to determine Broker's compensation hereunder; (B) the market value of such financial instruments may not be determinative of the reasonable value of services, goods and facilities provided to Broker by AKT American Capital Corporation; and (C) the ceiling set forth above is intended to assure that the compensation does not exceed such reasonable value. Broker shall fully disclose to each applicant the receipt and amount of the compensation paid by AKT American Capital Corporation to Broker pursuant to the terms of this Agreement.
- 6.2** If and as permissible under applicable federal and state law, Broker may impose fees upon applicants for consultations and other services provided to the applicant, provided, however, that (i) if required by applicable law, such fees shall be imposed pursuant to a duly executed written agreement between the Broker and its applicants; (ii) all compensation paid to Broker in connection with each Mortgage Loan shall be disclosed on the Good Faith Estimate of Closing Costs and HUD-1 Settlement Statement in accordance with applicable law and (iv) any such fee charged to the applicant by the Broker is not in any way imposed or required by AKT American Capital Corporation or a condition to AKT American Capital Corporation's acceptance of an Application Package.
- 6.3** Amounts owed by Broker to AKT American Capital Corporation under this Agreement may, at AKT American Capital Corporation's option and in its sole discretion, be offset by AKT American Capital Corporation against any payments then or thereafter owed by AKT American Capital Corporation to Broker.
- 6.4** If borrower prepays a Mortgage Loan in full up to the end of the fourth month after the date such Mortgage Loan was sold to the initial investor, Broker shall refund to AKT American Capital Corporation the total compensation paid to Broker by AKT American Capital Corporation hereunder, minus any prepayment penalty collected by AKT American Capital Corporation. The requirements will vary for each investor.
- 6.5** Early Payment Default. An Early Payment Default occurs if a borrower fails to pay any of the first four (4) installments of principal and interest payable to the current holder of said loan following the funding of the loan, and such default continues for a period of ninety (90) days. In lieu of repurchasing the loan, the Broker agrees to repay to AKT American Capital Corporation the gross premium and/or service release premium portion of the compensation paid to Broker, along with an administrative fee for expenses incurred in connection with the early payment default.

ARTICLE 7
Disciplinary Action

7.1 Disciplinary Action. Upon discovery of any breach of this agreement by the Broker, Broker will be put on Probation for 30 days. During this probation period, 100% of the loan files submitted will be subject to quality control. Broker will be re evaluated after the 30-day period, and if no infractions were discovered, Broker will be returned to normal status. Further infractions of the Broker agreement will lead to termination.

ARTICLE 8
TERMINATION

8.1 Termination. Either party may terminate this Agreement at any time with or without cause, which termination shall be effective immediately upon the other party's receipt of written notice thereof. All representations and warranties made herein and the parties' rights and obligations under Section 2.2 of this Agreement shall remain in full force and effect notwithstanding any termination of this Agreement. Unless otherwise agreed to in writing by the parties, AKT American Capital Corporation shall complete the underwriting of any Mortgage Loan Package submitted by Broker prior to the date of termination and shall approve or reject funding of such Loans in accordance with the terms of this Agreement.

8.2 Notification of Change in Status. Broker shall immediately notify AKT American Capital Corporation in the event (a) broker changes the name and/or address under or from which it conducts business; (b) there is a change of control of Broker; (c) broker fails to be in compliance with qualification or licensing of any jurisdiction where it conducts business; or (d) Broker files for bankruptcy protection or is a party to any similar proceeding.

ARTICLE 9
GENERAL

9.1 Loan Originators. Broker shall notify AKT American Capital Corporation in the event Broker intends to originate Loans through multiple locations or branches or Loan Originators. Broker agrees to provide AKT American Capital with such information as AKT American Capital Corporation may reasonably request regarding such locations and Loan Originators and to cause each Loan Originator to sign, prior to originating any Loans hereunder, a statement whereby Loan Originator agrees to comply with and be subject to the terms and conditions of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, Broker shall be liable for the acts and omissions of its officers, employees and agents, including, without limitation, Loan Originators.

Relationship of the Parties. AKT American Capital Corporation and Broker 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 and nothing contained herein shall be constructed to give any party, other than AKT American Capital Corporation and Broker, 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 or joint venture between AKT American Capital Corporation and Broker and neither party shall at any time hold itself out to any third party to be an agent or employee of the other.

9.2 AKT American Capital Corporation's Trademark. Broker shall not use AKT American Capital Corporation's name, trademarks or service marks in any manner, including, without limitation, in any advertising or marketing materials.

9.3 Non-Exclusive Arrangements. Broker shall not be obligated to submit any or all loan funding requests that it brokers to AKT American Capital Corporation, it being understood that this is a non-exclusive agreement.

9.4 Governing Law. This Agreement shall be governed by and constructed and enforced under the laws of the State of California, without regard to its conflict of laws principles. In the event of any lawsuit or other proceeding relating to this Agreement, each party hereby consents to jurisdiction in the state and federal courts located in the County of Los Angeles State of California.

9.5 Notices. Except where telephonic instructions or notices are authorized herein to be given, all 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 (registered or certified mail, return receipt requested, postage prepaid), sent by overnight courier (charges prepaid), or sent by facsimile (and confirmed by return facsimile), or personally delivered, addressed to the respective party at the address or facsimile number set forth below:

To AKT American Capital Corporation: 2121 Rosecrans Avenue 6th Floor
El Segundo, CA 90245
Attn: Broker Approval Department
Telephone: (310) 640-0100 Ex 211
Facsimile: (310) 524-0473

To Broker: _____

Attn.: _____
Telephone: _____
Facsimile: _____
Electronic Mail: _____

Notices delivered personally shall be effective upon delivery. Notices transmitted by facsimile shall be effective when transmitted. Notices delivered by registered or certified mail shall be effective on the date set forth on the receipt or registered or certified mail, or the third business day after mailing, whichever is earlier. Each party shall provide a written notice to the other of a change in its address, telephone number or facsimile number.

9.6 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Broker may not transfer or assign any of its obligations, rights or interests under this Agreement without the prior written consent of AKT American Capital Corporation and any attempted or purported assignment without such consent shall be null and void.

9.7 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, cause or provision in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

9.8 Waiver. No waiver of any provision of this Agreement or of the rights and obligations of the parties shall be effective unless in writing and signed by an authorized representative of the party waiving compliance. Any such waiver shall be effective only in the specific instance and for the specific stated in such writing.

9.9 Attorney's Fees. If any claim, legal action or any arbitration or other proceeding is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that claim, action or proceeding, in addition to any other relief to which such party may be entitled.

9.10 Cooperation. The parties hereto each agree to use commercially reasonable efforts to cooperate fully 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 Loan and provision of any and all information that may be requested regarding any of the Loans underwritten pursuant to this Agreement.

9.11 Entire Agreement. This Agreement is the final and exclusive statement of all agreements and understandings between the parties with respect to the subject matter described herein and all oral and written correspondence relating to the subject matter hereof, and any previous agreements entered into between Broker and AKT American Capital Corporation, are superseded by this Agreement. No change, modification or alteration of this Agreement shall be effective unless in writing and signed by both parties.

9.12 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall

be deemed to be an original, but all of which together shall constitute one instrument. Facsimile signature shall be deemed valid and binding to the same extent as the original.

9.13 Due Diligence and Information related to Broker. Broker acknowledges and agrees that any information obtained by AKT American Capital Corporation from Broker or otherwise in connection with AKT American Capital Corporation's review and approval of Broker or any Loan submitted to AKT American Capital Corporation for funding may be provided by AKT American Capital Corporation to any of its subsidiaries and/or affiliates. With respect to any information related to a Loan submitted to AKT American Capital Corporation for funding, Broker expressly consents to the release of any such information by AKT American Capital Corporation to its subsidiaries and/or affiliates which may have a need to know such information. Further, any other information provided by Broker to AKT American Capital Corporation in connection with this Agreement, including, without limitation, any financial reports with respect to Broker, may be shared with and used by such subsidiaries and/or affiliates for similar purposes.

9.14 Changes, Updates and Amendments to Agreement. From time to time, and upon at least thirty (30) days prior notice to Broker, AKT American Capital Corporation may change, update and/or amend the terms and conditions of this Agreement. Broker will be bound by such changes, updates and/or amendments upon the effective date of such notice without further need for acknowledgement or signature by Broker.

9.15 Communications with Broker. Broker acknowledges and agrees that AKT American Capital Corporation may communicate with Broker and provide Broker with information related to this Agreement or otherwise by any means legally permissible, including, without limitation, telephone, electronic mail and facsimile. To the extent AKT American Capital Corporation is required by applicable law to obtain Broker's prior consent to receive such communication from AKT American Capital Corporation via any such means, Broker hereby grants AKT American Capital Corporation such prior consent for any such applicable law and AKT American Capital Corporation shall not be required to obtain any additional consents from Broker. By way of example but not limitation, Broker consents and agrees that AKT American Capital Corporation may provide Broker with Loan pricing information and other information related to AKT American Capital Corporation's Loan programs to the electronic email address and/or facsimile number provided by Broker in Section 9.5 herein or any other electronic email address and/or facsimile number that Broker may provide to AKT American Capital Corporation for such purposes and that AKT American Capital Corporation shall not be required to obtain any additional consents from Broker.

9.16 No Compete. Both parties agree and acknowledge that AKT American Capital Corp. will in no way attempt to solicit business from a Broker's customer base. The borrower may need to be contacted regarding monthly payments, follow up on documentation, or other general questions. However, any discussions regarding financing options will be referred to the originating ACBN Broker. This does not guaranty that the lender that ultimately services the loan will not contact the borrower.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

AKT AMERICAN CAPITAL CORPORATION

BROKER: _____

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____



Early Payoff Fee Disclosure

Attention Broker:

The attached “150 days Early Payoff Fee” Disclosure will be included with your Borrower’s Loan Documents. This Disclosure is meant to protect you from having to repay the SRP/Rebate due to an Early Loan Payoff.

If you choose not to have your Borrower’s sign this disclosure, you hereby acknowledge that you will be responsible for any fees incurred in the event of an Early Payoff.

Read and Understood by: _____
Broker

Date



ACBN CREDIT AUTHORIZATION

If you prefer that ACBN pull your credit, please sign and return this form.

A consumer credit report is required to complete the Recertification process. Each Principal, Owner, or Broker of Record must sign the following Credit Authorization.

ACBN is hereby authorized to obtain verification of information from any source (including character and credit references) and obtain a personal consumer credit report in connection with this loan package application.

_____	_____	_____
Principal/Owner/Broker Name	Signature	Date

_____	_____
Social Security Number	Address

_____	_____	_____
Principal/Owner/Broker Name	Signature	Date

_____	_____
Social Security Number	Address

_____	_____	_____
Principal/Owner/Broker Name	Signature	Date

_____	_____
Social Security Number	Address



**ACC/ACBN Fraud and Misrepresentation
Company Statement and Zero Tolerance Policy**

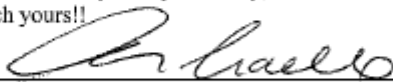
ACC/ACBN has a ZERO tolerance policy for any and all forms of misrepresentation. In the event we are able to determine misrepresentation in any file submitted to ACC/ACBN and/or submitted to an outside investor, the originator of the misrepresentation and/or the broker company shall be immediately terminated - there are no second chances regarding this policy. It is unfortunate in these times that any individual would not only place themselves in jeopardy but the company they work for and the employees that count on that company to support their families.

It is absolutely critical that we maintain our credit quality with our investors and wholesalers. It is up to all of us as loan professionals to pay attention to our business, flush out any fraud and misrepresentations, and also know that the quality of our loans is what determines our future as originators.

To say that we have a zero tolerance policy on fraud stops short of the real message here. The bottom line is that our livelihood is more valuable than being influenced by a desperate borrower, or a short sided decision by you to try and pass along misrepresented information in order to help a borrower get a loan. But we also have to know when a borrower is trying to do that on their own, which is the "paying attention to the signs" part of the conversation. Know your business, and pay attention enough to know when a borrower may be trying to get something past you. If you think something is questionable, and you are not sure what to do, ask us! Get a second or third opinion. There are many tools we have to validate the documentation that may be questionable.

We are in business during a very unique time. Rates are low, people are desperate, and the product mix is very narrow and tough to qualify for. This environment tends to bring out the worst in people, and it is up to us to rise above it, act professionally, and think long term.

We take this topic very seriously, and want to lead by example. Please watch our backs, and we will watch yours!!


Allen Cravello, President


Kent Kirkpatrick, Vice President


Tim Greaney, Vice President


Karen Lieb, Asst. Vice President, Banking Mgr.


Jacqui Withers, Asst. Vice President, HR and Admin.



ACC/ACBN Fraud and Misrepresentation Agreement

I understand that Fraud and Misrepresentations are a serious threat to ACC/ACBN, and the mortgage business. I will do my best to act professionally, pay attention to my job as a mortgage professional, and will apply the highest standards of moral and ethical business behavior when representing myself and ACC/ACBN. I understand that Fraud, Misrepresentation, and overall poor business behavior is not acceptable, will not be tolerated, and are grounds for immediate dismissal from ACC/ACBN.

I further agree not to commit Fraud or Misrepresentation, and will do my best to make sure that any borrower or 3rd party I am in contact with does not do the same, and they understand the consequences of committing such acts.

Date