

AMERICAN CAPITAL FUNDING MORTGAGE LOAN BROKER AGREEMENT

This Mortgage Loan Broker Agreement (“Agreement”) is entered as of this _____ day of _____, of 20__ by and between Westlend Financing, Inc. dba American Capital Funding a California Corporation (“ACF”) and _____ (“Broker”) with reference to the following facts:

- A. Broker, acting as an independent contractor, intends to refer credit applications to ACF for funding by ACF or previously funded loans to ACF for purchase by ACF, subject to the terms and conditions of this Agreement.
- B. ACF intends to consider for funding or purchase, credit applications or loans referred to ACF by Broker acting as a mortgage loan broker, subject to the terms and conditions of this Agreement. All credit applications or loans that Broker refers to ACF for funding or purchase are hereinafter referred to as “Loans” or individually as a loan.
- C. ACF is qualified to and will from time to time, sell the funded or purchased loans to the Investors or otherwise in the secondary market purchaser may require ACF to purchase the Loan and / or pay other costs incurred, including but not limited to costs of foreclosure and attorney’s fees.

NOW THEREFORE, in reliance on the foregoing facts and in consideration of the mutual promises and obligations contained herein, the parties hereto agree as follows:

1. **Appointment of Broker.** ACF hereby appoints Broker as a mortgage loan broker. The appointment by ACF of Broker is made subject to and limited to, the terms and conditions contained in this Agreement, as well as in the attached Exhibit A. Broker may refer loans or credit applications to ACF for funding or purchase. ACF shall consider for funding or purchase all loans referred to ACF by Broker. Nevertheless, this Agreement does not obligate ACF to fund or purchase any loan presented by Broker.

2. **Acceptable Loans.** ACF will only consider for funding or purchase Loans that are or are to be secured by deed of trust covering and encumbering construction, commercial, one to four family units improved residential and multi-family real property. For every Loan Broker refers to ACF, Broker shall provide ACF with all documentation required by ACF, as its reasonable discretion and subject to applicable law. In procuring credit reports and appraisals with respect to all Loans presented for funding or purchase by ACF, Broker shall deal only with totally independent and highly reputable credit rating agencies and qualified, licensed, independent Real estate appraisers. The independence and repute of the

credit rating agencies and real estate appraiser shall be determined at the sole discretion of ACF.

3. **Terms of Agreement.** The effective term of this agreement shall begin on the date of its execution and shall end one calendar year later. This Agreement shall then renew automatically for successive terms of one calendar year, each of which shall begin at the end of the preceding term. Notwithstanding the above, this Agreement shall not be renewed if either party provides written notice of its intent not to renew the Agreement to the other party at least one month before the term then in effect expires.

4. **Termination.**

This Agreement shall terminate under the conditions set forth below:

A. Upon the revocation or expiration and failure to renew my applicable license, authorizations or approvals required of Broker as a mortgage loan broker pursuant to the provisions of applicable law or governmental regulations.

B. If Broker breaches any duty or obligation arising under this Agreement, this Agreement may be terminated by ACF upon written notice to Broker, effective immediately or upon such other date as specified in the notice. The existence of a breach shall be determined at the reasonable discretion of ACF;

C. If Broker breaches any duty or obligation arising under applicable law or regulation; this Agreement may be terminated by ACF upon written notice to Broker, effective immediately or upon such other date as specified in the notice.

The existence of a breach shall be determined at the reasonable discretion of ACF;

D. Upon the dissolution, liquidation or termination of the separate legal existence of broker, and

E. Upon the filing by or against Broker of any federal or state bankruptcy proceeding in any federal or state court or upon the appointment of any receiver, custodian or trustee for all or a substantial portion, of the assets of Broker.

5. **Refusal to Fund or Purchase Loan Upon Breach.** Broker acknowledges that if in the course of presenting a Loan to ACF, Broker breaches a warranty, representation, duty or obligation contained in this Agreement or under applicable law or governmental regulation, ACF may at its discretion refuse to fund or purchase the Loan presented by broker without terminating this Agreement. The existence of a breach shall be determined at the reasonable discretion of ACF. ACF's refusal to fund or purchase a Loan shall not in any way limit or waive ACF's rights to terminate this Agreement or seek any other remedy available under this Agreement or otherwise.

6. **Territory.** Broker agrees that ACF is not obligated to accept from Broker any Loan secured by property located outside the United States or in any State in which ACF is not permitted to do business under applicable law.

7. **Consideration.** The consideration for all Loans presented to ACF by Broker pursuant to the terms of this Agreement will be determined on a daily basis pursuant to the formula set forth in ACF Wholesale Loan Daily Rate Sheet, the most current copy of which is attached hereto as Exhibit A. Exhibit A may be amended from time to time and at the sole discretion of ACF.

8. **Non-exclusivity of Agreement.** Nothing in this Agreement shall be construed to restrict in any way ACF's right to purchase or fund Loans referred to by its sources other than Broker. Broker acknowledges that it is one of many Brokers doing business with ACF and that ACF may purchase or fund loans from competitors of Broker.

9. **Representations and Warranties of Broker With Respect to Each Loan.**

To induce ACF to enter into this Agreement and to induce ACF to fund or purchase the Loans, Broker makes the representations and warranties set forth below with respect to each and every Loan referred or sold pursuant to this Agreement. These representations and warranties are effective both on the date of this Agreement and on the date of each transaction subsequently entered into and shall survive the expiration or termination of this agreement as to each and every loan which has been funded or purchased by ACF pursuant to this agreement. The continuing validity of these representations and warranties shall constitute a condition precedent to ACF's continuing obligations under this Agreement.

The representations and warranties are as follows:

- A. Broker has with due diligence verified the information the borrower has provided with respect to each Loan presented to ACF. All names, signatures, addresses, amounts, employment information, financial information, descriptions of property and other statements of facts appearing in the credit application and all other documents relating to the loan are true and correct. The borrowers are solvent within the meaning of the applicable bankruptcy law.
- B. The Loan is evidenced by promissory notes and secured by mortgages, deeds of trust or other comparable interest in real property.
- C. The real property encumbered by the Loan is free of material damage and is in good repair
- D. Broker has no knowledge of any fact that it has failed to disclose which would materially and adversely affect the value or marketability of the loan.
- E. No taxes or other liability of Broker shall accrue against or be collected from ACF as a result of ACF's purchase or funding of the Loan.
- F. Any and all requirements of any federal, state and local law including, without limitation, usury, truth-in-lending, real estate settlement procedures, consumer protection, equal credit opportunity or disclosure laws applicable to the Loan have been fully complied with.
- G. Broker holds a title insurance policy, issued by a title insurer acceptable to ACF and qualified to do business in the jurisdiction where the real property encumbered by the Loan is located, insuring the mortgage or deed of trust to be a lien of the agreed upon priority and having a liability limit at least as great as the outstanding principal of the Loan and

H. There are no mechanics liens or similar liens or claims which have been filed for work, labor or material affecting the real property encumbered by the Loan which are or may be liens prior or equal to the lien of the deed of trust or mortgage securing the Loan.

In the event of Broker presents a Loan to ACF for purchase, the following representations and warranties shall apply in addition to and with the same force and effect at those enumerated above:

- I. Broker is the sole originator of the Loan and has full and complete title to the Loan and all instruments and documents relating to the Loan, free and clear of all claims of any other person or entity. Broker has full power and authority to sell, assign, transfer and convey the Loan to ACF, as provided for in this Agreement. Broker has not sold, assigned or otherwise, transferred any purchase. Once Broker has transferred the Loan to ACF, ACF will have all rights I and to the Loan, including all rights with respect to servicing the Loan.
- J. The terms of the Loan have not been impaired, waived, altered or modified from the original in any respect. No instrument of waiver, alternation or modification has been executed regarding eh Loan and no borrower has been released, in whole or in part.
- K. The Loan is not subject to any right of rescission, set off, counterclaim or defense, including the defense of usury, nor will the operation of any of the terms of the loan render such Loan unenforceable, in whole or in part, or subject to any right of rescission, set off counterclaim or defense has been asserted with respect hereto.
- L. The Loan is in every respect genuine, is the valid instrument it purports to be, is the legal, valid, binding and enforceable obligations of the borrowers named in the Loan.
- M. No foreclosure (including any non-judicial foreclosure) or any other legal action has been brought by Broker or other party in connection with the Loan.
- N. The real property encumbered by the Loan is insured against loss or damage. Each insurance policy contains a standard lender's loss payable endorsement naming ACF as loss payee and provides ACF with coverage in an amount not less than the original balance of the Loan plus the amount of all prior encumbrances, if any. If such policy names Broker, Broker has caused such policy to be amended to name ACF as a loss payee.

10. **Representations and Warranties of Broker With Respect to Corporate Authority.**

To induce ACF to enter into this Agreement and to induce ACF to fund Loans, Broker represents and arrants that truth and accuracy of each of the following representations and warranties, both and the date hereof and on the dates of each transaction entered into pursuant to this Agreement. The continuing validity of these representations and warranties, in ACF's reasonable determination, shall constitute a condition precedent to ACF's continuing obligations pursuant to this Agreement.

- A. If Broker is a corporation. Broker is a corporation duly and Validly existing and is in good standing in the state of its incorporation, and possesses the requisite corporate authority to enter into this Agreement and to consummate all of the transactions contemplated by this Agreement have been taken by Broker.

- B. If Broker is a partnership. Broker is a general or if applicable, a limited partnership duly formed and validly existing under the laws of the state of its formation. The execution, delivery and performance of this Agreement are within the Broker's power and do not contravene the partnership agreement of the Broker or any law, order, rule or this Agreement or Loans shall be performed or any contractual restriction binding on or affecting Broker.
- C. Broker is fully licensed, qualified to do business and in good standing in each state in which it does business and in which is located the real property encumbered by any Loan or referred by Broker to ACF.
- D. No authorization, approval or any other action by and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by Broker of this Agreement.
- E. The execution and delivery of this Agreement by Broker hereunder does not and will not violate any provisions of any law, rule, regulation, order, writ, decree, judgment, injunction, determination or award presently in effect having applicability to Broker or to the charter or by-laws of Broker. All mortgage, assignee or pledge, are in compliance with all applicable licensing requirements of the state wherein the real property encumbered by such Loan is located.
- F. The execution and delivery of this Agreement by Broker and the performance by Broker hereunder does not and will not result in a breach of or constitute a default under any indenture, loan, credit agreement or any other agreement, lease or instrument to which Broker is a party or by which it or its properties may be bound or affected.
- G. When duly executed and delivery by broker, this agreement constitutes a legal, valid and binding obligation of Broker enforceable against Broker according to its terms.
- H. There are no actions, suits, adverse claims or proceedings, of any kind or nature, pending or to the knowledge of Broker threatened against or affecting Broker before any court or governmental department which would have material adverse effect on the financial condition, properties or operations of Broker and would materially and adversely affect Broker's ability to perform its obligations pursuant to this Agreement. Broker agrees promptly to notify ACF of the subsequent existence of any such pending or threatened action, suit, adverse claim or proceeding.
- I. Broker has not, in connection with this transaction, entered into any agreement, incurred any obligation or made any commitment or taken any action which might result in a claim for or an obligation to pay a sales Broker commission, finders fee or similar fee in respect to the transaction contemplated by this Agreement. Broker agrees to indemnify, defend and hold ACF harmless from and against any and all claims, damages, cost or expenses (including reasonable attorney's fees) relating to any Broker, agent or finder of other person who shall claim to have dealt on behalf of Broker in connection with the transaction contemplated by this Agreement.

11. **Breach of Representation and Warranties.** Broker agrees that upon breach of any of the representation, warranties or obligation contained in this Agreement or under California or Federal law, or upon discovery by ACF that any fact represented by Broker, its agents, employees or any borrowers under a Loan are not true, the repurchase provisions set forth in Paragraph 12, below and the indemnification set forth in Paragraph 13 below shall apply. All representations, warranties and obligations shall survive the closing of Loan purchase or funding and shall be deemed to be for the benefit of ACF and its successors and assigns. All fees due Broker, from date of breach forward, will be held until the provision set forth in Paragraph 12 for repurchase below have been complied with. In the event the provisions set forth in Paragraph below are not met, any fees due Broker will be forfeited to ACF.

12. **Repurchase of Loans.** At the request of ACF, Broker shall repurchase any Loan it originates or refers to ACF upon the occurrence of either of the following events, determined at the reasonable discretion of ACF.

- A. Breach by Broker of any representation or warranty contained in this Agreement and relating to the Loan; or
- B. Discovery by ACF or any investor that any representations relating to the Loan made by Broker, its agents, employees, any third party involved in transaction with broker (i.e. Real Estate Agent, Escrow Agent, Appraiser, etc.) or the borrower are materially untrue, inaccurate or misleading.
- C. If borrower fails to make any payment or is more than 30 days late in the first 90 days, the loan will be subject to repurchase.

The repurchase amount of the Loan shall be the unpaid principal balance of the Loan, as well any delinquent principle and interest, plus any yield spread premium paid by ACF, plus the servicing release premiums, paid by ACF for the servicing rights of the Loans, plus any accrued interest, legal expenses and other expenses ACF may have incurred as a result of the misrepresentation or the breach of the warranty or covenant.

Broker shall tender the repurchase amount of the Loan to ACF within 30days of notice by ACF. Failure by Broker to tender the repurchase amount to ACF within this time shall constitute a material breach of the Agreement. Nothing in this provision shall limit ACF's ability to terminate the Agreement immediately pursuant to Paragraph 3(B) and 3(C) of this Agreement.

In the even that broker does not comply with ACF's request to repurchase any Loan, this Agreement shall be suspended without notice and ACF shall have no further obligation to Broker to consider Loans submitted to ACF by Broker, in addition to any other legal or equitable remedies ACF may have against Broker.

13. **Indemnification.** Without limiting any of ACF's rights contained in this Agreement, Broker shall indemnify defined and hold harmless ACF, its successors and assigns, its officers, agents and employees, from any claim, action, liability, cost or expense, including judgment, court costs and attorney's fees related to the breach of any warranty, representation, or obligation contained in this Agreement. This indemnification shall survive the term of this Agreement for all Loans funded by ACF until the sooner of (i) written release by ACF and and successor or assigns; (ii) payment in full of all Loans purchased or funded pursuant to this Agreement; or (iii) the lapse for any applicable statute of limitation.

14. **Records and Rights of Inspection and Audit.**

A. At all times during the term of this Agreement, Broker shall maintain on the premises of its main office a complete set of files and records of all business, activities and operations conducted by Broker in its capacity as a mortgage loan broker of ACF. Such files and records shall be maintained in a neat, orderly and organized manner, for a period of not less than four (4) years from and after the date of the termination or expiration of this Agreement. Broker shall continue to maintain all such records in a single location.

B. At all time during the term of this Agreement, an ad at all times during the four (4) years period following the expiration or termination of this Agreement, Broker will, at ACF's own cost and as often as ACF may reasonably request (with which requests ACF shall attempt in good faith to give Broker two days' prior written notice except in the event of emergency, provided that ACF's rights hereunder representatives designated by ACf to (i) have access to the records described in the preceding paragraph A, (ii) make copies of or excerpts from such records, such (iii) discuss such affairs, finances and accounts of Broker, all as shall be reasonably relevant to the performance or observance of this Agreement. To the extent not inconsistent with ACF's remedies in the event of a breach of this Agreement or any of the representations and warranties provided hereunder, ACF agrees to keep all such information confidential to the extent it is otherwise not publicly available and to limit access to such information only to such representatives for ACF as ACF determines in its reasonable judgment to be necessary.

15. **Failure of Broker to Make Truth-In-Lending Disclosures.** In the event Broker fails to make any required preliminary truth-in-lending disclosures required by state or federal laws or negotiations in the case of ACF's funding a Loan, ACF may make any such disclosures on behalf of Broker and charge to Broker all cost and expenses incurred by ACF in connection with such disclosures. In making such a disclosure on behalf of Broker, ACF does not waive any additional rights or remedies it may have under this Agreement or otherwise for Brokers' failure to make the required truth-in-lending disclosures.

16. **Independent Contractor.** It is the parties' intention that Broker is an INDEPENDENT CONTACTOR of ACF, as far, as shall be in conformity with applicable law. Broker

is neither an agent, an employee nor a partner of ACF. Broker shall maintain complete control over its own agents and employees. Broker shall be solely responsible for the means, methods, techniques, and procedures of Brokers' activities pursuant to this agreement. If Broker is a partnership a joint venture, then, for purposes of this Agreement, the members of such partnership or joint venture shall be jointly and severally liable for Broker's performance pursuant to this Agreement, notwithstanding any agreement as between themselves to the contrary.

17. **Notices.** All notices required to be given pursuant to this Agreement will be given in writing and will be deemed given when personally delivered to the party or when deposited in the United States mail, postage prepaid, certified mail, return receipt request, addressed to such party as follows:

Lender

WESTLEND FINANCING, INC.
DBA: AMERICAN CAPITAL FUNDING
8735 LAUREL CANYON BLVD., SUITE B
SUN VALLEY, CA 91352
(818) 385-7500

Broker

18. **General Provisions.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof. There are no representations or warranties other than as contained herein. No waiver or modification of this Agreement shall be valid unless executed in writing with the same formality as this instrument. Waiver or breach of any tem, or condition of the Agreement will not be deemed a waiver for any other or subsequent breach, whether of a like of a different nature. This Agreement shall not be changed orally, and insofar a s it is executor, and executor agreement hereinafter made with respect to the subject matter hereof shall be ineffective to change or modify this Agreement or to discharged is sought. In the event of litigation between the parties related to this Agreement, the prevailing party shall be entitled to recover its costs and attorney’s fees. This Agreement shall be construed under the laws of the State of California applicable to contracts made or to be performed in that state. Each party hereto agrees to execute any and all documents and writing which may be necessary or expedient and to do such other acts as will further the purposes of this Agreement. Nothing herein contained shall be construed to create joint venture or partnership.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and date first above written.

Lender:
WESTLEND FINANCING, INC.
DBA: AMERICAN CAPITAL FUNDING
8735 LAUREL CANYON BLVD., #B
SUN VALLEY, CA 91352
By: _____
Its: _____

Broker:

By: _____

(TITLE)

Broker License Number

Tax ID Number

EXHIBIT "A"
FEE SCHEDULE

1. All pricing quote by Broker shall be per the daily rate sheet published by ACF.
2. No pricing will be honored unless and until the Broker has registered the price with ACF's pricing desk and in conforming with the price issued on the day of registration.
3. ACF will fund or purchase (closed loan) approval loans for Broker after review of all closing documents including properly executed assignments.
4. ACF reserves the right to change the terms and conditions of any program for new loans to be locked in from time at its sole discretion.
5. Broker may request, in writing, to withdraw a locked in loan. At the time the loan is withdrawn, ACF will determine any marketing loss to be paid by Broker. Broker will pay any marketing loss plus a \$125 underwriting fee.
6. At no time prior to closing, or within 180 days of closing, shall Broker take any action in solution of borrower to refinance.

BROKER'S ADDITIONAL RESPONSIBILITIES.

1. All loans submitted to ACF should include an original and one package. All "A" Paper loans be submitted direct to ACF's Corporate Office or ACF's selected underwriting office for final approval. Broker will only submit full credit packages meeting ACF's guidelines. Approval shall be submitted in the following manner.
2. Prepare originations for funding.
 - a. Receive prior approval from ACF or the selected underwriting office.
(Delegated Underwriting may be determine later)
 - b. If drawing documents, use designated documents service.
 - c. Accumulate, review and submit all outstanding conditions.
 - d. Lock loan in using ACF's Submission/Lock-in Form.

Initial: ACF _____, Broker _____

ADDENDUM TO MORTGAGE LOAN BROKER AGREEMENT

On all loans that are paid in full within 120days of first payment date, American Capital Funding's (ACF'S) current policy is to recapture the yield spread premium (YSP) paid to the broker. The repayment of the YSP by the broker to American Capital Funding is due within thirty days of receiving written notice form ACF.

Lender

Broker

**WESTLEND FINANCING, INC
DBA: AMERICAN CAPITAL FUNDING
8735 LAUREL CANYON BLVD., SUITE B
SUN VALLEY, CA 91352
818) 385-7500**

By: _____

By: _____

Title: _____

Title: _____

License Number: _____

Tax ID Number: _____

ADDENDUM TO MORTGAGE LOAN BROKER AGREEMENT

4. Termination

This Agreement shall terminate under the conditions set forth below:

F. Upon written notice form American Capital Funding, with or without cause.

Lender

Broker

**WESTLEND FINANCING, INC
DBA: AMERICAN CAPITAL FUNDING
8735 LAUREL CANYON BLVD., SUITE B
SUN VALLEY, CA 91352
818) 385-7500**

By: _____

By: _____

Title: _____

Title: _____

License Number: _____

Tax ID Number: _____