



BROKER ORIGINATION AGREEMENT

This BROKER ORIGINATION AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, 200_____, by and between AgriCap Financial Corporation (“AgriCap”), a Delaware corporation and _____ (“Broker”), a(n) _____ [legal entity].

I. RECITALS

AgriCap is in the business of originating and purchasing mortgage loans secured by commercial real property (each, a “Loan”) and Broker is in the business of originating such types of Loans by taking and processing loan applications from prospective applicants and placing these applications on a non-exclusive basis with mortgage lenders such as Lender, who underwrite, close and fund approved loans. AgriCap and Broker have agreed to enter into a non-exclusive arrangement under which Broker solicits prospective applicants for Loans and AgriCap underwrites and, upon approval of the application therefore in its sole discretion, funds such Loans, with the intention of selling such Loans to subsequent purchasers in the secondary mortgage market (“Investors”) The purpose of this Agreement is to define the duties and responsibilities of, and the consideration to, each party hereto in this arrangement.

NOW, THEREFORE, in consideration of the premises and the mutual promises set forth herein, AgriCap and Broker agree as follows:

II. BROKER’S DUTIES

- Registration of Loan Application Packages:** Broker may register with and deliver to AgriCap for approval and funding Loan Application Packages for loans processed and packaged by Broker, subject to the warranties, representations and agreements set forth herein and including any policies and procedures contained in announcements, bulletins, memoranda or other similar communications delivered to Broker all of which are hereby incorporated herein by reference as if they were more fully set forth herein.
- Loan Application Package Review and Loan Approval:** Loan Application Packages solicited by Broker shall be submitted to AgriCap, which shall, in its sole and absolute discretion, determine the acceptability to AgriCap of the proposed terms, the creditworthiness of the loan applicant and the adequacy of the real estate intended as security for the Loan.
- Non-Exclusive Agreement:** Nothing contained herein shall obligate Broker to submit to AgriCap all Loan Application Packages that it brokers, it being understood that this shall be a non-exclusive agreement
- Loan Commitments and Delivery of Documents to Loan Applicant:** Prior to the approval of a Loan Application Package by AgriCap, Broker shall not make any representations that Broker is authorized to approve a Loan Application Package on AgriCap’s behalf.

5. Loan Applicant Fees and Charges:

(a) AgriCap acknowledges that in originating, processing and, if applicable, closing a Loan, Broker will be performing essential services and furnishing certain goods and/or facilities for the benefit of AgriCap or of the loan applicant, or both, for which Broker shall be entitled to reasonable compensation. With respect to each Loan, Broker shall have taken the loan application from the loan applicant and shall have performed for services as agreed between Broker and AgriCap.

(b) Broker shall be entitled to negotiate with and receive from the loan applicant a reasonable fee for its services rendered and goods and/or facilities furnished, such fee not to exceed three (3%) percent inclusive of all income derivable by the Broker from all parties as part of a loan origination; provided, that, such broker fee, including any yield spread premium, servicing released premium, back-end points or other indirect or lender-paid compensation, however denominated, does not exceed the fee, or range of fees, that would be typical in similar transactions in similar markets and would be commensurate with that amount normally charged for similar services, goods or facilities.

(c) In connection with the origination of each Loan, Broker shall comply with all applicable State and Federal statutes, rules, and/or regulations. Such compliance shall include, without limitation, disclosing all fees and charges (including, without limitation, mortgage insurance and any Broker compensation (*e.g.*, any yield spread premium)), and providing to each applicant a Good Faith Estimate meeting the Real Estate Settlement Procedures Act (RESPA) within 3 days of receipt of the Loan Application.

6. Loans Closed by Broker.

(a) Loans shall be closed in the name of AgriCap and, subject to Broker's right to its compensation hereunder, Broker hereby assigns to AgriCap, at the time of submission of an application to AgriCap, all right, title and interest in and to the related Loan Application Package. Third party originated loans are not eligible for either closing or sale to AgriCap. Notwithstanding the foregoing, in the event a Loan is approved and accepted by AgriCap and closed in the name of Broker due to the requirements of applicable law, Broker shall assign, transfer, convey and deliver the Loan to AgriCap (including all servicing rights thereto), and endorse the related promissory note, in accordance with the provisions of any applicable policies and procedures.

(b) Broker agrees that, while it is not primarily responsible for retrieving, obtaining, and delivering standard post-closing documents required to complete closed loan packages within the time frames established by AgriCap, it will cooperate expeditiously in assisting AgriCap in such retrieval, if requested. Broker shall use its best efforts to assist in delivering such documentation affecting the marketability and insurability of the Loan, regardless of the limited responsibility of the Broker to obtain standard post-closing documentation to the extent such documentation was furnished or prepared by Broker. If AgriCap incurs loss due to Broker's failure to assist in retrieving, obtaining, and delivering such documents in a timely manner (*i.e.*, in keeping with commitment deadlines and post-closing documentation deadlines), then, at AgriCap's option and upon written notice thereof, Broker will reimburse AgriCap for such loss in accordance with the terms set forth in Section 10 of this Agreement.

7. Confidential Information:

(a) "Confidential Information" means all written information provided by AgriCap to Broker in connection with AgriCap's loan programs, including policies, guidelines, credit criteria, business practices, plans or proposals, all information provided by AgriCap to Broker regarding an Applicant's transaction which are the subject of this Agreement and Applicant Information. "Applicant Information" means all information related to Applicant provided or developed by Applicant, Broker, or AgriCap, regardless of whether AgriCap's or Broker's relationship with Applicant ceases, including nonpublic information as defined by federal law, including, but not limited to, the Gramm-Leach-Bliley Act, as it may be amended, any regulations promulgated hereunder and any other customer information protected by applicable state law. Broker shall take all necessary precautions to keep confidential the Confidential Information and shall take all necessary precautions to assure observation of this Agreement by its Representatives. Broker shall in any event be responsible for any breach of this Agreement by any Representative.

(b) Until AgriCap has approved the Loan and the Applicant has accepted the offer of credit, Broker can disclose Applicant Information to third parties as permitted by Applicant. In the event that Broker or any of its representatives receives any request, whether formal or informal, including, without limitation, any

interrogatory or subpoena issued by any person, or any private, public, or governmental organization, agency, department, bureau, and/or other entity seeking the disclosure of any Confidential Information, Broker will notify AgriCap of request within two business days of receipt of same so that AgriCap may seek an appropriate protective order. Broker will use its best efforts to obtain or assist AgriCap in obtaining such a protective order. Broker may disclose Applicant Information relating to a Loan if requested or required by Broker's regulatory authority without complying with the notification provisions of this section.

III. BROKER'S REPRESENTATIONS AND AGREEMENTS

1. **Authority:** Broker warrants and represents that:

- (a) As of the date of this Agreement and throughout the term of this Agreement, it is and will remain duly organized and validly existing as a corporation, partnership, or other form of organization in good standing under the laws of the jurisdiction or its organization; and it has and will have the requisite power and authority to enter into and perform this Agreement;
- (b) As of the date of this Agreement and throughout the term of this Agreement, it has and will have the minimum net worth for a licensed mortgage broker, mortgage banker, or lender, in the states in which it conducts loan originations and, if applicable, maintain a minimum net worth in accordance with the certification requirements published by the Department of Housing and Urban Development (HUD) and/or the Department of Veterans Affairs (VA), and that in the event of any change in its good standing with state or federal banking authorities or a change in its ability to meet the net worth requirements mandated by state, federal, and, if applicable, HUD/VA regulations, the Broker shall promptly notify AgriCap in writing, in the manner prescribed herein;
- (c) This Agreement has been duly authorized, executed and delivered to AgriCap and constitutes a valid, legally binding and enforceable agreement, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, receivership, moratorium, or other laws relating to or affecting the rights of creditors generally, and by general equity principles;
- (d) The execution and performance of this Agreement will not violate any provision of any organizational document, instrument, agreement, judgment, order, statute or regulation by which Broker is bound to which it is a party or require the consent of any other person or governmental authority (unless such consent has been obtained); and,
- (e) There is no action, proceeding, or investigation pending, or, to Broker's knowledge, threatened, that has or would have an adverse effect on Broker's performance of its obligations under this Agreement or which questions the validity of the Agreement or of any action taken or to be taken pursuant thereto.

2. **Indemnification and Release:**

- (a) Broker shall indemnify, defend, and hold harmless AgriCap and its Affiliates, and directors, officers, agents, and employees, successors and/or assigns, from and against any and all damage, loss, liability, cost, actions, causes of action, claims, demands or expense both direct and indirect (including without limitation reasonable legal and accounting fees and expenses actually incurred) by whomsoever asserted, including but not limited to the claims of: (i.) the Applicant arising directly or indirectly out of the transaction which is the subject matter of this Agreement; and, (ii.) any person or persons who prosecute or defend any actions or proceedings as representatives of or on behalf of any class or interest group, or any governmental instrumentality, body, agency, department or commission, or any administrative body or agency having jurisdiction pursuant to any applicable statute, rule, regulation, order or decree which may arise or be incurred as a result of any action or inaction by broker, including, but not limited to, a breach of any covenant, condition, representation or warranty arising under this Agreement, except as such damage, loss, liability, cost, action, cause of action, claim, demand or expense is caused solely by the negligence or willful misconduct of AgriCap.
- (b) Without limiting the generality of this section, Broker will adhere to all the terms and conditions set forth in the other sections of this agreement, AgriCap's product guidelines, any policies and procedures contained in program announcements, bulletins, memoranda or other similar communications delivered to Broker, as the same may be amended from time to time, subject to the warranties, representations and agreements set forth therein, all of which are hereby incorporated by reference as if they were more fully set forth herein.

(c) Broker understands and agrees that AgriCap may report information about any application for a Loan that AgriCap reasonably believes to contain misrepresentations and/or irregularities to any applicable regulatory agency, including without limitation HUD or any State banking department, and/or to any mortgage industry background database, including, without limitation, databases operated by Mortgage Asset Research Institute, Inc., such as the Mortgage Industry Data Exchange (“MIDEX”), and Broker hereby releases AgriCap from any and all damage, loss, liability, costs, actions, causes of action, claims, demands or expense that may arise from the reporting or use by any database subscriber of any information submitted by AgriCap with respect to Broker and its employees to any mortgage industry background database.

3. **Cure or Repurchase Obligation:** Upon discovery of any evidence of fraud, misstatement of material fact in the origination or sale of the Loan, and/or breach of any section of this Agreement (each such event a “Defect”) about which Broker knew or should have known, AgriCap shall notify Broker and Broker shall have the opportunity to cure such Defect within the time prescribed by AgriCap to the full and complete satisfaction of AgriCap. If after receiving such notice Broker is unable to cure such Defect within the prescribed time, then Broker may be required either to (i.) repurchase such defective loan at the repurchase price required by AgriCap (“Repurchase Price”), (ii.) agree to such other remedies that will cure such Defect, including without limitation provision of additional indemnification, or, (iii.) refund any portion of the Loan purchase price, such refund to be in an amount sufficient to reimburse or otherwise compensate AgriCap for any and all losses attributable to the defective loan.

4. **Repurchase Price:** With respect to any mortgage loan required to be repurchased pursuant to this agreement, the repurchase price shall be an amount equal to (i.) the outstanding principal balance of such mortgage loan at par value, plus (ii.) accrued interest to the date of repurchase, plus (iii.) any premium or similar amounts paid to the Broker at the time of original purchase and/or funding, plus (iv.) any such costs documented in writing by AgriCap.

5. **Early Refinance or Early Default:** In the event that the Broker procures the refinance of a loan previously purchased and/or funded by AgriCap (either closed in the name of the Broker or another AgriCap) within 180 days of the purchase and/or funding date by AgriCap, or if the mortgagor(s) fails to make the first payment (“First Payment Default”), and Broker was aware, or through the exercise of its best efforts should have been aware, of fraud or misrepresentation on the part of said mortgagor(s), Broker shall repay AgriCap, within thirty (30) days, the greater of any premium or similar amounts paid to broker by AgriCap at the time of original purchase and/or funding of the Loan, or an amount sufficient to compensate AgriCap for any fees paid and/or losses incurred in connection with the subject loan.

IV. OTHER PROVISIONS

1. **Right of Offset:** Broker agrees that AgriCap shall have the right, to the extent permitted by law, to offset against any amounts to which Broker may be entitled hereunder any amounts owed or hereafter owed by Broker to AgriCap, whether under this Agreement or otherwise.

2. **Termination:** Either party may terminate this Agreement with or without cause at any time by giving written notice to the other party, and such termination shall be effective upon the party’s receipt of written notice thereof any such termination will not affect applications for Loans, if any, that have been submitted to and approved by AgriCap prior to the effective date of termination, provided that any such applications clear a quality assurance audit. In the event that the Broker terminates this Agreement without cause, then, as liquidated damages, AgriCap may recover an amount equal to AgriCap’s applicable administrative fees incurred or paid in connection with any underwritten and approved locked loans that do not fund within 120 days from the date of termination due to Broker. Any mortgage loan package currently in process will be underwritten unless otherwise agreed to in writing by the parties. However, in the event that AgriCap, in its sole discretion, reasonably determines that there has been fraud or misrepresentation concerning Loans registered by Broker, or any other material breach by Broker of this Agreement, AgriCap reserves the right to terminate this Agreement immediately and without prior notice, and to refuse to close any Loans registered by Broker prior to such termination regardless of whether the interest rate

and points of such Loans had been locked in by AgriCap. The parties' rights and obligations under this Agreement and in this Section will remain in full force and effect notwithstanding any termination of this Agreement. All other rights and obligations of the parties hereto that arose prior to termination shall survive the effective date of termination of this Agreement.

3. No Agency: This Agreement and transactions entered into pursuant hereto shall not create between Broker and AgriCap a relationship of agency, legal representation, joint venture, partnership, or employment, and Broker and AgriCap agree that neither party is in any way authorized to make any contract, agreement, warranty, or representation, or to create any obligation, express or implied, on behalf of the other Broker is an independent contractor, and is hereby expressly prohibited from holding itself out as an agent, representative, or employee of AgriCap or as having any endorsement from or affiliation with AgriCap. Broker is prohibited from using AgriCap's name or logo in any form of advertising without AgriCap's express prior written consent.

4. Assignment: Broker shall not have the right to assign this Agreement or any of its duties, obligations or rights hereunder without the prior written consent of AgriCap. AgriCap may assign this Agreement, in whole or in part, to its subsidiary or to any purchaser or transferee to whom AgriCap may sell or transfer any of the Loans subject to this Agreement, without the consent of Broker.

5. Successors in Interest: Except as otherwise provided herein, this Agreement and all of the terms and conditions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

6. Notices: Any notice or demand that is required or permitted to be given by a provision of this Agreement shall be deemed to have been sufficiently given if either served personally or sent by prepaid first class, registered, or certified mail, addressed to the party at its address set forth below:

Broker:	AgriCap:
_____	AgriCap Financial Corporation
Company Name	
_____	350 S. Figueroa Street, Suite 501
Street Address	
_____	Los Angeles, CA 90071
City, State, ZIP Code	
Attention: _____	Attention: Chief Executive Officer

Either party may change its address by notice to the other.

7. Arbitration: At AgriCap's sole option, any disagreement, difference, or controversy between Broker and AgriCap involving the construction, operation, or application of any term, provision, or condition of this Agreement shall be subject to the Federal Arbitration Act and submitted to binding arbitration in the City of Los Angeles and State of California, in accordance with the commercial arbitration rules of the American Arbitration Association. Arbitration shall be before a panel of three neutral arbitrators, who shall have the following qualifications: (i.) an attorney who has practiced in the area of commercial law for at least ten years or a retired federal district or circuit court judge or a retired state judge of a civil court of general jurisdiction or an appellate court; (ii.) a second attorney or retired judge with the same qualifications stated in clause (i.); and (iii.) a person with at least ten (10) years experience in the wholesale mortgage banking business. The decision of the arbitration panel shall be final, conclusive, and binding upon Broker and AgriCap, and may be entered as a judgment in any court of competent jurisdiction. The non-prevailing party shall be responsible for and pay the costs and expenses of the arbitration, its own attorneys' fees, and the attorneys' fees and disbursements of the prevailing party.

8. Governing Law; Forum Selection; Severability: This Agreement shall be governed by and construed in accordance with the laws of the State of California without giving effect to the conflict of law principles thereof. Subject, however, to the provisions of Section 17, each of the parties irrevocably submits to the jurisdiction of any state or federal court located in Los Angeles County, California, over any action, suit or proceeding to enforce or defend any right under this Agreement or otherwise arising from any transaction existing in connection with this Agreement. If any provision of this Agreement is found to be invalid, such invalidity shall not affect any other provision hereof.

9. Attorneys' Fees: In the event Broker defaults in any of its warranties, representations, or obligations under this Agreement or in any document or obligation relating to this Agreement, it shall pay AgriCap its reasonable attorneys' fees and expenses incurred in enforcing its rights hereunder.

10. Waiver: No modification or waiver of any provision of this Agreement, nor any consent to any departure by AgriCap therefrom shall in any event be effective unless the same shall be in writing, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Neither any failure nor any delay on the part of AgriCap in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power, or privilege. The fact that AgriCap may underwrite a Loan, inspect the mortgage file or investigate any matter pertaining to a Loan shall not constitute a waiver of any term, provision, covenant, warranty, representation or condition of Broker or constitute a waiver of any of AgriCap' rights under this Agreement.

11. Entire Agreement; Amendments: This Agreement constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, representations, and understandings. All changes, additions, or deletions to this Agreement must be made in writing and signed by each of the parties hereto; provided, however, that AgriCap may from time to time amend or update its guidelines by delivering program announcements, bulletins and the like to Broker, each of which shall be effective as indicated therein.

12. Acceptance: This Agreement shall become binding upon acceptance by AgriCap at its home office in Los Angeles, California.

13. Counterparts: This Agreement may be executed in counterparts, each of which shall be deemed an original, and both of which, taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, AgriCap and Broker have executed this Agreement as of the day and year first above written.

Broker: _____

AgriCap Financial Corporation

Signature

Signature

Title

Title

Please Print Name

Please Print Name