

**HAMILTON MORTGAGE CORPORATION  
WHOLESALE LENDING BROKER AGREEMENT**

THIS WHOLESALE LENDING BROKER MORTGAGE PURCHASE AGREEMENT ("Agreement") is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between HAMILTON MORTGAGE CORPORATION ("HMC "), an Alabama Corporation whose principal office is located at #1 Independence Plaza Suite 416; Birmingham, AL 35209, and \_\_\_\_\_ ("Broker"), a(n) \_\_\_\_\_ Company whose principal office is located at:

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**RECITALS**

WHEREAS, the Broker desires to originate and offer to HMC and HMC desires to fund and underwrite certain residential Mortgage Loans (as hereinafter defined) from Broker, pursuant to the terms of this Agreement.

WHEREAS, HMC , as part of its regular business activities from time to time will underwrite and fund Mortgage Loans meeting certain criteria.

WHEREAS, Broker is in the business of originating and brokering Mortgage Loans and desires to sell and assign these Mortgage Loans to HMC and which are to be underwritten pursuant to HMC 's underwriting Guidelines in effect at the time of each sale.

NOW, THEREFORE, in consideration of the promises and mutual undertakings contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**ARTICLE I  
DEFINITIONS**

In addition to the words and terms elsewhere defined in this Agreement, the following words and terms shall have the following meanings:

**1 Definitions**

- 1.0 **Agency or Agencies** means the Federal National Mortgage ("Fannie Mae"), Federal Home Loan Mortgage Corporation ("Freddie Mac"), Government National Mortgage Association ("Ginnie Mae"), Federal Housing Administration ("FHA"), Veterans Administration ("VA"), Department of Housing and Urban Development ("HUD"), or any other federal or state agency which purchases mortgage loans.
- 1.1 **Assignment of Mortgage** means an assignment by Broker to HMC of the beneficial and legal interest in a Mortgage, or applicable equivalent sufficient under the laws of the state in which the property is located to provide adequate notice in the appropriate public records of the sale, transfer, and conveyance of the Mortgage to HMC.
- 1.2 **Borrower** means the person or persons who submit an application to Broker, receive a Mortgage Loan, and are obligated to pay under the terms of the Note.
- 1.3 **Business Day** means any day on which HMC is open to the public for business.
- 1.4 **Closing** means the time when the Borrower signs a Note evidencing a Mortgage Loan and the Mortgage securing payment of said Note.
- 1.5 **Closing Package** means the group of documents and other information or materials as defined in the Guidelines which must be delivered to HMC under the terms set forth herein.

- 1.6 **Commitment** means the written correspondence issued by HMC to Broker which indicates that HMC agrees to underwrite a specific Mortgage Loan if all conditions stated in the Commitment, this Agreement and Agency Guidelines are met.
- 1.7 **Disbursement Date** means the date that funds for a Closing, evidenced by an executed Note, are disbursed on behalf of the Borrower by the settlement agent.
- 1.8 **Guidelines** means all policies, procedures, and requirements of HMC made available to the Broker and applicable to the registration, underwriting, closing and funding of Mortgage Loans pursuant to this Agreement. HMC may modify the Guidelines in part or in whole at any time with or without notice to Broker. The Guidelines, and all revisions thereto, are expressly incorporated herein by this reference and made a part of this Agreement in all respects, and shall be binding upon the parties; provided, however, that the Broker shall be entitled to sell Mortgage Loans to HMC only if, and for so long as, Broker shall have been authorized to do so by HMC in writing.
- 1.9 **Laws** means all federal, state, county, local and foreign laws, regulations, licensing requirements, ordinances, codes, rules, and orders that may be applicable to Broker's business and ability to perform its obligations hereunder, all as may be amended or supplemented from time to time.
- 1.10 **Mortgage** means a valid and enforceable mortgage, deed of trust, or other security instrument pledging property as security for payment of the Note.
- 1.11 **Mortgage Loan** means a loan secured by a first lien on a one to four family dwelling which is the subject of this Agreement, evidenced by a Note and secured by a Mortgage, and including the Mortgage Loan Documents and all other instruments evidencing a Borrower's indebtedness.
- 1.12 **Mortgage Loan Amount** means the face amount of the Note for all Mortgage Loans delivered under this Agreement
- 1.13 **Mortgage Loan Documents** means the Closing Package and any and all other documents creating, evidencing, or securing a Mortgage Loan, which are required to be maintained or prepared by Broker pursuant to this Agreement or the Guidelines.
- 1.14 **Mortgage Loan Program** means a type of Mortgage Loan, the terms and conditions of which are described in the Guidelines, and which can be offered to prospective Borrowers as an eligible Mortgage Loan under the terms of this Agreement.
- 1.15 **Mortgaged Property** means the property encumbered by the Mortgage.
- 1.16 **Note** means the valid, binding, and enforceable instrument which evidences a Borrower's obligation to repay a Mortgage Loan secured by a Mortgage.
- 1.17 **Original Credit Documents** means all original application, appraisal, credit, and underwriting documents for all Mortgage Loans delivered under the terms of this Agreement.
- 1.18 **Purchase Price** means the price paid by HMC for a Mortgage Loan as describe in Section 2.3 hereinafter.
- 1.19 **Underwrite or Underwriting** means the examination of a Borrower's application for the purposes of determining whether to fund a Mortgage Loan from Broker.

**ARTICLE II**  
**PURCHASE AND SALE OF MORTGAGE LOANS**

**1.0 Eligible Loans**

- 1.0.1 Broker hereby agrees to offer to HMC all of its rights, title and interest in residential Mortgage Loans and HMC hereby agrees to underwrite and fund Mortgage Loans from Broker subject to HMC's sole discretion pursuant to the terms and conditions stated herein.
- 1.0.2 HMC will underwrite and fund only those Mortgage Loans eligible for the Mortgage Loan Programs offered by HMC, and that fully comply with the standards established by HMC. Broker acknowledges that HMC reserves the right to alter, add, or delete Mortgage Loan programs from time to time, with or without notice to Broker.
- 1.0.3 Notwithstanding anything in this Agreement to the contrary, HMC shall only be obligated to underwrite and fund a Mortgage Loan i) if a Commitment to fund the Mortgage Loan was issued by HMC, and; ii) if Broker and the Mortgage Loan strictly conform with the terms of the Commitment and this Agreement, and; iii) if the Mortgage Loan is salable to Fannie Mae, Freddie Mac, or a prudent investor in the recognized secondary market, or, if underwritten by HMC, conforms with all of HMC 's portfolio underwriting requirements; and, iv) if all documents relating to the Mortgage Loan are complete and acceptable to HMC in its sole and absolute discretion.
- 1.0.4 HMC shall determine, in its sole discretion, whether a Mortgage Loan meets the requirements set forth in this Agreement. Broker is under no obligation to submit, and HMC is under no obligation to fund, a specific number of Mortgage Loans under this Agreement.

**1.1 Submission and Approval**

- 1.1.1 Broker shall be the originator of all loans offered for purchase under the Agreement. Broker shall be responsible for providing loan applications and related disclosures required by any and all Laws to loan applicants and for obtaining executed loan applications and disclosure forms.
- 1.1.2 Broker shall obtain appraisal, credit, and all other documentation required by HMC for each Mortgage Loan for which an individual borrower has authorized Broker to provide financing. Broker shall present the loan application to HMC for its underwriting review, along with property and credit information as specified in the Guidelines.
- 1.1.3 The appraisal must be performed by an approved HMC appraiser. The appraisal can not be performed by an employee, agent or affiliate of the Broker.
- 1.1.4 All loans shall be underwritten for purchase on an individual basis by HMC. Upon acceptance and approval of any such purchase, HMC, in its sole discretion, shall issue a Commitment to Broker for the purchase of the Mortgage Loan stating, where applicable, terms and conditions of purchase subject to which HMC will buy the Mortgage Loan. Decisions as to the acceptability of Mortgage Loans for purchase by HMC shall be solely at the discretion of HMC. HMC shall have no responsibility to purchase any Mortgage Loan until all underwriting and closing conditions have been met.
- 1.1.5 Any Commitment issued by HMC is voidable by HMC if HMC believes that Broker or its agents, employees or assigns, have breached any material term or condition of the Agreement as to any Mortgage Loan offered by Broker for purchase, or as to any Mortgage Loan actually purchased by HMC from Broker in the past.

**1.2 Lock-In**

- 1.2.1 HMC may, in its sole discretion, provide to Broker a fifteen (15), thirty (30), forty five (45), sixty (60) or (90) ninety day lock-in which shall protect the price, terms, rate, loan program, loan limit, loan-to-value ratio, points and fees for each Mortgage Loan. HMC shall honor the terms of any Mortgage Loan that has been locked-in provided that the Broker has complied with the terms of this Agreement. HMC reserves the right to change the terms and conditions of new programs for new loans to be locked-in from time to time in its sole discretion.
- 1.2.2 Broker agrees to utilize best-efforts delivery on all Mortgage Loans locked-in with HMC. Broker will

use its "best-efforts" to close the Mortgage Loan according to the terms of the lock-in and Broker agrees that delivery of Broker's Mortgage Loans that are locked-in with HMC is mandatory. Should HMC discover that Broker has delivered a Mortgage Loan(s) previously locked-in with HMC to another institution HMC may in its sole discretion, immediately declare an event of default under this Agreement and, notwithstanding any other remedies declared in this Agreement, declare all outstanding Commitments void, and Broker shall be liable to HMC for any losses either direct, indirect, or consequential caused by acts of Broker including but not limited to HMC's attorney fees if in HMC's discretion Broker has historically pulled more than 30% of their locked loans from HMC not including loans that have been locked with HMC but do not close for reasons other than i) the Mortgage Loan cannot be approved by HMC, or; ii) the Borrower withdraws its Mortgage Loan application and subsequently does not close the loan.

- 1.2.3 Loans may be locked by Broker during normal business hours until 4:00 p.m. Locked loans are to be submitted to HMC by broker utilizing a Broker Lock Sheet if locked via email or facsimile; otherwise a lock may be called in to HMC's offices. A confirmation lock will be faxed back to the Broker upon completion of the lock by HMC in order to confirm the loan program and pricing.

### **1.3 Closing and Delivery**

- 1.3.1 HMC will purchase all Mortgage Loans from the Broker on the Disbursement Date. Broker represents, covenants and warrants that all Mortgage Loans shall be closed by a title agency or settlement attorney approved by HMC and that no officer, employee or agent of Broker shall close any Mortgage Loan sold to HMC. Funds shall be sent by HMC directly to title agency or settlement attorney for disbursement.
- 1.3.2 HMC will agree to release funds for a closing only if i) the Broker has been issued a Commitment indicating the final approval of the Mortgage Loan application by HMC, and ii) the Mortgage Loan has a valid lock-in with HMC that is not expired.

## **ARTICLE III REPRESENTATIONS, WARRANTIES, AND COVENANTS**

### **2 Representations and Warranties Regarding Mortgage Loans**

- 2.0.1 Broker warrants that all Mortgage Loan Documents submitted by Broker for each Mortgage Loan are in every respect valid and genuine; being what they support to be and all information submitted in each Mortgage Loan Document is true and accurate. The Mortgage Loan Documents have been duly executed by Borrower, acknowledged and sent for recording; the Borrower is the true and only obligor on the Mortgage Loan and is the real party in interest thereon, and there is no verbal understanding or written modification which would affect the terms of the Note or Mortgage.
- 2.0.2 The full principal amount of the Mortgage Loan has been advanced on behalf of the Borrower by the Settlement Agent at the time of assignment to HMC. The unpaid balance of the Mortgage Loan is as represented by Broker. All costs, fees, and expenses incurred in making, closing, and recording the Mortgage Loan have been paid.
- 2.0.3 Each Mortgage Loan assigned to HMC is at the time of assignment a valid first lien on the Mortgage Property described in the Mortgage. The Mortgage Property is free and clear of all encumbrances and liens having priority over the lien of such Mortgage, and no part of the Mortgage Property has been released from the lien of the Mortgage. Each Mortgage is duly executed and has been sent for recording. The Mortgage Property is real estate upon which is located a one-to-four unit residential dwelling or investment property if applicable. Broker warrants to the best of its knowledge, that the Mortgage Property is free from damage (including but not limited to any damage by fire, windstorm, or other casualty) and in good condition. Brokers will defend the Mortgage Loan against all claims whatsoever, and it has full right, title and authority to transfer the same.
- 2.0.4 Broker is the sole originator of the Mortgage Loan. Broker has the authority to sell, transfer, and assign such Mortgage Loan on the terms herein set forth. There has been no assignment, sale or pledge thereof by Broker, and as of the date of purchase by HMC, the Mortgage Loan will be free and clear of claims or encumbrances of any type.

- 2.0.5 Loans shall be closed in the name of Hamilton Mortgage Corporation unless otherwise required or otherwise authorized by HMC to close in Brokers name. Broker acknowledges that any executed agreement, power of attorney, or consent resolution that grants HMC the authority to execute, assign, or endorse Mortgage Loan Documents on behalf of the Broker does not release Broker from the responsibilities listed herein.
- 2.0.6 A title insurance commitment and title insurance policy on currently prescribed American Land Title Association ("ALTA") forms (or such other form approved in writing by HMC and acceptable to Fannie Mae or Freddie Mac) will be furnished to HMC and will insure HMC, its successors and/or assigns, without exceptions, as holding the first lien against the Mortgage Property for the full amount of the Mortgage Loan.
- 2.0.7 There is in force for each Mortgage Loan a hazard insurance policy meeting the requirements of HMC as set forth in the Guidelines. There is in force such flood insurance policy as is required under the Flood Disaster Protection Act of 1973, as amended, and it's implementing regulations.
- 2.0.8 All necessary steps have been taken by Broker to make and keep all guarantees and insurance as required by HMC valid and enforceable, including, without limitation, the payment by Broker of all initial up-front mortgage insurance. Broker shall make HMC the loss payee on each title policy, mortgage insurance policy, hazard insurance policy, and flood insurance policy. With respect to mortgage insurance, Broker agrees there are no captive reinsurance agreements or similar arrangements in place with any mortgage insurance provider with regard to any Mortgage Loan sold under this Agreement. Furthermore, Broker agrees to compensate HMC for under-disclosure of mortgage insurance coverage as required by the Commitment issued by HMC on Mortgage Loans delivered to HMC.
- 2.0.9 Any and all Laws applicable to the Mortgage Loans have been complied with, including but not limited to: i) the Federal Truth in Lending Act of 1969 ("TILA"), and Federal Reserve Regulation Z thereunder; ii) the Federal Equal Credit Opportunity Act ("ECOA"), and Federal Reserve Regulation B thereunder; iii) the Federal Fair Credit Reporting Act; iv) the Federal Real Estate Settlement Procedures Act of 1974 ("RESPA"), and Regulation X thereunder; v) the Flood Disaster Protection Act of 1973; vi) the Fair Housing Act; vii) the Home Mortgage Disclosure Act; viii) the Financial Institutions Reform Recovery and Enforcement Act of 1989; ix) the Homeowners Protection Act of 1998; x.) the Privacy of Consumer Financial Information Act; xi) any and all licensing requirements relating to Broker's rights to originate and sell Mortgage Loans; xii) the requirements of any agency that regulates Broker; xiii) any and all laws, rules, ordinances, and regulations relating to adjustable rate mortgages, negative amortization, and graduated payment mortgages. The Broker shall maintain in its possession, available for inspection by HMC, the Office of Thrift Supervision ("OTS"), and the Federal Deposit Insurance Corporation ("FDIC"), and shall deliver to HMC, upon request, evidence of compliance with all such requirements.
- 2.0.10 Broker understands HMC intends to sell the Mortgage Loans to investors in the secondary market. Broker represents, covenants, and warrants that in submitting Mortgage Loans to HMC that it is in full compliance with all pertinent requirements of Fannie Mae, Freddie Mac, Ginnie Mae, FHA, and VA.
- 2.0.11 Broker has no knowledge of any circumstance or conditions with respect to any Mortgage Loan, Mortgage Property, the Borrower, or the Borrower's credit standing that can be reasonably expected to cause private institutional investors, Fannie Mae, Freddie Mac, or Ginnie Mae to regard the loan as an unacceptable investment, cause the Mortgage Loan to become delinquent or adversely affect the value or marketability of the Mortgage Loan.
- 2.0.12 All Mortgage Loan Documents prepared by Broker or Broker's agent are genuine, accurate, and complete and meet the requirements and specifications established by Fannie Mae/Freddie Mac and product descriptions and underwriting Guidelines listed in the Guidelines. All Mortgage Loan Documents are the current version required by Fannie Mae/Freddie Mac.
- 2.0.13 For each individual Mortgage Loan, Borrower shall execute appropriate documentation acknowledging that each such Borrower has received all necessary disclosures required by state and federal laws and regulations, including (if applicable) adjustable and balloon rate mortgage disclosures.
- 2.0.14 Broker warrants that there are no defaults in complying with the terms of any Mortgage Loan, and all taxes, governmental assessments, insurance premiums, water, sewage, and municipal charges relating to any Mortgage Loan which previously became due and owing have been paid, or an escrow of funds

has been established in an amount sufficient to pay for every such item which remains unpaid. Broker represents and warrants that it has not advanced funds, or induced, solicited, or knowingly received any advance of funds by a party other than the borrower, directly or indirectly, for payment of any amount required by the Mortgage Loan. Borrower has no rights of rescission, setoffs, counter-claims, or defenses to the Note or Mortgage securing the Note arising from the acts and/or omissions of the Broker in the origination, processing, or closing of the Mortgage Loan.

- 2.0.15 No mortgage brokers or other consultants or finders were consulted or contacted in connection with or in bringing about this Mortgage or this mortgage sale transaction that would be due a fee.
- 2.0.16 Broker covenants and agrees that compensation received by Broker shall not exceed the fair market value of its services. Broker agrees that it shall not accept any fee or other compensation except as permitted by applicable law and regulation, and that it has disclosed any fee or other compensation in writing to the Borrower and HMC as required by applicable law and regulation.
- 2.0.17 Broker warrants that total points and revenue fees including any yield spread premium paid by HMC, are less than or equal to 5% of the Mortgage Loan Amount. Fees for bona fide loan services that are passed through a non-affiliated third party may be excluded from the 5% limitation mentioned herein. HMC will not be required to purchase any Mortgage Loan which, in its sole discretion, has exceeded the aforementioned 5% limitation.
- 2.0.18 Broker warrants that each Mortgage Loan sold to HMC is not a "high cost loan" or "predatory loan" as defined by the Home Ownership and Equity Protection Act of 1994, specifically Section 32 of Regulation Z or any other state law or municipal ordinance.
- 2.0.19 Broker shall be responsible for 1098 reporting of origination or discount points to the Internal Revenue Service for Mortgage Loans originated by Broker under the terms of this Agreement.
- 2.0.20 Each of the above representations and warranties i.) applies to all Mortgage Loans sold by Broker to HMC , ii.) is for the benefit of HMC and its successors and/or assigns, iii.) continues in full force and effect for so long as the Mortgage Loan remains outstanding and for such time that HMC is subject to any risk of loss or liability as to any Mortgage Loan purchased from Broker, and iv.) is in addition to any other specific representations and warranties contained elsewhere herein.

## **2.1 Representations and Warranties Regarding the Broker**

- 2.1.1 Broker has all requisite power and authority to execute and enter into this Agreement and to perform the obligations required of it hereunder. The execution and delivery of this Agreement and all documents, instruments, and agreements required to be executed by Broker pursuant hereto, and the consummation of the transactions contemplated hereby, have each been duly and validly authorized by all necessary action of Broker. This Agreement constitutes a valid, legal, and binding agreement of Broker enforceable by HMC in accordance with its terms subject to bankruptcy, insolvency, reorganization, receivership, or other laws affecting rights of creditors generally, and general equity principles.
- 2.1.2 Broker is duly organized, validly existing and in good standing under the laws of the jurisdiction where it is organized. Broker has all licenses necessary to carry on its business as now being conducted, and is licensed and qualified to transact business and is in good standing in the states where the mortgaged property is located, if the laws of such state require licensing or qualification in order to conduct business of the type conducted by the Broker.
- 2.1.3 The execution, delivery, and performance of this Agreement by Broker, its compliance with the terms hereof and consummation of the transactions contemplated hereby will not violate, conflict with, result in a breach of, give rise to any right of termination, cancellation or acceleration under, be prohibited by or require any additional approval under i.) Broker's charter, by-laws, partnership agreement or other organizational documents, or any other material instrument or agreement to which Broker is a party or by which Broker is bound or which affects this Agreement; or ii.) any and all Laws, orders, injunctions, or decrees applicable to Broker.
- 2.1.4 No approval of the transactions contemplated by this Agreement from any entity, public or private, or any regulatory authority having jurisdiction over Broker is required, or if required, such approval has been obtained. There are no actions or proceedings pending, affecting Broker or any Mortgage Loans,

which would adversely affect its ability to perform hereunder.

- 2.1.5 There is no claim, litigation, investigation or proceeding pending or threatened against or otherwise materially adversely affecting Broker's business, performance of its obligations under this Agreement or the validity or enforceability of this Agreement or any Mortgage Loan sold under this Agreement and Broker has no knowledge of any circumstance indicating that any such suit, investigation, or proceeding is likely or imminent.
- 2.1.6 Broker has not in connection with this Agreement entered into any agreement, incurred any obligation, made any commitment or taken any action which might result in a claim for or an obligation to pay a sales or brokerage commission, finder's fee or similar fee or compensation with respect to this Agreement or the transactions contemplated hereby. Broker shall hold HMC harmless from and against any claim off any broker, agent, finder or other person who makes such a claim.
- 2.1.7 Broker shall provide HMC a copy of its license at every renewal. Broker shall provide HMC and its representatives with any necessary information and data concerning the affairs of Broker as HMC may reasonably request.
- 2.1.8 Broker shall cooperate with HMC in furnishing of documents and information as requested from time to time by HMC and shall comply with all procedures established by HMC for closing Mortgage Loans pursuant to this Agreement.
- 2.1.9 Neither this Agreement nor any statement, report or other document furnished or to be furnished pursuant to this Agreement or in connection with the transactions contemplated hereby contains any material untrue statement of fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading.
- 2.1.10 Broker agrees that it will maintain satisfactory lock and underwriting fallouts. Lock and underwriting ratios in excess of 25% may prompt HMC to place Broker into a watch or probation status. If Broker fails to maintain acceptable fallout ratios in HMC 's sole determination HMC , may in its sole discretion, terminate this agreement as provided herein.

## **2.2 Representations and Warranties Regarding HMC**

- 2.2.1 HMC is duly organized, validly existing and in good standing under the laws governing its formation and existence, has all licenses necessary to carry on its business as now being conducted, and is duly authorized and qualified to transact in each applicable state any and all business contemplated by this Agreement. HMC has all requisite power and authority to execute and deliver this Agreement and to perform all obligations required of it hereunder.
- 2.2.2 Any necessary approval of the transactions contemplated by this Agreement from each federal or state regulatory authority having jurisdiction over HMC has been obtained. There are no actions or proceedings pending or affecting HMC, which would adversely affect its ability to perform hereunder.
- 2.2.3 The consummation of the transactions contemplated by this Agreement are in the ordinary course of business of HMC and will not result in the breach of any term or provision of the charter or bylaws of HMC , or result in the breach of any term or provision of , or conflict with, or constitute a default under, or result in the acceleration of any obligation under, any agreement, indenture, loan or credit agreement or other instrument to which HMC or its property is subject, or result in the violation of any Law to which HMC or its property is subject.

**ARTICLE IV  
INDEMNIFICATION**

**4 Hold Harmless**

- 4.0.1 Broker hereby agrees to indemnify and hold harmless HMC , its successors and/or assigns, from any and all losses, liabilities, claims, damages, or costs of any nature, including without limitation attorneys' fees and costs, and actions suffered or incurred by HMC which arise out of, result from, or relate to: i) the breach by the Broker of any covenant, condition, term, obligation, representation or warranty contained in this Agreement, the Guidelines, or in any written statement, certificate, or Mortgage Loan Document furnished by the Broker pursuant to this Agreement or the Guidelines; or ii) any material act or omission of Broker or any employee or agent of Broker which adversely affects any Mortgage Loan registered with and funded by HMC hereunder. This indemnification shall survive any termination or cancellation of this Agreement.
- 4.0.2 In all actions with third parties in which HMC has the right to be indemnified hereunder, HMC shall have the complete and exclusive right to determine the conduct and defense of such legal proceeding or investigation with such third party including, without limitation, the right to compromise, settle, defend, or continue any such action.
- 4.0.3 Broker agrees to indemnify HMC from and against any errors and/or omissions committed by any user, including, but not limited to Broker's agents, that Broker provides access to HMC's systems and/or authorizes to order funds or documents on said agent's behalf from HMC's systems.

**ARTICLE V  
TERMINATION**

**5 Conditions of Termination.**

- 5.0.1 This Agreement may be terminated by either party at any time with or without just cause upon five (5) days prior written notice. Termination shall not affect or change the obligations of the parties with respect to outstanding Commitments to deliver or fund Mortgage Loans or limit Broker's duties or obligations to HMC under this Agreement.
- 5.0.2 Notwithstanding anything to the contrary herein, HMC may terminate this Agreement immediately, upon written notice to Broker, if Broker defaults in the performance of this Agreement, breaches any of its representations or warranties, or if Broker acts negligently, or if fraud is discovered as to any Mortgage Loan. Upon such termination for cause HMC's obligation under any existing Commitment shall terminate, although HMC may continue to honor any outstanding Commitment in its sole discretion.

**ARTICLE VII  
MISCELLANEOUS**

**6 Miscellaneous Provisions**

- 6.0.1 Relationship of Parties. Broker is an independent contractor and this Agreement and transactions entered into pursuant hereto shall not create between Broker and HMC a relationship of agency, legal representation, joint venture, partnership, debtor/creditor, or employment. Broker and HMC agree that neither party is in anyway authorized to make any contract, agreement, warranty, or representation, or to create any obligation, express or implied, on behalf of the other.
- 6.0.2 Assignment. This Agreement shall be binding and inure to the benefit of and be binding upon the parties hereto and their successors and assigns. This Agreement is not assignable by Broker without the prior written consent of HMC. A change in ownership, merger, or consolidation of Broker shall be considered an assignment for purposes of this Agreement.
- 6.0.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama and any applicable federal laws. Each of the parties irrevocably submits to personal jurisdiction in the state court located in Jefferson County, Alabama, or the United States District Court

for the Northern District of Alabama 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.

- 6.0.4 Section Headings. Section headings are for reference only and shall not effect the interpretation or meaning of any provision of this Agreement.
- 6.0.5 Entire Agreement. This Agreement, any addendums attached hereto and executed by all parties integrates all the terms and conditions mentioned herein or incidental hereto and supersedes all oral negotiations or prior writings in respect to the subject matter hereof and thereof.
- 6.0.6 Severability. Any provision of this Agreement that is prohibited or unenforceable in a jurisdiction, shall be deemed ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction, and, to this end, the provisions hereof are severable. This Agreement may be executed in counterparts, all of which taken together shall constitute one and the same instrument.
- 6.0.7 Survival of Warranties. The representations, warranties, covenants, agreements and every other obligation contained in this Agreement shall survive the termination of this agreement and the transactions provided for herein and shall be fully applicable whether or not HMC relies thereon or has knowledge of any facts at variance therewith.
- 6.0.8 Modification and Waiver. HMC shall have the right to amend this Agreement with written notice to Broker. At HMC's request, Broker shall acknowledge changes to the Agreement in writing, but Broker's failure to provide written acknowledgement of any amendment shall not impair the enforceability of such amendment. Nothing in this paragraph shall be interpreted to restrict HMC's right to modify the their Guidelines as provided for elsewhere in this Agreement.
- 6.0.9 No Third Party Benefits. This Agreement is made for the express benefit of Broker and HMC, not for the benefit or interest of any other persons or entities, and accordingly, no third party shall obtain or acquire any rights or interest in this Agreement or by reason of the performance or failure of performance of either of the parties hereto or of their respective rights, privileges, duties or obligations arising hereunder.
- 6.0.10 Confidentiality. Broker understands that all information provided to Broker in connection with this Agreement is confidential and proprietary to HMC. Broker shall not, at any time during or following termination of this Agreement, directly or indirectly disclose or furnish to any person not entitled to receive the same for the immediate benefit of HMC (except to the extent between the parties arising out of the Agreement or by applicable law), any confidential information including, but not limited to, information related to HMC's business operations, credit policies, procedures and customers.
- 6.0.11 Expenses. Each party shall pay its own expenses incident to this Agreement and the transactions contemplated hereby, including but not limited to, all fees of its counsel and accountants, whether or not any of the transactions contemplated shall be consummated.
- 6.0.12 Brokers. Each party represents and warrants that there are no claims for brokerage commissions or finders' fees or other claims for money from any agent or similar intermediary in connection with Broker's entering into this Agreement with HMC, and each party agrees to indemnify and hold harmless the other party with respect to any and all liability for any such fee or commission which is required to be paid to any such agent or broker.
- 6.0.13 Faxing and E-mailing. By executing this agreement Broker agrees to receive facsimile or e-mail promotional materials, administrative updates or daily rate announcements from HMC.
- 6.0.14 Agreement Fairly Construed. This Agreement shall be construed fairly as to both parties and not in favor of or against either party, regardless of which party prepared this Agreement.
- 6.0.15 Non-Discrimination. By executing this agreement Broker certifies that it will comply with all applicable provisions of Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (38 U.S.C. 4212) and implementing regulations at 41 CFR Chapter 60.

6.0.16 Good Faith Dealing. The parties hereto agree to deal in good faith with each other at all times.

6.0.17 Controlled Business Arrangement. (Please check one of the boxes below)

Broker represents and warrants that it that it has a controlled business arrangement ("CBA"), as defined in 24 CFR 3500, with the following business entities:

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

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

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

Broker represents and warrants that it does not have a CBA with any business entity.

Broker agrees that it shall notify HMC in writing within five (5) days of any change in its relationship with any CBA.

6.0.18 Principal Officers. As of the date hereof the principal officer(s) of the Broker are:

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

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

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

6.0.19 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:

IF TO BROKER:

Broker: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

IF TO HAMILTON MORTGAGE CORPORATION

**Hamilton Mortgage Corporation  
1 Independence Plaza, Suite 416  
Birmingham, AL 35209  
Attn: Wholesale Sales Division**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and sealed as of the day and year first above written.

BROKER: \_\_\_\_\_.

By: \_\_\_\_\_

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

Its: \_\_\_\_\_

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

**HAMILTON MORTGAGE CORPORATION**

By: \_\_\_\_\_

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

Its: \_\_\_\_\_

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