



## **BROKER AGREEMENT**

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# BROKER AGREEMENT

THIS BROKER AGREEMENT (the "Agreement") is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 202\_\_ by and between Axos Bank ("Bank"), a federal savings bank having its principal office at 4350 La Jolla Village Drive Suite 140, San Diego, CA 92122, and \_\_\_\_\_ ("Broker"), a \_\_\_\_\_, having its principal office at \_\_\_\_\_ Bank and Broker are sometimes hereinafter referred to collectively as the "Parties," and individually each as a "Party."

## PRELIMINARY STATEMENTS

WHEREAS, Bank is a mortgage lender that originates and funds residential mortgage loans for portfolio and/or sale to investors in the secondary market;

WHEREAS, Broker assists perspective borrowers in locating residential mortgage lenders to finance the purchase and refinance of residential property;

WHEREAS, Broker assists prospective borrowers in completing and processing loan applications, and evaluates such applications for consideration and review by various residential mortgage lenders;

WHEREAS, Bank and Broker desire to enter into a nonexclusive relationship under which Broker may submit such loan applications and supporting documentation to Bank from time to time for its consideration; and

WHEREAS, Bank desires to consider making loans secured by mortgages to such prospective borrowers in accordance with established terms and conditions.

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

**Section 1. Application and Amendment of the Broker Guide.** Bank has provided to Broker and Broker has received and reviewed Bank's "Wholesale Broker Guide" and all guidelines issued thereunder (Wholesale Broker Guide, collectively with such guidelines, referred to collectively as the "Guide"), which is incorporated by reference in its entirety into this Agreement. Broker has had the opportunity to ask questions of Bank concerning the Guide. Broker understands and agrees that Bank can amend, alter, modify, supplement, replace or restate the Guide (an "Amendment") at any time, from time to time, in its sole discretion without the consent of Broker and that Bank's interpretation of the Guide, as applicable, shall be final and binding on Broker in all respects. Bank shall give written notice to Broker of an Amendment to the Guide, and the Amendment shall become effective immediately or as specifically provided therein, but not retroactively. In the event of any inconsistencies between the provisions of this Agreement and the Guide as of the date the Agreement is executed, this Agreement shall control. However, to the extent the Guide is amended, altered, modified, supplemented, replaced or restated, following the execution

of this Agreement, if there are any inconsistencies between the provisions of this Agreement and the Guide, then the Guide shall control.

**Section 2. Definitions.** Unless otherwise defined herein, the capitalization terms used herein shall have the meanings set forth in the Guide.

### **Section 3. Eligible Loans; Pricing.**

(a) Axos Bank's Loan Programs and Products. Bank will register only Eligible Loan applications, meaning home mortgage loan applications which conform to the loan programs and products then offered by Bank (collectively, the "Loan Programs"). Broker shall present Eligible Loan applications only upon submission of all information and documents required by Bank. Broker acknowledges that Bank reserves the right to alter, add, or delete Loan Programs from time to time by amending the Guide, and Broker accepts responsibility for knowing which Loan Programs are offered by Bank at any given time. Broker shall be responsible for assuring that each Eligible Loan application submitted to Bank complies with all of the terms and conditions of Bank's Loan Programs, and the terms and conditions hereof at the time Broker registers the Eligible Loan Application with Bank.

(b) Eligible Loan Pricing. Bank shall issue to Broker, on a periodic basis, rate and pricing information applicable to its Loan Programs. Such rate and pricing information is subject to change without notice. Broker shall comply with the guidelines set forth in the Guide concerning interest rates and lock-ins which apply to the particular Loan Programs then offered by Bank.

#### (c) Broker's Election of Quarterly Compensation Program.

- (i) Approximately once per calendar quarter, Bank will provide to Broker, via email, available options for Broker's general compensation, each such distribution a "Quarterly Comp. Plan Schedule," which will contain terms established by Bank in its discretion. Each Quarterly Comp. Plan Schedule shall be subject to, in each case, the terms of this Agreement and the Guide. The Quarterly Comp. Plan Schedule provides for a general compensation structure for Broker pursuant to this Agreement and not the specific "rate sheets," "lock-ins," Loan Programs, or other Eligible Loan Pricing described in the preceding sections 3(a) and 3(b) hereof. Broker will be able to elect only one of the options given in the Quarterly Comp. Plan Schedule, and that one option shall apply to all Eligible Loans funded pursuant to this Agreement during the applicable calendar quarter.
- (ii) Within ten calendar days after Bank provides notice to Broker of a new Quarterly Comp. Plan Schedule, Broker shall provide Bank written notice of the specific option it has elected under the Quarterly Comp. Plan Schedule for the applicable calendar quarter. The Bank's notice to Broker of a new Quarterly Comp. Plan shall state the effective date of the election made under that Quarterly Comp. Plan (i.e., that the election in such Quarterly Comp. Plan will apply to Eligible Loans submitted from that date). If Broker does not

provide written notice of its election, Bank, at its discretion, may determine that (x) Broker has decided to maintain terms equivalent to the last quarterly compensation program applicable to Broker or (y) Broker desires to terminate this Agreement. If Bank determines that Broker's failure to provide a response indicates Broker's desire to terminate this Agreement, Bank shall provide notice of this determination to Broker, and unless otherwise agreed by the parties, may terminate this agreement consistent with Section 15(b) hereof. Bank need not provide notice of its determination that Broker, by not responding, elected to maintain terms equivalent to the last quarterly compensation program applicable to Broker.

- (iii) Broker's Quarterly Comp. Plan Schedule election shall not change by any means other than Broker making an election under the Quarterly Comp. Plan Schedule offered by the Bank.
- (iv) Broker shall ensure that any discount charged to the borrower pursuant to an option under a Quarterly Comp. Plan Schedule is included in the pricing shown on the Anti-Steering Disclosure that is provided to the borrower. Additionally, Broker shall maintain appropriate policies and procedures to promote compliance with this Section 3(c)(iv).
- (v) Broker agrees that strict performance with the terms of Section 3(c)(iv) hereof represents a material term of this Agreement and a condition of Broker's election of an applicable option under a Quarterly Comp. Plan Schedule. Broker further agrees that time is of the essence with respect to Broker's obligations under this Section 3(c).

#### **Section 4. Duties of Broker.**

(a) Taking of Eligible Loan Applications. Broker shall take Eligible Loan applications in its own name through its employees. All Eligible Loan applications must have been originated and processed by Broker. Broker shall not submit third party originations under this Agreement.

(b) Registration; Application. Broker shall submit for registration each Eligible Loan application with Bank as set forth in the Guide. For each Eligible Loan application submitted to the Bank, Broker must provide the application signed by the prospective borrowers and such credit, financial and other information as set forth in the Guide and/or as may be required by law. Eligible Loan applications submitted by Broker shall be considered registered upon receipt by Broker of written or electronic registration confirmation from Bank. Broker, using its best efforts, shall assist Bank in obtaining any additional information needed by Bank or to otherwise facilitate the closing of the loan transaction.

(c) Export of Data Feed and Document Images. Broker shall electronically export, to Bank or its designee(s), such loan information data and loan document images as set forth in the Guide and as reasonably required by Bank. Loan Information data shall be exported at time of loan registration or as Bank may otherwise reasonably require. In

the event Broker requests an Eligible Loan Application pre-approval from Bank, document images shall be exported by Broker two (2) days prior to Bank's pre-approval decision.

(d) Performance of Broker Services. In addition to taking the information from prospective borrowers and assisting prospective borrowers in completing the Eligible Loan applications, Broker shall perform services including but not limited to all of the following services:

- (i) Comply with all applicable local, state and federal laws and all applicable regulations promulgated thereunder, including but not limited to the Real Estate Settlement Procedures Act, The Equal Credit Opportunity Act, the Truth in Lending Act, the Fair Credit Reporting Act, predatory lending, usury, consumer credit laws, and any other government regulatory requirements relevant to brokerage of real property secured loan applications in each jurisdiction where the real property securing the promissory note is located;
- (ii) Provide to prospective borrowers within time period(s) provided by law or regulation or as otherwise requested by Bank: (x) valid and complete credit authorizations, upon which Bank may rely to the extent permitted by applicable law and regulations, executed by each prospective borrower associated with the relevant loan application; (y) any other legally required materials or disclosures; and (z) any additional materials reasonably requested by Bank (The foregoing Section 4(d)(ii) shall not be construed to reduce Broker's obligations pursuant to Section 3(c)(iv) hereof);
- (iii) Ensure that a complete and accurate Anti-Steering Disclosure that complies with applicable laws and regulations is provided by either Broker or Bank to the prospective borrower no later than three (3) calendar days after the prospective borrower submits an application to Broker. (The foregoing Section 4(d)(iii) shall not be construed to reduce Broker's obligations pursuant to Section 3(c)(iv) hereof).
- (iv) Ensure that a complete, accurate and fully executed Anti-Steering Disclosure that complies with applicable laws and regulations is submitted to Bank within the time period provided by applicable laws or regulations or as otherwise requested by Bank (The foregoing Section 4(d)(iv) shall not be construed to reduce Broker's obligations pursuant to Section 3(c)(iv) hereof).
- (v) Analyze the prospective borrower's income and debt after verifying same and pre-qualifying the prospective borrower to determine the maximum Eligible Loan that the prospective borrower can afford consistent with, in each case, applicable law, regulatory standards, and industry best practices;
- (vi) Educate the prospective borrower in the home buying and financing process, advise the borrower about the different types of loan products available, and demonstrate how closing costs and monthly payments would vary under each product;

- (vii) Collect financial information (e.g., tax returns, bank statements) and other related documents that are part of the application process and verify and review the same for completeness and accuracy, including documents specified in the Guide or otherwise required by Bank;
- (viii) Initiate/order VOEs (verifications of employment) and VODs (verifications of deposits), and verify and review the same for completeness and accuracy;
- (ix) Initiate/order request for mortgage and other loan verifications;
- (x) Initiate/order appraisals from an Appraisal Management Company (“AMC”) approved by Bank (it being understood that it is Broker’s responsibility to consult Bank’s list of approved AMCs listed on Bank’s website);
- (xi) Initiate/order inspections or engineering reports;
- (xii) Maintain regular contact with prospective borrowers, transaction parties properly authorized by the borrower (e.g., real estate agents), and Bank, between application and closing to apprise them of the status of the application and to gather any additional information as needed;
- (xiii) Order or obtain from borrower diligence information (e.g., entity or trust documents) and other documentation (including, without limitation, satisfying Bank’s requests for information).
- (xiv) Provide or order, as applicable title information (i.e., a preliminary report/commitment) that is acceptable to Bank, in Bank’s discretion.

## **Section 5. Duties of Bank.**

(a) Underwriting of Eligible Loan Applications. Bank shall be solely responsible for underwriting all Eligible Loan applications provided by Broker. Bank shall have no obligation to approve or close an Eligible Loan Application that, in Bank’s sole discretion does not meet, in each case, its underwriting and compliance requirements. In making its determination, Bank expressly disclaims any inference Broker may draw as to the general quality or acceptability of the Eligible Loan Application. Bank retains sole and absolute discretion to reject any Eligible Loan Application that does not comply with the terms and conditions of this Agreement, the Guide, the Bank’s underwriting standards, compliance requirements applicable to Bank, or for any reason whatsoever (except as prohibited by law applicable to the Bank), and to set the terms and conditions of any approval of an Eligible Loan Application. Bank shall notify Broker of Bank’s disposition of an Eligible Loan Application as set forth in the Guide. Broker further acknowledges and accepts that in many circumstances the Bank may not be able to provide any information beyond that a given loan does not meet the Bank’s risk tolerance.

(b) Closing of Eligible Loan Applications. Eligible Loan applications will close in the name of Bank. In the absence of any changes occurring or arising after its approval, Bank, or its agents, shall promptly proceed to the closing of each approved Eligible Loan

application in accordance with the terms and conditions of its approval. Bank, or its agents, shall prepare the closing package and close the Eligible Loan Application in its name and with its own funds. Unless otherwise agreed, Bank, or its agents, shall contact and arrange with borrower and all other necessary parties, each loan closing. Bank, or its agents, shall promptly advise broker as each loan closes and will promptly advise Broker of any issues that may delay a loan closing. Bank shall be responsible for customer service and support with respect to requests for such Eligible Loans after they are closed.

**Section 6. Compensation.** Bank will convey to the settlement agent, after its review and approval, Broker's instructions to remit to Broker at closing all qualified expenses and compensation for services provided to borrowers and/or Bank.

**Section 7. Confidentiality and Nonpublic Personal Information.** All capitalized terms used in this Section 7 and not otherwise defined in this Agreement shall have the meaning set forth in the federal "Privacy of Consumer Financial Information" regulation, as amended from time to time (the "Privacy Regulation"), issued pursuant to Section 504 of the Gramm-Leach-Bliley Act (15 U.S.C.6801 et seq.). Both parties acknowledge that the Privacy Regulation governs disclosures of nonpublic personal information about consumers. Each party further acknowledges that it may receive Confidential Information of another party. For purposes of this Agreement, "Confidential Information" includes the terms of this Agreement, any data or information of any accountholder or prospective accountholder that is provided to or obtained by any party in the performance of its obligations under this Agreement or otherwise, including but not limited to (w) "non-public personal information" as defined by the Gramm-Leach-Bliley Act and its implementing regulations, as amended, and any other customer information about which a customer maintains a reasonable expectation of privacy (such non-public personal information and other customer information collectively referred to as "Accountholder Data"); (x) financial data and budgetary or proprietary business information, income or sales data or projections, customer lists, business operations, policies, procedures and techniques, advertising summary or tracking reports or other reports generated in accordance with this Agreement; (y) proprietary schematics, techniques, concepts, development tools and processes, computer printouts, design drawings and manuals, and improvements; and (z) trade secrets, plans for future development and new product concepts, contemplated products, research, development, strategies, and other information which, from the relevant circumstances, should reasonably be assumed to be confidential and proprietary. Except for Accountholder Data, the term Confidential Information shall not include information that, prior to delivery, was already in the recipient party's possession prior to the execution of both this Agreement and any processor Agreements between the parties; is or becomes generally available to the public through lawful means, other than as the result of a disclosure by the recipient party or its representatives; becomes available to a recipient party, without confidential or proprietary restriction, from a third party who rightfully possesses the information and the right to release it without confidentiality restrictions; or the recipient party can demonstrate that it was independently developed by such recipient party.

(a) Use. Except as otherwise provided in this Agreement, each party shall not disclose any Confidential Information of the other party. Each party will not use any Confidential Information of the other party except as necessary to fulfill its obligations or exercise its

rights under this Agreement, and only for such purposes and only for the time that it is necessary to do so, except to the extent it is otherwise permitted under this Agreement. Each party shall take commercially reasonable security precautions, at least as great as the precautions it takes to protect its own Confidential Information and as may be required by the laws applicable, respectively, to each party, with respect to the Confidential Information of the other party. Each party shall disclose such Confidential Information only on a need-to-know basis, subject to this Agreement, and only to its subsidiaries, agents or subcontractors who are obligated to treat such Confidential Information in a manner consistent with all the obligations of this Agreement. Broker hereby acknowledges the sufficiency of Bank's internal controls, with respect to Confidential Information, consistent with Bank's status as a federally-chartered financial institution. Liability to a third party for damages due to disclosure of Confidential Information shall be with the party that disclosed the Confidential Information.

- (b) Required Disclosures. In the event that the recipient of Confidential Information is requested or becomes legally compelled to disclose any Confidential Information of the other party, such recipient party shall provide the disclosing party, except where such notice is prohibited by law (e.g., without limitation, confidential regulatory supervision and examinations of federal banks), prompt written notice of such request(s) to enable the disclosing party to seek a protective order to protect and preserve the confidential nature of the Confidential Information. Each party agrees that it will furnish only that portion of the Confidential Information that is legally required and will exercise reasonable efforts to obtain reliable assurance that confidential treatment will be accorded to that portion of the Confidential Information and other information which is being disclosed (it being understood that no such assurances are needed for disclosures made by the Bank as part of confidential supervision or examinations by a federal Regulatory Authority). Each party shall immediately notify the other upon discovery of any loss or unauthorized disclosure of the Confidential Information of the other party.
- (c) Return or Destruction. As requested by the furnishing party during the term of this Agreement, upon expiration or termination of this Agreement, or completion of the obligations of the receiving party, in each case, the receiving party shall (w) return or destroy, as the furnishing party may direct, and in the manner reasonably directed by the furnishing party, all material in any medium that contains, refers to, or relates to the furnishing party's Confidential Information, and (x) retain no copies except one (1) copy solely for compliance with record retention requirements under the respective laws applicable to each party, *provided, however*, that no party shall be obligated to erase Confidential Information contained in an archived computer system backup made in accordance with such party's security and/or disaster recovery procedures, provided that such archived copy will (y) eventually be erased or destroyed in the ordinary course of such party's data processing procedures and (z) will remain fully subject to the obligations of confidentiality stated herein. Notwithstanding any other provision of this Section 7(c), Broker hereby acknowledges the sufficiency to the Bank's record retention, return, and destruction policies as a federally-chartered bank and agrees to abide by the Bank's policies with respect to the Bank's duties pursuant to this Section 7(c).



- (d) Misuse. In the event of any actual or suspected misuse, disclosure or loss of, or inability to account for, any Confidential Information of the furnishing party, the receiving party shall: (i) promptly (and in any event within three (3) Business Days) notify the furnishing party upon becoming aware thereof; (ii) furnish to the other Parties the details of the unauthorized possession, use or knowledge, or attempt thereof, and use reasonable efforts to assist the other party in investigating or preventing the reoccurrence of any unauthorized possession, use, or disclosure, or any attempt thereof, of Confidential Information; (iii) take such actions as may be necessary or reasonably requested by the furnishing party to minimize the violation; and (iv) cooperate in all reasonable respects with the furnishing party to minimize the violation and any damage resulting therefrom.
- (e) Information Security: Both parties hereby represent and warrant as follows with respect to any nonpublic personal information released to it by the other party: (i) the receiving party maintains commercially reasonable controls to limit access to the network on which any such nonpublic personal information is stored, through the compliance with and utilization of its information security measures which restrict access, and (ii) the receiving party shall comply with its respective information security measures.
- (f) Use of Nonpublic Personal Information. Both parties hereby agree that they shall: (i) comply with the terms and provisions of the Privacy Regulation, including, without limitation, the provisions regarding the sharing of nonpublic personal information; (ii) not disclose or use any nonpublic personal information that it obtains from the other party except to carry out the purpose for which such nonpublic personal information was provided, or as otherwise permitted by the Privacy Regulation and other applicable laws; (iii) comply with its respective information security standards; (iv) not make any changes to its security measures that would increase the risk of an unauthorized access.
- (g) Remedies. Both parties agree that money damages would not be a sufficient remedy for any breach of this Section 7 and that, notwithstanding any other provision of this Agreement, the non-breaching party shall be entitled to seek injunctive or other equitable relief, without posting a bond, to remedy or prevent any breach or threatened breach, in each case, of this Section 7. In addition and without limitation to Bank's rights under Section 18(c) hereof, Bank may audit Broker, subject to the same terms provided by Section 18(c) hereof, to monitor compliance with or help remediate any breach of this Section 7. The remedies provided by this Section 7(g) shall not be the exclusive remedies for any breach of this Section 7, but shall be in addition to all other rights and remedies available at law or in equity.

**Section 8. Representations, Warranties and Covenants of Broker.** As an inducement to Bank to enter into this Agreement and to perform its duties hereunder, Broker represents and warrants to Bank, as of the date of this Agreement and as of the date each Eligible Loan Application is submitted to Bank, as follows:

- (a) Due Organization; Good Standing. Broker is duly organized, validly existing and in good standing (in the case of a corporation or limited liability company) under the laws

of the state governing its creation and existence, and broker is qualified and in good standing in the states where the mortgaged properties in each Eligible Loan Application are located, if the laws of such states require licensing or qualification in order to conduct business of the type conducted by Broker.

(b) Authority and Capacity. Broker has full power, authority and capacity to enter into this Agreement, and to perform its obligations hereunder. The execution and delivery of this Agreement, and the consummation of the transactions contemplated hereby have been duly and validly authorized by all requisite action. This Agreement constitutes a valid and legally binding Agreement of Broker enforceable against Broker in accordance with its terms.

(c) No Conflicts. 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, constitute a default under, be prohibited by or require any additional approval under its articles of incorporation or organization, bylaws, partnership or operating agreement, or other applicable organizational documents or any instrument or agreement to which it is a party or by which it is bound, or any applicable federal, state, county, local, or foreign law, or any judicial or administrative decree, order, ruling or regulation, applicable to it.

(d) Compliance with Laws. Broker has complied, and shall comply, both in the conduct of its business generally, and in its origination of each Eligible Loan Application, with all applicable laws, including, without limitation, the Equal Credit Opportunity Act and Regulation B, including without limitation its requirements relating to nondiscrimination; the Truth in Lending Act and Regulation Z; the Real Estate Settlement Procedures Act and Regulation X; Gramm-Leach-Bliley Act and any regulations promulgated pursuant thereto; the Fair Credit Reporting Act; and state and municipal laws and regulations governing mortgage lending and mortgage brokerage. Broker represents and warrants that it and each member of its staff is properly licensed in all jurisdictions where required for the origination of loans as provided for in this Agreement and agrees to maintain all applicable licenses and approvals in good standing during the term of this Agreement. Broker shall maintain, available for Bank's inspection, evidence of compliance with all such requirements.

(e) Notice of Threatening Actions. Broker has not been issued, from any government authority, in each case, any administrative order, cease and desist decree or been the subject of any regulatory action, nor is there any reasonable basis for Broker to be subject to any of the foregoing. Broker shall immediately advise Bank in writing of, in each case, (i) any inquiry or pending or threatening action, by way of a proceeding or otherwise, to revoke or limit any license, permit, authorization or approval issued or granted by any federal, state or local government or quasigovernmental body, or any agency or instrumentality thereof or any similar proceeding against an employee or contractor of Broker who is individually licensed; (ii) any action, proceeding or threat of action from any governmental or quasigovernmental authority to impose any penalty or other disciplinary sanction on Broker; or (iii) any finding of a governmental authority (including, without limitation a court of record or an administrative agency) that finds Broker or its employees,

contractors or agents engaged in fraud or an act of moral turpitude in the course of Broker's business or violated laws applicable to broker regarding the brokering or origination of mortgage loans. In addition, in the event Broker receives any letter, notice, or other writing from any regulatory agency with respect to any Eligible Loan Application registered with Bank, Broker shall advise Bank immediately of such notice and deliver a copy of the notice to Bank in no more than ten (10) days after receipt.

(f) Secure and Fair Enforcement for Mortgage Licensing Act of 2008 ("SAFE Act"). Broker is in full compliance with the SAFE Act and all regulations promulgated pursuant thereto that are applicable to Broker, including but not limited to, appropriate licensing and /or registration and background checks of individuals acting as Mortgage Loan Originators ("MLOs").

(g) Litigation. Except as previously disclosed in writing to and acknowledged in writing by Bank, neither Broker nor any of its principals or licensed employees, in each case, are party to (i) any litigation as a defendant involving fraud, misrepresentations, violation of any state or federal lending laws or regulatory compliance and (ii) any negative investor or regulatory findings through audits, examinations or mortgage guaranty insurance investigations. In the event Broker or any of its principals or licensed employees becomes a party to any such matter described in this Section 8(g), Broker shall advise Bank immediately.

(h) No Untrue or Misleading Statements. No representation, warranty or written statement made by Broker to Bank in this Agreement or in any Eligible Loan Application, schedule, exhibit, written statement or document furnished to Bank in connection with the transactions contemplated hereby contains or will contain any untrue statement of a material fact or omits or will omit a material fact necessary to make the statements contained herein or therein not misleading.

(i) Business Information. Broker shall furnish Bank and its representatives with any necessary information and data concerning the affairs of Broker, as Bank may reasonably request, including without limitation information regarding the status of its licenses, permits, authorizations and approvals necessary for the conduct of its business as well as copies of such documents.

(j) Financial Statements. Broker shall furnish to Bank copies of statements of Broker's financial condition at Bank's request. Statements of financial condition shall be audited statements if such are obtained in the normal course of business. Broker hereby represents and warrants to Bank that such statements fairly present the pertinent results of operations and changes in financial position for each of such periods, and the financial position at the end of each such period of the Broker and its subsidiaries. Without limiting Bank's right to request Broker's financial statements, at any time, Broker is advised that Bank normally requests such statements once a year at the time of Broker's annual recertification.

(k) Credit Reports. Broker agrees that Bank may obtain business credit reports concerning Broker.

(l) Ability to Perform. Broker represents that it employs or will employ a sufficient number of knowledgeable, capable and trained individuals to perform the services required by this Agreement.

(m) Certifications in Application. Broker's "certifications" made to Bank in Broker's Wholesale Mortgage Broker Application are true and correct in all material respects and incorporated into this Agreement for reliance by the Bank as if made pursuant to this Section 8.

**Section 9. Representations, Warranties and Covenants as to Eligible Loan Applications.** As further inducement to Bank to enter into this Agreement and to perform its obligations here under, Broker represents, warrants, and covenants to Bank as to each Eligible Loan Application submitted to Bank as follows:

(a) Compliance with Laws. As of the date each Eligible Loan Application is funded by Bank, all of Broker's activities in connection with the Eligible Loan Application shall comply with all (i) laws and regulations applicable to Broker and Broker's business, including, without limitation, federal, state, and municipal laws and, in each case, regulations promulgated thereunder and (ii) the decrees or orders of any court of record, administrative agency, or other government authority (unless such decree or order is stayed by a competent order of such an authority, e.g., an injunction or stay pending appeal).

(b) Compliance with Bank Policies and Guide. The activities of Broker with respect to each Eligible Loan Application shall comply in all respects with the Guide and this Agreement. Each registered Eligible Loan Application was originated by Broker and not by a third party and that no other party will assert any right to compensation for origination of the Eligible Loan Application. All Mortgage File documents and all Eligible Loan applications, and information and documentation submitted by Broker in connection with such applications, have been prepared and/or completed in accordance with applicable law and the Guide, and all information provided by each of borrower and Broker in such Mortgage File documents, Eligible Loan applications, or other documents, or provided to any mortgage insurer is true and correct and does not fail to disclose any facts that could be material or which would make such information misleading.

(c) Factual Disclosure. With regard to all Eligible Loan applications submitted to Bank hereunder, all facts relating to any Eligible Loan Application transaction that are known or should be known to Broker in the exercise of prudent judgment that may adversely affect: (i) the value of the subject property related to any loan application submitted by Broker (each a "Mortgaged Property"); (ii) the credit, character, or capacity of the borrower; (iii) the validity of the mortgage that would secure the loan made pursuant to an application submitted by Broker; (iv) or any other aspect of the transaction that has been disclosed in writing to Bank. In submitting any application, Broker also represents that the Mortgaged Property has not been damaged by fire, flood, or other causes since the date of performance of the appraisal.

(d) Occupancy. The occupancy of the Mortgaged Property is as represented to Bank by the prospective borrower and/or Broker, and the Broker has no reason to believe that such representation of the prospective borrower is no longer true.

(e) Mortgage Insurance Payments. No Eligible Loan Application has a mortgage insurance policy that requires the Broker or any other party except the mortgagor (or trustor in the case of a deed of trust) to pay premiums on such policy.

(f) Appraisal. (1) The appraisal report, the appraiser, and AMC, in each case, satisfy the requirements of all (i) laws; (ii) regulations; and (iii) "Agency" requirements or guidelines (e.g., Fannie Mae, VA, Ginnie Mae, Freddie Mac, FHA, HUD, Penny Mac, FNMA, FHLMC (each an "Agency")) applicable to a loan secured by the Mortgaged Property, including, without limitation, any applicable requirement of Title XI of the Federal Institutions Reform, Recovery and Enforcement Act of 1989 and the regulations promulgated thereunder, all as in effect on the date the Eligible Loan Application is submitted to Bank (it being understood that the reference to each Agency serves only to identify the Agencies and shall not be construed to suggest that any Agency program or specific loan presented thereunder, in each case, qualifies for loan origination or registration as an Eligible Loan, in each case, pursuant to this Agreement). (2) The appraisal report with respect to the Mortgaged Property was signed prior to the approval of the Eligible Loan Application by a qualified appraiser, duly appointed by Broker, who had no interest, direct or indirect, in the Mortgaged Property or in any loan made on the security thereof, whose compensation is not affected by the approval or disapproval of such loan application, and who was independent of the borrower. (3) The appraisal was conducted by an AMC approved by Bank and consistent with applicable provisions of the Guide.

(g) Serviceman's Civil Relief Act. The borrower has not notified the Broker and the Broker has no knowledge of any relief requested or allowed to the borrower under the Serviceman's Civil Relief Act, as amended.

(h) Predatory Lending. Such Eligible Loan Application is not classified as (a) a "high cost" loan under the Home Ownership and Equity Protection Act of 1994, as amended; (b) a "high cost," "threshold," or "predatory" loan, in each case, under any other applicable state, federal, or local law; or (c) a "flipped" loan or loan that does not provide the borrower with a "net tangible benefit," as maybe defined under any applicable state, federal or local law.

(i) Broker Compensation. Unless (x) disclosed to Bank in writing and (y) approved by Bank in writing, in each case, before the funding of any mortgage loan:

(1) Broker shall not receive any direct or indirect payment from any person other than as provided in this Agreement with respect to the mortgage loan, including, without limitation, any payment involving escrow, appraisal or sale.

(2) Broker's agents, employees, officers, shareholders, members, directors, or similar persons controlling Broker, in each case, shall not have any direct or indirect ownership in any property intended as security for the mortgage loan being reviewed by Bank for purposes of purchase.

**Section 10. Responsibility for Fraud or Negligence.** Broker shall not submit any Eligible Loan Application or other document to Bank or any other party to a transaction involving Bank, in each case, that contains false or misrepresented information or fails to disclose material facts necessary to make the statements contained therein not misleading. Broker shall be responsible for all actions taken in the course of its performance of its obligations under this Agreement, whether performed by Broker, its employees, agents, or licensees. Broker accepts that Bank disclaims any duty to investigate, verify, authenticate or confirm any information contained in any Eligible Loan Application or other document submitted by Broker. The parties have agreed to the allocation of duties, risk, and responsibilities set forth herein, and Bank shall at all times be entitled to rely on Broker's full, complete and faithful performance of its duties and responsibilities hereunder.

**Section 11. Purchase and Loss Reimbursement.**

(a) Events of Purchase/Repurchase. Broker shall in the case of Eligible Loans closed in Bank's name, purchase or repurchase any Eligible Loan subject to this Agreement, in each of the following instances: (i) a borrower fails to make its first payment due to Bank on such Eligible Loan within 30 days of such payments due date, provided, however, that such failure is not attributable to a servicing error by Bank; (ii) a borrower fails to make any of the first four payments due to Bank on such Eligible Loan within 30 days of such payment being due; (iii) a borrower fails to make any payments due to Bank on such Eligible Loan within 60 days of such payment being due within the first 365 days of Bank's origination of the Loan; or (iv) a material breach by Broker, that adversely affects the value of such Eligible Loan, of any covenant, condition, term, obligation, representation or warranty related to such Eligible Loan contained in this Agreement or the Guide, or in such Eligible Loan Application, any other document, or in any written statement or certificate furnished by Broker, in each case, pursuant to this Agreement or the Guide, including, without limitation, those arising from Broker's fraud or negligence in the origination or processing of such Eligible Loan Application.

(b) Purchase/Repurchase. Bank shall send notice to Broker of any demand for purchase or repurchase within one hundred and twenty (120) days of the discovery of any event causing such demand for purchase or repurchase. Broker shall have thirty (30) days from date of receipt of such notice from Bank to cure any material breach in all respects (as determined in Bank's sole judgment). If such breach is not cured in Bank's sole judgment, the purchase shall be affected within ten (10) business days of receipt of written demand by Bank. The purchase or repurchase price shall be the sum of (i) the outstanding principal balance owing on the date of purchase; (ii) all fees paid by Bank in relation to the loan; (iii) any compensation paid by Bank to Broker; (iv) any advances made by Bank for taxes, insurance, foreclosure expense or any other related expense; and (v) interest that has accrued but not been paid up to and including the date the purchase or repurchase funds are received by Bank. At the time of purchase or repurchase, Bank will arrange for the assignment of the purchased or repurchased Eligible Loan to Broker, and Broker shall pay all Bank's incidental expenses associated with the assignment of the Eligible Loan to Broker.

(c) Loss and Expense Reimbursement. Notwithstanding the foregoing, and in lieu of requiring repurchase, Bank may, at its sole discretion, permit broker to reimburse Bank

for any loss and/or expenses incurred by Bank as a consequence of the occurrence of an event requiring repurchase. The determination by Bank of the nature and amount of such losses and/or expenses shall be final, conclusive and binding. Broker shall remit to Bank the funds necessary to satisfy its obligations hereunder within ten (10) business days from demand of such funds by Bank.

## **Section 12. Indemnification.**

(a) Non-Waiver of Remedies. Nothing contained in this Section 12 shall limit Bank's rights to any remedy, legal or equitable, all such legal and equitable remedies, including those provided for herein, being in addition to and not in lieu of any other remedy.

(b) Broker Indemnification. Broker shall indemnify, defend and hold Bank and its officers, directors, employees, agents, parent, affiliates, and subsidiaries harmless against and in respect of, and shall reimburse Bank for any and all losses, liabilities, claims, damages, costs including without limitation attorneys' fees and costs, and actions suffered or incurred by Bank that arise or result from or relate to, in each case: (a) a material breach by Broker of any covenant, condition, term, obligation, representation or warranty contained (i) in this Agreement or the Guide, or (ii) in any Eligible Loan Application or other document or in any written statement or certificate furnished by Broker pursuant to this Agreement or the Guide, including, without limitation, those arising from Broker's fraud or negligence in the origination or processing of Eligible Loan applications, or (b) any material act or omission of Broker or any employee or agent of Broker that adversely affects any Eligible Loan Application registered with and funded by Bank hereunder. In all actions with third parties in which Bank has the right to be indemnified hereunder, Bank 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.

## **Section 13. Premium Rebate.**

(a) Full Repayment. If a premium is paid by Bank to Broker for an Eligible Loan, and such Eligible Loan is prepaid in full within one hundred and eighty (180) days after the closing date other than by a refinancing by Bank, or any of its subsidiaries or affiliates, or a financing by Broker that is funded by Bank, Broker shall, upon demand by Bank, refund such premium to Bank. Such payments shall be due to Bank within thirty (30) days following notice from Bank.

b) Partial Repayment. If a premium is paid by Bank to Broker for an Eligible Loan, and such Eligible Loan is prepaid in any amount which, in the aggregate, exceeds twenty percent (20%) of the original principal balance of the loan, within one hundred and eighty (180) days after the closing date, Broker shall, upon demand by Bank, refund to Bank a pro-rated portion of the premium paid by Bank to the Broker for such Eligible Loan. The payment shall be calculated by dividing the aggregate prepayment amount by the original principal balance of the loan and multiplying the result by the original premium amount. Such payments shall be due to Bank within thirty (30) days following notice from Bank.

**Section 14. Right of Setoff.** Bank and its successors and assigns shall be entitled to set off against any amount to be paid by it to the Broker under this Agreement for such amounts as may be due from the Broker under this Agreement. Bank shall provide written notice to Broker, ten (10) days prior to any setoff action.

**Section 15. Term; Termination.**

(a) Term. The term of this Agreement shall commence as of the date hereof and shall extend until the termination of this Agreement pursuant to this Section 15.

(b) Termination without Cause. This Agreement may be terminated without cause by either Bank or Broker upon thirty (30) days' written notice to the other party. Such termination shall not in any respect change or modify the obligations of the parties with respect to, in each case: (i) loan applications that have been properly registered with Bank pursuant to Section 4 hereof prior to the effective date of the termination notice; (ii) either party's obligations under this Agreement accruing prior to the date of termination; and (iii) obligations that survive termination of this Agreement pursuant to Section 15(d) hereof. With respect to determining the loans that have been properly registered pursuant to Section 15(b)(i) hereof, Bank's determination as to which loans are properly registered shall be conclusive and binding upon the parties.

(c) Termination for Cause. Notwithstanding anything to the contrary herein, Bank may terminate this Agreement immediately, upon written notice to Broker, in each case, (i) if Bank determines or reasonably suspects that fraud has occurred in the origination of any Eligible Loan Application, or (ii) if Broker fails to perform any of its obligations under this Agreement, or (iii) if any law or regulation applicable to Bank makes it unlawful for Bank and Broker to do business in accordance with the terms of this Agreement. If the Agreement is terminated by Bank under this paragraph, Bank shall have no monetary or other obligation to Broker after the date notice is given, irrespective of whether the Bank funds an Eligible Loan Application that has been registered with Bank.

(d) Survival. The following Sections hereof shall survive termination of this Agreement: 2; 7-15 (inclusive); 16(b); and 18.

**Section 16. No Solicitation.**

(a) Mortgage Loans: Subject to the provisions set forth in this Section 16, from and after the date hereof, neither Broker, nor any of its subsidiaries or affiliates, may solicit, by means of direct mail, telephonic, email or personal solicitation, the borrowers under any Eligible Loan for purposes of prepayment of such Eligible Loan. Solicitations undertaken by Broker or any affiliate of Broker that are directed to the general public at large (as opposed to directed specifically at the borrowers under any Eligible Loans), including without limitation mass mailings based on commercially acquired mailing lists, the internet and newspaper, radio and television advertisements, shall not constitute solicitations under this Section 16.

(b) Employees: As a result of this Agreement, Broker will have the opportunity to work closely with Bank's employees and develop working relationships with them for the



sole purpose of furthering performance under this Agreement. Broker agrees that (i) during the term of this Agreement and (ii) for a period of one year after the termination of this Agreement, Broker shall not, directly or indirectly, solicit to hire, or hire, any employee of Bank. The foregoing prohibition shall not apply to general solicitations or advertisements not targeted specifically to employees of Bank or other employment or business arrangements resulting therefrom.

### **Section 17. Assignment; Complaints; Relationship between the Parties; and Annual Broker Certification.**

(a) Assignment. Broker shall not assign this Agreement without the prior written consent of Bank, signed by an officer of Bank holding a title of Executive Vice President or more senior. Bank's consent may be withheld by Bank at its sole discretion, and consent to one assignment shall not waive Bank's right to require consent to future assignments. As used in this Section 17(a), "assign" and "assignment" include, in each case: (i) assignment by operation of law; (ii) a delegation of duties hereunder; (iii) a change in ownership, legal entity, merger, or consolidation, irrespective of whether it results in a beneficial change of ownership in Broker; (iv) any direct or indirect change of control of Broker, including, without limitation, (x) through direct or indirect transfer of ownership interest(s), (y) a transaction or series of transactions that transfer of control of Broker or decision-making authority by contract, and (z) any asset or portfolio sale of all or substantially all of Broker's assets; and (v) any other direct or indirect transfer prohibited by similar in effect to the preceding examples in this sentence. Any assignment made contrary to this Section 17(a) shall be null and void ab initio.

(b) Customer Complaints. Broker shall ensure that all customer complaints received relating to Broker's communication and dealings related to this Agreement with borrowers and prospective borrowers (collectively, "Customer Complaints") are forwarded to Bank within ten (10) days following receipt thereof. If a Customer Complaint (i) is received electronically, such customer complaint shall be forwarded to Bank using the **ComplianceTeam@axosbank.com** e-mail address, or (ii) is received by mail, Broker shall mail a true, correct, and complete copy of such complaint to Axos Bank, 4350 La Jolla Village Drive, Ste. 140, San Diego, CA 92122, Attn: Compliance Team. Broker's failure to adhere to the provisions of this Section 17(b) shall be a material breach of this Agreement, and Broker shall indemnify, defend, and hold Bank, its officers, employees, directors, affiliates, and parent harmless regarding any breach of this Section 17(b). Complaints based on loans that do not close solely due to a prospective borrower's inability or unwillingness to accept or satisfy either (i) Bank's underwriting requirements; (ii) the terms of the loan or (iii) any Agency requirement applicable to the transaction, in each case, shall not be deemed a Customer Complaint pursuant to this Section 17(b).

(c) Relationship of Parties. Neither party is the partner, agent, employee or representative of the other, and nothing in this Agreement may be construed or deemed to create a partnership, joint venture, agency or employment relationship between Bank and Broker. Broker shall conduct business in its own name and not in Bank's name. Broker shall not represent that its office is an office, branch or agency of Bank or in any other way connected with Bank. Broker shall have no authority to sign any documents on behalf of Bank, or to bind or obligate Bank in any manner whatsoever. Broker shall be responsible

for its overhead and operations costs, payroll costs and all other costs incurred in connection with its operations. Broker acknowledges that it has incurred and will continue to incur such costs voluntarily, with the understanding that this Agreement may be terminated in accordance with Section 15 hereof and accordingly. Broker has no right to seek reimbursement or recoupment from or against Bank with respect to any sums it has expended in contemplation hereof.

(d) Annual Certification. As requested by Bank, Broker shall participate in and cooperate in good faith with Bank's annual recertification process, including, without limitation: (i) submitting, in a timely manner at Bank's request, business and other materials to Bank pertaining to not only to this Agreement but also to Broker's general business (it being understood that Bank may be required to verify such materials as part of Bank's compliance obligation); (ii) executing and delivering certifications, affirmations, representations, warranties, and ratifications of this Agreement, the Guide, matters addressed by Broker's representations and warranties under this Agreement (including, without limitation its certifications in its application to Bank), and similar matters.

## **Section 18. General Terms.**

(a) Broker Grant of Limited Power of Attorney. Broker hereby appoints Bank and the directors, officers, employees, agents, successors and assigns of Bank as its true and lawful attorney-in-fact without right of revocation and with full power of substitution for and in its place and stead to: (i) demand and control all sums due on Eligible Loans closed and funded pursuant to this Agreement and to enforce all rights with respect thereto, (ii) endorse, mark, place, or otherwise evidence Broker's name as payee on all checks, drafts, acceptances, or other form of partial or full Eligible Loan payment delivered or tendered to Bank, (iii) endorse, mark, place or otherwise evidence Broker's name on all notes, mortgages, deed of trust, and other forms of security instruments of collateral and all assignments, full of partial releases or satisfactions of said mortgages, deeds of trust, and other forms of security instruments or collateral for all Eligible Loans closed and funded pursuant to this Agreement. Broker agrees to execute such other documents as Bank may reasonably request to evidence the appointment of Bank as Broker's attorney-in-fact and agrees that this appointment is coupled with an interest of the Bank in receiving payment to which it is entitled under this Agreement.

(b) Notices. Any notice to any party to be provided under this Agreement, unless otherwise specifically indicated, shall be in writing and sent by (x) U.S. Certified Mail, return receipt requested, postage paid or (y) a national overnight delivery service, such as Federal Express or UPS, addressed to the party to be served notice at the address listed below for such party and shall be deemed effectively delivered upon (a) personal delivery, (b) one day after deposit for overnight delivery with Federal Express or a comparable national overnight delivery service, or (c) three days after deposit in the United States mail, by first-class mail, postage prepaid. A party may designate another address for notice purposes upon written notice thereof to the other party pursuant to the provisions of this paragraph. The initial addresses for notice hereunder are:

If to Broker: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

If to Bank:

Axos Bank  
4350 La Jolla Village Drive, Suite 140  
San Diego, CA 92122  
Attn: National Wholesale Manager

with a copy to:

Axos Bank  
4350 La Jolla Village Drive, Suite 140  
San Diego, CA 92122  
Attn: Chief Legal Officer

(c) Books and Records. Broker shall prepare and maintain documents related to loan applications in accordance with this Agreement, the Guide, and applicable Agency guidelines. Broker and Bank shall keep and maintain a complete and accurate account, satisfactory to Bank, of all funds collected and paid relating to the Eligible Loan applications. Broker shall give Bank, its employees, its representatives, and its regulators, including, without limitation, internal and external auditors, quality control auditors, attorneys, bank examiners and regulatory agency examiners, upon reasonable advance notice and during normal business hours, access to audit and inspect Broker’s files, books, records, reports, statistics, and other documents of Broker relating to its obligations under this Agreement and the Guide. In addition, Broker shall cooperate with Bank, its auditors and/or regulators in any audit of Bank and in any regulatory examination of Bank. Broker shall advise the Bank, in writing, as soon as possible but in no case later than forty-eight (48) hours after receipt, of any subpoena or other similar government or government-sanctioned request for information relating to this Agreement.

(d) Permitted Successors and Assigns. This Agreement shall be binding and inure to the benefit of and be binding upon the parties hereto and their permitted successors and assigns

(e) Entire Agreement. This Agreement and the Guide (as the Guide is from time-to-time amended by Bank), contain the entire Agreement between the parties and supersedes all prior and contemporaneous agreements and understandings between the parties. Nothing in this Section 18(e) limits the enforceability upon Broker of, in each case, (x) specific materials published by Bank to Broker, such as the Quarterly Comp. Plan Schedule, rate sheets, lock-in sheets, and similar materials published by Bank pursuant to, in each case, this Agreement and the Guide and (y) the Officer’s Certificate attached to

this Agreement or any similar certification or document executed by Broker pursuant Section 18(o) hereof.

(f) Amendment and Waiver. Except as provided in Section 1 hereof concerning the Guide, this Agreement may be amended from time to time by Broker and Bank solely by written agreement signed by Broker and Bank, and in the case of Bank, executed by an officer of Bank holding the title of Executive Vice President or more senior. The waiver of any right or remedy in respect of any one occasion shall not be deemed a waiver of such right or remedy in respect of such occurrence or event on any other occasion.

(g) Modification of Obligations. Bank may, without any notice to Broker, extend, compromise, renew, release, modify, adjust or alter, by operation of law or otherwise, any of the obligations of a borrower or other persons obligated under an Eligible Loan without releasing or otherwise affecting the obligations of Broker with respect to such Eligible Loan or otherwise under this Agreement.

(h) Severability and Survival of Provisions. If any one or more of the covenants, agreements, provisions, or terms of this Agreement is held invalid for any reason whatsoever, then such covenants, agreements, provisions, or terms shall be deemed severable from the remaining covenants, agreements, provisions, or terms of this Agreement and shall in no way affect the validity or enforceability of the other covenants, agreements, provisions, or terms of this Agreement or the rights of Bank hereunder. If the invalidity of any part, provision, representation, or warranty of this Agreement deprives any party of the economic benefit intended to be conferred by this Agreement, the parties shall negotiate in good faith to develop and structure the economic effect of which is nearly as possible the same as the economic effect of this Agreement without regard to such invalidity.

(i) Execution and Counterparts. This Agreement may be executed and then delivered by facsimile transmission, electronic transmission of executed PDFs, or physical delivery of copies hereof, using one or more counterparts, each of which shall be an original but all of which taken together shall constitute one and the same Agreement. This Agreement shall not constitute a contract or other binding obligation unless and until it is executed by all parties, and the text of Agreement shall not constitute an offer that can be accepted unless and until all parties have executed this Agreement in writing by signing below.

(j) Governing Law. This Agreement shall be governed by, construed and interpreted in accordance with the laws internal to the State of New York.

(k) Headings. The headings of the various sections of this Agreement have been inserted for convenience of reference only and shall not be deemed to be part of this Agreement.

(l) Attorneys' Fees. If a dispute arising from or concerning this Agreement results in litigation or arbitration between the parties, the prevailing party to such litigation shall be entitled to recover from the other party all attorneys' fees and all costs and expenses in bringing or defending such action.

(m) Arbitration; Bank as party; and WAIVER OF JURY TRIAL. Except for seeking injunctive relief pursuant to Section 7(g) hereof, any controversy or claim arising from or relating to (i) this Agreement or (ii) the relationship and interactions between the parties, whether or not this Agreement is germane to the dispute (including, without limitation any allegations of tortious conduct), shall be exclusively resolved by confidential binding arbitration in San Diego County, California. The Parties agree that any arbitration between the Parties shall be conducted before one neutral arbitrator (the “Arbitrator”) selected by the Parties. The Arbitrator shall be a retired judge or a similarly qualified individual with experience adjudicating employment law matters on the JAMS panel to whom the Parties mutually agree. Arbitrators shall be subject to disqualification on the same grounds as would apply to a judge of the California Superior Court. Arbitrators shall have the immunity of judicial officers from civil liability when acting in the capacity of an arbitrator, which immunity supplements any other existing immunity. Likewise, all communications during or in connection with the arbitration proceedings are privileged in accordance with Cal. Civil Code Sections 47(b). The Parties agree to bring actions or claims only in their own names and not on behalf of others or as part of a concerted litigation strategy with others. Broker shall only have recourse against Axos Bank, a federal savings bank, and, as a specific bargained for element of this Agreement and allocation of risk between the parties, Broker hereby waives any right to pursue an action or recover from, in each case, (i) Axos Financial , Inc., (ii) any other subsidiary or affiliate of the Bank, and (iii) officers, directors, and employees of the Bank, Axos Financial, Inc., and their subsidiaries and affiliates. The provisions of this Section 18(n) may be enforced by the Arbitrator or any court having jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees, and expenses, including, without limitation, attorneys’ fees, to be paid by the party against whom enforcement is ordered. The Parties expressly and irrevocably waive the right to a jury trial regarding disputes related to this Agreement or any other claim covered by this Section 18(m).

(n) Consent to Jurisdiction. The Parties agree that any action shall be brought in a federal court or state court located in the State of California, and the parties hereby waive any objections to summons, service of process, jurisdiction over the person or subject matter, or the venue of the courts listed above. Without limiting the generality of the foregoing, the Parties specifically and irrevocably consent to the jurisdiction and venue of the state and federal courts sitting in San Diego County, California. For the avoidance of doubt this Section 18(n) shall not be construed contrary to the Parties’ arbitration obligations provided in Section 18(m) hereof.

(o) Authorized Representatives. Bank shall be entitled to rely, without investigation, that any person holding themselves out to be a representative of Broker for purposes of signing this Agreement or other document delivered in connection with this Agreement or taking other action pursuant to the Agreement, including but not limited to oral discussions held in the course of business with the Bank pursuant to this Agreement after its execution,

was, at the respective time of such signing or actions, a duly elected or appointed, qualified and authorized representative of Broker, and the execution or delivery of the Agreement or any document pursuant to the Agreement and the taking of any other action, including but not limited to such oral discussion previously described in this Section 18(o), shall be conclusive evidence of such authorization. Broker shall deliver to Bank, attached to this Agreement, an Officer's Certificate in furtherance of this Section 18(o), but nothing contained in the attached Officer's Certificate shall limit the application of or reduce Broker's obligations under this Section 18(o).

IN WITNESS WHEREOF, Broker and Axos Bank have executed this Agreement by causing their names to be signed hereto by their respective officers hereunto duly authorized as of the day and year first above written.

**BROKER**

**Axos Bank**

By:

By:

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

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

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



## OFFICERS' CERTIFICATE

**Axos Bank**  
4350 La Jolla Village Drive, Suite 140  
San Diego, CA 92122  
Phone: 888-833-0555  
Email: [clientrelations@axosbank.com](mailto:clientrelations@axosbank.com)

## OFFICERS' CERTIFICATE

\_\_\_\_\_, 202\_

I, \_\_\_\_\_, hereby certify to Axos Bank, that I am duly appointed \_\_\_\_\_

of \_\_\_\_\_ ("Broker"), and intending that Axos Bank rely on these certifications, I certify:

1. Broker is hereby authorized to act as a mortgage broker for Eligible Loans to be originated by Axos Bank pursuant to the terms of the BROKER AGREEMENT by and between Axos Bank and Broker (the "Agreement"), as set forth in the Agreement;
2. The president, any vice president, any assistant vice president, secretary or assistant secretary of the Broker, in each case, are hereby authorized in the name of on behalf of the Broker to enter into, execute, deliver and perform on behalf of Broker under the Agreement, binding Broker through their respective acts;
3. The execution of the Agreement shall be conclusive evidence that the president, any vice president, any assistant vice president, secretary or assistant secretary of the Broker, in each case, are authorized to execute and deliver such further certificates, documents, instruments and agreements or take such other actions as are reasonably, necessary, or incidental to carrying out the foregoing obligations and those under the Agreement;
4. Each of the following persons who as an officer or other authorized representative of the Broker, signed the Agreement and any other document delivered in connection with the Agreement, was, at the time of such signing and delivery, and is now duly elected or appointed, qualified, to the position held and acting in such position on behalf of Broker, and the signature of such person, as set forth below opposite his or her name, is his or her genuine signature.

Each person described in Section 18 (o) of the Agreement, including, but not limited to, the following persons, are the authorized representatives of the Broker:

**Please fill out and sign:**

<u>Name</u>	<u>Title</u>	<u>Signature</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

**\*Any person signing Agreement or Application must appear in section.**

5. Capitalized terms used herein and not otherwise defined are, unless the context otherwise requires, used as defined in the Agreement.

[Signature page follows]



In WITNESS WHEREOF, the undersigned has caused this certificate to be executed as a duly authorized signatory of Broker, for reliance by Axos Bank, as of the day and year first above written.

**Signature:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

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

**Request for Taxpayer  
Identification Number and Certification**

Give form to the requester. Do not send to the IRS.

**Print or type**  
**See Specific Instructions on page 2.**

Name (as shown on your income tax return)

Business name, if different from above

Check appropriate box:  Individual/Sole proprietor  Corporation  Partnership  
 Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ .....  Exempt payee  
 Other (see instructions) ▶

Address (number, street, and apt. or suite no.)

City, state, and ZIP code

List account number(s) here (optional)

Requester's name and address (optional)

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I Instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number : : :
OR
Employer identification number : : :

**Part II Certification**

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

**Sign Here** Signature of U.S. person ▶ Date ▶

**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

**Purpose of Form**

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,