



BROKER AGREEMENT

This agreement is made and entered into this _____ day of _____, 20 _____,

by and between The Loan Experts Corporation, also doing business as All American Finance,

(hereafter called "Lender") and _____

a(n) _____ (hereafter called "Broker").

WHEREAS, Lender is engaged in the business of underwriting and funding single family residential first mortgage loans;

WHEREAS, the parties desire to establish a non-exclusive relationship whereby Broker may submit to lender on behalf of its customer's loan applications (and related materials) for consideration for underwriting and possible funding by Lender in accordance with this Agreement;

NOW THEREFORE, in consideration of the mutual promises, covenants and undertakings hereinafter provided, Broker and Lender agree as follow:

I. DEFINITIONS

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

A. "Advance" shall mean any amount of Mortgage Loan Proceeds disbursed or advanced by Lender to or on behalf of a Mortgagor in accordance with this Agreement.

B. "Affiliate" shall mean as to any Person (i) the spouse, parent, child, grandchild or sibling of any individual Person, or any other relative who lives in the same house with, or is a dependent (under the Internal Revenue Code) of, such Person, (ii) any general or limited partnership in which such Person or any Affiliate of such Person owns, beneficially or of record, more than 10% of the limited partnership interest; (iii) any corporation in which such person or any individual identified in clause (i) is a director or officer, or of which any such Person, or any Affiliate of such person is the owner, legally or beneficially or of record, of 10% or more of its outstanding voting stock; (iv) any limited liability company of which any such Person is a member or manager, or of which any such Person or Affiliate of such Person is the owner, legally, beneficially or of record, of 10% or more of the equity; (v) any trust of which any such Person, or any Affiliate of such Person is a trustee or co-trustee or is the holder, beneficially or of record, of a beneficial interest of 10% or more; (vi) any corporation, partnership, limited liability company, trust or other entity controlled by, controlling or under common control with either directly or indirectly, such Person or any Affiliate of such Person; (vii) any agent or employee of the Person, or any Person of which the Person is an agent or employee.

C. "Approved Closing Agent" shall mean any title insurance company, attorney or other duly qualified escrow agent, with respect to which Lender has received evidence of fidelity insurance and errors and omissions insurance and/or an insured closing protection letter from a title insurance company, in each case in form and substance satisfactory to Lender, and approved by Lender (with or without notice to Broker). No Affiliate of Broker may be an Approved Closing Agent without prior written consent of Lender. Lender may at any time withdraw or terminate its approval of any Closing Agent previously approved by Lender with or without notice to Broker.

D. "Business Day" shall mean any day on which Lender is open for business other than Saturday or Sunday.

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- E. “Closing Date” shall mean, with respect to a Mortgage Loan to be made by Lender pursuant to this Agreement, the date of funding of such Mortgage Loan by Lender.
- F. “FHLMC” shall mean Federal Home Loan Mortgage Corporation, or its successor.
- G. “FNMA” shall mean Federal National Mortgage Association, or its successor.
- H. “GNMA” shall mean Government National Mortgage Association, or its successor.
- I. “Loan-to-Value” or “LTV” shall mean, with respect to any Mortgage Loan, the ratio of the original principal amount thereof to the lesser of (I) the purchase price of the Mortgaged Property securing the Mortgage Loan, or (ii) the appraised value of such Mortgaged Property as established by an appraisal made in accordance with all applicable laws and regulations by a qualified independent appraiser, satisfying the provisions of Section 4.1.M and in form and substance satisfactory to Lender.
- J. “Mortgage” shall mean a good and valid first priority mortgage or deed of trust on a one-to-four family residential property located in any State in which the Broker is qualified to do business as a residential mortgage broker, executed by the maker(s) of a Mortgage Note securing the obligations evidenced by such Mortgage Note, recorded in the appropriate public land records, and satisfactory in all respects to Lender in its sole discretion.
- K. “Mortgage Loan” shall mean a first mortgage loan evidenced by a Mortgage Note and secured by a Mortgage executed and delivered to or for the benefit of Lender, which shall have been Registered with Lender by Broker, and which, subject to the provisions of Section 4.1 of this Agreement, shall be completely consistent with the representations and warranties of this Agreement and provisions of applicable Mortgage Loan Program (as defined in Section 1.1.M).
- L. “Mortgage Loan Documents” shall mean the documents creating, evidencing or securing a Mortgage Loan, including without limitation a Mortgage Note, Mortgage, security agreements, appraisals, credit reports, loan applications, loan settlement statements, title insurance policy (or other title evidence acceptable to Lender), hazard, flood, and liability insurance, correspondence and other documents pertaining thereto.
- M. “Mortgage Loan Program” shall mean any program established by Lender and made available by Lender to Broker for the acquisition of specified types of Mortgage Loans from Broker. The requirements of the Mortgage Loan Programs available to Broker shall be furnished to Broker by Lender and, as modified or amended from time to time, shall be part of this Agreement as fully as if stated herein.
- N. “Mortgage Note” shall mean the valid, binding and enforceable promissory note or other evidence of indebtedness of a Mortgage Loan, payable to Lender.
- O. “Mortgaged Property” shall mean the property subject to a Mortgage securing a Mortgage Loan, which shall consist of a fee simple or lease hold estate in land on which is situated a Residential Dwelling.
- P. “Mortgaged Property State” shall mean each State identified by Lender for each Mortgage Loan Program in which Mortgaged Property may be situated.
- Q. “Mortgagor” shall mean the obligor(s) on a Mortgage Note.

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- R. "Person" shall mean an individual, corporation, partnership, limited liability company, trust, association, governmental agency, or any other entity.
- S. "Private Mortgage Insurance" shall mean insurance of payment of a portion of a Mortgage Loan provided to Lender, its successors and assigns, by a properly licensed insurance company acceptable by Lender, in its sole discretion.
- T. "Registered", when used in reference to a Mortgage Loan application, shall mean a Mortgage Loan application that has been identified to Lender by Broker for underwriting by Lender in accordance with the provisions of this Agreement, and procedures established by Lender, assigned a loan number and confirmed in writing by Lender to Broker.
- U. "Residential Dwelling" shall mean (i) a detached one to four-family dwelling; (ii) a townhouse; or (iii) a condominium unit or townhouse unit in a planned unit development that is located in a condominium project or planned unit development approved by FNMA.
- V. "Title Insurance Policy" shall mean, with respect to each Mortgage Loan, a fully paid ALTA loan policy of title insurance, with EPA and all other customary endorsements required by FNMA, issued to Lender as the sole insured by a title insurance company duly licensed to conduct such business in the State in which the Mortgaged Property is located and acceptable to Lender, insuring the validity and priority of the Mortgage in the full amount of the Mortgage Loan and containing no exceptions, except as described in Section 4.1.D hereof.
- W. "Underwriting Package" shall mean, with respect to a Mortgage Loan which Broker seeks to be funded by Lender under a particular Mortgage Loan Program, the items specified therefore in the underwriting standards for such Mortgage Loan Program, including without limitation, fully completed and signed loan applications, credit reports, deposit and employment verifications, evidence of income, appraisal, location survey, Federal Truth-in-Lending Act ("TIL") and Real Estate Settlement Procedures Act ("RESPA") disclosure documents (acknowledges by Mortgagor), Broker's approval sheet, and all Loan Documents then available, if any.
- 1.2 Any accounting term not otherwise defined herein shall be deemed to be used in accordance with generally accepted accounting principles ("GAAP"). Unless the context otherwise requires, the words "herein", "hereunder", "hereto" and "hereof" shall be deemed to refer to this entire Agreement and not merely to a paragraph, section or portion hereof. The use of any gender shall be deemed to refer to any other gender, and any use of the singular or plural number shall be deemed to refer to either singular or plural, as the context may require.

II. DELIVERY OF UNDERWRITING PACKAGES

Broker shall deliver to Lender, and Lender shall receive for underwriting and review, Underwriting Packages originated by Broker in accordance with this Agreement. After Broker delivers an Underwriting Package to Lender, Broker shall not thereafter offer the loan application being a part thereof to any other lender or purchaser, and Lender shall thereafter have the exclusive right to fund the Mortgage Loan made or to be made pursuant to such loan application unless and until Lender expressly declines to make such Mortgage Loan. Any and all Underwriting Packages delivered by Broker to Lender during the term hereof, and any and all Mortgage Loans made by Lender pursuant to any such Underwriting Package, shall be originated, funded, made and acquired on and subject to the terms and provisions of this Agreement. Broker acknowledges that Lender intends to rely on Broker's agreement to assign to Lender, Underwriting Packages that have been Registered with Lender in accordance with this Agreement and that Lender may, without notice to Broker, make binding commitments to or agreements with

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others in reliance upon Broker's obligations pursuant to this Agreement. Except as otherwise specifically provided herein, after and Underwriting Package has been Registered with Lender, Lender shall review such Underwriting Package in accordance with this Agreement; provided that this Agreement imposes no requirement that Broker Register any Underwriting Package with Lender or that Lender accept for Registration any Underwriting Package from Broker, or that Lender make any Mortgage Loan to any applicant referred to Lender by Broker, except as expressly provided herein.

III. FUNDING OF MORTGAGE LOANS

3.1 **General Conditions:** The conditions listed below are precedent to any obligation of the Lender and shall be complied with in form and substance satisfactory to Lender prior to any obligation of Lender pursuant hereto:

- A. This Agreement shall have been executed and delivered to Lender by Broker;
- B. The Lender shall have received a Certificate of Good Standing for the Broker issued by the Secretary of State of the State in which the Broker is organized and by the Secretary of State in which it is qualified to do business, each dated as a date not more than 10 days prior to the date hereof;
- C. The Lender shall have received a copy of Broker's license as a mortgage broker, or, if there is no applicable licensing requirement, such other documentation as Lender may require, demonstrating the Broker's qualifications to conduct a mortgage broker business and, if Broker is qualified or approved to originate, underwrite and/or service loans by any of the FHA, VA, GNMA, FHLMC or FNMA, copies of evidence of each such approval;
- D. The Lender shall have received satisfactory evidence of compliance by the Broker with the errors and omissions insurance and fidelity bond requirements contained in Section 6.1.B;
- E. Broker shall have delivered to Lender copies of its annual financial statements for each of its last two fiscal years, including a statement of condition as of the end of each fiscal year, and for the current year through the end of the most recent calendar month, in each case prepared in accordance with generally accepted accounting principles consistently applied, together with a certificate of Broker to the effect that there had been no material adverse change in its assets, operations, business or condition since the date of the latest of such statements, and with respect to such annual financial statements, certified by an independent certified public accountant to have been prepared in accordance with "review" procedures prescribed by the American Institute of Certified public Accountants ("AICPA"); and
- F. Lender shall have received such other documents as Lender may reasonably request.

3.2 **Loan Funding Conditions:** The obligation of the Lender to make any Advance with respect to a Mortgage Loan shall be conditioned on the satisfaction of all of the terms and provisions contained in this Section 3.2 in the sole judgment of Lender:

- A. The Underwriting Package for the Mortgage Loan shall have been delivered to and approved by Lender.
- B. Lender shall have received, not less than 48 hours before Closing of each Mortgage Loan, the Broker's fully completed request for funding and all documents and materials required by the Lender.

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- C. All applicable provisions of this Agreement and underwriting standards for the applicable Mortgage Loan Program shall have been complied with and satisfied to Lender's satisfaction. Each Mortgage Loan shall satisfy the conditions of the applicable Mortgage Loan Program (as the same may be changed or amended by Lender at any time and from time to time in its sole and absolute discretion) in order for such Mortgage Loan to qualify and be eligible for funding pursuant hereto, such requirements to include, but not be limited to, residence type (primary residence, second home, etc.), loan type, minimum loan amount, maximum loan amount, loan term, interest rate, maximum LTV, property type, income ratios, escrow requirements and mortgage, hazard and flood insurance requirements.
- D. All of the representations and warranties of Broker in this Agreement shall be true and correct, and no event shall have occurred that, with notice or the passage of time, or both, would constitute a default by Broker under this Agreement.
- E. All other terms and conditions of this Agreement or otherwise imposed by Lender in connection with the funding of the Mortgage Loan shall have been complied with, or satisfied to, Lender's satisfaction.
- 3.3 **Broker's Compensation:** Subject to the full satisfaction of the conditions specified in Section 3.2 hereof, Lender shall deposit with the Approved Closing Agent for each Mortgage Loan, for payment to Broker, the Broker's compensation amount for such Mortgage Loan established by Lender's applicable charts published for such purposes, and Broker shall deposit with the Approved Closing Agent for such Mortgage Loan, for payment to Lender, all fees, charges and other amounts due from Broker to Lender with respect to such Mortgage Loan.
- 3.4 **Delivery of Non-Recorded Closing Documents:** Within 48 hours after Closing of each Mortgage Loan, Broker shall have caused to be delivered to Lender all original Mortgage Loan documents therefore in form and substance acceptable to Lender (other than the recorded Mortgage and Title Insurance Policy).
- 3.5 **Remaining Mortgage Loan Documents:** Within Thirty (30) days after Closing, Broker shall deliver or cause to be delivered to Lender such additional Mortgage Loan Documents for the Mortgage Loan as may be required by this Agreement, including all Loan Documents filed for record and the applicable Title Insurance Policy.

IV. REPRESENTATIONS AND WARRANTIES

- 4.1 **Representations and Warranties; Mortgage Loan:** Broker represents and warrants to Lender, as to each Mortgage Loan funded by Lender pursuant hereto (as of the Closing Date thereof unless otherwise stated), as follows:
- A. The information contained in the Underwriting Package is true, correct and complete.
- B. Broker has full right and authority, subject to no other interest or participation of, or agreement with, any other Person, to convey, transfer, assign and deliver the Underwriting Package and Mortgage Loan to Lender.
- C. Broker has not impaired, altered or modified any Mortgage Loan Document in any respect.
- D. The Mortgage is insured by a Title Insurance Policy that satisfies all requirements of FNMA and FHLMC for similar Mortgage Loans and is issued by and is the valid and binding obligation of a title insurer that is not an Affiliate of Broker and is acceptable to FNMA and FHLMC and qualified to do business in the applicable Mortgaged Property State, that insures Lender, its

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successors and assigns, as to the first priority lien (without exception for mechanics' liens, parties in possession or matters shown by a survey) of the Mortgage in the original principal amount of the Mortgage Loan and subject only to (i) the lien of current real property taxes and assessments not yet due and payable, (ii) covenants, conditions and restrictions, rights of way, easements and other matters of public record as of the date of recording of such Mortgage ordinarily acceptable to residential mortgage lending institutions in the area in which the Mortgage Property is located and (A) specifically considered in the appraisal performed in connection with the origination of the Mortgage Loan or (B) which do not adversely affect the appraised value of the Mortgaged Property as set forth in such appraisal and (iii) such other matters to which similar properties are commonly subject which do not individually, or in the aggregate, materially interfere with the benefits of the security intended to be provided by the Mortgage (the "Title Insurance Policy"). Lender is the sole insured of the Title Insurance Policy, the Title Insurance Policy is in full force and effect and no claims have been made under the Title Insurance Policy, and Broker had not done anything that would reduce or impair the coverage of the Title Insurance Policy.

- E. All improvements located on the Mortgaged Property are insured by an insurer acceptable to Lender against loss by fire, hazards of extended coverage and such other hazards as are customary in the area where the Mortgaged Property is located, in an amount which is equal to at least 100% of the maximum insurable value of the improvements securing the Mortgage Loan, naming Lender, its successors and assigns, as mortgagee and loss payee, and which satisfies all applicable requirements of FNMA and FHLMC. If the Mortgaged Property is in an area having special flood hazard, Lender, its successors and assigns, are insured by a flood insurance policy satisfying all requirements of FNMA, FHLMC, the Federal Insurance Administration and the Office of Thrift Supervision, issued by an insurer acceptable to Lender, in an amount equal to not less than the least of (i) the outstanding principal balance of the Mortgage Loan, (ii) the full insurance available under the Flood Disaster Protection Act of 1973, as amended.
- F. No future Advance of any Mortgage Loan proceeds is required, and any and all requirements as to disbursements of any funds escrowed at the time of delivery of such Mortgage Loan to Lender have been fully satisfied. All costs, fees and expenses incurred in making, closing and recording the Mortgage Loan have been paid. The unpaid principal balance of the Mortgage Loan is the original principal amount stated on the face of the Mortgage Note.
- G. All of the improvements which are included for the purpose of determining the appraised value of the Mortgaged Property are situated wholly within the boundaries and building restriction lines of such Mortgaged Property, and no improvements on adjoining properties encroach upon the Mortgaged Property; all of such improvements are in good condition and repair except as expressly identified in the appraisal thereof; and, unless the Title Insurance Policy does not except matters that would be disclosed by a survey, Broker shall have delivered to Lender a location survey for the Mortgaged Property satisfying all applicable FNMA and FHLMC underwriting requirements.
- H. The Mortgage Loan and the Mortgage Loan Documents comply with all FNMA and FHLMC underwriting standards and documentation requirements, except as otherwise expressly provided by Lender's specific Mortgage Loan Programs.
- I. Each of the Mortgage Note and Mortgage is on a form approved by FNMA and FHLMC with such riders or addenda as have been approved by FNMA or FHLMC, as applicable, or the Lender.

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- J. Each of the Mortgage Note and Mortgage is genuine, and each is the legal valid and binding obligation of the maker(s) thereof or signatories thereto, enforceable in accordance with its terms, subject to bankruptcy laws and other similar laws affecting creditors' rights generally. All parties to the Mortgage Note and Mortgage had legal capacity to execute the Mortgage Note and the Mortgage, and each of the Mortgage Note and Mortgage has been duly and properly executed and delivered by the Mortgagor. No payment due and owing pursuant to any Mortgage Note for any period subsequent to the date such Mortgage Note was acquired by Lender was collected or received by Broker, and Broker has not otherwise anticipated, waived, released, discounted, set off or otherwise discharged or compromised any such payment or amount. Broker has not released any Mortgaged property securing any Mortgage Loan. No Mortgage Loan Document has been amended or modified in any respect, nor has any right or remedy of the holder thereof been waived, modified, impaired or limited.
- K. Broker has complied with any and all requirements of all federal, state and local statutes, laws, rules, regulations, orders and decrees relating to each Mortgage Loan, including, without limitation, usury, TIL, RESPA, consumer credit protection, equal credit opportunity and disclosure laws.
- L. The property subject to each Mortgage consists of real property owned by the Mortgagor(s) in fee simple, upon which there is erected and situated a one-to-four family residence that has been constructed or permanently installed on site.
- M. Broker has received an appraisal of the Mortgaged Property dated not earlier than sixty (60) days prior to the origination date of Mortgage Loan secured thereby, signed by a qualified appraiser (not an Affiliate of Broker or Mortgagor) who had no interest, direct or indirect, in the Mortgaged property or in the Mortgage Loan, and who did not receive compensation which was affected by the approval or declining of the Mortgage Loan, which appraisal was produced and prepared in compliance with all applicable laws and regulations, and the requirements of FNMA and FHLMC. Any appraisal made in connection with a Mortgage Loan funded by Lender pursuant hereto and delivered to Lender as part of the Underwriting with respect thereto that estimates the value of the Mortgaged Property to be greater than one hundred twenty five percent (125%) of either the purchase price or any other appraised value thereof for the purpose of obtaining a loan secured thereby, in either case within twelve (12) months prior to the date of the appraisal in connection with such Mortgage Loan, shall be presumed not to comply with the requirements herein.
- N. There is no default, breach, violation or event of acceleration existing under the Mortgage or the Mortgage Note secured thereby, and no event which, with the passage of time or with notice and/or the expiration of any grace or cure period, would constitute such a default, breach, violation or event of acceleration has occurred and is continuing; and Broker has not waived any default, breach, violation or event of acceleration.
- O. Each Mortgaged Property complies with all applicable laws, statutes, ordinances, rules and regulations, including without limitation, zoning, building, subdivision and environmental laws and regulations, is in good condition and repair, and is not the subject of any pending or threatened eminent domain proceeding. Without limiting the generality of the foregoing, no toxic or hazardous material or substance, including without limitation asbestos or any petroleum product, or any material or substance that would require removal or remediation pursuant to any applicable governmental law, statute, ordinance, rule, regulation or order, is located on, at or under Mortgaged Property; no governmental authority has directed that any material or substance,

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including without limitation asbestos or any petroleum product, be removed from any Mortgaged Property; no underground storage tank is located at or under any Mortgaged Property.

- P. Broker has no knowledge of any circumstance or condition with respect to the Mortgage, the Mortgaged Property, the Mortgagor or the Mortgagor's credit standing that might be reasonably expected to cause FNMA, FHLMC or other institutional mortgage loan purchasers to regard the Mortgage Loan as an unacceptable investment, cause the Mortgage Loan to become delinquent or adversely affect the value or marketability of the Mortgage Loan or the Mortgaged Property.
- Q. If the Mortgage Loan is insured in whole or in part by mortgage guaranty insurance, no portion of such mortgage guaranty insurance is subject to a reinsurance or other risk-sharing arrangement.
- R. If a deed of trust constitutes the Mortgage, (i) no fees or expenses are or will become payable by Lender to the trustee, except in connection with a trustee's sale after default by the Mortgagor, and (ii) a trustee, duly qualified under applicable law to serve as such, has been properly designated and qualified and is duly acting in such capacity.

4.2 Representations and Warranties; Broker:

Broker represents and warrants to Lender, as of the date of this Agreement, and as of each Closing Date as follows:

- A. Broker is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is duly licensed, qualified and in good standing in each Mortgaged Property State in which Mortgaged Property securing a Mortgage Loan Registered by Broker with Lender pursuant hereto is located.
- B. Broker has full power and authority to execute and deliver this Agreement and to perform its obligations in accordance herewith.
- C. The execution, delivery and performance of this Agreement by Broker and the consummation of the transactions contemplated hereby have been duly and validly authorized by Broker.
- D. This Agreement evidences and constitutes the legal, valid, binding and enforceable obligations of Broker, subject to bankruptcy laws and other similar laws of general application.
- E. No approval, authorization, order, license, franchise consent, or registration or filing with, or notice to, any governmental authority or any other Person is required in connection with the execution, delivery or performance by Broker of this Agreement.
- F. Broker has never been disqualified, excluded or suspended from (i) selling loans to FNMA or FHLMC, (ii) being able to originate loans intended to be guaranteed or insured by HUD, the VA or any other governmental agency, or (iii) having loans originated by it insured in whole or in part by any of MGIC, GEMICO or UG or any other mortgage insurance company.
- G. The execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement are in the ordinary course of business of Broker and will not result in the breach or violation of any term or provision of the charter, articles of incorporation, regulations, by-laws, or other organizational document of Broker; or result in the breach or violation 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 Broker is a party or Broker or its property is subject; or result in the violation

of any law, rule, regulation, order, judgment of decree to which Broker or any of its property is subject.

- H. There is no action, suit or other proceeding pending or, to the best knowledge of Broker, threatened, at law or in equity, or by or before any judicial, legislative, executive or administrative court, agency or authority, or any arbitrator, which seeks damages by reason of, or seeks to prevent or hinder consummation of, the transactions contemplated hereby, or wherein an unfavorable determination, ruling or finding would materially adversely affect the transactions contemplated hereby, or any Mortgage Loan, any Mortgage Loan Document, or any Mortgaged Property, or which would materially adversely affect the business or financial condition of Broker or any Mortgagor.
- I. Broker has taken, or will take or cause to be taken, with respect to each and every Mortgage Loan Registered with Lender by Broker, all actions necessary for error free origination and processing or such Mortgage Loans on and through Broker's systems, software programs, document preparation, and any ancillary process which relates to the origination, closing and/or sale of residential mortgage loan. Without limiting the foregoing, Broker represents and warrants with respect to each such Mortgage Loan that (i) all of its systems and software programs can or will accept, process, and output true and accurate dates, periods of time and date information, including but not limited to accepting complete date input, providing complete date output, and performing complete and correct calculations based on dates or portions of dates; (ii) Broker has taken and processed the application for, originated, and prepared documents and disclosures for, such Mortgage Loan without any change in operation or interruption or delay caused by the inability of Broker's systems to correctly process data for dates or spans of time and will continue to do so; and (iii) Broker's systems and software programs can respond to two digit year-date input in a way that properly resolves any ambiguity as to century in a disclosed, defined and predetermined manner and can store and provide output of date information in ways that are unambiguous as to century. This reputation, warranty and covenant in no way limits the applicability of any other representation, warranty or covenant contained herein.
- J. All financial statements which have been delivered by Broker to Lender are true, correct, and complete, have been prepared in accordance with generally accepted accounting principles, practices, and procedures consistently applied, and fairly and accurately present the financial condition of Broker as of the respective dates thereof and the results of its operations for the periods identified, and, with respect to Broker's financial statements for its last two (2) fiscal years, have been certified by an independent certified public accountant to have been "reviewed" in accordance with the standards of the AICPA.
- K. All tax returns required to be filled by Broker in any jurisdiction have been filed, and all taxes, assessments, fee and other governmental charges imposed upon Broker, or upon any of its properties, income or franchises, which are due and payable, have been paid; the provisions for reserves for taxes on Broker's books are adequate, in its reasonable opinion, for all un-audited fiscal years, and for its current fiscal period.
- L. Neither this Agreement nor any statement, report or other document furnished or to be furnished by Broker pursuant to this Agreement or in connection with the transaction 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.
- M. Broker is in material compliance with all laws and governmental rules and regulations applicable to it and its business. Without limiting the foregoing, Broker, its partners, members, directors,

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officers, agents and employees are all currently insured by errors and omissions insurance and a fidelity bond to the extent required by applicable law and regulation.

- 4.3 **Survival.** All representations and warranties shall be true and correct as of each Closing Date and shall survive each Closing.

V. REPURCHASE OBLIGATIONS OF BROKER

- 5.1 Upon (i) failure by a Mortgagor to pay the full amount of any payment due pursuant to any Mortgage Loan within 30 days after the date when such payment was due two or more times within six (6) months after the Closing Date of such Mortgage Loan, (ii) discovery by Lender of a breach of any of the representations and warranties contained in Article IV hereof, or (iii) the failure of Broker to deliver or cause to be delivered to Lender of all the Mortgage Loan Documents for Mortgage Loan as and when specified in Article III hereof, then, within sixty (60) days after the earlier of Broker's discovery or Broker's receipt of notice of any such event or occurrence, Broker shall purchase said Mortgage Loan from Lender at a price equal to 100% of par, with adjustments for accrued interest, prepayments and any comparable items at the time of purchase, plus attorney's fees, legal expenses, court costs and any other expenses that may have been incurred by Lender in connection with the Mortgage Loan, and Broker shall promptly repay to Lender any and all compensation theretofore received by Broker from Lender with respect thereto, with interest on all of the foregoing at the rate of three percent (3%) per annum over the Lender's Prime Rate.
- 5.2 Upon Lender's determination that there is any evidence of fraud in the origination of the loan or in the documentation submitted to Lender or any matter in the mortgage loan file that is not true and correct.
- 5.3 Upon payment in full of a Mortgage Loan within 180 days after its Closing Date, then, within 10 days after the earlier of Broker's discovery or Broker's receipt of notice of such event, Broker shall repay to Lender any and all compensation theretofore received by Broker from Lender with respect thereto, with interest thereon at the rate of three percent (3%) per annum over the Prime.
- 5.4 Upon any purchase of a Mortgage Loan by Broker, Broker shall also assume all servicing obligations in connection therewith.

VI. COVENANTS.

- 6.1 **Affirmative Covenants.** Broker covenants and agrees that, during the term of this Agreement:
- A. Broker will comply with all statutes, laws, ordinances and governmental rules and regulations applicable to it and its business and to each loan application delivered by Broker to Lender for Registration, each Underwriting Package, each Mortgage Loan originated by Broker and Registered with Lender and each Mortgage Loan Document related thereto, except to the extent that any such compliance obligation or requirement may be expressly assumed in writing by Lender, including without limitation, all applicable disclosures to Mortgage Loan applicants and/or Mortgagor(s); to the extent expressly required by Lender in connection with Mortgage Loans Registered by Broker with Lender;
- B. Not less often than annually, and upon Lender's request from time to time, Broker shall procure and deliver to Lender evidence satisfactory to Lender that a Fidelity Bond or other insurance issued by a bonding or insurance company satisfactory to the Lender (not an Affiliate of Broker) is in full force and effect insuring the Lender as loss payee against fraud, theft and any misapplication, misuse, neglect or loss of any funds or documents by any officer, director, agent

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or employee of the Broker, in such amount as may be required by Lender from time to time, but not less than the amount as may be required by applicable law in each State in which the Broker originates Mortgage Loans for Registration with and possible funding by Lender; Broker shall also deliver to Lender evidence of errors and omissions insurance satisfactory to Lender in such amount as may be required by Lender from time to time, but not less than the amount required by applicable law in each State in which Broker originates Mortgage Loans for Registration with and possible funding by Lender.

- C. Broker shall maintain true and accurate books, records and accounts in which full and correct entries will be made of all of its business transactions, and will reflect in its financial statements adequate accruals and appropriations to reserves, all in accordance with generally accepted accounting principles, practices and procedures consistently applied, and in compliance with the regulations of each governmental agency having jurisdiction, and will permit employees or agents of Lender, its successors or assigns, at any reasonable time, to examine its books, accounts and records, including, without limitation, all files, documents, materials, data and other information related to each Mortgage Loan acquired, or to be acquired by Lender, pursuant hereto, and make copies and memoranda thereof;
- D. Broker shall do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights, and franchises; to the extent that Broker is, or at anytime becomes, qualified or eligible to sell Mortgage Loans to FHLMC or FNMA, or to have Mortgage Loans originated by it guaranteed or insured by VA, FHA, or any private mortgage insurance company, Broker shall do or cause to be done all things necessary to preserve each such qualification, eligibility and right;
- E. Within ninety (90) days after the end of each of its fiscal years, Broker shall deliver to Lender its annual financial statements for such fiscal year, including a balance sheet and an income and expense statement, which financial statements shall have been reviewed by an independent certified public accountant in accordance with generally accepted accounting principles consistently applied in accordance with applicable AICPA standards; and
- F. Broker shall at times during normal business hours permit Lender to have such access to the premises, files and records of Broker, its partners, officers, trustees, members, agents, and employees as Lender in its reasonable discretion may deem necessary or desirable to ascertain Broker's performance and/or compliance with respect to this Agreement, or with respect to any Mortgage Loan Registered with Lender or otherwise related to the relationship contemplated hereby.
- 6.2 **Negative Covenants.** Broker shall not, without the prior consent of Lender, which consent Lender may withhold in its sole discretion:
- A. Exchange, sell, pledge, assign, transfer, convey, deliver, mortgage or otherwise encumber or dispose of any Mortgage Loan, Mortgage Note or Mortgage Loan Document or any future payment pursuant to any Mortgage Note or any Mortgage Loan Document after Registration thereof with Lender, except to Lender as provided herein;
- B. Waive, excuse, condone, discount, set off, compromise or in any manner release or discharge any obligor under any Mortgage Note or Mortgage Loan Document that has been Registered with Lender of or from any obligation, covenant, condition or agreement to be kept, observed or performed in the manner and at the place and time specified therein;

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- C. Cancel, terminate or consent to any surrender of any Mortgage Note or any other Mortgage Loan Document or modify or in any way alter any term or provision thereof;
- D. Use the name of the Lender or the name of any Affiliate of Lender in connection with any of Broker's businesses or activities, except in connection with internal business matters and as required by governmental agencies or Broker's creditors;
- E. Use, furnish or rely upon a title, hazard, casualty, life, fidelity, errors and omissions or other insurance policy, survey or appraisal underwritten or issued by any Affiliate of Broker or any entity owned or controlled, directly or indirectly, by any real estate broker involved in a transaction resulting in the creation of any Mortgage Loan acquired or to be acquired by Lender pursuant hereto;
Disclose to any Person or entity any information obtained by Broker from Lender, its agents or employees relating to the business, operations, assets, liabilities, properties, financial condition, operating results, loan programs, mortgage loan originators, suppliers, vendors or customers (borrowers or depositors) of Lender, or any part of this Agreement, in each case without the prior written consent of Lender, except to Broker's agents or employees engaged in transactions contemplated hereby to the extent they have a need to know such information, or to Broker's accountants or attorneys to the extent they have a need to know such information, in each case provided that Broker has first notified each such Person of its confidentiality agreement and obtained a confidentiality agreement commitment from such person, or pursuant to subpoena when the Broker has first provided a copy of such subpoena to Lender not less than five (5) Business Days prior to delivery of or providing any information, documents or material pursuant thereto; or
- F. Within twelve (12) months after the Closing Date of a Mortgage Loan Registered by Broker with Lender, solicit, seek to encourage or make any inquiry of the Mortgagor with respect to potential refinancing of such Mortgage Loan. If Broker receives any inquiry from any such Mortgagor within such period regarding possible refinance of such Mortgage Loan, Broker shall immediately refer such inquiry to Lender. Lender may, in its sole discretion, permit such refinance and agree to fund the refinance Mortgage Loan on terms and conditions acceptable to the Lender, taking into consideration any amount theretofore paid to the Broker with respect to the Mortgage Loan being refinanced.

VII. DEFAULTS

- 7.1 Each of the following shall constitute a default or Event of Default hereunder:
 - A. The failure by Broker to make any payment as and when due and payable pursuant to this Agreement, or to fully and timely perform any other covenant, condition or obligation contained herein;
 - B. Any warranty, representation, financial data or other information made or furnished by Broker to Lender in connection with this Agreement or any transaction contemplated hereby (whether before or after the date hereof) was untrue, false, incorrect, incomplete or misleading in any material respect when made;
 - C. Any merger, consolidation, dissolution, suspension, termination of existence, insolvency (failure to pay its debts as they mature or the failure of the fair saleable value of its assets to be in excess of its liabilities at any time), or business failure of Broker, the appointment of any receiver, trustee, custodian, or similar fiduciary for part or all of the assets of Broker, any assignment by Broker for the benefit of its creditors, or the making by Broker of any offer of settlement,

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- extension, or compromise to its unsecured creditors generally, or the commencement of any proceeding under any federal or state bankruptcy, reorganization, moratorium, insolvency or any similar law, of, by, or against Broker, which proceeding, if not commenced by Broker, is not dismissed or vacated within 30 days after commencement;
- D. The Broker ceases to exist or is dissolved or sells all or substantially all of its assets, or ceases to be qualified to do or transact business in any State in which any Mortgage Property is located;
- E. If Broker is a corporation, partnership or limited liability company, any capital stock of, or other equity interest in, the Broker is issued, sold, transferred, conveyed, assigned, mortgaged, pledged, or otherwise disposed of, whether voluntarily or by operation of law, and whether with or without consideration, or any agreement for any of the foregoing is entered into;
- F. The loss, revocation, suspension or failure to obtain or renew any license or permit now held or hereafter acquired by Broker which is necessary for the continued operation of its business as contemplated by this Agreement, including without limitation the loss, revocation, suspension or termination for any reason of any eligibility, qualification, right or ability of Broker to sell Mortgage Loans to, and service Mortgage Loans for, FHLMC or FNMA or to obtain FHA insurance or VA guarantees or private mortgage insurance from any mortgage insurance company, with respect to Mortgage Loans originated or serviced by Broker;
- G. The entry, issuance or levying against Broker or Broker's property of any lien, attachment, injunction, execution or judgment for the payment of money in excess of \$25,000 unless the same is discharged in full, bonded, or stayed within thirty (30) days thereafter;
- H. Any attempt by Broker to assign, transfer, convey, pledge or encumber any Mortgage Loan or Mortgage Loan Document without Lender's prior written approval;
- I. Failure by Broker to pay any indebtedness or to observe or perform any term, covenant or provision contained in any note, mortgage, agreement or other obligation to Lender;
- J. The occurrence of a default or event, which with notice or lapse of time or both, would constitute a default under any note, mortgage, agreement or other obligation of Broker to any Person, which is not cured within the time, if any, permitted by such note, mortgage, agreement or other obligation;
- K. Failure to deliver to Lender any Mortgage Loan Document not filed for recording with respect to any Mortgage Loan with respect to which Lender has made an Advance pursuant hereto within 48 hours after the date of such Advance; or
- L. Any other material adverse change in the business or financial condition of Broker that is not cured to the satisfaction of Lender within 30 days after written notice thereof from Lender to Broker.

In the event of any failure by Broker to purchase any Mortgage Loan in accordance with the provisions hereof, or any breach by Broker of any of its representations or warranties herein, or any failure by Broker to perform any of its obligations pursuant hereto, or upon the occurrence of any other default or Event of Default, Lender may by written notice to Broker terminate this Agreement and, in such event, Lender shall have no further obligation to review or Register any Underwriting Package delivered by Broker to Lender or to fund any Mortgage Loan theretofore or thereafter originated by Broker, or any other obligation pursuant hereto, and Lender shall have any and all other rights and remedies to which it may be entitled hereunder, at law or in equity.

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- 7.2 Either Lender or Broker may terminate this Agreement by written notice to the other at any time, for any or no reason. Upon any such termination, Lender shall have no further obligation to fund any Mortgage Loan originated or Registered by Broker thereafter, but the terms, conditions and provisions of this Agreement shall continue to apply to any and all Mortgage Loans theretofore or thereafter Registered with or funded by Lender pursuant to this Agreement.
- 7.3 The failure of the Lender to exercise any of its powers, rights or remedies herein or otherwise shall not preclude subsequent resort to such power, right or remedy or resort to any other power, right or remedy nor shall the exercise of any power, right or remedy prevent the subsequent or concurrent resort to any other power, right or remedy. No delay or omission by Lender in exercising any power, right or remedy shall impair any such power, right or remedy, nor shall any such delay or omission be construed as a waiver of any Event of Default. Every power, right and remedy of Lender may be exercised from time to time and as often as shall be deemed expedient or advisable by Lender in its sole and absolute discretion. No waiver of any default or Event of Default shall extend to or affect any other defaults or Event of Defaults. Any waiver, permit, consent or approval of any provision or condition of this Agreement shall be effective only to the extent specifically set forth in writing. Lender shall not be obligated to exercise any power, right or remedy and shall not be liable for failing to take any action permitted hereby or for any act or omission relating to any Mortgaged Property unless the same is caused by its intentional misconduct. All powers, rights and remedies, either under this Agreement, by law, or otherwise afforded to Lender, shall be cumulative and not alternative;

VIII. MISCELLANEOUS

- 8.1 All costs and expenses incurred in connection with Broker's transfer and delivery of the Mortgage Loans to Lender, including without limitation, fees payable to or at the direction of Lender, and Broker's legal fees, shall be paid by Broker. Without in any way limiting the foregoing, Lender is hereby authorized to deduct or set off any fees, costs, expenses, or other amounts payable by Broker to, or at the direction of, Lender from or against any amount payable by Lender to Broker. In any event, no Mortgagor shall have any obligation to pay Lender any fee, cost, expense or other amount that is to be paid by Broker to or at the direction of Lender.
- 8.2 The appointment of trustees under any trust deeds or deeds of trust shall be subject to the approval of Lender.
- 8.3 Broker shall indemnify and hold harmless Lender, its directors, officers, agents and employees, from and against any and all losses, damages, penalties, fines, forfeitures, legal fees and related costs, judgments and other costs and expenses resulting from, (a) a breach of any representation or warranty of Broker contained in this Agreement, or (b) any act or omission of Broker or any of its partners, directors, members, shareholders, officers, agents or employees in originating any Mortgage Loan, including, without limitation, incomplete or erroneous loan documentation, fraud by Broker in the origination of the Mortgage Loan, or violation of applicable law or regulation. The provisions contained in this Section shall survive termination of this Agreement.
- 8.4 The representations and warranties contained in Article IV and the indemnity contained in Section 8.3 shall survive the closing of each Mortgage Loan and delivery of the Mortgage Loan Documents to Lender and the termination of this Agreement and shall inure to the benefit of any successor holder of each Mortgage Loan, notwithstanding the examination of the contents of an Underwriting Package or any Mortgage Loan Document or any other examination or investigation whatsoever.

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- 8.5 This Agreement, together with the Mortgage Loan Programs and other documents and materials referenced herein and therein, constitute the entire agreement of the parties with respect to the subject matter hereof, and its provisions cannot be waived, modified or amended except by written instrument signed by the party against which enforcement thereof is sought. This Agreement supersedes and replaces any and all prior agreements between the parties hereto relating to the subject matter hereof, and applies to all Underwriting Packages heretofore or hereafter assigned, conveyed, transferred and/or delivered by Broker to Lender and all Mortgage Loans funded by Lender pursuant thereto.
- 8.6 Broker shall comply with all terms, requirements, conditions and provisions of Lender's operating requirement, as the same may be amended, restated or replaced from time to time by Lender in its sole discretion.
- 8.7 In the event of any inconsistency between the terms and provisions of this Agreement and the terms and provisions of a Mortgage Loan Program applicable to a Mortgage Loan, the terms and provisions of the Mortgage Loan Program shall govern.
- 8.8 The relationship of Broker and Lender is not and shall not become that of creditor/debtor, partnership or joint venture relationship. Broker has not acted as agent for, or on behalf of, Lender in originating any Mortgage Loan.
- 8.9 The Broker cannot assign this Agreement or its rights under this Agreement, and any attempted assignment by Broker shall be void and of no force or effect, and shall be a default hereunder. Lender may assign this Agreement in its discretion.
- 8.10 This Agreement shall be construed and enforced in accordance with the laws of the State of California. The parties hereby consent and submit themselves to the jurisdiction and venue in any state or federal court located in the City San Jose, California for purposes of any legal or equitable proceeding arising from, out of or in connection with this Agreement or any transaction contemplated hereby, and Broker hereby appoints the person who executes this Agreement on its behalf at the address set forth on the signature page hereof, as its true and lawful attorney-in-fact for the purpose of receiving service of process in or for any such legal proceeding, which appointment is coupled with an interest and is irrevocable.
- 8.11 Except as prohibited by law, the parties shall, and they hereby do, after consultation with their respective counsel, expressly waive trial by jury in any litigation arising out of, connected with, or relating to this Agreement or the relationship created hereby, or any transaction contemplated hereby. With respect to any matter for which a jury trial cannot be waived, the parties agree not to assert any such claim as a counterclaim in, nor move to consolidate any such claim with, any action or proceeding as to which a jury trial is waived.
- 8.12 If any judicial action is commenced to enforce this Agreement, the prevailing party in such action shall be entitled to recover its costs and expenses, including reasonable attorneys' fees.
- 8.13 The captions and headings used in this Agreement are for convenience only and do not in any way limit, amplify, or otherwise modify or affect the interpretation of the provisions of this Agreement.
- 8.14 The terms "herein", "hereof" or "hereunder" or similar terms used in this Agreement refer to this entire Agreement and not to the particular provision in which the term is used.
- 8.15 If any provision of this Agreement becomes subject to interpretation by a court, administrative body or arbitrator, the parties agree that such court, administrative body or arbitrator, interpreting

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or considering such provision, should not apply any presumption or rule of construction that the terms of a document be more strictly construed against the party which itself or through its counsel or other agent prepared the same, as all parties hereto have participated in the preparation of the final form of this Agreement through review by their respective counsel and the negotiation of changes in language in any provision deemed unsuitable or inadequate or inappropriate as initially written, and, therefore, the application of such presumption or rule of construction would be inappropriate and contrary to the intent of the parties.

- 8.16 This Agreement shall not be deemed to confer in favor of any person or entity not a party hereto any rights whatsoever as third party beneficiary.
- 8.17 The parties acknowledge and agree that this Agreement shall not be recorded or filed in any public records or files, and any recording or filing by any person, whether or not a party to this Agreement, shall be considered null and void and a default hereunder.
- 8.18 **TIME IS OF THE ESSENCE OF THIS AGREEMENT.** However, if the final date of any period which is provided for in this Agreement falls on a Saturday, Sunday or legal holiday under the law of the United States or the State of California, such period shall be extended to the next day which is not a Saturday, Sunday or legal holiday.
- 8.19 Each party agrees to execute and deliver such instruments and take such actions as the other party may, from time to time, reasonably request in order to effectuate the purposes and to carry out the terms of this Agreement.
- 8.20 All rights and remedies of Lender under this Agreement are distinct from, and are cumulative with, any other rights or remedies under this Agreement or afforded by law or equity, and any and all such rights and remedies may be exercised concurrently, independently or successively, in such order and manner as Lender may elect. Without in any way limiting the foregoing, Lender may deduct or set off any and all amounts payable by Broker to, or at the direction of Lender, from or against any amount payable by Lender to Broker.
- 8.21 All demands, notices and communications hereunder shall, unless otherwise allowed, be in writing (including email and facsimile transactions) and shall be deemed to have been duly given by a party to the other party if telephoned, emailed, facsimile transmitted, mailed, or couriered as the case may be, to the telephone number, email address, facsimile number or address for such party as shown on signature pages hereof, or such other number or address as may have hereafter been furnished from such other party by like notice. Any such demand, notice or communication hereunder to a party shall be deemed to have been received on the date actually delivered or received. The addresses and addressees for the purpose of this Section may be changed to any proper U.S. post office address in the continental United States in the manner herein provided. Unless and until such written notice, or provided herein if no written notice of change has been received, shall be deemed to continue in effect for all purposes hereunder.
- 8.22 Broker authorizes Lender to contact and obtain information about Broker, its shareholders, directors, officers, partners and/or members from any financial institution, investor, insurance company, accountant, lender, creditor, credit bureau, organization or reporting agency, law enforcement agency, governmental agency or authority and/or any other Person that Lender may deem necessary, appropriate or advisable in connection with this Agreement and the transactions contemplated hereby, at any time and from time to time, so long as this Agreement is in effect.
- 8.23 Without limiting the rights to Lender pursuant hereto, including the rights of Lender to terminate this Agreement upon the occurrence of a default or event of Default, or as otherwise provided



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herein, the initial term of this Agreement shall be for a period of 12 months from and after the date hereof and shall automatically continue from year to year thereafter, provided that either party may terminate this Agreement as provided herein.

- 8.24 In event that a loan funded for the Broker by the Lender is paid off within 180 days of the funding date, Broker shall pay an "Early Payoff Fee" equal to 1% of the original loan amount to lender within ten (10) days of notice of payoff is given to Broker by Lender. Broker and Lender each understands and accepts the terms of this Agreement, as evidenced by the signatures of their respective duly authorized corporate officers

BROKER COMPANY INFORMATION:

Print company's Legal Name (as it appears on the license)

Address	City	State	Zip
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Phone	Fax	E-mail
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Print Broker of Record's Name	Title
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Broker of Record's Signature	Date
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Print Owner/CEO/President's Name	Title
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Owner/CEO/President's Signature	Date
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LENDER INFORMATION:

The Loan Experts Corporation, DBA: All American Finance

3600 San Felipe Road, San Jose, CA 95135

Phone: 408-868-6500 Fax: 408-868-6505

AAF – Authorized Officer's Signature Metcha Chidambaram, Vice President Operations & Regulatory Compliance	Date
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