

CONSULTING FEE AGREEMENT

THIS CONSULTING FEE AGREEMENT (the “Agreement”) is made this ____ day of _____, 20__ (“Effective Date”) by and between USA Private Money, LLC, a Wyoming limited liability company (“Consultant”) and undersigned (the “Client”).

Consultant is in the business of consulting on commercial or business purpose mortgage loans secured by non-owner occupied one-to-four family residential real property, multi-family residential real property and/or commercial real property (each, a “Loan”) by taking and processing loan applications from prospective applicants who are natural or non-natural persons such as the Client. Consultant does not originate loans secured by owner occupied residential property.

Client is desirous of obtaining a Loan subject to terms and conditions acceptable to Client and wishes to engage the services of Client as set forth herein.

NOW, THEREFORE, the parties hereto, each in consideration of the covenants and agreements of the other, in consideration of the services to be performed, and for good and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, agree as follows:

- 1. Services; Scope of Work.** Client hereby contracts Consultant to assist Client in obtaining commitments for a Loan in the amount (the “Loan Amount”) and terms acceptable to Client to be secured by the subject property. Client acknowledges and agrees that Consultant is a private money mortgage consultant and NOT a direct lender. During the process of obtaining a Loan commitment, Consultant agrees to maintain an open line of communication with the Client. Furthermore, Client provides express permission to Consultant to work with funding sources for the Loan, escrow agent, title company or attorney as it related to a Loan transaction and the closing thereof.

In connection with Consultant working to obtain a Loan commitment, Consultant shall:

- a. Provide a Loan analysis, including using a deal analyzer loan calculator for the purpose of the profit potential;
- b. Assist Client in structuring the Loan;
- c. Discuss Loan options with the Client;
- d. Collect from Client all necessary due diligence items for a complete Loan package;
- e. Market the Client application and Loan package to interested lenders;

- f. Submit Client's application and Loan package to interested lenders;
- g. Assist in the negotiation of the Loan terms and fees;
- h. Negotiate title company fees and interact with title as needed; and
- i. Assist and support with Loan closing process.

Consultant shall continue to provide the services set forth in this Section until the earlier of: (i) the Loan has been funded and closed; (ii) the Client has rejected two (2) Loan commitments issued by one or more lenders; (iii) the Client's proposed subject Loan transaction has been rejected in whole by two (2) different lenders; or (iv) the purchase and sale agreement for the subject property has expired or was terminated by the seller of the Client.

- 2. Best Efforts.** Consultant agrees to use reasonable commercial efforts to assist Client in securing a Loan; however, Consultant does not guarantee a Loan can or will be obtained. Client agrees that Consultant will not be liable to Client for any losses or damages whatsoever in the event a Loan is not secured.
- 3. Client Acknowledgement and Agreement Regarding the Loan and Process.** Client understands and agrees that the Loan will, in most instances, not exceed an amount equal to the lesser of 65% of the appraised value or 80% of the total Client costs, including rehab and closing costs. Furthermore, Client understands and agrees that in a typical Loan scenario, a lender will require the following of the Client:
 - a. A down payment in the approximate amount of 20% to 35% based upon the purchase price and the subject property's value;
 - b. Sufficient reserves to make interest only payments on the Loan for a period of approximately six (6) months; and
 - c. Sufficient reserves to cover any contingencies related to overruns and unexpected problems during rehab (typically 10% of the construction or rehab bid amount.
- 4. Consulting Fee.** If Client secures a Loan as a direct or indirect result of Consultant's efforts, Client agrees to pay to Consultant a consulting fee equal to the greater of \$2,000.00 or 2% of the Loan Amount (the "Fee"). The Fee shall be earned upon issuance of a commitment with terms and conditions acknowledged in writing to be acceptable to the Client.

The Fee shall be payable in the following manner:

- a. Simultaneously with the execution of this Agreement, Client shall make a partially nonrefundable deposit of \$1,000.00 (“Deposit”). A Deposit shall only apply to a specific Loan transaction and a deposit shall be due and payable to Consultant for each Loan transaction for which Client engages the services of Consultant. If the Loan closes, except as otherwise set forth below, the Deposit shall be credited against the Fee paid on the HUD.
- b. The balance of the Fee shall be due and payable on the HUD at the Loan closing and shall be listed on the HUD as a Consulting Fee.

It is understood and agreed by the Consultant and Client that the lender funding the Loan shall be responsible for the payment of one-half of the Fee. If the lender funding the Loan will not allow the Consultant to receive the compensation set forth under this Agreement, Client acknowledges and agrees that the Deposit shall not be credited against the Fee at the Loan closing and the Client shall be responsible for paying the full Fee on the HUD at the Loan closing. Client authorizes Consultant to present this Agreement to any escrow agent, title company or attorney responsible for closing the Loan.

If (i) the Client’s subject Loan transaction has been rejected by two (2) different lenders or (ii) the Client rejects two (2) loan commitments from two (2) different lenders; Consultant agrees that the Deposit will carry forward to a future proposed Client Loan transaction as a credit to be used on another transaction within the next 12 months.

- 5. Invoice; Notice of Interest.** This Agreement shall serve as an invoice that Consultant can present to Client, escrow agent, title company, attorney or lender for payment in full on the HUD at the Loan closing. Furthermore, Client acknowledges and agrees that if Consultant is not paid in full for providing the services set forth herein, Consultant shall have the right to file a notice of interest against the subject property and pursue any remedy available to Consultant in law or equity.
- 6. Term; Termination.** Consultant and Client agree that this Agreement and authority of Consultant by Client shall continue twelve (12) months from Effective Date, thereafter this Agreement shall continue until terminated in writing by either party; provided, however, Client may unilaterally terminate this Agreement within three (3) days of the Effective Date set forth above by sending an email to Consultant at the following email address – scott@usaprivatemoney.com. If the Client terminates this Agreement within three (3) days of the Effective Date set forth above, Client shall receive a **full refund of the Deposit**; *provided, however*, if the Consultant obtains a Loan commitment within three (3) days of the Effective Date set forth above, Client will not be entitled to a refund of the Deposit regardless of the timing of Client’s termination notice to Consultant.
- 7. No Circumvention.** For a period of twelve (12) months following the termination of this Agreement, Client shall not circumvent Consultant by directing,

approaching, dealing, contacting or entering into a transaction with any funding source introduced to Client by the Consultant during the term of this Agreement. If Client does circumvent the Consultant, Consultant shall be entitled to a consulting fee in an amount equal to the greater of \$3,000.00 or 3% of the Loan Amount. This Section 5 shall survive the termination of this Agreement.

- 8. Relationship.** The parties agree that the relationship of Consultant and Client shall be that of an independent contractor. This Agreement is neither intended to, nor will it be construed as, an agreement to create a joint venture, partnership, or other form of business association between the parties. All parties recognize that this Agreement is non-exclusive with respect to the Consultant.
- 9. Licensing.** In light of the nature of the Loan transaction (e.g. a commercial or business purpose loan secured by non-owner occupied residential property, multi-family property and/or commercially zoned properties), Consultant possesses the appropriate license to provide the services set forth herein. In the event that the subject Loan transaction is subject to certain additional state licensing requirements that Consultant does not possess, Consultant shall serve simply as a transaction coordinator and only provide (i) guidance and assistance to the Client in putting together a proper Loan due diligence package and (ii) a list of funding sources that might be interested in funding the Loan for Client, which services are agreed to not be contingent upon the funding or closing of a Loan. For these transaction coordinator services, Consultant shall receive a consulting fee equal to \$1,000.00, which shall be payable in advance. In the event that additional state licensing is required for a specific Loan transaction, this Agreement shall be automatically modified and alternated, without the necessity of either party having to execute an amendment hereof, as necessary for the purpose effecting the foregoing provisions.
- 10. Limitation of Liability.** **EXCEPT FOR CLAIMS ARISING FROM GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, CONSULTANT'S TOTAL LIABILITY UNDER THIS AGREEMENT IS LIMITED TO THE AMOUNT OF THE FEE, AS DEFINED IN SECTION 4. NOTWITHSTANDING THE FOREGOING, CONSULTANT SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, DELAY OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF BUSINESS PROFITS OR REVENUE, BUSINESS INTERRUPTION, LOSS OF INFORMATION, LOSS OF EARNEST MONEY DEPOSIT OR OTHER PECUNIARY LOSS), EVEN IF THE CLIENT WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.**
- 11. Dispute Resolution.** Any and all disputes, controversies, claims, and differences arising out of or relating to the this Agreement or any breach thereof, whether such claims sound in contract, tort, other otherwise, at law or in equity, under state,

federal or international law, whether provided by statute or the common law, which cannot be settled through correspondence and mutual consultation of the parties within thirty (30) days' notice to the other party of such dispute, controversy, claim or difference, shall be finally settled by arbitration. The arbitration proceeding shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"), as then in effect. AAA shall select an impartial arbitrator. Each party acknowledges and agrees that any and all arbitration proceedings shall be held in Phoenix, Arizona and each party waives, to the fullest extent permitted by law, that any arbitration proceeding held in Phoenix, Arizona is an inconvenient forum. The parties acknowledge and agree that (i) the arbitrator must be knowledgeable in industry standards and practices and the matters giving rise to the dispute; (ii) the arbitrator shall not have the power and authority to award treble, exemplary or punitive damages of any type under any circumstance whether or not such damages may be available under state, federal or international law, or under the Commercial Arbitration Rules of the AAA, the parties hereby waive their right, if any, to recover such damages; (iii) the authority of the arbitrator shall be limited to construing and enforcing the terms and conditions of this Agreement as expressly set forth herein; and (iv) the arbitrator shall state the reason for his or her award, and the legal and factual conclusions underlying the award of the arbitrator. The decision of the arbitrator shall be final and binding upon the parties hereto, shall not be subject to appeal and shall deal with the questions of costs of the arbitration and all matters related thereto. The award shall be in U.S. Dollars. The party in whose favor an award or decision is rendered by the arbitrator shall have the right to enter judgment on such award or decision in any court having jurisdiction thereof, or shall have the right to apply to such court for a judicial recognition of the arbitration award or an order of enforcement thereof, as the case may be. This agreement to arbitrate shall be specifically enforceable by the parties, and they confirm that they intend that all disputes, controversies, or claims of any kind shall be arbitrated. Nothing contained in this Section or elsewhere in this Agreement shall prevent a party from seeking injunctive or other equitable relief; provided, however, such action must be brought in any state or federal court in Maricopa County, Arizona.

12. Miscellaneous.

- a. Governing Law.** Each party specifically acknowledges and agrees that this Agreement and its interpretation and enforcement are governed by the laws of the State of Arizona.
- b. Compliance with Laws.** Consultant shall use reasonable efforts to comply with all local, state and federal laws, ordinances, regulations and orders in the performance of its obligations under this Agreement.

- c. Assignment.** Client may not assign this Agreement without the express written consent of Consultant; Consultant may assign its interest in a Loan transaction for a fee without the written consent of Client.
- d. Entire Agreement.** This Agreement sets forth the entire understanding of the parties with respect to the subject matter of this Agreement and supersedes all prior agreements and understandings between the parties regarding the subject matter of this Agreement.
- e. Amendment.** This Agreement may not be amended except by a writing signed by each party. If for any reason any provision of this Agreement is determined by a tribunal of competent jurisdiction to be legally invalid or unenforceable, the validity of the remainder of the Agreement will not be affected and such provision will be deemed modified to the minimum extent necessary to make such provision consistent with applicable law and, in its modified form, such provision will then be enforceable and enforced.
- f. Binding Effect.** This Agreement is binding upon the parties and will bind their executors, personal representatives, legatees, heirs, successors and assigns.
- g. Waiver.** No waiver by any party of any right or default under this Agreement will be effective unless in writing and signed by the waiving party. No such waiver will be deemed to extend to any prior or subsequent right or default or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.
- h. Preparation of Agreement.** This Agreement was originally prepared by legal counsel for Consultant. The parties agree, however, that this fact shall not create any presumption in favor or against any party in respect of the interpretation or enforcement of this Agreement. Furthermore, Client acknowledges and agrees that (1) Client has been fully advised by Consultant of the benefits of retaining independent legal counsel to represent and protect Client's interest during the negotiation and drafting of this Agreement and (2) Client has had a full and fair opportunity to retain and employ legal representation in connection with this Agreement.
- i. Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this document may also be exchanged via electronic facsimile machines and any electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.

[Remainder of page intentionally left blank]

**SIGNATURE PAGE
CONSULTING FEE AGREEMENT**

IN WITNESS WHEREOF, this Agreement has been executed by the parties as of the Effective Date written above.

CONSULTANT :

USA Private Money, LLC

By: _____

Name: Scott Brown

Its: Manager

CLIENT:

(Entity Name & State of Incorporation, if applicable)

(Print Name)

(Signature)

(Print Title, if applicable)

Client's contact information:

Phone: _____

Fax: _____

Email: _____