



## **LOAN BROKER / REFERRAL AGENT FEE AGREEMENT**

This Loan Broker / Referral Agent Fee Agreement (“Agreement”) is entered into effective this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between \_\_\_\_\_, with a principal business address of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ (referred to herein as a “Loan Broker,<sup>1</sup>” see definition below) and ACC Capital, 200 River Market Avenue, Suite 400, Little Rock, Arkansas 72201 (“Lender”).

For valuable consideration, the receipt and sufficiency of which hereby is acknowledged, the parties mutually agree as follows:

1. Lender is in the business of originating and funding commercial loans. Loan Broker, in part, is in the business of arranging loans and performing requested services in furtherance of arranging loans for its clients. In the course of undertaking its services, Loan Broker may introduce prospective borrowers (hereinafter “Borrower”) for the purpose of Borrower obtaining a loan from or through Lender.

2. In the event that Lender funds and closes a Loan (hereinafter a “Loan”) with a Borrower within twelve (12) months from the date that Loan Broker introduced said Borrower to Lender, Lender will pay Loan Broker a fee as outlined in Exhibit A hereto<sup>2</sup> and in accordance with the terms and conditions set forth herein. Lender and Loan Broker acknowledge that all fees paid must be in conformity with all SBA rules and regulations, as they may be amended from time to time, including without limitation, those described on Exhibit B attached hereto. The Lender will not pay a broker fee due hereunder to an individual.

3. Loan Broker agrees to provide direct and ongoing access to Borrower for the purpose of obtaining such reasonable and necessary documentation and verification of information as may be required by Lender from time to time to conduct a due diligence and make an informed decision regarding funding of a Loan. Loan Broker further agrees to respond timely to requests for information from Lender and to assist Lender in obtaining and verifying such information in order to facilitate the decision to fund and close of the Loan. Loan Broker also agrees that if, prior to closing or funding of a Loan, it acquires actual knowledge of any fact, circumstances, condition or event concerning the Borrower that negatively affects Borrower’s creditworthiness or trustworthiness or the Loan’s value,

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<sup>1</sup> As used herein, a “Loan Broker,” also known as a Referral Agent, is an Agent who, on a specific transaction, either assists the Applicant in finding an SBA Lender that will be willing to make a loan to the Applicant or assists the SBA Lender in finding an Applicant.

<sup>2</sup> Invoice, SBA Form 159, IRS Form W-9 and such other documentation as Lender and/or SBA may require must be received in connection with closing and prior to payment.

collateral or marketability, Loan Broker will immediately disclose such knowledge to Lender, within one (1) business day of its acquisition.

4. Loan Broker represents and warrants the following to Lender:

a. Loan Broker and its agents, employees and representatives have and will retain all licenses and permits necessary to perform its obligations and provide the services under this Agreement, including, without limitation, to engage in SBA loan business, to transact loan business in any applicable state involving commercial real estate backed loans, and to receive the compensation to be provided hereunder;

b. Loan Broker has complied with and will continue to comply with all local, state and federal laws and regulations applicable to the conduct of its business and Loan Broker is in good standing with all local, state and federal regulatory agencies;

c. Loan Broker is an independent contractor and not an employee or authorized representative of Lender and Loan Broker will not directly or indirectly represent to Borrower or any other party that it is an employee or authorized representative of Lender;

d. All applications submitted by Loan Broker to Lender, to the best of Loan Broker's knowledge after due investigation, will be true and complete and will accurately reflect all information required by Lender and will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not misleading in light of the circumstances under which such statements were or are made. Loan Broker agrees and understands that Lender may rely upon said information in making a determination as to the creditworthiness of any given file.

e. Loan Broker shall indemnify, defend, and hold harmless Lender, its affiliates and all its respective officers, directors, employees, agents, advisors, and representatives from and against any and all claims, damages, losses, liabilities, and expenses, joint or several, which may be incurred by or asserted or awarded against the foregoing as to information arising out of the information submitted to it/them by Loan Broker.

5. Based on Lender's own credit, collateral and other lending criteria, Lender may, from time to time, in its sole discretion, but without obligation, accept and review applications from Borrowers referred to Lender by Loan Broker. Loan Broker acknowledges and understands that Lender's execution of this Agreement is neither intended nor may be construed as its agreement to make any loan(s) to any such Borrowers. Loan approvals will be determined at the sole and absolute discretion of Lender and it will have no liability to Borrower, Loan Broker or any third party in the event that it declines to approve any loan application or to fund any loan for any reason whatsoever.

6. Lender shall be relieved of its obligation to compensate the Loan Broker if (a) it has actual or constructive knowledge that, at the time when the Loan Broker introduces a Borrower, the Loan Broker has been debarred, suspended or its privileges of working with the federal government have been otherwise revoked, suspended or are under investigation or review by any supervisory authority; or (b) if the Lender has actual or constructive knowledge of payment for the same services to the Loan Broker by the Borrower. In such instance(s), Lender reserves the right to (i) cancel the loan without further recourse (ii) withhold payment hereunder, or (iii) have any payments that have been made by Lender returned to Lender. The undersigned does hereby hold the Lender harmless for any losses suffered as a result of the any instances described in this Paragraph 6 arising.

7. Loan Broker hereby represents and warrants that it is in good standing and neither it nor its agents, employees, and representatives working on the subject loan have been suspended or debarred or have knowledge of any conditions that would result in their suspension, revocation or debarment. Loan Broker hereby consents to the Lender conducting the searches to verify the foregoing via any system which the Lender deems necessary or prudent, which may include but is not limited to SAMS.gov, and OFAC, both now and from time-to-time as may be desired by Lender and/or SBA in their sole and absolute discretion.

8. A Lender Service Provider assists the Lender with originating, disbursing, servicing, liquidating, or litigating SBA loans. Loan Broker asserts, represents and warrants that it is not a Lender Service Provider and has provided a referral service to the Lender.

9. This Agreement and the rights and obligations of the parties hereunder will be governed, construed and interpreted in accordance with Arkansas law and the laws of the United States, and all applicable regulations and policies, including all SBA Loan Program Requirements.

10. This Agreement shall commence on the date of execution hereof and shall continue until thirty (30) days written notice, certified mail, return receipt requested, to either party from the other that such Agreement is terminated; provided, however, that no such notice shall affect fees which may be owed for any qualified loan for which a referral has been received and approved by Lender.

11. This Agreement contains the entire agreement and understanding of the parties on the subject matter hereof, superseding all prior or written understandings. It may be amended only by a writing executed by both parties.

12. Lender and Loan Broker acknowledge that all fees paid must be in conformity with the rules set forth herein and as dictated by SOP 50 10 and 13 CFR Part 103, et seq.

13. The terms and conditions of this Agreement shall extend to and bind the undersigned's respective heirs, assigns, personal representatives, successors and/or assigns.

14. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and both of which shall constitute one and the same agreement. The counterparts of this Agreement may be executed and delivered by facsimile or other electronic signature, including PDF and DocuSign, by either of the parties and the receiving party may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received.

**IN WITNESS WHEREOF, the undersigned have caused this Agreement to be made, executed and delivered as of the date first set forth above.**

**LOAN BROKER:**

Corporation/Company Name: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

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

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

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

**LENDER:**

**ACC Capital**

By: \_\_\_\_\_  
(Signature)

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

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

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

**EXHIBIT A**  
**ACC Capital**  
**LOANS GREATER THAN > \$100,000**

**UNLESS AMENDED WITH RESPECT TO A SPECIFIC LOAN, THE STANDARD REFERRAL FEE (COMPENSATION) TO BE PAID TO THE LOAN BROKER WILL BE ONE PERCENT (1%) OF THE PRINCIPAL LOAN AMOUNT, SUBJECT, IN ANY EVENT, TO THE FOREGOING AND THE FOLLOWING TERMS AND CONDITIONS:**

1. The Referral Fee applies to SBA 7(a) loans, SBA 504 loans (fee paid only upon Lender's portion of the permanent, 1<sup>st</sup> position, long-term loan amount) and conventional loans;
2. Subject to the terms and conditions hereof, payment of the Referral Fee will be made to Loan Broker on the day of closing;
3. Lender will not pay any Referral Fee prohibited by state or federal law, as applicable;
4. By accepting the fee referenced above from the Lender, the Loan Broker hereby certifies that neither it nor any of its affiliates, agents or employees will charge the Applicant or the Lender an additional referral, consulting, broker fee and/or similarly named fee for "other services" as per the then-current SOP 50 10 in connection with this transaction; and
5. In the event that the fee paid to the Loan Broker is determined by Lender or SBA to be in excess of any then-current regulation, the Loan Broker shall immediately remit fees in excess to those permitted in regulation to the Borrower.

## **EXHIBIT B**

### **COMPLIANCE WITH SBA REGULATIONS – Loan Brokers and Fees**

Loan Broker as used herein means the entity and his/her/its employees, representatives, agents and affiliates that identifies and refers a Borrower to a lender or a lender to a Borrower. The Loan Broker may be employed and compensated for the referral by either a Borrower or a lender. The Loan Broker may not charge both a referral and consulting or similar fee. Lender shall not pay an individual for services rendered hereunder. All payment rendered hereunder must be made to a corporation, LLC or other business entity.

Each Loan Broker must disclose the name of its Borrower and all fees charged in connection with the SBA loan transaction on the SBA Form 159. For any fee exceeding \$2,500, the Loan Broker will be expected to provide an itemized invoice including a detailed explanation of the work performed and the number of hours spent working on each activity.

No Agent, including Loan Broker, Referral Agent, LSP, or any other party identified as an Agent under 13 CFR 103.1, et seq. may provide services to both the Borrower and Lender and be compensated for the same services by both parties in connection with the same loan application.

The SBA does not allow charges for services that are not reasonably necessary in connection with an application.

Private information about a loan cannot be discussed with anyone who claims to be an Agent for a Borrower, Participant or lender without evidence of representation. Without proper authorization, SBA and participating lenders may not discuss private information with even a spouse or other close relative of the Borrower.

SBA may require that an Agent supply written evidence of his or her authority to act on behalf of the Borrower's or Lender's current or prior dealings with the SBA. Lenders may consult the Excluded Parties List System (EPLS) to determine if an Agent has been debarred or suspended by SBA or another federal agency ([www.sam.gov](http://www.sam.gov)).

The Lender and the Lender service provider (if applicable) will not engage in the sharing of any secondary market premium. The contract must not evidence any actual or apparent conflict of interest or self-dealing on the part of any of the Lender's officers, management or staff.

The Lender must submit the Form 159. This submission is only required once at the time of initial loan disbursement and should be submitted in conjunction with a Lender's 1502 report for the month. (PN 5000-1177)