SOUTH END CAPITAL
A DIVISION OF STEARNS BANK N.A.
Member FDIC | Equal Housing Lender

REFERRAL PARTNER AGREEMENT

This Referral Partner Agreement ("**Agreement**") between Stearns Bank National Association ("**Bank**") and Referral Partner ("**Referral Partner**") is made as of the date this Agreement and is accepted by Referral Partner ("Effective Date").

A Bank is a national bank that provides small business, equipment financing, and commercial loans ("**Loan**" or "**Loans**").

B. Referral Partner has relationships with borrowers or institutions that are owners of commercial real estate, investment residential real estate and businesses ("**Client**" or "**Clients**").

C. Bank desires to engage Referral Partner under the terms and conditions of this Agreement.

By accepting this Agreement, either by clicking or selecting a box indicating your acceptance, by executing a Referral Partner Registration Form or other document that references this Agreement or accessing our Referral Partner Portal where this Agreement is stored, you agree to the terms of this Agreement. If you are entering into this Agreement on behalf of another legal entity, you represent that you have the authority to bind such entity and its affiliates to this Agreement, in which case the terms "Referral Partner," "you" or "your" shall refer to such entity and its affiliates. **If you do not have such authority, or if you do not agree with the terms and conditions of this Agreement, you must not accept this Agreement and may not participate in the Loan program.**

1. **Programs**. Referral Partner shall act as a non-exclusive Referral Partner for the Loan programs offered by Bank from time to time. Bank reserves the right to modify the Loan programs that it offers at any time and to introduce Clients to loan programs offered by third party lenders at its discretion.

2. **Engagement of Services**. Bank hereby engages Referral Partner, under the terms and conditions set forth in this Agreement to identify potential (i) Clients who are interested in obtaining a Loan offered by Bank, or third-party lenders in Bank's network, and (ii) other referral partners not currently engaged by Bank (each, a "Third-Party Referral Partner"). Referral Partner hereby agrees to identify potential Clients and Third-Party Referral Partners, pursuant to the terms and conditions of this Agreement.

3. **Bank Review**. Bank shall have the right, in its sole and absolute discretion, to review a Loan request submitted by Referral Partner prior to accepting the terms and agreeing to fund the Loan, and Bank has the right to reject or deny any Loan referred by Referral Partner in Bank's sole and absolute discretion.

4. **Referral Partner's Duties**
   - 4.1. Referral Partner agrees to actively and diligently identify potential Clients for Loans from Bank or Third-Party Referral Partners in accordance with all applicable laws and regulations.
   - 4.2. Referral Partner shall devote such time as may be necessary for the performance of its duties hereunder.
   - 4.3. Referral Partner shall maintain a high standard of integrity and professional conduct in all dealings with potential Clients interested in obtaining Loans as well as with Bank. Prior to referring a Loan to Bank, Referral Partner shall have reasonable grounds to believe and shall believe that (a) the potential Clients introduced by Referral Partner to Bank are interested in obtaining Loan, (b) the potential Clients have the ability to analyze and understand the Loan, and (c) the potential Clients

meet all of Bank's underwriting and credit standards necessary to be approved for a Loan.

4.4. Referral Partner shall promptly provide all information or documentation concerning Clients or potential Clients as reasonably requested by Bank.

4.5. Referral Partner shall (a) solicit those individuals or institutions with whom it has a personal or business relationship, (b) obtain from potential Clients all information as reasonably requested by Bank, (c) if requested by Bank, provide potential Clients or Clients with any documentation or other information provided by Bank, and (d) promptly report to Bank the results of all proposals or any other relevant information obtained from potential Clients or Clients.

4.6. Referral Partner (a) shall not deliver any material relating to Bank's Loan except documents or information provided by or expressly approved by Bank, or when authorized in writing to do so by Bank; (b) will not make any representations on behalf of Bank or in respect to the Loan other than those contained in documents provided by Bank; (c) shall have no obligation, right or authority to negotiate specific Loan terms with any potential Clients or Clients; (d) shall have no right or authority to prepare any Loan documentation; (e) shall have no right to produce any documentation with Bank's name, logo, contact information, names or signatures of Bank's employees or directors; and (f) shall not introduce a potential Client who does not meet the specifications of Bank's Loan.

4.7. Referral Partner shall become familiar with, understand and comply with all laws and regulations that may govern the Referral Partner's obligations under this Agreement. Referral Partner will obtain, at its sole cost and expense, all licenses, permits, and other authorization necessary to perform its duties under this Agreement.

4.8. Referral Partner shall become familiar with, understand and comply with all procedures, guidelines, documentation, information, underwriting guidelines and programs made available to the Referral Partner by Bank.

4.9. Referral Partner shall provide accurate Client contact information inclusive of Clients email addresses, phone numbers and personal and business addresses on corresponding Bank loan applications when prompted, and upon request by Bank. Additionally, Referral Partner will provide access to Clients for Bank upon request, will not act as a barrier to contact between Bank and Clients, and acknowledges that as part of Bank's loan due diligence; Bank will communicate with Clients directly from time-to-time as a fraud prevention measure, to verify application information, to conduct underwriting calls, to deliver necessary loan documentation and proposals, and for any purpose deemed necessary by Bank during the loan application, processing and underwriting process.

4.10. Referral Partner authorizes Bank to add Referral Partner to its marketing lists, including email marketing lists, for purposes of receiving future communications and announcements from Bank.

5. Compensation

5.1 The compensation to be paid for Loans referred by Referral Partner to Bank is set forth on **Exhibit A** and in Bank's program guidelines ("Compensation") and may be modified as communicated from Bank to Referral Partner on a case-by-case basis. Compensation will only be paid to individuals or companies within the United States, in USD, and to a U.S. bank account. At Bank's request, Referral Partner will be required to provide a completed and signed IRS Form W-9 and ACH form in order for Compensation to be paid. The value and scope of the Referral Partner's services may vary for each transaction. Therefore, the Compensation paid by Bank with respect to a particular Loan may be altered with respect to specific transactions after a bid, quote or term sheet has been prepared by Bank and submitted to the Referral Partner and Clients. Bank shall not owe any other fees, compensation or other amounts to Referral Partner.

5.2 Compensation for each Loan shall be earned at such time when a Client's Loan has been funded and pursuant to the terms communicated from Bank to Referral Partner. Compensation shall be paid to Referral Partner in a timely manner and in accordance with Bank's accounting procedures and timelines.

5.3 Bank shall not be obligated to pay Referral Partner compensation of any kind for a transaction or

Loan where (i) the Client was not solicited by and introduced to Bank's programs directly by the Referral Partner, (ii) the Bank already had a pre-existing relationship with or introduction to the Client or Third-Party Referral Partner, (iii) the Bank discovered that Referral Partner committed fraud, misrepresentation, deception or other comparable acts in connection with a Client or a Loan referred to Bank, (iv) the Bank is unable through commercially reasonable efforts to receive its total gross compensation from a Loan from which Referral Partner's Compensation is to be paid, (v) Referral Partner's Agreement is terminated prior to the funding of a Client's Loan, or (vi) the Loan does not close or fund for any reason.

5.4 Referral Partner understands that no level of earnings is guaranteed under this Agreement.

6. <u>Status as Independent Contractor</u>

6.1. Referral Partner is acting as an independent contractor under this agreement. Referral Partner shall have sole control of the manner and means of performing under this Agreement, subject to the restrictions set forth herein. Referral Partner will not be treated as an employee with respect to withholding services for tax purposes or for purposes of the Federal Unemployment Tax Act, the Federal Insurance Contribution Act, the Social Security Act, any State Unemployment Act, or State Employment Security Act. Referral Partner agrees to pay all applicable federal and state self-employment taxes, sales taxes, local taxes, and/or license fees that may become due as a result of its activities under this agreement. Bank shall not require Referral Partner to do anything that would jeopardize the relationship of independent contractor between Bank and Referral Partner.

6.2. All expenses and disbursements, including but not limited to those for travel and maintenance, entertainment, office, marketing, clerical and general administrative and promotional expenses, that may be incurred by Referral Partner in connection with this Agreement shall be borne wholly and completely by Referral Partner and Bank shall not be in any way responsible or liable therefore.

6.3. The parties agree that no partnership is created as a result of this Agreement, that neither party is the agent, legal representative, franchisee or employee of the other for any purpose whatsoever, and that neither party is granted any right or authority to assume or create any obligation for or on behalf of, or in the name of, or in any way to bind the other party. Referral Partner does not have, nor shall it hold itself out as having, any right, power, or authority to create any contract or obligation, either express or implied, on behalf of, in the name of, or binding upon Bank, or to pledge Bank credit, or to extend credit in Bank's name, use or exercise any rights in respect of such credit, unless Bank grants its prior written consent thereto.

6.4. Referral Partner may not sub-contract, hire, appoint or employ agents for any of the services to be performed under this Agreement.

6.5. Bank is solely responsible for all expenses of the operations of the Bank's offices and business activities.

7. <u>Non-Solicitation</u>. During the term of this Agreement and for 12 months thereafter, Referral Partner will not (a) solicit, recruit or otherwise cause any Bank employee to cease providing services for Bank; or (b) hire or engage any third-party who has rendered services to Bank in a manner that would prohibit that third-party from continuing to render services to Bank.

8. <u>Covenants and Warranties</u> Referral Partner, for itself, its officer, directors and employees, covenants and warrants as follows:

8.1. Referral Partner will actively and diligently promote Loans consistent with the terms of this Agreement and in accordance with all applicable ethical, regulatory and legal standards and requirements;

8.2. Referral Partner will make available to Bank such information as may be reasonably requested by Bank to verify Referral Partner's compliance with applicable federal, state, provincial, or local laws or regulations;

8.3. Referral Partner is not a party to any other agreement or contract which would prohibit or impair its performance of its duties and obligation set forth in this Agreement.

8.4. Referral Partner is not under investigation by any regulatory, state, or federal agency or authority, nor subject to any orders or consent agreements. Moreover, Referral Partner agrees to a continuing obligation to notify Bank if Referral Partner becomes the subject of any investigation, consent order, administrative action or such.

8.5. Referral Partner has all requisite authority and power to execute and deliver this Agreement and any document required hereunder and to perform any condition or obligation imposed under the terms of such documents.

8.6 All statements made by Client in connection with any Loan request are true and correct and not materially misleading in any respect.

8.7 Referral Partner is a validly organized, licensed, registered and existing entity in good standing in its state of registration and is duly organized to transact business in all jurisdictions in which it is transacting business.

9. Early Default and Commission Refund. In the event of a Client default in the first six (6) months of the Loan term, the Referral Partner shall pay Bank (for each Loan opportunity) any commission fees received by Referral Partner. Referral Partner shall pay the amounts described in this Section within five (5) days of Bank's written demand. (A default shall be defined herein as any failure to make a full contractual Loan payment within thirty (30) days of its due date).

10. Confidentiality

10.1. "Confidential or Proprietary Information" means all present and future confidential or proprietary information belonging to Bank and its affiliates, whether in written, electronic or oral form, and whether developed by Referral Partner or by Bank's other referral partners or employees, including but not limited to Client names and addresses, Loan terms, Loan documents and processes, trade secrets, ideas, business and marketing plans, financial and operational matters, Loan pricing information, and also including all information marked as confidential or which reasonably should be understood to be confidential or proprietary, whether or not so marked.

10.2. Confidential or Proprietary Information does not include (i) information that Referral Partner can show is or has become available for unrestricted public use, without breach of this or any other agreement., or (ii) any information (a) with respect to the U.S. federal and state income tax treatment of the transactions contemplated hereby and any facts that may be relevant to understanding such tax treatment, which facts shall not include for this purpose the names of the parties or any other person named herein, or information that would permit identification of the parties or such other persons, or any pricing terms or other nonpublic business or financial information that is unrelated to such tax treatment or facts, and (b) all materials of any kind (including opinions or other tax analyses) relating to such tax treatment or facts that are provided to any of the persons referred to above.

10.3. Referral Partner agrees that, except as appropriate in connection with Bank's business, Referral Partner shall not at any time (i) disclose or deliver Confidential and Proprietary Information to any person; or (ii) use any such information for the direct or indirect benefit of any person or entity other than Bank, except as Bank may consent or direct in writing.

10.4. Referral Partner agrees to use reasonable and diligent effort to maintain the proprietary nature, security and/or confidentiality of all Confidential or Proprietary Information. Referral Partner shall also keep confidential any information provided by any potential Clients, Clients or other third-parties to Bank under obligation of confidentiality. Referral Partner shall promptly notify Bank if it becomes aware of any misuse or wrongful disclosure of Confidential or Proprietary Information by any person. All Confidential or Proprietary Information is and shall remain the sole property of and in control of Bank. All obligations of confidentiality shall continue for as long as is permitted under Minnesota law.

11. Term & Termination

11.1. Either party may terminate this Agreement for any reason or no reason upon ten (10) days written notice from the other party.

11.2. **Effect of Termination**.

a. Except as otherwise provided in Sections 5 and 9, neither party shall be liable to the other for Compensation, reimbursement or damages on account of loss of prospective profits from anticipated or prospective Loan closings or on account of expenditures, investments, leases or commitments made in connection with anticipated or prospective Loan closings.
b. No Compensation shall be payable following termination of this Agreement, except with respect to Loans which were closed prior to the date of termination.
c. Sections 4, 5, 6, 8, 9, 10, 11 and 12 shall survive any termination of this Agreement.

12. Indemnification. Referral Partner shall indemnify, defend and hold Bank harmless from and against any and all costs, losses, liabilities and expenses of any type whatsoever, including reasonable attorneys' fees to enforce this indemnification and without limitation all claims, of any nature whatsoever, arising out of or in connection with Referral Partner's activities or omissions.

13. Acts of Representatives. Referral Partner understands and agrees that all functions, duties and responsibilities under or arising out of this Agreement extend to any individual(s) acting on Referral Partner's behalf. Referral Partner specifically understands and agrees that in the event that it delegates to others, including but not limited to, vendors/dealers or other brokers, any of its functions, duties or responsibilities, Referral Partner shall provide prior written notice thereof to Bank and remain fully responsible for any and all such actions as if Referral Bank had taken such actions itself.

14. Miscellaneous

14.1. This Agreement contains the entire agreement and understanding of the parties and supersedes and cancels any previous agreements or understandings, whether oral, written or implied, with respect to its subject matter. No provision of this Agreement may be amended or waived unless in a written document signed by both parties. The waiver of, or failure to exercise, any right under this Agreement shall not be deemed a waiver of any other right hereunder, or of any other or further breach or failure of performance of the other party.

14.2. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, assigns and representatives. The parties specifically intend and agree that this Agreement be binding upon and inure to the benefit of Bank's successor in interest in any merger, asset purchase or other buyout of Bank. Referral Partner may not assign this Agreement or any of its rights or obligations hereunder, in whole or in part, without prior written consent of Bank, which may be withheld at Bank's sole discretion.

14.3. No rights or licenses with respect to the Loan, Bank's trademarks, service marks other intellectual property or technology are granted or deemed granted hereunder or in connection herewith, other than those rights or licenses expressly granted in this Agreement.

14.4. Any notice required or permitted by any provision of this Agreement shall be sufficient if given in writing by certified or registered mail or commercial overnight delivery service to the parties at their respective address unless and until either party notifies the other in writing of a different address. When specified by the sending party in the communication, electronic mail will be sufficient.

14.5. Referral Partner acknowledges and agrees that the remedy at law for any breach of its covenants made in this Agreement, including the covenants not to compete or solicit and the covenant of confidentiality, shall be inadequate and that Bank shall be entitled to injunctive relief, in addition to any other remedy it might have, including damages and the right to recover reasonable attorneys' fees, if it becomes necessary for Bank to enforce its rights under this Agreements.

14.6. Should any provision of this Agreement be held invalid, ineffective, or unenforceable, under present or future laws, by a court of competent jurisdiction, such provision shall be reduced or modified by such court to the minimum extent necessary to make it valid and enforceable. If such provision cannot be so modified, it shall be severed. In any event, the remainder of the provisions of this agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

14.7 Neither party shall be liable to the other party of any punitive, incidental or consequential damages in connection with this Agreement. Bank shall be entitled to recover from Referral Partner all costs and expenses, including reasonable attorney's fees, incurred by Bank in connection with enforcing any of its rights or remedies under this Agreement

14.8 Referral Partner may not assign this Agreement or its rights, duties and obligation without the prior written consent of Bank. Any assignment of rights or delegation of duties or obligations hereunder made by Referral Partner without the written consent of Bank shall be void and of no effect. Bank may at any time, without obtaining the consent of Referral Partner, assign this Agreement and its rights, duties and obligations hereunder to any successor or assign of Bank, whether by way of merger, consolidation, operation of law, assignment or purchase or other acquisition of all of substantially all of Bank's assets or business. This Agreement shall inure to the benefit of, and be binding upon all successors, assigns, heirs and legal representatives of the parties hereto.

14.9 The parties agree that this Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota without regard to any conflict of law provisions.

14.10 Neither party will be liable for failure or delay in performance of any of their obligations under this Agreement arising out of any event or circumstance beyond that party's reasonable control; provided, however, that such party promptly notifies the other party of the nature and duration of the force majeure and resumes performance as soon as possible.

14.11 This Agreement may be executed and then delivered in one or more counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same Agreement.

14.12 Neither party will disclose the terms of this Agreement without the prior approval of the other party. Notwithstanding any other provision(s) of this Agreement, Referral Partner agrees not to issue any press releases or endorsements which reference the Bank or include statements attributable to the Bank without the prior written consent of the Bank.

14.13 Section headings are not to be considered part of this Agreement and are not intended to be a full and accurate description of the contents hereof.

15. **WAIVER OF JURY TRIAL.** REFERRAL PARTNER AND BANK HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHTS EITHER OF THEM MAY HAVE TO A JURY TRIAL IN CONNECTION WITH ANY LITIGATION COMMENCED BY OR AGAINST REFERRAL PARTNER, BANK AND/OR THIRD PARTIES WITH RESPECT TO THIS AGREEMENT.

EXHIBIT A COMPENSATION

A fee in the amount shown below shall be paid to Referral Partner by Bank for each Loan funded and closed with a Client referred to Bank by Referral Partner pursuant to the terms of this Agreement. Compensation on loans referred to Bank prior to the date of this Agreement will be subject to any compensation schedule in place at that time.

1. Internally Funded Small Commercial Real Estate Loans (Initial Funding to a Client): Up to **3.00%**, (Subsequent and Renewal funding to a Client): 0.00%

2. Externally Funded Loans (**Initial**, **Subsequent**, and **Renewal** Funding to a Client): **50%** of net revenue (gross revenue less refunds, chargebacks, third-party fees, transfer fees, etc.) received by Bank. No other fees will be paid or protected, and no fee requests or fee agreements can be submitted to escrow or collected at closing.

3. Third-Party Referral Partner Referrals for Externally Funded Loans (**Initial** Funding to a Client): **20%** of net revenue (gross revenue less refunds, chargebacks, third-party fees, transfer fees, etc.) will be paid if funded loan was referred by a Third-Party Party Referral Partner whom Referral Partner directly (and not indirectly) referred.

4. Third-Party Referral Partner Referrals for Externally Funded Loans (**Subsequent** and **Renewal** Funding to a Client): **10%** of net revenue (gross revenue less refunds, chargebacks, third-party fees, transfer fees, etc.) will be paid if funded loan was referred by a Third-Party Party Referral Partner whom Referral Partner directly (and not indirectly) referred.

Such compensation paid by Bank shall be determined in Bank's sole and absolute discretion and may be changed at any time by Bank on a case-by-case basis.

Referral Fee Exclusions

Unless otherwise agreed to in writing prior to funding, no Compensation will be paid by Bank to Referral Partner when:

a. Internally funded Loans are not Small Commercial Real Estate Loans

b. Subsequent and Renewal Loans are internally funded

c. Referral Partner has collected, or will collect upon Loan funding, a fee directly from the Client

d. The Referral Partner is the Client

e. Compensation is less than fifty dollars ($50)