



## REAL ESTATE CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT is made as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_(hereinafter the "Client"), and Graham Irwin, representing Remodel Guidance, (hereinafter the "Consultant.")

WHEREAS, Client finds that the Consultant is willing to perform certain work hereinafter described in accordance with the provisions of this Agreement; and

WHEREAS, Client finds that the Consultant is qualified to perform the work, all relevant factors considered, and that such performance will be in furtherance of Client's interests.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and intending to be legally bound, the parties hereto agree as follows:

**SERVICES:** The Consultant shall provide a written "Property Potential Analysis" (hereinafter the "Report") and associated research, inspection, consultation and preparation for the property at the following address:

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**SCOPE AND INTENDED PURPOSE OF REPORT:** The Report to be prepared is a basic analysis of the potential of the subject property for expansion and development. The focus of the Report is on property potential, not its current condition. It is not intended to substitute for a professional Real Estate Inspection, nor any of the other inspections or reports typically associated with a real estate transaction, nor should it be treated as such. The Report should not be used as the sole inspection for the purpose of purchase decisions.

**CLIENT'S DUTY:** Client agrees to read the entire Report when it is received and promptly contact the Consultant with any questions or concerns regarding the Report. The printed or emailed Report shall be the final and exclusive findings of Consultant. The Client shall not rely on any oral statements made by the Consultant or the Consultant's representatives prior to, or after, issuance of the written Report.

Client acknowledges that the Report is a general overview and that further investigation may provide additional information which may affect a purchase decision of the subject property. Furthermore, Client acknowledges that the information which forms the basis of the Report is subject to change without notice.

Client shall provide Consultant with convenient access to the exterior and interior of the subject property and to any and all relevant documents, and will fully disclose all known issues related to the property and relevant to the preparation of the Report. If the Client is, or becomes, aware of conditions or facts which contradict the assumptions or findings of the Consultant or the Report, Client agrees to promptly notify the Consultant in writing and allow Consultant and/or Consultant's designated representative(s) to address said conditions. Client agrees that any failure to so notify Consultant, provide full disclosure, and/or allow inspection access is a material breach of this Agreement.

**ENVIRONMENTAL CONDITIONS:** Client agrees what is being contracted for is a Property Potential Analysis and not an environmental evaluation. The Report is not intended to detect, identify, or disclose any health or environmental conditions regarding this building or property, including, but not limited to: the presence of asbestos, radon, lead, urea-formaldehyde, fungi, molds, mildew, PCBs, or other toxic, reactive, combustible, or corrosive contaminants, materials, or substances in the water, air, soil, or building materials. The Consultant is not liable for injury, health risks, or damage caused or contributed to by these conditions.

**GENERAL PROVISIONS:** The Report is not a substitute for any transferor's or agent's disclosure that may be required by law, or a substitute for Client's independent duty to reasonably evaluate the property prior to the close of the transaction. This Agreement and the Report do not constitute a home warranty, guarantee, or insurance policy of any kind whatsoever.

Client may distribute copies of the written Report to the seller (if other), prospective buyer(s) (if other) and the real estate agents involved in this transaction, but Client and Consultant do not in any way intend to benefit said seller(s), buyer(s) or the real estate agents directly or indirectly through this Agreement or the written Report. **CLIENT AGREES TO INDEMNIFY, DEFEND AND HOLD CONSULTANT HARMLESS FROM ANY THIRD PARTY CLAIMS ARISING OUT OF CLIENT'S DISTRIBUTION OF THE REPORT.**

No legal action or proceeding of any kind, including those sounding in tort or contract, can be commenced against Consultant/Consulting Company or its officers, agents, or employees more than one year from the date Client discovers, or through the exercise of reasonable diligence should have discovered, the cause of action. In no event shall the time for commencement of a legal action or proceeding exceed two years from the date of the subject inspection. **THIS TIME PERIOD IS SHORTER THAN OTHERWISE PROVIDED BY LAW.**

**SEVERABILITY:** Should any provision of this Agreement be held by a court of competent jurisdiction to be either invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect, unimpaired by the court's holding.

**MEDIATION:** The parties to this Agreement agree to attend, in good faith, mediation with a retired judge or lawyer with at least 5 years of mediation experience before any lawsuit is filed. All notices of mediation must be served in writing by return receipt requested allowing 30 days for response. If no response is forthcoming the moving party may then demand binding arbitration under the terms and provisions set forth below.

**ARBITRATION:** Any dispute concerning the interpretation or enforcement of this Agreement, the Report, or any other dispute arising out of this relationship, shall be resolved between the parties by binding arbitration conducted in accordance with California Law, except that the parties shall select an arbitrator who is familiar with the real estate profession. The parties agree that they shall be entitled to discovery procedures within the discretion of the arbitrator. The arbitrator shall manage and hear the case applying the laws of the State of California to all issues submitted in the arbitration proceeding. The award of the arbitrator shall be final, and a judgment may be entered on it by any court having jurisdiction.

**FEES FOR SERVICE:** The fee for the provided services is dependent on the type of Report requested, as follows. The Client shall indicate which of the following payment options is desired:

     Buyer's Report

This Report is intended to help a prospective buyer evaluate the potential of a property they might purchase. The fee for this Report is \$245 and is due upon receipt of the Report.

     Seller's Report (cash price)

This Report is intended to help a seller demonstrate the potential of their property to prospective buyers. The fee for this Report is \$245 and is due upon receipt of the Report.

     Seller's Report (paid in escrow)

This Report is identical to the previous Report, but the fees are due when the property is in escrow. The

fee is \$295 and must be paid before close of escrow. The Seller may elect to pay the fee immediately upon receipt of the Report and receive the cash discount above.

**DISCLAIMER & LIMITATION OF LIABILITY:** The Report will be prepared with the most immediate and expedient information available, much of which must be verified. The information contained in the Report will be based upon current regulations at the time of issuance and is subject to change. The Consultant offers no guarantee of accuracy, completeness or feasibility of the Report - it should be used as a starting point only.

In recognition of the relative risks and benefits of the project to both the Client and Remodel Guidance, the risks have been allocated so that the Client agrees that to the fullest extent permitted by law, Remodel Guidance's total liability to the Client, for any and all injuries, claims, losses, expenses, damages or claim expenses arising out of this Agreement from any cause or causes, shall not exceed the total amount paid by the Client for this Report. Such causes include, but are not limited to, Remodel Guidance's negligence, errors, omissions, strict liability, and breach of contract or warranty. Client acknowledges that this limitation of liability is reasonable in view of the relatively small fee that the Consultant charges for preparing the Report when compared with the large potential of exposure that the Consultant might otherwise incur in the absence of such.

**ACCEPTANCE OF THIS AGREEMENT AND FEE PAYMENT:** This agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, successors, assigns, agents, and representatives of any kind whatsoever. This agreement constitutes the entire integrated agreement between the parties hereto pertaining to the subject matter hereof, and may be modified only by a written agreement signed by all of the parties hereto. No oral agreements, understandings, or representations shall change, modify, or amend any part of this agreement.

Each party signing this Agreement warrants and represents that he/she has the full capacity and authority to execute this Agreement on behalf of the named party. If this Agreement is executed on behalf of Client by any third party, the person executing this Agreement expressly represents to Consultant that he/she has the full and complete authority to execute this Agreement on Client's behalf and to fully and completely bind Client to all of the terms, conditions, limitations, exceptions, and exclusions of this Agreement.

Client acknowledges having read and understood all the terms, conditions, and limitations of this Agreement and voluntarily agrees to be bound thereby and to pay the fee(s) listed and indicated above. In the event the Client fails to pay any amount due hereunder and it becomes necessary for the the Consultant to take action in a court of law to collect such sums, the Client shall be responsible for all costs and reasonable attorney's fees incurred by the Consultant.

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

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

TYPE OF REPORT (Check One):

Buyer's Report \$245,  Seller's Report (cash price) \$245,  Seller's Report (paid in escrow) \$295

TOTAL FEE: \_\_\_\_\_