

INDEPENDENT CONTRACTOR AGREEMENT

Contract Date: _____, 20_____

Brokerage Firm: _____ ("Broker")

Address of Firm: _____

Associate Broker/Salesperson: _____ ("Associate")

1. Broker, a licensed Michigan real estate broker, retains Associate, who is a licensed associate broker or a licensed salesperson, as an independent contractor to assist Broker in the performance of real estate related activities.
2. Associate agrees to work diligently and use his/her best efforts to procure real estate business for Broker. Associate is authorized to execute listing agreements and buyer broker agreements on behalf of Broker.
3. Broker will provide Associate with access to all current listings of Broker and listings made available to Broker through offers of cooperation.
4. Associate may utilize Broker's office facilities for the performance of Associate's services as provided in this Agreement.
5. Associate will conduct his/her business in a reputable manner and in conformance with the National Association of REALTORS® Code of Ethics and Arbitration Manual as amended to conform to Michigan law (the "Manual"), as well as all applicable laws, rules and regulations and the Broker's policies and procedures.
6. Broker shall have sole control over the manner in which its listings of real estate are advertised on any medium. All advertisements of listings shall prominently display the Broker's name. Associate may not display, or authorize any third party to display, Broker's listings on any website without Broker's prior written consent. Associate shall comply with all of Broker's rules and regulations governing internet advertising activities as the same may be imposed by Broker from time to time.
7. Broker and Associate intend that all photographs, images, graphics, video recordings, virtual tours, drawings, written descriptions, remarks, narratives, pricing information, and all other copyrightable elements submitted by Associate to Broker at any time with respect to a real estate listing (the "Listing Content") shall be the property of Broker and a contribution to a collective work consisting of Listing Content of all Broker's sales licensees, subject to the following:
 - a. To the extent permitted under applicable law, all Listing Content shall be considered a Work Made for Hire (as such term is defined under the Copyright Act, 17 U.S.C. Section 101 and following, as amended) (a "Work Made for

Hire”) by Associate for Broker, and as such, shall be exclusively developed for the benefit of and owned by Broker. Broker shall exclusively own all copyrights and all other intellectual property rights in the Listing Content.

- b. To the extent that it is determined that any of the Listing Content does not qualify as a Work Made for Hire, Associate agrees to assign and transfer and does hereby irrevocably assign and transfer to Broker any and all right, title, and interest, including all copyright rights and other intellectual property rights, and all actions and causes of action related to the foregoing, and all damages, profits, and other recoveries related thereto, which Associate may have or acquire in and to any and all Listing Content. Such rights, title, and interest shall be deemed assigned as of the moment of creation without necessity of any further action on the part of either party. Associate represents and warrants to Broker with respect to the Listing Content for each listing procured by Associate that (i) each element of the Listing Content is an original work of authorship of Associate, or has been assigned to Associate, and (ii) the Listing Content and this assignment of rights to Broker do not violate or infringe upon the rights, including any copyright rights, of any person or entity.
- c. Associate agrees to take all action and execute and deliver to Broker all documents requested by Broker in connection with the transfer and assignment of rights in and to the Listing Content to Broker, and any copyright application for and registration of the Listing Content.
- d. If the foregoing assignment is determined to be unenforceable for any reason, Associate hereby grants to Broker an exclusive, non-revocable, worldwide, royalty-free copyright license to sublicense through multiple tiers, publish, display, reproduce, create derivative works of, and distribute the Listing Content or any derivative works thereof.
- e. Associate shall indemnify Broker against all damages, costs, and liabilities, including reasonable attorney fees, arising from any claim that the Listing Content or any portion of the Listing Content infringes the rights of any third party. ASSOCIATE ACKNOWLEDGES THAT THE FOREGOING SENTENCE MEANS THAT ASSOCIATE MUST OBTAIN ASSIGNMENTS FROM THE AUTHORS OF ANY PORTIONS OF THE LISTING CONTENT, INCLUDING SELLERS, AS NECESSARY FOR ASSOCIATE TO ASSIGN THE LISTING CONTENT TO BROKER AND TO OTHERWISE MAKE FULL USE OF THE LISTING CONTENT UNDER THIS AGREEMENT; IF ASSOCIATE FAILS TO DO SO, ASSOCIATE WILL ASSUME AND REIMBURSE BROKER FOR THE COST OF DEFENDING BROKER AGAINST INFRINGEMENT CLAIMS AND PAYING DAMAGES ON ANY SUCH CLAIMS.
- f. Broker hereby grants to Associate a limited, non-exclusive, and personal license to use Listing Content only for purposes as expressly allowed under

Associate's license, the rules and regulations of the MLS, and under this Agreement. Associate agrees to take all reasonable steps to protect the MLS Database and Listing Content from unauthorized access, copyright or use.

8. It is expressly agreed and understood that, in the performance of his or her services hereunder, the Associate is not to be treated or otherwise considered as an employee of the Broker with respect to such services for federal tax purposes, or for any other tax purposes. It is further agreed and understood between the parties that the Broker WILL NOT withhold or pay over on behalf of the Associate any amounts relating to federal, state and local income taxes, unemployment compensation, workers' compensation or any other employer liability or responsibility. Associate agrees and understands that he or she is totally responsible for the timely reporting and payment of all income taxes and other governmental liabilities resulting from the performance of his or her services hereunder, which responsibility is not borne nor shared by the Broker in any manner whatsoever.
9. The commission, fees and other terms and conditions of contracts with clients shall be determined by Broker. When Associate performs any service hereunder for which a commission and/or fee is earned, the amount shall, when collected, be divided between Broker and Associate as set forth in the Commission Schedule incorporated herein by reference, as the same may be revised from time to time by the Broker in its sole discretion. It is expressly agreed that any amendments to the Commission Schedule shall not apply to any commission earned pursuant to a purchase agreement in place at the time of such amendment. In no case shall the Broker be personally liable to the Associate for any commission or fees, nor shall Associate be personally liable to Broker for any commission or fees, but when the funds shall have been collected from the party or parties for whom the service was performed, Broker shall hold it in trust for Associate and Broker, to be divided according to the terms of this Agreement. Payment to Associate is conditioned upon Broker's receipt of a complete file on the real estate transaction.
10. The division and distribution of earned commissions and/or fees shall take place as soon as practicable after receipt of the funds, provided however, that in the event Broker shall receive notice of a claim for all or a portion of such commission from another real estate broker, Broker may continue to hold such funds in trust until the claim is finally resolved. Arbitration requests and/or suits for commissions shall be maintained only in the name of the Broker, and the Associate shall be construed to be a subagent only, with respect to the clients and customers for whom services shall be performed.
11. Broker shall not be liable to Associate for any expenses incurred by him/her, nor shall Associate be liable to the Broker for any office expense, in each case except as may be expressly provided in this Agreement, the Commission Schedule or other written policy or procedure. Associate shall have no authority to obligate the Broker to pay any expenses, charges or other fees.

12. Associate shall furnish an automobile at his/her sole expense when one is necessary to carry out the duties of the Associate under the terms of this Agreement. Associate shall at all times carry liability insurance on his/her automobile in a form and provided by an insurer acceptable to the Broker, with such insurance having minimum limits of \$_____ for each person and \$_____ for each accident, with a property damage limit of not less than \$_____. The minimum amounts of insurance required under the terms of this paragraph may be adjusted by the Broker as is reasonably necessary. Associate shall, upon Broker's request, have the Broker listed as an additional insured under any such insurance policy or policies, and shall cause any such insurer to agree to provide Broker with thirty (30) days prior notice of any proposed cancellation of any such policies. Associate agrees, upon reasonable request, to furnish Broker with a certificate or other documentation acceptable to Broker evidencing that all insurance required under this paragraph has been obtained by the Associate and is then presently effective. Associate agrees to indemnify and hold Broker harmless from any claim for damages asserted against the Broker by reason of any act or omission by Associate in the use of his/her automobile, such indemnification to include reasonable attorneys' fees, costs and expenses incurred by Broker in defense of any such claim.
13. This contract and the association created hereby may be terminated by either party, with or without cause, at any time, upon _____ days notice given to the other. The rights of the parties to any commission which accrued prior to notice of termination shall not be divested by the termination of this contract.
14. Associate shall not, after the termination of this contract, use to his/her own advantage, or the advantage of any other person or corporation, any information that is, or should reasonably be understood to be, confidential or proprietary to Broker.
15. In the event this Agreement is terminated for any reason, Associate shall immediately deliver all paper and electronic files to Broker, including active files.
- a. For clients (both sellers and buyers) procured by Associate who have an agency contract in place at the time of termination (**select/modify as appropriate**):

Associate shall not be entitled to a commission on any sales which close after termination, unless this Agreement is terminated by Broker without cause, in which case Associate shall receive all commissions earned prior to termination which are actually received by Broker. For purposes hereof, "earned" shall refer to transactions with a binding purchase agreement in place at the time of termination.

As to commissions actually received by Broker pursuant to binding purchase agreements in place prior to termination of this Agreement, Associate shall receive _____ percent of the

commission to which he/she would have otherwise been entitled if the Agreement was still in place.

As to commissions actually received by Broker pursuant to purchase agreements signed after the termination of this Agreement, Associate shall receive _____ percent of the commission to which he/she would have otherwise been entitled if the Agreement was still in place. Associate shall not be entitled to any compensation in connection with purchase agreements signed during extensions to any such listings or on any re-listings.

- b. **Pending Cooperating Sales.** For cooperating sales procured by Associate which are pending at the time of termination (**select/modify as appropriate**):

Associate shall not be entitled to a commission on any sales which close after termination, unless this Agreement is terminated by Broker without cause, in which case Associate shall receive all commissions earned prior to termination which are actually received by Broker. For purposes hereof, "earned" shall refer to transactions with a binding purchase agreement in place at the time of termination.

As to commissions actually received by Broker pursuant to binding purchase agreements in place prior to termination of this Agreement, Associate shall be entitled to _____ percent of the commission to which he/she would have otherwise been entitled if the Agreement was still in place.

- 16. This Agreement shall be construed in accordance with the laws of the State of Michigan.

- 17. _____

Broker

Associate