

# Independent Contractor Agreement

Date: \_\_\_\_\_, 20\_\_\_\_

This **Independent Contractor Agreement** (the "Contract") is made on \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_, hereinafter called "Broker" and \_\_\_\_\_, hereinafter called "Licensee," in consideration of the mutual promises contained herein.

WHEREAS, Broker and Licensee are duly licensed in the State of Georgia to provide real estate brokerage services, including, but not limited to the solicitation of offers to purchase, sell, lease, exchange, and/or manage real property (the "Brokerage Services");

WHEREAS, it is deemed to be to the mutual advantage of Broker and Licensee to enter into this Contract upon the terms and conditions hereinafter set forth;

NOW THEREFORE, for and in consideration of the mutual covenants and promises herein contained, the payment of ten US dollars (US\$10.00) and other good and valuable consideration, each paid to the other, the receipt and sufficiency of which is hereby acknowledged, the undersigned parties do hereby agree as follows:

## 1. TERM

The term of this Agreement shall begin on the date first hereinabove written and shall expire on \_\_\_\_\_, . Unless otherwise terminated, this Agreement shall automatically renew for successive periods of one year.

## 2. INDEPENDENT CONTRACTOR RELATIONSHIP

All parties agree that Licensee shall be deemed an Independent Contractor of Broker, and not an employee, and by entering into this Contract neither party has hired the other. Nothing about this Contract shall be construed to create an employment relationship between the parties, nor shall this Contract create a joint venture or partnership agreement. Licensee is under the supervision of Broker only to the extent Broker deems necessary to comply with Georgia license law, and shall otherwise NOT be under the direct supervision or control of Broker. Neither party hereto shall be liable for any obligation incurred by the other except as provided expressly herein. Broker shall not withhold from any commission due hereunder or otherwise be responsible for the payment of any payments or contributions for any State or Federal income tax, workman's compensation or unemployment compensation for Licensee unless required by state law, and nothing herein contained shall be construed to be inconsistent with the independent contractor relationship or status. As further evidence that Licensee is an Independent Contractor and is not an employee of Broker, Broker and Licensee agree that Licensee shall set Licensee's hours for work and shall pay Licensee's own self-employment tax and estimated income tax.

## 3. SERVICES PROVIDED

Licensee shall use Licensee's best efforts to provide Brokerage Services and to promote Broker's real estate listings. Licensee shall at all times keep Broker informed of Licensee's brokerage activities and shall not provide any service, other than Brokerage Services, in connection with any real estate transaction without the written consent of Broker.

**3.1 Broker's Listings-** Broker may, at Broker's discretion, assign or place Broker's listings in the exclusive and temporary possession of any of Broker's individual licensees; however, Licensee shall not be obligated or required to accept such listings. All other current listings of Broker shall be made available to Licensee.

**3.2 Use of Broker's Facilities-** Broker agrees that Licensee may share with other licensees all the facilities of the office presently operated by said Broker for the purpose of providing Brokerage Services, subject to such fees and rates as Broker may publish from time to time.

**3.3 RESPA Compliance-** Licensee agrees not to accept any fee, thing of value, "kickback" or other compensation for any service provided in connection with a real estate transaction other than for Brokerage Services actually performed and disclosed in writing.

**3.4 Brokerage Relationships-** Licensee hereby acknowledges that, unless otherwise stated in Broker's written policies and procedures, in each real estate transaction for which Broker or Licensee provides Brokerage Services, Broker and Broker's licensees shall represent the party with whom they have the first, consistent contact and/or an executed Agency Agreement. Unless otherwise agreed to by Broker, prior to

providing Brokerage Services, Licensee shall procure an exclusive right to sell and/or exclusive agency listing agreement when representing a Seller or Landlord, and to obtain a written engagement agreement, either exclusive or non-exclusive, when representing a Buyer or Tenant unless the Buyer or Tenant requests, in writing, that Broker not represent them.

#### 4. CONDUCT AND COMPLIANCE

Licensee and Broker agree, at all times, to use their best efforts to practice a standard of conduct calculated to maintain and to increase the good will and reputation of Broker. Licensee shall use Licensee's best efforts to attend regular sales meetings and participate in training programs provided by Broker.

**4.1 Licensure-** Broker and Licensee agree to participate in and timely fulfill the minimum requirements set forth by the Georgia Real Estate Commission ("GREC") in order to maintain their current licensure status. Broker agrees to hold Licensee's license in order to facilitate Licensee's compliance with this section, and Licensee shall notify Broker immediately in the event Licensee's license is terminated or suspended in Georgia or in any other state where Licensee is licensed. Licensee shall not be permitted to maintain a license in any other state outside of Georgia with another broker unless Broker, in Broker's sole discretion, has agreed to enter into a written agreement with Licensee and Licensee's out of state broker, unless otherwise provided herein.

**4.2 Laws and Regulations-** Licensee shall, at all times, conform to and abide by all local, state and federal laws, rules and regulations that are binding upon or applicable to real estate licensees in the State of Georgia.

**4.3 Broker Policies-** Licensee agrees to be bound by, and Broker agrees to provide Licensee with, the terms of any written policies and procedures which may be issued by Broker from time to time; provided, however, that Broker shall provide Licensee with a minimum of 14 days' notice of any change in policy or procedure which may increase Licensee's expenses or decrease Licensee's commissions by more than US\$600.00 per annum.

**4.4 Other Standards-** Licensee shall comply with the code of ethics, the constitution, the rules and by-laws of any local real estate boards of which Licensee or Broker is a member, and the rules and regulations of any multiple listing service with which Broker now or in the future may be affiliated, as the same shall be amended from time to time.

#### 5. COMMISSIONS

Licensee shall be compensated solely by means of commissions and shall not have any guaranteed income, draws, or bonuses. Broker shall have the duty to pay Licensee any commission or fees earned by Licensee to the extent they are actually collected by Broker, and subject to the terms of this Contract. A "commission" shall be defined as any and all compensation, fee, bonus or other consideration paid in connection with Licensee's performance of any real estate brokerage services permitted under state or federal law.

**5.1 Commission Rates-** The commissions to be charged for any services performed hereunder shall be those determined and published by Broker. Broker may change the published commissions or indicate a special fee arrangement for particular transactions at any time with \_\_\_\_\_ days' written notice to Licensee. When Licensee shall perform any service hereunder whereby a commission is earned, said commission shall, when collected, be divided between Broker and Licensee, pursuant to Broker's published commission schedule. In the event of special arrangements with any client of Broker or controlled by Licensee, a special division of commission may apply; such rate of division, however, shall be agreed upon in advance by Broker and Licensee.

**5.2 No Personal Liability-** In no case shall Broker be personally liable to Licensee for any commission, nor shall Licensee be personally liable to Broker for any commission, but when the commission has been collected from the party or parties for whom the service was performed, Broker shall hold the same in trust for Licensee and Broker to be divided according to the terms of this Contract and the terms of the written agreement under which the commission was earned.

**5.3 Real Estate Teams-** If two or more of Broker's Licensees list and/or sell a property on a collaborative basis (subject to the approval in advance of Broker), said Licensees shall notify Broker in writing prior to closing as to how the commission payable to Licensees shall be divided.

**5.4 Commission Disputes-** Should Broker or Licensee become involved in a dispute which leads to arbitration with another broker for a commission after a sale has been closed and commissions paid to Licensee, Licensee shall refund the commissions which Licensee has received in said transaction to Broker immediately upon notification by Broker of said arbitration. All parties agree that Broker shall then release

commissions only upon and in accordance with the decision of the arbitration panel, or upon the written agreement of all parties to the dispute.

**5.5 Timeliness of Payment-** The division and distribution of the earned commissions as set out herein which may be paid to or collected by Licensee or Broker shall take place as soon as practicable after collection of such commissions from the party or parties for whom services have been performed.

**5.6 Commission Reduction-** In the event Licensee reduces the commission to be paid in connection with a real estate transaction without Broker's prior consent, the reduction will be taken solely on the portion of the commission to be paid to Licensee. In no event shall Licensee agree to reduce a commission to less than the amount Broker would have been paid had the commission been paid in the original amount, unless otherwise agreed to by Broker.

**5.7 Payments to Licensee's Business Entity-** Broker [check one]  does OR  does NOT agree to pay any commission due to Licensee hereunder to a legal entity designated by Licensee, such as a corporation or limited liability company, created by Licensee for the purpose of providing Brokerage Services and in which Licensee has more than a twenty percent (20%) interest. Any payment made to such a legal entity at the request of Licensee shall be done as a courtesy to Licensee and shall in no way create a business, contractual or third party beneficiary relationship between Broker and said entity. In the event Licensee's ownership interest in such an entity falls below twenty percent (20%), Licensee agrees to promptly notify Broker. This agreement to pay a third party entity may be revoked at any time by Broker upon a minimum of 14 days' notice to Licensee and shall in no way affect any other right or obligation specified hereunder.

## 6. EXPENSES

Broker shall not be liable to Licensee for any expenses incurred by Licensee, and Licensee shall have no authority to bind Broker by any promise or representation unless specifically authorized in a particular transaction or as otherwise provided herein.

**6.1 Licensee's Business Expenses-** Licensee shall pay all of Licensee's business expenses, including, but not limited to: furnishing Licensee's own transportation, advertising fees, payment of adequate personal and liability insurance to protect Licensee and/or Broker, business cards, signage, name/sign riders, multiple listing books, home computer access, long distance phone calls, errors and omissions Insurance, etc., unless otherwise specified in Broker's written policies and procedures, or as otherwise specified herein.

**6.2 Legal Fees-** The expense of any legal fees or costs which are incurred in the collection of, or the attempt to collect, commission, shall be paid by the parties in the same proportion as provided for herein in the division of the commission. Suits for the commission shall be maintained only in the name of Broker unless otherwise provided under Georgia law. For purposes of any action for the collection of commission, Licensee shall be construed to be the sub-agent of Broker only with respect to the clients and customers for whom Brokerage Services have been performed by Licensee, and Licensee shall otherwise be deemed to be an independent contractor and not an employee or partner of Broker.

Licensee shall also pay for any actual legal fees incurred by Broker in the event Broker is required to engage an attorney to respond to and/or answer any garnishment action involving Licensee and filed against Broker. In the event Broker has agreed, as a courtesy to Licensee, to remit payments due to Licensee hereunder directly to a third party business entity on Licensee's behalf, Broker in answering the garnishment may treat all commissions being paid to Licensee's business entity as the property of Licensee subject to levy and garnishment.

**6.3 Advertising/Marketing Costs-** Broker may elect, from time to time, to incur marketing and advertising costs which may promote one or more listings. Licensee hereby authorizes Broker to use Licensee's name, likeness, description and/or recorded voice in any of Broker's marketing and/or training materials and publications. Licensee may elect to advertise in addition to any Broker advertising upon receipt of Broker approval and at Licensee's expense.

**6.4 Insurance-** Licensee agrees to maintain at Licensee's expense personal liability, casualty, automobile, property damage and other insurance coverage in coverage amounts sufficient to protect the interests of Licensee and Broker in the event of a claim related to Licensee's real estate brokerage activities, as the same may be specified from time to time in Broker's written policies and procedures. Licensee agrees to provide proof of such coverage from time to time and upon request of Broker.

**6.5 License and Membership Fees-** Licensee shall pay all of the cost necessary to maintain Licensee's real estate license, the cost of any occupational tax, if applicable, and any dues for membership in any local real estate board, Multiple Listing Service(s), or other organization of which Licensee may be a member.

**6.6 Broker Invoices-** Any invoice for expenses incurred by Broker on behalf of Licensee or at Licensee's request shall be due and payable within \_\_\_\_\_ days of receipt by Licensee, or as otherwise provided in Broker's written policies and procedures. If a Licensee fails to timely pay such invoice, Broker may deduct the entire amount payable to Broker from Licensee's next payable commission earnings, together with any late fees specified therein.

## 7. LICENSEE'S PERSONAL TRANSACTIONS

**7.1 Notice of Real Estate Owned-** Within 5 days of the date hereof, Licensee shall furnish Broker with a complete list of all real property owned by Licensee individually or through a legal or business entity in which Licensee has an interest. Licensee shall promptly notify Broker in advance of acquiring any additional real property, so that at all times Broker has a current list of real estate owned by Licensee.

**7.2 Management of Licensee's Real Property-** Licensee will not manage any of Licensee's own real property or the real property with whom Licensee has a material relationship without the written consent of Broker.

**7.3 Use of Broker Resources-** Licensee may not use Broker's facilities, staff, equipment or other resources for the management, acquisition, sale, maintenance or any other expense related to Licensee's real property without the express written consent of Broker.

**7.4 GREC Rules-** With respect to the management, sale or leasing of any real property owned by Licensee or parties related to Licensee, Licensee agrees at all times to familiarize him or herself with and abide by the rules and regulations of GREC and the laws of the State of Georgia.

## 8. LISTINGS, FORMS AND RECORDS

**8.1 Listings-** Licensee and Broker agree that any and all listings of real property for sale, lease, or to be managed, and all actions taken in connection with Licensee providing Brokerage Services, shall be taken by Licensee in the name of Broker. Such listings shall be submitted to Broker within twenty-four (24) hours after receipt of same by Licensee. All listings shall be and remain the separate and exclusive property of Broker unless otherwise agreed by the parties hereto. Broker shall have the sole right to cancel an exclusive listing agreement on any property at any time by written notice to Licensee and Seller; provided, however, where i) Licensee is the procuring cause of such exclusive listings, ii) cancellation may cause Licensee to lose commissions earned or to be earned by virtue of securing the exclusive listing, and iii) cancellation of the listing is not necessary in order to comply with any law or ethical code, then Broker may not cancel without the consent of Licensee.

**8.2 Files-** All correspondence, plats, listing information, memoranda, files, photographs, reports, legal opinions, accounting information, and any and all other instruments, documents or information of any nature whatsoever concerning real estate transactions handled by Licensee during the term of this Contract, are the property of Broker and shall continue to be the property of Broker after the termination of this Contract.

**8.3 Correspondence-** The parties hereto shall mutually approve and agree upon the form of any correspondence written on behalf of Broker and pertaining to transactions being handled, in whole or in part, by Licensee.

**8.4 Transaction Forms-** Licensee shall use only those forms approved by Broker in documenting real estate transactions for which Licensee has provided Brokerage Services. At no time shall Licensee engage in the unlicensed practice of law by giving legal advice on behalf of a client or customer.

**8.5 Licensee's Authority-** Provided Broker has not otherwise expressly limited Licensee's authority, either verbally or in writing, the commission to be earned as a result of the transaction is not less than the minimum specified by Broker for such transaction or service, the contracts and forms documenting the transaction comply with Broker's policies and procedures, and provided it is not otherwise prohibited under this Contract, Licensee shall be authorized to enter into on behalf of Broker any contracts, engagement agreements or other documents as are reasonable and customary for a Georgia real estate licensee to execute in connection with Licensee's providing Brokerage Services. Licensee shall not, however, be authorized to enter into any agreement on Broker's behalf which broadens Broker's or Licensee's responsibilities to clients or customers beyond the scope of the Brokerage Relationships in Real Estate Transactions Act ("BRRETA").

## 9. INDEMNITIES AND CLAIMS

**9.1 Licensee Indemnity-** Licensee agrees to indemnify Broker and hold Broker harmless from all claims, demands, expenses and liabilities, including costs and attorney's fees, which arise i) by reason of any action

by Licensee outside of, or which exceeds, the scope of Licensee's permitted activities under this Contract; ii) by reason of any dishonest or deliberately fraudulent act or omission, or any criminal or malicious act, or omission by or at the direction of Licensee; iii) by reason of Licensee's negligence (to the extent said negligent acts are not covered and paid to Broker under a policy of liability insurance); or iv) by reason of Broker's agreement to pay a third party business entity owned by Licensee (if applicable); (such claims are hereinafter referred to as "Indemnified Claims").

**9.2 No Broker Liability-** Broker shall not be obligated to pay any judgment or final adjudication of liability based upon Indemnified Claims, and the obligation to pay any such judgment or final adjudication of liability on the Indemnified Claim shall be solely the obligation of Licensee as provided above.

**9.3 Cooperation of Licensee-** In the event any real estate transaction in which Licensee is involved results in a dispute, litigation or legal expense, where such dispute is not based on any dishonest or deliberately fraudulent act or omission, or any criminal or malicious act or omission, and Broker chooses to defend or prosecute a claim, Licensee shall cooperate fully with Broker. Broker and Licensee shall share all expense connected therewith, in the same proportion as they would normally share the commission resulting from such transaction if there were no dispute or litigation. Broker, within Broker's sole discretion may determine whether or not any litigation or dispute shall be prosecuted, defended, compromised or settled, or whether or not legal expense shall be incurred; provided, however, that no compromise or settlement involving the payment of money or anything of value by Licensee, or the foregoing of any commission not challenged or subject to dispute or portion thereof due Licensee, shall be accepted by Broker without the written consent of Licensee.

**9.4 Notice of Claims-** Licensee shall immediately provide Broker with notice of any claim or potential claim against Broker and/or Licensee, whether civil, criminal or regulatory in nature, as soon as notice of the actual or potential claim has been brought to the attention of Licensee.

**9.5 Separate Counsel-** At any time, Licensee may secure separate legal counsel to represent Licensee in connection with any claims made against Licensee, but notwithstanding any other provision of this agreement, Broker shall not be required, under any circumstances, to pay any portion of or contribute to the payment of any legal fees of Licensee.

## 10. TERMINATION

**10.1 Notice of Termination-** With or without cause, Broker or Licensee may terminate this agreement at any time by giving written notice to the other party.

**10.2 Survival of Contract-** The right of the parties to any commissions which accrued prior to the termination of this agreement shall specifically survive the termination of this Contract.

**10.3 List of Prospects-** Licensee, upon termination of this Contract, shall furnish Broker with a bona fide list of all prospects, leads and probable transactions given and/or referred to Licensee by Broker, Broker Associates or other Broker licensees, and said list shall become the property of Broker. Licensee shall not be compensated for any transaction completed subsequent to termination of this agreement unless agreed to in writing by Broker.

**10.4 Nondisclosure-** Upon termination of this agreement, Licensee further agrees not to furnish to any person, firm, company or corporation engaged in furnishing Brokerage Services any information as to Broker's clients, customers, properties, prices, terms of negotiations, policies or relationships with clients and customers, nor any other information concerning Broker and/or Broker's business.

**10.5 Return of Broker Property-** Upon termination of this Contract, Licensee shall not be entitled to take, nor have in his/her possession, nor use, any written listing of properties secured on behalf of Broker or otherwise during the term of this Contract unless specifically authorized by Broker. Any list of names of prospective purchasers, sellers, lessees, or lessors given in writing to Licensee during the term of this Contract shall be accounted for and returned to Broker. All files, supplies, equipment, correspondence, trust funds or other items, including, but not limited to plats of property, keys, and other property which the releasing Broker owns or for which he is responsible, "For Sale" signs, listing kits, books, training manuals, or records of any kind that have been used in connection with the furnishing of Brokerage Services hereunder shall be released and returned to Broker or Broker's designee by the departing Licensee.

**10.6 Referral Fees-** Any listing released by Broker at the request of Licensee and Seller or Landlord for the purpose of transferring said listing to another Broker shall require the execution of a written agreement between Broker and Licensee's new broker. A referral fee, equal to the amount of any sums spent by Broker for marketing purposes on any listing being transferred, shall be due to Broker upon the earning of

commission on said listing, whether under the original listing or re-listed period. Licensee shall be responsible for the payment of any multiple listing service fee incurred as a result of the listing.

**10.7 Renewals-** Upon termination of this agreement, Licensee shall not be entitled to any commission or renewal fee which arises as a result of the post-termination exercise of a renewal, purchase or lease option contained in any existing lease agreement or in any lease or option agreement consummated prior to termination of this agreement. Broker shall perform all necessary services in connection with the foregoing, unless compensation shall be specifically agreed upon between the Broker and Licensee, in which case Licensee shall use due diligence to effectuate the consummation of said transaction.

## 11. MISCELLANEOUS

**11.1** The provisions of this agreement shall extend to and be binding on the respective heirs, executors, administrators and successors of each party hereto;

**11.2** If any provision of this agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this agreement shall nonetheless remain in full force and effect;

**11.3** This agreement, including any exhibits attached hereto, contain the entire agreement between the parties pertaining to the subject matter hereof and fully supersede all prior written or oral agreements and understandings between the parties pertaining to such subject matter;

**11.4** This agreement shall be governed by and interpreted under the laws of the State of Georgia;

**11.5** Time is of the essence of this agreement;

**11.6** Any indemnity, hold harmless or obligation to pay commission contained herein shall survive the termination of this agreement;

**11.7** Any notice, request or other communication required or permitted to be given hereunder shall be in writing and shall be delivered by hand or overnight courier (such as United Parcel Service or Federal Express), sent by facsimile, sent by electronic mail ("email") or mailed by United States registered or certified mail, return receipt requested, postage prepaid and addressed to each party at its address as set forth below. Any such notice shall be considered given on the date of such hand or courier delivery, confirmed facsimile transmission, deposit with such overnight courier for next business day delivery, or deposit in the United States mail, but the time period (if any is provided herein) in which to respond to such notice shall commence on the date of hand or overnight courier delivery or on the date received following deposit in the United States mail as provided above. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice. By giving at least five (5) banking days' prior written notice thereof, any party may from time to time and at any time change its mailing address hereunder. The parties' respective mailing and email addresses for notice purposes are indicated after the parties' signatures below. Telephone numbers are given for convenience of reference only. Notice by telephone shall not be effective; and

**11.8** This document and any amendments thereto, may be executed in multiple counterparts by the parties, and such counterparts shall have the same legal enforceability and binding effect as though it were signed by all parties in original form.

### Special Stipulations:

**Special Stipulations, continued:**

Substantive provisions continued on additional page.

This Agreement was accepted by the party to whom it was presented on \_\_\_\_\_, 20\_\_\_\_.

*All Names should be both signed and printed.*

**Broker:**

\_\_\_\_\_/\_\_\_\_\_  
Name of Brokerage Firm Broker Code

➤ \_\_\_\_\_

\_\_\_\_\_  
Broker Printed Name

\_\_\_\_\_  
Broker Address

\_\_\_\_\_  
Broker's License Number

**Licensee:**

➤ \_\_\_\_\_

\_\_\_\_\_  
Licensee Printed Name

\_\_\_\_\_  
Licensee Address

\_\_\_\_\_  
Licensee's License Number

