

**INDIANA ASSOCIATION OF REALTORS®  
INDEPENDENT CONTRACTOR AGREEMENT**

**THIS AGREEMENT** is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_, hereinafter referred to as “**Managing Broker**” and \_\_\_\_\_, hereinafter referred to as “**Independent Contractor**”.

(a) Managing Broker is an individual duly licensed in an active status by the Indiana Real Estate Commission and authorized to act as a Managing Broker;

(b) Independent Contractor is an individual duly licensed in an active status by the Indiana Real Estate Commission as a Broker;

(c) Managing Broker is qualified to obtain the listings of real estate for sale and lease and Managing Broker maintains an office properly staffed and equipped to operate such business;

(d) Independent Contractor is qualified to conduct the business of a Broker; and

(e) Managing Broker and Independent Contractor wish to become affiliated with each other in such general real estate business of Managing Broker.

**IN CONSIDERATION** of the mutual promises contained herein, Managing Broker and Independent Contractor agree as follows:

**1. FACILITIES AND SALES EFFORTS**

- A. Efforts by Independent Broker.** Independent Contractor shall proceed diligently, loyally, legally and with best efforts to sell, trade, lease, rent or manage all real estate listed with Managing Broker (except for any special listings which are exclusively placed by Managing Broker with another Independent Contractor), to solicit additional listings and customers or clients for Managing Broker, and otherwise to promote the business of serving the public in real estate transactions.
- B. Use of facilities.** Managing Broker and Independent Contractor agree that Independent Contractor may share with other Independent Contractors affiliated with Managing Brokers all of the facilities of the office now operated by Managing Broker in connection with such general real estate business of Managing Broker.
- C. Listings and cooperation.** Managing Broker agrees to make available to Independent Contractor all current listings of Managing Broker’s office except such listings as Managing Broker, for valid and usual business reasons, may make available exclusively to some other Independent Contractor. Managing Broker has the sole right to approve, extend, cancel or release any exclusive listing contract on any property at any time by written notice to Independent Contractor and Seller. Managing Broker also agrees, upon request, to assist Independent Broker in his or her work by advice, instruction, and all practicable cooperation.

**2. ETHICS, TRADE ORGANIZATIONS AND LAWS**

- A. Membership.** Independent Contractor agrees to become and maintain status as a REALTOR® in a local Board/Association. Independent Contractor and Managing Broker shall be governed by the NAR Code of Ethics, the Constitution and Bylaws of the Managing Broker’s and Independent Contractor’s

Boards/Associations of REALTORS®, and the rules and regulations of any multiple listing service with which the Managing Broker and Independent Contractor now or in the future may be affiliated. Independent Contractor has been given a copy of all of Managing Broker's company policies, and agrees to be bound by and comply with such policies as they may be amended from time to time. All dues or other expenses of Independent Contractor arising out of the membership of Independent Contractor in any organization, including organizations of brokers, shall be paid by Independent Contractor, and Managing Broker shall not reimburse Independent Broker from such payment.

- B. Laws, Rules and Regulations.** Independent Contractor acknowledges receipt of a current copy of and shall obey the Indiana Real Estate License Laws and Rules of the Indiana Real Estate Commission. Managing Broker and Independent Contractor agree to comply with all laws and regulations applicable to Managing Broker and Independent Contractor, including all laws relating to the making of unsolicited phone calls under the Do-Not-Call rules, Do-Not-Fax rules and rules governing the sending of unsolicited e-mails promulgated by the Federal Trade Commission, Federal Communications Commission or any other governmental entity.

### **3. COMMISSIONS**

- A. Compensation of Independent Contractor.** The commissions and fees for services rendered in the sale, rental, trade, listing or management of real estate shall be established from time to time by Managing Broker. In no event shall Independent Contractor charge less than the commission or fee established by Managing Broker without a prior written agreement pertaining to a particular transaction. Managing Broker shall advise Independent Contractor of any such special arrangement. Commissions, when paid pursuant to this Agreement, shall be divided between Managing Broker and Independent Contractor after deduction of all expenses according to Independent Contractor's Commission Schedule, which is attached hereto and incorporated herein.
- B. Payment of commissions.** In the event that two (2) or more brokers under contract with Managing Broker participate in a sale and each claims a commission, the amount of the commission shall be divided equally among the brokers or otherwise according to a written agreement among the brokers; or if they shall be unable to agree, then it shall be submitted to arbitration. In no case shall Managing Broker be personally liable to Independent Contractor for any commissions, nor shall Independent Contractor be personally liable to Managing Broker for any commissions not collected. If commissions have been collected from the party for whom the service was performed, such sum shall be deposited with Managing Broker and subsequently divided according to the terms of this Agreement. The division and distribution of collected commissions shall take place as soon as practicable.

### **4. EXPENSES**

- A. Special and general expenses.** Managing Broker shall not be liable to Independent Contractor for any expenses incurred by Independent Contractor nor shall Independent Contractor be liable to Managing Broker for Managing Broker's office help or expenses other than as specifically provided for in this Agreement. Certain "special expenses" directly attributable to a specific transaction shall be deducted from the gross commission prior to division of the net amount between Managing Broker and Independent Contractor. Any "special expenses" shall not be allowable unless previously agreed upon in writing by the parties. Expenses of a general nature such as those for professional or customer relations which inure to the benefit of Managing Broker, may be reimbursed to Independent Contractor by Managing Broker if such reimbursement is previously agreed upon in writing by the parties.

- B. Real estate license, dues, and taxes.** Independent Contractor shall pay all fees or costs relating to Independent Contractor's real estate license and mandatory continuing education requirements, all professional dues, and taxes.

## **5. AUTHORITY**

- A. Contracts in general.** Independent Contractor has no authority to bind Managing Broker by any promise or representation, unless specifically authorized by Managing Broker in writing in a particular transaction. Independent Contractor must submit to Managing Broker promptly all purchase agreements, listing contracts and lease related documents.
- B. Correspondence, records and forms.** All correspondence, listing information, memoranda, files, photographs, reports, legal opinions, accounting information and any other documents or information concerning transactions handled by Managing Broker or by Independent Contractor shall remain the sole property of Managing Broker. Upon a reasonable request, Independent Contractor will be entitled to copies of such documentation.

## **6. LITIGATION AND CONTROVERSIES**

- A. Managing Broker's actions.** If Independent Contractor does not wish to enter into the following actions jointly with Managing Broker, then Independent Contractor grants to Managing Broker the power of attorney to institute an action in court concerning commissions or other matters related to the conduct of the real estate business of Managing Broker and Independent Contractor under this Agreement, to conduct the same to a final decision, to negotiate settlements, to defend actions pertaining to the real estate business, to employ legal counsel and to conduct all matters in such manner as Managing Broker deems desirable.
- B. Duty to cooperate.** If a transaction in which Independent Contractor is involved results in a dispute, litigation or legal expense, Independent Contractor shall cooperate fully with Managing Broker. Managing Broker and Independent Contractor shall share all expenses in the same proportion as they would normally share the commission resulting from any transaction if there were no dispute or litigation. It is the policy to avoid litigation whenever possible. Managing Broker in Managing Broker's sole discretion may determine whether or not any litigation or dispute shall be prosecuted, defended, compromised and settled. The terms of any settlement involving the payment of money or anything of value by Independent Contractor may be accepted by Managing Broker without the prior written consent of Independent Contractor.
- C. Default and hold harmless.** If either party shall be in default of any provision of this Agreement and such breach shall result in damage to the other party, then the defaulting party shall pay the other party for such damage and shall defend and hold the other party harmless from any claim, demand, cause of action, lawsuit, attorney fees or costs which may result from any breach of this Agreement. There is hereby granted to the defaulted party a contractual lien upon any sum due to the other or which may be collected by the defaulted party and subsequently be due to the other party, to cover the items described in this provision.

## **7. DISPUTE RESOLUTION**

- A. Agreement between the parties; mandatory mediation/arbitration.** In the event of a dispute between Independent Contractor and Managing Broker or any Independent Contractor under contract with Managing Broker arising out of this Agreement: (1) Managing Broker and Independent Contractor agree to mediate all disputes and claims arising out of this Agreement before resorting to arbitration; (2) if the dispute is not resolved through mediation, the parties shall submit the dispute to binding

arbitration, in place of pursuing a court action, in accordance with the rules and procedures set forth in the Indiana Uniform Arbitration Act I.C. 34-57-1 et seq. Managing Broker and Independent Contractor agree to be bound by the decision of the arbitration panel.

- B. Class Action Waiver.** Managing Broker and Independent Contractor agree that any and all claims pursued against each other will be on an individual basis, and not on behalf of or as a part of any purported class, collective, representative, or consolidated action. Both Managing Broker and Independent Contractor hereby waive their right to commence, become a party to or remain a participant in any group, representative, class collective or hybrid class/collective or group action in any court, arbitration proceeding, or any other forum, against the other. The parties agree that any claim by or against Managing Broker or Independent Contractor shall be heard in arbitration without joinder of parties or consolidation of such claim with any other person or entity's claim. In the event of a dispute arising out of this agreement, Managing Broker and Independent Contractor waive their rights to bring any litigation as a class action.

## **8. INDEPENDENT CONTRACTOR**

- A. Legal status and tax responsibilities.** This Agreement does not constitute a hiring by either party, nor shall it be construed as one of employment or partnership, and neither party shall be liable for any obligation incurred by the other except as provided in this Agreement. It is understood that Independent Contractor is a qualified real estate agent under the Internal Revenue Code and will not be treated as an employee with respect to the services performed by Independent Contractor for federal tax purposes. Accordingly, Managing Broker shall not withhold from Independent Contractor's commissions any amount of taxes. The parties are and shall remain independent contractors under this Agreement. Also, Independent Contractor will not be treated as an employee with respect to the services performed as a real estate agent for state tax purposes. Managing Broker will not make any contributions with regard to social security taxes (FICA) on the earnings of Independent Contractor. Managing Broker will provide the Independent Contractor with a Form 1099 MISC. summarizing annual income. Independent Contractor is responsible for all income taxes and self-employment taxes. In addition, Independent Contractor shall bear any and all responsibility for providing Independent Contractor's own workers compensation insurance coverage.

## **9. TERMINATION**

- A. Termination by the parties.** This Agreement may be terminated by either party with or without cause and without liability at any time on three (3) days written notice to the other, but the rights of the parties to any commissions which accrued before the termination shall not be divested by the termination of this Agreement, except as provided herein. On transactions "pending" (i.e. sales made or listings produced) at termination but closed after termination, Independent Contractor shall receive Independent Contractor's usual commission share, but Managing Broker may deduct fair and reasonable charges, if any, for expenses incurred and efforts expended by Managing Broker or Managing Broker's designate for any services in closing the transaction.
- B. Listings.** Upon termination, all current listings remain the sole and exclusive property of Managing Broker, and Independent Contractor shall conduct no further negotiations with respect to such listings.
- C. Transfer of license.** Upon termination, if Independent Contractor desires to transfer Independent Contractor's license to another real estate Managing Broker, Managing Broker shall cooperate in the transfer of the license despite any circumstances in connection with the termination of association.

- D. Prospects and leads list.** Upon termination, Independent Contractor shall furnish to Managing Broker a legitimate list of all prospects, leads and probable transactions developed by Independent Contractor, or upon which Independent Contractor shall have engaged with respect to any transaction prior to termination of this Agreement.
- E. Records and information.** Upon termination, Independent Contractor shall not furnish to any person, firm, company or corporation engaged in the real estate business any information as to Managing Broker's clients, customers, properties, prices, terms of negotiations nor Managing Broker's policies of relationships with clients and customers nor any other information concerning Managing Broker or Managing Broker's business. Independent Contractor shall not, after termination, remove from the files or from the office of Managing Broker any keys, maps, books, publications, investor prospect lists, or any other material, files or data. It is expressly agreed that such keys, records and information are Managing Broker's property. Independent Contractor shall be entitled to copies of documents pertaining to transactions in which Independent Contractor has a legitimate interest, and Managing Broker shall not unreasonably withhold such items from Independent Contractor.

#### **10. MISCELLANEOUS PROVISIONS**

- A. Governing law.** This Agreement is governed by the laws of the State of Indiana.
- B. Assignment.** This Agreement is personal to the parties and may not be assigned, sold or otherwise transferred by either party.
- C. Waiver.** The failure of any party to enforce at any time any of the provisions or terms of this Agreement shall not constitute a waiver of any provision or term.
- D. Entire agreement.** This Agreement constitutes the entire agreement between Managing Broker and Independent Contractor, and there are no agreements or understandings concerning this Agreement which are not fully set forth or incorporated herein.

**IN WITNESS WHEREOF,** the parties have signed this Agreement on the date written above.

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**Managing Broker**

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**Independent Contractor**