

Trademark Sublicense Agreement

This Trademark Sublicense Agreement (the "Agreement") is made and entered into by and between _____, a _____ (the "Sublicensor"), and _____, a _____ (the "Sublicensee").

Sublicensor has entered into a trademark license agreement with CMLS for a license and the right to sublicense the use of the mark sourceMLS™ (WITH DESIGN)™. Sublicensee desires to use the mark to designate its display of real estate listings as complying with the standards established by CMLS for the display of real estate listings, all in accordance with the terms and conditions of this Agreement.

In exchange for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, Sublicensor and Sublicensee agree as follows:

1. Grant of License. Subject to the terms and conditions of this Agreement and the Trademark License Agreement dated _____ and entered into between Council of Multiple Listing Services, a Washington nonprofit corporation ("CMLS") and Sublicensor, a copy of which is attached as Exhibit A, and is incorporated by reference ("CMLS Trademark License Agreement"), Sublicensor hereby grants to Sublicensee a revocable, non-exclusive, non-transferable limited sublicense (the "License") to use the trademark identified on the attached Exhibit B, which is incorporated into this Agreement by this reference (the "Licensed Mark"), on or in connection with the electronic display of individual sourceMLS™ Listings ("Individual Listings Only License"), including on the Internet, or applications for online and/or mobile devices ("Display Application"), that display listings of real property for sale, rent, or lease ("Listing") in connection with Approved Services.

2. sourceMLS™ Listings.

(a) Notwithstanding anything to the contrary in this Agreement, Sublicensee shall use the Licensed Mark only as permitted in this Agreement, and may not use the Licensed Mark in connection with any Listing that is not a sourceMLS™ Listing. If all Listings displayed by Sublicensee on a specific Display Application are sourceMLS™ Listings, then Sublicensee may also use the Licensed Mark on such Display Application in connection with marketing and advertising sourceMLS™ Listings through Sublicensee's Approved Services ("Site License"). If at any time a Listing ceases to be a sourceMLS™ Listing, Sublicensee agrees to promptly remove the Licensed Mark from use in connection with that Listing, and in the case of a Site License, if any Listing displayed on a specific Display Application ceases to be a sourceMLS™ Listing, or the Display Application no longer qualifies for a Site License, Sublicensee agrees to promptly remove the Licensed Mark from the Display Application, except on individual sourceMLS™ Listings. Sublicensee shall not use or make any representations regarding the Licensed Mark in any manner that affirmatively states, suggests, or implies that any

Listing is a sourceMLS™ Listing, if it is not a sourceMLS™ Listing, or that the Licensed Mark represents anything, except that the sourceMLS™ Listings satisfy the conditions of becoming sourceMLS™ Listings under the terms of this Agreement. Sublicense shall use the Licensed Mark for the following:

_____ Individual Listings Only License

_____ Site License

(b) “sourceMLS™ Listings” are Listings that (i) fully comply with and satisfy all of the conditions set forth in the sourceMLS™ listing guidelines established by CMLS (the "sourceMLS™ Listing Guidelines"), and (ii) are licensed to Sublicensee by Sublicensor in a written license agreement for the use and display of such listings by Sublicensee. A copy of the sourceMLS™ Listing Guidelines effective as of the Effective Date is attached to this Agreement as Exhibit C, and is incorporated by reference. The sourceMLS™ Listing Guidelines may be modified by CMLS at any time in its sole discretion, and all modifications shall be binding on Sublicensee thirty (30) days after notice of such modification to Sublicensee. Notwithstanding the provisions of Section 17(a), notice of the changes to the sourceMLS™ Listing Guidelines may be given by CMLS posting revised or amended sourceMLS™ Listing Guidelines at <http://www.sourcemls.org/listingguidelines>.

3. Representations and Covenants Regarding Sublicensee.

(a) Sublicensee represents and warrants that the following are true, accurate, and not misleading as of the Effective Date, and Sublicensee agrees to conduct its business and take all action necessary at all times during the term of this Agreement so that the following remain true, accurate, and not misleading at all times during the term of this Agreement.

(i) Sublicensee is duly organized and in good standing as a business entity in the state of its formation, and all other jurisdictions where the qualification to do business is required for the conduct of Sublicensee’s business in that jurisdiction.

(ii) The person signing this Agreement on behalf of Sublicensee is authorized to do so.

(iii) Upon the execution of this Agreement, this Agreement will be the valid and binding obligation of Sublicensee, enforceable in accordance with its terms.

(iv) As of the Effective Date , Sublicensee provides and will continue to provide during the term of this Agreement one or more of the following

services (“Approved Services”), and display Listings only in connection with Approved Services:

- (1) Real estate brokerage services.
- (2) Real estate advertising and marketing services.
- (3) Online real estate marketing services.
- (4) Providing real estate information to consumers.

(b) Sublicensee shall comply and at all times conduct its business in accordance with all federal, state and local laws. If applicable, Sublicensee shall comply with the bylaws, policies, rules and regulations of the multiple listing service in which Sublicensee is a member. Sublicensee shall perform all of its obligations under all material contracts to which Sublicensee is a party or by which Sublicensee is bound.

4. License Fees. [In consideration for the grant of the License, Sublicensee agrees to pay to Sublicensor as a license fee an amount equal to _____ dollars (\$____.00) (“Sublicense Fee”). The Sublicense Fee shall be payable on the Effective Date.

5. Limitations on Licensed Mark License. Sublicensor does not grant Sublicensee any right, title, or interest in the Licensed Mark other than the rights expressly granted hereunder. Sublicensee shall have no right to sublicense, transfer, assign or authorize others to use the Licensed Mark. Sublicensee will not enter into any agreement allowing another to perform any act that Sublicensee is prohibited from undertaking under the terms of this Agreement. Sublicensee agrees to use commercially reasonable efforts to safeguard and maintain the reputation and prestige of the Licensed Mark, and to use commercially reasonable efforts to prevent the Licensed Mark from negatively impacting CMLS’ or Sublicensor’s reputation associated with the Licensed Mark.

6. Licensed Mark Usage. The display of the Licensed Mark by Sublicensee shall be a dynamic uniform resource locator provided by CMLS and shall be a link back to a page provided by CMLS. Each display of the Licensed Mark shall be exactly as shown on the attached Exhibit A. The Licensed Mark may not be displayed using a static graphical rendering of the Licensed Mark. Sublicensee agrees to use the Licensed Mark, and cause all Sublicensees to use the Licensed Mark, only in compliance with this Agreement, and all applicable laws, regulations, and ordinances and the sourceMLS™ Listing Guidelines, and to comply with all marking and notice provisions of the Lanham Act, and all other applicable laws. Sublicensee is authorized to use the Licensed Mark in combination with the Sublicensee’s trademarks and its company name. Sublicensee agrees that it will not use the Licensed Mark, or any variations thereof, in any manner that would give the impression that Sublicensee is affiliated in any way with CMLS, other than as Sublicensee of the Licensed Mark. Any use of the Licensed Mark by Sublicensee shall be in strict accordance with the requirements identified in this Agreement. Sublicensee shall not use

or cause the Licensed Mark to be used in any way that is likely to reduce, diminish or damage the goodwill, value or reputation associated with CMLS or the Licensed Mark, in any manner as would violate the rights of any third parties, in any manner as would result in any third party claim or in any governmental investigation, claim or proceeding alleging unlawful or improper use of the Licensed Mark, on or in connection with any products or services other than the sourceMLS™ Listings and promotional materials pertaining to the sourceMLS™ Listings, or in any manner other than as a certification mark. Any use of the Licensed Mark by Sublicensee shall inure to the benefit of CMLS.

7. Marketing and Promotion. Sublicensee acknowledges that CMLS desires potential licensees and sublicensees, consumers, and others to become educated regarding the Licensed Mark and its use on sourceMLS™ Listings, and to be aware of the sourceMLS™ Listing Guidelines. CMLS further desires to build and strengthen the goodwill of the Licensed Mark through appropriate use of the Licensed Mark. Accordingly, CMLS will deliver to Sublicensor and Sublicensee will deliver to Sublicensee a media kit with information regarding the Licensed Mark and promotion of the Licensed Mark in connection with sourceMLS™ Listing. Sublicensee agrees to use the media kit, and implement the programs described in the media kit, and use good faith efforts to promote the education and use of the Licensed Mark on sourceMLS™ Listings among potential licensees and sublicensees, consumers, and others.

8. Limitation of Liability. TO THE FULLEST EXTENT AVAILABLE UNDER APPLICABLE LAW, SUBLICENSOR'S, AND TO THE EXTENT APPLICABLE, IF ANY, CMLS' ENTIRE AND CUMULATIVE LIABILITY TO SUBLICENSEE OR ANY THIRD PARTY FOR ANY LOSS OR DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS, OR ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE USE OF THE LICENSED MARK, INCLUDING ANY TORT, SUCH AS NEGLIGENCE, SHALL NOT EXCEED (A) AN AMOUNT EQUAL TO THE SUBLICENSE FEES PAID TO SUBLICENSOR UNDER THIS AGREEMENT, OR (B) IF NO SUBLICENSE FEES ARE OWING OR PAID, THEN ONE HUNDRED DOLLARS (\$100.00). WITHOUT WAIVER OF THE LIMITATIONS SET FORTH IN THIS SECTION, IN NO EVENT SHALL SUBLICENSOR, AND TO THE EXTENT APPLICABLE, IF ANY, CMLS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES OR LOST PROFITS, EVEN IF SUBLICENSOR AND CMLS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SUBLICENSOR AND SUBLICENSEE AGREE THAT THE LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT REPRESENT BARGAINED FOR ALLOCATIONS OF RISK, AND THAT THE FEES, CHARGES, AND COSTS OWING UNDER THIS AGREEMENT, REPRESENT THE ALLOCATIONS OF SUCH RISK.

9. Notices. Sublicensee shall comply with all reasonable trademark, trade name, and service mark notice markings required by Sublicensor or CMLS. Sublicensee shall cause the symbol "™", or when the Licensed Mark is registered, the symbol ®, to be placed in all uses of the Licensed Mark, including all forms of advertising and promotion.

Sublicensee agrees to fully cooperate with Sublicensor and CMLS, and take all reasonable action requested by Sublicensor and CMLS, at CMLS' expense, in connection with any application for federal registration of the Licensed Mark, including any application by the licensor of the Licensed Mark to CMLS, or the maintenance of any federal registration of the Licensed Mark.

10. Right to the Licensed Mark. Sublicensee acknowledges and agrees that the Licensed Mark, and all associated goodwill, are the sole and exclusive property of CMLS, or its licensor, and Sublicensee will do nothing inconsistent with CMLS', or its licensor's, ownership of the Licensed Mark. Use by Sublicensee of the Licensed Mark shall inure to the benefit of CMLS, or its licensor. Sublicensee shall not, during or after the term of this Agreement, intentionally or recklessly engage in any conduct, directly or indirectly that would infringe upon, harm, or contest the validity of or of CMLS', or its licensor's, rights to the Licensed Mark. Sublicensor does not grant or convey any right, title, interest, or goodwill in or to the Licensed Mark, other than the rights of a license as provided herein. Sublicensee is prohibited from reserving, registering, or using any domain name comprised in whole or in part of the Licensed Mark, except as set forth in this Agreement. Sublicensee further agrees that it shall not use or seek to register any mark that contains the term "sourceMLS™" or any spelling variation thereof or any mark confusingly similar to the Licensed Mark.

11. Indemnification and Hold Harmless. Sublicensee shall indemnify, defend and hold harmless Sublicensor and CMLS, and their parent and affiliated companies, and their respective officers, directors, customers, employees, members, managers, agents, and representatives from and against any and all claims, losses, damages, costs, and expenses, including attorneys' fees and costs, and including any claims by CMLS' licensor, arising out of or related to Sublicensee's sale, offering for sale, promotion, advertisement, or provision of services under or in connection with the Licensed Mark, the failure of any Sublicensee to perform all of its obligations under this Agreement, the misuse of the Licensed Mark, or any breach or default of this Agreement by Sublicensee. Sublicensor shall indemnify, defend and hold harmless Sublicensee, and its officers, directors, customers, employees, members, managers, agents, and representatives from and against any and all claims, losses, damages, costs, and expenses, including attorneys' fees and costs, for valid claims that the Licensed Mark infringes on the United States trademark rights of a third party.

12. No Representations and Warranties Regarding Licensed Property. Sublicensee agrees and acknowledges that the License is made without any representations or warranties of any kind or nature. Notwithstanding that Sublicensor has agreed to indemnify Sublicensee as provided in Section 11, Sublicensor and CMLS do not make any representations or warranties regarding title to the Licensed Mark, the rights of any other persons or entities to the Licensed Mark, or with regard to the enforceability of any rights to the Licensed Mark. Sublicensee expressly agrees and acknowledges that CMLS is a Sublicensee of the Licensed Mark.

13. Control of Use Licensed Mark. CMLS, and its licensor, shall have absolute control over the use of the Licensed Mark, the conditions and process under which it may be licensed or used, and the qualifications for Listings becoming sourceMLS™ Listings. Sublicensee agrees that the nature and quality of all services provided by Sublicensee and Listings displayed under the Licensed Mark shall conform in all respects to the sourceMLS™ Listing Guidelines, and other terms of this Agreement. Sublicensee agrees and acknowledges that Sublicensor and CMLS may take any action to cause the Licensed Mark to be used only in connection with sourceMLS™ Listings. Specifically, but without limitation, CMLS and Sublicensor may at any time inspect, examine, test, and audit any feed of Listings, the Display Application through which the Listings are being displayed, including any passwords necessary for system access, and the display of such Listings to determine if the Listings are sourceMLS™ Listings, and Sublicensee is complying with the terms and conditions of this Agreement. Sublicensee agrees to fully cooperate with CMLS and Sublicensor, and their service providers, and grant access to CMLS and Sublicensor to Sublicensee's premises and electronic access for any such inspection, examination, test, or audit. Sublicensee further agrees to deliver to CMLS or Sublicensor, at Sublicensor's request, specimens of the use of the Licensed Mark for any period of time requested by CMLS or Sublicensor. The determination of compliance by Sublicensee of the covenants regarding the Licensed Mark shall be in the sole discretion of CMLS and Sublicensor.

14. Infringement. If, at any time during the term of this Agreement, Sublicensee becomes aware of or receives notice of any infringement of any of CMLS', or its licensor's, rights in and to the Licensed Mark, misuse of the Licensed Mark, or breach of this Agreement by Sublicensee, Sublicensee agrees to give notice of such infringement, misuse, or breach to CMLS and Sublicensor within forth-eight (48) hours of receipt of the notice or awareness of such event by Sublicensee. Sublicensee shall take no action in connection with any misuse or infringement of the Licensed Mark without the consent of CMLS. CMLS shall have no obligation to take any action against any person or entity infringing on or misusing the Licensed Mark, but may do so, in its sole discretion. As between CMLS and Sublicensee, any proceeds, awards, or damages awarded to CMLS, or its licensor, or any other amounts received by way of settlement, or otherwise, in connection with any alleged or actual infringement, shall be paid to CMLS and shall be the sole property of CMLS. Sublicensee shall have no claim to any such proceeds.

15. Term of License. The effective date of this Agreement and the License will commence on the date identified on the signature page as the effective date of this Agreement (the "Effective Date"), and will terminate on the first (1st) anniversary of the Effective Date, unless renewed or earlier terminated in accordance with the terms and conditions of this Agreement. This Agreement shall automatically renew for additional one (1) year terms, unless either party gives notice of the termination of this Agreement at least thirty (30) days prior to the expiration of the then-current term. Notwithstanding anything to the contrary, upon termination of the CMLS Trademark License Agreement, this Agreement shall immediately and without notice terminate, and the term of this Agreement may not extend beyond the term of the CMLS Trademark License Agreement.

16. Termination.

(a) Unless earlier terminated in accordance with the provisions of Section 15 of this Agreement, after thirty (30) days written notice to Sublicensee, CMLS or Sublicensor may terminate this Agreement, and/or the License granted to Sublicensee upon the occurrence of any of the following:

(i) Sublicensee fails to perform any of its obligations or defaults under this Agreement, including, without limitation, payment of any Sublicense Fees within ten (10) days of the date on which such Sublicense Fees are due.

(ii) Any claim or litigation is made or threatened against Sublicensee by any regulatory agency of any local, state, or the federal government, and such claim or litigation is not dismissed or fully settled upon terms acceptable to CMLS and Sublicensor within ninety (90) days of the date of such claim or litigation.

(iii) If a default occurs, or any event occurs or condition exists, which with the passage of time, the giving of notice, or both, would constitute a default, on any obligation or under any agreement of Sublicensee to or with CMLS, Sublicensor, or any other person or entity.

(iv) Sublicensee is dissolved, becomes insolvent, or is terminated.

(v) If a petition in bankruptcy is filed against Sublicensee and such petition is not dismissed within one hundred twenty (120) days of filing or a petition in bankruptcy is filed by Sublicensee.

(vi) CMLS generally terminates the sourceMLS™ program..

(b) Sublicensee may terminate this Agreement at any time, and Sublicensee shall give prior written notice of such termination to Sublicensor and CMLS.

(c) Upon termination of this Agreement, for any reason, Sublicensee agrees to immediately terminate all use of the Licensed Mark, and any word, symbol, or device confusingly similar to the Licensed Mark, and to destroy all printed and electronic materials bearing the Licensed Mark, or within five (5) days of termination, certify in writing to CMLS and Sublicensor the destruction of all such printed and electronic materials.

(d) Sublicensor and Sublicensee agree and acknowledge that if Sublicensee defaults under this Agreement, no adequate remedy may be available at law to compensate Sublicensor or CMLS for their injury. Further, Sublicensee agrees that Sublicensor and CMLS may suffer irreparable harm. As a result, Sublicensee agrees that if Sublicensee defaults under this Agreement, in addition to all other remedies available to Sublicensor and CMLS, Sublicensor and/or CMLS may seek and obtain, and Sublicensee

will not oppose the granting of, a temporary restraining order and preliminary injunction requiring Sublicensee to perform its obligations under this Agreement.

17. General.

(a) Notices. Any notice required to be delivered under this Agreement shall be deemed sufficiently delivered or given when mailed by United States first class mail, postage fully prepaid, or registered or certified mail, return receipt requested, addressed to the party for whom such notice is intended at the addresses set forth below:

CMLS: Council of Multiple Listing Services

Attention: Sarah Carlton

Sublicensor:

Attention: _____

With a copy to:

Attention: _____

Sublicensee:

Attention: _____

With a copy to:

Attention: _____

(b) Washington Law Governs. This Agreement shall be governed by and construed in accordance with the laws of the state of Washington.

(c) Integrated Agreement. This Agreement constitutes the entire agreement between Sublicensor and Sublicensee with respect to the subject matter of this Agreement. All prior and contemporaneous oral and written agreements are merged into this Agreement. This Agreement may not be modified or amended, except in writing signed by Sublicensor and Sublicensee, with the written consent of CMLS.

(d) Survival. The provisions of Sections 4, 10, 11, 12, 14, 16(c), 16(d), and 17 of this Agreement shall survive the termination of this Agreement.

(e) Time. Time is of the essence in this Agreement.

(f) Attorney Fees. Upon the occurrence of a default by Sublicensee under this Agreement, Sublicensee agrees to pay CMLS and Sublicensor all of their respective costs and expenses incurred in connection with the default and enforcing CMLS' and Sublicensor's rights, including reasonable attorney fees and costs.

(g) Waiver. The waiver by any party of, or the failure of any party to take action with respect to, any breach of any term, covenant or condition in this Agreement contained shall not be deemed to be a waiver of such term, covenant or condition, or subsequent breach of the same, or any other term, covenant or condition contained in this Agreement. The subsequent acceptance of any payment due under this Agreement by any party shall not be deemed to be a waiver of any preceding breach of the party making payment with respect to any term, covenant or condition contained in this Agreement, including the obligation to make such payments under this Agreement, other than the failure of the party making payment to make the particular payment so accepted, regardless of knowledge on the part of the party accepting such payment of such preceding breach at the time of such acceptance.

(h) Independent Contractor Status. Sublicensee is an independent contractor under this Agreement, and nothing in this Agreement shall be construed to create any partnership, joint venture, or agency relationship between the CMLS, Sublicensor, and Sublicensee.

(i) Assignability. Neither party shall assign the License, this Agreement, or of any of its rights under this Agreement. Neither party shall delegate any of its duties under this Agreement. Any attempt to assign or delegate any right or duty under this Agreement shall be void.

(j) Binding Effect of Agreement. This Agreement will be binding upon and shall inure to the benefit of Sublicensor and Sublicensee, and their respective legal representatives and successors.

(k) Severability. Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid, or otherwise unenforceable, shall not invalidate or make unenforceable any other provision of this Agreement.

(l) Third Party Beneficiary. CMLS is an express and intended third party beneficiary under this Agreement.

[Signatures on following page]

Dated effective _____.

SUBLICENSOR

By _____
President

SUBLICENSEE

By _____
Its _____

Exhibit A

CMLS Trademark License Agreement

Exhibit B

Licensed Mark

TM



Exhibit C

sourceMLS™ Listing Guidelines