

## BREVARD BOARD OF REALTORS®

### APPLICATION PROCEDURES AND REQUIREMENTS TO ESTABLISH NEW REAL ESTATE COMPANY DESIGNATION FOR REALTOR® MEMBERSHIP AS PRINCIPAL BROKER (Primary Board)

This is the NORTH CAROLINA MOUNTAINS MLS Application Packet and fee schedule for Member Subscribers of the Brevard Board of REALTORS® who are establishing a new real estate company designation. The following fees and forms (filled out in their entirety) must be returned to the Board Office before your application for membership is considered complete.

FEES:	\$850.00	Office Membership Fee (one-time charge to office)
	\$426.00	National, State & Local Dues (Prorated see Fee Schedule)
	\$400.00	Application Fee
	\$350.00	Active Key Lease (If Applicable)
	See attached	Regional MLS Fees

FORMS:	Application for REALTOR® Membership
	Agent Information/Internet Authorization Form (For Principal)
	NORTH CAROLINA MOUNTAINS MLS Subscriber Agreement (For Principal)
	Active Key Sub-Licensing Agreement (If Applicable)

\*Upon application approval by the Executive Committee, you will be required to complete the following stages of membership:

1. You must attend two orientation classes plus induction:
  - a) MLS Orientation must be completed first and prior to Board Orientation.
  - b) Board Orientation must be completed either the first or second orientation course presented by the Brevard Board of REALTORS® after your application is processed. You will be notified of the next scheduled Orientation class. If you do not attend the classes required, you will not be eligible for membership.
  - c) Induction is held immediately after the Board Orientation.

**FAILURE TO COMPLY WITH THE ABOVE REQUIREMENTS WILL RESULT IN FORFEITURE OF APPLICATION FEE AND DUES, AND FULL RE-APPLICATION WILL BE REQUIRED FOR MEMBERSHIP.**

Thank you for considering the Brevard Board of REALTORS® as your primary board. If you have any questions, please call the Board Office at 877.4059 or fax us at 877.3038.

Amy Davis  
Executive Officer  
Brevard Board of REALTORS®

\*If for any reason application is denied, fees are refundable.



**APPLICATION FOR REALTOR® MEMBERSHIP**

To the Brevard Board of REALTORS®, I hereby apply for REALTOR® Membership in the above named Board and am enclosing my check in the amount of \$ **400.00** for a one time application fee and \$ \_\_\_\_\_\* for my 2010 Dues payable to the Brevard Board of REALTORS®. My application fee and 2010 dues will be returned to me in the event of non-election. In the event of my election, I agree to abide by the Code of Ethics of the National Association of REALTORS®, which includes the duty to arbitrate, and the Constitution, Bylaws and Rules and Regulations of the above named Board, the State Association and the National Association, and if required, I further agree to satisfactorily complete a reasonable and non-discriminatory written examination on such Code, Constitutions, Bylaws and Rules and Regulations. I understand membership brings certain privileges and obligations that require compliance. Membership is final only upon approval by the Board of Directors and may be revoked should completion of requirements, such as orientation, not be completed within timeframe established in the association's bylaws. I understand that I will be required to complete periodic Code of Ethics training and Legal Liability training as specified in the association's bylaws as a continued condition of membership.

*NOTE: Applicant acknowledges that if accepted as a member and he/she subsequently resigns from the Board or otherwise causes membership to terminate with an ethics complaint pending, the Board of Directors may condition renewal of membership upon applicant's certification that he/she will submit to the pending ethics proceeding and will abide by the decision of the hearing panel. If applicant resigns or otherwise causes membership to terminate, the duty to submit to arbitration continues in effect even after membership lapses or is terminated, provided the dispute arose while applicant was a REALTOR®.*

\* Amount shown is prorated according to month joining. I hereby submit the following information for your consideration:

Name (as shown on license): \_\_\_\_\_ Name (on roster): \_\_\_\_\_

Real Estate License #: \_\_\_\_\_

Licensed/certified appraiser:  Yes  No Appraisal License #: \_\_\_\_\_

Office Name: \_\_\_\_\_

Office Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-Mail: \_\_\_\_\_

Website: \_\_\_\_\_

Residence Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-Mail: \_\_\_\_\_

Cell Phone: \_\_\_\_\_ Preferred Mailing:  Home  Office Preferred Phone:  Home  Office

Website: \_\_\_\_\_

Are you presently a member of any other Association of REALTORS®?  Yes  No

If yes, name of Association and type of membership held: \_\_\_\_\_

Have you previously held membership in any other Association of REALTORS®?  Yes  No

If yes, name of Association and type of membership held: \_\_\_\_\_

Have you been found in violation of the Code of Ethics or other membership duties in any Association of REALTORS® in the past three (3) years or are there any such complaints pending?  Yes  No (If yes, provide details as an attachment.)

If you are now or have ever been a REALTOR®, indicate your NAR membership (NRDS) #: \_\_\_\_\_

and last date (year) of completion of NAR's Code of Ethics training requirement: \_\_\_\_\_. (Please attach copy of certificate of completion.)

Are you, or is any real estate firm in which you are a sole proprietor, general partner or corporate officer, involved in any pending bankruptcy or insolvency proceeding or have you or any real estate firm in which you are a sole proprietor, general partner or corporate officer been adjudged bankrupt in the past three (3) years?  Yes  No

If yes, specify the place(s) and date(s) of such action, and detail the circumstances relating thereto on a separate sheet and attach to this application.

NOTE: Applicant acknowledges that if the applicant or any real estate firm in which the applicant is a sole proprietor, general partner, or corporate officer is involved in any pending bankruptcy or insolvency proceedings or has been adjudged bankrupt in the past three (3) years, the Brevard Board of REALTORS® may require, as a condition of membership, that the applicant pay cash in advance for Board and MLS fees for up to one (1) year from the date that membership is approved or from the date that the applicant is discharged from bankruptcy (whichever is later) or, in the event that bankruptcy proceedings are initiated subsequent to obtaining membership in the Brevard Board of REALTORS®, that the member may be placed on a “cash basis” from the date that bankruptcy is initiated until one (1) year from the date that the member has been discharged from bankruptcy.

I hereby certify that the foregoing information furnished by me is true and correct, and I agree that failure to provide complete and accurate information as requested, or any misstatement of fact, shall be grounds for revocation of my membership if granted. I further agree that, if accepted for membership in the Board, I shall pay the fees and dues as from time to time established. **NOTE:** Payments to the Brevard Board of REALTORS® are not deductible as charitable contributions. Such payments may, however, be deductible as an ordinary and necessary business expense. No refunds.

By signing below I consent that the REALTOR® Associations (local, state, national) and their subsidiaries, if any (e.g., MLS, Foundation) may contact me at the specified address, telephone numbers, fax numbers, email address or other means of communication available. This consent applies to changes in contact information that may be provided by me to the Association(s) in the future. This consent recognizes that certain state and federal laws may place limits on communications that I am waiving to receive all communications as part of my membership.

I agree as a condition of participation in the Brevard Board of REALTORS® to abide by all relevant Bylaws, Rules and Regulations and other obligations of participation, including payment of fees. I further agree to be bound by the Code of Ethics on the same terms and conditions as established in the Code of Ethics and Arbitration Manual, including the obligation to submit to ethics hearings and the duty to arbitrate contractual and specific non-contractual disputes with other REALTORS® in accordance with the established procedures of the Board. I understand that a violation of the Code of Ethics may result in suspension or termination of MLS rights and privileges and that I may be assessed an administrative fee not to exceed \$500 which may be in addition to any discipline, including fines, that may be imposed.

Dated: \_\_\_\_\_ Signature: \_\_\_\_\_

(Optional Information):

Specialty:  Residential  Commercial  Resort  International  Other: \_\_\_\_\_

How long with current real estate firm? \_\_\_\_\_ Previous real estate firm (if applicable): \_\_\_\_\_

Number of years engaged in the real estate business: \_\_\_\_\_

**Are you a principal, partner, corporate officer or branch office manager?**  Yes  No **If yes, you must also complete 2<sup>nd</sup> and 3<sup>rd</sup> page of this application.**

Company information:  Sole Proprietor  Partnership  Corporation  LLC (Limited Liability Company)

Your position:  Principal  Partner  Corporate Officer  Branch Office Manager

Names of other Partners/Officers/ of your firm:  
\_\_\_\_\_  
\_\_\_\_\_

Have you ever been refused membership in any other Association of REALTORS®?  Yes  No

If yes, state the basis for each such refusal and detail the circumstances related thereto:  
\_\_\_\_\_  
\_\_\_\_\_

Is the Office Address, as stated, your principal place of business?  Yes  No

If not, or if you have any branch offices, please indicate and give address:  
\_\_\_\_\_  
\_\_\_\_\_

Do you hold, or have you ever held, a real estate license in any other state?  Yes  No

If so, where:  
\_\_\_\_\_  
\_\_\_\_\_

Have you or your firm been found in violation of state real estate licensing regulations within the last three years? If yes, provide details: [  ] Yes [  ] No

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Have you or you firm been convicted, adjudged, or otherwise recorded as guilty by a final judgment of any court of competent jurisdiction of a felony or other crime. If yes, provide details: [  ] Yes [  ] No

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NORTH CAROLINA MOUNTAINS MLS  
BREVARD BOARD OF REALTORS®

**PARTICIPANT APPLICATION**

At this time I have chosen to establish my own real estate business. I represent that I am current in my obligations to the Brevard Board of REALTORS® and it has been 30 days or less since I have left my previous affiliation. I understand that I will be responsible for an office set-up fee and application fee to become a Participant in the NORTH CAROLINA MOUNTAINS MLS.

The Applicant represents and warrants that their State Real Estate Commission has been notified of and has confirmed the appointment of the below-named individual as broker-in-Charge of the designated office; and further represents and warrants that such individual has a current, valid Broker's License or Appraiser Certification and is an active member of the Brevard Board of REALTORS®.

The Broker-in-Charge is required to report any changes in ownership or officers to the NORTH CAROLINA MOUNTAINS MLS Listing Service.

Participation in the Service may not be transferred or shared under any circumstances.

Applicant agrees to:

1. Abide by the Bylaws and Rules and Regulations as established by the NORTH CAROLINA MOUNTAINS MLS. Failure to abide by the Bylaws, Rules and Regulations and User Subscriber Agreement may be grounds for termination from the Service at the sole discretion of the Board of Directors of the NORTH CAROLINA MOUNTAINS MLS with the approval of the Directors of the Brevard Board of REALTORS®.
2. Abide by the restrictions pertaining to the MLS Logo according to the guidelines established by the NATIONAL ASSOCIATION OF REALTORS®.
3. Pay the costs of the Service in the manner prescribed by the Board of Directors of the NORTH CAROLINA MOUNTAINS MLS. (Applicant acknowledges receipt of a copy of the schedule of costs of the NORTH CAROLINA MOUNTAINS MLS.)
4. Provide a letter from my Primary Board/Association of REALTORS® confirming my membership with that Board/Association.

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Signature of Applicant

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Date

NORTH CAROLINA MOUNTAINS MLS  
BREVARD BOARD OF REALTORS®

**Agent Information/Internet Authorization Form**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

You will be assigned a user name into the Regional MLS System. Please provide a password for the system. Passwords should be 6-8 characters. Passwords can be alpha, numeric, or both. No symbols. Passwords will be entered into the system in all lower case. User names and passwords are case sensitive.

**Password:** \_\_\_\_\_

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**FOR BOARD USE ONLY:**

USER ID: \_\_\_\_\_

FIRM ID: \_\_\_\_\_

OFFICE ID: \_\_\_\_\_

AGENT ID: \_\_\_\_\_

DATE ENTERED INTO INNOVIA: \_\_\_\_\_

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Brevard Board of REALTORS®  
2010 Dues and Access Fees Schedule - Primary Member

<i>First Quarter</i>	January	February	March
National	\$80.00	\$73.33	\$66.67
Assessment	\$35.00	\$35.00	\$35.00
State	\$130.00	\$119.17	\$108.34
Local	\$181.00	\$165.92	\$150.83
Application Fee	\$400.00	\$400.00	\$400.00
Access	\$231.00	\$154.00	\$77.00
<b>Subtotal</b>	<b>\$1,057.00</b>	<b>\$947.42</b>	<b>\$837.84</b>
ActiveKey	\$350.00	\$350.00	\$350.00
<b>Total</b>	<b>\$1,407.00</b>	<b>\$1,297.42</b>	<b>\$1,187.84</b>
<i>Second Quarter</i>	April	May	June
National	\$60.00	\$53.33	\$46.67
Assessment	\$35.00	\$35.00	\$35.00
State	\$97.50	\$86.65	\$75.85
Local	\$135.75	\$120.67	\$105.58
Application Fee	\$400.00	\$400.00	\$400.00
Access	\$231.00	\$154.00	\$77.00
<b>Subtotal</b>	<b>\$959.25</b>	<b>\$849.65</b>	<b>\$740.10</b>
ActiveKey	\$350.00	\$350.00	\$350.00
<b>Total</b>	<b>\$1,309.25</b>	<b>\$1,199.65</b>	<b>\$1,090.10</b>
<i>Third Quarter</i>	July	August	September
National	\$40.00	\$33.33	\$26.67
Assessment	\$35.00	\$35.00	\$35.00
State	\$65.00	\$54.15	\$43.35
Local	\$90.50	\$75.42	\$60.33
Application Fee	\$400.00	\$400.00	\$400.00
Access	\$231.00	\$154.00	\$77.00
<b>Subtotal</b>	<b>\$861.50</b>	<b>\$751.90</b>	<b>\$642.35</b>
ActiveKey	\$350.00	\$350.00	\$350.00
<b>Total</b>	<b>\$1,211.50</b>	<b>\$1,101.90</b>	<b>\$992.35</b>
<i>Fourth Quarter</i>	October	November	December
National	\$20.00	\$13.33	\$6.67
Assessment	\$35.00	\$35.00	\$35.00
State	\$32.50	\$21.65	\$10.85
Local	\$45.25	\$30.16	\$15.08
Application Fee	\$400.00	\$400.00	\$400.00
Access	\$231.00	\$154.00	\$77.00
<b>Subtotal</b>	<b>\$763.75</b>	<b>\$654.14</b>	<b>\$544.60</b>
ActiveKey	\$350.00	\$350.00	\$350.00
<b>Total</b>	<b>\$1,113.75</b>	<b>\$1,004.14</b>	<b>\$894.60</b>

# Participation Agreement

This Participation Agreement (the “Agreement”) is made and entered into by and between \_\_\_\_\_, an individual principal real estate broker or broker in charge, or a real estate brokerage firm, as MLS may require (the “Participant”), and **NORTH CAROLINA MOUNTAINS MLS, LLC**, a North Carolina limited liability company (the “MLS”).

Definitions. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 25 of this Agreement.

Grant of Participation Rights in Multiple Listing Service. The Board of which the Participant is a member is a Member or a wholly owned subsidiary of a Member of the MLS. Participant is licensed to provide real estate brokerage services in the State of North Carolina, and is a Member of a Board. The Board of which Participant is a Member offers a suite of services to its Brokers and Brokerage Firms, including access to the MLS Database. Accordingly, Participant has enrolled with the Board of which it is a Member to receive various services, including access to the MLS Database. Therefore, subject to the terms and conditions of this Agreement and the Rules and Regulations, MLS agrees to make the MLS Database available for access by Participant, and Participant shall have all rights and obligations of a participant in MLS’s multiple listing service as set forth under the Rules and Regulations. Access to the MLS Database shall be through a means determined by MLS.

License Grant. MLS hereby grants to Participant a limited, non-exclusive, and personal license to use Listing Content only for purposes and as expressly allowed under Participant’s certification or licensure, the Rules and Regulations, and any applicable License Agreement. Participant agrees to take all reasonable steps to protect the MLS Database and Listing Content from unauthorized access, copying, or use.

## Intellectual Property Ownership.

Participant acknowledges and agrees that the MLS Database, and all copies, modifications, enhancements, and derivative works of the MLS Database, are the property of MLS, and all right, title, and interest in and to the MLS Database, together with all copies, modifications, enhancements, and derivative works, including all copyright and other intellectual property rights are and shall remain with MLS. Participant hereby irrevocably assigns to MLS any and all rights which it may have or acquire in and to the MLS Database.

Participant hereby grants to MLS a non-exclusive, irrevocable, worldwide, royalty free license to use, sublicense through multiple tiers, publish, display, and reproduce the Listing Content, to prepare derivative works of the Listing Content, and to distribute the Listing Content or any derivative works thereof. Such license shall be deemed granted of the moment of creation without the necessity of any further action on the part of either party. Participant represents and warrants to MLS with respect to the Listing Content for each of Participant’s Listings that the Listing Content, and the

license of rights in and to the Listing Content to MLS, do not infringe or violate any copyrights, trade secrets, or other intellectual or proprietary rights of any third party.

Participant agrees not to challenge MLS's rights in and to the MLS Database or to take any action inconsistent with the license granted to the Listing Content under this Agreement. Participant agrees to take all action and execute and deliver to MLS all documents requested by MLS in connection with the license granted to MLS in and to the Listing Content. Participant further agrees to take all action and execute and deliver to MLS all documents requested by MLS in connection with the copyright application and registration of the MLS Database.

Participant shall indemnify MLS 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. **PARTICIPANT ACKNOWLEDGES THAT THE FOREGOING SENTENCE MEANS THAT PARTICIPANT MUST OBTAIN ASSIGNMENTS OR LICENSES FROM THE AUTHORS OF ANY PORTIONS OF THE LISTING CONTENT, INCLUDING SALES LICENSEES AND SELLERS, AS NECESSARY FOR PARTICIPANT TO LICENSE THE LISTING CONTENT TO MLS AND TO OTHERWISE MAKE FULL USE OF THE LISTING CONTENT UNDER THIS AGREEMENT. IF PARTICIPANT FAILS TO DO SO, PARTICIPANT WILL ASSUME AND REIMBURSE MLS FOR THE COST OF DEFENDING MLS AGAINST INFRINGEMENT CLAIMS AND PAYING DAMAGES ON ANY SUCH CLAIMS.**

Without limiting the generality of this Section 4, but subject to the rights of participants in the MLS' multiple listing service to opt out of participation with respect to Listings submitted by such participant as set forth in the Rules and Regulations, Participant acknowledges and agrees that MLS may use and license, or otherwise grant rights in or to the MLS Database or any or all of the Listings included in the MLS Database, including any and all Listing Content, to any third party for any lawful purpose reasonably deemed appropriate by MLS, unless otherwise limited by a separate agreement between MLS and the applicable Broker or by the Rules and Regulations.

License to Participant's Listings. Upon the receipt of a written request from Participant, in a form acceptable to MLS, and so long as Participant, the applicable Sales Licensee, and/or an applicable Vendor are not in default under this Agreement, the Rules and Regulations or any agreement with MLS, MLS will grant to Participant, the applicable Sales Licensee of Participant, or the applicable Vendor a license to the Listing Content for Participant's Listings. The license will only be granted pursuant to a License Agreement. MLS has no obligation to grant a license to Participant, any Sales Licensee, or any Vendor which does not enter into a License Agreement. In addition to any applicable license fee payable by Participant, the Sales Licensee, and/or the Vendor, Participant shall pay to MLS all costs and expenses incurred by MLS in connection with any licenses and any services provided by MLS in connection with such licenses.

Fees. In consideration for participation in MLS's multiple listing service and for the services provided and licenses granted under this Agreement, Participant agrees to pay to the Board of which Participant is a Member the fees (the "Fees") in the amount,

and in accordance with the terms, established by such Board for participation by participants in MLS's multiple listing service, which amount and terms may be changed by such Board at any time effective upon thirty (30) days prior written notice to Participant.

Agreement With Sales Licensees. Participant agrees to cause all of Participant's Sales Licensees who will receive access to the MLS through Participant to enter into a subscriber agreement, in a form and substance acceptable to MLS (a "Subscriber Agreement"), in its sole discretion.

Responsibility for Affiliates. Participant shall be responsible and liable to MLS for the acts and omissions of its Affiliates, and shall be responsible for each Affiliate's compliance with the Rules and Regulations. Any failure to comply with the Rules and Regulations by an Affiliate shall be deemed a failure to comply by Participant, and Participant shall be responsible and liable to MLS for any damages incurred by MLS arising from or as a result of an Affiliate's noncompliance with the Rules and Regulations.

No Assignment by Participant. Participant agrees that this Agreement is personal to Participant, and Participant may not assign or transfer this Agreement, including any license granted under this Agreement, or transfer any rights or delegate any duties under this Agreement, to any third party. Any attempt to assign, transfer, or delegate any of Participant's rights, duties, or obligations under this Agreement shall be null and void.

Interruptions in Service. Participant acknowledges that access to the MLS Database may from time-to-time be unavailable to Participant, whether because of technical failures or interruptions, intentional downtime for service or changes to MLS's website, or otherwise. Participant agrees that any modification of MLS's website, and any interruption or unavailability of access to the MLS Database shall not constitute a default of any obligations of MLS under this Agreement, and MLS shall have no liability of any nature to Participant for any such modifications, interruptions, unavailability, or failure of access.

Copies and Derivative Works. Except as otherwise expressly provided in this Agreement or the Rules and Regulations, Participant may not do any of the following, either directly or indirectly, including assist any other person to do, or otherwise contribute in any way to any of the following:

Make any copies of the MLS Database, or any portion of the MLS Database, including any specific Listing Content included in the MLS Database;

Create any derivative works, enhancements, or other modifications of the MLS Database, or any portion of the MLS Database, including any Listing Content included in the MLS Database;

Download, distribute, export, or transmit the MLS Database, or any portion of the MLS Database, including any Listing Content included in the MLS Database, to any computer or other electronic device, or otherwise transmit electronically, or otherwise, the MLS Database, or any portion of the MLS Database, including any Listing Content included in the MLS Database; or

Publicly display the MLS Database, or any portion of the MLS Database, including any Listing Content included in the MLS Database.

Representations and Warranties Regarding Listings. Participant represents and warrants with respect to each Participant's Listing or change to a Participant's Listing submitted to MLS under this Agreement and the Rules and Regulations, the following:

The respective Seller has assigned in writing all of Seller's rights, title and interest, including all copyright rights and other intellectual property rights, in and to the Listing Content to Participant.

The Participant's Listing complies in all respects with the Rules and Regulations.

To the best of Participant's and any applicable Sales Licensee's knowledge and after reasonable due diligence to verify the accuracy of all information in the Participant's Listing, all information included in the Participant's Listing is accurate and not misleading.

The Listing Content for each Participant's Listing is an original work of authorship of Participant, or Participant is the assignee of such Listing Content pursuant to an enforceable assignment. Except for Participant and any person or entity, which has assigned his, her or its rights in accordance with Section 4 of this Agreement, no other person or entity has any rights of any nature in or to any of the Listing Content for any Participant's Listing.

There is no claim, litigation or proceeding pending or threatened with respect to the Listing Content for any Participant's Listing.

The Listing Content, and the assignment of rights in and to Listing Content to MLS, do not infringe or violate any patents, copyrights, mask work rights, trademarks, trade secrets or other proprietary rights of any third party.

Submission of Listings. As a material condition to accessing the MLS Database, Participant agrees to submit to MLS, all Listings, or any of Participant's Sales Licensees, in accordance with, and except as otherwise provided in, the Rules and Regulations. MLS may refuse to accept or include in, and may remove from, the MLS Database any Listing or Listing Content, or may require Participant to direct MLS to modify any Listing Content, as provided under the Rules and Regulations or if MLS determines, in its sole discretion, that such Listing or Listing Content may violate or infringe upon the rights of a third party. Notwithstanding the foregoing sentence, except as provided in the Rules and Regulations, Participant acknowledges that MLS has no obligation to remove, modify or refuse to accept any Listing or Listing Content. MLS grants to Participant a limited, non-exclusive, personal license to input Listing Content in the MLS Database and to modify such Listing Content strictly in accordance with the terms and conditions of this Agreement and the Rules and Regulations. Participant acknowledges and agrees that any Listing or Listing Content, or any prospective Listing or Listing Content, submitted by Participant or its Affiliates may be accessible by other participants in or users of MLS's multiple listing service, and MLS shall have no liability to Participant for providing such other participants or users access to any Listing or Listing Content, or any

prospective Listing or Listing Content.

Confidential Information. Any information provided by MLS to any Participant, including without limitation, any password to the MLS Database, any printouts of the MLS Database as provided under this Agreement, and all Listing Content, including personal information of a Seller (collectively “Confidential Information”) shall be maintained by Participant as confidential and available exclusively for use by Participant as provided in this Agreement. Participant shall not disclose any Confidential Information to anyone, except as ordered by a court of competent jurisdiction or as otherwise required by law. Participant shall not disclose any Confidential Information pursuant to a court order or as required by law until Participant has given MLS ten (10) days prior written notice and an opportunity to oppose such disclosure. Notwithstanding the foregoing, Participant may disclose Listing Content for individual Listings strictly in accordance with this Agreement and the Rules and Regulations.

Additional Representations and Warranties of Participant. If Participant is a Broker, Participant represents and warrants the following to MLS: (a) Participant holds a current, valid real estate broker’s license; (b) Participant is a member of a Board in good standing; and (c) Participant is capable of offering and accepting cooperation and compensation to and from other participants in MLS’s multiple listing service in accordance with the Rules and Regulations. If Participant is a Brokerage Firm, Participant represents and warrants to MLS that Brokerage Firm is managed by and under the control of a Broker, and such Broker (a) holds a current, valid real estate broker’s license; (b) is a member of a Board in good standing; and (c) is capable of offering and accepting cooperation and compensation to and from other participants in MLS’s multiple listing service in accordance with the Rules and Regulations. Participant further represents and warrants to MLS that this Agreement, when executed by Participant, will be valid, binding and enforceable with respect to Participant in accordance with its terms; (a) the provisions of the services provided under this Agreement and the fulfillment of Participant’s obligations as contemplated under this Agreement are proper and lawful; (b) Participant is not and shall not be under any disability, restriction or prohibition related to the execution of this Agreement and the performance of its obligations under this Agreement; and (c) all of Participant’s Sales Licensees have entered into Subscriber Agreements.

Compliance with Governing Rules and Agreements.

By entering into this Agreement, Participant represents and warrants to MLS that Participant, or its Broker if Participant is a Brokerage Firm, has read and understands, and Participant shall be bound by and at all times fully comply with and perform all of Participant’s obligations under this Agreement, the Rules and Regulations, the applicable Board Rules and Regulations, and the published policies and procedures of each third party service provider providing services to the Participant or MLS hereunder, including, without limitation, additional confidentiality and non-disclosure agreements as may be reasonably required by such third parties. A copy of the then-current version of the Rules and Regulations is available upon request. In addition to all other rights and remedies available to MLS under this Agreement and the Rules and Regulations, Participant acknowledges that MLS may levy fines against Participant for noncompliance with the Rules and Regulations as provided in the Rules and Regulations.

To the extent there is any conflict between this Agreement, the Rules and Regulations, and any applicable Subscriber Agreement, the Rules and Regulations shall govern. As between this Agreement and any Subscriber Agreement, this Agreement shall govern.

No Warranty. THE SERVICES PROVIDED AND LICENSE GRANTED TO PARTICIPANT UNDER THIS AGREEMENT ARE PROVIDED ON AN "AS IS" BASIS, WITHOUT ANY WARRANTY OF ANY NATURE. MLS EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SPECIFICALLY, BUT WITHOUT LIMITATION, MLS DISCLAIMS ANY WARRANTY WITH RESPECT TO ANY LISTINGS, ANY LISTING CONTENT, AND THEIR ACCURACY.

Limitation of Liability. MLS'S ENTIRE AND CUMULATIVE LIABILITY TO PARTICIPANT, OR ANY OTHER PARTY, FOR ANY LOSS OR DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS, OR ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE MLS DATABASE OR LISTING CONTENT SHALL NOT EXCEED AN AMOUNT EQUAL TO THE FEES PAID BY PARTICIPANT TO MLS DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE ON WHICH THE CLAIM ARISES. WITHOUT WAIVER OF THE FOREGOING LIMITATION, IN NO EVENT SHALL MLS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES OR LOST PROFITS, EVEN IF MLS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. MLS SHALL HAVE NO LIABILITY OF ANY NATURE TO SALES LICENSEES.

Injunction. MLS and Participant agree that a breach or violation of Sections 11, 14, and 20.g of this Agreement will result in immediate and irreparable injury and harm to MLS. In such event, MLS shall have, in addition to any and all remedies of law and other consequences under this Agreement, the right to an injunction, specific performance or other equitable relief to prevent the violation of the obligation under this Agreement; provided, however, that, this shall in no way limit any other remedies which MLS may have, including, without limitation, the right to seek monetary damages.

Term and Termination.

The initial term of this Agreement shall commence on the Effective Date and, unless earlier terminated as provided in this Agreement, shall continue for a period of one (1) year. This Agreement shall automatically renew for additional one (1) year terms unless either party gives written notice to the other party of non-renewal at least thirty (30) days prior to the expiration of the then-current term or this Agreement is otherwise terminated as provided in this Agreement.

Notwithstanding the provisions of Section 20 a. of this Agreement, either party may terminate this Agreement at any time for any reason upon twenty (20) days prior written notice to the other party.

MLS may terminate this Agreement, upon the occurrence of any of the

following events: (1) Participant fails to pay any Fees when due; (2) Participant discloses any Confidential Information, including, without limitation, any password of Participant or a Sales Licensee, except as expressly provided in this Agreement; (3) Participant otherwise fails to comply in all respects with the Rules and Regulations, the applicable Board Rules and Regulations; (4) Participant defaults under any material term or condition of any License Agreement; or (5) Participant defaults under any other material term or condition of this Agreement. Except as otherwise provided in this Agreement, termination pursuant to this Section 20.c of this Agreement shall be effective at any time after MLS has given ten (10) business days notice to Participant of any such event, and such event has not been cured within such ten (10) day period. Notwithstanding the foregoing sentence, if, in the reasonable discretion of MLS, the occurrence of any such event could result in irreparable harm to MLS, termination shall be effective immediately, without prior written notice to Participant, provided that notice shall be delivered to Participant within ten (10) business days following such termination.

This Agreement may also terminate as provided under Section 24.d of this Agreement.

In addition to all other rights and remedies available to MLS under this Agreement, if Participant fails to pay any Fees when due, or otherwise defaults under this Agreement, MLS may, in its sole discretion, temporarily suspend the license granted to Participant to access the MLS Database until all outstanding Fees have been paid in full or the default has been cured.

Notwithstanding anything to the contrary in this Agreement, if Participant violates or is alleged to have violated the Rules and Regulations, Participant shall not be terminated in accordance with Section 20.c of this Agreement until any hearing or appeal rights of Participant have expired as provided in the Rules and Regulations.

Upon termination of this Agreement, Participant agrees to immediately destroy any printouts of the MLS Database or Listing Content, and any copies of the MLS Database and Listing Content in Participant's possession or under Participant's control, including in possession of any Affiliates. No pre-paid Fees will be refunded to Participant for any termination of this Agreement.

Upon termination of this Agreement, all licenses granted and all services provided to Participant under this Agreement shall terminate. In addition, any and all rights granted to Affiliates to access or use the MLS Database pursuant to the Rules and Regulations or separate agreement with MLS shall automatically terminate, unless otherwise expressly provided with respect to Sales Licensees under an applicable Subscriber Agreement.

If, for any reason, any Subscriber Agreement is terminated, Participant agrees to either assign all Participant's Listings originated by the terminated Sales Licensee to another of Participant's Sales Licensees, or request that MLS terminate or change the status of Participant's Listings originated by the terminated Sales Licensee.

Indemnification. Participant agrees to indemnify and hold harmless MLS, and its officers, directors, employees, shareholders and agents, from and against any and all claims, demands, liabilities, and actions, including the payment of all legal expenses,

including reasonable attorney's fees and costs, arising out of or connected with any Listing Agreement, this Agreement, submission to MLS of any Listing or Listing Content and the inclusion of any Listing or Listing Content by Participant in the MLS Database, including, without limitation, any claim that the access to, display of, and/or use of any Listing Content infringes on or constitutes a misappropriation of any patent, copyright, or trade secret, or any other intellectual property right of any person or entity anywhere in the world, including any claims by Sellers. MLS shall have the right to control its own defense and engage legal counsel acceptable to MLS.

Proprietary and Other Notices. Participant agrees that it will not alter or remove any trademarks or copyright notices or other notices and disclaimers located or used on, or in connection with, the MLS Database or any printouts of the MLS Database allowed under this Agreement.

IDX Advertising Consent. Unless Participant has made an express, written non-participation election for MLS's Internet Data Exchange (IDX) program as described in the Rules and Regulations, Participant expressly consents to other participants in MLS's IDX program to advertise all Participant's Listings in accordance with the IDX policy set forth in the Rules and Regulations.

General.

Notices. All notices, demands, or consents required or permitted under this Agreement shall be in writing and shall be delivered personally or sent by registered mail, certified mail, return receipt requested, by a reputable overnight courier service, or by e-mail, if the sender receives and maintains a copy of a certified mail receipt and a copy is mailed within one (1) business day after notice is delivered by e-mail, to the appropriate party at the following addresses:

If to Participant:

At the street address or e-mail maintained by MLS for Participant.

If to MLS:

North Carolina Mountains MLS, LLC  
5030 Hendersonville Rd., Suite 1B  
Fletcher, NC 28732

The foregoing addresses may be changed from time-to-time by delivering notice of such change, referencing this Agreement, to the parties to this Agreement.

Governing Law; Submission to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. Participant acknowledges that by providing Listings to MLS and using the services provided under this Agreement, Participant has transacted business in the State of North Carolina. By transacting business in the State of North Carolina by agreement, Participant voluntarily submits and consents to, and waives any defense to the jurisdiction of courts located in Buncombe, Haywood, Henderson, or Transylvania

County, State of North Carolina, as to all matters relating to or arising from this Agreement.

Costs of Litigation. If any action is brought by either party to this Agreement against the other party regarding the subject matter of this Agreement, the prevailing party shall be entitled to recover, in addition to any other relief granted, reasonable attorney's fees, costs, and expenses of litigation.

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; except that if any provision of Sections 10, 17, or 18 of this Agreement, or any other limitation of liability or exclusion of warranty set forth in this Agreement, is determined to be invalid or unenforceable, then this Agreement shall immediately terminate without notice.

No Waiver. The waiver by either party of, or the failure of either party to take action with respect to, any breach of any term, covenant or condition contained in this Agreement 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.

Entire Agreement; Modifications Only in Writing. This Agreement, together with the Rules and Regulations and any applicable License Agreement, (i) constitutes the entire agreement between MLS and Participant concerning the MLS Database, Listing Content, and all other subject matter of this Agreement, (ii) supersedes any contemporaneous or prior proposal, representation, agreement, or understanding between the parties, and (iii) may not be amended except in writing signed by MLS and Participant.

No Third Party Beneficiaries. This Agreement is for the sole and exclusive benefit of MLS and Participant and is not intended to benefit any third party, including any Seller or Sales Licensee. No third party may claim any right or benefit under or seek to enforce any of the terms and conditions of this Agreement.

Survival. The provisions of Sections 4, 6, 8, 10, 14, 17, 18, 19, 20.g, 21, and 24 of this Agreement shall survive any termination of this Agreement, including termination pursuant to Section 24.d of this Agreement.

Definitions. The following terms shall have the following meanings in this Agreement:

Affiliates mean sales licensees, non-principal brokers, appraisers, and any other agents or employees of Participant who may have access to the MLS Database subject to the Rules and Regulations and any applicable agreements with MLS. A current list of all Affiliates shall be provided to MLS upon execution of this Agreement. Upon the addition or removal of any Affiliate, Participant shall update the

list and provide the updated schedule to MLS within ten (10) days following any such change.

Broker means a principal real estate broker or broker in charge.

Brokerage Firm means a real estate brokerage firm affiliated with a principal real estate broker or broker in charge.

Board means: Asheville Board of Realtors, Inc.; Brevard Board of Realtors, Inc.; Haywood County Board of Realtors, Inc.; and Hendersonville Board of Realtors, Inc.

Board Rules and Regulations means the rules and regulations, as amended, of the Board of which a Participant is a member.

Exempted Listing means a Listing which the respective Seller has refused permission to be disseminated by MLS, or a Listing which is not required to be submitted to the MLS, in accordance with the Rules and Regulations.

License Agreement means a license agreement entered into between MLS and Participant, MLS and a Sales Licensee of Participant, or MLS and a third party at the request of Subscriber.

Listing mean a real estate listing of a participant in MLS's multiple listing service.

Listing Agreement means an enforceable, written, and fully executed agreement between Participant and a Seller whereby, among other things, Participant agrees to provide real estate sales services to Seller, and Seller agrees to pay compensation for services provided.

Listing Content means all data and content, including without limitation, all photographs, images, graphics, video recordings, virtual tours, drawings, written descriptions, remarks, narratives, and pricing information submitted by Participant to MLS with respect to a Listing, excepting Exempted Listings.

MLS Database means the compilation of Listings, including information for sold properties, known as the MLS Database, as modified from time-to-time by MLS, and which is available to Subscribers at the MLS website.

Participant Listings means only the Listings of Participant.

Rules and Regulations means the MLS Rules and Regulations established by MLS, as amended by MLS from time to time.

Sales Licensee means a real estate sales licensee, agent, or non-principal broker who is engaged by Participant as a sales licensee of Participant, either as an employee or independent contractor of Participant.

Seller means the seller(s) or lessor(s) of a property which is the subject of a Listing at issue under this Agreement.

Subscriber Agreement has the meaning set forth in Section 7 of this Agreement.

Vendor means any person or entity which has entered into a License Agreement for display of real estate listings for Participant or a Sales Licensee of Participant.

Dated effective \_\_\_\_\_, \_\_\_\_\_

MLS

NORTH CAROLINA MOUNTAINS MLS, LLC

By \_\_\_\_\_

\_\_\_\_\_  
President

PARTICIPANT

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title of signatory if Participant is a brokerage firm: \_\_\_\_\_