

PHOTOGRAPHER MASTER LICENSE AGREEMENT

This Photographer License Agreement (the "Agreement") is entered into effective _____, 20__, by Combined LA/Westside Multiple Listing Service, a California nonprofit mutual benefit corporation (The MLS), and _____ (Photographer)

This Agreement is made with reference to the following facts:

A. Photographer is retained from time to time by Participants of the MLS to provide photographs and/or video (hereafter "photographs" collectively) for listings placed in the MLS by Participant. Photographer and The MLS desire for Photographer to have the ability to upload photographs into the MLS data base for specific listings and to provide to Participants photographs for use in assisting purchasers and sellers in the purchase and sale of real property. The MLS is willing to accommodate the uploading of photographs provided both Participant and Photographer comply with the terms and provisions of this Agreement. The MLS is also willing to list on its appropriate web site pages that Photographer is a signatory to this Master License Agreement and has agreed to the terms and provisions of this Agreement.

B. The MLS is willing to accommodate the uploading of photographs provided Photographer only uploads photographs authorized by Participants and Subscribers. Photographer shall not access the MLS data base for any reason other than to upload photographs for a Participant or Subscriber of the MLS.

NOW, THEREFORE, in consideration of the foregoing facts and circumstances and mutual covenants and promises contained herein and intending to be legally bound, the Parties agree as follows:

1. Definitions.

- (a) "Agreement" means this Photographer Master License Agreement, including all exhibits referred to herein and/or attached hereto and any subsequent amendments or addenda to this Agreement that are executed by the Parties.
- (b) "Confidential Information" means any confidential or proprietary information of the MLS including, without limitation, source codes, software, tools, designs, plans, or any other information relating to any research project, work in process, future development, marketing or business plan or financial or personnel matter relating to the MLSs' present or future products, sales, suppliers, customers, employees, members, or business, which information is disclosed by or on behalf of the MLS to each other and licensees, whether tangible or intangible, and whether or not disclosed in oral, written, graphic, photographic, or electronic form and whether marked "confidential" or "proprietary" or not. All such information received in the course of the parties' relationship is considered confidential unless marked otherwise. The MLS data base and MLS Content, including its structure or arrangement, shall be considered Confidential Information for all purposes of this Agreement. The specific terms of this Agreement also shall be considered Confidential Information. The term "Confidential Information" does not include information that (i) is or becomes generally available to the public through no fault of the receiving Party; (ii) can be demonstrated by credible evidence as having been rightfully known to the receiving Party prior to the time of its disclosure, or to have been independently developed by the receiving Party; (iii) is subsequently learned from a third party not under a confidentiality obligation to the disclosing Party, or (iv) was required to be disclosed by operation of law or a court order.
- (c) "Content", or "MLS Content" means, separately or collectively as applicable, all information provided by Participants/Subscribers including but not limited to personally identifiable information of buyers and sellers and any other individuals or entities, pending sales, off market listings, text, images, maps, audio, video, software and other informational content and data, MLS Participant/Subscriber information and any compilation, collection or combination of any of the foregoing.
- (d) "Data Use Policy" means a set of rules and policies adopted and amended from time to time by the MLS for the regulation, protection, licensing and management of the MLSs' MLS

Compilation and Content. Data Use Policy does not supersede MLS Rules and is intended to expand and interpret the MLS Rules pertaining to the use of the MLS' MLS Content.

- (e) "Database" means the MLSs collected and compiled Content maintained in electronic form from which the MLS provides Licensed Content, pursuant to this Agreement.
- (f) "Display" means the visual representation of Licensed Content by means of potential Licensee Offerings, whether in print, electronic or other form, which at all times is subject to the MLS Rules and the Rules Applicable to the Display of Licensed Content.
- (g) "Effective Date" means the date the parties agree this Agreement commences.
- (h) "Intellectual Property Rights" means any and all rights existing from time to time under patent law, trademark law, service mark law, copyright law, trade secret law, unfair competition law, moral rights law, publicity rights law, privacy rights law and any and all other similar proprietary rights and any renewals and extensions thereof now or hereafter in force and effect in the United States and throughout the Universe.
- (i) "Licensed Content" means portions of the Content contained in the Database provided or made available to Licensee pursuant to this Agreement.
- (j) "Multiple Listing Service" or "MLS" means an organization or association as defined in *California Civil Code*, Section 1087 that collects information about real properties directly from real estate professionals and then aggregates, compiles, displays, maintains and distributes that information principally for the benefit of those same real estate professionals and includes the use of related or peripheral information and technology needed to support the information technology and business operations of the MLS.
- (k) "MLS Rules" means the MLS Rules and Regulations adopted and amended from time to time by the MLS for the regulation of the MLS, its Database and the Content, including the rights, duties and obligations of Participants/Subscribers with respect to the operation and use of the MLS, as well as any stated policy regarding the use or Display of Licensed Content and access to the MLS Database, as adopted and amended from time to time.
- (l) "Monitor" means a method by which the MLS track the Seeded or Watermarked Licensed Content used in Licensee Offerings to ensure compliance with the spirit and letter of this Agreement.
- (m) "Participant(s)/Subscriber(s)" means licensed real estate brokers or salespersons, or licensed or certified appraisers, who are participants or subscribers in good standing with the MLS and who are authorized to use the MLS's Database in accordance with the MLS Rules.
- (n) RETS- means Real Estate Transaction Standard.
- (o) "Seed" means a method by which the MLS may code the Licensed Content such that its access, use and integration can be monitored.
- (p) "Term" means the period during which the provisions, terms and conditions of this Agreement are in full force and effect.
- (q) "Terms of Use" means a written set of requirements and restrictions related to Consumer use of the Licensee Offerings in a Licensee Customer's website which has been submitted to and approved by the MLS prior to its first display on Licensee Customer's website.
- (r) "Watermark" or "Digital Watermark" means an identification code permanently embedded into digital data, digital signal or pattern carrying information about the copyright owner, the creator of the work, authorized consumers and other pertinent information.

2. Grant of License.

- (a) Subject to the terms and conditions of this Agreement, the MLS hereby grants to Photographer a limited, revocable, non-exclusive, non-transferable License to access the MLS for the sole and exclusive purpose of uploading photographs of property on behalf of Participants and Subscribers.
- (b) Photographer grants without any reservation to the MLS all rights and the full and uncontested ownership to all aspects of the photographs uploaded onto the MLS. This grant includes but is not limited to all further rights to use or claim ownership of the photographs or to form the basis of a claim by photographer of having any intellectual or other property rights to the photographs or their subsequent use.
- (c) Nothing herein shall be construed to provide photographer with any continuing or reserved rights as to the photographs or any derivative thereof.
- (d) The MLS enters this Agreement with the understanding Photographer will be entering into agreements with MLSs' Participants and Subscribers to take photographs of the interior and exterior of real property. Any agreement between a Participants and Photographer shall reference this Agreement and require full and complete compliance with this Agreement by all parties.
- (e) The MLS grants the Photographer access to the MLS Data and Content for the sole and limited purpose set forth in this Agreement. The MLS agrees to set forth on its communications with Participants that Photographer has executed a Master License Agreement with the MLS.

3. Rules, Limitations and other Restrictions.

- (a) Acknowledgement of MLS Rules and Data Use Policy. Photographer acknowledges that it has read, and will comply with, the MLS Rules and the Data Use Policy available at the MLS's website or by request, as amended from time to time, in connection with its rights to access and upload photographs. Photographer shall use the programs and instructions provided by the MLS for the uploading of photographs. Nothing contained herein shall be construed as entitling photographer to view, access or use any aspect of the MLS Content or MLS data base, except those aspects provided by the MLS to Photographer for the sole purpose of uploading of photographs.
- (b) Consumer Privacy and Information Security. Photographer shall comply with all applicable privacy and information security laws including but not limited to security breach notification laws. In the event a security breach by a Photographer's computerized system containing photographs or any programs or information on accessing the MLS resulting in access or use by an unauthorized third party, Photographer shall notify the MLS by confirmed email or confirmed telephone within twenty-four (24) hours of its discovery by Photographer. Photographer shall also take all reasonable steps, in accordance with commercially reasonable security practices, to protect the security and privacy of the Licensed Content from unauthorized access, use or disclosure. Other than as necessary to perform its rights and obligations under its agreement with the MLS, Photographer shall not use or disclose the MLS Content or programs made available to Photographer without the prior consent of the MLS.
- (c) Suspension or Termination. Photographer expressly agrees that the MLS Content and photographs may be Seeded, Watermarked and Monitored by the MLS and the MLS hereby reserve the right to require the suspension or immediate termination of this Agreement upon notice to Photographer of any evidence or allegation that Photographer has breached the terms and conditions of this Agreement, or that notice has been received that Photographer is in breach of any governmental rules, regulations or statutes, and that such breach may interfere with the Parties' performance of this Agreement.

- (d) Audit and Review of Content Use. The MLS has the right and authority to audit and review Photographer's access and use of any programs, instructions, uploads or downloads from the MLS Content or MLS Data Base, in connection with any Photographer's rights and obligations under this Agreement. Photographer and Participant shall make its records and files and responsible personnel accessible to the MLS upon request for purposes of review of Photographer's full compliance with this Agreement.
- (e) No Modification or Derivative Works. Photographer shall neither modify nor create derivative works based on or containing any aspect of the MLS data base or MLS Content unless specifically authorized in writing by this agreement. If any modifications or derivative works are authorized by MLS, they shall remain the sole and exclusive property of the MLS, and Photographer agrees to and hereby does assign any and all rights to such modifications and works to the MLS.
- (f) No Intellectual Property Rights. This Agreement does not convey or grant an interest in the Database or the MLS Content but only a limited right to access solely for the purpose of uploading photographs for the Participant revocable in accordance with the terms hereof. In the event of any claim for infringement or misappropriation of the Database or the MLS Content, all damages awarded and other awards and recoveries shall be the exclusive property of the MLS and all such amounts shall be paid to MLS.
- (g) Other Restrictions.
- (i) Restrictions Respecting Uploading Photographs. No photographs shall be uploaded unless the Participant has obtained the written consent of the property owner(s) whose properties are portrayed in the photographs. MLS reserves the right to audit and inspect at any time authorizations. In the event a claim is made by any property owner concerning the uploading of photographs of the owner's property, Participant agrees to indemnify and hold the MLS completely harmless from any such claims, including the payment of all attorneys' fees and costs incurred in responding to the claim, irrespective if litigation, or any other action is filed. This indemnity is intended to be a full and complete indemnity to maximum allowed by law.
 - (ii) Restriction on Transfer. Photographer may not transfer the rights granted under this Agreement to any third party. The process of uploading may be performed by an employee or contractor of Photographer provided the MLS is furnished with the name of the person doing the uploading and that person agrees to be bound by the terms and provisions of this Agreement. Photographer shall not be permitted to sublicense, sell, transfer, distribute, publish, loan, lease, exchange, store or give, or provide access to, the MLS Content nor data base to anyone, including, without limitation, any parent, subsidiaries, affiliated entities or contractors of Photographers except as expressly authorized in writing by MLS.
 - (iii) Restriction on Access and Internet Display. Photographer shall not be allowed access, use or display, or permit others to access, use or display, any MLS Content or any part of the Database on any third party Internet websites, or profit by or accept any consideration for enabling any third party to access, use or display MLS Content through links to or by framing such Content or data from a website owned or operated by or for the benefit of Photographer, except as expressly authorized in writing by the MLS.
 - (iv) Restriction on Integrating Licensed Content. Photographer shall not be allowed to process or combine or permit to be processed or combined, the MLS Content or the Database or any portion thereof, with any other data or information, except as expressly authorized in writing by the MLS.
 - (v) Restriction on Violation of Laws. Photographer shall not use or access the MLS Content or the Database, for any purpose or in any manner that infringes on any

third parties' Intellectual Property Rights or violates any federal or state law, statute, ordinance or regulation, including, without limitation, the Real Estate Settlement Procedures Act and laws governing unfair competition, unfair and deceptive practices, anti-discrimination and false advertising.

4. Proprietary Rights.

- (a) The MLS. This Agreement is a license agreement and not an agreement of sale. The selection, compilation and arrangement of the MLS Content and other data comprising the MLS Database compilation is the proprietary, copyrighted property of the MLS, and all rights, title and interest in the selection, compilation and arrangement of listings information, comparable and statistical data and other information maintained in the Database compilation, including the copyrights therein, shall at all times remain with MLS.
- (b) Copyright. All Displays of Licensed Content shall include: "Property Information © [current year] Combined LA/Westside Multiple Listing Service All rights reserved."

5. Confidentiality.

- (a) Rights and Restrictions. To prevent the unauthorized duplication or disclosure of Confidential Information, Photographer agrees to exercise a reasonable degree of care (but not less than the degree of care it exercises to protect its own proprietary information), and in no event less than due care, at all times that the Confidential Information is in the possession or under the control of the Photographer. Photographer may use the Confidential Information only in connection with the exercise of its rights and the performance of its duties and obligations under this Agreement and shall be fully responsible for any use by an employee, agent or contractor.
- (b) Responsibility for Misuse. Photographer shall be responsible for any misuse by of the Confidential Information, including any unauthorized access to or use of such Confidential Information by means of Photographer's personnel, systems, equipment, products or applications.
- (c) Injunctive Relief. Photographer acknowledges that unauthorized use, misappropriation or disclosure of the Confidential Information, as described in this section, will cause irreparable harm to the MLS and that remedies at law may be inadequate thereby justifying enforcement by temporary or permanent injunctive relief.

6. Liability Provisions and Limitations.

- (a) No Consequential Damages. IN NO EVENT SHALL THE MLS BE LIABLE FOR ANY INDIRECT, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, SUCH AS LOSS OF USE OR OF ANTICIPATED PROFITS OR OTHER ECONOMIC COSTS IN CONNECTION WITH, OR ARISING OUT OF, ANY SERVICES OR PRODUCTS PROVIDED OR OTHER OBLIGATIONS TO BE PERFORMED UNDER THIS AGREEMENT, REGARDLESS OF HOW SUCH DAMAGES ARISE AND WHETHER OR NOT A PARTY WAS ADVISED SUCH DAMAGES MIGHT ARISE.
- (b) Indemnification. Photographer agrees to indemnify and hold the MLS harmless with respect to any claims, action, liability, laws, expenses or legal fees arising from the acts or omissions of Photographer's and/or Participant's:

- (i) conduct of its own business operations, including the exercise of its rights and performance of its obligations contemplated by this Agreement, or
 - (ii) use or misuse of MLS Content, access programs and instructions, or
 - (iii) wrongful conduct or breach of the Agreement.
- (c) Assignment. Photographer and/or Participant may assign its rights or obligations hereunder without the express written permission of the MLS, which may be arbitrarily withheld.

7. Term and Termination.

- (a) Term. The Initial Term of this Agreement is one (1) year, unless earlier terminated in accordance with the provisions of this Agreement.
- (b) Termination. This Agreement may be terminated at any time during the Term by the MLS without reason or cause.
- (c) Survival of Provisions. Upon any termination of this Agreement, all rights and obligations of the Parties under the Agreement shall terminate, except for the rights and obligations set forth in sections 5 through 11 of the Agreement.

8. Privacy Acknowledgement and Disclaimers. Licensee acknowledges that the federal government and certain states have enacted or may enact laws, which place restrictions upon or allow consumers to place restrictions on the use of personally identifiable information. Due to the varying laws and publication dates of privacy notices, the MLS disclaims any warranty, express or implied, that personally identifiable information which may be contained in the MLS Content and/or Database has been identified in or deleted from the MLS Content and/or Database that may be accessed by Photographer under this Agreement. Photographer will assure that prior to uploading any photographs, there is no violation of any law or expectation of privacy that will be violated by publication in the MLS Content.

9. Independent Contractor Relationship. This Agreement shall in no way be construed to constitute the Parties as agents, partners, legal representatives or employees of each other for any purpose, and neither Party shall act or represent itself as having any such status or relationship with the other Party. The Parties shall have the relationship of independent contractors.

10. Notices. Any notice or other communication hereunder shall be in writing and shall be deemed to be given and effective when delivered personally to the Party at the address set forth below or upon delivery to the parties at the address set forth below by an overnight courier service providing tracking and proof of delivery, or by facsimile or e mail providing proof of delivery.

Combined LA/Westside Multiple Listing Service
 8350 Wilshire Blvd. First Floor
 Beverly Hills, CA 90211
 Attn: Annie Ives
 Facsimile: (310) _____

[Photographer]

Facsimile: (---) _____

11. Miscellaneous Provisions.

- (a) Governing Law and Jurisdiction. This Agreement shall be governed by the laws of the State of California and the Federal laws of the United States of America, exclusive of any conflicts of

laws principles, which would require the application of the laws of another jurisdiction. Any and all disputes arising under this Agreement shall be subject to the exclusive jurisdiction of the courts located in Riverside County.

- (b) Authority. Each Party warrants that it has full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement. Each Party further acknowledges that it has read this Agreement and agrees to be bound by it.
- (c) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same document. Signatures of Parties on copies transmitted by facsimile shall be considered as signed original documents.
- (d) Captions. The captions in this Agreement are included for convenience of reference only and will not be construed to define or limit any of the provisions contained herein.
- (e) Waivers. No delay or failure of a Party to exercise or enforce at any time any right or provision of this Agreement shall be considered a waiver thereof or of such Party's right thereafter to exercise or enforce each and every right and provision of this Agreement. A waiver to be valid shall be in writing but need not be supported by consideration. No single waiver shall constitute a continuing or subsequent waiver.
- (f) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their successors and assigns; provided, however, that Licensee may not assign or delegate its rights, duties or obligations under this Agreement to any third party, including by operation of law, without the prior written consent of the MLS providing the MLS Content.
- (g) Interpretation of Agreement. The Parties agree that this Agreement shall be fairly interpreted in accordance with its terms without any strict construction in favor or against either Party, and that an ambiguity shall not be interpreted against the drafting Party.
- (h) Severability. If any provision of this Agreement shall be held illegal, invalid or unenforceable, in full or in part, such provision shall be modified to the minimum extent necessary to make it legal, valid and enforceable, and the remaining provisions of this Agreement shall not be affected thereby.
- (i) Further Documents. The Parties agree, upon request, to sign and deliver such other documents and perform such acts as may be reasonably required to carry out the intent and provisions of this Agreement.
- (j) Attorneys' Fees. The Parties agree that the prevailing Party in any dispute or legal action between the Parties with respect to this Agreement shall be entitled to recover from the other Party its reasonable attorneys' fees and costs incurred in connection with or as a result of such dispute or action.
- (k) Review and Approval of Agreement. Each Party represents that it has taken all required corporate and other action to approve this Agreement and authorize its execution, and that it has had an opportunity to have this Agreement reviewed by professional advisors and counsel of its own choice before executing it.
- (l) Entire Agreement. This Agreement, including any schedules, exhibits or attachments hereto, incorporated herein by reference, constitutes the entire agreement between the Parties, and supersedes any contemporaneous or prior proposals, representations, agreements or understanding between the Parties, concerning the subject matter hereof. This Agreement may not be amended except in writing signed by both Parties. The Agreement is made and entered into solely by and for the benefit of the Parties, and it shall not be construed or applied for the benefit of any third parties.

IN WITNESS WHEREOF, the Parties have entered into this Agreement and make it effective as of the Effective Date.

Combined LA/Westside Multiple Listing Service, a California nonprofit mutual benefit corporation

By:

Annie Ives, Chief Executive Officer

[Photographer name of entity]

By: _____
Print Name: _____
Title: _____