**Website Development Agreement**

This Website Development Agreement (“Agreement”) is made and entered into between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [insert the full legal name of the broker, brokerage firm, sales licensees, or MLS], a(n) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [state that the website owner is an individual if a broker or sales licensee is entering into the agreement or insert the entity type if an MLS is entering into the agreement] (“Owner”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a(n) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [insert entity type or state that developer is an individual, as applicable] (“Developer”).

Owner has agreed to engage Developer to design and develop a website (the “Website”) for Owner for display of certain real estate listings, and Developer has agreed to design and develop the Website in accordance with the terms of this Agreement.

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

1. Developer’s Responsibilities. Developer agrees to design and develop the Website in accordance with (a) the specifications which are set forth on the attached Schedule A to this Agreement, and the other instructions and materials provided by Owner from time-to-during the terms of this Agreement (the “Specifications”), and (b) the development schedule set forth on the attached Schedule B to this Agreement (the “Development Schedule”).

2. Website Design.

a. Design. The design of the Website shall be in substantial conformity with the Specifications. Developer shall develop the Website to project the highest professional image.

b. Materials Provided by Owner. All materials, text, graphics and other content for the Website to be supplied by Owner (the “Owner Content”) may be provided in soft format such as on CD - Rom, DVD or via email. Files will be provided in HTML format, standard word processing text format, or, if images, digitally in TIFF, GIF, JPEG, or Photoshop format. Owner agrees to provide all Owner Content within a reasonable time for Developer to timely meet the requirements of the Development Schedule or as otherwise specified in the Development Schedule.

c. Accessibility During Development. Throughout the development of the prototype and the final Website, the Website shall be accessible to Owner. Until Owner has approved the final Website, none of the web pages for the Website will be accessible to end users.

d. Delivery of Deliverables. Upon Owner’s approval of the final Website, or upon termination of this Agreement, whichever occurs earlier, Developer shall deliver to Owner all code, documentation, reports, images, artwork, text, and other materials developed by Developer in the course of its performance under this Agreement and any other terms reasonably necessary for the operation of the Website, other than third party operating system software, third party networking software, web browsers, and hardware, and all changes and enhancements thereto (the “Deliverables”). Documentation shall be delivered in printed format and in electronic format. Code shall be delivered in electronic format. Developer shall maintain its backups and one set of the Deliverables for a period of six (6) months after Owner’s approval of the final Website. If this Agreement is terminated prior to final approval, or upon expiration of the six-month period, Developer will destroy all of its copies of the Deliverables, including all backups thereof, and permanently destroy all files constituting final or working copies of any Deliverables from Developer’s computers and back-up materials unless otherwise directed in writing by Owner.

3. Domain Name. The Website shall have the domain name designated by Owner (the “Domain Name”). Owner shall register the Domain Name or, at Owner’s option and upon Owner’s request, Developer shall register the Domain Name on Owner’s behalf. Unless otherwise agreed in writing by the parties, Owner shall be listed as the registrant, and administrative and technical contact for the Domain Name. Owner shall reimburse Developer for any registration fees incurred by Developer in registering the Domain Name for Owner. If, by agreement of the parties, Developer is listed as the registrant or technical or administrative contact for the Domain Name, then Developer shall maintain and renew registration of the Domain Name, and pay any applicable fees associated therewith, throughout the term of this Agreement. If, by agreement of the parties, Developer is listed as the registrant or technical or administrative contact for the Domain Name, then upon any termination of this Agreement for any reason, Developer shall take all action necessary to transfer the name of registrant and the technical and administrative contact information for the Domain Name to Owner or designee of Owner within five (5) days of termination of this Agreement, or within five (5) days of Owner providing such information or taking such action as required to effectuate the transfer.

4. Fees. Owner agrees to pay Developer the amounts and in accordance with the payment terms set forth on the attached Schedule C to this Agreement. If there is a dispute with regard to whether work was actually completed or whether an invoice is properly payable, the amount of the invoice in dispute shall not be due until the dispute is resolved.

5. Expenses. Except as expressly agreed otherwise in writing by Owner, Developer shall bear all of its own expenses arising from its performance of its obligations under this Agreement. Owner shall have no obligation to provide office space, work facilities, equipment, clerical services, programming services, or the like.

6. Future Development and Enhancements and License. Owner and Developer agree and acknowledge that Owner may from time-to-time after termination of this Agreement request that Developer enhance, update, create new versions, create bug fixes, or otherwise modify the Website (“Enhancements”). Owner shall have no obligation to engage Developer in connection with any Enhancements. Developer shall charge Owner for such services at Developer’s current standard published hourly rate. Developer agrees that such rates will not increase by more than ten percent (10%) during any calendar year and that such rates will not increase more than one (1) time in any two (2) calendar year period. Developer agrees to assign, and hereby assigns all right, title and interest, including all copyright rights and other intellectual property rights, in and to the Enhancements to Owner. Upon completion, all Enhancements shall be included in the definition of the Deliverables under this Agreement and shall be governed by the terms and conditions of this Agreement. Owner hereby grants to Developer a revocable, non-exclusive license to use and access the Website for the sole purpose of creating Enhancements. This license may be terminated by Owner at any time.

7. Confidential Information of Owner.

a. Developer acknowledges that Developer may have access to information of Owner that is considered by Owner to be confidential or proprietary including, without limitation, real property listing information, including all intellectual property rights, trade secrets, copyrights, customer lists, and customer information (“Confidential Information”). Confidential Information does not include information that (a) has been made public by an act or omission by a party other than Developer; (b) Developer receives from an unrelated third party without restriction on disclosure and without breach of a nondisclosure obligation; (c) Developer knew prior to receiving such information; or (d) Developer develops independently without use of Confidential Information. Developer agrees to maintain as confidential and not disclose the Confidential Information to any third party and will not use any Confidential Information for any purpose other than for the performance of its obligations under this Agreement. Developer agrees to use all reasonable efforts to prevent any unauthorized disclosure of Confidential Information disclosed by Owner under this Agreement.

b. Developer acknowledges and agrees that Owner does not wish to receive from Developer any confidential information of Developer or of any third party. Developer represents and warrants that any information provided to Owner in connection with this Agreement shall not be confidential or proprietary to Developer or any third party.

c. Developer shall immediately notify Owner upon discovery of any unauthorized use or disclosure of Confidential Information, or any other breach of this Agreement, and will cooperate with Owner in every reasonable way to regain possession of the Confidential Information and prevent its unauthorized use.

8. Ownership of Owner Content. Developer acknowledges and agrees that all Owner Content is a proprietary, original work of authorship of Owner, or licensed or assigned to Owner, and is protected under United States copyright, trademark, patent and trade secret laws of general applicability. Developer further acknowledges and agrees that all right, title, and interest in and to the Owner Content, and any portion of the Owner Content, together with all modifications, enhancements, and derivative works of the Owner Content, whether or not made by Developer, including all copyright rights, are and shall remain with Owner or its licensors. Developer agrees to assign and transfer and does hereby irrevocably assign and transfer to Owner any and all right, title, and interest, including all copyright rights and other intellectual property rights, and all actions and causes of action related to the foregoing, and all damages, profits, and other recoveries related thereto, which Developer may have or acquire in and to the Owner Content and any and all modifications or derivative works made by Developer to the Owner Content. Developer agrees to execute all documents and take all action reasonably requested by Owner in connection with the assignment of rights to Owner. Developer agrees that it will not challenge or take any action inconsistent with Owner’s rights to the Owner Content.

9. Trademarks. Owner grants to Developer a limited, non-exclusive, revocable license to use the trademarks of Owner solely for use on the Website and in exactly the form designated by Owner. The license granted under this Section 9 of this Agreement may be terminated at any time by Owner, in its sole discretion, upon ten (10) days notice. Developer agrees and acknowledges that the license of the Owner’s trademarks is made without any representations or warranties of any kind or nature. Owner does not make any representations or warranties regarding title to any Owner trademark, the rights of any other persons or entities to the Owner trademarks, or with regard to the enforceability of any rights to any Owner trademark. Except as provided in this Section 9 of this Agreement, no other right is granted to Developer under this Agreement with respect to any trademarks of Owner. Developer agrees that it will not file any applications or assert any rights to any of Owner’s trademarks in the United States, or any other country or territory.

10. Ownership of Deliverables.

a. Owner and Developer intend that, except as set forth below, all elements of all Deliverables shall be exclusively owned by Owner, and Owner shall exclusively own all copyrights and all other intellectual property rights in the Deliverables. Accordingly, Developer agrees to assign and transfer and does hereby irrevocably assign and transfer to Owner any and all right, title, and interest, including all copyright rights and other intellectual property rights, and all actions and causes of action related to the foregoing, and all damages, profits, and other recoveries related thereto, which Developer may have or acquire in and to any and all Deliverables. Such rights, title, and interest shall be deemed assigned as of the moment of creation without the necessity of any further action on the part of either party. Developer agrees to take all action and execute and deliver to Owner all documents requested by Owner in connection with the transfer and assignment of rights in and to the Deliverables to Owner, and any copyright application for and registration of the Deliverables or any elements of the Deliverables. If the foregoing assignment is determined to be unenforceable for any reason, Developer hereby grants to Owner an exclusive, non-revocable, worldwide, fully paid, copyright license to sublicense through multiple tiers, perform, publish, display, reproduce, create derivative works of, and distribute any or all of the Deliverables or any derivative works thereof.

b. In the event that any portion of any Deliverable, including the entirety thereof, constitutes a preexisting work for which Developer cannot grant to Owner the rights set forth in this Section 10 (a “Preexisting Work”), Developer shall specify in writing (1) the nature of such Preexisting Work; (2) its owner; (3) any restrictions or royalty terms applicable to Developer’s or Owner’s use of such Preexisting Work or Owner’s exploitation of the Deliverable as a derivative works thereof; and (4) the source of Developer’s authority to employ the Preexisting Work in the preparation of the Deliverable, and Developer shall grant to Owner a non-exclusive, non-revocable, worldwide, fully paid license to use the Preexisting Work in any manner consitent with this Agreement. The only preexisting works that may be used in the construction of the Website or any Deliverables are the Preexisting Works that may be approved in writing by Owner prior to their use.

c. In the event for any reason, after reasonable effort, Developer fails to execute and deliver to Owner any document requested by Owner under Section 10.b of this Agreement, Developer hereby irrevocably designates and appoints Owner, and its officers and agents, as Developer’s attorney in fact, which appointment is coupled with an interest, to act for and in behalf of Developer to execute, verify, and file any such documents and to do all other lawfully permitted acts to further the purposes of this Agreement with the same legal force and effect as if executed by Developer. Developer hereby waives any and all claims, of any nature whatsoever, which Developer now or may hereafter have for infringement of the Deliverables assigned to Owner under this Agreement.

11. Copyright Notices. Developer shall include on the Website any and all copyright or other notices as requested by Owner.

12. Work Only by Developer. Excepting any co-developer who is engaged by Owner to co-develop the Website with Developer, no individuals or entities other than Developer and Developer’s employees shall undertake any work in connection with this Agreement. Developer shall obtain and maintain in effect written agreements with each of its employees who participate in any of Developer’s work under this Agreement, which agreements shall contain terms sufficient for Developer to comply with all provisions of this Agreement and to support all grants and assignments of rights and ownership under this Agreement. Such agreements also shall impose an obligation of confidentiality on such employees with respect to Owner’s Confidential Information.

13. Indemnification/No Infringement. In performing services under this Agreement, Developer agrees not to design, develop, or provide to Owner any items, including any Deliverables, that infringe any patents, copyrights, trademarks or other intellectual property rights, including trade secrets, privacy, or other rights of any person or entity. If Developer becomes aware of any such possible infringement in the course of performing any work hereunder, Developer shall immediately notify Owner in writing. Developer agrees to indemnify, defend, and hold Owner, its officers, directors, members, employees, representatives, agents, and the like harmless for any such alleged or actual infringement of the rights of a third party, including any patent, copyright, trademark, trade secret, privacy, or other intellectual property or proprietary rights, and for any liability, debt, or other obligation arising out of or resulting from any breach by Developer of this Agreement, performance or failed performance under this Agreement, or use of any Deliverables. This indemnification shall include Owner’s attorney fees and expenses. Owner shall have the right, at its option, to control its own defense and engage counsel acceptable to Owner.

14. Developer’s Representations and Warranties. Developer represents and warrants to Owner as follows:

a. No Conflict. Developer is under no obligation or restriction that would in any way interfere or conflict with the work to be performed by Developer under this Agreement. Owner understands that Developer is currently working on one or more similar works for other customers. Provided that those works do not interfere or conflict with Developer’s obligations under this Agreement, those works shall not constitute a violation of this Agreement by Developer.

b. Ownership Rights. (1) Developer is and will be the sole author of all works employed by Developer in preparing any and all Deliverables other than Preexisting Works; (2) Developer has and will have full and sufficient right to assign or grant the rights and/or licenses granted in the Deliverables pursuant to this Agreement; (3) all Deliverables other than Preexisting Works have not been and will not be published under circumstances that would cause a loss of copyright therein; and (4) all Deliverables, including all Preexisting Works, do not and will not infringe any patents, copyrights, trademarks or other intellectual property rights, including trade secrets, privacy, or similar rights of any person or entity, nor has any claim, whether or not embodied in an action, past or present, of such infringement been threatened or asserted, nor is such a claim pending against Developer or, insofar as Developer is aware, against any entity from which Developer has obtained such rights.

c. Conformity, Performance, and Compliance. (1) all Deliverables shall be prepared in a workmanlike manner and with professional diligence and skill; (2) all Deliverables will function under standard HTML conventions; (3) all Deliverables will conform to the specifications and functions set forth in this Agreement; and (4) Developer will perform all work under this Agreement in compliance with applicable laws. Developer will repair any Deliverable that does not meet this warranty within a reasonable period of time if the defect affects the usability of the Website, and otherwise will repair the defect within twenty four (24) hours, such repairs to be free of charge to Owner. This warranty does not cover links that change over time, pages that become obsolete over time, content that becomes outdated over time, or other changes that do not result from any error on the part of Developer.

d. The media on which the Deliverables is or will be contained shall not knowingly contain any computer instructions which purpose is to disrupt, damage or interfere with the use of any other computer programs or computer telecommunications facilities for their commercial purposes, or perform functions which are not an appropriate part of the functionality of the applicable computer programs, and which result is to disrupt the use or operation of such computer programs. The Deliverables shall not knowingly contain any virus, worm, trojan horse, or other similar code, or any mechanism which electronically notifies the user of any fact or event, nor any key, node lock, time-out, logic bomb or other function, implemented by any means, which may restrict use of or access to any programs, data or equipment.

15. Independent Contractor. Developer, in rendering performance under this Agreement, shall be deemed an independent contractor and nothing contained herein shall be construed as constituting an employment, joint venture, or partnership relationship between Developer and Owner. Developer shall be solely responsible for and shall hold Owner harmless for any and all claims for taxes, fees, or costs, including but not limited to withholding, income tax, FICA, and workmen’s compensation.

16. Injunctive Relief. Owner and Developer agree that any default under or breach of Sections 2.d, 7, 8, 9, 10, , 11, and 12 of this Agreement will result in immediate and irreparable injury and harm to Owner, which 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 default under or breach of this Agreement. The forgoing remedies shall in no way limit any other remedies which Owner may have, including, without limitation, the right to seek monetary damages.

17. Termination. Unless earlier terminated in accordance with this Section 17, this Agreement shall continue in effect until the Website is operational and has been accepted by Owner. Owner may, at its sole option, terminate this Agreement immediately upon written notice to Developer. Upon receipt of notice of such termination, Developer shall inform Owner of the extent to which performance has been completed through the date of termination and collect and deliver to Owner whatever work product and Deliverables then exist in a manner prescribed by Owner. Developer may not terminate this Agreement except upon the occurrence of a material default by Owner which has not been cured within thirty (30) days after written notice to Owner. Sections 2.d, 3, 6, 7, 8, 9, 10, 13, 16, 17, and 18 of this Agreement shall survive any termination of this Agreement.

18. General.

a. 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 fees, costs, and expenses of litigation.

b. Governing Law; Submission to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the state of \_\_\_\_\_\_\_\_\_\_. Developer acknowledges that by entering into this Agreement, and providing services under this Agreement, Developer has transacted business in the state of \_\_\_\_\_\_\_\_. By transacting business in the state of \_\_\_\_\_\_\_\_\_\_\_ by agreement, Developer voluntarily submits and consents to, and waives any defense to the jurisdiction of courts located in \_\_\_\_\_\_\_\_\_\_\_ County, state of \_\_\_\_\_\_\_\_\_\_, as to all matters relating to or arising from this Agreement.

c. No Assignment. Developer may not assign or delegate, sublicense or otherwise transfer this Agreement, or its services to be performed or obligations under this Agreement.

d. Waiver. No waiver by either party of any default shall be deemed as a waiver of prior or subsequent default of the same of other provisions of this Agreement.

e. Severability. If any term, clause or provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision, and such invalid term, clause or provision shall be deemed to be severed from the Agreement.

f. Integration. This Agreement constitutes the entire understanding of the parties, and revokes and supersedes all prior agreements between the parties and is intended as a final expression of their Agreement. All schedules referenced in this Agreement shall be incorporated into this Agreement by this reference. This Agreement shall not be modified or amended except in writing signed by the parties hereto and specifically referring to this Agreement. This Agreement shall take precedence over any other documents which may conflict with this Agreement.

Dated effective \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

OWNER:

Printed Name of Owner:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name and Title of Signatory (if Owner is a business entity or brokerage firm):

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DEVELOPER

Printed Name of Developer:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name and Title of Signatory (if Developer

is a business entity):

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_