



INDEPENDENT CONTRACTOR AGREEMENT

This Independent Contractor Agreement (hereinafter "Agreement") is made as of 07/09/2019, is by and between:

Pall Spera Company Realtors LLC (hereinafter "Agency") and

Kelley King (hereinafter "Associate") and is as follows:

WHEREAS, Agency is engaged in business as a real estate agency in the State of Vermont; and

WHEREAS, Agency and Associate enter into this Agreement to establish the terms and conditions of their business relationship and to establish that Associate is an independent contractor;

NOW, THEREFORE, it is agreed as follows:

1. Creation of Independent Contractor Relationship. Agency and Associate agree that to the fullest extent permitted by law, Associate shall be an independent contractor and shall not be an employee, partner, joint venturer or have any other relationship with Agency other than that of an independent contractor. This Agreement does not constitute or create a hiring or employment agreement by either party. Agency and Associate are independent contracting parties with respect to all real estate services to be rendered arising out of this Agreement or in any resulting real estate transactions.

Associate has discretion and judgment concerning the methods, techniques and procedures to be used in rendering real estate brokerage services authorized under Vermont law. However, Associate agrees to render those services in compliance with Federal and State laws, rules, and regulations and in accordance with Agency's policies, procedures, directions and any office procedures or manuals established by Agency which Associate hereby agrees to observe. Agency shall have direction and control over Associate to the extent reasonably necessary to comply with Federal and State laws, rules and regulations including, the Rules of the Vermont Real Estate Commission.

2. Basis of Compensation. All of Associate's compensation from performing real estate brokerage services shall be based upon a share of commissions which are actually collected and received by Agency and shall be based upon sales, production or results. Associate compensation is not based on time, hours worked, effort or on the basis of any hourly wage.

Because Associate is not an employee under this Agreement, Associate will not be treated as an employee for Federal or State income tax purposes or for purposes of coverage under the Vermont Worker's Compensation Act. Agency and Associate acknowledge and recognize that Associate is not eligible for and shall not be covered under any worker's compensation insurance coverage under the Vermont Worker's Compensation Act. Associate expressly waives and releases any and all rights or claims against Agency as a "worker" or "employee" under the Vermont Worker's Compensation Act and expressly acknowledges that Agency is not an "employer" under the Act.

3. Compensation to Associate. Associate's compensation shall be based upon a share of commissions actually collected by Agency. The division and distribution of the earned and paid commissions shall be made as and when the same are received and collected by Agency. Such distribution and division shall take place as soon as practicable after collection of such commissions by Agency. Agency shall have the sole and exclusive right to determine in all events the commissions to be charged for real estate brokerage services provided to clients, other real estate agencies or any other person. As between Agency and Associate, Agency shall have the sole and exclusive right to adjust, compromise and negotiate any reduction, alteration or modification of any such commissions with clients, other real estate agencies or any other person. Associate agrees not to assert any claim or demand against any of Agency's clients, customers, other real estate agencies or any other person concerning entitlement to commissions or any portion thereof.

4. No Withholding or Contribution by Agency. As a result of the independent contractor status between Agency and Associate, Agency shall not withhold from compensation payable to Associate or make any contribution on account of Associate's compensation to or under the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA) or any other Federal or State income tax or benefits program arising out of Associate's compensation. It shall be Associate's sole and exclusive responsibility to make and pay all such contributions and taxes. Agency shall consider Associate as a self-employed person with respect to all such tax payments. Associate shall indemnify and hold Agency harmless from any failure of Associate to pay self-employment taxes and obligations.

5. Use of Office Facilities. Agency shall make available the facilities of Agency's real estate brokerage office for Associate's use, provided, however, that all such use by Associate shall be in accordance with the Agency's policies, procedures, directives and office manuals.

6. **Expenses.** Agency shall not be responsible to Associate for any expenses incurred by Associate in providing real estate brokerages services including real estate licensing fees, advertising initiated by Associate. All advertising undertaken by Associate must be approved in advance by Agency and shall be in compliance with the Vermont Real Estate Commission Rules regarding advertising. Associate shall also pay for all professional association dues and fees, including fees for continuing education programs whether required or optional. Agency shall bear and be responsible for the expense of all advertising on listings or other properties in its sole and exclusive discretion. If Associate wishes to utilize advertising over and above the advertising provided by Agency, an arrangement with respect to payment for said advertising will be determined by mutual agreement between Agency and Associate. In all cases, however, any advertising undertaken by Associate must be submitted for prior approval of Agency as to content, design and format. The approval of Associate's advertising shall not constitute a representation by Agency that the advertising complies with the Vermont Real Estate Commission's advertising rules. In the event Agency advances funds to pay expenses of Associate, including professional association dues, Associate shall promptly reimburse Agency for the full amount advanced or, alternatively, Agency may deduct the full amount advanced from any compensation payable to Associate.

7. **Marketing Agreements, Buyer Broker Agreements, Broker Agency Agreements, Cooperation Agreements, Referral Agreements and All Other Agreements Recognized as the Property of Agency.** All marketing agreements, buyer broker agreements, broker agency agreements, cooperation and referral agreements and all other agreements with clients, any other real estate agency or any member of the public for the performance or delivery of real estate brokerage services (hereinafter referred to collectively as the Agency's Agreements) shall be undertaken and performed in the name of the Agency and shall, for all purposes, be deemed the sole and exclusive property of Agency in which Associate shall have no legal or proprietary interest. All of the Agency's Agreements, whether produced, generated or initiated by Associate or otherwise, are deemed for all purposes to be the property of Agency.

8. **Access to and Utilization of Agency's Agreements/Efforts of Associates.** Agency shall make the Agency's listings, buyer service agreement, cooperation and referral agreements with other real estate firms and licensees available for use by Associate. Associate is authorized to provide real estate brokerage services with respect to such Agreements. Agency will provide Associate with reasonable assistance, advice and cooperation regarding real estate brokerage services in order to further the mutual goals of Agency and Associate.

Associate shall act diligently and exercise best efforts to provide real estate brokerage services concerning the Agency's listing and other brokerage service, including referral, agreements, shall endeavor to generate and initiate additional listing and other brokerage service agreements for Agency, and shall take such other actions as are appropriate to promote service to the public in real estate transactions; it being acknowledged that all such efforts by Associate are for the mutual benefit of Agency and Associate and contribute to the positive goodwill of both Agency and Associate.

9. **Proprietary Information and Files.** Associate agrees that all information gained as a result of the business of Agency, including all files and documents (including electronic or otherwise) are the exclusive property of Agency. Such files and all copies thereof shall be delivered to Agency by Associate immediately upon termination of their relationship under this Agreement. After such termination, Associate shall not use any such information to his or her own advantage or the advantage of any other person, business or entity. The provisions of the Vermont Trade Secrets Act apply to all such information.

10. Insurance.

A. **Automobile.** Associate shall use automobile(s) owned or leased by Associate in the performance of real estate brokerage services covered by this Agreement. All expenses relating to the ownership and use of such automobile(s) shall be borne exclusively by Associate. No automobile expenses shall be reimbursed in whole or in part by Agency. Associate shall procure and keep in force comprehensive automobile liability insurance covering the ownership, maintenance or use of all vehicles used in the performance of this Agreement with limits of not less than \$300,000.00 combined single limit for bodily injury and property damage liability. Associate's insurance shall be primary and non-contributory to all other available coverage so that Associate's insurance shall be required to pay any loss or claim before any other applicable insurance without seeking contribution or pro rata payment from any other available insurance. Unless Associate insurer is unable to do so, Agency shall be named as an additional insured under all such policies. Associate shall furnish properly executed certificates of such insurance to Agency. Associate shall provide prompt written notice to Agency of the occurrence of any event which could result in a claim against Associate or Agency arising out of the use of an automobile by Associate after the termination of this Agreement.

B. **Errors and Omissions (Professional Liability).** Agency ☐ does ☐ does not (check the box) maintain errors and omissions (professional liability) insurance. If Agency maintains a professional liability insurance policy, Associate shall be an insured under said policy during the term of this Agreement unless such coverage is excluded under such policy. Agency shall have no obligation to provide professional liability insurance to Associate subsequent to the termination of this Agreement. In the event of any claim asserted against Agency arising out of actions or inactions of Associate, Associate shall be responsible for and shall reimburse Agency for one-half (50%) of any deductible or other amounts paid or payable by Agency on account of such claim. This obligation shall be in addition to the hold harmless and indemnification obligations of Associate set forth in Section 14. If any professional liability insurance procured by Agency is cancelled or terminated either during or after the term of this Agreement, Agency shall endeavor to notify Associate. After any termination of this Agreement, Agency shall have no obligation to provide professional liability insurance to Associate and shall have no obligations of any nature to indemnify Associate against any claim asserted against Associate.

11. Termination of Relationship. Either Agency or Associate may terminate this Agreement at any time upon -0- days' written notice to the other.

12. Compensation after Termination. Associate's entitlement to compensation which accrued prior to termination of this Agreement shall not be divested upon termination of this Agreement. However, if this Agreement is terminated while Associate has listings or pending transactions that require additional work which normally would have been performed by Associate, Agency shall make arrangements with another associate associated with Agency to perform the required work or shall perform the work itself. The reasonable compensation for performing such work on such listings and transactions shall be deducted from Associate's share of any compensation due under this Agreement. Except for such offset, Associate shall promptly receive his or her agreed-upon share of compensation on such sales or other transactions when collected by Agency after deduction of any other amounts or offsets provided in this Agreement.

13. Unfair Advantage, Interference with Contracts. After any termination of this Agreement, Associate shall not use to his or her advantage or to the advantage of any other person, firm, or corporation, any information gained from the files or business of Agency. In addition, Associate shall not interfere with, attempt to interfere with, or solicit or encourage the termination of any marketing agreement, buyer broker agreement, broker's agent agreement, cooperation or referral agreement or any other agreement entered into between Agency and any client, real estate broker or member of the public.

14. Limited Authority of Associate. Associate shall be authorized to enter into marketing, broker agent, buyer broker, cooperation, referral or other agreements relating to brokerage services on behalf of Agency, but only upon terms, conditions and compensation arrangements approved in advance by Agency. All such agreements shall be made and undertaken in the name of Agency and not in the individual name of Associate. Associate shall have no authority whatsoever to bind Agency by any promise or representation unless specifically authorized by this Agreement or by Agency in writing. Any promises or representations undertaken in violation of this Section shall not be binding upon Agency. Associate shall indemnify and hold Agency harmless from and against any claims or expenses, including attorney's fees, arising out of such representations or promises.

15. Dispute Resolution. All disputes or claims between Agency and Associate arising from or in any way connected with this Agreement shall first be submitted to non-binding mediation pursuant to the provisions of Vermont's Mediation Act. In the event the dispute is not resolved by means of mediation, such disputes shall be resolved by binding arbitration between Agency and Associate pursuant to the provisions of the Vermont Arbitration Act.

ACKNOWLEDGMENT OF ARBITRATION

THE PARTIES UNDERSTAND THAT THIS AGREEMENT CONTAINS AN AGREEMENT TO ARBITRATE. AFTER SIGNING THIS AGREEMENT, EACH PARTY UNDERSTANDS THAT HE/IT WILL NOT BE ABLE TO BRING A LAWSUIT CONCERNING ANY DISPUTES THAT MAY ARISE WHICH IS COVERED BY THIS AGREEMENT TO ARBITRATE, UNLESS IT INVOLVES A QUESTION OF CONSTITUTIONAL OR CIVIL RIGHTS. INSTEAD, THE PARTIES AGREE TO SUBMIT ANY COVERED DISPUTE TO AN IMPARTIAL ARBITRATOR.

In any action, proceeding or arbitration between Agency and Associate arising from or related to this Agreement, the prevailing party shall be entitled to reasonable attorney's fees in addition to other appropriate relief.

16. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, executors, personal representatives, successors and permitted assigns and to the benefit of no other party.

17. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Vermont. Agency and Associate agree that the performance of their respective obligations under this Agreement shall be in conformity with all applicable laws, rules, regulations and codes of ethics, including REALTOR® Code of Ethics.

18. Waiver. No party shall be deemed to have waived the exercise of any right that it holds under this Agreement unless such waiver is made in writing. No waiver made with respect to any matter under this Agreement shall be deemed to be a waiver with respect to any other matter.

19. Entire Agreement. This Agreement and any attachment hereto or office policies or manuals relating to allocation of commissions between Agency and Associate contain the entire understanding and agreement of the parties and may only be altered or amended by a document in writing signed by the parties.

Made and executed at Stowe, Vermont, on this date: 07/09/2019.

Agency: Pall Speta 7/9/19
(signature) Date

Associate: Keller King 7/9/19
(signature) Date