

**PEAK, SWIRLES AND CAVALLITO PROPERTIES**

**INDEPENDENT CONTRACTOR AGREEMENT (ICA)  
2022**

This Independent Contractor Agreement (ICAgreement) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2022, between Peak, Swirles & Cavallito Properties, LLC (PSCP) a North Carolina limited liability company, located at 3608 Shannon Road, Suite 100, Durham, NC 27707, and \_\_\_\_\_, (Associate) holding NC real estate license number: \_\_\_\_\_, an independent contractor.

PSCP is a licensed real estate company in the state of NC and is qualified to engage in business as a real estate broker to procure listings of residential real estate for sale and to represent prospective buyers in the purchase of residential real estate and is known throughout the community as a company of excellent reputation in dealing with the public; and

PSCP's name and logo are both recognized by the public and are considered to be of value in the real estate industry; and

The Associate, an Independent Contractor, is a licensed real estate broker and is considered to have a good reputation for fair and honest transactions with the public; and

The Associate wants to join PSCP so he/she can use the company's name and facility to continue developing his/her real estate business; and

Both the Associate and PSCP want to enter into an Agreement and agree to the rights and duties of each party as noted below:

Both the Associate and PSCP, in consideration of the mutual promises noted below, agree as follows:

1. PSCP grants the Associate the non-exclusive license to use PSCP's name and logo in connection with the Associate's business as a real estate broker during the term of this ICAgreement. Nothing in this ICAgreement will prevent PSCP from granting to other Brokers/entities the non-exclusive license to use its name and logo.

2. PSCP agrees to keep the Associate informed of all current real estate listings held by PSCP, and agrees to give the Associate a reasonable level of assistance in development of the Associate's business.
3. PSCP agrees to give the Associate a work space with access to wireless internet service, stationery, forms and equipment as the company deems necessary for conducting the Associate's real estate business in a professional manner.
4. The Associate agrees:
  - a. To work diligently with his/her best efforts to sell any and all real estate listed with PSCP; to obtain listings and clients for PSCP and to promote the residential real estate business so that each party of a transaction will obtain the greatest profit possible within the boundaries of the regulatory, legal and ethical requirements of the state of North Carolina.
  - b. To use PSCP's name and/or logo only when the Associate is engaging in or soliciting potential residential real estate business.
  - c. To let PSCP know if the Associate enters into any form of business or venture other than being a residential real estate broker for PSCP.
  - d. To conduct him/herself in accordance with the regulations, laws, codes of ethics and other rules relating to or governing residential real estate including, but not limited to:
    - i. The Fair Housing Act
    - ii. The National Association of Realtors Code of Ethics
    - iii. The North Carolina Real Estate Licensing Law (see NC General Statutes)
    - iv. The North Carolina Real Estate Commission's Rules and Regulations (See the NC Administrative Code)
    - v. PSCP's agreements with the Triangle Multiple Listing Service
    - vi. PSCP's Office Policy and Procedures Manual
  - e. To represent PSCP during the term of this Agreement.
  - f. To get prior approval of any advertising or marketing campaign for either print or electronic media that are not created by PSCP that represents either the Associate or the Associate's listings.
  - g. To have an internet email account.
  - h. To apply for membership in the Durham Regional Association of Realtors within 30 days of signing this agreement. Associate agrees, additionally, to keep said membership in good standing during the term of this Agreement.
  - i. To pay PSCP as noted on quarterly statements for Errors and Omissions insurance to cover the Associate as well as any approved licensed assistants under the supervision of the Associate.
  - j. To maintain car liability insurance, the limits of which to be determined by PSCP. Those limits may be changed at any time in its sole discretion for

any/all vehicles used in the Associate's real estate business. A record of the current policy is to be submitted to PSCP files.

- k. To be financially responsible for all expenses and charges incurred in his/her real estate business including those incurred by assistants as well as all charges and expenses required to be paid as defined in the PSCP Policy Manual and Independent Contractor Terms and Conditions. Note: such charges and expenses may be changed by PSCP from time to time at its sole discretion. Charges include, but are not limited to: Errors and Omissions insurance, TMLS access fees, Workman's Compensation, UPS, FedEx, Champagne for closings, etc.
  - l. To deliver to PSCP Office Administrator within 24 hours of acceptance of an offer to purchase:
    - i. The purchase contract with ALL addenda
    - ii. Signed Property Disclosure form
    - iii. Receipts and Acknowledgements of Earnest Money and Due Diligence checks as required by Commission rules.
    - iv. Signed Agency Disclosure form or flap
    - v. Exclusive Right to Represent the Buyer, if appropriate
    - vi. Miscellaneous relevant forms, ie: Lead-based Paint Disclosure, etc.
    - vii. Measurement of square footage calculations of the property
  - m. Upon Closing, to deliver to PSCP Office Administrator within one business day of closing:
    - i. Original Closing Statement with all signatures
    - ii. PSCP Check from the closing attorney
    - iii. Any additional documents pertaining to the closing such as:
      1. Survey
      2. Measurements of house (Sketch or Appraisal)
      3. Inspection Reports (home, well, septic, radon, structural, pest)
      4. Resolution of any repair requests
  - n. To attend regularly scheduled sales meetings, and to review the listings of PSCP and other important Real Estate business
5. PSCP and the Associate agree that the 6% commission to be charged for any Listing services performed shall be those determined by PSCP. If a different commission rate is offered the client, this should be agreed to in advance by management. When the Associate performs any service, whereby a commission is earned, that commission shall be paid to PSCP. After the commission is collected, it will be divided between PSCP and the Associate. That division with the Associate will be determined by an annual meeting with the Broker-in-Charge and/or other owners of the company; PSCP will keep the balance. If there are

- special arrangements with a client of PSCP, or the Associate, on a property listed by PSCP or controlled by the Associate, a special division of the commission may apply. That division must be agreed upon in advance. If two or more Associates participate in such a service, or claim to have done so, the amount of the commission over that accruing to PSCP shall be divided between the participating Associates according to a written agreement between them or by arbitration under the rules and regulations of the American Arbitration Association. In no case will PSCP be personally liable to the Associate for any commission, but when the commission has been collected from the party or parties for whom the service was performed, then PSCP will hold the same in trust for the Associates to be divided according to the terms of this agreement.
6. Payment of commissions, as described above, will occur as soon as practical after collection of such commissions from those for whom the services were performed.
  7. **A CORRECT compensation sheet must be submitted by the Associate to the Office Administrator and approved by the Broker-in-Charge AND the file on the property/transaction MUST be complete as per 4.l and 4.m with ALL signatures, initials and information required in order to obtain the commission. The completeness of the file is determined by the Office Administrator and Broker-in-Charge.**
  8. PSCP and the Associate agree that the Associate will NOT be treated as an employee for federal tax purposes with respect to the services performed by the Associate in residential real estate sales.
  9. PSCP and the Associate agree that PSCP does not exercise control over the real estate business of the Associate. The Associate is free to work any hours and days s/he believes is appropriate and to conduct his/her real estate business as s/he deems appropriate in accordance to the legal, regulatory and ethical requirements noted above. The Associate may determine the hours spent in the office and can determine whether or not s/he hires assistants to aid in the Associate's real estate business.
  10. The Associate agrees that if s/he wants to hire an assistant(s) to assist the Associate in the real estate business, PSCP will have the right to approve of the assistant(s). PSCP also has the right to disapprove of such a hire at PSCP's sole discretion. All assistants must agree to all policies and procedures of PSCP, including those listed in this ICAgreement. The Associate agrees to terminate the assistant if PSCP so demands.

11. Regarding all acts or omissions of any unlicensed assistant contracted by the Associate for which a claim is made against PSCP, the Associate agrees to indemnify PSCP and PSCP's Errors and Omissions insurance carrier from all losses, damages, expenses and costs associated with such a claim, including the cost of legal defense, and the Associate agrees to hold PSCP and PSCP's Errors and Omissions insurance carrier harmless from any such losses, damages, expenses, costs and claims which result from the acts or omissions of any unlicensed assistant contracted with by the Associate.
12. The Associate agrees to indemnify and hold harmless PSCP from and against any claim not covered under PSCP's Errors and Omissions insurance policy which arises from, or is associated with, any 1.) act or omission of Associate, or 2.) act or omission of a licensed assistant with whom the Associate contracts, including any losses, damages, expenses, costs and reasonable attorney's fees arising from, or associated with, such claim against PSCP.
13. PSCP and the Associate agree that PSCP provides no benefits to the Associate other than those set out in this Agreement. Specifically, PSCP provides no health, disability, maternity, life insurance, retirement or any other benefits like, or similar to, those traditionally associated with an employment relationship.
14. Except as otherwise noted, PSCP will not be liable to the Associate for any expenses incurred by him/her, or for any of his/her acts, nor shall Associate be liable to PSCP by any promise or representation unless specifically authorized by PSCP in a particular transaction. Suits for commission shall be maintained only in the name of PSCP. The Associate will be considered an Associate, not a servant, employee or partner of PSCP.
15. The Associate will not, after termination of this ICAgreement, use to his/her own advantage, or the advantage of any other person or corporation, any information gained from the files or business of PSCP.
16. After the termination of the ICAgreement, if an Associate sells a property to a customer who had been previously assigned to him/her by PSCP, or with whom the first contact occurred during the term of this Agreement, or obtained from any of PSCP's sources, or if a property is sold that was listed by PSCP through the efforts of the Associate, then the Associate agrees that the entire commission from that sale will be paid to PSCP. The commission will then be divided as determined by the Broker-in-Charge on a case-by-case basis . The condition contained in this paragraph shall survive the termination of this ICAgreement. All listings secured by the Associate while this Agreement is in effect shall be and will remain the property of PSCP after termination.

17. The Associate will pay any fines or assessments levied by the Durham Regional Association of Realtors (DRAR), MLS or other industry organizations as a result of actions or omissions of the Associate, including any dues, fines levied to PSCP because of the Associate's non-membership in the DRAR. The Associate shall also pay any fines or assessments levied by owner's associations or governmental bodies or agencies for violations of sign ordinances, rules or regulations.
18. The Associate will pay PSCP his/her proportionate share (calculated as set forth) of any legal fees, court awarded damages or negotiated financial concessions that PSCP is required to pay or decides, in its sole discretion, to pay because of any action or omission on the part of the Associate. The percentage used to calculate the Associate's proportionate share shall be the same percentage that was used to calculate the Associate's share of commission existing at the time of the Associate's closing on the property in question.
19. The Associate will not charge any items to PSCP through any vendors. Any necessary expense items that are approved in advance will be paid for by the Associate and will be reimbursed by PSCP on a periodic basis upon receipt of the appropriate bills from the Associate.
20. Any bills that arise in connection with a closing of a transaction and that remain unpaid after the closing will be the sole responsibility of the Associate and other Associates involved in the transaction.
21. This ICAgreement supersedes all prior oral or written agreements, if any, between the parties relating to the subject matter of this ICAgreement and constitutes the entire agreement between PSCP and the Associate. The provisions of this ICAgreement may not be amended, deleted nor modified in whole, or in part, without the express written consent of both PSCP and the Associate.
22. Each party represents and warrants to the other party that it has the full right and power to enter into and perform this ICAgreement.
23. Any written notice required or permitted under this ICAgreement will be sufficient if in writing, and if sent by registered or certified mail, postage prepaid to the address given below.

And to PSCP's office at:

3608 Shannon Road, Suite 100  
Durham, NC 27707

24. Nothing in this ICAgreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this ICAgreement on any person other than the parties to it and their respective successors and assigns.
25. In the event that any provision of the ICAgreement is deemed to be void, invalid or unenforceable, the remaining provisions of this ICAgreement will continue in full force. The waiver by any party to this Agreement or a breach by any other party of any provisions of this ICAgreement will not operate or be construed as a waiver of any subsequent breach by such party.
26. Except as otherwise required by any laws, rules and regulations pertaining to NC real estate Associates, any disputes between the parties arising out of this Agreement which cannot be resolved amicably shall be first mediated and, as a last resort, brought before the General Court of Justice of Durham County, NC, and the parties acknowledge and agree that said Court shall have personal jurisdiction over the parties.
27. The initial term of this ICAgreement will begin on the date noted and shall remain in effect, subject to #28 below, until the last day of the year in which the first anniversary of the execution date of the Agreement occurs.
28. After the initial term, the ICAgreement shall be automatically renewed for successive terms of one year unless either party gives the other party written notice of its election not to renew not less than thirty (30) days prior to the expiration of the then-current term.
29. Notwithstanding any other provision, either party may, in its sole judgment and discretion, terminate this ICAgreement, without cause and for no reason given or required, upon notice to the other party, provided that the rights of the parties to any commission which occurred prior to said notice shall not be divested by the termination of the ICAgreement. Under this Paragraph, notice from the Associate shall be sufficient only if it is in writing; notice from PSCP shall be sufficient if it is oral or in writing.
30. PSCP and the Associate agree that this ICAgreement is personal and neither it, nor any of the rights or duties provided, may be assigned by the Associate. PSCP shall have the right to assign this ICAgreement.
31. PSCP and the Associate agree that this ICAgreement shall be governed by the laws of the State of North Carolina without regard to North Carolina's choice of law provisions.

- 32. As a safety precaution, the Associate will provide to the company emergency contact information including name and telephone numbers as well as make, model and license plate number of cars used while selling real estate.
  
- 33. Under NC License law an agent may at the discretion of the Broker-in-Charge participate in a commercial property transaction associated with Peak Swirles & Cavallito Properties.

Agreed to, as of the date and year noted below:

**Peak, Swirles & Cavallito Properties, LLC**

By: \_\_\_\_\_

Authorized Officer

\_\_\_\_\_ Date

**Independent Contractor**

Associate:

\_\_\_\_\_ Date

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

City: \_\_\_\_\_ Zip: \_\_\_\_\_

Email: \_\_\_\_\_ Telephone: \_\_\_\_\_