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**From:** Sarah Benton [mailto:mlsservices@rivercounties.com]

**Sent:** Wednesday, September 30, 2009 3:38 PM

**To:** 'Susan Barnette'

**Subject:** RE: RETS Feed

Attached is the IDX agreement to be signed between you and your web designer. It basically says that this information you're giving them access to won't be misused. In it, you are the "Contractant" and they are the "Company." Once I receive the completed/signed agreement, I will get you set up. Please let me know if you have questions. Thank you!



*Sarah Benton*

MLS Administrator

River Counties Association of Realtors®

2070 Candies Lane NW

Cleveland, TN 37312

Phone: (423) 476-5912

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## RCMLS IDX CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made as of this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between \_\_\_\_\_ (“Contractant,” which term shall also include agents, employees, representatives, contractors, servers, web sites, networks and all others, to the full extent applicable), and McDougal Design, Cleveland TN (“Company”), (collectively the “Parties”).

### WITNESSETH:

WHEREAS, Company has a limited license to use certain proprietary information and data owned and copyrighted solely by the River Counties Multiple Listing Service (“RCMLS”), which information and data includes; but is not limited to, Multiple Listing Service® data (“MLS”) (all such proprietary and copyrighted information and data, including the MLS data, shall hereinafter be referred to as the “Data”);

WHEREAS, pursuant to the terms and conditions of Company’s license and contract with RCMLS with respect to the Data, a copy of which has been made available to the Contractant, the Company desires to engage Contractant in a manner that will permit access to the Data; and

WHEREAS, Contractant understands the proprietary nature of the Data and is willing, able and agreeable to keep the Data (including any and all parts and portions of it) confidential and secret and to not use the Data in any manner restricted or prohibited by the Company or by the license and contract which the Company has with RCMLS;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained and any other good or valuable consideration, the receipt and sufficiency of which is hereby irrevocably acknowledged by each of the Parties, the Parties hereto agree as follows:

### 1. CONFIDENTIAL INFORMATION

A. “Confidential Information” shall mean any and all Data; including, but not limited to, confidential technical data, trade secret, know-how or other confidential information disclosed by any party hereunder or by RCMLS in writing, digitally, orally, or by drawing or any other form. Contractant expressly agrees and understands that RCMLS is a third-party beneficiary hereunder.

B. Notwithstanding the foregoing, Confidential Information shall not include all Data and other information which: (i) is known to the Contractant at the time of disclosure or becomes known to the Contractant without breach of this Agreement; (ii) is or becomes publicly know through no wrongful act of the Contractant or any person or entity in any way related to or associated with the Contractant; (iii) is independently developed by the Contractant or any of its subsidiaries; (iv) is approved for release upon a prior written consent of both RCMLS and the Company; (v) is disclosed pursuant to judicial order, requirement of a governmental agency or by operation of law.

C. The Contractant agrees that it will not disclose any Confidential Information to any third party and will not use Confidential Information for any purpose other than for the performance of the rights and obligations hereunder strictly for the Company during the term of this engagement and at all times thereafter, without the prior written consent of both RCMLS and the Company. The Contractant further agrees that the Confidential Information shall remain the sole property of RCMLS and that Contractant will take all reasonable precautions to prevent any unauthorized disclosure of any and all of the Confidential Information by Contractant and all others. No license shall be granted by RCMLS or by the Company to the Contractant with respect to Confidential Information and Data disclosed to Contractant unless otherwise expressly provided in writing and signed by the duly authorized agent of RCMLS.

D. Upon the request of either the Company or RCMLS, the Contractant will promptly return all Confidential Information and Data furnished to Contractant and all copies and other forms thereof.

E. The Parties agree that all publicity and public announcements concerning the formation and existence of this Agreement shall be jointly planned and coordinated by and among the Parties. Neither Party shall disclose any of the specific terms of this Agreement to any third party without the prior written consent of the other Party and RCMLS, which consent shall not be withheld unreasonably. Notwithstanding the foregoing, any Party may disclose information concerning this Agreement as required by the rules, orders, regulations, subpoenas or directives of a court, government or governmental agency, after giving prior notice to the other Party.

F. If Contractant breaches any of its obligations with respect to confidentiality and unauthorized use of Confidential Information or Data hereunder, then both the Company and RCMLS (as a third-party beneficiary hereunder) shall be entitled to both equitable and legal relief to protect its or their interests therein; including but not limited to, injunctive relief, as well as money damages and all costs and fees associated therewith, notwithstanding anything to the contrary contained herein.

## **2. RELATIONSHIPS OF PARTIES**

Nothing in the Agreement shall be deemed to constitute, create, give effect to or otherwise recognize a partnership, joint venture or formal business entity of any kind; and the rights and obligations of the Parties shall be limited to those expressly set forth herein.

## **3. JURISDICTION/DISPUTES**

This Agreement shall be governed in accordance with the laws of the State of Tennessee. All disputes under this Agreement shall be resolved by litigation in the courts of Bradley County, Tennessee, including the federal courts therein and the Parties all consent to the jurisdiction of such courts, agree to accept service of process by mail, and hereby waive any jurisdictional or venue defenses otherwise available to it.

**4. AGREEMENT BINDING ON SUCCESSORS**

The provisions of the Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their heirs, administrators, personal representatives, successors and assigns.

**5. ASSIGNABILITY**

This Agreement and the rights and obligations hereunder are personal with respect to Contractant and may not be assigned by the Contractant by any act without the prior written consent of Company and RCMLS. Company shall, however, have the absolute, unfettered right to assign this Agreement to a successor in interest to Company or to the purchaser of any of the assets of Company.

**6. 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.

**7. 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.

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound hereby, have each caused to be affixed hereto its or his/her duly authorized hand and seal as of the date above written.

**CONTRACTANT:**

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**COMPANY:**

Signature: Terry L. McDougal

Print Name: Terry L. McDougal

Title: Co-Owner

Email Address: terry@mcdesign.com