

AGREEMENT OF ASSOCIATION AS AN INDEPENDENT CONTRACTOR

AGREEMENT made this _____ day of _____, _____ by and between
_____ (“Broker”) and _____ (“Associate”).

WHEREAS, Broker is engaged in business as a real estate broker duly licensed by the Commonwealth of Massachusetts; and whereas Associate is a real estate salesperson/broker duly licensed by the Commonwealth of Massachusetts; and

WHEREAS, it is deemed to be to the mutual advantage of Broker and said Associate to do business with each other in the manner agreed and under the terms and conditions set forth.

In consideration of the mutual promises and agreements set forth, Broker and Associate agree that:

1. **Relationship.** Associate shall be associated with Broker as an independent contractor and not as an employee. Associate shall retain sole discretion, judgment and control of the way in which Associate carries out listing, selling and other real estate brokerage services, except that Associate agrees to perform those activities in compliance with state law, rules and regulations, and according to Broker’s policies and procedures. Broker has the right to supervise Associate only to the extent necessary to comply with the Massachusetts General Laws, the rules and regulations of the Board of Registration of Real Estate Brokers and Salespersons and the provisions of this Agreement. This Agreement does not constitute a hiring by either of the parties and Associate shall not be an employee with respect to services and activities performed pursuant to this Agreement for federal and state tax purposes.
2. **Listings.** Broker agrees to make available to Associate its current listings and other information relating to prospective purchasers, sellers, landlord or tenants and to assist Associate in his/her work by rendering cooperation. Nothing in this Agreement shall be construed to require that Associate accept any particular listing or prospective listing suggested by Broker, nor shall Broker have the right or authority to direct Associate to see particular parties or restrict Associate’s activities to particular parties or particular areas.
3. **Efforts Of Associate.** Associate agrees to use best efforts to sell, lease or rent real estate listed with Broker, to solicit additional customers/clients and listings, and otherwise to promote Broker’s business for the purpose of deriving profit for Broker and Associate from their respective professional activities. Unless expressly agreed by Broker, Associate shall have no authority to withdraw or terminate any listing of Broker. Associate shall not act as escrow agent in any transaction and shall promptly remit to Broker any funds received.
4. **Conduct Of Business.** Associate understands that Broker is a member of the National Association of REALTORS®, the Massachusetts Association of REALTORS® and is a participant in the local multiple listing service and is subject to the rules, bylaws, codes and decisions of each of these organizations. Associate further understands that as a result of the Broker’s membership or participation in these organizations, the Associate agrees to abide by the rules, bylaws, codes, and decisions of these organizations and also agrees to utilize the services of these organizations for issues including, but not limited to, arbitration, mediations, grievances, and dispute resolution. Associate agrees to obtain and maintain membership in the National Association of REALTORS® during the pendency of this Agreement. Associate agrees to conduct business so as to maintain and to increase the good will and reputation of Broker. Associate agrees to perform duties according to the Broker’s policies and procedures and in accordance with Broker’s policy manual, as it may be amended from time to time by Broker.

Associate shall have no authority to bind Broker by any promise or representation, unless expressly authorized in a particular transaction.

5. Broker's Undertaking. Broker agrees to make available to Associate office space, local telephone service, fax machines and related equipment for Associate's use and agrees to provide manuals, forms, secretarial assistance, if available, and such other materials, equipment and services as is customary to the operation of a real estate brokerage office.

6. Fees. The fees to be charged customers and clients shall be determined by Broker, and Broker shall advise the Associate of any special contract relating to any particular transaction that Associate undertakes to handle. When the Associate performs any service whereby a fee is earned, the fee shall, when collected, be allocated between Broker and Associate as set out in Rider "A," entitled "Fee Schedule," which is incorporated by reference. In the event of special arrangements with any client or Broker or Associate on property listed with Broker or controlled by Associate, a special allocation of fees may apply, such rate of division to be agreed upon in advance by Broker and Associate. The division and distribution of fees shall take place as soon as practicable after collection of such commissions from the party or parties for whom the services may have been performed. In no event shall Broker be personally liable to Associate for any uncollected fee, but when the fee shall have been collected from the party or parties for whom the service was performed, said Broker shall hold the same in trust for Associate and itself to be divided according to the terms of this Agreement.

7. Resolution Of Disagreement. (a) Associate v. Associate. In the event, that two or more duly licensed associates participate in a transaction or perform services for which a fee is payable, the amount of the fee above the amount due Broker shall be divided between the associates according to agreement between them or if no such agreement is reached, according to such allocation as the Broker deems appropriate. Broker may decline to make such allocation, whereupon Associate agrees to mediate the matter by a mediator selected by Broker. If the mediation is unsuccessful, Associate agrees to arbitrate the matter according to procedures which are analogous to those set forth in the National Association of REALTORS® Code of Ethics and Arbitration Manual before a panel of three (3) impartial brokers/salespersons selected by Broker. (b) Associate v. Broker. Any dispute between Associate and Broker shall be mediated as set forth above. If such mediation is unsuccessful, such dispute shall be arbitrated by a panel of three (3) impartial persons selected by mutual agreement and then decided according to the other procedures described above.

8. Expenses. Broker shall not be liable to Associate for any expenses incurred by Associate or for any of Associate's acts or omissions nor shall Associate be liable to Broker for general office expenses or for any of Broker's acts or omissions. Associate shall pay all costs of a real estate license, continuing education, long distance and cellular telephone, business cards and professional association dues. Broker and Associate agree to coordinate advertising. Broker agrees to bear the expense of all advertising that Broker deems necessary to the operation of the business. If the Associate wishes to utilize advertising over and above that determined necessary by Broker, then the responsibility for payment for advertising will be determined by mutual agreement. In all cases, however, advertising is to be submitted in content, design and format approved by Broker. Associate shall supply Broker with satisfactory evidence of adequate automobile liability insurance. In the event that a claim is asserted against Broker or Associate with regard to activities or services of the Associate pursuant to this Agreement, Broker shall have sole right, duty and authority to control the defense and settlement of such matter and each party shall bear the cost, expense, award or indemnity of such claim in the same proportion as would be provided for the division of fees. Where such a claim is covered by applicable insurance, such division of expense shall apply to the deductible portion of the policy, if any. Broker shall have sole right, duty and authority to control efforts to collect fees. All expenses incurred in the collection of, or the attempt to collect a fee, shall be paid by the parties in the same proportion as provided for the division of fees.

9. Release And Waiver. Associate waives and releases Broker from any and all claims Associate may have or ever have for work related injuries or unemployment. Associate acknowledges that because of Associate's independent contractor status, Associate is not entitled to receive worker's or unemployment compensation pursuant to the Massachusetts General Laws and expressly waives any right thereto.

10. Termination. This Agreement may be terminated in writing by either party with or without cause at any time upon three (3) days' notice to the other. The rights of the parties to any fee in a pending transaction, for a pending listing or for a pending exclusive buyer agency agreement shall be as follows: In any transaction which is "under agreement" on the date of termination Associate shall be due _____ percent of the otherwise agreed upon fee, but Broker may authorize payment of a larger fee. Where Associate has listed a property (or procured an exclusive buyer agency agreement) and the transaction is placed under agreement after termination, but during the listing period in effect on the date of termination, Associate shall receive _____ percent of the otherwise agreed upon fee. Each of the aforesaid reductions in fees is in recognition of the likelihood that others may be required to perform services with regard to the transaction in the absence of the Associate. No fee shall be due Associate as listing agent where a property is sold during any extension of a listing or buyer agency agreement which extension commences after termination nor shall a fee be due Associate as selling agent where a property is placed under agreement after termination. Upon termination Associate shall promptly inform Broker of the status of all prospects, leads, listings, negotiations and transactions.

11. Proprietary Information. Associate shall not, after termination of this Agreement, use to Associate's own advantage, or disclose or use for the advantage of any other person or corporation, any confidential or proprietary information obtained from Broker and shall return to Broker all documents or materials relating to listings, customers and clients, prospects, address lists, forms and other proprietary material of Broker or copies of same in whatever form within twenty-four (24) hours. All information and files are and shall remain the property of Broker. Broker shall be entitled to injunctive relief for any violation.

12. Entire Agreement/Governing Law. This Agreement constitutes the entire agreement of the parties. It shall be governed by Massachusetts law.

Signed this _____ day of _____, _____.

[Fee Schedule should be attached as Rider A before signing]

Broker or Authorized Representative

License No. _____

Associate

License No. _____

(print name, home address and telephone below)

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