

**::SAMPLE:: INDEPENDENT CONTRACTOR AGREEMENT ::SAMPLE::**

THIS AGREEMENT, (the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2014 by and between BROKERAGE with offices located at ADDRESS (the "Broker") and \_\_\_\_\_ having an address at \_\_\_\_\_ (the "Associate").

WHEREAS, Broker is a duly licensed real estate broker pursuant to Article 12-A of the Real Property Law ("Article 12-A") and Associate is a duly licensed real estate salesperson or real estate associate broker pursuant to Article 12-A; and

WHEREAS, Broker desires to engage Associate as an independent contractor and Associate desires to be associated with Broker as an independent contractor in the real estate brokerage business pursuant to the terms and conditions set forth below; and

WHEREAS, Broker and Associate have entered into this Agreement freely and without duress.

NOW THEREFORE, in consideration of the terms, conditions and mutual covenants contained herein, and other good and valuable consideration the receipt of which is hereby acknowledged, Broker and Associate agree as follows:

1. Broker hereby engages Associate as an independent contractor associated with Broker pursuant to Article 12-A and Associate shall be treated as an independent contractor for all purposes, including, but not limited to, federal, state and local laws, income taxation, withholding tax regulations, unemployment insurance and workers compensation coverage.
2. Broker and Associate shall comply with the requirements of Article 12-A and the regulations pertaining thereto. Such compliance shall not affect Associate's status as an independent contractor nor should it be construed as an indication that Associate is an employee of Broker for any purpose whatsoever.
3. This Agreement shall create an independent contractor relationship and does not create an employer-employee, joint venture, or partnership relationship. Accordingly, Associate shall be responsible for filing its own federal, state and local income tax returns and for paying all required federal, state and local income and withholding taxes relating thereto as required by law. Associate shall be responsible for procuring any required Worker's Compensation insurance coverage, at Associate's soles cost and expense, and shall not be covered under New York State Unemployment Insurance for the services rendered under this Agreement. This Agreement may be terminated by either party at any time.

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4. Associate (a) shall be paid a commission on his or her gross sales, rentals, and referrals, if any, without deduction for taxes, which commission shall be directly related to sales or other output; (b) shall not receive any remuneration related to the number of hours worked; (c) shall not be entitled to draw against commissions; and (d) shall not be treated as an employee with respect to such services for federal, state, and local tax purposes.

5. Associate shall be permitted to work from his or her own residence, office, or Broker's office, and to work any days and hours he or she chooses.

6. Associate shall be free to engage in outside employment subject to compliance with Article 12-A and the regulations pertaining thereto.

7. Associate may use Broker's office facilities in connection with Associate's engagement set forth herein. Associate must provide for their own supplies. Associate's expenses, including but not limited to, travel, automobile and entertainment expenses, shall be paid for solely by Associate.

8. This Agreement and the independent contractor relationship created hereunder may be terminated by either party at any time upon notice given to the other pursuant to the terms herein.

9. Associate acknowledges that all (i) listing files, (ii) sales files, (iii) correspondence, (iv) papers, (v) documents, (vi) records, (vi) client information, (vii) computer data and content and (viii) other materials and information maintained by Broker, or furnished or otherwise made available to Associate by Broker (collectively, the "Proprietary Information"), are the proprietary business information and property of Broker and shall be kept strictly confidential by Associate. After termination or expiration of this Agreement, Associate shall return the Proprietary Information to Broker and Associate agrees not use such the Proprietary Information to Associate's advantage or to the advantage of any other person or entity. The confidentiality of proprietary information shall survive any termination of association between Broker and Associate.

Associate acknowledges that all information input by Associate or Broker into Broker's computers and/or computer server systems becomes the property of Broker upon such input. Associate hereby assigns to Broker, irrevocably and without any need for further consideration, all of Associate's right, title and interest in, and to, any copyright or other intellectual property rights in any property listing posted by Associate on or in Broker's computer system, or provided to the REBNY Residential Listing Service (RLS) (the "Assignment"). Such right, title and interest shall be deemed assigned as of the moment of creation without any further action on the part of either party. Associate agrees to execute and deliver to Broker, at anytime during or after the term of this Agreement, any documents or instruments necessary to confirm the Assignment. Associate agrees to take any action necessary to enable Broker to secure, protect, enforce and defend its copyrights in such data and/or content.

10. Associate acknowledges that Broker maintains membership in the Real Estate Board of New York ("REBNY") and the REBNY Residential Listing Service ("RLS"). Associate, during the term of this Agreement, agrees to maintain his or her own individual membership in REBNY and to adhere to REBNY's rules, resolutions and Code of Ethics, as well as the rules and regulations of the RLS.

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Associate agrees to comply with all federal, state and local laws and regulations including, but not limited to, “fair housing” laws, “do not call” laws and all laws pertaining to the real estate brokerage and sales business.

11. Broker may offer Associate an opportunity to attend training programs and periodic sales meetings in order to familiarize Associate with Broker’s procedures, sales and marketing techniques and recent developments pertaining to real estate law and regulations, but attendance at such programs and meetings shall be optional.

12. Associate has received a copy of Broker’s Non-Discrimination Policy (Exhibit B) and agrees to abide by same.

13. On any printed or digital advertising or promotional materials, including all BROKER forms, Associate shall include the Equal Housing Opportunity logo and the text,

“BROKER is a licensed real estate broker committed to providing equal housing opportunity. We do not discriminate on the basis of race, color, national origin, religion, sex, familial status, disability, age, marital status, military status, sexual orientation, gender identity, source of income, alienage/citizenship status, domestic partnership status, lawful occupation, and any other characteristics protected by law.”

14. Associate has received a copy of Broker’s Non- Harassment / Sexual Harassment Policy (Exhibit D) and agrees to abide by same.

15. Associate shall abide by all federal, state and local advertising rules and regulations including listing their name, license status, company name and address, email address and telephone number on every listing or advertisement.

16. Associate has received a copy of Broker’s Advertising Regulations (Exhibit E) and agrees to abide by same.

19. Any notice required to be given under this Agreement shall be given in writing by certified mail addressed to the parties at the addresses set forth above, or such other address as the parties may designate.

20. A party’s failure to strictly enforce this Agreement or any of its provisions or any default hereunder shall not be construed as or operate as a waiver of such party’s right to demand strict performance of this or any provision or any default under this Agreement. Associate agrees not to login or engage unauthorized entry to any database or repository of proprietary information for which Salesperson or Associate Broker does not have written authorization, including, but not limited to, the database or repository of any broker with whom Salesperson or Associate Broker was previously affiliated.

18. Any dispute between or among Associate and Broker shall be heard before a panel of Arbitrators of the Real Estate Board of New York in New York City.

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21. This Agreement shall be interpreted in accordance with the laws of the State of New York. If any portion of this Agreement is deemed invalid or void at law, this Agreement shall be construed as though such portion or provision had not been inserted and the remainder of this Agreement shall remain in full force and effect.

22. This Agreement embodies and constitutes the entire understanding between the parties with respect to the independent contractor engagement contemplated herein, and all prior agreements, understandings, representations and statements, oral or written, are merged into this contract. Neither this contract nor any provision hereof may be waived, modified, amended, discharged or terminated except by an instrument signed by the party against whom the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

23. This Agreement shall be binding upon and inure to the benefit of Broker and Associate and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

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

BROKER ASSOCIATE

Initial \_\_\_\_\_

See Exhibit A for information as to commissions

**BROKER**

**EXHIBIT A TO INDEPENDENT CONTRACTOR AGREEMENT**

**Commissions**

BROKER sets forth the following terms and conditions for payment of commissions to its Senior Salespersons and Senior Associate brokers and Associate Salespersons within the structure of the BROKER Senior System Rental Program.

- In all circumstances when a Commission is earned and collected, BROKER shall receive not less than 50% of the Commission.
- The Senior Salesperson or Senior Associate Broker and those working under the senior salesperson or Senior Associate Broker (“Associate Salesperson”) who worked on the specific deal shall share in distribution of the remaining 50% of commissions after any applicable deduction of corporate listing fees and/or corporate listing expenses.
- Senior Salesperson or Senior Associate Broker shall receive 50%-60% of the remaining 50%, after any applicable deduction of corporate listing fees and/or corporate listing expenses.
- Associate Salespersons shall receive 40%-50% of the remaining 50%, after any applicable deduction of corporate listing fees and/or corporate listing expenses.
- In the event that a Senior Salesperson, Senior Associate Broker or Associate Salesperson leaves the employ of BROKER, All agents involved in the transaction shall collectively receive a maximum of 50 % of commissions.
- All of the foregoing is subject to modification on a deal by deal basis in accordance with the sole judgment of BROKER’s Manager, and BROKER’s procedures and policies.

In the event that an agent or associate broker becomes “absent” from a deal prior to the deal’s conclusion, the commission earned shall be reasonable apportioned by the Office Manager and Sales Director of BROKER.

**Split Level Incentives for Sales Agents**

1. Commission Splits:

For the calendar year, full time agents will receive the following for consummated sales of residential and/or commercial properties. This does not apply to rental commissions or new developments exclusively represented by BROKER. These splits apply from the date closed forward and are not retroactive.

| <u>Gross Commissions to Company</u> | <u>Calendar Year</u><br><u>% to Agents</u> |
|-------------------------------------|--------------------------------------------|
| \$1 - \$165,000                     | 50%                                        |
| \$165,001 - \$225,000               | 55%                                        |
| \$225,001 - \$300,000               | 60%                                        |
| \$300,001 - \$395,000               | 65%                                        |
| Over \$395,000                      | 70%                                        |

Gross commission is defined as commission actually received minus referral fees or commissions paid to co-brokers.

The schedule is on a calendar year basis, and closing dates will determine the appropriate amount of commission. The incentive schedule applies to all monies earned for the company, including exclusive listing commissions and referrals. These commissions are subject to applicable listing fees.

All referral commissions and fees to the outside will be charged off the top of each gross commission. Any agent-to-agent referral fee within BROKER will be deducted from the agent's portion of the commission only.

Cash incentives or bonuses paid by the buyer or seller are considered to be part of the gross commission. A cash incentive or bonus is any money received in excess of the standard percentage charged by the company and any other fees received in the course of business.

If an agent ends the calendar year at a 55%, 60%, 65% or 70% split level, he/she will revert backwards 5% at the beginning of the next calendar year.

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For example:

- To begin the year 2011 on a 55% split, an agent's gross commissions must be at least \$225,000 in the prior year.
- To begin the year 2011 on a 60% percent split, an agent's gross commissions must be at least \$300,000 in the prior year.
- To begin the year 2011 on a 65% split, an agent's gross commissions must be at least \$395,000 in the prior year.

Incentive splits will be paid on all monies brought into the company by an agent.

## 2. Commission Payment to Agents No Longer Associated With BROKER

In the event a real estate agent's association with BROKER ends for any reason, their prior commissions not paid will revert to the 50/50 level if they are on any level higher than 50%. Listing fees will not be paid once an agent is no longer associated with BROKER.

### Exclusive Commission Rates

#### 1. Sales – Commission Rates

The standard company commission rate is 6%. Any exceptions must be approved by the management. No exclusive commissions will be paid on apartments listed at less than 6% commission unless previously approved by the sales manager. A salesperson is not permitted to negotiate the company's commission. Any exception must be approved by a manager.

#### 2. Rentals – Commission Rates

##### A. Tenant Rental Commissions

The following is BROKER commission structure of all rental transaction.

| <u>Rental Term:</u>                | <u>Commission:</u>                                                            |
|------------------------------------|-------------------------------------------------------------------------------|
| Less than two months               | ½ month's rent                                                                |
| Two months up to six months        | 1 month's rent                                                                |
| Over six months and up to one year | 15% of the first annual rent                                                  |
| Over one year                      | 15% of the first annual rent                                                  |
| Co-Brokes                          | 15% of the first annual rent<br>(to be split 50/50 with the cooperating firm) |

##### B. Corporate Discount Commission Rate

12% of the first annual rent or 13.5% based on a co-broke or exclusive that doesn't recognize the discount policy.

Commercial Office and Retail Leasing Commission Schedule:

On the rental for all or any fraction of:

|                                      |    |                                             |    |
|--------------------------------------|----|---------------------------------------------|----|
| The first, second, third years ..... | 5% | The fourth, fifth, sixth years .....        | 4% |
| The seventh through tenth years..... | 3% | The eleventh through thirteenth years ..... | 2% |
| The fourteenth year and beyond.....  | 1% |                                             |    |

For key-money, selling furniture, fixtures and/or goodwill (retail and office).....10%

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## **EXHIBIT B - NON-DISCRIMINATION POLICY**

As part of BROKER, continuing effort to ensure compliance with federal, state and local anti-discrimination laws, we would like to take this opportunity to remind you of BROKER's Fair Housing Policy. It is important for each BROKER employee, agent, associate broker, salesperson and independent contractor to review his or her own actions in light of these requirements and for everyone to keep in mind the importance of treating all persons equally.

It is the policy and practice of BROKER not to engage in or assist others to engage in housing discrimination. Consistent with that policy, we remind you that the anti-discrimination laws of the United States, New York State and New York City are quite specific in the area of housing and in conformance with those laws, you must not engage in any of the following conduct during the course of your work with BROKER:

1. Refuse to show, rent, negotiate for the rental of , or otherwise make unavailable or deny, rental housing to any person because of disability, source of income (including SSI, SSD, Section 8, and other rental vouchers, government programs, or public benefits), race, color, religion, sex, familial status, national origin, marital status, domestic partnership status, age, sexual orientation, alienage or citizenship status, lawful occupation, or military status (each is a "prohibited basis");
2. Discriminate against any person in the terms, conditions or privileges of a rental or in the provision of services or facilities in connection with a rental because of a prohibited basis;
3. Make any verbal or written statement, including advertising, with respect to the rental of housing that indicates any preference, limitation or discrimination concerning a prohibited basis;
4. Represent to any person because of a prohibited basis that any dwelling is not available for inspection or rental when such a dwelling is in fact so available.

Any action you take because of a prohibited basis that has the effect of making housing unavailable to persons protected under these laws constitutes a violation of federal, state, and local laws.

BROKER is firmly committed to the goal of Fair Housing. You should understand that any violation of this Non-Discrimination Policy will lead to discipline, up to and including termination of your contract with BROKER, LLC.

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**EXHIBIT C - ACKNOWLEDGEMENT AND AGREEMENT**

I acknowledge that I have received and read BROKER's Non-Discrimination Policy. I agree to comply with the terms of the Policy and with all federal, state and local housing discrimination laws.

DATE: \_\_\_\_\_

EMPLOYEE / AGENT NAME (Print) \_\_\_\_\_

EMPLOYEE / AGENT SIGNATURE \_\_\_\_\_

Initial \_\_\_\_\_

## **EXHIBIT D - NON-HARASSMENT/SEXUAL HARASSMENT POLICY**

BROKER, LLC will not tolerate harassment/sexual harassment of any employee, client, or independent contractor by a supervisor, fellow employee(s) or independent contractor(s), or by any third party individuals on the Company premises or at "off-site" locations.

The Company will not tolerate physical or verbal conduct that acts to create a hostile work environment. Behavior that is offensive, intimidating or abusive in nature, especially behavior that relates to such things as an individual's religion, age, sex, national origin, race, color, or disability is prohibited.

These prohibited acts include racially or ethnically degrading statements, sexual advances and proposals or the threat that a refusal of sexual proposals will adversely affect employment or association.

Harassment may include a range of subtle and not so subtle behaviors and may involve individuals of the same or different gender, color, race, national origin, religion etc. Depending on the circumstances, the Company considers the following conduct to represent some, but certainly not all, of the types of acts that may be deemed as harassment and thus, are prohibited.

### A. Physical Assault of a Sexual Nature, such as:

Intentional physical conduct that is sexual in nature. Depending upon the circumstances, this may include touching, pinching, patting, grabbing, brushing against or poking another's body. In addition, any kind of sexual battery or attempt to commit this type of assault is also prohibited.

### B. Sexual Advances, Propositions or Other Sexual Comments, such as:

i. Sexually oriented gestures, noises, whistling, remarks, jokes, or comments about a person's sexuality

or sexual experience or directed at or made in the presence of any employee or independent contractor;

ii. Preferential treatment or promise of preferential treatment to an employee or independent contractor for submitting to sexual conduct, including soliciting or attempting to solicit any employee or independent contractor to engage in sexual activity for compensation or reward; and

iii. Subjecting, or threatening to subject an employee or independent contractor to unwelcome sexual attention or conduct or intentionally making performance of the employee's or independent contractor's job more difficult because of that employee's or independent contractor's gender.

### C. Discriminatory Comments, Displays or Publications in the Workplace, such as:

i. Verbal or written communications that could be interpreted as slurs, slang words, threats or insults

directed toward a particular individual or group of individuals.

ii. Displaying, bringing in or possessing in the workplace pictures, posters, calendars, cartoons, cards, graffiti, objects, promotional materials, reading materials, or other materials that are threatening, demeaning, insulting, hostile, sexually suggestive, or pornographic.

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iii. Displaying signs or other materials purporting to identify or segregate an employee or independent contractor by race, color, national origin, age, religion, gender (other than restrooms or locker rooms) etc. in any area of the workplace.

D. Retaliation for Harassment Complaints, such as:

i. Disciplining, changing work assignments, providing inaccurate work information to, or refusing to cooperate or discuss work related matters with any employee or independent contractor because that they have complained about or resisted harassment, discrimination or retaliation; and

ii. Intentionally pressuring, falsely denying, lying about or otherwise covering up or attempting to cover up any conduct described in this policy.

If any employee or independent contractor feels that he/she is a victim of any form of harassment, a verbal or written complaint is to be filed with their immediate Supervisor, the Office Manager or any person listed as a contact person for prompt investigation. If the complaint is made verbally or in writing, the contact person to whom the complaint is made to will promptly investigate using the written complaint investigation form. This method will help to promptly answer and resolve any problems that may exist. It is our intent to investigate the complaint promptly and to take whatever remedial action is deemed appropriate, which may include termination of employment. All complaints will be treated with confidentiality, to the extent possible, and no disciplinary action will be taken against any employee who files a complaint in good faith.

#### **WORKPLACE VIOLENCE**

Violence or threats of violence in the workplace will not be tolerated. Pushing, choking, fighting, threats or intimidating acts of violence against any employee, employee's personal property or Company property is forbidden.

If an employee feels he or she is a victim of violence in the work environment, the employee should file a written complaint with his/her supervisor, the Office Manager or any person listed as a contact person at the end of the handbook. Filing a complaint will allow the Company to undertake an immediate investigation of the complaint and take whatever remedial action is deemed appropriate, which may include termination of employment.

All complaints will be treated on a confidential basis to the extent possible. No disciplinary or retaliatory action will be taken against any employee filing a complaint in good faith. The Company is committed to trying to provide a safe work environment for its employees. The full Workplace Violence program is contained in the Safety Plan.

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## **SUPERVISORY OFFICERS FOR RECEIVING COMPLAINTS**

BROKER LLC maintains an "Open Door" policy to its Independent Contractors and Employees to assure its commitment to a hospitable and harassment free work environment. BROKER also maintains confidentiality of all complaints. Accordingly, in the event of any complaint, the following persons can be contacted to follow up on issue related to workplace issues:

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## **EXHIBIT E - ADVERTISING REGULATIONS**

BROKER agents must maintain the highest level of clarity, transparency and truth in all of their advertising.

Advertisements are defined as “Any promotion and solicitation related to licensed real estate activity including advertising through mail, telephone, websites, email, electronic bulletin boards, business cards, signs, billboards and flyers.”

BROKER agents may advertise only property that is actively listed with the firm. Advertising expired listings, making inaccurate descriptions or “bait and switch” advertising are strictly prohibited. All advertisements must include an honest and accurate description of the property to be leased or sold and must not be misleading. Advertisements that state that a property is located in the vicinity of a certain geographical area or territory must also include the name of the geographical area or territorial subdivision in which the property is actually located.

Ads must always indicate that the advertiser is BROKER, a licensed real estate broker, and provide either the full address or office telephone number of the BROKER office where the agent is associated.

All advertisements must be approved by BROKER Management prior to publication.

Team names in advertisements must include the full licensed names of the licensed salespeople or associate brokers who are part of the team. Also, the team name must be immediately followed by “at BROKER”

Also very important in this section - “the use of a term other than ‘team’ such as ‘associates’ or ‘group’ is prohibited.”

An example of a correct team representation would be:

John Doe  
Licensed Real Estate Salesperson  
The John Doe Luxury Properties Team at BROKER  
ADDRESS OF BROKERAGE

Every ad, including email signatures and online ads, must correctly and accurately state the type of license held by the person named in the ad. The only types of license status are Licensed Real Estate Salesperson or Licensed Associate Real Estate Broker.

Although a team may use a different logo than BROKER's logo provided BROKER's logo and full name also appear in the advertisement.

Photographs may not be reproduced without the express prior written consent of the owner of the photograph. Photographs must represent that actual apartment advertised, or carry the disclaimer, "Model Apartment is

pictured, demonstrating similar finishes and features to property advertised."

An advertisement that references or includes information about a property that is not listed with the advertising

broker or was not sold by the advertising broker must contain this disclaimer:

"This advertisement does not suggest that the broker has a listing or has done a transaction in this property or properties."

BROKER Agents who create or maintain their own websites or blogs must do so with the supervision and approval of BROKER. Agent websites must have a link to BROKER EMAIL. The BROKER logo must appear on every page of any Agent website along with the address and office telephone number of the BROKER office

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Location where the agent is licensed. BROKER reserves the right to withhold or deny approval of agent websites that are not in compliance with advertising laws.

Business cards must include the agent's name as it appears on their license, their license status and the address and telephone number of the BROKER office where the agent is licensed.

BROKER Agents must comply with all Federal, State and Local laws with respect to Fair Housing in advertising.

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