

## BROKER/SALES ASSOCIATE AGREEMENT

This AGREEMENT is made this 1st day of June, by and between Windermere Real Estate/S.C.A., Inc. ("Broker"), and Paul Stacey ("Associate"). The Parties hereby agree as follows:

1. **GENERAL.** Each party shall at all times hold a real estate license as required by the real estate licensing authority of the state in which Broker's office is located. In the event that either party's license expires, or is suspended or revoked by the state licensing authority, the party shall immediately so notify the other party in writing. Broker maintains a real estate office, equipped, furnished and staffed to serve the public and the parties. Both parties agree to exert best efforts to promote the reputation and business of Broker and Associate.

2. **STATUS OF THE PARTIES.** The parties agree that Associate is an independent contractor, is not an employee of Broker and specifically will not be treated as an employee for Federal tax purposes. Broker shall have no responsibility for withholding, reporting or paying Associate's federal, state or local taxes, (including but not limited to Federal income tax, Social Security and unemployment taxes or insurance), which shall be Associate's sole responsibility. Exception: Broker shall withhold and pay state Business and Occupation (B & O) taxes on Associate's share of commissions and fees where and when applicable. Broker and Associate shall each be responsible for payment of their proportionate share of state industrial insurance (worker's compensation), medical aid and supplemental pension fund portions of state industrial insurance where applicable.

3. **BROKER'S RESPONSIBILITY.** Broker shall provide Associate with a desk, office equipment, local telephone service, receptionist, business secretarial assistance, office advertising, membership in listing and/or referral services selected by Broker, and use of sales materials.

Associate, through personal contact as well as office meetings, shall have the benefit of Broker's guidance, suggestions and experience in matters of listings, sales, financing, current trends and general aspects of the real estate business.

Broker agrees to promote the image of the parties and office by establishing and maintaining rules regarding office use, days it will be open, advertising, listing and selling procedures and related matters. Broker reserves the right to establish, and Associate agrees to comply, with office procedures for inquiries, leads and similar sales opportunities. Broker may, at his/her discretion, modify any such policies and procedures at any time. Modifications will be communicated to Associate within a reasonable time frame.

#### 4. ASSOCIATE'S RESPONSIBILITIES.

**Legal Compliance:** Associate agrees to maintain current knowledge of all laws governing licensed real estate salespersons and brokers, and agrees to strict adherence at all times.

**Documents and Funds:** Listings, sales and other agreements obtained by Associate shall be in the name of, and the property of, Broker. All wholly or partially executed instruments, documents and deposits shall be immediately delivered to Broker's possession in accordance with applicable laws.

**Advertising/Marketing:** Associate agrees to comply with all laws, local ordinances, rules and regulations (including Realtor® Association and MLS rules) regarding restrictions on advertising and signs, and to use only advertising, signs, brochures or other solicitation materials approved by Broker in advance of their use. Broker's authorization is required on all personal marketing materials and all other forms of advertising in any media whatsoever, including without limitation newspapers, magazines, telephone book listings ("white page" business listings and yellow page listings or advertisements), billboards, television, radio, buses, grocery carts, Internet web sites, other online solicitation (e.g. mass e-mail), etc., prior to use by Associate.

Associate agrees to use Broker's legally licensed name designation on all advertising and marketing materials as required by law. Associate also agrees to follow all Windermere policies, together with all policies and procedures published by Broker, concerning the Windermere logo, advertising, signage, and any related topics.

Associate shall not act as a loan officer or as a representative for any mortgage broker, lender, closing agent, or title company. Such activities are not covered by any insurance purchased or maintained by Broker, and

Associate shall defend, indemnify, and hold Broker harmless from any and all claims against Broker arising from and/or relating to such activities.

Associate shall not engage in any property management activities without Broker's express written permission, and Associate shall defend, indemnify, and hold Broker harmless from any and all claims against Broker arising from and/or relating to Associate's involvement in such activities.

Use of Windermere Name: Associate understands that the name "Windermere" and the Windermere logo are registered trademarks of Windermere Services Company. Other names and logos used by Broker (including, without limitation, Premier Homes/Estates/Properties; Sea, Sun & Snow; Lifestyles Northwest, etc.) are also protected by trademark law at the state and/or federal level. During the term of this Agreement Associate is granted a limited, non-exclusive license to use the Windermere marks in connection with Associate's real estate business, provided that Associate at all times complies with all written policies and procedures governing their use. Such policies may be adopted from time to time by Windermere Services and/or Broker, and may be changed at any time without notice. Associate shall not, without the express written authorization of Broker, allow any third person or entity to use any of the marks, in any form, for any reason; nor shall Associate do anything to imperil or undermine the good will and public esteem of Broker, the brokerage, or the 'Windermere' trade name and marks. Misuse of the Windermere name or trademarks shall constitute a material breach of this agreement, and may be grounds for immediate termination.

Standards of Practice: Associate shall control his/her own work hours and shall have no required floor time. Associate shall conduct business in a professional and courteous manner, acting with respect toward other agents, Associates and clients, and shall make a good faith effort to resolve differences quickly through Broker or Associate's manager.

Though subject to change from time to time, Associate shall abide by Broker's most current "Standards of Practice" guidelines (a copy of which is attached for reference), and agrees to adhere to published grievance or arbitration hearing procedures in the event of disputes involving other Windermere Associates and Brokers.

**5. COMMISSION AGREEMENT.** Windermere's Commission Schedule is attached hereto and incorporated in this agreement by reference and summarizes commission shares and conditions.

**6. MEMBERSHIPS.** Broker and Associate are members of the National and State Association of Realtors® and subscribe to one or more multiple listing service(s) (MLS). Associate shall pay all Realtor® and MLS dues and fees. Associate agrees to abide by the Association of Realtors® Code of Ethics, as well as any MLS rules and regulations.

**7. EXPENSES.** Broker shall not be liable to Associate or third parties for expenses incurred by Associate unless otherwise agreed to in writing. Associate shall be responsible for and shall promptly pay all of Associate's own expenses. Though subject to change from time to time, the "Windermere's Expense Schedule," which is attached hereto and incorporated herein by reference, summarizes most goods and services generally used by Associate and specifies who is responsible for payment.

Associate hereby authorizes Broker, at Broker's sole discretion, to advance payment of any expenses, dues, fees and charges (including Association of Realtors® dues), whether for accounting convenience of Broker or third party, or because Associate has failed to make such payment promptly. Associate agrees to reimburse Broker for all amounts advanced as well as for all B&O taxes (where applicable) assessed to Broker on reimbursements, advances, or prepayments made on Associate's behalf. Amounts advanced shall be deducted from Associate's first available commissions after payment. Balances remaining after commission deductions shall be due on the 7<sup>th</sup> day of each month. If Associate fails to pay remaining balances by the deadline, then Broker may assess a late fee. All balances that remain unpaid thirty days after becoming due shall accrue interest at the rate of 18% until paid.

**8. WINDERMERE FOUNDATION.** Associate agrees that a portion of the gross listing and/or selling commission from each transaction shall be allocated to the Windermere Foundation (a charitable non-profit organization).

**9. INSURANCE.**

**Automobile Insurance:** At all times, Associate shall have automobile and property damage insurance covering all motor vehicles that Associate uses or may use in Associate's business. The insurance shall have limits of not less than \$250,000/\$500,000/\$100,000 or a combined single limit of \$500,000. Associate agrees to provide Broker with proof of coverage immediately upon request. Associate shall notify Broker promptly of any and all business-related accidents, losses or incidents that result in or are likely to result in a claim against such insurance.

**Personal Property Insurance:** Broker's property insurance does not cover loss of or damage to Associate's personal office equipment and belongings (including, without limitation, computers, cellular telephones, PDAs, etc.). Associate is encouraged to purchase personal property insurance at his or her own expense. Associate agrees to hold Broker harmless for any loss of or damage to Associate's personal property, whether such damage or loss occurs because of natural disaster, theft, or any other reason whatsoever.

**Errors and Omissions Insurance:** Broker maintains Errors and Omissions (E&O) insurance covering claims arising from Associate's conduct in the provision of professional real estate services while Associate is licensed to Broker. On an annual basis, Broker renews its existing policy or purchases a new one. Associate agrees that the policy in effect upon execution of this Agreement is incorporated herein as if fully set forth. Associate further agrees that each renewal or new policy shall be incorporated automatically herein. Unless agreed otherwise in writing, Associate shall indemnify Broker for the full amount of the E&O deductible set forth in the policy.

Associate shall be familiar with and shall comply with all terms of Broker's E&O policy. Broker will make the policy available for Associate's review. Associate understands that certain types of conduct and claims (including, without limitation, intentional misconduct) are routinely excluded from coverage and that exclusions and endorsements may change when E&O policies are renewed or changed.

Associate understands that Broker's E&O insurance does not cover Associate's conduct or activities as, in connection with, or on behalf of mortgage brokers, lenders, title companies, settlement service providers, or providers of other types of related real estate services. Associate shall not enter into any agreement, contract, or relationship for which compensation in any form relating to such real estate services is paid directly or indirectly to Associate.

With respect to any and all uninsured and/or denied claims arising from or related to Associate's conduct, Associate agrees to indemnify Broker for all costs and expenses incurred by Broker, including, without limitation, attorney fees, judgments, fines, and awards.

**10. ASSOCIATE/PRINCIPAL TRANSACTIONS.** Associate shall not represent himself or herself as a principal in any real property transactions (including, without limitation, business opportunity transactions) without Broker's express written permission. Associate understands that this provision has been included in this Agreement because of substantially higher liability associated with such transactions, and because Broker's E&O insurance may not cover such principal transactions. Accordingly, in the event Broker grants permission for Associate to represent himself or herself, Associate agrees to indemnify Broker for Broker's full E&O deductible on all covered claims arising from or related to such transactions. For all non-covered or denied claims, Associate shall indemnify Broker for all Broker's costs and expenses arising from or relating to such transactions.

If Broker does not consent to Associate representing himself or herself, Associate shall be represented by another licensee assigned by Broker and approved by Associate. Associate shall not represent any other principal party to such a transaction.

Associate shall comply with all rules imposed by Broker and Broker's E&O provider, which rules are incorporated herein by reference. If Associate fails to comply with this paragraph and/or the referenced rules, then Associate shall indemnify Broker for all costs and expenses incurred by Broker pertaining to any claim arising from or related to Associate's conduct and/or role in the transaction. For purposes of this section and the referenced rules, the definition of Associate includes, without limitation, any and all limited liability companies, corporations, partnerships, and/or other entities in which Associate is an officer, shareholder, member, partner, etc. Additionally, for purposes of this section, costs and expenses include, without limitation, litigation costs and expenses, attorney fees, judgments, fines, and awards.

**11. INDEMNIFICATION OF BROKER.** Associate shall indemnify Broker for all Broker's costs and expenses pertaining to any and all uninsured and/or denied claims arising from or relating to Associate's conduct, including,

without limitation, Associate's failure to comply with the terms of this Agreement. In addition, Associate shall pay all fines, awards, or monetary sanctions of any kind levied against Associate and/or Broker as a result of Associate's conduct, and understands that Broker shall not pay any portion whatsoever. Associate understands that the referenced fines, awards, or monetary sanctions include, without limitation, multiple listing service commission awards and/or disciplinary fines imposed by any Association of Realtors® or MLS, fines for failure to comply with federal laws and regulations such as lead-based paint disclosures, telemarketing restrictions, and RESPA, and violation of state licensing statutes.

Associate authorizes Broker to withhold commissions paid to Broker and owed to Associate in amounts sufficient to pay all costs and expenses incurred by Broker. Neither Broker's failure to withhold nor a lack of commissions shall relieve Associate of the obligation to indemnify Broker, and Associate shall, in all circumstances, reimburse Broker for all sums paid by Broker in connection with Associate's conduct.

If Associate retains his or her own attorney to represent Associate, then in addition to Associate's indemnification obligation herein, Associate shall bear sole responsibility for paying that attorney. For purposes of this section 11, costs and expenses include, without limitation, litigation costs and expenses, fines, awards, judgments, and attorney fees.

**12. COMMISSION CLAIMS / INDEPENDENT LEGAL ACTION.** Broker has no insurance covering the pursuit of commission claims or any other type of claim for damages. Without Broker's express written permission, Associate shall not initiate legal action in pursuit of a commission or other damages.

If Broker elects to pursue a commission or other damages on behalf of Broker and Associate, then Broker shall have the sole right to select attorneys, control any litigation, and to settle, compromise, dismiss, and/or cease pursuit of the claim. Unless Broker and Associate agree otherwise in writing, all costs and expenses (including, without limitation, attorney fees, litigation expenses, collection of judgments or awards, and attorney fees and costs awarded to the adverse party) incurred by Broker in the pursuit of any such claim shall be split by Broker and Associate in the same proportion as the commission split set forth in the Commission Schedule attached hereto. The applicable split shall be the one in effect upon the closing of the transaction giving rise to the claim; provided: that if there is no closing, then the applicable split shall be the one in effect at the time that pursuit of the claim is commenced. Prior to pursuit or litigation of such claims, Broker shall have the right to require a deposit from Associate to cover all or a portion of Associate's estimated share of the costs. Associate shall be liable for his or her share of the costs, regardless of the outcome of the pursuit of such claims.

Any amounts received as a result of the pursuit of such claims shall be divided between Broker and Associate in accordance with this paragraph and the commission split set forth in the Commission Schedule.

If Broker declines to pursue a commission or other claim, but gives written permission for Associate to pursue such claims, then Associate shall be solely responsible for all costs incurred in pursuing the claims. Any amounts recovered by Associate may be retained by Associate, but only if paid first to Broker.

If Associate breaches the terms of this paragraph, or if pursuit of the commission (whether by Broker or by Associate) results in any uninsured or denied claims, or professional or administrative investigations or complaints against Broker and/or Associate, then the terms of Paragraph 11 shall apply. If pursuit of the commission results in insured claims against Broker and/or Associate, then Associate shall pay the entire E&O deductible, unless otherwise agreed in writing.

**13. TERM AND TERMINATION.** The term of this agreement begins when Associate's license is activated with Broker and may be terminated, at any time, with or without cause, by either party giving notice to the other, or by Broker by returning Associate's real estate license to the state's licensing authority. Upon termination, Associate shall promptly return all keys and other property belonging to Broker.

**Pending Commissions and Transactions:** Any commissions pending (i.e. buyer and seller have reached mutual acceptance on a purchase and sale agreement, lease, listing or other similar document, but the subject transaction has not yet closed) at the time of termination shall be paid in accordance with this Agreement and shall be subject to settlement of Associate's obligations to Broker. Associate authorizes Broker to hold all commissions in Broker's account pending resolution of any disputes over division of the commission funds, or of any existing or potential legal actions.

Associate agrees to exercise utmost good faith and diligence to complete and close pending transactions. If any of Associate's transactions is not completed prior to termination, then Broker may appoint other licensees affiliated with Broker to complete the transaction. In such case, Broker is authorized to compensate other such licensees in an amount determined by Broker in its sole discretion, and to deduct such amounts from Associate's share of the commission up to and including the full amount owed to Associate.

**Unpaid Obligations to Broker:** Upon termination Associate will immediately pay all amounts due Broker. If Associate moves to another real estate brokerage, Associate hereby irrevocably assigns the proceeds of any pending commissions and, upon Broker's written request to Associate's new Broker, authorizes the new Broker to deduct and forward such shortfalls out of commissions earned at Associate's new brokerage to Broker until owed amounts are paid in full. Collection costs on amounts not paid, including attorney's fees, shall be paid by Associate.

Associate's license to use the Windermere name and trademarks shall be deemed revoked immediately upon termination of this Agreement, and Associate agrees to cease and desist from all use of the marks thereafter. Associate shall surrender to Broker, upon demand, all personal marketing materials in Associate's possession bearing or referring to the name Windermere, or any of the Windermere trademarks. Any Internet domain names registered by or to Associate which include the name "Windermere" in any fashion whatsoever shall, upon termination of this Agreement, be transferred to Broker or to Windermere Services Company upon demand. Associate agrees that Broker or Windermere Services may seek injunctive relief to enforce the provisions of this paragraph, in addition to seeking recovery of money damages. For purposes of protecting its trademark rights ONLY, Windermere Services Company shall be deemed a third party beneficiary of this Agreement, and shall have standing to bring suit for breach of this provision. In any such action arising from Associate's infringement of the Windermere trademarks, the prevailing party shall be entitled to recover attorney fees and costs.

**14. DUTY TO ARBITRATE.** Associate and Broker agree that commission or other disputes which cannot be resolved between them or between other Windermere Brokers or Associates (including disputes arising after termination of this Agreement) shall be submitted to and resolved in accordance with Broker's internal arbitration procedures. Arbitration is mandatory and the decision is binding. The 'Windermere Standards of Practice and Arbitration Manual' is available for Associate's review at any time in Broker's office and on the 'Windermere Online Resource Center' (WORC) intranet site. The version of the Manual in effect at the time arbitration is commenced will control. Associate hereby grants Broker the right to deduct resulting awards and damages from Associate's outstanding or future commissions, or if there is no closing or commissions, to pay immediately upon Broker's demand.

**15. ASSISTANTS.** In the event Associate hires a licensed or unlicensed assistant, Associate agrees to abide by and comply with Broker's guidelines pertaining to Associate Assistants. Associate shall advise Broker if Associate is hiring, using, or intends to hire or use an Assistant, and agrees to execute the required Addendum/Amendment to this Agreement at such time. If Associate is acting as an Assistant, then Associate agrees to execute the required Addendum/Amendment to this Agreement, and to limit his/her activities to those outlined in Broker's guidelines pertaining to Assistant activities.

**16. HARASSMENT.** Broker is committed to providing a work environment free of unlawful harassment and discrimination for all Windermere personnel, including real estate licensees. Broker's policy prohibits sexual harassment and any other type of unlawful harassment or discrimination, in accordance with federal, state, and local laws and ordinances. In addition, Broker will not tolerate any inappropriate harassment, intimidation, or similar conduct, whether or not such behavior is actually unlawful. If Associate feels that he or she is not being treated in a manner consistent with Broker's policy, then Associate shall so notify Broker. Broker will investigate all reports of violations of Broker's policy, and if Broker determines that a violation has occurred, then Broker will take corrective action, which may include termination of the person who violated Broker's policy. Associate may review Broker's written policy upon request.

**17. ENTIRE AGREEMENT.** This Agreement contains the entire understanding between the parties and supersedes any prior understanding and agreements between them.

**18. AMENDMENTS.** This Agreement may be amended only in writing, signed by each of the parties and attached to this Agreement.

**19. BINDING EFFECT.** Except as otherwise provided in this Agreement, every covenant, term and provision of this Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representative, successors and all persons hereafter holding or having an interest in this Agreement.

**20. CONSTRUCTION.** Every covenant, term and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any party.

**21. HEADINGS AND PRONOUNS.** Section and other headings contained in this Agreement are for reference purposes only and are not intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision. All pronouns and any variations of them shall be deemed to refer to masculine, feminine, neuter, singular or plural, as required for the identification of the person or persons, firm or firms, corporation or corporations.

**22. SEVERABILITY.** Every provision of this Agreement is intended to be severable. If any term or provision is found to be illegal, invalid or unenforceable for any reason whatsoever, such illegality, invalidity, or unenforceability shall have no affect on the remainder of the Agreement, and it shall be enforced to the full extent permitted by law.

**23. WAIVER.** The consent, approval or waiver of any covenant, term or condition of this Agreement by either party shall not be construed as consent, approval or waiver of a subsequent similar act or breach of the same covenant, term or condition.

**24. GOVERNING LAW.** The laws of the state shall govern the validity of this Agreement, the construction of its terms, and the interpretation and construction of this Agreement. Any disputes arising from this Agreement shall be resolved through internal arbitration as set forth in 'Duty to Arbitrate' section above. Each party shall bear its own attorney fees and costs in all proceedings.

**25. NO THIRD PARTY BENEFICIARY INTENT.** Except as expressly stated in section 13 above, the promises between Broker and Associate in this Agreement are intended for Broker's and Associate's sole benefit and not for the benefit of any third party, including without limitation any buyer or seller of real estate, nor for the benefit of any other brokerage or broker.

IN WITNESS WHEREOF, the parties have entered into this Broker/Sales Associate Agreement as of date below.

\_\_\_\_\_  
Broker

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Associate

5/27/06  
\_\_\_\_\_  
Date

**Schedule A**  
**WINDERMERE COMMISSION AGREEMENT**

**I. GENERAL**

- A. Associate shall not be entitled to any salary, draws, or compensation other than as set forth herein.
- B. Associate agrees to adhere to Broker's standard listing and selling fee schedule in all transactions. Neither Broker nor Associate shall alter the amount or defer payment of a commission without the prior agreement of the other.
- C. All commissions must be paid to Broker alone per licensing law. Associate shall have no claim to commission shares except from money actually received by Broker.
- D. Broker shall be entitled to deduct unpaid obligations owed to Broker from Associate's share. Balances remaining after commission deductions shall be due on the 7<sup>th</sup> day of each month. If Associate fails to pay remaining balances by the deadline, then Broker may assess a late fee. All balances that remain unpaid thirty days after becoming due shall accrue interest at the rate of 18% until paid.
- E. All commissions received from incoming or outgoing referrals, co-listing or co-selling agreements (whether within or outside the Windermere group), shall be divided according to Associate's split after deduction of all referral fees and commissions due third parties. Exception: Referrals generated by Windermere relocation companies or departments shall be split according to the commission schedule published by the appropriate Windermere relocation company or department and by Broker's commission schedule for incoming and outgoing referrals.

Associate shall be responsible for logging in with appropriate Windermere relocation companies or departments all out-of-area customers within a reasonable time (usually 72 hours). Failure to do so may result in a substantial reduction of Associate's commission share due to referral agreements/contracts with referring networks and companies.

Agreements for commissions shared shall be expressed as a percentage of the relevant listing or selling commission portion. Associate shall make all referrals, co-listing and co-selling agreements (whether within or outside the Windermere group) through Associate's Branch Manager. Commission sharing arrangements and partnerships between Associates shall be in writing at inception of relationship and include a description of responsibilities. Failure to do so could impact Associate's ability to recover commissions in Broker's arbitration procedure.

- F. In the case of special marketing programs or projects (including, but not limited to, builder accounts and condominiums and affinity groups), Broker reserves the right to set separate commission payment policies to cover the associated costs. By participating in such programs, Associate automatically agrees to exceptions in usual commission structure.
- G. If no signed listing agreement has been obtained, commission arrangements must be established in writing by Associate and Branch Manager prior to showing by other agents.

**II. BASIC COMMISSION APPORTIONMENT**

Gross commission received by Broker will have standard fee deductions made before Associate's share is calculated. Unless stated otherwise, the term "commission" shall hereinafter mean net commission amount remaining after standard deductions. Standard deductions include Errors

and Omissions, Windermere Foundation fee, and, where applicable, B&O, certain transaction and monthly fees, and franchise fee. (Contact Broker or Broker's bookkeeper for a detail of deductions and amounts applicable to Associate.)

### III. COMMISSION PAYMENTS TO ASSOCIATE

Associate will receive 50% of the listing and/or selling portion of commission received by the Broker based on Associate's role in the transaction.

In any  calendar or  anniversary year (check applicable box) once the Associate has earned and paid Broker \$26,500 in company dollar (Threshold), the commission shall be paid 100% to the Associate less appropriate taxes and deductions. Calendar or anniversary year shall hereinafter be called "Qualification Period." Each Qualification Period shall not exceed 12 months unless otherwise agreed to in writing.

Commissions received by Broker after Associate's termination (regardless of reason for termination) shall be paid using the Qualification Period and sharing basis which would have applied had Associate not terminated. By way of illustration, if terminated Associate receives a commission after a new Qualification Period would have started had the termination not occurred, the commission shall be split according to the threshold in place for that new Qualification Period in the branch to which Associate was licensed at time of termination. This shall also apply to all transactions pending in Associate's current branch in the event Associate transfers to another branch belonging to Broker in which Commissions are paid on a different basis.

**IV. WINDERMERE RETIREMENT PLAN (Plan):** Associate is entitled to participate in the Plan upon consummating their association with Windermere. In recognition of Associate's continued association and Associate attaining Threshold, Broker agrees to make a contribution to Associate's Plan as follows:

Once Associate reaches Threshold in their Qualification Period, AND at the end of the Qualification Period has been :

- Level 1) Licensed with Windermere up to 36 full months: Broker shall contribute \$500.
- Level 2) Licensed with Windermere 37 full months to 84 full months. Broker shall contribute \$1000.
- Level 3) Licensed with Windermere 85 full months or more. Broker shall contribute \$1500.

**Terms & Conditions:** In addition to meeting Broker's Threshold and tenure requirements, the following applies:

- A. Associate must have completed all required steps to adopt the Plan as a participating employer at least 30 days prior to end of their Qualification Period.
- B. If, in any calendar or anniversary year, Associate's Threshold is less than the amount set forth in Section II, Broker will not make any contribution to the Plan.
- C. For purposes of determining tenure: (1) all time during which Associate was licensed to any Windermere broker, and (2) all time during which Associate was licensed to a non-Windermere broker that became a Windermere broker while Associate was licensed to that broker, shall be included for purposes of calculating Broker contributions to the Plan.

*The following must be completed and initialed by Broker and Associate to be applicable:*  
**At the signing of this Commission Schedule, Associate has \_\_\_\_\_ full months tenure; additional full months tenure shall commence accrual effective the first day of the month following the signing of this agreement.**

Broker's Initials: \_\_\_\_\_ Associate's Initials: \_\_\_\_\_



D. If Associate moves directly from Broker's office to another Windermere office, then Broker agrees to make a contribution if Broker's Threshold was made prior to the transfer and if the Associate is licensed with a Windermere Broker at the time the contribution is made. Tenure at time of transfer is used to determine amount of contribution in the transferring year.

If Associate transfers to a Windermere office with Threshold, tenure and contribution requirements identical to Broker's and meets the Threshold requirements between the two offices within the Qualification Year, the contribution will be made and split between the Windermere Brokers on a prorated basis per the amount of the required Threshold earned in each office. No tenure is lost in such transfers.

If Associate transfers to a Windermere office with dissimilar Threshold requirements and/or contribution levels, Associate must first meet the higher of the two Threshold requirements, then the contribution will be made and split between the Windermere Brokers on a prorated basis per the amount of required threshold and contribution earned in each office. No tenure is lost in such transfers.

E. Broker contributions are made within 45 days following the Qualification Period. Associate must be licensed with a Windermere Broker at the time contributions are disbursed to be eligible for contributions as outlined herein.

F. Associates who for any reason do not choose to participate in Plan forfeit their right to Broker contribution. Contribution cannot be made in any other manner or form of payment unless agreed upon in writing by all parties.

\_\_\_\_\_  
Broker

\_\_\_\_\_  
Date

  
Associate

**Schedule B  
BROKER SERVICES & EXPENSE SCHEDULE**

The following is subject to change from time to time and is a summary only. See your Broker for specifics regarding when and how fees are charged or shared. Not all of the products or services available through Windermere are listed here. Refer to Windermere's Online Resource Center (WORC) site for more detailed information on marketing or technology products. See your Office Staff with questions regarding products, pricing and ordering procedures or approved vendor options.

**BASIC SERVICES PROVIDED BY BROKER AT NO COST TO AGENT**

**Facilities and Equipment**

Office Space/desk/resource area  
Copy machine/Printing up to 2000 copies per quarter for any purpose<sup>1</sup>  
Use of Fax Machine  
Internet and NWMLS access  
Computer(s) and Digital Copier(s)  
Telephones, incoming lines, local calls (long distance excluded)  
Binding machine, front and back covers and spiral for presentations  
Coffee Supplies

**Supplies**

All preprinted MLS forms  
Generic company envelopes, stationery and forms for normal transaction related use  
Generic Windermere Presentation portfolios -- Folder or covers for bound version  
Marketing Presentation sheets for Presentation Portfolio

**Signage**

Generic "For Sale" signs

**Brochures/Presentation Packets**

Agency Brochure  
Public Relations Reprints

**Support Services**

Voice Mail Answering Services  
Full time manager  
Full time receptionist (excluding holidays)  
Full time Office Staff and Office Staff support 7 days per week

**Advertising**

Broker scheduled classified advertising<sup>2</sup>  
Institutional print advertising  
Institutional television advertising  
"Windermere Cup" sponsorship

**Special Facilities**

Private or semi-private space where available

<sup>1</sup> Extra in-office copies at 6 cents each. Excess usage of in-office copier will increase copy costs. Larger copying projects can be taken to commercial printing locations.

<sup>2</sup> Special discounted rates for optional agent paid advertising in Seattle Times and other newspapers.

**ASSOCIATE PAYS FOR A PORTION OF THE FOLLOWING  
SPECIAL BROKER SERVICES**

**E&O Coverage**

Transaction fee and small monthly fee buys \$3,000,000 coverage with \$1000 maximum deductible

**Education**

State approved, Broker subsidized clock hour courses through Windermere's Professional Development programs

**Sign Posting**

Costs prorated on the same basis as commission split

**ASSOCIATE PROVIDED WITH THE FOLLOWING WINDERMERE-  
UNIQUE PROGRAMS AT THEIR COST**

**Visibility Plus**

Personalized mailing program which includes newsletters, postcards and direct mailers

**Choices**

See Choices Brochure for a complete list of options which include Personal brochures, Personal stationery, envelopes, notecards and postcards  
Special target marketing personal postcards

**Brochures**

Premier Properties  
Windermere Foundation  
Bridge Loan Program  
Windermere Real Estate

**ASSOCIATES PAYS FOR OPTIONAL SUPPLIES AND MATERIALS SUCH AS**

ADVERTISING outside of Broker's schedule or normal publications, sketches or photos  
MLS extras such as special flyers, supplements, keys and key boxes  
FARMING or MARKETING printed materials and attendant postage  
RELOCATION Packets and postage  
PERSONAL MARKETING materials and supplies  
OFFICE SUPPLIES  
SIGNAGE not included in Broker list

**OTHER FEES/COSTS FOR GOODS AND SERVICES**

**Monthly Office Fee:**

Each month agents will receive a statement reflecting an "OD fee" in the amount of \$168.00. This fee is to be paid by associate each month as a monthly office fee. Payments can be made by check, a closing transaction commissions closing within 60 days of the monthly statement delivery, or by Visa at the Downtown Kirkland office. If payment is made by credit card a 3% fee will be added to the balance being paid.

**Pre Split Transaction Related Fees:**

\$12.50 Windermere Foundation fee, \$67.50 for Errors and Omissions fee, and 1.5% of gross commission for State Business and Occupational tax, (B&O).

**Post Split Transaction Related Fees:**

\$50.00 transaction fee for each transaction.

**Schedule C  
ERRORS AND OMISSIONS INSURANCE**

This Schedule is a part of the undersigned Associate's Broker/Sales Associate Agreement.

Broker's E&O insurance is subject to a \$50,000.00 deductible per claim. For covered claims, Associate is responsible for the first \$1,000.00 of the deductible when Associate receives or is entitled to one side of the commission, and the first \$2,000.00 when Associate receives or is entitled to both sides of the commission, in proportion to Associate's commission split set forth in the Commission Schedule attached to this Agreement, but only in the event that the claims are settled or in the event of a judgment or award against Broker and/or Associate; provided: that Broker and/or Broker's E&O carrier shall have the right to designate defense counsel, settle or compromise claims, and control all aspects of the litigation and/or resolution of the claims. When a claim is uncovered or denied or Associate has failed to comply with the terms of this Agreement and/or Broker's E&O policy, this provision shall not apply, and Associate shall indemnify Broker in accordance with paragraph 11 of this Agreement.

Associate may retain counsel, at Associate's sole expense, but if Associate and/or Associate's counsel interferes with Broker's and/or Broker's E&O carrier's handling of the claims, then Associate shall indemnify Broker for the entire \$50,000.00 deductible, plus any and all damages in excess thereof, including, without limitation, awards, judgments, settlements, attorneys fees, and expenses incurred by Broker as a result of or relating to such interference.

To cover the cost of insuring Associate, Broker shall charge Associate a monthly fee, plus a per-transaction fee. Associate authorizes Broker to advance the referenced fees and Associate's share of the deductible whenever Broker deems it necessary, and Associate authorizes Broker to deduct the fees and deductible share from Associate's commissions. In the event that no commissions become available after Broker's advancement of fees and/or deductible share, then Associate shall reimburse Broker no later than thirty days after the fees are advanced, whether or not Associate is licensed to Broker.

Associate's obligations herein apply, whether or not Associate is actually named as a defendant or the target of a claim, whenever the claim arises from or relates to Associate's professional conduct.

Broker's E&O policy is a claims-made policy, which means that all actual or potential claims (collectively "claims") must be tendered to the E&O carrier when any insured person becomes aware of the claim. Failure to report such claims in a timely manner results in denial of coverage. Associate shall be responsible for reporting to Broker all claims, in writing and in a timely manner. If Associate's failure to timely report a claim results in denial of the claim, then Associate shall indemnify Broker in accordance with Paragraph 11 of this Agreement.

When Associate is a principal in a transaction, the provisions of this Schedule do not apply and are superseded by the provisions of the Associate/Principal Transactions Schedule, which is attached to this Agreement and incorporated by reference herein.

\_\_\_\_\_  
Broker

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Associate

  
\_\_\_\_\_  
Date

**Schedule D**  
**ASSOCIATE/PRINCIPAL TRANSACTIONS**

Principal Transactions means all transactions (including, without limitation, purchases, sales, leases, and business opportunity transactions) involving real property in which Associate has or will acquire any interest. The definition of Associate includes, without limitation, any and all limited liability companies, corporations, partnerships, and/or other entities in which Associate is an officer, shareholder, member, partner, etc., and/or has a financial or ownership interest.

**I. INDEMNIFICATION OF BROKER.** Principal Transactions in which Associate represents himself or herself pose risks that Broker is unwilling to assume. In very limited circumstances, such transactions are covered by Broker's E&O insurance, subject to the E&O policy's provisions and exclusions, and the terms of this Agreement. If Associate is represented by another licensee, however, then coverage is generally provided for the other licensee and Broker, subject to the policy's provisions and exclusions. Associate's conduct as a principal is never covered by Broker's E&O insurance.

Whenever a Principal Transaction in which Associate has represented himself or herself is an E&O-covered transaction (as determined by the applicable policy), and Associate has complied with all terms of this Agreement, then Associate shall indemnify Broker for the entire \$50,000.00 deductible. Associate agrees that Broker and Broker's E&O carrier shall have sole authority, with respect to covered claims, to retain counsel, settle or compromise, and control all aspects of the litigation and/or resolution of such claims. Associate authorizes Broker to withhold all of Associate's commissions, up to the sum of \$50,000.00, to ensure payment of the deductible, but neither a lack of commissions nor Broker's failure to withhold relieves Associate of the obligation to pay the deductible. Associate may retain his or her own attorney, at Associate's sole expense, but Associate's attorney must be pre-approved by Broker and Broker's E&O carrier.

Whenever a Principal Transaction is not covered by Broker's E&O insurance for any reason, and/or Associate has failed to comply with all terms of this Agreement, then Associate shall indemnify Broker for all costs and expenses (including, without limitation, attorney fees, expert fees, judgments, settlements, the cost of alternative dispute resolution, fines, damages of any kind, and litigation costs and expenses), incurred by Broker, arising from and/or related to the transaction. Associate authorizes Broker to withhold all of Associate's commissions, in amounts sufficient to ensure payment of such costs and expenses, but neither a lack of commissions nor Broker's failure to withhold relieves Associate of the obligation to fully indemnify Broker.

**II. PRINCIPAL TRANSACTIONS**

Associate shall not represent himself or herself without Broker's express written permission. This means that Associate shall not list, sell, lease, purchase, or otherwise convey or acquire any interest in real property, or engage in any business opportunity transaction, without first obtaining Broker's written permission.

All Principal Transactions must be handled through Broker, and Associate must be represented by a Broker licensee, unless Broker grants written permission for Associate to represent himself or herself. In addition, in all Principal Transactions, Associate shall disclose that he or she is a licensed real estate salesperson, using the language set forth below, and shall make a timely disclosure of any and all conflicts of interest, using language approved in advance by Broker. Broker may also impose additional requirements on Associate, including, without limitation, the requirement that Associate pay for an independent attorney's review of the transaction on behalf of the other principal. In no event shall Associate represent the other principal to the transaction.

In all Principal Transactions, Associate shall provide a copy of all transactional documents to Broker within two business days after they have been signed and shall use the following language in purchase and sale agreements, leases, and other such documents:

If Associate acquires more than one property in a year or conveys more than one property in a year, then each additional transaction shall be subject to the Commission Schedule, unless otherwise agreed in writing.

\_\_\_\_\_  
Broker

\_\_\_\_\_  
Date

\_\_\_\_\_  
Associate

*Paul Kelly* *5/24/06*  
\_\_\_\_\_  
Date

**WINDERMERE COMMISSION SCHEDULE  
Windermere Real Estate/SCA., Inc. ADDENDUM**

**COMMISSION APPORTIONMENT**

- A. **SHARED COMMISSION:** Arrangements for commissions shared between Associates in any one office shall be expressed in terms of a percentage of the listing or selling portion. Both Associates shares shall be divided with the office according to each Associate's split at the time of closing.
- B. **CLOSING DATE:** The closing date to establish the calendar or anniversary year on the basis of which commissions shall be shared and for which earnings are credited toward achievement of Incentive level, except in the case of deferred commissions, shall be conditioned on receipt of closing documents and commission payment, at the accounting office of Windermere Real Estate/SCA, Inc. on Monday, Wednesday and Friday by 3:00 PM, prior to the anniversary turn-over date. The following exceptions will apply-the accounting office will be closed on the following dates:
- |  |                        |
|--|------------------------|
| January 2nd-January 6th, 2006                                      | Calendar Year End      |
| January 16th, 2006<br>(Accounting Open/No Commission Disbursement) | Martin Luther King Day |
| February 20th, 2006  | President's Day        |
| May 29th 2006  | Memorial Day           |
| June 26th-July 4th, 2006   | Fiscal Year End        |
| September 4th, 2006  | Labor Day              |
| October 9th, 2006<br>(Accounting Open/No Commission Disbursement)  | Columbus Day           |
| November 23rd-November 24th, 2006                                  | Thanksgiving           |
| December 25th, 2004  | Christmas              |

In these cases, checks need to be received at the accounting office by 3:00PM on Monday, Wednesday or Friday prior to the above closed dates.

- C. **DEFERRED COMMISSIONS:** Deferred commissions shall be paid on a cash basis. Associate's share of a deferred commission shall be based on commission split at time of receipt of payment.
- D. **BONUS:** All monetary bonus' are to be shared according to the Associate's split applicable at time of receipt of payment. All non-monetary bonus' (I.e. VCR's, Televisions, Trips, etc.) are to be retained by the Associate.
- E. **RELOCATION REFERRAL:** It is understood that the commission for an incoming referral from Windermere Relocation will be: A percentage of the selling commission (according to commission schedule published by Windermere Relocation, Inc.) will be paid to Windermere Relocation.

Associate chooses to , not to , receive referrals from Windermere Relocation, Inc.

**COMMISSION PAYMENTS TO ASSOCIATE**

- A. As recognition of prior performance Broker agrees to advance to Associate commission in excess of the commission schedule. Such advances shall be considered earned when the Company portion of commissions received reaches \$26,500. If the Associate fails to satisfy the company portion of the commission of \$26,500 by the end of the associates qualification period, all advances in excess of the standard 50/50 commission schedule are due the Broker from the Associate and shall be payable at the associate's qualifying year end. In the event the Associate Agreement is terminated by the associate while on an Advance commission schedule, all advances in excess of the standard 50/50 commission schedule will be due and payable to Broker upon associates notice of termination.

For computation purposes, commission payment to Associate under this agreement shall be on the basis noted below until the Company portion of the commissions received reaches \$26,500 and the 100% thereafter.

If 6 (six) months into the Associates commission fiscal year, the total of the Associate's closed and pending commissions computed as noted below reflect a Company dollar less than \$26,500 all subsequent commission payments will automatically revert to 50% to Associate until Company dollar received equals \$26,500.

	<u>Qualifying Criteria Prior Year Associate Earnings</u>
_____ Level I-60% to Associate	\$50,000-\$75,000
_____ Level II-65% to Associate	\$75001-\$100,000
_____ Level III-70% to Agent	\$100,000 and Above

- B. Associate's compensation Anniversary date is from (start) 6/1/06 to (ends): 5/30/07

# Standards of Practice



The Windermere Standards of Practice embody the Company's commitment to the highest standard of service to clients. These are not abstract ideals; they are practical standards for the conduct of your business.

1. Seller and Buyer interests always come before self-interest.
2. Respect the limits of your own expertise. Before doing business outside your usual market area or area of expertise, always ask, "What is best for this Buyer/Seller?" and act accordingly. (Follow "Guidelines for Doing Business Outside Your Usual Market.")
3. Keep yourself fully informed as to the legal changes governing our business.
4. Respect Fair Housing Laws and provide equal professional service regardless of race, color, religion, sex or sexual orientation, familial status, handicap or national origin.
5. Respect Buyer's and Seller's freedom to choose. Agents earn the privilege of representing Buyers or Sellers by providing quality service and by establishing and maintaining strong working relationships.
  - a. Educate Buyers and Sellers as fully as possible about agency relationships and how our business works. Professional working relationships are those which clients have chosen freely after being fully informed. Do not assume that potential clients understand how to work with an agent or the problems they can create by working with more than one; ask direct questions about possible relationships with other agents.
  - b. In the absence of a written agency agreement with Seller or Buyer, the client's choice of agent shall be respected.
  - c. It is in the interest of all agents to actively encourage and support client loyalty to agents.
  - d. Respect legitimate requests by Buyers or Sellers for termination of a working relationship, whether or not a written agreement exists.
6. Understand and observe the duties, obligations, privileges and limitations of your client relationships and those of other agents.
  - a. Respect all contractual relationships—listing agreements, purchase and sale agreements, buyer agency agreements—and do not interfere with them directly or indirectly.
  - b. Communicate promptly and fully with all clients and potential clients, and with other agents.
  - c. When representing a Seller, always involve your manager in the review process when multiple offers include one prepared by you.

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# Standards of Practice



(continued)

7. Treat all agents as equal colleagues.
  - a. Personal marketing materials should be positive in character, competing on your strengths, not on another's weakness. Competitive claims should be factual and accurate.
  - b. Communicate. Mistakes and misunderstandings occur. When they do:
    - i. Recognize that all stories have two sides.
    - ii. Communicate with the other agent(s) involved as quickly as possible.
    - iii. Seek management assistance if you and the other agent(s) cannot resolve a dispute quickly.
    - iv. Discuss disputes only with those directly involved.
    - v. Avoid involving Buyers or Sellers in any dispute.
8. Respect Windermere's marketing materials, logo and sign standards and follow all guidelines for personal Web sites. Doing so protects and enhances the image of every Windermere agent and the Company.
9. Actively encourage full compliance with the spirit of Windermere Standards of Practice by:
  - a. Leading by example.
  - b. Taking responsibility to maintain the Standards of Practice by involving your manager and cooperating in an open exploration of any alleged violations in a respectful manner.
  - c. When concrete evidence suggests wrongdoing without remorse, apology or restitution, pursue the issue using Windermere's Grievance Procedure in a timely manner.

I endorse and agree to abide by the license laws in the states in which I hold an active license, the REALTORS® Code of Ethics, these Standards of Practice and Windermere's conflict resolution procedures.

  
Sales Associate

  
Date

\_\_\_\_\_  
Broker

\_\_\_\_\_  
Date

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