

INFORMED CONSENT TO DUAL AGENCY

Property Address: _____
Seller(s): _____
Name of Brokerage Firm: _____ (“Broker”)
Listing Salesperson: _____
Buyer(s): _____
Selling Salesperson: _____

1. Consent to Dual Agency:

The Seller and Buyer acknowledge and agree that Broker and the listing and selling salespersons are undertaking a Consensual Dual Agency representation in the sale of the above property. Seller and Buyer have previously been informed of the possibility of a dual agency arising if a buyer client becomes interested in a seller client's property. Seller and Buyer have consented to this dual representation and hereby confirm their consent by signing below after reading the following description of the type of representation to be provided.

2. Description of Broker's Role: Confidentiality and Disclosure of Information:

Because Broker is acting as agent for both Seller and Buyer in this transaction, Broker shall make every reasonable effort to remain impartial to Seller and Buyer. Seller and Buyer acknowledge that, prior to the time this Addendum was entered into, Broker acted as (exclusive) agent of the Seller and acted as (exclusive) agent of the Buyer. In those separate roles, Broker may have obtained information which, if disclosed, could harm the bargaining position of the party providing such information to Broker. Seller and Buyer agree that Broker shall not be obligated or liable to either party for refusing or failing to disclose information which, in the sole discretion of Broker, would harm one party's bargaining position but would benefit the other party.

Nothing contained herein shall prevent Broker from disclosing to Buyer any known material defects that affect the property value. Broker agrees not to disclose confidential information to the other party, such as (a) to Buyer, information about what price or terms Seller will accept other than the Listing Price and terms or (b) to Seller, information about what price or terms Buyer will agree to other than any written offering price. In the event that Seller and Buyer do not enter into an agreement for the purchase and sale of Seller's property to Buyer, or in the event that the purchase and sale provided for in a contract of sale between Seller and Buyer does not close in accordance with its terms, this dual agency and this Consent may be terminated by any party, by mailing written notice to the others.

3. Description of Seller's and Buyer's Role:

Seller and Buyer acknowledge that they are aware of the implications and consequences of Broker's dual agency role to facilitate a transaction, rather than act as an advocate for one party over the other, and that they have determined that the benefits of entering into this transaction, with the Broker acting as a dual agent, outweigh those implications and consequences.

Seller and Buyer acknowledge that they have been advised to seek independent legal counsel in order to assist them with any matter relating to a purchase and sale contract and any other aspect of the transaction. Seller and Buyer agree to indemnify and hold Broker harmless against all claims, damages, losses, expenses or liabilities arising from Broker's role as a dual agent, except those arising from Broker's intentional wrongful acts or violation of the Real Property Law of the State of New York. Seller and Buyer shall have a duty to protect their own interests and should read this Consent carefully to ensure that it accurately sets forth the terms which they want included in the transaction.

Both BUYER and SELLER understand and agree that BROKER shall have the right to collect a commission or fee from the transaction, pursuant to existing agreements, and acknowledge that it has been disclosed that BROKER will collect a fee of \$_____ or _____% of the sales price which shall be paid as a cost of this transaction from the proceeds to be paid by BUYER to SELLER. Any prior agreements to the contrary are hereby superseded.

4. **Consequences of Dual Agency:**

Seller and Buyer are giving up their right to have Broker's undivided loyalty to act at all times solely in their individual best interests to the exclusion of all other interests. Dual Agency may thus deprive Buyer and Seller of benefits they may have otherwise received in a Single Agency relationship. For example, as a seller represented by an Agent, Seller has the right to expect that Seller's agent will attempt to obtain the full asking price for the property. As a buyer, represented by an Agent, Buyer has the right to expect the Agent to work toward bringing about a transaction at the lowest possible price. A Dual Agent will not work on behalf of either party regarding price.

5. **Fiduciary Duties:**

In theory, a Dual Agent owes both the Buyer and Seller the same fiduciary duties as if the Agent represented each alone. These duties include loyalty, obedience, disclosure, confidentiality, reasonable care, diligence and the duty to account. By consenting to dual agency, the conflicting duties to Buyer and Seller are reconciled by mutual agreement to forego them. The duty of undivided loyalty is forfeited in a Dual Agency relationship and instead the Dual Agent is required to act with fairness to each party. In addition, most of the other fiduciary obligations are affected because of the contrasting motivations of Buyer and Seller, who have agreed that the consensual dual agent will not favor the interests of one over those of the other.

6. **Disputes:**

In the event a dispute arises between Buyer and Seller, Broker may elect to withdraw from the transaction.

7. **Description of Limited Agency Services:**

WHAT BROKER AND ITS SALESPERSONS CAN DO FOR SELLERS AND BUYERS WHEN ACTING AS A DUAL AGENT:

- We will treat the Seller and Buyer honestly and fairly.
- We will provide helpful information about the property and neighborhood to the Buyer.
- We will respond accurately to questions about the property.
- We will disclose all material facts about the property that are known to us.
- We will disclose financial qualifications of the Buyer to the Seller.
- We can explain real estate terms and procedures.
- We can help the Buyer to arrange for property inspections.
- We can help the Buyer compare financing alternatives.
- We will provide information about comparable properties so the Seller and Buyer may make an educated decision on what price to accept and/or offer.
- We will work diligently to facilitate the sale and will advise when experts should be retained (lawyer, tax accountant, architect, etc.)
- We will act as a mediator and make recommendations for compromise between Seller and Buyer.

WHAT BROKER AND ITS SALESPERSONS CANNOT DISCLOSE TO SELLERS AND BUYERS

- We cannot disclose confidential information that we may know about the Seller and/or Buyer (e.g., motivation to sell/buy; price/terms; negotiating strategy), without written permission of the Seller and/or Buyer.
- We cannot disclose the price the Seller will take, other than the listing price, without written permission of the Seller.
- We cannot disclose the price the Buyer is willing to pay, without written permission of the Buyer.
- We cannot recommend or suggest a price the Buyer should offer or pay for the property.
- We cannot recommend or suggest a price the Seller should accept or counter.

8. **Role of Salesperson:**

The salesperson who has executed this Informed Consent To Dual Agency as the "Listing Salesperson" agrees that she(he) will continue to represent the interests of the Seller in all negotiations, discussions and procedures relating to this transaction. The person whose signature is set forth below and is designated as "Selling Salesperson" agrees that she(he) will continue to represent the interests of the Buyer in all negotiations, discussions and procedures relating to this transaction. Broker will act as an intermediary with respect to Seller and Buyer and except for the fiduciary duty to account for any monies which come into

