

## INFORMED CONSENT TO DUAL AGENCY

Property Address: \_\_\_\_\_

Name of Brokerage Firm: \_\_\_\_\_ (“Broker”)

Seller(s): \_\_\_\_\_

Listing Salesperson: \_\_\_\_\_

Buyer(s): \_\_\_\_\_

Selling Salesperson: \_\_\_\_\_

1. 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 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 the terms set forth in said contract of sale, Broker may terminate its dual agency role and this Consent, by mailing written notice thereof to Seller and Buyer.
3. Description of Seller's and Buyer's Role:  
Because of Broker's dual agency relationship, Seller and Buyer acknowledge that they understand that they have the responsibility to negotiate and make their own decisions as to what terms are to be included in this Addendum. Seller and Buyer also 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 agent, and that they have determined that the benefits of entering into this transaction, with the Broker acting as a Dual Agent outweigh said 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 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 adversely affect Buyer's and Seller's best interests to the exclusion of all other interests, and may deprive them 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. 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 modify or forego them. The duty of undivided loyalty is forfeited in a dual agency relationship. 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. In the event a conflict arises between Buyer and Seller, Broker may elect to withdraw from the transaction because Broker is unable to adequately represent each interest. Where one client discloses confidential information to the Broker which is of such a nature that the Broker cannot fairly give advice to the other without disclosing it, the Broker cannot continue to act as advisor.
7. Buyer and Seller have the absolute right to refuse to consent to a dual agency relationship and the representation of an adverse interest by Broker.
8. Buyer and Seller have the right to consent to a dual agency relationship, with or without an adjustment in the amount of compensation to the Broker.
9. Buyer and Seller each have the right to retain their own Agent to represent only their interest in a single agency relationship (i.e. Buyer's Agent or Seller's Agent).
10. 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.

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.

11. 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 duties to account for any monies which come into Broker's possession and the duty to exercise reasonable care. Broker will not have fiduciary duties to either Seller or Buyer to provide "undivided loyalty or obedience". If the salesperson who acted as the Listing Salesperson is also the Selling Salesperson, then such Salesperson will act as an intermediary with respect to Seller and Buyer.

By signing below, you approve and agree Broker and its Salespersons may act as Dual Agent in this transaction.

**YOU SHOULD UNDERSTAND THAT THIS IS A LEGALLY BINDING DUAL AGENCY ACKNOWLEDGMENT THAT MAY ULTIMATELY RESTRICT YOUR LEGAL RIGHTS OR REMEDIES. IF YOU DO NOT UNDERSTAND THIS ADDENDUM OR FEEL THAT IT DOES NOT PROVIDE FOR YOUR LEGAL NEEDS, YOU SHOULD CONSULT AN ATTORNEY BEFORE YOU SIGN IT.**

Seller Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Seller Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Buyer Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Buyer Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Broker Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Selling Salesperson Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Listing Salesperson Signature: \_\_\_\_\_ Date: \_\_\_\_\_

*The Selling Salesperson whose signature appears above acknowledges that Buyer has signed this Consent before signing any written offer to purchase the property. The Listing Salesperson whose signature appears above acknowledges that the Seller has signed this Consent before signing the acceptance of an offer or a counter offer.*