

EXCLUSIVE BUYER AGENCY AGREEMENT

THIS IS A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, IT IS RECOMMENDED THAT YOU CONSULT WITH AN ATTORNEY BEFORE SIGNING.

BUYER(S): _____
["BUYER"]

ADDRESS: _____

BROKER: _____
["BROKER"]

ADDRESS: _____

SALESPERSON/ASSOCIATE BROKER: _____
["AGENT"]

BUYER hereby retains BROKER, represented by AGENT, on an **exclusive** basis, to assist BUYER in locating and/or negotiating for the purchase, lease, exchange, option, and/or acquisition of an interest in real property, a general description of which is provided below. The terms and conditions of this agreement ("AGREEMENT") are as follows:

AGREEMENT PERIOD

1. The term of this AGREEMENT begins on _____, 20____ ["EFFECTIVE DATE"], and ends at midnight on _____, 20____, or upon the closing of a property purchased in accordance with this AGREEMENT, whichever is earlier.

COMPENSATION IS FULLY NEGOTIABLE AND NOT SET BY LAW

2. **BUYER HEREBY ACKNOWLEDGES AND UNDERSTANDS THAT COMPENSATION IS NOT SET BY LAW, OR BY THE HUDSON GATEWAY ASSOCIATION OF REALTORS®, INC. ("HGAR") OR ONEKEY® MLS, LLC ("ONEKEY® MLS"), AND THAT ANY COMPENSATION TO BROKER IS FULLY NEGOTIABLE BETWEEN THE BUYER AND THE BROKER. BROKER SHALL NOT RECEIVE COMPENSATION FROM ANY SOURCE THAT EXCEEDS THE AMOUNT OF COMPENSATION TO BROKER UNDER THIS AGREEMENT UNLESS OTHERWISE AGREED TO BY BUYER AND BROKER IN WRITING.**

_____/_____/_____/_____ [ALL PARTIES TO INITIAL].

COMPENSATION DUE TO BROKER

3. **Collecting the Commission from the Seller.** BUYER may choose to negotiate that the commission due to BROKER be paid, in whole or in part, by the seller at closing as a credit and/or seller's concession to BUYER and/or by the seller directly to BROKER'S brokerage firm. At BUYER'S instruction, BROKER will include either or both of these in BUYER'S offer to purchase a property, and BROKER will assist BUYER in negotiating these options with any seller or any broker representing a seller. BROKER will **not** retain from the purchase transaction any amount from any source that exceeds the amount agreed upon below. Any amount offered by the seller above the commission will be disclosed to BUYER and will be used to BUYER'S benefit in the transaction, unless otherwise agreed.

4. **Compensation Due.** BUYER agrees that the BROKER shall receive compensation when BUYER, or any other person acting on BUYER'S behalf, purchases, exchanges for, obtains an option on or leases real property located and/or shown by the BROKER to the BUYER, which compensation shall become due and payable when title passes or BUYER enters into a written or oral lease agreement for any rental of the PROPERTY during the term of this AGREEMENT.

5. **Commission Amount Due to Broker.**

Purchase:

BUYER agrees that BROKER shall be compensated **[INSERT FIXED FEE OR PERCENTAGE NOT BOTH]:**

- \$ _____; **OR**
- _____ % of the purchase price of the property.

Lease:

BUYER agrees that BROKER shall be compensated **[INSERT FIXED FEE OR PERCENTAGE NOT BOTH]:**

- \$ _____; **OR**
- _____ % of the aggregate rental amount of the lease and all options as exercised.

6. BROKER is authorized to have the agreed upon compensation paid by the seller or the listing broker under a real estate purchase agreement or otherwise, except as set forth in section 12[b], 12[c] or 12[d]. However, to the extent that the agreed upon compensation is not paid to BROKER by the seller or the listing broker, BUYER shall be fully responsible to BROKER for the difference between the agreed upon compensation and any amount received by BROKER from the Seller and/or listing broker.

If BUYER and BROKER agree to dual agency or dual agency with designated sales agents (see Paragraphs 12[c] and 12[d] below), the BUYER shall be responsible for compensating the BROKER for the full amount set forth above, unless otherwise negotiated and memorialized in writing.

_____/_____/_____/_____ **[ALL PARTIES TO INITIAL].**

BROKER may not receive compensation from any source that exceeds the amount or rate agreed to with the BUYER.

_____/_____/_____/_____ **[ALL PARTIES TO INITIAL].**

7. BUYER shall pay BROKER a retainer fee of \$_____ upon signing this AGREEMENT, if any, which shall be credited against the commission received by BROKER upon the consummation of any purchase or lease transaction by BUYER.

8. BUYER acknowledges that if within _____ **[insert number of days]** days of the termination of this AGREEMENT, without the services of a licensed agent, BUYER buys, exchanges for, obtains an option on, or leases real property shown to BUYER by BROKER during the term of this AGREEMENT, compensation as set forth in this AGREEMENT shall be applicable and BUYER shall pay such fee to BROKER.

BROKER'S OBLIGATIONS

9. BROKER agrees to:

- [a] Use reasonable efforts in locating a property on price and terms reasonably acceptable to BUYER and provide any and all information actually known by the BROKER relating to the property to the BUYER;
- [b] Use professional knowledge and skills to determine property fair market value based upon similarly situated properties that are active or have been sold/pending/rented and negotiate for BUYER's purchase of the property;
- [c] Assist BUYER throughout the transaction and act in BUYER's best interests at all times; and

- [d] Present purchase offers to the seller or to seller's agent if a written authorization granting exclusive authority exists or present lease offers to landlord or landlord's agent if a written authorization granting exclusive authority exists.

10. BUYER understands the range of value given by the BROKER is not based on exact scientific principles and is only the opinion of the BROKER based upon research, knowledge of market conditions and BROKER shall only be liable to the BUYER for damages if the opinion was arrived at as a result of the BROKER'S gross negligence or bad faith.

BUYER'S OBLIGATIONS

11. During the term of this AGREEMENT, BUYER agrees:

- [a] To provide to BROKER upon request:
 - [i] the general nature, location, requirements and preferred terms and conditions, which BUYER is seeking in connection with the acquisition of the desired property; and
 - [ii] relevant personal and financial information to assure BUYER'S ability to obtain financing, and BUYER will notify BROKER promptly of any changes to such information that occurs during the term of this AGREEMENT;
- [b] BUYER agrees to work on an **exclusive** basis with BROKER and not with other real estate brokers, other salespersons, other associate brokers, or owner/landlord/seller, with respect to viewing properties and agrees to refer to BROKER all inquiries in any form from any other real estate broker, other salespersons, other associate brokers, prospective owner/landlord/seller or any other source; and
- [c] conduct in good faith all negotiations for property, exclusively through BROKER.

DUAL AGENCY; IN-HOUSE SALES

12. If BUYER expresses interest in property owned by a seller who has an agency relationship with BROKER ["seller's broker"], a conflict has arisen. The BROKER shall immediately advise both the BUYER and seller client of the pertinent facts including the fact that a dual agency situation has arisen, and that the following options are available:

- [a] BROKER and seller could dissolve their agency relationship. The seller may then seek to retain another broker, and/or an attorney, or may represent themselves. This would release the seller from any listing agreement which was entered into with BROKER. BROKER may continue to act as agent for BUYER and BROKER remains obligated under this AGREEMENT; **OR**
- [b] BROKER and BUYER could dissolve their agency relationship. BUYER may then seek to retain another broker, and/or an attorney, or may represent themselves. This would release BUYER from their obligations under this AGREEMENT for that property only. BROKER may continue to act as Agent for Seller;

NOTE: For transactions where the BROKER and BUYER choose scenario [b] above, BUYER would pay no compensation or subsequent fees to BROKER, as this AGREEMENT would no longer be in effect. If BROKER and seller choose scenario [a] above and BROKER and BUYER continue their relationship, cooperating compensation, if any, may be paid by the seller, unless different arrangements have been agreed upon. Under

_____ / _____ / _____ / _____ **[ALL PARTIES TO INITIAL].**

- [c] With fully informed consent, BUYER and seller may elect to continue with the brokerage firm serving as a consensual dual agent which is the exception to the general rule that agents serve one principal. In dual agency, the BROKER and its agents have a duty of fairness to both the BUYER and seller. As a dual agent, the firm and its agents cannot furnish undivided loyalty to either party. As a dual agent, the firm and its licensee agents have a duty not to disclose confidential information given by one principal to the other principal, such as the price one is willing to pay or accept. Such information may already be known to the firm and its agents. If the information is of such a nature that the agent cannot fairly give advice without disclosing it, the agent cannot properly continue to act as an agent.
- [d] With fully informed consent, BUYER and seller may elect to continue with the brokerage firm serving as a consensual dual agent with designated sales agents. The BROKER of the firm will be a dual agent and the

seller and BUYER will have different agents of the firm advocate on their behalf. The designated sales agent for the BUYER will function as the buyer's agent representing the interests of and advocating on behalf of the BUYER and the designated sales agent for the seller will function as the seller's agent representing the interests of and advocating on behalf of the seller in the negotiations between the BUYER and seller. A designated sales agent cannot provide the full range of fiduciary duties to the BUYER or seller. The designated sales agent must explain that, like the dual agent under whose supervision they function, they cannot provide undivided loyalty.

NOTE: For transactions where the BUYER and BROKER agree to [c] or [d] above (dual agency or dual agency with designated sales agent), the BUYER and BROKER understand and agree that the BROKER is not entitled to cooperating compensation, as BROKER is the sole BROKER in the transaction, and BUYER will be obligated to compensate the BROKER the full amount of compensation pursuant to Paragraphs 3, 4, 5, 6 7 and 8 of this AGREEMENT, as the BROKER may not request compensation from the seller. If there is no mutual agreement, the proposed transaction between BUYER and seller shall not be pursued.

_____/_____/_____/_____ [ALL PARTIES TO INITIAL].

ADVICE ON TECHNICAL AND LEGAL MATTERS

13. BROKER will not counsel BUYER on legal matters, home inspections, public health, surveying, tax, financial or other technical matters which are outside of the scope of the BROKER's expertise. BROKER has recommended to BUYER that BUYER seek the advice and counsel of qualified experts in connection with the physical condition of the property, its state of repair, water, termite, radon, lead and similar tests and as to legal matters with respect to the property. BUYER hereby acknowledges that it is BUYER's sole responsibility for obtaining such services and for retaining any experts which BUYER chooses to obtain.

FAIR HOUSING

14. BROKER is committed to compliance with all laws as well as the philosophy of fair housing for all people. BROKER will present properties to BUYER in full compliance with local, State and Federal Fair Housing laws as well as the National Association of Realtors® Code of Ethics against discrimination on the basis of race, color, religion, sex, identity, national origin, disability, age, marital status and/or familial status, children or other prohibited factors.

OTHER POTENTIAL BUYERS

15. BUYER acknowledges that:

- [a] BROKER may have other agents who service other buyers in addition to BUYER;
- [b] BUYER acknowledges and agrees that the BROKER, either through the agent of BUYER or through another agent of the BROKER has the right to present offers to the owner of a property of other potential buyers or tenants in competition with BUYER;
- [c] BUYER consents to BROKER's representation of other potential buyers or tenants before, during, and after the expiration of this AGREEMENT;
- [d] BUYER acknowledges and agrees that BROKER shall not reveal to the BUYER any terms of any competing offer;
- [e] BUYER acknowledges and agrees that BROKER's agent servicing the BUYER shall not disclose if other BROKER agents working with other buyers or tenants are negotiating on a property upon which the BUYER is negotiating;
- [f] In the event the BUYER's agent acquires actual knowledge of such a competing offer, the BROKER's sole obligation shall be to continue to advise the BUYER of the BROKER's estimate of the fair market value of the property, to submit to the seller or the seller's agent all offers made by the BUYER, and to report to the BUYER all information which the seller or seller's agent authorized the BROKER to disclose to the BUYER.

To the extent that any law or regulation contravenes this section of the AGREEMENT, the BUYER hereby waives the same and agrees to the terms and conditions set forth above.

DISPUTE RESOLUTION

16. [a] **Binding Final Arbitration.** BUYER and BROKER agree that any dispute concerning the terms and conditions of this Agreement that cannot be amicably resolved between them shall be adjudicated by HGAR, at HGAR’s sole discretion, in accordance with the rules of the National Association of REALTORS® (“NAR”) Code of Ethics and Arbitration Manual (“NAR Arbitration Manual”), as adopted by HGAR. Each party shall bear its own fees and costs. All claims and/or disputes that are unable to be resolved amicably or through mediation shall be submitted to confidential binding arbitration in accordance with subparagraphs [a] and [b] hereof, and adjudicated in accordance with the rules of the NAR Arbitration Manual, as amended from time to time, and as adopted by HGAR, a copy of which is available at the offices of HGAR (or at <https://www.nar.realtor/code-of-ethics-and-arbitration-manual>). The proceeding shall be adjudicated by HGAR, at HGAR’s sole discretion, or may be referred to the American Arbitration Association, JAMS or similar organization, at HGAR’s election. BROKER and BUYER mutually agree to use confidential individual binding arbitration, in lieu of a court proceeding, for any disputes or claims now in existence or that may exist in the future (i) that BUYER may have against BROKER, BROKER’S affiliates, and/or BROKER’S current or former employees or independent contractors, salespersons and/or associate brokers, and (ii) that BROKER and/or its, his or her affiliates may have against BUYER. Such claims would include, without limitation, any claims concerning the initiation of the work relationship, the pay or other compensation for the work performed, breach of contract, expenses, and any claims for conversion and/or breach of fiduciary duty. This Agreement to Arbitrate shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1 et seq.
- [b] **CLASS ACTION WAIVER.** BROKER and BUYER agree that any and all claims pursued against each other shall be pursued through the mediation, and binding arbitration process contained in this Paragraph 16, and not through litigation, or as a part of any purported class, collective, representative, or consolidated action. Both BROKER and BUYER hereby waive their right to commence any lawsuit, become a party to or remain a participant in any group, representative, class collective or hybrid class/collective or group action in any court, arbitration proceeding, or any other forum, against the other. This Class Action waiver shall supersede any contrary agreements, statements or rules in the NAR Arbitration Manual. This waiver of class action claims and proceedings is an essential and material term of this AGREEMENT.
- [c] **BUYER UNDERSTANDS THE ARBITRATION AND WAIVER PROVISIONS.** BUYER REPRESENTS AND WARRANTS THAT HE OR SHE UNDERSTANDS THE MEANING AND EFFECT OF THE ARBITRATION AND WAIVER PROVISIONS IN THIS PARAGRAPH 16 AND HAS BEEN PROVIDED A REASONABLE TIME AND OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL REGARDING THIS AGREEMENT. BUYER HEREBY AGREES TO THE PROVISIONS OF THIS PARAGRAPH 16.

_____/_____/_____/_____/_____ [ALL PARTIES TO INITIAL].

HOME EQUITY THEFT PREVENTION ACT

17. BUYER acknowledges that BUYER is aware of the Home Equity Theft Prevention Act and particularly, the provisions of Section 265 of the Real Property Law of the State of New York. In order to ensure compliance with same, BUYER warrants and represents to BROKER that **[checks the boxes below that apply]**:

- BUYER is a bona fide purchaser and is acquiring the within described real property for BUYER’S own personal use and occupancy.
- BUYER is purchasing the premises for investment purposes and may be deemed to be an Equity Purchaser under Section 265 of the Real Property Law.
- BUYER will not be reselling the property to Seller or to a third party or entity and/or assisting in providing financing to any such person(s).

In the event that the above circumstances change after the execution of this AGREEMENT, BUYER hereby covenants and agrees that BUYER will communicate with BROKER and/or AGENT regarding any change in BUYER’s status as a purchaser.

AGENCY AND ANTI-DISCRIMINATION DISCLOSURES

18. The BUYER signing this AGREEMENT hereby acknowledges that he or she has been given a copy of the New York State Agency Disclosure Form mandated to be presented to that party under Section 443 of the NYS Real Property Law and a copy of the Housing and Anti-Discrimination Disclosure Form mandated to be presented under 19 NYCRR §175.28.

TYPE OF PROPERTY

- 19. TYPE OF PROPERTY: Residential Residential Income Commercial
- Industrial Vacant Land Condominium
- Coop Other

GEOGRAPHIC LOCATION OF PROPERTY (COUNTY, TOWN, ETC.): _____

GENERAL NATURE OF PROPERTY: _____

PRICE RANGE: _____

PREFERRED TERMS: _____

POSSESSION: _____

OTHER REQUIREMENTS: _____

SEVERABILITY

20. This AGREEMENT shall remain in effect in the event a section or provision is unenforceable or invalid. All remaining sections and provisions shall be deemed legally binding unless a court or tribunal of competent jurisdiction rules that any such provision or section is invalid or unenforceable, thus limiting the effect of another provision or section. In such case, the affected provision or section shall be enforced as so limited.

ADDITIONAL TERMS

- 21. [a] Upon request by BROKER, BUYER agrees to provide a signature acknowledgment to a listing of properties shown to BUYER by BROKER during the term of this AGREEMENT.
- [b] This document and any addendum hereto, contains the entire agreement of the parties and supersedes all prior agreements or representations which are not expressly set forth herein between these parties.
- [c] This AGREEMENT may be modified only in writing signed and dated by both parties. BUYER acknowledges that BUYER has not relied on any statements of BROKER which are not herein expressed.
- [d] The parties acknowledge that and agree that HGAR, and/or OneKey® MLS are not parties to this AGREEMENT and the BROKER is not an agent of any of these organizations and has no authority to make any representation, agreement, or commitment with respect to these organizations. BUYER further understands and agrees that HGAR and/or OneKey® MLS are not the BUYER’S agents and none of the terms of this AGREEMENT shall make them the BUYER’S agents.
- [e] All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed duly given if delivered by first class, certified or registered mail, by fax, e-mail or other verifiable electronic means. Notices given in any of the above manners by the party’s attorney shall be deemed notice given by the party represented by said attorney.
- [f] This AGREEMENT may be executed in counterparts by the parties and all counterparts shall be deemed to constitute one complete original. The parties further agree that electronic mail transmission (by .pdf, .tif or similar electronic portable document format) or facsimile delivery shall be deemed delivery of an original counterpart for purposes of this AGREEMENT.

- [g] This AGREEMENT shall be binding upon the parties hereto, and their respective heirs, successors, or assigns as of the EFFECTIVE DATE.
- [h] "BUYER" refers to each and all parties who will have an ownership or leasehold interest in the PROPERTY and the undersigned BUYER represents that he/she will be the sole and exclusive owner/lessee and is fully authorized to enter into this AGREEMENT.
- [i] As used in this AGREEMENT, the neuter includes the masculine and feminine, the singular includes the plural and the plural includes the singular, as the context may require.
- [j] Notwithstanding any provision to the contrary contained in this AGREEMENT, if BROKER is held to be monetarily liable for any matter arising from this AGREEMENT, the maximum monetary liability of BROKER shall not exceed the aggregate amount received by BROKER in connection with the transaction in question, not including filing or related administrative fees.
- [k] Additional Terms _____

The undersigned PARTIES hereby acknowledge that they each have thoroughly read and approved each of the provisions contained in this AGREEMENT and they each acknowledge receipt of a copy hereof.

BUYER: _____ (Signature) _____ (Typed/Print Name) _____ (Date)
 _____ (Telephone) _____ (E-mail)

BUYER: _____ (Signature) _____ (Typed/Print Name) _____ (Date)
 _____ (Telephone) _____ (E-mail)

BROKER/AGENT:

_____ (Firm Name) _____ (Broker/Agent's Signature) _____ (Broker/Agent's Typed/Printed Name)
 _____ (Broker/Agent Telephone) _____ (Broker/Agent E-mail)
 _____ (Broker License No.) _____ (Agent License No.) _____ (Date)