



## DUAL AGENCY POTENTIAL/CONSENT AGREEMENT

(for in-house showings/sales when both parties are, or potentially are, "clients")



This Agreement is to be signed and confirmed by Buyer before signing Offer For Real Estate and confirmed by Seller before reviewing Offer For Real Estate when both parties are treated as "clients." A "client" means a party to a transaction who has an agency agreement with a broker for brokerage services. A "customer" means a consumer who is not being represented by a licensee but for whom the licensee may perform ministerial acts.

A. AGREEMENT BETWEEN (Brokerage/firm) Gateway Real Estate, hereinafter called "Broker," and Owner(s) (print name per title) Tom and Rachel Harpham and/or Buyer(s) Joseph Kennelbeck  
The terms "Owner" and/or "Seller" shall hereinafter refer to seller, landlord or optionor. The term "Buyer" shall hereinafter refer to buyer, tenant or optionee. The term "Broker" shall also refer to Broker's affiliated licensees (brokers and salespersons).

### B. RECITALS AND GENERAL CONDITIONS.

1. **IF BROKER REPRESENTS OWNER.** When a broker enters into an agreement to represent an owner (client), the broker and all licensees associated with that broker represent the owner, except when "Appointed Agency" is broker policy. An agent for an owner owes the owner the duties of loyalty, obedience, disclosure, confidentiality, reasonable care and diligence, and full accounting.
2. **IF BROKER REPRESENTS BUYER.** When a broker enters into an agreement to represent a buyer (client), the broker and all licensees associated with that broker represent the buyer, except when "Appointed Agency" is broker policy. An agent for a buyer owes the buyer the duties of loyalty, obedience, disclosure, confidentiality, reasonable care and diligence, and full accounting.
3. **IF BROKER REPRESENTS BOTH OWNER AND BUYER.** A real estate broker acting directly or through a salesperson can legally be the agent of both the owner and the buyer, but only with the knowledge and written consent of both parties. If a buyer represented by a broker wants detailed information about, or to see, a property of an owner who is also being represented by the same broker, the broker shall make every reasonable effort to remain impartial to both parties. In these circumstances, Broker immediately becomes a dual agent. Owner and Buyer acknowledge that, prior to such circumstances, Broker either acted as representative of the Owner or 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. **Provisions that govern the actions of Broker acting as a dual agent:**
  - a. Broker shall not knowingly say or do anything which might place one party at a disadvantage, disclose confidential information or personal confidences of one party to the other party, including motivation to sell/buy, negotiating strategy, or any other information a party specifically instructs Broker in writing not to disclose, unless such disclosure is required by law.
  - b. Broker shall not, without prior express written consent of Owner, disclose to Buyer that Owner might accept a price less than the listing price, or accept terms less favorable to Owner than is indicated in the listing agreement nor shall Broker, without the prior express written consent of Buyer disclose to Owner that Buyer may be willing to pay a higher price, or accept terms less favorable to Buyer than those indicated in Buyers last written offer.
  - c. Broker will endeavor to be impartial between the parties and shall not represent the interests of either Owner or Buyer to the detriment of the other party. Broker is obligated to inform each party of facts Broker knows which likely could affect the party's decision to permit Broker to represent both Owner and Buyer. **Owner/Seller and Buyer are not required to consent to dual agency.**
4. **DESCRIPTION OF BROKER'S SERVICES.** Broker may do the following for Owners and Buyers when acting as a Dual Agent: (1) Treat the Owner and Buyer fairly and honestly; (2) Provide helpful information about the property and area; (3) Respond accurately to questions about the property; (4) Disclose all material facts about the property known to Broker; (5) Explain real estate terms and procedures; (6) Explain to the Owner and Buyer the benefits of having the property inspected; (7) Explain closing costs and procedures; (8) Help Owner and Buyer compare financing alternatives; (9) Provide information about comparable properties so Owner and Buyer may make an informed decision on what price to accept and/or offer; (10) Assist with the standard forms that include the necessary protection and disclosures for the Owner and Buyer; (11) Work diligently to facilitate the sale; and, (12) Receive notices for Owners and Buyers. The proceeding list of services is not intended to be all-inclusive, nor will all services listed be necessary in every case. Licensees are not required to answer questions outside the scope of their real estate license. **In providing said services, Broker shall do all of the following:**
  - a. Provide brokerage services to all parties to the transaction honestly and in good faith.
  - b. Diligently exercise reasonable skill and care in providing brokerage services to all parties.
  - c. Disclose to each party all **material adverse facts** (i.e., significant defects or negative circumstances) that the licensee knows except for the following:
    - 1) Material adverse facts known by the party.
    - 2) Material adverse facts the party could discover through a reasonably diligent inspection, and which would be discovered by a reasonably prudent person under like or similar circumstances.
    - 3) Material adverse facts the disclosure of which is prohibited by law.
    - 4) Material adverse facts that are known to a person who conducts an inspection on behalf of the party.
  - d. Account for all property coming into the possession of the licensee that belongs to any party within reasonable time of receiving the property.
  - e. Disclose to the client all information known by the licensee that is material to the transaction and that is not known by the client or could not be discovered by the client through a reasonably diligent inspection.
  - f. Fulfill any obligation that is within the scope of the agency agreement except those obligations that are inconsistent with other duties that the licensee has under law.
  - g. Place both clients interests ahead of Brokers.

Agreement continued on page 2.

- 5. **DESCRIPTION OF THE RESPONSIBILITIES AND RIGHTS OF OWNER AND BUYER.** In a dual agency situation, Owner and Buyer acknowledge and agree they have the responsibility to negotiate and make their own decisions as to what terms are to be included in any agreement for the purchase and sale of Owner's property. **Owner and Buyer also acknowledge they understand that Broker's representing more than one party in a transaction can create a conflict of interest since both clients may rely upon Broker's advice, and the client's respective interests may be adverse to each other. Owner and Buyer understand they may seek independent legal counsel in order to assist them with any matter relating to a purchase agreement or any other aspect of this transaction. Owner and Buyer have the duty to protect their own interests and are advised by Broker to carefully read all documents to assure that they adequately express the parties understanding of the transaction. If Owner or Buyer have questions regarding the duties and responsibilities of Broker, those questions should be resolved before signing this document.**
- 6. **BINDING DOCUMENTS.** Owner and Buyer agree that whenever terms of this "Dual Agency Potential/Consent Agreement" contradict or conflict with their individual agency agreement with Broker, this Agreement shall supersede and prevail. When this Agreement is attached to an executed agency agreement or purchase agreement, it shall become a part thereof. Further, this Agreement shall be binding on heirs, assigns, executors and administrators of the parties hereto.
- 7. **REQUEST TO COMPLETE FORM DOCUMENTS.** Owner and/or buyer request that Broker select, prepare and complete form documents as authorized by Iowa law or rule, such as purchase agreements, groundwater hazard, and declaration of value.
- 8. **FAX TRANSMISSION.** The facsimile transmission of a signed copy hereof shall constitute a binding agreement. The parties agree to confirm this Agreement by mail or personal delivery of the original signed Agreement between the parties.

C. DUAL AGENCY POTENTIAL/CONSENT.

1. **POTENTIAL DUAL AGENCY.** Owner acknowledges that in order for Owners property to be exposed to all Buyer Clients of Broker, that the potential for dual agency exists. Buyer acknowledges that, in the process of searching for all property meeting the needs of Buyer, Buyer may want detailed information about, and to possibly see, property of Owner Clients of Broker, and therefore a potential for dual agency exists. Owner and Buyer acknowledge that when Broker presents detailed information or shows an Owner Client's property to a Buyer Client, that Broker is immediately a dual agent, undertaking a Consensual Dual Agency representation.

Instructions to Broker by Owner: Owner (agrees ) (does not agree ) to Potential Dual Agency representation.  
 Instructions to Broker by Buyer: Buyer (agrees ) (does not agree ) to Potential Dual Agency representation.

Signature Owner \_\_\_\_\_ AND/OR Signature Buyer \_\_\_\_\_

a. **Owner and Buyer understand that as a prerequisite for Broker to act as a dual agent in a specific property transaction, they will be required to confirm their election to have Broker act as a consensual dual agent in writing in section C.2. below.**

2. **SPECIFIC PROPERTY DUAL AGENCY.** For the specific transaction Lease/option Purchase Agreement dated 1/23/04  
 Property Address: 1215 N. Hyland Listing Agent: Ross McCullough  
 Owner(s) (per title): Tom & Rachel Harpham hereinafter called "Seller."  
 Buyer(s): Joseph Kennebeck Selling Agent: John Dix

- a. **The Seller and Buyer acknowledge** that Broker is undertaking a Consensual Dual Agency representation in the sale of the above specific property. Seller and Buyer have previously been informed of the possibility of a dual agency.  
 Buyer agrees  (does not agree ) to dual agency representation in this transaction.  
 Seller agrees  (does not agree ) to dual agency representation in this transaction.
- b. **Broker Compensation.** If the Buyer is paying Broker a fee or commission for this transaction, the amount and terms are as follows:  
None (if none so state).
- c. **Termination of Negotiations or sale.** In the event Seller and Buyer do not enter into an agreement for the purchase and sale of Seller's property to Buyer, or they do enter into an agreement and the sale does not close, the dual agency role of Broker under this Agreement shall be deemed by all parties to have been terminated. Broker will then become the agent of each, Seller and Buyer, on the terms and conditions previously agreed upon.

By signing below, Owner/Seller and/or Buyer acknowledge and agree that Broker shall act as instructed in sections C.1. and/or C.2. above. If any party has previously signed this agreement they shall reconfirm section C.2. by initialing and time/dating above their original signature(s).

I (we) have read and understand this agreement and acknowledge receipt of a copy. **This is a legally binding contract. If not understood, consult with the lawyer of your choice.**

Joseph Kennebeck  
 Buyer     Seller    \_\_\_\_\_    Time & Date  
 \_\_\_\_\_    Time & Date  
 Buyer     Seller  
 \_\_\_\_\_    Time & Date  
 Selling licensee (for Broker)    \_\_\_\_\_    Time & Date

Ross McCullough  
 Seller     Buyer    \_\_\_\_\_    Time & Date  
 \_\_\_\_\_    Time & Date  
 Seller     Buyer  
John Dix  
 Listing licensee (for Broker)    \_\_\_\_\_    Time & Date