

SERHANT.

Date: 01/06/2025

Owner's Name: David P. Malm

Owner's Address: 220 Boylston Place Apt 9009 Boston, MA 2116

Owner's Email Address: dmalm@websterequitypartners.com

Owner's Phone Number: 781-419-1504

Property Address: 25 West 28th Street, #PH42A New York, NY 10001 ("Property")

Exclusive Right to Sell Listing Agreement (Co-op / Condo)

Dear David P. Malm:

This Exclusive Right to Sell Listing Agreement ("Agreement") is between you, ("Owner" or "You" or "Your") and Serhant LLC ("Serhant") as your real estate broker for the exclusive right to sell Your above-referenced Property.

1. **Authorization.** You represent that You either own the Property or warrant Your authority from the Owner to enter into this Agreement. You further represent that the Property is not now the subject of a listing agreement with any other real estate broker.
2. **Explanation.** An "exclusive right to sell" listing means that if you, the owner of the property, find a purchaser for your house, or if another broker finds a purchaser, you must pay the agreed commission to the present broker. An "exclusive agency" listing means that if you, the owner of the property, find a purchaser, you will not have to pay a commission to the broker. However, if another broker finds a purchaser, you will owe a commission to both the selling broker and your present broker."
3. **Term.** This Agreement is effective from the date it is fully executed ("Effective Date") and will continue in full force for 180 calendar days from the later of the Effective Date or from the date the listing for the Property is first designated as active on any applicable multiple listing service ("Term"). At the end of the Term, the listing will automatically convert to an open, non-exclusive, listing unless Owner notices Serhant otherwise in writing.
4. **Sales Price.** You authorize Serhant to offer the Property for sale at \$9,145,000.00 ("Sales Price") and represent that the monthly maintenance / common charges / assessments / annual real estate taxes are as follows, as applicable:
 - (a) Condominium monthly common charges are \$4,615.00 and annual real estate taxes are: \$2,128.00, and no current assessment.
 - (b) Co-operative ___ shares of ownership and represent the monthly maintenance charges are \$ ___ and assessment is \$.
5. **Board Approval.** To the extent that the sale of the Property is subject to board approval, You authorize Serhant to contact the board.



6. **Advertising.** Owner shall permit Serhant, its agent(s), and/or its vendors to photograph and/or video the Property for marketing purposes. Owner shall permit Serhant, on reasonable notice, to accompany potential purchasers and/or Co-Brokers in the Property.
7. **Prior Broker.** In the event that You had a prior listing agreement for the Property with another real estate brokerage (“Prior Broker”), and such prior listing included a currently binding list of prospective purchasers (“Tail Agreement”), and You both provided Serhant with a copy of the protected list simultaneously with or before Your execution of this Agreement and You sold the Property under said Tail Agreement, in addition to any monies due to Your Prior Broker, You shall pay Serhant a commission of one (1%) percent of the total Sales Price of the Property. Otherwise, the Sales Commission shall be due and payable pursuant to paragraph “9” of this Agreement as if you had no Tail Agreement.
8. **Inquiries.** During the Term, Owner agrees to refer to Serhant any inquiries, proposals, and/or offers received by Owner regarding the Property, including, but not limited to those from principals, other brokers, or third parties. Owner further agrees to conduct all negotiations regarding the sale or other disposition of the Property solely and exclusively through Serhant. Any sale is subject to your good faith approval.
9. **Sales Commission.** If, during the term of this Agreement, the Property is sold, You shall pay commission as follows:
 - (a) Where the same Serhant associated licensee, both lists the Property and procures the Buyer(s): four (4%) percent of the Property’s Final Sales Price.
 - (b) Where more than 1 Serhant associated licensees list the Property and procure Buyer(s): five (5%) percent of the Property’s Final Sales Price.
 - (c) Where Serhant lists the Property, and another Third-Party Real Estate Brokerage (“Buyer Brokerage Firm”) procures Buyer(s):
 - (i) To Serhant: 3% of the Property’s Final Sales Price
 - (ii) To Buyer Brokerage Firm: 2% of the Property’s Final Sales Price.

Real estate broker commissions are not set by law and are fully negotiable. Serhant’s commission is earned and payable upon either the closing of title, or transfer of shares or membership interest to an entity that owns the Property, during the term of this Agreement. Owner shall pay Serhant’s commission no later than the date of the closing. Owner shall pay Serhant’s commission in the form of a wire, bank check, or attorney’s check. To the extent that a closing does not occur, through the fault of Owner, in whole or in part, commission is deemed earned and payable on either Serhant being recognized, at law, as the procuring cause of the transaction, or on the execution of a contract concerning a transfer of the ownership interest in the Property, directly or indirectly. If applicable, the Buyer Brokerage Firm’s commission will be paid from the proceeds at closing. Pursuant to RPL § 294-b, **“At the time of closing, you may be required to deposit the broker’s commission with the county clerk in the event that you do not pay the broker his or her commission as set forth herein. Your obligation to deposit the broker’s commission with the county clerk may be waived by the broker.”**



10. **Tail Period.** Within seven (7) business days after the expiration of this Agreement, Serhant shall deliver to Owner a list of no more than six (6) names of persons introduced to the Property during the term of this Agreement. If within ninety (90) calendar days after the expiration of this Agreement a sales contract or lease for the Property is executed with one of the six (6) persons on the list (including all related entities, alter-egos, and/or related persons), you will pay Serhant the commission as set forth above. Owner represents and warrants that if a new exclusive listing agreement is executed with another Exclusive Broker (the “New Exclusive Broker”), Owner shall notify the New Exclusive Broker of this provision and Broker may negotiate directly with the Owner with respect to the persons on the list during the ninety (90) calendar day protected period.
11. **Contract of Sale.** Owner agrees to and shall provide either directly or shall authorize their attorney, accountant, or other representative to provide Serhant with an executed copy of the contract of sale for the Property, either during this Agreement or within fourteen (14) calendar days after the expiration of this Agreement.
12. **Lead Paint Disclosure.** You acknowledge that Serhant has informed you of their obligations under 42 U.S.C. 4852d (Lead Based Paint Hazard) and You are aware of your responsibility to ensure compliance.
13. **Housing Discrimination.** The parties agree that the Property shall be marketed and sold in compliance with Federal, State, and Local Laws concerning housing discrimination.
14. **Default.** Serhant shall notify Owner, in writing, of any defaults under this Agreement. Owner shall cure said default within ten (10) calendar days of the date of the notice. Should Owner not cure, then, Owner shall pay interest on the amount then due to Serhant, at the rate of four (4%) percent per annum, accruing from the date such unpaid portion first became due. In the event that Owner receives any monies or retains any portion of the down payment in connection with a buyer’s default, Serhant is entitled to ten (10%) percent of said monies without any limitation otherwise intended with respect to this Agreement.
15. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of New York. Any dispute or claim arising out of or relating to this agreement, shall be resolved in New York County, New York. In any action or proceeding to enforce this Agreement, a court of competent jurisdiction shall award Serhant reasonable attorney’s fees, costs, and related expenses in the event Serhant prevails.
16. **Indemnification.** Owner agrees to and shall defend, indemnify, and hold Serhant harmless against any and all damages and expenses incurred by Serhant, including but not limited to reasonable attorney’s fees and costs in the event of any claim or action commenced against

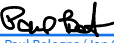


Serhant by a third-party as a result of obeying Owner’s lawful instructions, relying on Owner’s representations made in this Agreement, or as a result of Owner’s breach of duty set forth in this Agreement. Serhant will have the sole and exclusive right to select counsel of its choosing to represent Serhant in any such action.

- 17. **Severability.** If a provision of this Agreement is deemed invalid, illegal, or otherwise enforceable, the remaining provisions of the Agreement will in no way be changed.
- 18. **Integration.** This Agreement represents the entire agreement between Owner and Broker and supersedes any prior agreement(s), it may only be modified by a writing signed by both Owner and Broker, and it is binding upon all successors and assigns. This Agreement may be executed in one or more counterparts, including via electronic signature.
- 19. ***Email and Wire Fraud*.** Please take note that email and wire fraud is real. Broker is not responsible for any wire fraud. In an effort to protect Owner, Broker shall not request Owner’s social security number, bank account information, or any other highly confidential information via email. Owner agrees to and shall call the intended recipient of a wire transfer at a telephone number previously known to Owner as a valid telephone number to confirm instructions, prior to wiring ANY money.

Please sign this page as confirmation of your agreement, retain a copy, and return to Serhant a signed copy of this agreement.

Agreed and Accepted

Paul Bologna
 Executive Director of Sales:  Date 01/06/2025
Paul Bologna (Jan 6, 2025 16:18 EST)

Lauren Mitinas- Kelly
 Exclusive Agent:  Date 01/07/2025

David P. Malm
 Owner’s Name:  Date 01/06/2025
David Malm (Jan 6, 2025 17:00 EST)



Division of Licensing Services

New York State
Department of State
Division of Licensing Services
P.O. Box 22001
Albany, NY 12201-2001
Customer Service: (518) 474-4429
<https://dos.ny.gov>

New York State Disclosure Form for Buyer and Seller

THIS IS NOT A CONTRACT

New York State law requires real estate licensees who are acting as agents of buyers or sellers of property to advise the potential buyers or sellers with whom they work of the nature of their agency relationship and the rights and obligations it creates. This disclosure will help you to make informed choices about your relationship with the real estate broker and its sales agents.

Throughout the transaction you may receive more than one disclosure form. The law may require each agent assisting in the transaction to present you with this disclosure form. A real estate agent is a person qualified to advise about real estate.

If you need legal, tax or other advice, consult with a professional in that field.

Disclosure Regarding Real Estate Agency Relationships

Seller's Agent

A seller's agent is an agent who is engaged by a seller to represent the seller's interests. The seller's agent does this by securing a buyer for the seller's home at a price and on terms acceptable to the seller. A seller's agent has, without limitation, the following fiduciary duties to the seller: reasonable care, undivided loyalty, confidentiality, full disclosure, obedience and duty to account. A seller's agent does not represent the interests of the buyer. The obligations of a seller's agent are also subject to any specific provisions set forth in an agreement between the agent and the seller. In dealings with the buyer, a seller's agent should (a) exercise reasonable skill and care in performance of the agent's duties; (b) deal honestly, fairly and in good faith; and (c) disclose all facts known to the agent materially affecting the value or desirability of property, except as otherwise provided by law.

Buyer's Agent

A buyer's agent is an agent who is engaged by a buyer to represent the buyer's interest. The buyer's agent does this by negotiating the purchase of a home at a price and on terms acceptable to the buyer. A buyer's agent has, without limitation, the following fiduciary duties to the buyer: reasonable care, undivided loyalty, confidentiality, full disclosure, obedience and duty to account. A buyer's agent does not represent the interest of the seller. The obligations of a buyer's agent are also subject to any specific provisions set forth in an agreement between the agent and the buyer. In dealings with the seller, a buyer's agent should (a) exercise reasonable skill and care in performance of the

agent's duties; (b) deal honestly, fairly and in good faith; and (c) disclose all facts known to the agent materially affecting the buyer's ability and/or willingness to perform a contract to acquire seller's property that are not inconsistent with the agent's fiduciary duties to the buyer.

Broker's Agents

A broker's agent is an agent that cooperates or is engaged by a listing agent or a buyer's agent (but does not work for the same firm as the listing agent or buyer's agent) to assist the listing agent or buyer's agent in locating a property to sell or buy, respectively, for the listing agent's seller or the buyer agent's buyer. The broker's agent does not have a direct relationship with the buyer or seller and the buyer or seller cannot provide instructions or direction directly to the broker's agent. The buyer and the seller therefore do not have vicarious liability for the acts of the broker's agent. The listing agent or buyer's agent do provide direction and instruction to the broker's agent and therefore the listing agent or buyer's agent will have liability for the acts of the broker's agent.

Dual Agent

A real estate broker may represent both the buyer and the seller if both the buyer and seller give their informed consent in writing. In such a dual agency situation, the agent will not be able to provide the full range of fiduciary duties to the buyer and seller. The obligations of an agent are also subject to any specific provisions set forth in an agreement between the agent, and the buyer and seller. An agent acting as a dual agent must explain carefully to both the buyer and seller that the agent is acting for the other party as well. The agent should also explain the possible effects of dual representation, including that by consenting to the dual agency relationship the buyer and seller are giving up their right to undivided loyalty. A buyer or seller should carefully consider the possible consequences of a dual agency relationship before agreeing to such representation. A seller or buyer may provide advance informed consent to dual agency by indicating the same on this form.

Dual Agent with Designated Sales Agents

If the buyer and seller provide their informed consent in writing, the principals and the real estate broker who represents both parties as a dual agent may designate a sales agent to represent the buyer and another sales agent to represent the seller. A sales agent works under the supervision of the real estate broker. With the informed consent of the buyer and the seller in writing, 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

New York State Disclosure Form for Buyer and Seller

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 landlord or tenant. A designated sales agent cannot provide 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. A buyer or seller should carefully consider the possible consequences of a dual agency relationship with designated sales agents before agreeing to such representation. A seller or buyer provide advance informed consent to dual agency with designated sales agents by indicating the same on this form.

This form was provided to me by Lauren Mitinas- Kelly of Serhant. _____
(Print Name of Licensee) (Print Name of Company, Firm or Brokerage)

a licensed real estate broker acting in the interest of the:

Seller as a (check relationship below)

Seller's Agent

Broker's Agent

Buyer as a (check relationship below)

Buyer's Agent

Broker's Agent

Dual Agent

Dual Agent with Designated Sales Agent

For advance informed consent to either dual agency or dual agency with designated sales agents complete section below:


Advance Informed Consent Dual Agency

Advance Informed Consent to Dual Agency with Designated Sales Agents

If dual agent with designated sales agents is indicated above: _____ is appointed to represent the buyer; and _____ is appointed to represent the seller in this transaction.

(I) (We) David P. Malm acknowledge receipt of a copy of this disclosure form:

Signature of { } Buyer(s) and/or { } Seller(s):


David Malm (Jan 6, 2025 17:00 EST)

Date: _____

Date: 01/06/2025



New York State Housing and Anti-Discrimination Disclosure Form

Federal, State and local Fair Housing and Anti-discrimination Laws provide comprehensive protections from discrimination in housing. It is unlawful for any property owner, landlord, property manager or other person who sells, rents or leases housing, to discriminate based on certain protected characteristics, which include, but are not limited to **race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, age, disability, marital status, lawful source of income or familial status**. Real estate professionals must also comply with all Fair Housing and Anti-discrimination Laws.

Real estate brokers and real estate salespersons, and their employees and agents violate the Law if they:

- Discriminate based on any protected characteristic when negotiating a sale, rental or lease, including representing that a property is not available when it is available.
- Negotiate discriminatory terms of sale, rental or lease, such as stating a different price because of race, national origin or other protected characteristic.
- Discriminate based on any protected characteristic because it is the preference of a seller or landlord.
- Discriminate by “steering” which occurs when a real estate professional guides prospective buyers or renters towards or away from certain neighborhoods, locations or buildings, based on any protected characteristic.
- Discriminate by “blockbusting” which occurs when a real estate professional represents that a change has occurred or may occur in future in the composition of a block, neighborhood or area, with respect to any protected characteristics, and that the change will lead to undesirable consequences for that area, such as lower property values, increase in crime, or decline in the quality of schools.
- Discriminate by pressuring a client or employee to violate the Law.
- Express any discrimination because of any protected characteristic by any statement, publication, advertisement, application, inquiry or any Fair Housing Law record.

YOU HAVE THE RIGHT TO FILE A COMPLAINT

If you believe you have been the victim of housing discrimination you should file a complaint with the New York State Division of Human Rights (DHR). Complaints may be filed by:

- Downloading a complaint form from the DHR website: www.dhr.ny.gov;
- Stop by a DHR office in person, or contact one of the Division’s offices, by telephone or by mail, to obtain a complaint form and/or other assistance in filing a complaint. A list of office locations is available online at: <https://dhr.ny.gov/contact-us>, and the Fair Housing HOTLINE at (844)-862-8703.

You may also file a complaint with the NYS Department of State, Division of Licensing Services. Complaints may be filed by:

- Downloading a complaint form from the Department of State’s website https://www.dos.ny.gov/licensing/complaint_links.html
- Stop by a Department’s office in person, or contact one of the Department’s offices, by telephone or by mail, to obtain a complaint form.
- Call the Department at (518) 474-4429.

There is no fee charged to you for these services. It is unlawful for anyone to retaliate against you for filing a complaint.



Division of Licensing Services

New York State
Department of State, Division of Licensing Services
(518) 474-4429
www.dos.ny.gov

New York State
Division of Consumer Rights
(888) 392-3644


New York State Housing and Anti-Discrimination Disclosure Form

For more information on Fair Housing Act rights and responsibilities please visit <https://dhr.ny.gov/fairhousing> and <https://www.dos.ny.gov/licensing/fairhousing.html>.

This form was provided to me by Lauren Mitinas- Kelly (print name of Real Estate Salesperson/ Broker) of Serhant. (print name of Real Estate company, firm or brokerage)

(I)(We) David P. Malm

(Buyer/Tenant/Seller/Landlord) acknowledge receipt of a copy of this disclosure form:

Buyer/Tenant/Seller/Landlord Signature  David Malm (Jan 6, 2025 17:00 EST) Date: 01/06/2025

Buyer/Tenant/Seller/Landlord Signature _____ Date: _____

Real Estate broker and real estate salespersons are required by New York State law to provide you with this Disclosure.