

EXCLUSIVE BUYER-BROKER AGREEMENT & AGENCY DISCLOSURE

THIS IS A LEGALLY BINDING AGREEMENT - READ CAREFULLY BEFORE SIGNING
DESIGNATED AGENCY BROKERAGE

THIS EXCLUSIVE BUYER-BROKER AGREEMENT & AGENCY DISCLOSURE ("Exclusive Buyer-Broker Agreement") is entered into between _____ (the "Company"), _____ as the authorized agent for the Company (the "Buyer's Agent") and _____ (the "Buyer").

1. TERM OF AGREEMENT.

1.1 Duration of Agreement. Buyer hereby retains the Company and Buyer's Agent to locate and negotiate for the acquisition of a property for the agreed upon duration of time below or upon the closing of the acquisition of a property (the "Closing"), whichever occurs first (the "Initial Term").

This Exclusive Buyer-Broker Agreement is effective as of the date it is signed by all parties and ENDS at 5:00 P.M. (Mountain Time) on _____ (End Date).

1.2 Properties or Locations the Company Represents the Buyer. Buyer hereby retains the Company and Buyer's Agent to locate and negotiate for the acquisition of a property (Check One Box):

☐ located only within: _____ (County/Countries);

OR

☐ located only at: _____ (property/properties).

Unless checked below, the Buyer warrants that the Buyer has not entered into a representation agreement with another brokerage and has no obligation to pay compensation to any other company arising out of the acquisition of a property identified in Section 1.2.

☐ The Buyer does have a representation agreement with another brokerage for the following properties and these properties are excluded from this Exclusive Buyer-Broker Agreement: _____

During the Initial Term of this Exclusive Buyer-Broker Agreement, and any extensions thereof, the Buyer agrees not to enter into another buyer-broker agreement with another real estate agent or brokerage that conflicts with this Exclusive Buyer-Broker Agreement. In the event this Exclusive Buyer-Broker Agreement expires while the Buyer is under contract on any real property identified in Section 1.2, the Company and the Buyer mutually agree that the Initial Term shall automatically extend until the under-contract transaction closes or is cancelled.

2. BROKERAGE FEE.

2.1 Buyer's Obligation to Pay Brokerage Fee. If, during the Initial Term, or any extension of the Initial Term, the Buyer, or any other person acting in the Buyer's behalf, acquires an interest in any real property as referenced in Section 1 above, the BUYER AGREES TO PAY to the Company a brokerage fee in the amount of \$ _____ and _____ % of the gross acquisition price of the property (the "Brokerage Fee").

2.2 Satisfaction of Brokerage Fee by a Third Party. If a seller's brokerage and/or the property owner is compensating the Company on a property acquired by the Buyer, then the compensation paid to the Company by the seller's brokerage and/or the property owner shall satisfy the Buyer's obligation for the Brokerage Fee shown above provided that the compensation is equal to the Brokerage Fee. The Company may not accept total compensation from any source that is greater than the Brokerage Fee. In the event the compensation paid by the seller's brokerage and/or the property owner is less than the Brokerage Fee, the Buyer shall pay any remaining difference at Closing.

2.3 Brokerage Fee Due and Payable. Unless otherwise agreed to in writing by the Buyer and the Company, the Brokerage Fee shown above shall be due and payable on: (a) If a purchase, the date of recording of the documents for Closing; (b) If a lease, the effective date of the lease; or (c) If an option, the date consideration for the option agreement is paid. If the transaction is prevented by default of Buyer, the Brokerage Fee shall be immediately payable to the Company. BROKERAGE FEES ARE FULLY NEGOTIABLE AND ARE NOT SET BY LAW, ANY BOARD OR ASSOCIATION OF REALTORS®, MULTIPLE LISTING SERVICE (the "MLS"), OR IN ANY MANNER OTHER THAN BETWEEN THE COMPANY AND BUYER.

3. PROTECTION PERIOD. If within _____ months after the termination or expiration of this Exclusive Buyer-Broker Agreement, Buyer or any person acting on the Buyer's behalf, enters into an agreement to purchase, exchange, obtain an option on, or lease any property, as referenced in Section 1 above, located for Buyer by Buyer's Agent or the Company, or on which Buyer's Agent negotiates in Buyer's behalf during the Initial Term, Buyer agrees to pay to the Company the Brokerage Fee referenced in Section 2, unless the Buyer is obligated to pay a Brokerage Fee on such acquisition to another brokerage based on another buyer-broker agreement entered into after the expiration or termination date of this Exclusive Buyer-Broker Agreement.

4. BUYER REPRESENTATIONS/DISCLOSURES. The Buyer warrants that the Buyer will: (a) In all communications with other real estate agents, notify the agents in advance that the Buyer has entered into this Exclusive Buyer-Broker Agreement with the Company; (b) Furnish the Buyer's Agent with relevant personal and financial information to facilitate the Buyer's ability to acquire a property; (c) Exercise care and diligence in evaluating the physical and legal condition of the property selected by the Buyer; (d) Hold harmless the Company and the Buyer's Agent against any claims as the result of any injuries

incurred while inspecting any property; (e) Upon signing of this Exclusive Buyer-Broker Agreement, personally review and sign the Buyer Due Diligence Checklist form and Wire Fraud Alert Disclosure; and (f) Disclose to the Buyer's Agent all properties in which the Buyer, as of the date of this Exclusive Buyer-Broker Agreement, is either negotiating to acquire or has a present interest in acquiring.

5. AGENCY RELATIONSHIPS.

5.1 Duties of a Buyer's Agent. By signing this Exclusive Buyer-Broker Agreement, the Buyer designates the Buyer's Agent and the Principal/Branch Broker for the Company (the "Broker"), as agents for the Buyer to locate properties as referenced in Section 1 above for Buyer's consideration and review. The Buyer authorizes the Buyer's Agent or the Broker to appoint another agent in the Company to also represent the Buyer in the event the Buyer's Agent or the Broker will be unavailable to service the Buyer. As agents for the Buyer, the Buyer's Agent and Broker have fiduciary duties to the Buyer that include loyalty, obedience, full disclosure, confidentiality, reasonable care, and any other duties required by law.

5.2 Duties of a Limited Agent. The Buyer understands that the Buyer's Agent and the Broker may now, or in the future, be agents for a seller who may have a property that the Buyer may wish to acquire. Then the Buyer's Agent and the Broker may be acting as Limited Agents - representing both the Buyer and the seller at the same time. A Limited Agent has fiduciary duties to both the Buyer and the seller as required by law. However, some of those duties are "limited" because the agent cannot provide to both parties undivided loyalty, confidentiality and disclosure. For this reason, the Limited Agent is bound by a further duty of neutrality. Being neutral, the Limited Agent may not disclose to either party information likely to weaken the bargaining position of the other - for example, the highest price the Buyer will offer, or the lowest price the seller will accept. However, the Limited Agent will be required to disclose information given to the agent in confidence by the other party if failure to disclose such information would be a material misrepresentation regarding the Property or regarding the ability of the parties to fulfill their obligations. The Buyer is advised that neither the Buyer nor the seller is required to accept a limited agency situation in the Company, and each party is entitled to be represented by its own agent. In the event a limited agency situation arises, the Buyer's Agent and the Broker, as applicable, may only act as Limited Agents based upon a separate Limited Agency Consent Agreement signed by the seller and Buyer.

6. PROFESSIONAL ADVICE. The Company and the Buyer's agent are trained in the marketing of real estate. Neither the Company nor the Buyer's Agent are trained or licensed to provide the Buyer with professional advice regarding the physical condition of any property or regarding legal or tax matters. The Buyer is advised not to rely on the Company, or any agents of the Company, for a determination regarding the physical or legal condition of the property, including, but not limited to: past or present compliance with zoning and building code requirements; the condition of any appliances; the condition of heating/cooling, plumbing, and electrical fixtures and equipment; sewer problems; moisture or other problems in the roof or foundation; the availability and location of utilities; the location of property lines; and the exact square footage or acreage of the property. As part of any written offer to purchase a property, the Company strongly recommends that the Buyer engage the services of appropriate professionals to conduct inspections, investigations, tests, surveys, and other evaluations of the property at the Buyer's expense. If the Buyer fails to do so, the Buyer is acting contrary to the advice of the Company. Any recommendations for third party services made by the Company or the Buyer's Agent do not guarantee the Buyer's satisfaction in the use of those third party services and should not be seen as a warranty of any kind as to the level of service that will be provided by the third parties. The Buyer is advised that it is up to the Buyer in the Buyer's sole discretion to choose third party services that meet the needs of the Buyer and not to rely on any recommendations given by the Company or the Buyer's Agent.

7. DISPUTE RESOLUTION. The parties agree that any dispute related to this Exclusive Buyer-Broker Agreement, arising prior to or after the acquisition of a property, ☐ **SHALL** ☐ **MAY AT THE OPTION OF THE PARTIES** first be submitted to mediation. If no box is checked, then the parties agree that "may at the option of the parties" shall be the default option. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. The parties to the dispute must agree before any settlement is binding. The parties will jointly appoint an acceptable mediator and share equally in the cost of such mediation. If mediation fails, the other remedies available under this Exclusive Buyer-Broker Agreement shall apply. Nothing in this Section 7 prohibits any party from seeking emergency legal or equitable relief, pending mediation.

8. ATTORNEY FEES/GOVERNING LAW/CLASS ACTION WAIVER. Except as provided in Section 7, in case of the employment of an attorney in any matter arising out of this Exclusive Buyer-Broker Agreement, the prevailing party shall be entitled to receive from the other party all costs and attorney fees, whether the matter is resolved through court action or otherwise. If, through no fault of the Company, any litigation arises out of the Buyer's employment of the Company under this Exclusive Buyer-Broker Agreement (whether before or after the acquisition of a property), the Buyer agrees to indemnify the Company and the Buyer's Agent from all costs and attorney fees incurred by the Company and/or the Buyer's Agent in pursuing and/or defending such action. This Exclusive Buyer-Broker Agreement shall be governed and construed in accordance with the laws of the State of Utah. The Buyer forfeits any and all rights to participate in any class action against the Company. In particular, the Buyer agrees not to be a representative or member of any class of claimants or act as a private attorney general in litigation, arbitration, or administrative proceeding with respect to any claim arising out of this Exclusive Buyer-Broker Agreement.

9. BUYER AUTHORIZATIONS. The Buyer authorizes the Company and/or Buyer's Agent to: (a) Disclose after Closing to each MLS in which the Company participates (consistent with the requirements of each such MLS), the final terms and sales price of the property acquired by Buyer under the terms of this Agreement; and (b) Communicate with the Buyer for the purpose of soliciting real estate related goods and services during and after the term of this Exclusive Buyer-Broker Agreement. The Buyer further agrees that in any transaction for the acquisition of any property, as referenced in Section 1 above, the Earnest Money Deposit may be placed into an interest-bearing trust account with interest paid to the Utah Association of Realtors® Housing Opportunity Fund (UARHOF) to assist in creating affordable housing throughout the state.

10. **ATTACHMENT.** The Buyer Due Diligence Checklist form and Wire Fraud Alert Disclosure are incorporated into this Exclusive Buyer-Broker Agreement. There [] **ARE** [] **ARE NOT** additional terms contained in an Addendum attached to this Exclusive Buyer-Broker Agreement. If an Addendum is attached, the terms of that Addendum are incorporated into this Exclusive Buyer-Broker Agreement by this reference.
11. **EQUAL HOUSING OPPORTUNITY.** The Buyer and the Company will comply with Federal, State, and local fair housing laws.
12. **ELECTRONIC TRANSMISSION & COUNTERPARTS.** Electronic transmission (including email and fax) of a signed copy of this Exclusive Buyer Broker-Agreement and any addenda, and the retransmission of any signed electronic transmission, shall be the same as delivery of an original. This Exclusive Buyer-Broker Agreement and any addenda may be executed in counterparts.
13. **DUE-ON-SALE.** Certain types of transactions may trigger what is commonly referred to as a “due-on-sale” clause. A “due-on-sale” clause typically states that the seller’s lender or mortgagee may call the loan due and payable in full if the seller participates in certain types of transactions. These types of transactions may include, but are not limited to, transactions where: (a) The sale of the property does not result in the underlying debt being paid in full; (b) The parties enter into a seller-financed transaction; (c) A lease option agreement is entered into; or (d) Any other unauthorized transfer of title to the Property has occurred without the lender’s consent. The Buyer understands that if any underlying encumbrances or mortgages on the Property contain a “due-on-sale clause,” and the “due-on-sale” clause is triggered, the lender may call the entire unpaid balance of the loan immediately due.
14. **ENTIRE AGREEMENT.** This Exclusive Buyer-Broker Agreement, including the Buyer Due Diligence Checklist form, Wire Fraud Alert Disclosure, and any additional addenda contain the entire agreement between the parties relating to the subject matter of this Exclusive Buyer-Broker Agreement. This Exclusive Buyer-Broker Agreement shall not be modified or amended except in writing signed by the parties hereto. If any provision of this Exclusive Buyer-Broker Agreement is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such provision shall be severed from this Exclusive Buyer-Broker Agreement and the other provisions shall remain in full force and effect to the fullest extent possible.

THE UNDERSIGNED hereby accept the terms of this Exclusive Buyer-Broker Agreement.

_____	_____	_____
(Buyer's Signature)	(Address/Phone)	(Date)
_____	_____	_____
(Buyer's Signature)	(Address/Phone)	(Date)

ACCEPTED by the Company

by: _____

(Signature of Authorized Buyer's Agent or Broker) (Date)

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