



Summit

Sotheby's  
INTERNATIONAL REALTY



## 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 Summit **Sotheby's** International Realty (the "Company") and \_\_\_\_\_ (the "Buyer").

**1. TERM OF AGREEMENT.** The Buyer hereby retains the Company, including \_\_\_\_\_ (the "Buyer's Agent") as the authorized agent for the Company, starting on the Effective Date as defined in Section 15 below, and ending at 5:00 P.M. (Mountain Time) on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, or the closing of the acquisition of a property, which ever occurs first (the "Initial Term"), to act as the exclusive Buyer's Agent in locating and/or negotiating for the acquisition of a property in the State of Utah. 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.

**2. BROKERAGE FEE.** The Company charges for its services a brokerage fee of three percent (3%) of the purchase price for the Property purchased by Buyer (our "Brokerage Fee"). Our Brokerage Fee shall be paid as follows:

**2.1 Property Listed with a Brokerage.** If the Property purchased by the Buyer is listed with a brokerage, and the buyer agent commission ("BAC") paid to the Company by the listing brokerage is equal to the amount above, the Buyer will not be responsible to pay our Brokerage Fee. If the BAC is less than the amount shown above, Buyer will pay the difference at Closing. The Company will notify Buyer before any offer is made on a property in which the BAC is less than the amount listed above.

**2.2 Property Not Listed with a Brokerage.** If the Property the Buyer wants to purchase is *not listed* with a brokerage (such as a "For Sale By Owner"), the Company will ask the seller to pay our Brokerage Fee, conditioned upon the Buyer and the seller reaching a mutually acceptable agreement. If the seller does not agree to pay our Brokerage Fee, the Buyer will be responsible to pay it; but the Buyer *will know that before the Buyer's Agent presents the Buyer's purchase offer.*

**2.3 Payment Due at Closing.** Our Brokerage Fee shall be due and payable on the date of recording of the Closing Documents for the Buyer's purchase of the property.

**2.4 Exclusive Agency Relationship.** Buyer agrees to use Buyer's Agent for the acquisition of any property during the Initial Term or any extension of the Initial Term as set forth in Section 1. In the event Buyer acquires a property during the Initial Term or an extension of the Initial Term without the use of Buyer's Agent or Company, Buyer shall be responsible for the payment of the Brokerage Fee to Company at the time of Closing.

**3. PROTECTION PERIOD.** If within three (3) 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.

**4. BUYER REPRESENTATIONS/DISCLOSURES.** The Buyer warrants that the Buyer has not entered into any other Exclusive Buyer-Broker Agreement with any other brokerage that is still in force and effect. 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 (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 ("Third Party Vendors") to provide legal, accounting, and mortgage lending services, and 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.

**6.1. Referral of Third Party Vendors.** Any referral of Third Party Vendors ("Referred Vendors") by the Company or the Buyer's Agent to provide services for the Buyer is strictly a courtesy to the Buyer. Neither the Company nor the Buyer's Agent represent, warrant or guarantee the level or quality of care, licensing, or services that may be provided by any Referred Vendors. Buyer has the sole and exclusive right to select any Third Party Vendor and services, including those provided by any Referred Vendors, for any services related to the purchase of a property. Buyer has the sole and exclusive responsibility to review, evaluate, and verify the credentials and experience of any Third Party Vendor, including any Referred Vendors, before retaining their services. Additionally, if at the request of the Buyer, the Company or the Buyer's Agent directly selects and/or arranges for any Referred Vendors for the Buyer, the Buyer agrees: a) to be responsible for the payment of all fees charged by the Referred Vendors; and b) to indemnify, defend, save and hold harmless the Company and the Buyer's Agent, including the payment of reasonable attorney fees and costs incurred in the enforcement of this Agreement, as a result of: (1) any claims made by any Referred Vendors for non-payment by Buyer; and (2) for any claims for loss or damage of any kind that Buyer may have or incur arising directly or indirectly out of the services provided by any Referred Vendors.

**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 first be submitted to mediation through a mediation provider mutually agreed upon by the Buyer and the Company. Each party agrees to bear its own costs of mediation. If mediation fails, the other remedies available under this Exclusive Buyer-Broker Agreement shall apply.

**8. ATTORNEY FEES/GOVERNING LAW.** 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 reasonable 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.

**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; (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; and (c) photograph the exterior of the Property after closing for use in print and on-line marketing for the Company and Buyer's Agent in "just sold" marketing materials. 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.** There [ ] ARE [ ] ARE NOT additional terms contained in an Addendum 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.** This Exclusive Buyer-Broker Agreement and any addenda may be executed in counterparts. Signatures on this Exclusive Buyer-Broker Agreement and any addenda, whether executed physically or electronically, shall have the same legal effect as original physical signatures. 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.

**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, contains 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.

**15. EFFECTIVE DATE.** This Exclusive Buyer-Broker Agreement is entered into and is effective as of the date: (a) The Buyer and the authorized Buyer's Agent or Broker have signed this Exclusive Buyer-Broker Agreement; and (b) The authorized Buyer's Agent or Broker has received a mutually signed copy of this Exclusive Buyer-Broker Agreement (the "Effective Date").

**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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