

**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 Town & Country Apollo Properties (the "Company") and \_\_\_\_\_ (the "Buyer").

**1. TERM OF AGREEMENT.** The Buyer hereby retains the Company, including Lynn C Fillmore (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 SIX MONTHS FROM EXECUTION OF THIS AGREEMENT, 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: (a) In --\_\_\_\_County, Utah; or (b) Located at ALL UTAH PROPERTIES (property address). 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.** 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 \$--\_\_\_\_ or 3 % of the acquisition price of the property (the "Brokerage Fee"). If the property acquired by the Buyer is listed with a brokerage, the buyer agent commission ("BAC") paid to the Company by the listing brokerage shall satisfy the Buyer's obligation for the Brokerage Fee shown above provided that the BAC is not less than the amount shown above. If the BAC is less than the amount shown above, Buyer will pay the difference at Closing. If the property is not listed with a brokerage, in the absence of a commission agreement with the owner of the selected property, the Brokerage Fee shown above shall be paid by the Buyer. 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 Closing documents; (b) If a lease, the effective date of the lease; or (c) If an option, the date the option agreement is signed. If the transaction is prevented by default of Buyer, the compensation shall be immediately payable to the Company.

**3. PROTECTION PERIOD.** If within 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 to provide the Buyer with legal or tax advice, or with technical 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 any property selected by the Buyer, 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 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 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; 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.** 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, 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) \_\_\_\_\_  
Lynn C Fillmore (Date)

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UAR FORM 6

**THIS IS AN ADDENDUM** to that EXCLUSIVE BUYER BROKER AGREEMENT & AGENCY DISCLOSURE (the "Buyer Broker Agreement") entered into on the \_\_\_\_\_, between \_\_\_\_\_ (the "Buyer"), and Town & Country Apollo Properties (the "Company"). The following terms are hereby incorporated as part of the Buyer Broker Agreement, and to the extent these terms modify or conflict with any provisions of the Buyer Broker Agreement, these terms shall control.

1. **CREDIT OFFER: Customer vs Client.** A "customer" is someone who purchases goods or services from a business. A "client" is someone who receives professional services, based on financial considerations for professional services rendered; This agreement will create a client relationship between the Buyer and Broker / Buyer Agent. Retainer Fee: For Credit Offer, the Buyer shall pay to Company a non-refundable Retainer Fee in the amount of \$295.00, due upon acceptance of this agreement. Exception. If Buyer purchases a pre-selected property the retainer fee will be returned to Buyer upon closing. (failure to pay retainer fee shall void credit offer)

2. **BROKERAGE FEE: Cooperative Commission:** The cooperative commission (\*based on a traditional 3% of purchase price) offered as incentive to the Licensed Buyer Brokerages over the "MLS" shall be split between Buyer and Company. Any cooperative commission amount exceeding 3% or Buyer Agent Bonuses offered shall be due to Company. If Property is listed by the Company; The Seller has authorized the Listing Broker that Seller will accept a limited agency situation. No Credit will be due Buyer. Buyer Agent incentive will be the minimum noted below. It is the business practice of the Company to participate in In-House Sales. By signing this agreement, Buyer consents to possible limited agency within the purchase process with Company. For Non-MLS properties, (For Sale by Owner) Buyer and Company will also be subject to this Commission agreement. (minimum noted below shall apply).

\*Note: a minimum of 1.5% of the net sales price or lease amount of property acquired, will be due to the Company under this agreement. The parties acknowledge that this fee arrangement is based on Buyer Agent providing services to Buyer, and that if the services required by Buyer exceed the services set forth in Paragraph 3 below, the Credit offer may be modified by Company.

3. **BUYER OBLIGATIONS:** Buyer will:

3.1. Work exclusively through Broker/Buyer Agent in acquiring property in the market area and negotiate the acquisition of property in the market area only through Broker/Buyer Agent;

3.2. Use due diligence in searching for, locating, and screening properties for possible purchase;

3.3. Provide Buyer Agent with a lender pre-approval letter for proof of funds prior to property entry or presented offers

3.4. Inform other Buyer Agents, salespersons, and sellers with whom Buyer may have contact that Broker/Buyer Agent exclusively represents Buyer for the purpose of acquiring property in the market area and refer all such persons to Broker/Buyer Agent;

4. **BROKER/BUYER AGENT OBLIGATIONS:** Broker/Buyer Agent will:

4.1. Advise Buyer regarding any properties Buyer becomes aware of, by any search method employed by Buyer, including, but not limited to searches on the internet, on web sites such as Realtor.com and MLS Search and parameters submitted to Buyer's Agent.

4.2. Provide Entry into selected Properties. The first (5) five selections are without added fee; then a reduction in rebate of \$50 for each additional entry thereafter.

4.3. Submit Buyer offers with necessary documentation, negotiate offers on Buyer's behalf to achieve a fully executed contract, and guide Buyer through the transaction process up to closing.

**INDEMNIFICATION:** BUYER shall defend, indemnify and hold Company, Buyers Agent and

representatives harmless from, any and all losses, claims, damages, liabilities and costs, including without limitation, commission claims, court costs, reasonable attorneys' fees, which arise from, are related to, or are in connection with this Agreement or violation of any federal, state or local laws

**ALL OTHER TERMS** of the Exclusive Buyer Broker Agreement, not modified by this ADDENDUM shall remain the same.

\_\_\_\_\_  
(Buyer Signature)

\_\_\_\_\_  
(Offer Date)

ACCEPTED by the Company

by \_\_\_\_\_  
(Authorized Buyer's Agent)                      Date

by \_\_\_\_\_  
(Principal Broker)                                      Date

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**UAR FORM 35**

# LIMITED AGENCY CONSENT AGREEMENT

THIS IS A LEGALLY BINDING AGREEMENT – READ CAREFULLY BEFORE SIGNING

Name of Buyer(s): \_\_\_\_\_

Name of Seller(s): \_\_\_\_\_

Agent Representing Buyer: Lynn C Fillmore

Agent Representing Seller: Lynn C Fillmore

Name of Brokerage: Town & Country Apollo Properties (the "Company").

The Buyer and the Seller are both presently using the services of the Company in a possible real estate transaction involving real property located at: \_\_\_\_\_ (referred to below as the "Property").

**AS THE BUYER AND THE SELLER PROCEED WITH THIS TRANSACTION IT IS IMPORTANT THAT THEY EACH UNDERSTAND THEIR PROFESSIONAL RELATIONSHIP WITH THE REAL ESTATE AGENT(S) AND WITH THE COMPANY. WHAT FOLLOWS IS A BRIEF BUT VERY IMPORTANT EXPLANATION OF THE NATURE OF AGENCY RELATIONSHIPS BETWEEN THE BUYER, THE SELLER, THE COMPANY, AND THE REAL ESTATE AGENTS WORKING IN THIS TRANSACTION.**

**1. Principal or Branch Broker.** Every real estate agent must affiliate with a real estate broker. The broker is referred to as a Principal Broker or a Branch Broker (if the brokerage has a branch office). The broker is responsible for operation of the brokerage and for the professional conduct of all agents.

**2. Right of Agents to Represent Seller and/or Buyer.** An agent may represent, through the brokerage, a seller who wants to sell property or a buyer who wants to buy property. On occasion, an agent will represent both seller and buyer in the same transaction. When an agent represents a seller, the agent is a "Seller's Agent"; when representing a buyer, the agent is a "Buyer's Agent"; and when representing both seller and buyer, the agent is a "Limited Agent".

**3. Seller's Agent.** A Seller's Agent works to assist the seller in locating a buyer and in negotiating a transaction suitable to the seller's specific needs. A Seller's Agent has fiduciary duties to the seller which include loyalty, full disclosure, confidentiality, diligence, obedience, reasonable care, and holding safe monies entrusted to the agent.

**4. Buyer's Agent.** A Buyer's Agent works to assist the buyer in locating and negotiating the acquisition of a property suitable to that buyer's specific needs. A Buyer's Agent has the same fiduciary duties to the buyer that the Seller's Agent has to the Seller.

**5. Limited Agent.** A Limited Agent represents both seller and buyer in the same transaction and works to assist in negotiating a mutually acceptable transaction. A Limited Agent has fiduciary duties to both seller and buyer. However, those duties are "limited" because the agent cannot provide to both parties undivided loyalty, full confidentiality and full disclosure of all information known to the agent. For this reason, a Limited Agent must remain neutral in the representation of a seller and buyer, and may not disclose to either party information likely to weaken the bargaining position of the other; such as, the highest price the buyer will pay or the lowest price the seller will accept. A Limited Agent must, however, disclose to both parties material information known to the Limited Agent regarding a defect in the Property and/or the ability of each party to fulfill agreed upon obligations, and must disclose information given to the Limited Agent in confidence, by either party, if the failure to disclose would be a material misrepresentation regarding the Property.

**6. In-House Sale.** If the buyer and the seller are both represented by one or more agents in the same brokerage, that transaction is commonly referred to as an "In-House Sale". Consequently, most In-House Sales involve limited agency because seller and buyer are represented by the same brokerage.

**7. Conflicts with the In-House Sale.** There are conflicts associated with an In-House Sale; for example, agents affiliated with the same brokerage discuss with each other the needs of their respective buyers or sellers. Such discussions could inadvertently compromise the confidentiality of information provided to those agents. For that reason, the Company has policies designed to protect the confidentiality of discussions between agents and access to confidential client and transaction files.

**8. Earnest Money Deposit.** Buyer and Seller agree that although the Company is authorized to act as a Limited Agent, Buyer and Seller authorize and direct the Principal Broker for the Company to hold and release the Earnest Money Deposit in accordance with the terms and conditions of the real estate purchase contract, or other written agreement entered into between the Buyer and the Seller.

**9. Authorization for Limited Agency.** The Seller and Buyer are advised that they are not required to accept a limited agency situation in the Company and that Buyer and Seller are each entitled to be represented by their own agent. However, it is the business practice of the Company to participate in In-House Sales. By signing this agreement, Buyer and Seller consent to a limited agency within the Company as provided below: **(Check Applicable Box):**

**A. One Agent.** The Buyer and the Seller consent to: Lynn C Fillmore (name of Agent); and the Principal/Branch Broker representing both the Buyer and the Seller as a Limited Agent as described above.

**B. Two Agents.** The Buyer and the Seller consent to: \_\_\_\_\_ (Seller's Agent) continuing to represent the

**Seller; and:** \_\_\_\_\_ (Buyer's Agent); continuing to represent the Buyer; and the Principal/Branch Broker acting as a Limited Agent as described above.

\_\_\_\_\_  
(Buyer) (Date) (Seller) (Date)

\_\_\_\_\_  
(Buyer) (Date) (Seller) (Date)

ACCEPTED by the Company:

by:

\_\_\_\_\_  
(Signature of Authorized Agent or Broker) (Date)

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UAR FORM 7

# BUYER DUE DILIGENCE CHECKLIST

This is a legally binding document. If not understood, consult an attorney.

**THIS BUYER DUE DILIGENCE CHECKLIST** is provided by Town & Country Apollo Properties (the "Company"), including Lynn C Fillmore (the "Agent") to \_\_\_\_\_ (the "Buyer") in connection with the purchase of any property.

## NOTICE FROM COMPANY

Buyer is advised that the Company and its agents are trained in the marketing of real estate. Neither the Company nor its agents are trained or licensed to provide Buyer with professional advice regarding the physical condition of any property or regarding legal or tax matters. The Company and its agents strongly recommend that in connection with any offer to acquire any property, Buyer retain the professional services of legal and/or tax advisors, property inspectors, surveyors, and other professionals to satisfy Buyer as to any and all aspects of the physical and legal condition of the property. **BUYER IS ADVISED NOT TO RELY ON THE COMPANY, OR ON ANY AGENTS OF THE COMPANY, FOR A DETERMINATION REGARDING THE PHYSICAL OR LEGAL CONDITION OF THE PROPERTY.** The following is a general listing of issues that Buyer should consider in evaluating any property. This is not intended to be a comprehensive list of all issues that may be relevant in Buyer's evaluation of a specific property, including any property listed above. This document is, however, intended to direct Buyer's attention to a number of issues that are commonly considered important in the evaluation of any property.

**1. BUILDING CODE/ZONING COMPLIANCE:** Buyer is advised to consult with local zoning officials to assure that Buyer's intended use of the Property (including, but not limited to, rental and business uses, construction of new improvements and/or the remodel of existing improvements) will comply with local zoning requirements and with any recorded restrictive covenants and conditions. Buyer should determine whether a certificate of occupancy has been issued for the Property and if such certificate is available for inspection. Buyer is also advised to make inquiry at the local building department to determine if building permits and final inspections were obtained for any remodel work at the Property, if applicable. Buyer acknowledges that the Company should not be relied upon for any determination as to any past, present or future building code or zoning restrictions or violations, or as to the suitability of the Property for Buyer's intended use.

**2. RENTAL OF PROPERTY:** If Buyer intends to use the Property as a rental, Buyer is advised to consult with local zoning officials and to review any applicable restrictive covenants to determine that rental of the Property is a legal use, and does not violate any restrictive covenants. Buyer is also advised to consult with local governmental authorities to determine whether a business or other license is required in order to use the Property as a rental. Buyer acknowledges that the Company should not be relied upon for any determination as to whether rental of the Property is a legal or permitted use.

**3. HAZARDOUS WASTE AND TOXIC SUBSTANCES:** Buyer is advised to consult with appropriate professionals regarding the possible existence of hazardous wastes and toxic substances on the Property, including, but not limited to, asbestos, radon gas, lead and lead-based paint, and contamination of the Property from the use, storing or manufacturing of any illegal substances including, methamphetamines. Buyer is advised that a variety of federal laws can place strict liability on property owners for hazardous waste management and cleanup of hazardous substances. Buyer is advised of Buyer's obligation to make appropriate inquiries ("due diligence") into past uses of the Property to ascertain the possible existence of hazardous wastes or toxic substances. Buyer acknowledges that the Company should not be relied upon for any determination as to the existence of any hazardous wastes or toxic substances.

**4. RADON GAS:** The EPA and the Surgeon General have linked exposure to elevated radon levels to an increased risk of developing lung cancer. The Buyer is advised to consult with appropriate professionals to determine if elevated levels of radon gas exist in the Property. Additional information regarding radon is available from the state of Utah at [radon.utah.gov](http://radon.utah.gov) and the EPA at [epa.gov/radon/](http://epa.gov/radon/).

**5. SURVEYING AND STAKING:** Buyer is advised that without an accurate survey of the Property, Buyer cannot be certain as to the boundaries of the Property, or that any improvements on the Property are not encroaching upon adjoining parcels of property, or that improvements located on adjoining parcels of property do not encroach onto the Property. Walls and fences may not correspond with legal boundary lines for the Property. Buyer acknowledges that the Company should not be relied upon for any determination as to the boundaries of the Property or of any encroachments within or over the actual boundaries of the Property.

**6. HOME WARRANTY PLANS:** Buyer acknowledges that Buyer has been advised by the Company of the availability of Home Warranty Plans which provide limited warranties for certain home appliances and certain components of the Property after



Closing.

**7. FLOOD ZONE AND INSURANCE:** If the Property is located in a "Flood Zone" as set forth on the H.U.D. "Special Flood Zone Area" map, the mortgage lender may require that Buyer obtain and pay for flood insurance on the Property and its improvements.

**8. HOMEOWNERS INSURANCE:** Buyer is advised that certain properties, due to location, condition, and/or claims history, may be uninsurable, or may only be insurable at an increased cost. Buyer is also advised that Buyer's credit, insurance claims history, and other issues (such as specific kinds of pets), may be factors in determining the availability and cost of homeowners insurance. Buyer is advised to consult directly with insurance companies of Buyer's choice regarding the availability and costs of homeowner's insurance for the Property.

**9. TITLE ISSUES/HOMEOWNER'S ASSOCIATION:** Buyer is advised that title insurance companies offer a variety of title insurance policies that provide different levels of coverage. Buyer is advised to carefully review with legal counsel and with the title insurer: (a) the available title insurance coverage; (b) the contents of any Commitment for Title Insurance on the Property; and (c) the contents of all documents affecting the Property that are a matter of public record, including, but not limited to, any restrictive covenants (CC&R's). If the Property is part of a Condominium or other Homeowners Association ("HOA"), Buyer is advised to consult directly with the HOA regarding all HOA matters that may affect the Property, including, but not limited to, existing and proposed budgets, financial statements, present and proposed assessments, dues, fees, reserve accounts, rules, and meeting minutes.

**10. PHYSICAL CONDITION:** Buyer is advised to consult with appropriate professionals regarding all physical aspects of the Property, including, but not limited to: built-in appliances; plumbing fixtures, lines, fittings and systems; heating, air conditioning systems and components; electrical wiring, systems, appliances and components; foundation; roof; structure; exterior surfaces (including stucco), exterior features and equipment; pool/spa systems and components; any diseased trees or other landscaping; and moisture seepage and damage from roof, foundation or windows. Buyer is advised not to rely on seller, the Company, or any agents of the Company for a determination regarding the physical condition of the Property.

**11. SQUARE FOOTAGE/ACREAGE:** If the square footage or acreage of the Property is of material concern to Buyer, Buyer is advised to verify the square footage or acreage through any independent sources or means deemed appropriate by Buyer. In the event the Company provides any numerical statements regarding these items, such statements are approximations only. Buyer is advised not to rely on seller, the Company, or any agents of the Company for a determination regarding the square footage or acreage of the Property.

**12. UTILITY SERVICES:** Buyer is advised to consult with appropriate professionals regarding the location of utility service lines and the availability and cost of all utility services for the Property including, but not limited to, sewer, natural gas, electricity, telephone, and cable TV. Buyer is advised that the Property may not be connected to public water and/or public sewer, and applicable fees may not have been paid. Septic tanks may need to be pumped. Leach fields may need to be inspected.

**13. WATER:** Buyer is advised to consult with the water service provider for the Property and with other appropriate professionals regarding the source, quality, and availability of water for the Property; and regarding all applicable fees and costs (including, without limitation, connection fees, stand-by fees and service fees), use and regulatory restrictions, and ownership of water rights and water system. Depending upon the location of the Property, the water service provider, and climate conditions, water service to the Property may be interrupted. A well and well system may require inspection. Buyer is further advised that, depending upon the location of the Property, State and local laws may impose specific requirements regarding the source, the capacity, and the quality of water that will service new plat or building permit applications. Such water-related laws may directly impact Buyer's ability to develop the Property and/or obtain a building permit for any improvements to the Property. Buyer is advised to consult directly with applicable State and local authorities, and with legal counsel, regarding the content and potential affect of such water-related laws.

**14. GEOLOGIC CONDITIONS:** Buyer is advised to consult with appropriate professionals regarding possible geologic conditions at or near the Property. Such geologic conditions may include, but are not limited to, soil and terrain stability, the existence of wetlands, drainage problems, and any building and/or zoning requirements relating to such geologic conditions.

**15. MOLD:** Buyer is advised to consult with appropriate professionals to determine the possible existence of mold in the Property. Water leaks and water damage to the Property may result in mold that may have adverse health affects. Additional information regarding mold is available through the EPA at: [www.epa.gov](http://www.epa.gov).

**16. HOUSING COMPLIANCE:** Buyer is advised to consult with appropriate professionals regarding neighborhood or property conditions including, but not limited to: schools; proximity and adequacy of law enforcement; proximity to commercial, industrial, or agricultural activities; crime statistics; fire protection; other governmental services; existing and proposed transportation; construction and development; noise or odor from any source; and other nuisances, hazards, or circumstances. All properties

will be shown without regard to race, color, religion, sex, national origin, handicap or familial status and any other requirements of federal and state fair housing laws.

**17. PROPERTY TAXES:** Buyer is also advised that, depending upon present use, the Property may be taxed as "Greenbelt". A purchase of the Property may change the Greenbelt status and the amount of property taxes assessed by the County. Such change in Greenbelt status may also result in liability for roll-back taxes. If Buyer has any questions regarding County property tax requirements, Buyer is advised to consult directly with the County Assessor's Office.

**18. INCOME TAX/LEGAL CONSEQUENCES:** Buyer is advised that this transaction has tax and legal consequences. Buyer is advised to consult with appropriate legal and tax advisors regarding this transaction.

**19. FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA):** In general, the sale or other disposition of a U.S. real property interest by a foreign person as defined in the Internal Revenue Code is subject to income tax withholding under FIRPTA. If FIRPTA applies to the SELLER, the buyer or other qualified substitute may be legally required to withhold and remit to the IRS 10% of the total purchase price for a property at closing. FIRPTA may require Buyer's signature on applicable IRS withholding forms. Failure to comply with FIRPTA may create liability for Buyer and Seller. If FIRPTA applies to this transaction, Buyer and Seller are advised to consult with appropriate legal and tax advisors regarding their rights and obligations under FIRPTA.

**20. ENERGY EFFICIENCY:** According to the national ENERGY STAR, and other similar energy efficiency programs, utility bills in a typical existing home can be reduced by 20% or more through energy efficiency improvements. A home energy analysis can be provided by certified home energy efficiency professionals to document the energy efficiency levels of an existing home, and also provide recommendations for energy improvements that will reduce utility costs, improve comfort, and improve indoor air quality and safety of a property. Buyer is advised to consult with appropriate energy efficiency professionals regarding any property of interest to the Buyer. Additional information is available at [www.energystar.gov](http://www.energystar.gov).

**RECEIPT AND ACKNOWLEDGEMENT OF BUYER**

I have carefully reviewed this BUYER DUE DILIGENCE CHECKLIST. I understand my right and the recommendation of the Company to consult with appropriate experts and professionals prior to, or as part of an offer to purchase any property. **I FURTHER UNDERSTAND THAT I HAVE THE RIGHT TO INCLUDE ANY OR ALL OF THE ABOVE ISSUES AS A CONDITION OF MY OFFER TO PURCHASE ANY PROPERTY.**

Buyer Signature

Date

Buyer Signature

Date

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# REAL ESTATE PURCHASE CONTRACT

This is a legally binding Real Estate Purchase Contract ("REPC"). Utah law requires real estate licensees to use this form. Buyer and Seller, however, may agree to alter or delete its provisions or to use a different form. If you desire legal or tax advice, consult your attorney or tax advisor.

## EARNEST MONEY DEPOSIT

On this \_\_\_\_\_ ("Offer Reference Date") \_\_\_\_\_ ("Buyer") offers to purchase from \_\_\_\_\_ ("Seller") the Property described below and **agrees to deliver no later than four (4) calendar days after Acceptance (as defined in Section 23)**, an Earnest Money Deposit in the amount of \$\_\_\_\_\_ in the form of \_\_\_\_\_. After Acceptance of the REPC by Buyer and Seller, and receipt of the Earnest Money by the Brokerage, the Brokerage shall have four (4) calendar days in which to deposit the Earnest Money into the Brokerage Real Estate Trust Account.

## OFFER TO PURCHASE

### 1. PROPERTY: \_\_\_\_\_

City of \_\_\_\_\_, County of \_\_\_\_\_, State of Utah, Zip \_\_\_\_\_ Tax ID No. \_\_\_\_\_ (the "Property"). Any reference below to the term "Property" shall include the Property described above, together with the Included Items and water rights/water shares, if any, referenced in Sections 1.1, 1.2 and 1.4.

**1.1 Included Items.** Unless excluded herein, this sale includes the following items if presently owned and in place on the Property: plumbing, heating, air conditioning fixtures and equipment; solar panels; ovens, ranges and hoods; cook tops; dishwashers; ceiling fans; water heaters; water softeners; light fixtures and bulbs; bathroom fixtures and bathroom mirrors; all window coverings including curtains, draperies, rods, window blinds and shutters; window and door screens; storm doors and windows; awnings; satellite dishes; all installed TV mounting brackets; all wall and ceiling mounted speakers; affixed carpets; automatic garage door openers and accompanying transmitters; security system; fencing and any landscaping.

**1.2 Other Included Items.** The following items that are presently owned and in place on the Property have been left for the convenience of the parties and are also included in this sale (check applicable box):  washers  dryers  refrigerators  microwave ovens  other (specify) \_\_\_\_\_

The above checked items shall be conveyed to Buyer under separate bill of sale with warranties as to title. In addition to any boxes checked in this Section 1.2 above, there  ARE  ARE NOT additional items of personal property Buyer intends to acquire from Seller at Closing by separate written agreement.

**1.3 Excluded Items.** The following items are excluded from this sale: \_\_\_\_\_

**1.4 Water Service.** The Purchase Price for the Property shall include all water rights/water shares, if any, that are the legal source for Seller's current culinary water service and irrigation water service, if any, to the Property. The water rights/water shares will be conveyed or otherwise transferred to Buyer at Closing by applicable deed or legal instruments. The following water rights/water shares, if applicable, are specifically excluded from this sale: \_\_\_\_\_

### 2. PURCHASE PRICE.

**2.1 Payment of Purchase Price.** The Purchase Price for the Property is \$\_\_\_\_\_. Except as provided in this Section, the Purchase Price shall be paid as provided in Sections 2.1(a) through 2.1(e) below. Any amounts shown in Sections 2.1(c) and 2.1(e) may be adjusted as deemed necessary by Buyer and the Lender (the "Lender").

\$\_\_\_\_\_ (a) **Earnest Money Deposit.** Under certain conditions described in the REPC, this deposit may become totally non-refundable.

\$\_\_\_\_\_ (b) **Additional Earnest Money Deposit** (see Section 8.4 if applicable)

\$\_\_\_\_\_ (c) **New Loan.** Buyer may apply for mortgage loan financing (the "Loan") on terms acceptable to Buyer: If an FHA/VA loan applies, see attached FHA/VA Loan Addendum.

\$\_\_\_\_\_ (d) **Seller Financing** (see attached Seller Financing Addendum)

\$\_\_\_\_\_ (e) **Balance of Purchase Price in Cash at Settlement**

\$\_\_\_\_\_ **PURCHASE PRICE. Total of lines (a) through (e)**

**2.2 Sale of Buyer's Property.** Buyer's ability to purchase the Property, to obtain the Loan referenced in Section 2.1(c) above, and/or any portion of the cash referenced in Section 2.1(e) above  IS  IS NOT conditioned upon the sale of real estate owned by Buyer. If checked in the affirmative, the terms of the attached subject to sale of Buyer's property addendum apply.

### 3. SETTLEMENT AND CLOSING.

**3.1 Settlement.** Settlement shall take place no later than the Settlement Deadline referenced in Section 24(d), or as otherwise mutually agreed by Buyer and Seller in writing. "Settlement" shall occur only when all of the following have been completed: (a) Buyer and Seller have signed and delivered to each other or to the escrow/closing office all documents required by the REPC, by the Lender, by the title insurance

and escrow/closing offices, by written escrow instructions (including any split closing instructions, if applicable), or by applicable law; (b) any monies required to be paid by Buyer or Seller under these documents (except for the proceeds of any Loan) have been delivered by Buyer or Seller to the other party, or to the escrow/closing office, in the form of cash, wire transfer, cashier's check, or other form acceptable to the escrow/closing office.

**3.2 Closing.** For purposes of the REPC, "Closing" means that: (a) Settlement has been completed; (b) the proceeds of any new Loan have been delivered by the Lender to Seller or to the escrow/closing office; and (c) the applicable Closing documents have been recorded in the office of the county recorder ("Recording"). The actions described in 3.2 (b) and (c) shall be completed no later than four calendar days after Settlement.

**3.3 Possession.** Except as provided in Section 6.1(a) and (b), Seller shall deliver physical possession of the Property to Buyer as follows:  **Upon Recording;**  **\_\_\_ Hours after Recording;**  **\_\_\_ Calendar Days after Recording.** Any contracted rental of the Property prior to or after Closing, between Buyer and Seller, shall be by separate written agreement. Seller and Buyer shall each be responsible for any insurance coverage each party deems necessary for the Property including any personal property and belongings. The provisions of this Section 3.3 shall survive Closing.

**4. PRORATIONS / ASSESSMENTS / OTHER PAYMENT OBLIGATIONS.**

**4.1 Prorations.** All prorations, including, but not limited to, homeowner's association dues, property taxes for the current year, rents, and interest on assumed obligations, if any, shall be made as of the Settlement Deadline referenced in Section 24(d), unless otherwise agreed to in writing by the parties. Such writing could include the settlement statement. The provisions of this Section 4.1 shall survive Closing.

**4.2 Special Assessments.** Any assessments for capital improvements as approved by the homeowner's association ("HOA") (pursuant to HOA governing documents) or as assessed by a municipality or special improvement district, prior to the Settlement Deadline shall be paid for by:  **Seller**  **Buyer**  **Split Equally Between Buyer and Seller**  **Other (explain)** \_\_\_\_\_.

The provisions of this Section 4.2 shall survive Closing.

**4.3 Fees/Costs/Payment Obligations.**

**(a) Escrow Fees.** Unless otherwise agreed to in writing, Seller and Buyer shall each pay their respective fees charged by the escrow/closing office for its services in the settlement/closing process. The provisions of this Section 4.3(a) shall survive Closing.

**(b) Rental Deposits/Prepaid Rents.** Rental deposits (including, but not limited to, security deposits, cleaning deposits and prepaid rents) for long term lease or rental agreements, as defined in Section 6.1(a), and short-term rental bookings, as defined in Section 6.1(b), not expiring prior to Closing, shall be paid or credited by Seller to Buyer at Settlement. The provisions of this Section 4.3(b) shall survive Closing.

**(c) HOA/Other Entity Fees Due Upon Change of Ownership.** Some HOA's, special improvement districts and/or other specially planned areas, under their governing documents charge a fee that is due to such entity as a result of the transfer of title to the Property from Seller to Buyer. Such fees are sometimes referred to as transfer fees, community enhancement fees, HOA reinvestment fees, etc. (collectively referred to in this section as "change of ownership fees"). Regardless of how the change of ownership fee is titled in the applicable governing documents, if a change of ownership fee is due upon the transfer of title to the Property from Seller to Buyer, that change of ownership fee shall, at Settlement, be paid for by:  **Seller**  **Buyer**  **Split Equally Between Buyer and Seller**  **Other (explain)** \_\_\_\_\_.

The provisions of this Section 4.3(c) shall survive Closing.

**(d) Utility Services.** Buyer agrees to be responsible for all utilities and other services provided to the Property after the Settlement Deadline. The provisions of this Section 4.3(d) shall survive Closing.

**(e) Sales Proceeds Withholding.** The escrow/closing office is authorized and directed to withhold from Seller's proceeds at Closing, sufficient funds to pay off on Seller's behalf all mortgages, trust deeds, judgments, mechanic's liens, tax liens and warrants. The provisions of this Section 4.3(e) shall survive Closing.

**5. CONFIRMATION OF AGENCY DISCLOSURE.** Buyer and Seller acknowledge prior written receipt of agency disclosure provided by their respective agent that has disclosed the agency relationships confirmed below. At the signing of the REPC:

Seller's Agent(s) \_\_\_\_\_, represent(s)  **Seller**  **both Buyer and Seller as Limited Agent(s);**

Seller's Agent(s) Utah Real Estate License Number(s): \_\_\_\_\_.

Seller's Brokerage \_\_\_\_\_, represents  **Seller**  **both Buyer and Seller as Limited Agent;**

Seller's Brokerage Utah Real Estate License Number: \_\_\_\_\_.

Buyer's Agent(s) Lynn C Fillmore, represent(s)  **Buyer**  **both Buyer and Seller as Limited Agent(s);**

Buyer's Agent(s) Utah Real Estate License Number(s): 5478881

Buyer's Brokerage Town & Country Apollo Properties, represents  **Buyer**  **both Buyer and Seller as a Limited Agent.**

Buyer's Brokerage Utah Real Estate License Number: 5485093

**6. TITLE & TITLE INSURANCE.**

**6.1 Title to Property.** Seller represents that Seller has fee title to the Property and will convey marketable title to the Property to Buyer at Closing by general warranty deed. Buyer does agree to accept title to the Property subject to the contents of the Commitment for Title Insurance (the "Commitment") provided by Seller under Section 7, and as reviewed and approved by Buyer under Section 8.

**(a) Long-Term Lease or Rental Agreements.** Buyer agrees to accept title to the Property subject to any long-term tenant lease or rental agreements (meaning for periods of thirty (30) or more consecutive days) affecting the Property not expiring prior to Closing. Buyer also agrees to accept title to the Property subject to any existing rental and property management agreements affecting the Property not expiring prior to Closing. The provisions of this Section 6.1(a) shall survive Closing.

**(b) Short-Term Rental Bookings.** Buyer agrees to accept title to the Property subject to any short-term rental bookings (meaning for periods of less than thirty (30) consecutive days) affecting the Property not expiring prior to Closing. The provisions of this Section 6.1(b) shall survive Closing.

**6.2 Title Insurance.** At Settlement, Seller agrees to pay for and cause to be issued in favor of Buyer, through the title insurance agency that issued the Commitment (the "Issuing Agent"), the most current version of the *ALTA Homeowner's Policy of Title Insurance* (the "*Homeowner's Policy*"). If the *Homeowner's Policy* is not available through the Issuing Agent, Buyer and Seller further agree as follows: (a) Seller agrees to pay for the *Homeowner's Policy* if available through any other title insurance agency selected by Buyer; (b) if the *Homeowner's Policy* is not available either through the Issuing Agent or any other title insurance agency, then Seller agrees to pay for, and Buyer agrees to accept, the most current available version of an *ALTA Owner's Policy of Title Insurance* ("*Owner's Policy*") available through the Issuing Agent.

**7. SELLER DISCLOSURES.** No later than the Seller Disclosure Deadline referenced in Section 24(a), Seller shall provide to Buyer the following documents in hard copy or electronic format which are collectively referred to as the "Seller Disclosures":

- (a) a written Seller property condition disclosure for the Property, completed, signed and dated by Seller as provided in Section 10.3;
- (b) a *Lead-Based Paint Disclosure & Acknowledgement* for the Property, completed, signed and dated by Seller (only if the Property was built prior to 1978);
- (c) a Commitment for Title Insurance as referenced in Section 6.1;
- (d) a copy of any restrictive covenants (CC&R's), rules and regulations affecting the Property;
- (e) a copy of the most recent minutes, budget and financial statement for the homeowners' association, if any;
- (f) a copy of any long-term tenant lease or rental agreements affecting the Property not expiring prior to Closing;
- (g) a copy of any short-term rental booking schedule (as of the Seller Disclosure Deadline) for guest use of the Property after Closing;
- (h) a copy of any existing property management agreements affecting the Property;
- (i) evidence of any water rights and/or water shares referenced in Section 1.4;
- (j) written notice of any claims and/or conditions known to Seller relating to environmental problems and building or zoning code violations;
- (k) In general, the sale or other disposition of a U.S. real property interest by a foreign person is subject to income tax withholding under the *Foreign Investment in Real Property Tax Act of 1980* (FIRPTA). A "foreign person" includes a non-resident alien individual, foreign corporation, partnership, trust or estate. If FIRPTA applies to Seller, Seller is advised that Buyer or other qualified substitute may be legally required to withhold this tax at Closing. In order to avoid closing delays, if Seller is a foreign person under FIRPTA, Seller shall advise Buyer in writing; and
- (l) Other (specify) \_\_\_\_\_

**8. BUYER'S CONDITIONS OF PURCHASE.**

**8.1 DUE DILIGENCE CONDITION.** Buyer's obligation to purchase the Property:  IS  IS NOT conditioned upon Buyer's Due Diligence as defined in this Section 8.1(a) below. This condition is referred to as the "Due Diligence Condition." If checked in the affirmative, Sections 8.1(a) through 8.1(c) apply; otherwise they do not.

**(a) Due Diligence Items.** Buyer's Due Diligence shall consist of Buyer's review and approval of the contents of the Seller Disclosures referenced in Section 7, and any other tests, evaluations and verifications of the Property deemed necessary or appropriate by Buyer, such as: the physical condition of the Property; the existence of any hazardous substances, environmental issues or geologic conditions; the square footage or acreage of the land and/or improvements; the condition of the roof, walls, and foundation; the condition of the plumbing, electrical, mechanical, heating and air conditioning systems and fixtures; the condition of all appliances; the costs and availability of homeowners' insurance and flood insurance, if applicable; water source, availability and quality; the location of property lines; regulatory use restrictions or violations; fees for services such as HOA dues, municipal services, and utility costs; convicted sex offenders residing in proximity to the Property; and any other matters deemed material to Buyer in making a decision to purchase the Property. Unless otherwise provided in the REPC, all of Buyer's Due Diligence shall be paid for by Buyer and shall be conducted by individuals or entities of Buyer's choice. Seller agrees to cooperate with Buyer's Due Diligence. Buyer agrees to pay for any damage to the Property resulting from any such inspections or tests during the Due Diligence.

**(b) Buyer's Right to Cancel or Resolve Objections.** If Buyer determines, in Buyer's sole discretion, that the results of the Due Diligence are unacceptable, Buyer may either: (i) no later than the Due Diligence Deadline referenced in Section 24(b), cancel the REPC by providing written notice to Seller, whereupon the Earnest Money Deposit shall be released to Buyer without the requirement of further written authorization from Seller; or (ii) no later than the Due Diligence Deadline referenced in Section 24(b), resolve in writing with Seller any objections Buyer has arising from Buyer's Due Diligence.

**(c) Failure to Cancel or Resolve Objections.** If Buyer fails to cancel the REPC or fails to resolve in writing with Seller any objections Buyer has arising from Buyer's Due Diligence, as provided in Section 8.1(b), Buyer shall be deemed to have waived the Due Diligence Condition, and except as provided in Sections 8.2(a) and 8.3(b)(i), the Earnest Money Deposit shall become non-refundable.

**8.2 APPRAISAL CONDITION.** Buyer's obligation to purchase the Property:  IS  IS NOT conditioned upon the Property appraising for not less than the Purchase Price. This condition is referred to as the "Appraisal Condition." If checked in the affirmative, Sections 8.2(a) and 8.2(b) apply; otherwise they do not.

**(a) Buyer's Right to Cancel.** If after completion of an appraisal by a licensed appraiser, Buyer receives written notice from the Lender or the appraiser that the Property has appraised for less than the Purchase Price (a "Notice of Appraised Value"), Buyer may cancel the REPC by providing written notice to Seller (with a copy of the Notice of Appraised Value) no later than the Financing & Appraisal Deadline referenced in Section 24(c); whereupon the Earnest Money Deposit shall be released to Buyer without the requirement of further written authorization from

Seller.

**(b) Failure to Cancel.** If the REPC is not cancelled as provided in this section 8.2, Buyer shall be deemed to have waived the Appraisal Condition, and except as provided in Sections 8.1(b) and 8.3(b)(i), the Earnest Money Deposit shall become non-refundable.

**8.3 FINANCING CONDITION. (Check Applicable Box)**

**(a) [ ] No Financing Required.** Buyer's obligation to purchase the Property **IS NOT** conditioned upon Buyer obtaining financing. If checked, Section 8.3(b) below does NOT apply.

**(b) [ ] Financing Required.** Buyer's obligation to purchase the Property **IS** conditioned upon Buyer obtaining the Loan referenced in Section 2.1(c). This Condition is referred to as the "Financing Condition." If checked, Sections 8.3(b)(i), (ii) and (iii) apply; otherwise they do not. If the REPC is not cancelled by Buyer as provided in Sections 8.1(b) or 8.2(a), then Buyer agrees to work diligently and in good faith to obtain the Loan.

**(i) Buyer's Right to Cancel Before the Financing & Appraisal Deadline.** If Buyer, in Buyer's sole discretion, is not satisfied with the terms and conditions of the Loan, Buyer may, after the Due Diligence Deadline referenced in Section 24(b), if applicable, cancel the REPC by providing written notice to Seller no later than the Financing & Appraisal Deadline referenced in Section 24(c); whereupon \$\_\_\_\_\_ of Buyer's Earnest Money Deposit shall be released to Seller without the requirement of further written authorization from Buyer, and the remainder of Buyer's Earnest Money Deposit shall be released to Buyer without further written authorization from Seller.

**(ii) Buyer's Right to Cancel After the Financing & Appraisal Deadline.** If after expiration of the Financing & Appraisal Deadline referenced in Section 24(c), Buyer fails to obtain the Loan, meaning that the proceeds of the Loan have not been delivered by the Lender to the escrow/closing office as required under Section 3.2, then Buyer shall not be obligated to purchase the Property and Buyer or Seller may cancel the REPC by providing written notice to the other party.

**(iii) Earnest Money Deposit(s) Released to Seller.** If the REPC is cancelled as provided in Section 8.3(b)(ii), Buyer agrees that all of Buyer's Earnest Money Deposit, or Deposits, if applicable (see Section 8.4 below), shall be released to Seller without the requirement of further written authorization from Buyer. Seller agrees to accept, as Seller's exclusive remedy, the Earnest Money Deposit, or Deposits, if applicable, as liquidated damages. Buyer and Seller agree that liquidated damages would be difficult and impractical to calculate, and the Earnest Money Deposit, or Deposits, if applicable, is a fair and reasonable estimate of Seller's damages in the event Buyer fails to obtain the Loan.

**8.4 ADDITIONAL EARNEST MONEY DEPOSIT.** If the REPC has not been previously canceled by Buyer as provided in Sections 8.1, 8.2 or 8.3, as applicable, then no later than the Due Diligence Deadline, or the Financing & Appraisal Deadline, whichever is later, Buyer: **[ ] WILL [ ] WILL NOT** deliver to the Buyer's Brokerage, an Additional Earnest Money Deposit in the amount of \$\_\_\_\_\_. The Earnest Money Deposit and the Additional Earnest Money Deposit, if applicable, are sometimes referred to herein as the "Deposits". The Earnest Money Deposit, or Deposits, if applicable, shall be credited toward the Purchase Price at Closing.

**9. ADDENDA.** There **[X] ARE [ ] ARE NOT** addenda to the REPC containing additional terms. If there are, the terms of the following addenda are incorporated into the REPC by this reference: **[ ] Addendum No. \_\_\_\_ [ ] Seller Financing Addendum [ ] FHA/VA Loan Addendum [ ] Other (specify) \_\_\_\_\_.**

**10. HOME WARRANTY PLAN / AS-IS CONDITION OF PROPERTY.**

**10.1 Home Warranty Plan.** A one-year Home Warranty Plan **[ ] WILL [ ] WILL NOT** be included in this transaction. If included, the Home Warranty Plan shall be ordered by **[ ] Buyer [ ] Seller** and shall be issued by a company selected by **[ ] Buyer [ ] Seller**. The cost of the Home Warranty Plan shall not exceed \$\_\_\_\_\_ and shall be paid for at Settlement by **[ ] Buyer [ ] Seller**.

**10.2 Condition of Property/Buyer Acknowledgements.** Buyer acknowledges and agrees that in reference to the physical condition of the Property: (a) Buyer is purchasing the Property in its "As-Is" condition without expressed or implied warranties of any kind; (b) Buyer shall have, during Buyer's Due Diligence as referenced in Section 8.1, an opportunity to completely inspect and evaluate the condition of the Property; and (c) if based on the Buyer's Due Diligence, Buyer elects to proceed with the purchase of the Property, Buyer is relying wholly on Buyer's own judgment and that of any contractors or inspectors engaged by Buyer to review, evaluate and inspect the Property. The provisions of Section 10.2 shall survive Closing.

**10.3 Condition of Property/Seller Acknowledgements.** Seller acknowledges and agrees that in reference to the physical condition of the Property, Seller agrees to: (a) disclose in writing to Buyer defects in the Property known to Seller that materially affect the value of the Property that cannot be discovered by a reasonable inspection by an ordinary prudent Buyer; (b) carefully review, complete, and provide to Buyer a written Seller property condition disclosure as stated in Section 7(a); (c) deliver the Property to Buyer in substantially the same general condition as it was on the date of Acceptance, as defined in Section 23, ordinary wear and tear excepted; (d) deliver the Property to Buyer in broom-clean condition and free of debris and personal belongings; and (e) repair any Seller or tenant moving-related damage to the Property at Seller's expense. The provisions of Section 10.3 shall survive Closing.

**11. FINAL PRE-SETTLEMENT WALK-THROUGH INSPECTION.** No earlier than seven (7) calendar days prior to Settlement, and upon reasonable notice and at a reasonable time, Buyer may conduct a final pre-Settlement walk-through inspection of the Property to determine only that the Property is "as represented," meaning that the items referenced in Sections 1.1, 1.2 and 8.1(b)(ii) ("the items") are respectively present, repaired or corrected as agreed. The failure to conduct a walk-through inspection or to claim that an item is not as represented shall not constitute a waiver by Buyer of the right to receive, on the date of possession, the items as represented.

**12. CHANGES DURING TRANSACTION.** Seller agrees that except as provided in Section 12.5 below, from the date of Acceptance until the date of Closing the following additional items apply:

**12.1 Alterations/Improvements to the Property.** No substantial alterations or improvements to the Property shall be made or undertaken without prior written consent of Buyer.

**12.2 Financial Encumbrances/Changes to Legal Title.** No further financial encumbrances to the Property shall be made, and no changes in the legal title to the Property shall be made without the prior written consent of Buyer.

**12.3 Property Management Agreements.** No changes to any existing property management agreements shall be made and no new property management agreements may be entered into without the prior written consent of Buyer.

**12.4 Long-Term Lease or Rental Agreements.** No changes to any existing tenant lease or rental agreements shall be made and no new long-term lease or rental agreements, as defined in Section 6.1(a), may be entered into without the prior written consent of Buyer.

**12.5 Short-Term Rental Bookings.** If the Property is made available for short-term rental bookings as defined in Section 6.1(b), Seller **MAY NOT** after the Seller Disclosure Deadline continue to accept short-term rental bookings for guest use of the property without the prior written consent of Buyer.

**13. AUTHORITY OF SIGNERS.** If Buyer or Seller is a corporation, partnership, trust, estate, limited liability company or other entity, the person signing the REPC on its behalf warrants his or her authority to do so and to bind Buyer and Seller.

**14. COMPLETE CONTRACT.** The REPC together with its addenda, any attached exhibits, and Seller Disclosures (collectively referred to as the "REPC"), constitutes the entire contract between the parties and supersedes and replaces any and all prior negotiations, representations, warranties, understandings or contracts between the parties whether verbal or otherwise. The REPC cannot be changed except by written agreement of the parties.

**15. MEDIATION.** Any dispute relating to the REPC arising prior to or after Closing: **[X] SHALL [ ] MAY AT THE OPTION OF THE PARTIES** first be submitted to mediation. 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 procedures and remedies available under the REPC shall apply. Nothing in this Section 15 prohibits any party from seeking emergency legal or equitable relief, pending mediation. The provisions of this Section 15 shall survive Closing.

**16. DEFAULT.**

**16.1 Buyer Default.** If Buyer defaults, Seller may elect one of the following remedies: (a) cancel the REPC and retain the Earnest Money Deposit, or Deposits, if applicable, as liquidated damages; (b) maintain the Earnest Money Deposit, or Deposits, if applicable, in trust and sue Buyer to specifically enforce the REPC; or (c) return the Earnest Money Deposit, or Deposits, if applicable, to Buyer and pursue any other remedies available at law.

**16.2 Seller Default.** If Seller defaults, Buyer may elect one of the following remedies: (a) cancel the REPC, and in addition to the return of the Earnest Money Deposit, or Deposits, if applicable, Buyer may elect to accept from Seller, as liquidated damages, a sum equal to the Earnest Money Deposit, or Deposits, if applicable; or (b) maintain the Earnest Money Deposit, or Deposits, if applicable, in trust and sue Seller to specifically enforce the REPC; or (c) accept a return of the Earnest Money Deposit, or Deposits, if applicable, and pursue any other remedies available at law. If Buyer elects to accept liquidated damages, Seller agrees to pay the liquidated damages to Buyer upon demand.

**17. ATTORNEY FEES AND COSTS/GOVERNING LAW.** In the event of litigation or binding arbitration arising out of the transaction contemplated by the REPC, the prevailing party shall be entitled to costs and reasonable attorney fees. However, attorney fees shall not be awarded for participation in mediation under Section 15. This contract shall be governed by and construed in accordance with the laws of the State of Utah. The provisions of this Section 17 shall survive Closing.

**18. NOTICES.** Except as provided in Section 23, all notices required under the REPC must be: (a) in writing; (b) signed by the Buyer or Seller giving notice; and (c) received by the Buyer or the Seller, or their respective agent, or by the brokerage firm representing the Buyer or Seller, no later than the applicable date referenced in the REPC.

**19. NO ASSIGNMENT.** The REPC and the rights and obligations of Buyer hereunder, are personal to Buyer. The REPC may not be assigned by Buyer without the prior written consent of Seller. Provided, however, the transfer of Buyer's interest in the REPC to any business entity in which Buyer holds a legal interest, including, but not limited to, a family partnership, family trust, limited liability company, partnership, or corporation (collectively referred to as a "Permissible Transfer"), shall not be treated as an assignment by Buyer that requires Seller's prior written consent. Furthermore, the inclusion of "and/or assigns" or similar language on the line identifying Buyer on the first page of the REPC shall constitute Seller's written consent only to a Permissible Transfer.

**20. INSURANCE & RISK OF LOSS.**

**20.1 Insurance Coverage.** As of Closing, Buyer shall be responsible to obtain casualty and liability insurance coverage on the Property in amounts acceptable to Buyer and Buyer's Lender, if applicable.

**20.2 Risk of Loss.** If prior to Closing, any part of the Property is damaged or destroyed by fire, vandalism, flood, earthquake, or act of God, the risk of such loss or damage shall be borne by Seller; provided however, that if the cost of repairing such loss or damage would exceed ten percent (10%) of the Purchase Price referenced in Section 2, either Seller or Buyer may elect to cancel the REPC by providing written notice to the other party, in which instance the Earnest Money Deposit, or Deposits, if applicable, shall be returned to Buyer.

**21. TIME IS OF THE ESSENCE.** Time is of the essence regarding the dates set forth in the REPC. Extensions must be agreed to in writing by all parties. Unless otherwise explicitly stated in the REPC: (a) performance under each Section of the REPC which references a date shall absolutely be required by 5:00 PM Mountain Time on the stated date; and (b) the term "days" and "calendar days" shall mean calendar days and shall be counted beginning on the day following the event which triggers the timing requirement (e.g. Acceptance). Performance dates and times referenced herein shall not be binding upon title companies, lenders, appraisers and others not parties to the REPC, except as otherwise agreed to in writing by such non-party.

**22. ELECTRONIC TRANSMISSION AND COUNTERPARTS.** The REPC may be executed in counterparts. Signatures on any of the Documents, whether executed physically or by use of electronic signatures, shall be deemed original signatures and shall have the same legal effect as original signatures.

**23. ACCEPTANCE.** "Acceptance" occurs **only** when **all** of the following have occurred: (a) Seller or Buyer has signed the offer or counteroffer where noted to indicate acceptance; and (b) Seller or Buyer or their agent has communicated to the other party or to the other party's agent that the offer or counteroffer has been signed as required.

**24. CONTRACT DEADLINES.** Buyer and Seller agree that the following deadlines shall apply to the REPC:

- (a) Seller Disclosure Deadline \_\_\_\_\_ (Date)
- (b) Due Diligence Deadline \_\_\_\_\_ (Date)
- (c) Financing & Appraisal Deadline \_\_\_\_\_ (Date)
- (d) Settlement Deadline \_\_\_\_\_ (Date)

**25. OFFER AND TIME FOR ACCEPTANCE.** Buyer offers to purchase the Property on the above terms and conditions. If Seller does not accept this offer by: \_\_ : \_\_ [ ] AM [ ] PM Mountain Time on \_\_\_\_\_ (Date), this offer shall lapse; and the Brokerage shall return any Earnest Money Deposit to Buyer.

\_\_\_\_\_  
 (Buyer's Signature)                      (Date)                      \_\_\_\_\_  
 (Buyer's Signature)                      (Date)

**ACCEPTANCE/COUNTEROFFER/REJECTION**

**CHECK ONE:**

- ACCEPTANCE OF OFFER TO PURCHASE:** Seller Accepts the foregoing offer on the terms and conditions specified above.
- COUNTEROFFER:** Seller presents for Buyer's Acceptance the terms of Buyer's offer subject to the exceptions or modifications as specified in the attached ADDENDUM NO. \_\_\_\_.
- REJECTION:** Seller rejects the foregoing offer.

\_\_\_\_\_  
 (Seller's Signature)                      (Date)                      (Time)                      \_\_\_\_\_  
 (Seller's Signature)                      (Date)                      (Time)

THIS FORM APPROVED BY THE UTAH REAL ESTATE COMMISSION AND THE OFFICE OF THE UTAH ATTORNEY GENERAL, EFFECTIVE SEPTEMBER 1, 2017. AS OF JANUARY 1, 2018, IT WILL REPLACE AND SUPERSEDE THE PREVIOUSLY APPROVED VERSION OF THIS FORM.





**ADDENDUM NO. 1**  
**TO**  
**REAL ESTATE PURCHASE CONTRACT**



**THIS IS AN  ADDENDUM  COUNTEROFFER** to that REAL ESTATE PURCHASE CONTRACT (the "REPC") with an Offer Reference Date of \_\_\_\_\_ including all prior addenda and counteroffers, between \_\_\_\_\_ as Buyer, and \_\_\_\_\_ as Seller, regarding the Property located at \_\_\_\_\_. The following terms are hereby incorporated as part of the REPC:

**BUYER AND SELLER AGREE THAT THE CONTRACT DEADLINES REFERENCED IN SECTION 24 OF THE REPC (CHECK APPLICABLE BOX):  REMAIN UNCHANGED  ARE CHANGED AS FOLLOWS:** \_\_\_\_\_

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the REPC, including all prior addenda and counteroffers, these terms shall control. All other terms of the REPC, including all prior addenda and counteroffers, not modified by this ADDENDUM shall remain the same.  Seller  Buyer shall have until \_\_:\_\_  AM  PM Mountain Time on \_\_\_\_\_ (Date), to accept the terms of this ADDENDUM in accordance with the provisions of Section 23 of the REPC. Unless so accepted, the offer as set forth in this ADDENDUM shall lapse.

\_\_\_\_\_  
 Buyer  Seller Signature (Date) (Time)  Buyer  Seller Signature (Date) (Time)

**ACCEPTANCE/COUNTEROFFER/REJECTION**

**CHECK ONE:**

**ACCEPTANCE:**  Seller  Buyer hereby accepts the terms of this ADDENDUM.

**COUNTEROFFER:**  Seller  Buyer presents as a counteroffer the terms of attached ADDENDUM NO. \_\_\_\_.

\_\_\_\_\_  
(Signature) (Date) (Time) (Signature) (Date) (Time)

**REJECTION:**  Seller  Buyer rejects the foregoing ADDENDUM.

\_\_\_\_\_  
(Signature) (Date) (Time) (Signature) (Date) (Time)

THIS FORM APPROVED BY THE UTAH REAL ESTATE COMMISSION AND THE OFFICE OF THE UTAH ATTORNEY GENERAL, EFFECTIVE AUGUST 5, 2003. IT REPLACES AND SUPERSEDES ALL PREVIOUSLY APPROVED VERSIONS OF THIS FORM.