

EXCLUSIVE AGENCY LISTING AGREEMENT
AND
TERMS OF SERVICE

This Exclusive Agency Listing Agreement (the "Agreement") is entered into and effective this _____ day of _____, 20____, (the "Effective Date") by and between The Flat Rate Group, Inc., a Utah corporation, dba Flat Rate Homes (hereinafter referred to as the "Brokerage") and _____ (hereinafter referred to as the "Seller") (together the "Parties") (the above date and Seller information to be applied from the Listing Intake Form) for the provision of brokerage services related to the selling and/or marketing of real estate in the State of Utah.

1. SCOPE OF AGREEMENT. This Agreement applies to all Brokerage services ordered by Seller, whether part of a basic listing ("Basic Listing") or in the form of additional services which have been ordered by Seller. This Agreement shall also apply to each and every listing Seller places with the Brokerage, regardless of the number of such listings, whether ordered at one time or separately. The Listing Intake Form(s) which Seller fills out and supplies to the Brokerage, including the information contained therein, is hereby incorporated and made part of this Agreement by reference.

2. TERM. Seller hereby grants to the Brokerage, including its principal broker ("Principal Broker"), which is the authorized agent of the Brokerage, and all other associated brokers/agents that may be affiliated with the Brokerage from time to time, the exclusive right to list the property mentioned above ("Listed Property") and to provide real estate broker services, either on a month to month basis or for the annual listing period (either or both of the listing periods to be referred to herein as the listing "Term"), depending on what was chosen by Seller in the Listing Intake Form. The listing term begins on the Effective Date of this Agreement.

3. BROKERAGE FEE. The brokerage fee ("Brokerage Fee") shall be the flat fee stated in the Listing Intake Form (hereinafter the "Basic Listing Fee"). Additional Services shall be offered to Seller from the Brokerage for an additional fee (all fees for additional services together to be referred to herein as the "Additional Services Fees"). The additional services shall be listed on the Listing Intake Form. The combination of the Basic Listing Fee and the Additional Services Fees shall comprise the total listing fee ("Total Listing Fee") charged by the Brokerage.

Seller hereby offers the amount of money, or the percentage of the total sales price, listed in the Listing Intake Form (hereinafter the "Commission"), as compensation to the buyer's broker/agent ("Buyer's Agent") who brings a ready willing and able buyer, who does close on the property ("Buyer"), to Seller, for the Listed Property, in accordance with the terms of the listing as it is placed on the appropriate Multiple Listing Service ("MLS") for the Listed Property, or other terms negotiated between the buyer and Seller. The Base Listing Fee shall be considered earned when the listing is placed on the MLS. Additional Services Fees shall be considered earned once the service has been performed or the item purchased has been provided. The Buyer's Agent's Commission shall be considered due and payable once the broker/agent

produces a ready, willing and able buyer who actually closes on the purchase of the property, or upon such event as qualifies for the earning of the Commission based on Utah law or the rules and regulations of either the local Association of Realtors or the MLS which operates in the area where the Listed Property is located.

4. CHANGES. Changes and corrections may be made to the listing price and other information provided by Seller to the Brokerage for inclusion on the MLS listing. Seller acknowledges and agrees that the Brokerage may take up to 24 hours from the start of the business day following the date of submission of the changes to update the changes online.

5. PAUSES TO SERVICE. Seller agrees and acknowledges that it has the right to pause its listing. However, Seller's decision to order a pause in provision of the services that have been ordered from the Brokerage, such as listing the Listed Property for sale on the MLS or other online forums, or the placing of "For Sale" signs and conducting showings of the Listed Property, shall not pause the Term of the listing, which shall continue to run. No refunds shall be given for time lost due to a pause being ordered by the Seller.

6. SCOPE OF WORK AND RESPONSIBILITY OF SELLER. The scope of the work ("Scope") which the Brokerage undertakes for Seller shall be the total of all services which the Seller orders from the Brokerage on the Listing Intake Form. No other services shall be due to Seller from the Brokerage. If Seller chooses to purchase only a Basic Listing, which entitles it to listing on the MLS, Seller acknowledges that it shall not have the right to expect Full Service Brokerage Services. Unless Seller shall choose to purchase the additional service entitled "Full Service Brokerage Services" on the Listing Intake Form, Seller shall be primarily responsible for the sale of the property, all showings of the property or open houses, the placement of signs on the property, and buyers or Buyer's Agents shall be instructed to contact the Seller directly to arrange showings of the Listed Property. The Brokerage shall assist Seller with the products and services within the Scope, but only when Seller purchases Full Service Brokerage Services shall the Brokerage take on the primary selling role and provide the services listed on the Listing Intake Form under Full Service Brokerage Services.

7. PROTECTION PERIOD. In the event that a buyer who was represented by the Buyer's Agent and shown the Listed Property during the Term of the listing returns and closes on the purchase of the Listed Property within **three (3) months** of the expiration of the listing Term, Seller agrees to deposit with the Brokerage the Commission for payment to the Buyer's Agent.

8. SELLER WARRANTIES. Seller warrants to the Brokerage that the natural person(s) or legal entity listed in the Seller Information is/are all of the record owner(s) of the Listed Property it is listing with the Brokerage, that Seller owns good and marketable title to the Listed Property and has the full legal right to list and sell the Listed Property. Seller further warrants that the Listed Property is not the subject of any claims or litigation, nor will the outcome of any pending claims or litigation change the ownership of the Listed Property or interfere with Seller's right to list and sell the same. Seller agrees to provide buyer with marketable title upon closing, and to pay, at closing, for a standard coverage owner's policy of title insurance in the amount of the purchase price.

In the event that Seller is not the record owner of the Listed Property, Seller warrants that it has a power of attorney from the record owner that is either a general power of attorney or a limited power of attorney that specifically authorizes Seller the right to list and sell the Listed Property, and all other necessary legal rights to sell the property and otherwise enter into this Agreement. Seller agrees to notify Brokerage if it is selling the Listed Property under a power of attorney as described above and to provide a copy of the document evidencing a power of attorney to the Brokerage for its review. Seller agrees to indemnify and hold the Brokerage harmless from all suits, causes of action or any other legal proceedings due to Seller listing a property for sale with the Brokerage which Seller was not legally authorized to sell.

9. SELLER DISCLOSURES. Once Seller receives a written offer for the purchase of the Listed Property, Seller agrees to fully inform the Brokerage concerning Seller's knowledge of the condition of the Listed Property, including the presence of mold or lead based paint, and to complete a Seller's Property Condition Disclosure form. Seller acknowledges that it understands that Seller has a superior knowledge of the condition of the Listed Property and that the representations made in the Seller's Property Condition Disclosure are the sole responsibility of the Seller, and Seller assumes full responsibility for the accuracy of such statements and any adverse effects that inaccurate information may have on a buyer. In the event that any of the disclosures of Seller to the Brokerage regarding the condition of the Listed Property, whether made on the Seller's Property Condition Disclosure form, or otherwise, turn out to be incorrect, inaccurate, false or misleading, or in the event that any form of legal or administrative action is brought against the Brokerage, its Principal Broker, or any of the brokers/agents affiliated with the Brokerage, due to inaccurate or misleading information being contained in the Seller's Property Condition Disclosure, Seller shall indemnify the Brokerage, the Principal Broker and the other brokers and agents affiliated with the Brokerage, against all suits, administrative proceedings, causes of action and legal proceedings of any kind, including paying for the costs of representation at hearings or at court during trial and appellate proceedings, including paying a reasonable attorneys' fee, to the Brokerage, or paying such costs on behalf of the Brokerage.

10. RELATIONSHIP OF THE PARTIES. It is understood and agreed that an agency relationship is created by this Agreement between the Brokerage and the Seller. Seller hereby designates the Brokerage, its Principal Broker and any brokers or agents affiliated with the Brokerage, as its agents to assist it in selling the Listed Property, limited by the Scope of the services Seller has chosen to purchase from the Brokerage. Seller hereby discloses and affirms that it does not have currently, and will not enter into, an agency relationship or listing agreement with any other real estate brokerage or agent for selling the Listed Property during the Term of the listing. The Parties acknowledge that the Principal Broker and other real estate brokers/agents who are affiliated with the Brokerage shall owe fiduciary duties to the Seller. Seller understands that the Brokerage is now, or may in the future, become the broker for a buyer who wants to purchase Seller's property. If this situation arises, Seller agrees that the Brokerage may act as a limited agent. Seller acknowledges that as a limited agent, the fiduciary duties owed to Seller, which include loyalty, obedience to lawful instructions, full disclosure, confidentiality, reasonable care and diligence, and the duty to hold safe any money or property of the Seller in the Brokerages possession, shall be limited so as to allow the Brokerage to represent both the buyer and Seller. The above stated fiduciary duties shall be limited in the following

ways: Seller shall no longer have the right to undivided loyalty, absolute confidentiality or full disclosure. This shall mean that the Brokerage shall become obligated to be neutral between the parties, advancing the interests of each party, and shall not disclose to either party information which the Brokerage comes into possession of which may negatively impact the other party during negotiations, such as the lowest price Seller would accept, or the highest price buyer is willing to pay. Limited agency will not eliminate the Brokerage's responsibility to disclose the information in the Seller's Property Condition Disclosure or other material information concerning the condition of the property (material information shall include things that have an effect on the health or safety of the buyer should they purchase the property, such as the presence of mold or lead paint). Nor will limited agency limit Seller's obligation to be truthful in its disclosures. All other fiduciary duties shall remain in effect. **SELLER IS HEREBY ADVISED THAT NEITHER SELLER NOR BUYERS ARE LEGALLY REQUIRED TO ACCEPT A LIMITED AGENCY ON THE PART OF THE BROKERAGE AND THAT EACH HAS THE RIGHT TO BE REPRESENTED BY A SEPARATE AGENT.** Additionally, before a limited agency relationship may commence, both Seller and buyer must agree to the limited agency in writing. Seller, by checking the boxes at the end of this Agreement, agrees to accept limited agency and this Agreement shall constitute written acceptance by Seller of the limited agency described herein, including the waiver by Seller of its rights to undivided loyalty, absolute confidentiality and full disclosure.

The Parties further agree and acknowledge that nothing in this Agreement shall create an employment relationship between the Seller and the brokers/agents associated with the Brokerage but that the brokers/agents of the Brokerage are independent contractors, affiliated with the Brokerage. Consequently, Seller shall only be liable for the Brokerage Fee outlined above and shall not be liable for providing any other benefits or payments normally associated with employment.

It is understood by the parties that the Brokerage is a corporation formed according to the laws of the State of Utah and that all selling is done under the direction of the Brokerage's Principal Broker. It is further understood that if the Principal Broker should become deceased or cease its affiliation with the Brokerage for any reason that the Brokerage shall contract for the services of another principal broker immediately, and that this listing shall remain in full force and effect as long as the Brokerage is affiliated with a principal broker. In the event that the Brokerage is unable to obtain the services of a replacement principal broker immediately, Seller shall be notified and this listing shall terminate in accordance with applicable law. If termination of the listing shall occur as described above, Seller shall receive the return of the Basic Listing fee prorated for the number of days that the listing was valid and the Brokerage maintained an active Principal Broker. All other Additional Services Fees shall be retained or refunded depending on whether the value of the service or item purchased has been received.

11. LIMITATIONS ON SELLER. Seller hereby acknowledges and agrees that during the Term of the listing, and while the listing is online, the Brokerage is required to place the contact information for its Principal Broker and/or other brokers/agents on the Multiple Listing Service to be contacted by brokers/agents that represent potential buyers. Seller further acknowledges and agrees that during the Term of the listing Seller may not place any "For Sale by Owner" signs anywhere on the Listed Property where they may be viewed by the public, including yard

signs and in windows. Only signs provided by the Brokerage may be displayed on the Listed Property during the Term of the listing.

12. ADVICE. The Brokerage and its brokers, agents and employees specifically strive to provide professional advice with regard to the sale and listing of real estate. However, while the brokers and agents associated with the Brokerage are trained and licensed in real estate, they are not trained or licensed attorneys or accountants and do not provide legal or tax advice. None of the statements or advice given to Seller by the Principal Broker, other brokers or agents, or any of the officers or employees of the Brokerage is, or should be construed to be, legal or tax advice, and Seller acknowledges that it may not rely on any advice it receives for those purposes.

13. SELLER AUTHORIZATION. Seller hereby grants to the Brokerage the right to do the following:

- To list for sale the Listed Property both on any MLS on which the Brokerage places listings and to advertise the property for sale on the internet generally.
- To disclose to the MLS any of Seller's information required to be disclosed to list the Listed Property on the MLS, whether or not such information is deemed by Seller to be private.
- To discuss with potential buyers, or buyer's agents, the sale of the home and to receive and relay offers to the Seller, as well as to hold out to the public that the Brokerage and/or the Principal Broker have a listing on the Listed Property.
- Hold keys to the Listed Property and to enter at such times as the Seller has stated are times that the Listed Property is available for showing.
- To disclose to the MLS the terms of the sale upon closing.
- To communicate with the Seller to offer for sale additional products or services related to the sale of real estate and to use the information on the Listing Intake Form for that purpose.
- To place Brokerage "For Sale" signs in the yard or windows of the Listed Property.
- To install a key box or other device which assists the Brokerage in granting access to the Listed Property to other non-Brokerage affiliated real estate agents who may, or may not, be members of the MLS or Utah Association of Realtors.
- To hold open houses to assist in showing and selling the Listed Property
- To hold in the Principal Broker's trust account Earnest Monies that may be deposited with the Principal Broker before the closing of the sale of the Listed Property. Any Earnest Money may be deposited in an interest bearing trust account and the interest may be paid to the Utah Order of Home Warranty Plan.
- Order a Preliminary Title Report on the Listed Property.
- Order a Home Warranty Plan.

Nothing in this section above shall obligate the Brokerage to provide services outside the Scope of the service purchased by the Seller. If Seller desires to restrict the Brokerage from engaging in one of the activities above Seller must notify the Brokerage in writing of such election. The Brokerage may then determine whether or not the services which Seller has purchased are still available or whether to restrict the services which are available to Seller for purchase.

14. PERSONAL PROPERTY. While the Brokerage will make commercially reasonable efforts to safeguard the personal property of the Seller that remains in the Listed Property when the Listed Property is shown by representatives of the Brokerage, Seller acknowledges that it is solely responsible for the personal property and valuables it leaves in the Listed Property during any showing by the Brokerage or another party. Seller further acknowledges that if a key box is installed, showings may be conducted by brokers/agents that are not affiliated with the Brokerage, but represent buyers. Seller agrees to hold the Brokerage harmless for any lost, stolen, or damaged personal property which is left in the Listed Property during showings.

15. FAIR HOUSING COMPLIANCE. The Parties expressly agree to comply with all Federal, State or local laws, rules, regulations or ordinances related to fair housing (“Fair Housing Laws”). The Brokerage hereby expressly refuses to participate in the violation of any Fair Housing Laws and retains the right to cancel this Agreement if Seller either fails to comply with said Fair Housing Laws or encourages the Brokerage, its Principal Broker or its other brokers or agents to do so. Seller agrees to indemnify and hold the Brokerage harmless from all suits, regulatory action or legal actions of any kind brought against the Brokerage, Principal Broker, or other brokers/agents affiliated with the Brokerage due to the breach of said Fair Housing Laws by Seller. Seller further agrees to pay for all attorneys’ fees and costs associated with any defense the Brokerage feels is necessary due to Seller’s breach of the Fair Housing Laws.

16. 30 DAY GUARANTEE. Seller may terminate this listing for any reason within 30 days of the Effective Date of this Agreement. Seller may receive a refund of amounts paid for unused services or products subject to the following: Sellers who purchase an annual listing may receive a full refund if they terminate this listing within 30 days of the Effective Date unless the listing produces a sale of the Listed Property. Sellers who terminate a listing more than 30 days after the Effective Date shall receive a prorated refund based on the number of months this Agreement was in effect. The number of months used in the calculation of the prorated refund shall be rounded up to the next full month. No prorated refunds shall be calculated based on partial months. No refunds are available for month to month listings for any reason. No refunds shall be given for signs unless they are returned to the Brokerage, or its representatives, within 10 days of termination of this listing, in unused, never installed, condition. In no event shall there be refunds for any services or products if a buyer who found the Listed Property due to the products and services provided by the Brokerage purchases the Listed Property. Any refunds to be provided shall be provided to the Seller within 30 days of the date the notice of termination is received.

17. TERMINATION. This Agreement may be terminated by either party by providing written notice to the other party in accordance with the provisions of the section entitled Notices below. If this Agreement is terminated by the Brokerage, the Brokerage shall refund the Total Listing Fee. If this Agreement is terminated by the Seller, the Brokerage shall refund the Basic Listing Fee, together with any Additional Services Fees for services or products which have been paid for and which have not yet been provided to Seller. Once Additional Services Fees have been collected and the service or item has been provided, refunds of such Additional Services Fees shall be governed by the terms outlined in the 30 Day Guarantee section above. Termination shall be effective upon receipt of either, 1) written notice delivered via email or 2) written noticed mailed through the United States Postal Service. Termination shall not relieve either

party from fulfilling obligations in this Agreement such as payment for services already ordered and received. Upon termination of the services described in this Agreement, the agency relationship created by this Agreement shall cease.

18. NOTICES. Any notices sent between the Parties shall be sent to the addresses provided in this agreement via U.S. Mail or email as prescribed below. Notices sent through the U.S. Mail to Seller shall be sent to the current address listed above. Notices sent to the Brokerage shall be sent to PO Box 50061, Provo, Utah 84605-0061. Notices sent via email shall be emailed to Seller at the email address provided in the Listing Intake Form and to the Brokerage at notices@flatratehomes.com. Notices sent via U.S. Mail are deemed delivered three Business Days (Business Days are defined to be days falling on Monday through Friday, excluding federal and State of Utah holidays) following the date of postmark. Notices emailed are deemed delivered once they show up in the sender's "Sent" box of their email account, unless they later receive a notice of the failure of delivery.

19. PRIVACY POLICY REGARDING PERSONAL AND FINANCIAL INFORMATION. The Brokerage shall take appropriate steps to safeguard the personal and financial information of Seller. The Brokerage does not, and shall not, sell the private personal or financial information of the Seller to any third parties, except that such information may be shared between the Brokerage and its subsidiaries or associated companies or their assigns, including the Principal Broker, associate brokers, agents, officers or employees of the same and may be used to further the purposes of this Agreement, or for marketing purposes after the term of this Agreement shall have expired. Seller acknowledges and agrees that payment information is not kept by the Brokerage except in cases where there may be recurring monthly payments for services.

Notwithstanding the foregoing, Seller acknowledges that they are aware that there are risks inherent in electronic communications through the internet and email and that private information may inadvertently be made known to third parties. Seller agrees, as an express term of this Agreement, to hold the Brokerage harmless for any breaches of its privacy that may occur due to the use of the internet or electronic communications such as email. Seller further authorizes and consents to receiving communications from the Brokerage via email.

20. INDEMNIFICATION OF THE BROKERAGE. Seller agrees that it bears the sole responsibility for the accuracy of the information provided to the Brokerage in the Listing Intake Form which it acknowledges will be used for inclusion on publicly available forms of advertising such as the MLS. Seller agrees to indemnify and hold the Brokerage harmless for any and all incorrect representations which Seller has made to the Brokerage in this Agreement and which may be passed on to other brokers/agents or the general public.

21. AMENDMENT TO AGREEMENT. Changes to this Agreement may only be made by Amendment and shall be in writing, signed by both Parties. No Amendments shall invalidate this Agreement. The Parties shall still be bound by the terms of this Agreement, subject to the additional terms contained in any Amendments.

22. ADDENDA. Additions may be made to this Agreement through one or more addenda. To be valid, an addendum must be in writing and signed by both Parties and on a form provided by the Brokerage.

23. DISCLAIMER OF WARRANTY. Neither the Brokerage, its Principal Broker or any other brokers, agents, officers or employees of the Brokerage, makes any direct or implied statements or promises of success or favorable outcome to Seller regarding the sale of the Listed Property. Seller acknowledges that there is no guarantee that services contemplated in this Agreement, and the efforts of Brokerage, Principal Broker or other brokers or agents affiliated with the Brokerage, will produce the sale of Seller's Listed Property. Seller further acknowledges, that it has the sole option to choose which of the Brokerage's services to purchase, and that each of the Brokerage's services chosen, or unchosen, as well as many other factors, including market forces, local, statewide, national and international events, or acts of God, may inhibit the sale of the Listed Property. Seller agrees to hold the Brokerage, Principal Broker, affiliated brokers and agents, officers and employees of the Brokerage harmless if this listing does not produce the sale of the Listed Property.

24. ENTIRE AGREEMENT. This Agreement, which includes the Listing Intake Form and any input form required to be used by the MLS, all of which are incorporated herein by reference, is the entire agreement between the Parties and supersedes all earlier or simultaneous agreements regarding this listing, whether written or oral. This Agreement may only be amended according to the amendment procedures in the Amendment to Agreement section above. If there is any ambiguity in this Agreement, there shall be no presumption that the ambiguity should be construed against the drafter.

25. ELECTRONIC TRANSMISSION AND COUNTERPARTS. This Agreement may be executed in multiple counterparts with each counterpart being deemed an original and the combination of the counterparts being considered one and the same contract. Electronic signatures and transmissions, or re-transmissions of this Agreement, or any amendments or addenda, shall be considered the same as an original copy.

26. SEVERABILITY. Should any part of this Agreement be rendered or declared invalid by a court of competent jurisdiction in the State of Utah, such invalidation of such part or portion of this Agreement shall not invalidate the remaining portions thereof, and they shall remain in full force and effect.

27. PERSONAL GUARANTEE. The undersigned Seller, or representative of Seller, personally guarantees all amounts owing to the Brokerage under this Agreement.

28. DISPUTES AND CHOICE OF LAW. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Utah. In the event that a dispute arises between the parties to this Agreement, the Parties agree, before either party may file suit, to submit the dispute to mediation by a professional mediator mutually agreed upon by the Parties. The mediator must be one which has been licensed to practice law in the State of Utah. The party seeking mediation shall send notice to the other party in the manner prescribed in the section entitled Notices above. In the event that the Parties cannot agree upon a mediator, the

party seeking mediation shall pick three mediators who meet the requisite qualifications from which the responding party may choose the mediator. Each party may have legal counsel present at the mediation but the Parties shall each bear the cost of their own legal counsel in addition to one-half of the cost of the mediator. If mediation is unsuccessful, the Parties may file suit in the appropriate court of law, with each party to pay its own attorneys' fees, in addition to costs of suit, at trial or appellate levels, and venue shall be laid in Utah County, Utah.

This Agreement constitutes an offer to provide services for the fees listed. By filling out the form, paying the fee, checking the box that you have read and understood the Agreement and clicking the SEND button, Seller accepts this offer and becomes legally bound by this Agreement. By checking the box below and clicking the SEND button you represent that you are legally able and authorized to list the property for sale and may sign for and legally bind the entity or person(s) listed in this Agreement as Seller.

I AGREE to limited agency as described above.

I have read and understand the foregoing Agreement.

Electronic Signature: typed name

SEND