



Town & Country Apollo Properties (MLS HYBRID SERVICE PLANS)



EXCLUSIVE RIGHT TO SELL LISTING AGREEMENT & AGENCY DISCLOSURE

THIS IS A LEGALLY BINDING AGREEMENT - READ CAREFULLY BEFORE SIGNING

THIS EXCLUSIVE RIGHT TO SELL LISTING AGREEMENT & AGENCY DISCLOSURE ("Listing Agreement") is entered into by and between, Town & Country Apollo Properties (The "Company"), Lynn C Fillmore, Principal Broker, Licensed Realtor® (the "Seller's Agent"), and _____ (the "Seller").

1. TERMS OF LISTING. The Seller hereby grants to the Company, including, Lynn C Fillmore, (the "Seller's Agent") as the authorized agent for the Company, starting on the Effective Date, the exclusive right to sell, lease, or exchange real property owned by the Seller, described as:

_____, (Address or parcel ID)
(The "Property"), at the terms and price stated on this form and the attached property data form (the "Data Form"), or at such other terms and price to which the Seller may agree in writing. **Choose Your Listing PLAN below.** (See Section 18 for Early Termination)

1.1 MULTIPLE LISTING SERVICE (the "MLS"): Company is a member of the Utah MLS systems below. (Select MLS that applies)

☐ *Wasatch Front Regional MLS ☐ *Park City MLS ☐ *Iron County MLS ☐ *Washington County MLS

This Service contract will END at 5:00 p.m. at the end of the listing term of Plan chosen above (the "Listing Period"), unless extended, upgraded or terminated in writing. If Sellers Property is under contract, this listing shall remain in effect until closed or cancelled. The Upfront Fee is due to Company upon the property posting to the chosen "MLS". (The "effective date"). Once posted, Listing Fee is NON-REFUNDABLE*. Unpaid Fees are considered late after 5 business days*.

☐ **"Limited Service*, Monthly"**. Upfront "Listing Fee" (\$50), 30 Day Term, plus Backend "Listing Fee" of \$750 due at closing. Principal Broker shall: **(a) Accept and present offers to seller, (b) Advise seller on offers, and (c) Assist seller with preparing and communicating counter-offers.** *Buyer Agents directed to the Seller to schedule showing. (Add a Company Sign / \$50 Fee; Add Realtor Key Box / \$200 Fee)

☐ **"Limited Service"**. Upfront "Listing Fee" (\$750), Term: Up to 12 Months or Cancelled. The Principal Broker shall: **(a) Accept and present offers to seller, (b) Advise seller on offers, and (c) Assist seller with preparing and communicating counter-offers.** *Buyer Agents directed to the Seller to schedule showing. (Add Company Sign by request / No Fee, Add Realtor Key Box / \$200 Fee)

☐ **"Full Service"**. Upfront "Listing Fee" (\$1250), Term: Up to 12 Months or Cancelled. The Principal Broker shall: **(a) Accept and present offers to seller, (b) Advise seller on offers, and (c) Assist seller with preparing and communicating counter-offers.** In addition to the Utah required services, the Seller's Agent will: **Participate on the seller's behalf in scheduling appointments, contract negotiations & contract documentation between Seller and Buyer or Seller and Buyer Broker/Agent.** Includes: Framed Sign and Realtors® approved/endorsed security key-box.

☐ **"Traditional Service"**. No Upfront "Listing Fee" (\$0), Term Until Sold or Cancelled. Minimum 1.5% due from Seller to Company at closing. The Principal Broker shall: **(a) Accept and present offers to seller, (b) Advise seller on offers, and (c) Assist seller with preparing and communicating counter-offers.** In addition to the Utah required services, the Seller's Agent will: **Participate on the seller's behalf in scheduling appointments, contract negotiations & contract documentation between Seller and Buyer or Seller and Buyer Broker/Agent.** Includes: Framed Sign and Realtors® approved/endorsed security key-box.

2. BROKERAGE FEE / Agent Incentives. A "Brokerage Fee" is not required to list Sellers property, but is recommended as Incentive to Utah Licensed MLS Member Agents. Real Estate Commissions are negotiable and are not established by law. If, during the Listing Period, the Company, the Seller's Agent, the Seller, another real estate agent, or anyone else locates a party who is ready, willing and able to buy, lease or exchange (collectively "acquire") the Property, or any part thereof, at the listing price and terms stated on the Data Form, or any other price and terms to which the Seller may agree in writing, the Seller agrees to pay to the Company a Brokerage Fee as noted herein:

Buyer Agent Commission ("BAC") in the amount of \$_____, and/or _____ % of the acquisition price to be offered over the selected MLS

Seller Agent Commission ("SAC") in the amount of \$_____, and/or _____ % of the acquisition price to be retained by the Selling Agent.

The Total of these amounts two amounts (BAC + SAC) shall be known as the Total Brokerage Fee.

The Brokerage Fee, unless otherwise agreed in writing by the Seller and the Company, shall be due and payable from the Seller's proceeds on: (a) If a purchase, the date of recording of the Closing documents for the acquisition of the Property; (b) If a lease, the effective date of the lease; and (c) if an option, the date the option agreement is signed. If within the Listing Period, or any extension of the Listing Period, the Property is withdrawn from sale, transferred, conveyed, leased, rented, or made unmarketable by a voluntary act of Seller, without the written consent of the Company; or if the sale is prevented by default of the Seller, the Brokerage Fee shall be immediately due and payable to the Company. If the BAC above is blank the Company will offer a \$1 BAC as a minimum requirement for posting the listing to the MLS.

2.1 UNREPRESENTED BUYERS (In-House Sale – Limited Agency see below 5.2): *As required by all Utah Licensed MLS Member Agents, the Seller shall inquire of a Buyers Representation Status at introduction. Seller is not a "For Sale By Owner" but is at all times represented by the Company and the Sellers Agent. **It is EXPRESSLY UNDERSTOOD and AGREED,** If an Unrepresented Buyer (the "Buyer") is located before or after posting listing to MLS, and uses the **Company for purchase (In-House Sale), a Company Commission of \$1,200.00 shall apply in lieu of the Total Brokerage Fee in section 2 above.** For all In-House Buyers, the Seller shall introduce (present / show) the property to the "Buyer" and the modified fee shall apply as a condition of closing. Buyers not seeking "limited agency" representation, shall be required to sign an "Unrepresented Buyers

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Disclosure" for a waiver of any BAC portion offered to Buyer Agents. The \$1,200.00 Company Commission shall still apply. If Seller's Agent is required to present / show the property to an Unrepresented Buyer, the BAC contracted (See 2. above) shall be due to the Sellers Agent at closing. If the Unrepresented Buyer seeks representation from a **Non-MLS Member** the "BAC" incentive offered above, shall be at the discretion of the Listing Brokerage.

3. PROTECTION PERIOD. If within 3 months after the termination or expiration of this Listing Agreement, the Property is acquired by any party to whom the Property was offered or shown by the Company, the Seller's Agent, the Seller, or another real estate agent during the Listing Period, or any extension of the Listing Period, the Seller agrees to pay to the Company the Brokerage Fee stated in Section 2, unless the Seller is obligated to pay a Brokerage Fee on such acquisition to another brokerage based on another valid listing agreement entered into after the expiration or termination date of this Listing Agreement.

4. SELLER WARRANTIES/DISCLOSURES. The Seller warrants to the Company that the individuals or entity listed above as the "Seller" represents all of the record owners of the Property. The Seller warrants that Seller has marketable title and an established right to sell, lease or exchange the Property. The Seller agrees to execute the necessary documents of conveyance. The Seller agrees to furnish buyer with good and marketable title, and to pay at Settlement, for a policy of title insurance in accordance with the terms of any real estate purchase contract entered into between buyer and Seller. The Seller agrees to fully inform the Seller's Agent regarding the Seller's knowledge of the condition of the Property. Upon signing of this Listing Agreement, the Seller agrees to personally complete and sign a Seller's Property Condition Disclosure form and Wire Fraud Alert Disclosure. The Seller agrees to indemnify and hold harmless the Seller's Agent and the Company against any claims that may arise from: (a) The Seller providing incorrect or inaccurate information regarding the Property; (b) The Seller failing to disclose material information regarding the Property, including, but not limited to, the condition of all appliances; the condition of heating, plumbing, and electrical fixtures and equipment; sewer problems; moisture or other problems in the roof or foundation; the availability and location of utilities; and the location of property lines; and (c) Any injuries resulting from any unsafe conditions within the Property.

5. AGENCY RELATIONSHIPS. *(As noted in Utah REPC 5. CONFIRMATION OF AGENCY DISCLOSURE)* **Seller acknowledges prior written receipt of agency disclosure provided by their respective agent that has disclosed the agency relationships confirmed below.**

5.1 Seller's Agent. By signing this Listing Agreement, the Seller designates the Seller's Agent and the Principal/Branch Broker for the Company (the "Broker"), as agents for the Seller. As agents for the Seller, they have fiduciary duties to the Seller that include loyalty, obedience, full disclosure, confidentiality, reasonable care, and any other duties required by law.

5.2 Limited Agent. The Seller understands and authorizes that the Seller's Agent and the Broker may act as agent for a buyer who may wish to negotiate a purchase of the Property. The Seller's Agent and the Broker would be acting as Limited Agents - **representing both the Seller and Buyer at the same time.** This is known as an "In-House" sale; A Limited Agent has fiduciary duties to both the Seller and the Buyer as required by law. In-House Buyers shall sign a "Limited Agency Disclosure"

6. PROFESSIONAL ADVICE. The Company and the Seller's Agent are trained in the marketing of real estate. Neither the Company nor its agents are trained or licensed to provide the Seller or any prospective buyer with legal or tax advice, or with technical advice regarding the physical condition of the Property. The Seller is advised not to rely on the Company, or any agents of the Company, for a determination regarding the physical or legal condition of the Property. If the Seller desires advice regarding: (a) Past or present compliance with zoning and building code requirements; (b) Legal or tax matters; (c) The physical condition of the Property; (d) This Listing Agreement; or (e) Any transaction for the acquisition of the Property, the Seller's Agent and the Company strongly recommend that the Seller obtain such independent advice. If the Seller fails to do so, the Seller is acting contrary to the advice of the Company. Any recommendations for third-party services made by the Company or the Seller's Agent do not guarantee the Seller'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 Seller is advised that it is up to the Seller in the Seller's sole discretion to choose third-party services that meet the needs of the Seller and not to rely on any recommendations given by the Company or the Seller's Agent.

6.1. INDEMNIFICATION: SELLER shall defend, indemnify and hold Company, Sellers Agent and representatives harmless from, any and all losses, claims, damages, liabilities and costs, including without limitation commission claims, court costs, attorneys' fees and MLS penalties and fines, which arise from, are related to, or are in connection with, (i) Seller's breach of this Agreement or violation of any federal, state or local law; (ii) Seller's provision of false, misleading, inaccurate or incomplete information, representations or warranties to Company, prospective buyers or buyer; or (iii) claims of third parties relating to the Listed Property, the sale thereof, and/or any compensation to be paid in connection with such sale including, without limitation, a claim by the Listing or Cooperating Brokerage against Company for Brokerage Fee. Seller also accepts any liability for any potential misrepresentation as to the condition and square footage measurement of the home.

7. DISPUTE RESOLUTION. The parties agree that any dispute, arising prior to or after a Closing, related to this Listing Agreement shall first be submitted to mediation through a mediation provider mutually agreed upon by the Seller and the Company. Each party agrees to bear its own costs of mediation. If mediation fails, any other remedies available at law 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 Listing 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 Seller's employment of the Company under this Listing Agreement (whether before or after a Closing), the Seller agrees to indemnify the Company and the Seller's Agent from all costs and attorney fees incurred by the Company and/or the Seller's Agent in pursuing and/or defending such action. This Listing Agreement shall be governed and construed in accordance with the laws of the State of Utah.

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9. ADVERTISING/SELLER AUTHORIZATIONS. The Seller authorizes the Company and the Seller's Agent to advertise the Property for sale through any printed and/or electronic media deemed necessary and appropriate by the Seller's Agent and the Company, including, but not limited to, each MLS in which the Company participates. The Seller agrees that any advertising the Seller intends to conduct, including print and/or electronic media, shall first be approved in writing by the Seller's Agent. The Seller further agrees that the Seller's Agent and the Company are authorized to:

- (a) Disclose to the MLS after Closing, the final terms and sales price for the Property consistent with the requirements of the MLS;
- (b) Disclose to the MLS the square footage of the Property as obtained from (check applicable box):
County Records Appraisal Building Plans Other
(Explain)
- (c) Obtain financial information from any lender or other party holding a lien or interest on the Property;
- (d) Have keys to the Property, if applicable;
- (e) **MLS Supra GE Realtors® Key-Box on Property:** SELLER [] DOES [] DOES NOT want a MLS Supra GE Realtors® Key-Box. Supra GE Realtors® Key-Box Included with Full Service. (Limited Service: Supra Key-Box (\$200) Placed and Retrieved). If the Seller installs a non-MLS key-box on the Property, Seller acknowledges that it may not provide the same level of security as the MLS or local board of Realtors® approved/endorsed security key-box
- (f) Hold Open-Houses at the Property; if applicable;
- (g) **COMPANY Sign** not required, However, MLS policy states that the only sign on the subject property shall be that of the Company. "FOR SALE BY OWNER" signs are NOT allowed on MLS listed properties. Framed Sign Included with Full Service; Placed and retrieved. (Limited Service: Sign Framed (\$150) Placed and Retrieved)
- (h) Brokerage shall order a Preliminary Title Report upon Listing Property: SELLER [] DOES want to choose a preferred Sellers' Title Company. Prior to settlement, Brokerage shall review for correctness, the Closing Disclosures and ALTA Settlement Statement produced by the Sellers' Title Company, as per the review policy requirement of Listing Broker by the Utah Division of Real Estate.
- (i) Order a Home Warranty Plan, if applicable;
- (j) Communicate with the Seller for the purpose of soliciting real estate related goods and services during and after the term of this Listing Agreement;
- (k) Place the Earnest Money Deposit 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.
- (l) **Photo Upload to MLS.** Seller may submit true and correct photos of the property that are the subject of the listing to be displayed on the MLS, these photos will not be in violation of any contracts with, or copyrights of, third parties. Seller will indemnify, defend, and hold harmless the Company and MLS from and against any and all claims, losses, liabilities, and actions asserted by any third parties arising out of or resulting from the MLS's use of the photos. Seller agrees to "Opt Out" from photo upload if photos are unavailable at time of Listing or until they have been submitted by Seller. Photos and Video Tour may be ordered from Third Party providers.

10. PERSONAL PROPERTY. The Seller acknowledges that the Company has discussed with the Seller the safeguarding of personal property and valuables located within the Property. The Seller acknowledges that the Company is not an insurer against the loss of or damage to personal property. The Seller agrees to hold the Company harmless from any loss or damage that might result from any authorizations given in Section 9.

11. ATTACHMENT. Seller's Property Condition Disclosure form, the Data Form and Wire Fraud Alert Disclosure are incorporated into this Listing Agreement by this reference. There ARE ARE NOT additional terms contained in an Addendum attached to this Listing Agreement. If an Addendum is attached, the terms of that Addendum are incorporated into this Listing Agreement by this reference.

12. FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA"). The sale or other disposition of a U.S. real property interest by a foreign person is subject to income tax withholding under FIRPTA. A "foreign person" may include a non-resident alien individual, foreign corporation, foreign partnership, foreign trust and foreign estate. Seller warrants and represents to the Company and to the Seller's Agent, that Seller [] IS [] IS NOT a "foreign person" as defined by the Internal Revenue Code and its associated regulations. If Seller is not a foreign person, Seller agrees, upon request, to deliver a certification to Buyer at closing, stating that Seller is not a foreign person. This certification shall be in the form then required by FIRPTA. If FIRPTA applies to you as Seller, you are advised that the Buyer or other qualified substitute may be legally required to withhold a substantial percentage of the total purchase price for the Property at closing and remit that amount to the IRS. If Seller is a foreign person as defined above, and Seller does not have a US Taxpayer Identification number, Seller agrees to prepare to apply for a US Taxpayer Identification number.

13. EQUAL HOUSING OPPORTUNITY. The Seller and the Company shall comply with Federal, State, and local fair housing laws.

14. ELECTRONIC TRANSMISSION & COUNTERPARTS. Electronic transmission (including email and fax) of a signed copy of this Listing Agreement and any addenda, and the retransmission of any signed electronic transmission, shall be the same as delivery of an original. This Listing Agreement and any addenda may be executed in counterparts.

15. 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 Seller understands that if any underlying

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_____ Date

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.

16. DEFAULT / NON-COMPLIANCE: *Default or non-compliance (Failure to perform a task or fulfill an obligation) shall authorize the Company to conditionally withdraw the property from the active market. If in default; this agreement shall remain in force indefinitely, notwithstanding the term noted above. Company may cease marketing the Property on behalf of the Seller. Seller agrees that such conditional withdrawal shall not relieve the Seller from Seller's obligation to pay for Services and Brokerage Fees noted in Section 1 & 2.

17. EFFECTIVE DATE. This Listing Agreement is entered into and is effective when: (a) The Seller and the authorized Seller's Agent or Listing Broker have signed this Listing Agreement; and (b) The authorized Seller's Agent or Broker has received a mutually signed copy of this Listing Agreement or (c) **If ordered or modified Online; An Affidavit by Online Electronic Signature. By Signing (typing your name) Online; You are agreeing to conduct business electronically within the State of Utah in accordance with the federal Electronic Signatures in Global and National Commerce Act (E-SIGN), 15 U.S.C.A. §§ 7001-7031 (Supp. 2001) and Utah's Uniform Electronic Transactions Act (UETA), Utah Code Ann. §§ 46 4-101 to -501 (2000).** If Online, A Copy of this Listing Agreement agreed to, on the Effective Date will be emailed to you, Signed by the Listing Broker, confirming this Agreement.

18. TERMINATION OPTION. Seller/s may modify MLS posting. Seller/s may terminate* this listing agreement provided there are no Listing, Brokerage or Referral fees due, or contracts pending for located parties noted under Section 2., entitling Brokerage compensation to be paid under the terms of this agreement. Seller will give at least 5 days prior written notice to company using Companies termination agreement. If Seller is terminating this listing to re-list with Company with a new agreement and MLS#, Seller does authorize Broker to submit appropriate digitally executed cancellation form to MLS. *If Traditional Service Plan was selected, \$1250 is due from Seller Prior to early termination. The agreement will then terminate.*

19. ENTIRE AGREEMENT. This Listing Agreement, including the Seller's Property Condition Disclosure form, Data Form, the Wire Fraud Alert Disclosure, and any additional addendum, contain the entire agreement between the parties relating to the subject matter of this Listing Agreement. This Listing Agreement may not be modified or amended except in writing signed by the parties hereto. Policies & procedures from State to State imposed by Legislators, Real Estate Boards and MLS Systems may differ from the referral companies Web Site offerings. If you are not in agreement with the terms of this contract. Do Not Sign. This is a legally binding agreement.

THE UNDERSIGNED hereby agree to the terms of this Listing Agreement.

(Seller Signature)

(Date)

(Seller Signature)

(Date)

[] This LISTING AGREEMENT & AGENCY DISCLOSURE has been executed ONLINE with Sellers Electronic Signature, see Seller Affidavit: *Electronic Signature*

Seller Phone: _____ / _____ Seller Email: _____

ACCEPTED by the Company by; _____
(Lynn C. Fillmore, Principal Broker) (Date)

www.UtahBroker.com UtahBroker@comcast.net (801) 224-1559 Office (801) 372-1658 Cell / Text

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_____ Date