



**(MLS FLAT FEE 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").

**As per Utah Code Effective 5/13/2014, 61-2f-308. Brokerage agreements. A principal broker subject to an exclusive brokerage agreement shall: (i) accept delivery of and present to the client offers and counteroffers to buy, lease, or exchange the client's real estate; (ii) assist the client in developing, communicating, and presenting offers, counteroffers, and notices; and (iii) answer any question the client has concerning: (A) an offer; (B) a counteroffer; (C) a notice; and (D) a contingency.**

**1. TERM 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 and ending at 5:00 P.M. (Mountain Time) based on the Plan & Term chosen below, (the "Listing Period"), 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.**

**Limited Service**

**"PLAN 30"**. Upfront Fee (\$49), Term, up to 30 calendar days. 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.**

**"PLAN A"**. Upfront Fee (\$195), Term, Up to 12 Months. 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.**

**Full Service**

**"PLAN B"**. Upfront Fee, (\$695), Term, Up to 12 Months. A 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.** Also included, Realtors® approved/endorsed security key-box and added Sign options.

**"PLAN C"**. **No Upfront Fee**, Term, 12 Months. Upon Buyer closing on property, a **1% "List Fee" shall be due to Company from Seller for listing services, plus any applicable "Brokerage Fee" if contracted below.** (See *Termination Options* item 18. pg. 4 of 4) **Includes PLAN A & B Services noted above.**

**1.1 MULTIPLE LISTING SERVICE (the "MLS"):** Company is a member of these Utah MLS systems. (select 1)

**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 (the "Listing Period"), unless extended, upgraded or terminated in writing. If Sellers Property is under contract, listing shall remain in effect until closed or cancelled. (See *Termination Option* item 18. pg. 4 of 4). The Upfront Fee for **PLAN 30, A and B** are 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.

**2. BROKERAGE FEE. (Incentive to Agents) A Buyer Agent Commission is not required to list 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, If any party 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 through Company a Buyer Agent Commission (the "BAC") in the amount of \$\_\_\_\_\_ or \_\_\_\_\_ % Percent of such acquisition price. A Lease contract shall be based on lease term with 12 month minimum term. **This amount will be offered over the selected MLS system/s as incentive to Utah Licensed MLS Member Agents; an additional one half percent (½%) will be added to this amount and retained by the Company for Seller's Agent Incentive and for Brokerages Liability of offering the BAC.** If there is No Buyer Agent Commission noted herein, the Company will offer over the MLS a BAC in the amount of \$1 as a minimum requirement for posting the listing to the MLS.

Seller Initials \_\_\_\_\_ Date \_\_\_\_\_

**2.1 UNREPRESENTED BUYERS: It is EXPRESSLY UNDERSTOOD and AGREED,** if an Unrepresented Buyer (the "Buyer") is identified by the Company, The Company may refer the Buyer to the Seller and the Seller will introduce (present / show) the property to the Buyer. As a condition of closing, and in lieu of any Brokerage Fee noted above, the Seller agrees to pay to the Company a One and One Half Percent (**1.5%**) "Referral Fee" based on the agreed acquisition price. If an Unrepresented Buyer is located by the Seller prior to (see excluded parties addenda) or after the listing is posted, the Seller may introduce the Property to the Buyer and then refer the Buyer to the Seller's Agent for a One Percent (**1%**) "Referral Fee". (See 5.2 below). Upon referral, the **Seller's Agent will assist the Buyer and Seller as a Limited Agent or In-House Sale.** An Unrepresented Buyer identified by the Seller that **is not referred to the Company,** shall be required to sign an "Unrepresented Buyers Disclosure" for a waiver of any BAC portion offered to Buyer Agents. **For any Unrepresented Buyer,** located by Seller that is not referred to the Company, a minimum amount of One Half Percent (**1/2%**) of the acquisition price will be due to the Company from Seller at closing.

\*As required by all Utah Licensed MLS Member Agents, the Seller shall inquire of a Buyers Representation Status at introduction. If the Buyer seeks representation from another MLS member Brokerage in the acquisition of the property, the BAC if offered over the MLS will be due to that MLS Member Brokerage as per section 2.0 above. If Buyer seeks representation from a Non MLS Brokerage the incentive shall be at the discretion of the Listing Brokerage. **It is expressly understood by the Seller, if the Seller's Agent is required to present / show the property to a Buyer, any Brokerage Fee contracted above will be due in full to the Company.**

**2.2 SETTLEMENT / CLOSING:** 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; (see 18. below), or if the sale is prevented by default of the Seller, the Brokerage Fee shall be immediately due and payable to the Company. The Company is authorized to share the Brokerage Fee with another brokerage participating in any transaction arising out of this Listing Agreement.

**2.3. TRANSACTION FEE. For All Listing Plans,** A Company transaction fee in the amount of **\$95.00** will be due from Sellers proceeds at closing or lease/rental signing, payable to the Company for, documentation, confirmation, posting of data to the MLS and 3 year file documentation required by the Utah Division of Real Estate.

**3. PROTECTION PERIOD.** If within ninety (90) days 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.** (Contact your Title Company for the costs involved) 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. 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.**

**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.

**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

Seller Initials \_\_\_\_\_ Date \_\_\_\_\_

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, reasonable 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 BROKER, 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 Cooperating Brokerage against BROKER for Brokerage Fee). Seller also accepts any liability for any potential misrepresentation as to the condition and square footage measurement of the home. Seller accepts any and all responsibility to pay Brokerage Fee as noted herein.

**7. DISPUTE RESOLUTION.** The parties agree that any dispute, arising prior to or after a Closing, related to this Listing Agreement, or REPC transaction, shall first be submitted to mediation through a mediation provider mutually agreed upon by the Seller and the Company. Seller agrees to bear the half the cost of mediation.

**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 or REPC transaction, the Seller shall be responsible for all costs and attorney fees, whether the matter is resolved through court action or otherwise. If any litigation arises out of the Seller's employment of the Company under the terms of 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. See Section 16. This Listing Agreement shall be governed and construed in accordance with the laws of the State of Utah.

**9. ADVERTISING/SELLER AUTHORIZATIONS/SETTLEMENT AND CLOSING.** The Seller authorizes the Company and the Seller's Agent to advertise the Property 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 Multiple Listing Service (MLS) in which the Company participates. The Seller agrees that any advertising the Seller intends to conduct, including print and/or electronic media, shall be subject to authorization and limitations placed on a Utah Licensed 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) Have keys to the Property, if applicable;
- (c) Key-Box: **SELLER [ ] DOES [ ] DOES NOT** want a MLS or local board of Realtors® approved/endorsed security key-box installed on the Property. (Fee is \$150 with Plan 30 & Plan A, included with Plan B & C). 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. A Key-Box is recommended for Vacant or not easily accessible properties for increased showings.
- (e) Sign: **SELLER [ ] DOES [ ] DOES NOT** want a Company Sign to be delivered to property. (company sign is not required, however, MLS policy states that the only sign on the property shall be that of the company); **Plans A** includes sign, **Plan B & C** include framed or posted sign. **PLAN 30 does not include a sign. A company sign is available for \$35.00.**
- (f) 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.
- (g) Review for correctness, the Closing Disclosures and ALTA Settlement Statement produced by the Sellers' Title Company prior to settlement as per the review policy requirement of Listing Broker by the Utah Division of Real Estate.

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

**11. ADDENDA.** The MLS Data Input Form is incorporated into the Listing Agreement by this reference. In addition to the Data Form, there [ ] ARE [ ] ARE NOT addenda to the Listing Agreement containing additional terms. If there are, the terms of the following addenda are incorporated into the Listing Agreement by this reference. Addendum No. \_\_\_\_.

**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 in Section 1445 of 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 10% of the total purchase price

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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. SHORT SALE TRANSACTIONS.** In the event an offer is presented to the Seller, that is **less than the Seller's equity**; a short sale may apply. To qualify as a short sale, the offer must include a short sale addendum. A short sale transaction is considered a modification to the terms of this listing agreement and becomes subject to a variable 6% brokerage fee. The final acceptable sales price, brokerage fees, and terms of the sale are **subject to bank approval**. Under the terms of a short sale contract, the Buyer Brokerage and Listing Brokerage will agree to accept a brokerage fee amount, to be split evenly between the Brokerages involved. The Seller will contact Sellers's Agent prior to entering into a short sale contract.

**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 the services already rendered by Company.

**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 (the "Effective Date") 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 may terminate this agreement providing there are no FEES due or contracts pending or located parties **noted under Section 2. Brokerage Fee**, 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 company's termination agreement. The agreement will then terminate. PLAN 30, A & B may be terminated without added Fee; PLAN C requires a \$995 early termination Fee.

**18.1. MONEY BACK GUARANTEE.** Prior to termination, Sellers listing may be referred to a Traditional Cooperative Brokerage and upon the closing of Sellers property, a refund of the Sellers listing fee paid to Town & Country Apollo Properties will be credited to the Seller. This Listing Referral must come from Company to the New Listing Brokerage for the refund to be awarded.

**19. ENTIRE AGREEMENT.** This Listing Agreement, including the Seller's Property Condition Disclosure form and the Data Form, 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. Additional services requested by the Seller, but not contracted in this agreement may be subject to additional fees. Policies & procedures from State to State imposed by Legislators, Real Estate Boards and MLS Systems may differ from the referral companies Web Site offering. **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)

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