Town & Country Apollo Properties
(MLS LISTING PLANS)

THIS 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. TERM OF LISTING. Seller hereby grants to the Company the exclusive right to sell, lease, or exchange real property owned by the Seller and described as: _____ (the "Property"), at the listing price and terms stated on the attached property data form (the "Data Form"), or at such other price and terms to which the Seller may agree in writing. This Listing Agreement is effective as of the date it is signed by all parties and ENDS at 5:00 P.M. (Mountain Time) on _(*see Plan Choice Below*)_ (End Date / End of Term below) (the "Listing Period"). In the event this Listing Agreement expires while the Property is under contract to be sold, the Company and Seller mutually agree that the Listing Period shall automatically extend until the under-contract transaction closes or is cancelled. (*See Section 18 for Early Termination*)

1.1 MULTIPLE LISTING SERVICE (the "MLS"): Company is a member of the 4 Utah MLS systems below. (Select the TYPE and MLS that applies below. A Double MLS Posting to an additional MLS System or MLS Property Type may be added for ½ of Listing Fee noted in your Plan choice below.)

[ ] Residential [ ] Land [ ] Multi Unit [ ] Commercial [ ] Farm [ ] Lease

[ ] Wasatch Front Regional MLS [ ] Park City MLS [ ] Iron County MLS [ ] Washington County MLS

1.2 MLS LISTING FEE (Select PLAN choice) The Upfront Fee is due to Company upon the property posting to the chosen **"MLS".** (The "effective date"). Once posted to MLS, The Listing Fee is NON-REFUNDABLE. Unpaid Fees are considered late after 5 business days.

[ ] - PLATINUM / FULL SERVICE - $1,999.00 Paid Upfront as the **"Listing Fee".** Term: Up to 12 Months. 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 if requested: Framed Company Sign, Photos Appointment & Realtor Approved Key Box (*if available in your MLS area*)]

[ ] – **"Traditional"** PLATINUM / FULL SERVICE - *$.00 Paid Upfront as the **"Listing Fee".** 1.5% Listing Brokerage Commission due from Seller to Company at Closing.*

[ ] - GOLD / FULL SERVICE - $999.00 Paid Upfront as the "**Listing Fee**". Term: Up to 12 Months. 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. (Company Sign is not required, but is included by mail upon request)

[ ] - SILVER / LIMITED SERVICE - $599.00 Paid Upfront as the "**Listing Fee**". Term: Up to 12 Months. 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. Seller shall be sole party directed to schedule showing appointments (Company Sign is not required or included, but is available)

[ ] - BRONZE / LIMITED SERVICE - $150.00 Paid Upfront as the "**Listing Fee**". Term: 30 days and up to 12 Months. This Plan shall Auto-Renew for $150 (each 30 days). See 18. MODIFICATION / TERMINATION OPTIONs. 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. Seller shall be sole party directed to schedule showing appointments (Company Sign is not required or included, but is available)

2. BROKERAGE COMPENSATION. BROKERAGE FEE / Agent Incentives. A Buyer Agent Commission (the "BAC") is NOT required to list Sellers property, Real Estate Commissions are negotiable and are not established by law.

2.1 Buyer Brokerage Fee. The Buyer Brokerage Fee also known as the Buyer Agent Commission or (the "BAC") is no longer posted over the MLS system. *Per the NAR lawsuit, compensation to Buyer Brokerage will not be displayed over the MLS System.* The Buyer Brokerage Commission may be requested from the Seller, by the Buyer. The amount will be noted in the Utah Real Estate Purchase Contract (the "REPC") in Section 4.3(e). The request for Buyer Agent Compensation is a negotiable item as are all other items in the REPC from Buyer to Seller.

2.2 MLS Compliance Fee. On all sales, there shall be an "MLS Compliance Fee". This MLS Compliance fee is **.0025 or ¼%** of the Net Sale Price of the Property. This fee shall be collected from Seller at closing and due to the Company, to cover costs associated with coordinating the transaction and employing and enforcing policies and procedures required to stay compliant with State Laws and local board Rules. If buyer comes direct to seller with no agent, the MLS Compliance Fee is still due at closing.

2.3 Unrepresented Buyer: Buyer may choose to remain UNREPRESENTED **by signing an Unrepresented Buyer Disclosure or Buyer may be** REPRESENTED **by the Sellers Agent by Signing a Buyer Broker Agreement with a Limited Agency Disclosure Agreement.** Both are considered an "In House Sale" The **Seller is never** considered a "For Sale By Owner" but is at all times represented by the Company and the Seller's Agent. **It is EXPRESSLY UNDERSTOOD and AGREED:** If the Buyer DOES NOT retain Agency from an outside Brokerage**,** A Brokerage Fee in the amount of **1% (One Percent)** of such

acquisition price (the "Brokerage Fee") shall apply and be added and due from Seller to the Company at Closing. For these In-House Buyers, the Seller shall make available ("introduce") the property to the "Buyer".

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 or the Seller 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 and executing this agreement 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 / Disclosure. *(As noted in the Utah REPC 5. CONFIRMATION OF AGENCY DISCLOSURE) Seller acknowledges this agreement as written receipt of agency disclosure provided by the Seller's agent that has disclosed the agency relationships confirmed below*

5.1 Duties of a 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 to locate a buyer for the Property. The Seller authorizes the Seller's Agent or the Broker to appoint another agent in the Company to also represent the Seller in the event the Seller's Agent or the Broker will be unavailable to service 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 Duties of a Limited Agent. The Seller understands and authorizes that the Seller's Agent and the Broker may now, or in the future, be agents for an Unrepresented Buyer who may wish to negotiate a purchase of the Property. The Seller's Agent and the Broker may 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. Seller and In-House Buyers shall sign a "Limited Agency Disclosure". Unrepresented Buyers not seeking assistance shall sign an "Unrepresented Buyer Disclosure". 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 Seller is advised that the buyer 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 Seller'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 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.

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. Seller agrees to bear the costs of mediation. If mediation fails, any other remedies available at law shall apply.

8. ATTORNEY FEES/GOVERNING LAW. It is EXPRESSLY UNDERSTOOD and AGREED that In case of the employment of an attorney in any matter arising out of this Listing Agreement, any transaction for the acquisition of the Property, the Seller agrees to indemnify the Company and the Seller's Agent from all costs, losses, damages and attorney fees 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.

8.1. INDEMNIFICATION: It is EXPRESSLY UNDERSTOOD and AGREED that the SELLER shall defend, indemnify and hold Company, Sellers Agent and representatives harmless from, any and all losses, claims, damages, liabilities and costs. And will include 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, MLS Property Data and square footage measurement of the property as offered.

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 Realtors®** approved/endorsed security **Key-Box** is not required. **SELLER [ ] DOES [ ] DOES NOT** want a Realtor Key-Box installed. **(**Optional: *Realtor Key-Box ($200) Placed and Retrieved. Key-Box is included with Traditional & Platinum Service Plan*)**.** 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) A **COMPANY Sign** may be included but is 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. SELLER [ ] DOES [ ] DOES NOT** want a Company Sign. (Sign or additional Sign can be mailed for **$75** USPS) (Optional: *Framed Sign ($200) Placed and Retrieved. Included with Traditional & Platinum Service Plans*)
(h) Brokerage may order a Preliminary Title Report (see Utah REPC sec. 7 Due Diligence) upon Listing Property over the MLS: **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) **Photos Uploaded 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. 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 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 or Company may terminate the agreement. Seller agrees that such conditional withdrawal or termination 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. MODIFICATION / TERMINATION OPTIONs. Seller may modify MLS posting by notifying the Company online or in writing. (Seller will give at least 5 days prior written notice to company for a termination of Listing.) Seller may terminate this Listing Agreement provided there is no Listing, Brokerage or Fee due, or contracts pending for located parties noted under Section 2. entitling a Brokerage Fees or compensation to be paid under the terms of this agreement. If Traditional Platinum Listing Plan was chosen, Termination of this Plan requires a $600.00 termination fee.

19. ENTIRE AGREEMENT. This Listing Agreement, and any additional addendum, contains 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)

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