

# EXCLUSIVE BUYER-BROKER AGREEMENT & AGENCY DISCLOSURE

THIS IS A LEGALLY BINDING AGREEMENT - READ CAREFULLY BEFORE SIGNING  
DESIGNATED AGENCY BROKERAGE

THIS EXCLUSIVE BUYER-BROKER AGREEMENT & AGENCY DISCLOSURE ("Exclusive Buyer-Broker Agreement") is entered into between Town & Country Apollo Properties, LLC (the "Company") and \_\_\_\_\_ (the "Buyer").

1. **TERM OF AGREEMENT.** The Buyer hereby retains the Company, including Lynn C Fillmore (the "Buyer's Agent") as the authorized agent for the Company, starting on the Effective Date as defined in section 15 below, and ending at 5:00 P.M. (Mountain Time) on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, or the Closing of the acquisition of a property ("Closing"), whichever occurs first (the "Initial Term"), to act as the exclusive Buyer's Agent in locating and/or negotiating for the acquisition of a property: (a) In \_\_\_\_\_ County, Utah; or (b) Located at \_\_\_\_\_ (property address). During the Initial Term of this Exclusive Buyer-Broker Agreement, and any extensions thereof, the Buyer agrees not to enter into another buyer-broker agreement with another real estate agent or brokerage.

## 2. BROKERAGE FEE.

2.1 **Buyer's Obligation to Pay Brokerage Fee.** If, during the Initial Term, or any extension of the Initial Term, the Buyer, or any other person acting in the Buyer's behalf, acquires an interest in any real property as referenced in Section 1 above, the BUYER AGREES TO PAY to the Company a brokerage fee in the amount of \$ \_\_\_\_\_ and \_\_\_\_\_% of the acquisition price of the property (the "Brokerage Fee").

2.2 **Satisfaction of Brokerage Fee by a Third Party.** If the property acquired by the Buyer is listed with a brokerage on a multiple listing service ("MLS"), the buyer brokerage compensation (the "BBC") paid to the Company by the listing brokerage shall satisfy the Buyer's obligation for the Brokerage Fee shown above provided that the BBC is equal to or more than the amount shown above. In the event the BBC is less than the Brokerage Fee or any compensation offered by the listing brokerage/property owner to the Company is less than the Brokerage Fee, the Buyer may negotiate with the property owner and/or listing brokerage to satisfy the Buyer's remaining obligation to pay the Brokerage Fee. Buyer shall pay any remaining difference at Closing. In the absence of any agreement with the property owner and/or listing brokerage, the Buyer shall pay the Brokerage Fee at Closing.

2.3 **Brokerage Fee Due and Payable.** Unless otherwise agreed to in writing by the Buyer and the Company, the Brokerage Fee shown above shall be due and payable on: (a) If a purchase, the date of recording of the documents for Closing; (b) If a lease, the effective date of the lease; or (c) If an option, the date the option agreement is signed. If the transaction is prevented by default of Buyer, the Brokerage Fee shall be immediately payable to the Company. BROKERAGE FEES ARE NOT SET BY ANY BOARD OR ASSOCIATION OF REALTORS®, OR MLS, OR IN ANY MANNER OTHER THAN BETWEEN THE COMPANY AND BUYER.

3. **PROTECTION PERIOD.** If within \_\_\_\_\_ months after the termination or expiration of this Exclusive Buyer-Broker Agreement, Buyer or any person acting on the Buyer's behalf, enters into an agreement to purchase, exchange, obtain an option on, or lease any property, as referenced in Section 1 above, located for Buyer by Buyer's Agent or the Company, or on which Buyer's Agent negotiates in Buyer's behalf during the Initial Term, Buyer agrees to pay to the Company the Brokerage Fee referenced in Section 2.

4. **BUYER REPRESENTATIONS/DISCLOSURES.** The Buyer warrants that the Buyer has not entered into any other Exclusive Buyer-Broker Agreement with any other brokerage that is still in force and effect. The Buyer will: (a) In all communications with other real estate agents, notify the agents in advance that the Buyer has entered into this Exclusive Buyer-Broker Agreement with the Company; (b) Furnish the Buyer's Agent with relevant personal and financial information to facilitate the Buyer's ability to acquire a property; (c) Exercise care and diligence in evaluating the physical and legal condition of the property selected by the Buyer; (d) Hold harmless the Company and the Buyer's Agent against any claims as the result of any injuries incurred while inspecting any property; (e) Upon signing of this Exclusive Buyer-Broker Agreement, personally review and sign the Buyer Due Diligence Checklist form and Wire Fraud Alert Disclosure; and (f) Disclose to the Buyer's Agent all properties in which the Buyer, as of the date of this Exclusive Buyer-Broker Agreement, is either negotiating to acquire or has a present interest in acquiring.

## 5. AGENCY RELATIONSHIPS.

**5.1 Duties of a Buyer's Agent.** By signing this Exclusive Buyer-Broker Agreement, the Buyer designates the Buyer's Agent and the Principal/Branch Broker for the Company (the "Broker"), as agents for the Buyer to locate properties as referenced in Section 1 above for Buyer's consideration and review. The Buyer authorizes the Buyer's Agent or the Broker to appoint another agent in the Company to also represent the Buyer in the event the Buyer's Agent or the Broker will be unavailable to service the Buyer. As agents for the Buyer, the Buyer's Agent and Broker have fiduciary duties to the Buyer that include loyalty, obedience, full disclosure, confidentiality, reasonable care, and any other duties required by law.

**5.2 Duties of a Limited Agent.** The Buyer understands that the Buyer's Agent and the Broker may now, or in the future, be agents for a seller who may have a property that the Buyer may wish to acquire. Then the Buyer's Agent and the Broker may be acting as Limited Agents - representing both the Buyer and the seller at the same time. A Limited Agent has fiduciary duties to both the Buyer and the seller as required by law. However, some of those duties are "limited" because the agent cannot provide to both parties undivided loyalty, confidentiality and disclosure. For this reason, the Limited Agent is bound by a further duty of neutrality. Being neutral, the Limited Agent may not disclose to either party information likely to weaken the bargaining position of the other – for example, the highest price the Buyer will offer, or the lowest price the seller will accept. However, the Limited Agent will be required to disclose information given to the agent in confidence by the other party if failure to disclose such information would be a material misrepresentation regarding the Property or regarding the ability of the parties to fulfill their obligations. The Buyer is advised that neither the Buyer nor the seller is required to accept a limited agency situation in the Company, and each party is entitled to be represented by its own agent. In the event a limited agency situation arises, the Buyer's Agent and the Broker, as applicable, may only act as Limited Agents based upon a separate Limited Agency Consent Agreement signed by the seller and Buyer.

**6. PROFESSIONAL ADVICE.** The Company and the Buyer's Agent are trained in the marketing of real estate. Neither the Company nor the Buyer's Agent are trained or licensed to provide the Buyer with professional advice regarding the physical condition of any property or regarding legal or tax matters. The Buyer is advised not to rely on the Company, or any agents of the Company, for a determination regarding the physical or legal condition of the property, including, but not limited to: past or present compliance with zoning and building code requirements; the condition of any appliances; the condition of heating/cooling, plumbing, and electrical fixtures and equipment; sewer problems; moisture or other problems in the roof or foundation; the availability and location of utilities; the location of property lines; and the exact square footage or acreage of the property. As part of any written offer to purchase a property, the Company strongly recommends that the Buyer engage the services of appropriate professionals to conduct inspections, investigations, tests, surveys, and other evaluations of the Property at the Buyer's expense. If the Buyer fails to do so, the Buyer is acting contrary to the advice of the Company. Any recommendations for third party services made by the Company or the Buyer's Agent do not guarantee the Buyer's satisfaction in the use of those third party services and should not be seen as a warranty of any kind as to the level of service that will be provided by the third parties. The Buyer is advised that it is up to the Buyer in the Buyer's sole discretion to choose third party services that meet the needs of the Buyer and not to rely on any recommendations given by the Company or the Buyer's Agent.

**7. DISPUTE RESOLUTION.** The parties agree that any dispute related to this Exclusive Buyer-Broker Agreement, arising prior to or after the acquisition of a property, may at the option of the parties, first be submitted to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. The parties to the dispute must agree before any settlement is binding. The parties will jointly appoint an acceptable mediator and share equally in the cost of such mediation. If mediation fails, the other remedies available under this Exclusive Buyer-Broker Agreement shall apply.

**8. ATTORNEY FEES/GOVERNING LAW/CLASS ACTION WAIVER.** Except as provided in Section 7, in case of the employment of an attorney in any matter arising out of this Exclusive Buyer-Broker Agreement, the prevailing party shall be entitled to receive from the other party all costs and attorney fees, whether the matter is resolved through court action or otherwise. If, through no fault of the Company, any litigation arises out of the Buyer's employment of the Company under this Exclusive Buyer-Broker Agreement (whether before or after the acquisition of a property), the Buyer agrees to indemnify the Company and the Buyer's Agent from all costs and attorney fees incurred by the Company and/or the Buyer's Agent in pursuing and/or defending such action. The Buyer forfeits any and all rights to participate in any class action against the Company. In particular, the Buyer agrees not to be a representative or member of any class of claimants or act as a private attorney general in litigation, arbitration, or administrative proceeding with respect to any claim arising out of this Exclusive Buyer-Broker Agreement.

**9. BUYER AUTHORIZATIONS.** The Buyer authorizes the Company and/or Buyer's Agent to: (a) Disclose after Closing to each MLS in which the Company participates (consistent with the requirements of each such MLS), the final terms and sales price of the property acquired by Buyer under the terms of this Agreement; and (b) Communicate with the Buyer for the purpose of soliciting real estate related goods and services during and after the term of this Exclusive Buyer-Broker Agreement. The Buyer further agrees that in any transaction for the acquisition of any property, as referenced in Section 1 above, the Earnest Money Deposit may be placed into an interest-bearing trust account with interest paid to the Utah Association of Realtors® Housing Opportunity Fund (UARHOF) to assist in creating affordable housing throughout the state.

10. **ATTACHMENT.** The Buyer Due Diligence Checklist form and Wire Fraud Alert Disclosure are incorporated into this Exclusive Buyer-Broker Agreement. There  ARE  ARE NOT additional terms contained in an Addendum attached to this Exclusive Buyer-Broker Agreement. If an Addendum is attached, the terms of that Addendum are incorporated into this Exclusive Buyer-Broker Agreement by this reference.

11. **EQUAL HOUSING OPPORTUNITY.** The Buyer and the Company will comply with Federal, State, and local fair housing laws.

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

13. **DUE-ON-SALE.** Certain types of transactions may trigger what is commonly referred to as a "due-on-sale" clause. A "due-on-sale" clause typically states that the seller's lender or mortgagee may call the loan due and payable in full if the seller participates in certain types of transactions. These types of transactions may include, but are not limited to, transactions where: (a) The sale of the property does not result in the underlying debt being paid in full; (b) The parties enter into a seller-financed transaction; (c) A lease option agreement is entered into; or (d) Any other unauthorized transfer of title to the Property has occurred without the lender's consent. The Buyer understands that if any underlying encumbrances or mortgages on the Property contain a "due-on-sale clause," and the "due-on-sale" clause is triggered, the lender may call the entire unpaid balance of the loan immediately due.

14. **ENTIRE AGREEMENT.** This Exclusive Buyer-Broker Agreement, including the Buyer Due Diligence Checklist form, Wire Fraud Alert Disclosure, and any additional addendum contain the entire agreement between the parties relating to the subject matter of this Exclusive Buyer-Broker Agreement. This Exclusive Buyer-Broker Agreement shall not be modified or amended except in writing signed by the parties hereto. If any provision of this Exclusive Buyer-Broker Agreement is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such provision shall be severed from this Exclusive Buyer-Broker Agreement and the other provisions shall remain in full force and effect to the fullest extent possible.

15. **EFFECTIVE DATE.** This Exclusive Buyer-Broker Agreement is entered into and is effective as of the date: (a) The Buyer and the authorized Buyer's Agent or Broker have signed this Exclusive Buyer-Broker Agreement; and (b) The authorized Buyer's Agent or Broker has received a mutually signed copy of this Exclusive Buyer-Broker Agreement (the "Effective Date").

**THE UNDERSIGNED** hereby accept the terms of this Exclusive Buyer-Broker Agreement.

\_\_\_\_\_  
(Buyer's Signature) (Address/Phone) (Date)

\_\_\_\_\_  
(Buyer's Signature) (Address/Phone) (Date)

ACCEPTED by the Company

by: \_\_\_\_\_  
(Signature of Authorized Buyer's Agent or Broker) (Date)

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