



## ADDENDUM TO EXCLUSIVE RIGHT OF SALE LISTING AGREEMENT

THE FOLLOWING PROVISIONS ARE MADE A PART OF THE EXCLUSIVE RIGHT OF SALE LISTING AGREEMENT OF EVEN DATE BETWEEN:

\_\_\_\_\_ (Seller)  
and \_\_\_\_\_ (Broker)  
regarding the property located at \_\_\_\_\_ (Property)

A "short sale" is a process in which a Lender and/or lien holder (hereinafter referred to as "Lender") are requested to reduce the amount owed to it in order for the property to sell. This occurs when the property cannot be sold for the amount(s) owed to the Lender. The Seller's net sale proceeds after the payment of customary closing costs from the sale of the real property are insufficient to pay the outstanding mortgage and/or other lien(s) in full at closing. Sometimes, a short sale Seller is in default of a loan(s) or lien obligation and is able to document the financial inability to pay.

1. Seller hereby appoints the Law Office of Barry L. Miller, P.A. (hereinafter referred to as "Firm") as Seller's exclusive agent to negotiate a short sale with the Seller's Lender(s). Seller represents that the Lender(s) as identified on the mortgage information sheet attached hereto are all of the Lender(s) having an interest in the property. If Seller has equity line of mortgage, Seller agrees not to make any additional draws on said mortgage.
2. Seller authorize Broker and/or its agent(s) (whether serving as a transaction Broker or single agent) to:  
(A) market the property as a short sale or pre-foreclosure property in the MLS (in accordance with the MLS rules and regulations), advertisements, signage or other marketing mediums as selected by Broker;  
(B) disclose or provide any requested information or documentation to the Lender for the purpose of obtaining approval from the Lender in connection with the sale of the listed property;  
(C) contact the Lender's loss mitigation or similar department to obtain loan and/or lien status, account and payoff related information;  
(D) provide comparables, Broker price opinions (general condition of the community and the condition of the property in relation to the other properties in the community), MLS information and data and other data documenting the current value of the property;  
(E) coordinate visual inspection(s) of the property by authorized representative(s) of the Lender.
3. Seller authorizes listing Broker to make price adjustments as may corresponded with Lender approval (short sale) and market conditions.
4. Seller shall have a continuing obligation to provide listing Broker and FIRM any and all information and documents that they may require to effectuate the short sale. Seller shall immediately provide FIRM with all documents received from Lender(s), its agents or attorneys.
5. Seller authorizes listing Broker and its agent(s) to include the Purchase and Sales Contract for the property (hereinafter referred to as the "Contract") a contingency for: (A) approval of the contract by the Lender; and (B) Lender's agreement to accept a payoff which is less than the balance owed on the loan and/or lien and (C) Lender's issuance of a release and satisfaction of the mortgage(s) and/or lien(s) upon Lender's receipt of the reduced payoff amounts. Lender may require the Seller to execute a promissory note for the outstanding balance of the loan.
6. Seller and Broker via the Firm shall promptly furnish the Lender with copies of the executed purchase and sale contract, preliminary closing statement prepared by The Closing Agent, Inc., Seller's financial information such as pay stubs, tax returns and bank statements, medical bills, a hardship letter

outlining the Seller's financial difficulties to gain approval of the short sale, proof of Seller's assets and liabilities, homeowner or condominium association lien status (estoppel) letters (when applicable) and any other documentation Lender deems necessary to substantiate Seller's inability to make repayment obligations to the Lender.

7. Seller acknowledges that the commission offered to a cooperating listing Broker under the listing agreement may be modified if Lender reduces the compensation to be paid to listing Broker. Listing Agent and Seller will receive periodic updates via e mail. Listing Agent agrees not to forward these confidential updates to any third party. Listing Agent may provide selling agent general progress reports based upon Firm's updates.
8. Seller acknowledges that: (A) Seller will not receive any net sales proceeds at closing and may be required by the Lender to deposit Seller's own funds into escrow; and (B) sale of the property is possible if the Lender agrees to take less than what is owed as a payoff and that the Lender may require the Seller to pay the difference of what was owed as a deficiency; and (C) if Lender refuses to honor the approved discount(s) and closing is not possible, the property could proceed to the filing of a foreclosure action or if an action has been filed to proceed to a sale and/or a judgment, and (D) if the short sale is successful and there is no deficiency, the discount received may become a taxable event to the Seller. Seller may also be taxed on gain in the value of the property from the date of Seller's purchase to the date of the sale. Seller is advised that other options, including but not limited to, bankruptcy, foreclosure or deed in lieu of foreclosure may be more appropriate than a short sale. Seller is advised to consult with appropriate tax and financial professionals.
9. Seller agrees to have all utilities active and on during the listing and at the time of building/property inspections at Seller's sole expense. Seller agrees to maintain the property and not remove any appliances, fixtures or equipment from the property. Seller acknowledges and understands that the Lender can and will seek damages if property is altered or damaged. Furthermore, the Lender can and will seek damages if mechanical systems and appliances are removed from the property.
10. Seller represents that the property is currently insured as required by the Lender and that at no time during this contract shall the Seller allow the insurance to be cancelled or lapse.
11. Seller acknowledges that Firm has not rendered any accounting advice and that Seller should seek an accountant or other tax professional as this transaction may have consequence to the Seller.
12. Firms do not guarantee that they will be successful in obtaining a short sale with a Buyer or obtaining a short sale approval from the Lender.
13. Seller agrees to hold FIRM and listing Broker harmless and shall indemnify listing Broker and FIRM from any and all loss, damage, liability, cost and expenses of any nature including but not limited to attorney's fees (including appeals) that may be incurred from any person, company or Lender due to: (A) Seller's negligence, representations, misrepresentations, actions or inactions, (B) the existence of undisclosed, inaccurate or incomplete facts about the property or any Lender, or (C) use of any and all documents and information that have been provided by Seller.
14. Seller agrees to execute the attached "Memorandum of Agreement" which shall be recorded in the public records of the county in which the property is located. This memorandum is to memorialize and acknowledge the validity of this agreement and to insure that Firm is paid any and all amount due at the time of closing.
15. Seller acknowledges that the short sale may result in the Lender requiring the Seller to pay any deficiency resulting from the short sale (which the Lender file a law suit to recover), that the Lender's forgiveness of debt may be a taxable event to the Seller and that the Seller's credit may be negatively

affected. Seller also acknowledges that Lender may require Seller to bring funds to closing or to execute a promissory note as a condition of approval. Seller is advised to consult with appropriate financial and tax professionals. Seller agrees to rely on such professionals and NOT the Law Office of Barry L. Miller, P.A. for tax advice.

16. Seller acknowledges that the short sale approval from the Lender may result in the Lender releasing the mortgage or lien of record however, the Seller, may continue to be liable for the indebtedness (promissory note or obligation).
17. FIRM shall receive a fee of \$2,500.00 ("Fee") on the HUD-1 settlement statement for the services of negotiating the short sale and other fees as set forth in the **SHORT SALE AGREEMENT FOR PAYMENT AND SERVICES**. This Fee shall be due from Seller if, within 180 days after the termination of the contract, Seller transfers or sells the property or any interest in the property to any third party (excluding if the property is transferred as a result of a foreclosure action).
18. Seller agrees that The Closing Agent, Inc. (hereinafter referred to as "TCA") shall be the title and escrow agent for the Property. TCA shall issue the title insurance policies and perform the closing at its published rates. TCA is affiliated with the Firm.
19. Client understands and acknowledges:
  - A. Seller understands that they are to forward any correspondences received from lender or their agents (attorney, sheriff, courts, etc.) to the Firm via facsimile (FAX) or e-mail IMMEDIATELY.
  - B. Seller understands that they are not to negotiate or agree to terms of any loss mitigation alternative without first contacting the loss mitigation specialist handling their case file at our office.
  - C. Seller understands that process of loss mitigation for some lenders can take as long as 30 to 270 days to complete.
  - D. Seller understands if their current financial situation changes they are to inform the Firm who is handling their case file immediately.
  - E. Seller understands they are to keep in constant contact with our office. Many situations may arise, such as, important questions or information may need to be addressed by Seller to our office and/or lender, investor and any government agency involved in reviewing their loss mitigation consideration. Your input may play an important role in approval in certain situations.
  - F. Seller has indicated that the mortgage debt is not under any current bankruptcy proceedings with the US Bankruptcy Court. If Seller files Bankruptcy, Seller will immediately notify the Firm.
  - G. Firm shall retain the all documents submitted to it from client for 60 days and thereafter shall dispose of same.

20. Miscellaneous.

- A. Governing law, venue, severability. This agreement shall be governed by the laws of the state of Florida. Venue shall be proper only in Orange County, Florida. If any one or more of the provisions of this agreement shall be held invalid or unenforceable, the validity and enforceability of all other provisions of this agreement shall not be affected thereby. The parties hereby expressly waive trial by jury in any actions.

- B. Sole agreement, amendment. This agreement supersedes and replaces any prior agreement(s) or understanding(s) of any type between the parties. This agreement may be amended only by a written instrument executed by both parties.
- C. Benefit. All rights and obligations of this agreement shall bind and inure to the benefit of the parties and their respective heirs, executors, administrators, assigns and successors; provided, however that this agreement shall not be assignable by the parties, however, Buyer may assign its rights, duties and obligations hereunder without Seller's consent or notice.
- D. Non-waiver. No delay or failure by a party to exercise any right under this agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right.
- E. Headings. Heading in this agreement are for convenience only and shall not be used to interrupt or construe its provisions.
- F. Attorney's Fees. In the event either party commences legal action to enforce its rights under this agreement, the prevailing party shall be entitled to reimbursement from the other party of its reasonable attorney's fees and costs, including any appeals.

**THIS ADDENDUM AMENDS THE ABOVE-REFERENCED EXCLUSIVE LISTING AGREEMENT BETWEEN SELLER AND BROKER. ALL OTHER NON-CONFLICTING PROVISIONS OF THAT AGREEMENT REMAIN IN FULL FORCE AND EFFECT.**

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

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

\_\_\_\_\_  
Listing Associate Date

\_\_\_\_\_

\_\_\_\_\_  
Law Office of Barry L. Miller, P.A. Date