



TOMLINSON



ADDENDUM TO LISTING AGREEMENT – SHORT SALE

The following terms and conditions are part of this Listing Agreement ("Listing Agreement") dated _____ among _____ ("Firm"), its assigned Broker(s) _____ ("Broker(s)") and _____ ("Seller") concerning the property at _____ ("Property").

A. **PRIOR DISCLOSURE.** Seller acknowledges that prior to listing Seller's Property with Firm, Seller received from Broker a Pre-Listing Disclosure on potential short sales. Seller acknowledges having made Seller's own determination that the Property should be listed for sale, recognizing that any sale will likely be made as part of a "Short Sale," meaning that sales proceeds will be insufficient to fully satisfy all closing costs and all liens and encumbrances against the Property. Seller authorizes Firm and Broker(s) to market the Property as a Short Sale in accordance with MLS Rules.

Seller believes it is in Seller's interest that Firm and Broker(s) perform their duties under the applicable laws governing real estate Firms and Broker(s), expose the Property to the broadest potential group of potential buyers (including buyers working with any of Firm's Broker(s)), and have Firm and/or any of Broker(s) represent Seller and buyers as dual agent when appropriate. Seller agrees the services provided in this Listing, including any additional services to be provided in Section E, are in Seller's best interest.

B. **FIRM PROVIDES NO ASSURANCE OF SUCCESS.** Seller acknowledges Firm and Broker have provided no assurance of any type that any service of Firm, Listing Broker(s), or any Licensee(s) will: (a) be successful in enabling Seller to complete the sale of the Property; (b) in any way prevent, delay or extend the date for any adverse action any lender or creditor might take against Seller or the Property, including pursuit of any remedies any or all of them have; (c) assist Seller in any way in reinstating or modifying any loan; (d) avoid or lessen any impact on Seller's credit; assist in completing a sale transaction that would entitle Seller to receive any potential benefit or right to occupy any portion of the Property after sale; or (e) enable Seller to complete any action that would in any way eliminate or reduce potential liability for any remaining debt, tax impacts resulting from a short sale, or adverse consequences associated with Seller's credit availability or credit rating. Seller recognizes Firm and Broker(s) have no control over, or responsibility for, the actions of Seller, any lender or creditor, any potential buyer, or any other participant in any transaction.

C. **SHORT SALE.** Prior to listing the Property, Seller provided Broker(s) with a listing of Seller's estimated debts and other obligations encumbering the Property that will need to be paid. At the time of listing the Property, Seller has reviewed that statement and, except as modified, confirms that it is accurate and complete to the best of Seller's knowledge. Any appropriate adjustments or supplements in order to update and make that listing as complete and accurate as possible are attached hereto as Exhibit "A." Seller acknowledges that proceeds from the sale of the Property will probably be insufficient to fully pay existing mortgages, other liens and closing costs (a "Short Sale") Seller acknowledges (a) any Short Sale will very likely be subject to significant control and direction by lenders and other creditors; (b) any creditor's acceptance of less than a full payoff could lead to debt forgiveness resulting in adverse tax consequences,

adverse credit and/or tax impact, a creditor request that Seller remain obligated to pay some additional amounts to the creditor following completion of the sale of the Property, and other adverse consequences that may result from Seller's efforts to sell or otherwise transfer ownership of the Property; and (c) lenders and creditors accepting less than the full amount they are owed will very likely condition approval of any sale on Seller receiving no or very minimal sale proceeds.

Seller confirms having investigated Seller's options and alternatives to completing a Short Sale prior to entering this Listing Agreement having determined that Seller desires to pursue a Short Sale. Accordingly, Seller requests that the transaction be advertised and pursued as a potential Short Sale. **Seller also acknowledges that Firm and Broker(s) have not advised Seller how to approach, deal with or negotiate with any lenders or creditors and have not advised Seller to stop making payments or otherwise stop performing obligations in connection with any exiting loan or other debt.**

D. **FORECLOSURE STATUS.** Seller warrants to Firm, Broker(s) and all other members of the Multiple Listing Service named in this Listing Agreement There is no foreclosure sale scheduled for the Property; or A foreclosure sale is scheduled for _____ (insert date). Seller understands and agrees that it will be a material fact and Seller and Firm must disclose to prospective buyers and Firms and agents acting on behalf of buyers if the closing date agreed to in a sale agreement covering the Property is later than the date set for a scheduled foreclosure sale. (Form 17 may be used for this disclosure.)

SELLER COVENANTS AND AGREES TO IMMEDIATELY NOTIFY FIRM AND BROKER(S) IN THE EVENT SELLER RECEIVES A FORECLOSURE NOTICE COVERING THE PROPERTY AND TO PROVIDE BROKER(S) WITH A COPY OF SAID NOTICE.

E. **FIRM'S ADDITIONAL SERVICES.** Seller requests that Firm and Broker(s) make a good faith effort to perform the following additional services (check all that apply):

- Furnish sale information, documentation and Seller's financial information requested by lienholders.
- Coordinate visual inspections of the Property by lienholders.
- Provide comparable sales data and broker price opinions to lienholders if so requested.
- Refer Seller to lenders or other service providers who might assist Seller in efforts to refinance the Property or modify existing loans on the Property.
- Transmit requests from Seller, if requested by Seller, seeking postponement of a pending foreclosure sale.
- Transmit requests from Seller, if requested by Seller, to negotiate with lienholders for discounted payoff amounts.
- Other: _____

If Seller has requested any additional services under this Section E, Seller has executed and delivered to Broker(s) an Authorization to Release Financial/Loan Information.

IMPORTANT NOTICE UNDER FEDERAL LAW. The following disclosures are being made pursuant to the Federal Trade Commission's Mortgage Assistance Relief Services ("MARS") Rules (16 C.F.R. Part 322).

a. Firm is not associated with the government, and none of the service being provided or to be provided by Firm or any of its Broker(s) is approved by the government or any of Seller's lenders or creditors. Despite Seller agreeing to and requesting Firm and its Broker(s) to use the services described in the Listing and in this Addendum, Seller acknowledges that any or all of Seller's lenders may not agree to accept less than the amount they claim they are owed or to otherwise change any of Seller's loans.

b. Seller acknowledges that Seller instruct Firm or all of its Broker(s) to stop providing any of the additional services requested above in this Section E. at any time. Seller agrees these are the only services to be provided by Firm or any of its Broker(s) under the Listing that could be considered part of short sale negotiation services.

c. Seller and Firm agree Seller has the full right to accept or reject any offer of mortgage assistance that may be provided through Firm or any of its Broker(s) from any of Seller's lenders or servicers. Regardless of whether Seller accepts or rejects any proposal or offer from any lender, Seller and Firm agree Seller will not have to pay Firm or any of its Broker(s) any fee for provision of the additional services requested in the check boxes in the first portion of this Section E above.

d. Regardless of whether Seller instructs Firm and/or its Broker(s) to discontinue provision of any of the additional services identified in Section E, or whether Seller accepts or rejects any offer presented through any lender, in the event a transaction is completed with respect to Seller's property for which a commission would be due under the listing and this Addendum, Seller may still be obligated for payment of the commission or other fees agreed upon for the provision of additional real estate brokerage services.

e. If Seller stops paying any of Seller's mortgages or other obligations securing the Property, Seller acknowledges that Seller could lose Seller's home and damage Seller's credit rating.

f. Seller acknowledges having been provided with and having reviewed the above MARS Disclosure.

Seller's Initials

Date

Seller's Initials

Date

F. **ADDITIONAL TERMS.** The following terms are made part of this Listing Agreement, and are intended to comply with the requirements of the Home Affordable Foreclosure Alternatives ("HAFA") Program:

a. Seller may cancel this Listing Agreement and all addenda prior to the ending date of the listing period without advance notice to Firm or Broker(s) (other than any agreed non-refundable cost deposit), and without payment of a commission or any other consideration to Firm or Broker(s), if the Property is conveyed to any mortgage insurer or lender involved in a loan secured by the Property.

b. In any listing disclosures to other brokerage firms or brokers, the following provisions will be included (and these provisions will be included in any Purchase and Sale Agreement ("PSA") covering the Property):

i. Any sale will likely involve a short sale.

ii. Sale of the Property is contingent on written agreement to all terms, including provisions regarding payment of commission, by all lender(s) having a security interest in the Property and, if applicable, any mortgage insurer. Provided, in no event will the listing side commission be less than the selling side commission.

iii. Any PSA will include the following "Seller and Buyer each represent that the sale covered by this Listing Agreement is an 'arm's length' transaction and the Seller and Buyer are unrelated to each other by family, marriage or commercial enterprise. Buyer agrees not to sell the Property within 90 days of Closing of this sale."

iv. In any PSA, Seller will reserve the right to continue marketing the Property in order to accept additional offers, and to submit all offers to their lender(s).

Form 22SS may be used in any PSA to include most of the required provisions.

c. In the event Seller's lender(s) and other creditors provide an acceptable solution or agreement accepting a proposed PSA, Seller acknowledges that Seller is required to provide Buyer with notice of such approval. Seller agrees to complete a Form SS-90 for this purpose. Seller agrees to cooperate in undertaking any actions necessary to confirm with any lender or other creditor that this notice has been delivered and to procure any necessary consent from the Buyer. Seller acknowledges that under some loan programs, mutual acceptance of a PSA will not be deemed to have occurred from the perspective of the short sale lender until Seller and Seller's buyer have agreed and confirmed acceptance, including any conditions imposed by the lender.

G. EXPERT ADVICE. Firm and Broker(s) advise Seller to seek expert advice on the legal, financial, income tax and other consequences of any transaction, and particularly any transaction involving a potential Short Sale or sale or transfer after a lender has notified Seller of a default or potential foreclosure.

H. ADVANCE COST DEPOSIT. (No Advance Cost Deposit will be charged if any Additional Services under Section E. have been requested.) At the time of executing this Addendum, Seller has deposited with Firm a deposit of \$_____ from which Firm and Broker(s) are authorized to pay reasonable out-of-pocket expenses to market the Property in accordance with the Agreement and this Addendum. Unless otherwise agreed in writing by Firm's Designated Broker or Managing Broker, the portion of this deposit used to pay any such

expenses will not be refunded to Seller regardless of whether the Property sells or whether this Listing is canceled or expires for any reason. If the Property is sold or a commission is otherwise paid to Firm in connection with this Listing Agreement, the full amount of this deposit will be applied toward Seller's commission obligation.

NOTE: If any Additional Services have been agreed on in Section E, the signature of Firm's designated Broker or Broker's Managing Broker manager is required for this Addendum to be valid.

Seller:

Designated Broker or Managing Broker:

Date

Date

Broker(s):

Date

Date

Date