

## SHORT SALE ADDENDUM TO PURCHASE AGREEMENT

1. **ADDENDUM TO CONTRACT.** This Short Sale Addendum (Addendum) is attached to and made a part of the purchase agreement (Purchase Agreement) between \_\_\_\_\_ (Buyer) \_\_\_\_\_ (Seller) dated \_\_\_\_\_, 20\_\_\_\_ for the purchase and sale of the property known as \_\_\_\_\_ (Property).

This Addendum shall control in the event of any conflict with Purchase Agreement. Except as modified, all other terms and provisions of Purchase Agreement shall remain the same.

2. **Purpose of Addendum.** Seller has debts secured by one or more liens on Property. The purchase price may not be enough to cover payment for all the liens and costs of sale. If so, for the closing to occur, the affected lienholder (§ 2.1 below) must agree to a short sale (§ 2.2 below).

**2.1. Lien; Lienholder.** A lien is a recorded claim or lien against Property, including, but not limited to, a mortgage, deed of trust, mechanic's lien, judgment or tax lien (Lien). A title insurance commitment may be used to show any Lien against Property. A lienholder (Lienholder) is a creditor who has a Lien and agrees to release the Lien in a short sale (§ 2.2 below).

**2.2. Short Sale.** A short sale (Short Sale) is a transaction in which a Lienholder releases its Lien against Property and (1) accepts an amount less than the full amount a Lienholder claims is owed or (2) treats the debt secured by a Lien differently than as originally provided for in the evidence of debt (such as a promissory note).

Before a Short Sale can occur, Buyer, Seller, and Lienholder (except those creditors that are to be paid the full amount claimed) must consent to the terms of the sale. Sometimes, Lien is released but Lienholder does not agree to release Seller from liability or reduce the unpaid portion of the debt, and Seller and any guarantors will remain liable after closing for that unpaid portion, despite the release of Lien against Property at closing.

**2.3. Short Sale Acceptance.** Short Sale Acceptance is when Seller receives one or more written statements, signed by Lienholder, that specify the terms and conditions of Short Sale.

3. **SHORT SALE APPROVAL.** This Addendum is contingent upon Seller's receipt of written consent from all existing Lienholders, no later than 90 days after acceptance of Purchase Agreement which falls on \_\_\_\_\_, 20\_\_\_\_ (Short Sale Acceptance Date), to reduce their respective loan balances by an amount sufficient to permit the proceeds from the sale of the Property to pay the existing balances on loans secured by the Property, real property taxes, brokerage commissions and applicable sales tax, closing costs, and other monetary obligations the Purchase Agreement and Listing Agreement require Seller to pay at closing (including, but not limited to, escrow charges, title charges, documentary transfer taxes, prorations, retrofit costs and repairs) without requiring Seller to place any funds into escrow.

If Seller fails to give Buyer written notice of all existing consents from all Lienholders by the Short Sale Acceptance date, either Seller or Buyer may cancel, in writing, the Purchase Agreement. In that event, earnest money will be disbursed in accordance with SDCL 36-21A-81. Seller shall reasonably cooperate with any existing Lienholder during the Short Sale process. Seller must notify Buyer immediately upon receipt of a Lienholder's consent and agreement to Short Sale.

4. **SELLER DEADLINE FOR SUBMISSION TO LIENHOLDER.** Within five (5) business days after this Addendum has been accepted by Buyer and Seller, Seller shall submit to each Lienholder a copy of this Addendum and other Addenda and documentation required by a Lienholder for its approval of this sale.

Any additional information or documentation requested of Seller by such Lienholder shall be submitted within five (5) business days of such request or Buyer may terminate Purchase Agreement in accordance with the terms of Purchase Agreement.

Buyer and Seller acknowledge that an agreement to amend/extend Purchase Agreement is required to revise any dates, deadlines or terms of Purchase Agreement as a result of changes required by Lienholder's acceptance of Short Sale.

Buyer and Seller understand that the approval of a Lienholder may take weeks or months to obtain, and neither the Seller nor any real estate agent representing Seller or Buyer can guarantee the timeliness of Lienholder approval.

5. **TIME PERIODS - CONTINGENCIES.** Time periods in the Purchase Agreement for inspections, contingencies, covenants, and other obligations shall begin:

A.  as specified in the Agreement;

B.  the day after Seller delivers to Buyer a written notice of Lienholder's consent; or,

C.  other \_\_\_\_\_.

6. **NO ASSURANCE OF LENDER APPROVAL.** Buyer and Seller understand that a Lienholder (a) is not obligated to accept transaction as a Short Sale; (b) may require Seller to forward any other offer received; and (c) may accept other Short Sale offers. Additionally, Lienholder may require that, in order to obtain its approval for a Short Sale, some terms of the Purchase Agreement such as the closing, be amended or that Seller sign a personal note or some other obligation for all or a portion of the amount of the secured debt reduction. Buyer and Seller do not have to agree to any of the terms proposed by a Lienholder. Buyer, Seller and real estate brokers do not have control of whether a Lienholder will consent to a Short Sale, or any act, omission, or decision by any Lienholder in the Short Sale process. Even if Lienholder agrees to a Short Sale, Lienholder is not required to forgive repayment of the debt secured by the Lien or release Seller and any guarantors from liability unless Lienholder's claim is paid in full.

Lienholder may condition its agreement of Short Sale on Seller doing any or any combination of the following to obtain Short Sale Acceptance:

- A. making a cash payment;
- B. signing a new promissory note;
- C. continuing to owe a Lienholder the unpaid portion of the debt; or,
- D. agreeing to other requirements made by Lienholder.

- 7. **OFFERS FROM OTHER BUYERS.** Seller may keep Property on the market and continue to show it to other buyers. Buyer and Seller understand that additional offers may be received by Seller's agent, which must be presented to Seller pursuant to South Dakota law. Such offers may be accepted by Seller as backup contracts.
- 8. **BUYER AND SELLER COSTS.** Buyer and Seller acknowledge that each may incur costs in connection with rights or obligations under the Purchase Agreement. These costs may include, but are not limited to, payments for loan applications, inspections, appraisals, and other reports. Such costs will be the sole responsibility of the party incurring them if any Lienholder does not consent to the Short Sale transaction.
- 9. **FORECLOSURE.** Seller represents that to the best of Seller's knowledge, a foreclosure proceeding  has not  has been filed with respect to the Property. Further, if during the Short Sale process a foreclosure proceeding is filed, Seller shall disclose such foreclosure filing to Buyer. Buyer and Seller understand that if the closing does not occur before the end of the 180-day redemption period of the Property, Seller will lose all rights and interest in the Property. In such event, Purchase Agreement shall be void, and all earnest money shall be disbursed pursuant to SDCL 36-21A-81.
- 10. **CLOSING.** Closing shall occur within thirty (30) days or \_\_\_\_\_ days after delivery of Lienholder approval.

**By signing below, Buyer and Seller acknowledge that they have read, understand, accept and received a copy of this Short Sale Addendum.**

Date \_\_\_\_\_ Date \_\_\_\_\_

Buyer \_\_\_\_\_ Seller \_\_\_\_\_

Buyer \_\_\_\_\_ Seller \_\_\_\_\_