

# MASTER LISTING AGREEMENT

This Master Listing Agreement is executed this day of , 20\_\_ by and between ABC Servicing and (hereinafter referred to as “ABC Servicing” and “Agent”, respectively).

## **Statement of Purpose**

ABC Servicing has entered into agreements with various investors (the “Management Agreements”) to manage the disposition of various real estate assets acquired as a result of foreclosure or otherwise. Among ABC Servicing responsibilities under the Management Agreements is the requirement that each property which, whether through foreclosure or otherwise, becomes a real estate owned property, be listed for sale with an Agent in the state in which the property is located. Agent has demonstrated expertise in the marketing of such properties ABC Servicing and Agent desire to enter into this Master Listing Agreement to set forth the terms and conditions upon which ABC Servicing shall list with Agent, certain properties managed by ABC Servicing. Therefore, ABC Servicing and Agent hereby agree as follows:

**I. Listing of Property for Sale:** From time to time, ABC Servicing shall list with Agent certain parcels of real property for sale (each a “Property”), subject to the terms of this Agreement. To effect the listing of any specific Property, ABC Servicing shall deliver to Agent a Property Description/Authorization form, which shall be completed so as to provide to Agent the information necessary to market the Property. Each Property Description/Authorization form delivered by ABC Servicing to Agent shall be subject to the terms of this Master Listing Agreement.

**II. Property Defects:** ABC Servicing makes no representations or warranties whatsoever as to the condition of the Property or the presence of defects therein, latent or otherwise.

**III. Agency’s Duties:** The Agent shall use its best efforts to sell the Property at the listed price as set by ABC Servicing, by the use of any and all recognized methods including, but not limited to, advertising, showing the Property to prospective purchasers and, where permitted by law, placing a “For Sale” sign on the Property. If property is occupied Agent shall work with the designated ABC Servicing property preservation provider to place a ABC Servicing master code lock box on the Property after the Eviction has been completed. Such Property shall be offered for sale through the multiple listing service for the geographic area where such Property is located, or if no such multiple listing service is available, through another similar service whereby Agents list Properties for sale on a cooperative basis. Any exception to this requirement must be approved by ABC Servicing in writing. Agent is authorized to disseminate to Agent's multiple listing service and to cooperating Agents such information about the listed Property as shall be necessary for disclosure to bona fide customers and clients. Agent shall cooperate with any and all Agents who may have purchasers for the Property.

Agent further agrees to:

1. PRESENT ALL WRITTEN OFFERS TO ABC Servicing MARKETING OFFICER IMMEDIATELY UPON RECEIPT BY AGENT.
  2. Provide weekly inspection reports to ABC Servicing on each Property that is occupied subsequent to the foreclosure sale date, and negotiate with any and all such occupants the terms of their voluntary surrender of the Property to ABC Servicing pursuant to any “cash for keys” or similar program or policy of ABC Servicing in effect during the term of this Agreement.
  3. Complete REO Interior BPO with interior photos and submit them to ABC Servicing within the timeframe noted on the order request.
  4. Agent must initiate all utility services in the Agent’s name within 24 hours after the Broker Price Opinion request by ABC Servicing.
  5. Facilitate the completion of an initial trash-out to change lock, install ABC Servicing master code lockbox, remove debris, perform initial clean-up, lawn service or winterization as required by the ABC Servicing selected property preservation provider.
  6. Upon request, arrange for bids, repairs, reconditioning, and/or maintenance on the Property. Agent shall have ABC Servicing written approval before incurring costs or expenses on behalf of ABC Servicing. However, in the event of an emergency condition threatening the Property, Agent shall take any reasonable and prudent action to protect and preserve the Property up to an aggregate cost of \$500.00 without ABC Servicing prior approval. Such actions shall be reported to ABC Servicing within one (1) business day. Agent shall obtain ABC Servicing written approval prior to incurring any costs or expenses in excess of an aggregate of \$500.00.
  7. Submit monthly status report updates every 30 days to the ABC Servicing Marketing Officer via fax, on the form(s) provided on the ABC Servicing website (ABC Servicing.com/reo), with recommendations to expedite marketing.
  8. Provide to ABC Servicing a monthly statement (on the form provided from time to time by ABC Servicing) of expenses related to the Property with original bids or invoices substantiating them.
- ALL FINAL BILLS MUST BE SUBMITTED TO THE CLOSING ATTORNEY. ALL FINAL BILLS WILL BE PAID PER THE AMOUNTS SHOWN ON THE HUD SETTLEMENT STATEMENT. IF BILLS ARE NOT SUBMITTED TO ABC SERVICING WITHIN 30 DAYS OF CLOSING, AGENT WILL NOT BE PAID.**

**Agent Initial:** \_\_\_\_\_

9. Agent shall not permit occupancy of the Property at any time prior to settlement under an agreement of sale, without ABC Servicing prior written consent.

IV. Compensation to Agent: ABC Servicing agrees to pay Agent a sale's commission for any consummated sale resulting from a written offer procured by Agent (a "Commission"), provided, however:

1 ABC Servicing reserves the right to sell any Property to any purchaser directly obtained by ABC Servicing.

2. ABC Servicing reserves the right to sell any listed Property (a) at public auction, or (b) to a private mortgage insurance company, in either of which events, there may be no commission paid by ABC Servicing to Agent on account of the sale of the Property.

3. ABC Servicing reserves the right, upon written notice to Agent, to change the commission on any listed Property to facilitate the marketing of such Property.

The Commission shall be in the amount set forth on the Property Description/Authorization Form.

V. Compensation to Other Parties: Agent will not pay, or cause to be paid, any referral fee, finder's fee or any other compensation to any person or business entity for the privilege of doing business with ABC Servicing or on account of the execution of the Listing Agreement, except as provided herein.

VI. Payment of Commissions: Sales contracts submitted to ABC Servicing pursuant to this Listing Agreement shall state that sales commissions are to be paid to the Agent, as Agent, and to any cooperating Agent, rather than to any Agent or sales-person affiliated with Agent or any cooperating Agent. At closing, ABC Servicing shall instruct the title company conducting the closing to pay sales commission strictly in accordance with the terms of the contract to the Agents named therein. Except as set forth in this Agreement, no payment of sales commission or other fees or compensation on account of the sale of the Property described in the contract shall be made to any person other than licensed real estate Agents qualified to do business in the state in which the Property is located; attorneys at-law licensed in any state, if permitted by the law of the jurisdiction in which such attorney is licensed; and other persons and business entities providing to the title company, or to parties or for their benefit, goods or services necessary for the actual closing of the sale of a Property. Any exception to this requirement must be approved in writing by ABC Servicing prior to closing. No such payments shall be made in contravention of any law or regulation applicable to the jurisdiction in which the listed Property is located.

VII. Licensing: No sales contract shall be signed or submitted on behalf of Agent by any person who is not himself a real estate agent or Agent holding a valid real estate license in the state in which the Property is located. From time to time, as requested by ABC Servicing, Agent shall provide ABC Servicing with a written listing of all agents or Agents associated or affiliated with Agent and the numbers and expiration dates of their licenses. Notwithstanding the foregoing, it is the Agent's responsibility to ensure that all sales personnel who are affiliated with Agent and are involved in the marketing of ABC Servicing Properties, are actively licensed by the Real Estate Commission in the state in which the Property is located.

VIII. Fair Housing: All listed Property will be offered, shown and made available for sale to all persons without regard to race, color, religion, national origin, or sex.

IX. No Employment Relationship: Neither Agent nor its employees are employees of ABC Servicing, it being agreed and understood that Agent is an independent contractor responsible to ABC Servicing pursuant to the terms and conditions of this Agreement.

X. No Warranty Clause: All earnest money contracts submitted by Agent to ABC Servicing will contain a no warranty clause with the following wording:  
BUYER (S) HEREBY EXPRESSLY ACKNOWLEDGES THAT ABC Servicing HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES AS TO THE PHYSICAL CONDITION OF THE PROPERTY, THE APPLIANCES, UTILITIES, FIXTURES, EQUIPMENT AND OTHER APPURTENANCES RELATING THERETO, OR ANY OTHER MATTER AFFECTING OR RELATING TO THE HEREIN DESCRIBED PROPERTY (OTHER THAN THE WARRANTY OF TITLE ACCORDING TO THE SPECIAL WARRANTY DEED TO BE DELIVERED AT CLOSING), AND THAT THE BUYER(S) HAS BEEN AFFORDED AN ADEQUATE OPPORTUNITY TO INSPECT AND EVALUATE THE CONDITION OF THE PROPERTY. BUYER(S) HEREBY EXPRESSLY ACKNOWLEDGES THAT NO SUCH REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE, AND BUYER(S) AGREES TO ACCEPT THE HEREIN DESCRIBED PROPERTY AS IS AND WHERE IS AND WITHOUT WARRANTY, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY OF THE HEREIN DESCRIBED PROPERTY OR OF ITS FITNESS FOR ANY PARTICULAR USE OR PURPOSE. NO REPRESENTATIONS, CLAIMS, STATEMENTS, ADVERTISING OR PROMOTIONAL ACTIVITIES MADE OR CONDUCTED BY ABC Servicing OR ABC Servicing's AGENTS OR REPRESENTATIVES SHALL BE BINDING UPON ABC Servicing UNLESS THE SAME ARE EXPRESSLY SET FORTH IN THIS CONTRACT, ANY ADDENDUM, OR A SUBSEQUENT WRITTEN AGREEMENT EXECUTED BY ABC Servicing AND BUYER(S).

Such contracts shall include other special terms or conditions as shall be required by ABC Servicing from time to time, even though not enumerated herein.

XI. Terms and Cancellation: This Agreement shall commence on the date hereof and shall terminate as to any Property or all Properties, with or without cause, five (5) calendar days after written notice of cancellation is given by either party to the other party.

XII. Notices: Any notice required or permitted to be given pursuant to this Agreement shall be deemed given upon the earlier to occur of the following: (a) actual delivery of such notice to the intended recipient thereof, or (b) three (3) days after deposit of such notice in a postal receptacle under the custody and control of the U. S. Postal Service, first class postage pre-paid, specifying delivery by certified mail, return receipt requested, properly addressed to the intended recipient thereof at the address set forth at the end of this Agreement.

XIII. No Purchase by Affiliates: Employees, sub-contractors, or affiliated persons of Agent are prohibited from purchasing Properties managed or listed by ABC Servicing without ABC Servicing's prior written consent.

XIV. Regulatory Requirements. Agent acknowledges that the sale of certain properties managed by ABC Servicing must meet regulatory requirements and may require prior regulatory approval.

XV. Miscellaneous:

1. In connection with the termination of this Agreement for any reason, and notwithstanding any dispute between the parties, Agent shall provide to ABC Servicing such termination assistance as ABC Servicing may reasonably request in order to provide an orderly transition from Agent to another provider of services.

If any such termination assistance requires resources in addition to those being used by Agent in the performance of the services, ABC Servicing shall pay Agent therefor on a mutually acceptable basis.

2. Agent warrants that it shall perform its obligations under this Agreement in accordance with the prevailing reasonable commercial standards applicable thereto, and in compliance with all applicable statutes, acts, ordinances, laws, rules, regulations, codes, and standards. Agent represents and warrants that it is in good standing in the state of its formation and is qualified to do business, or such qualification is not required in, each state in which it proposes to provide products and/or services, and that it has and will keep current all licenses, certifications and other qualifications necessary or required to provide such products and/or services. Agent shall provide copies or other evidence thereof to ABC Servicing upon request. Any fees for licenses and permits required by law or regulation that may be necessary to Agent's performance hereunder shall be the responsibility of Agent. Agent will employ sufficient personnel skilled in the sale of real estate to perform the work contemplated by this Agreement.

3. Agent agrees to hold harmless, defend, and indemnify ABC Servicing from loss, costs or expenses (including, without limitation, attorney, expert witness and paralegal fees) incurred in connection with any claims, demands, suits, appeals, disputes or arbitration arising from services provided by Agent hereunder, including without limitation disputes with Agent's subcontractors or actions by buyers, owners or sellers of property and claims of negligence in connection with services provided by Agent under this Agreement. This indemnity provision shall not apply to the extent that such loss, costs, or expenses are caused by the gross negligence or intentional acts of ABC Servicing or of any investor.

4. Invoices shall be sent by Agent for all payments hereunder. Invoices shall describe the items charged for in the invoice and shall be subject to approval by ABC Servicing.

5. Both parties agree that they shall not discriminate against any employee or applicant for employment because of race, creed, color, age, sex, national origin, marital status, liability for service in the armed forces, disability due to veteran status, status as veteran of the Vietnam era, or the handicapped, and they shall comply with all the requirements of the Equal Opportunity Clause set forth in Executive Order 11246, as amended, and its implementing instructions, as well as the Rehabilitation Act of 1973 and the Vietnam Era Veterans Readjustment Assistance Act of 1974, which are incorporated herein by reference.

In the event that and at such time as ABC Servicing requests, Agent shall furnish to ABC Servicing written certification that Agent is in compliance with Executive Order 11246 and applicable regulations there under. Both parties certify that they do not and shall not maintain facilities for their employees in a segregated manner or permit their employees to perform their services at any location under their control where segregated facilities are maintained, and agree to obtain similar certifications from any subcontractors.

6. Each party agrees that information concerning the other party's business (including that of all corporate affiliates and subcontractors) is Confidential Information and shall be maintained in confidence and not disclosed, used or duplicated. The provisions of this section shall survive the termination of this Agreement.

7. Neither party shall use the name of the other for advertising or other such purposes without the prior written approval of the other party.

8. Agent shall not assign or subcontract, in whole or part, any of its obligations under this Agreement without ABC Servicing's written consent. ABC Servicing shall have the right to require Agent to terminate any subcontractor that is, in ABC Servicing's sole judgement, unacceptable to ABC Servicing.

9. This Agreement shall be governed by and construed in accordance with the laws of North Carolina.

10. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Failure to exercise a right or remedy at law or granted hereunder shall not be deemed a waiver of such right or remedy. Failure to claim default hereunder shall not waive any default.

11. This Agreement, including all documents referred to herein and attached hereto, constitutes the entire agreement of the parties on the subject matter hereof and supersedes all prior representations, understandings and agreements between the parties with respect to such subject matter. If there is a conflict between or among such documents, this Agreement shall be the final expression of the parties' intent.

Executed this day of , 20 .

AGENT:

(Company Name)

By: Date:

(Signature)

(Printed Name)

Address: Phone No. ( )

ABC SERVICING SERVICING

By: Date:

Title: \_\_\_\_\_

(Printed Name)