

Exclusive Right of Sale Listing Agreement



This Exclusive Right of Sale Listing Agreement ("Agreement") is between

JOSEPH P ENCINOSA

("Seller")

and Mathew Ortiz

("Broker").

1. Authority to Sell Property: Seller gives Broker the EXCLUSIVE RIGHT TO SELL the real and personal property (collectively "Property") described below, at the price and terms described below, beginning December 3, 2021 and terminating at 11:59 p.m. on May 3, 2022 ("Termination Date"). Upon full execution of a contract for sale and purchase of the Property, all rights and obligations of this Agreement will automatically extend through the date of the actual closing of the sales contract. Seller and Broker acknowledge that this Agreement does not guarantee a sale. This Property will be offered to any person without regard to race, color, religion, sex, handicap, familial status, national origin, or any other factor protected by federal, state, or local law. Seller certifies and represents that she/he/it is legally entitled to convey the Property and all improvements.

2. Description of Property:

(a) **Street Address:** 111 MIAMI GARDENS ROAD WEST PARK, 33023

Legal Description: MIAMI GARDENS ESTATES SEC 4 28-20 B LOT 15, BLK 33

☐ See Attachment

(b) **Personal Property, including appliances:** all appliances and shed in the back

☐ See Attachment

(c) **Occupancy:**

Property ☐ is ☒ is not currently occupied by a tenant. If occupied, the lease term expires

3. Price and Terms: The property is offered for sale on the following terms or on other terms acceptable to Seller:

(a) **Price:** \$420,000.00

(b) **Financing Terms:** ☒ Cash ☒ Conventional ☒ VA ☒ FHA ☐ Other (specify)

☐ **Seller Financing:** Seller will hold a purchase money mortgage in the amount of \$ with the following terms:

☐ **Assumption of Existing Mortgage:** Buyer may assume existing mortgage for \$ plus an assumption fee of \$. The mortgage is for a term of years beginning in , at an interest rate of % ☐ fixed ☐ variable (describe)

Lender approval of assumption ☐ is required ☐ is not required ☐ unknown. **Notices to Seller:** (1) You may remain liable for an assumed mortgage for a number of years after the Property is sold. Check with your lender to determine the extent of your liability. Seller will ensure that all mortgage payments and required escrow deposits are current at the time of closing and will convey the escrow deposit to the buyer at closing.

(2) Extensive regulations affect Seller financed transactions. It is beyond the scope of a real estate licensee's authority to determine whether the terms of your Seller financing agreement comply with all applicable laws or whether you must be registered and/or licensed as a loan originator before offering Seller financing. You are advised to consult with a legal or mortgage professional to make this determination.

(c) **Seller Expenses:** Seller will pay mortgage discount or other closing costs not to exceed % of the purchase price and any other expenses Seller agrees to pay in connection with a transaction.

4. Broker Obligations: Broker agrees to make diligent and continued efforts to sell the Property in accordance with this Agreement until a sales contract is pending on the Property.

5. Multiple Listing Service: Placing the Property in a multiple listing service (the "MLS") is beneficial to Seller because the Property will be exposed to a large number of potential buyers. As a MLS participant, Broker is obligated to enter the Property into the MLS within one (1) business day of marketing the Property to the public (see Paragraph 6(a)) or as necessary to comply with local MLS rule(s). This listing will be published accordingly in the MLS unless Seller directs Broker otherwise in writing. (See paragraph 6(b)(i)). Seller authorizes Broker to report to the MLS this listing information and price, terms, and financing information on any resulting sale for use by authorized Board / Association members and MLS participants and subscribers unless Seller directs Broker otherwise in writing.

Seller (JE) () and Broker/Sales Associate (MO) () acknowledge receipt of a copy of this page, which is Page 1 of 4.

6. **Broker Authority:** Seller authorizes Broker to:

- (a) Market the Property to the Public (unless limited in Paragraph 6(b)(i) below):
- (i) Public marketing includes, but is not limited to, flyers, yard signs, digital marketing on public facing websites, brokerage website displays (i.e. IDX or VOW), email blasts, multi-brokerage listing sharing networks and applications available to the general public.
 - (ii) **Public marketing also includes marketing the Property to real estate agents outside Broker's office.**
 - (iii) Place appropriate transaction signs on the Property, except if Paragraph 6(b)(i) is checked below.
 - (iv) Use **Seller's** name in connection with marketing or advertising the Property.
☐ Display the Property on the Internet except the street address.
- (b) Not Publicly Market to the Public/Seller Opt-Out:
- (i) ☐ **Seller** does not authorize **Broker** to display the Property on the MLS.
 - (ii) **Seller** understands and acknowledges that if **Seller** checks option 6(b)(i), a For Sale sign will not be placed upon the Property and
 - (iii) **Seller** understands and acknowledges that if **Seller** checks option 6(b)(i), **Broker** will be limited to marketing the Property only to agents within **Broker's** office.
- _____/_____
Initials of Seller
- (c) Obtain information relating to the present mortgage(s) on the Property.
- (d) Provide objective comparative market analysis information to potential buyers.
- (e) **(Check if applicable)** ☒ Use a lock box system to show and access the Property. A lock box does not ensure the Property's security. **Seller** is advised to secure or remove valuables. **Seller** agrees that the lock box is for **Seller's** benefit and releases **Broker**, persons working through **Broker**, and **Broker's** local Realtor Board / Association from all liability and responsibility in connection with any damage or loss that occurs.
☐ Withhold verbal offers. ☐ Withhold all offers once **Seller** accepts a sales contract for the Property.
- (f) Act as a single agent of **Seller**.
- (g) **Virtual Office Websites:** Some real estate brokerages offer real estate brokerage services online. These websites are referred to as Virtual Office Websites ("VOWs"). An automated estimate of market value or reviews and comments about a property may be displayed in conjunction with a property on some VOWs. Anyone who registers on a VOW may gain access to such automated valuations or comments and reviews about any property displayed on a VOW. Unless limited below, a VOW may display automated valuations or comments and reviews about this Property.
☐ **Seller** does not authorize an automated estimate of the market value of the listing (or a hyperlink to such estimate) to be displayed in immediate conjunction with the listing of this Property.
☐ **Seller** does not authorize third parties to write comments or reviews about the listing of the Property (or display a hyperlink to such comments or reviews) in immediate conjunction with the listing of this Property.

7. **Seller Obligations:** In consideration of **Broker's** obligations, **Seller** agrees to:

- (a) Cooperate with **Broker** in carrying out the purpose of this Agreement, including referring immediately to **Broker** all inquiries regarding the Property's transfer, whether by purchase or any other means of transfer.
- (b) Recognize **Broker** may be subject to additional MLS obligations and potential penalties for failure to comply with them.
- (c) Provide **Broker** with keys to the Property and make the Property available for **Broker** to show during reasonable times.
- (d) Inform **Broker** before leasing, mortgaging, or otherwise encumbering the Property.
- (e) Indemnify **Broker** and hold **Broker** harmless from losses, damages, costs, and expenses of any nature, including attorney's fees, and from liability to any person, that **Broker** incurs because of (1) **Seller's** negligence, representations, misrepresentations, actions, or inactions; (2) the use of a lock box; (3) the existence of undisclosed material facts about the Property; or (4) a court or arbitration decision that a broker who was not compensated in connection with a transaction is entitled to compensation from **Broker**. This clause will survive **Broker's** performance and the transfer of title.
- (f) Perform any act reasonably necessary to comply with FIRPTA (Section 1445 of the Internal Revenue Code).
- (g) Make all legally required disclosures, including all facts that materially affect the Property's value and are not readily observable or known by the buyer. **Seller** certifies and represents that **Seller** knows of no such material facts (local government building code violations, unobservable defects, etc.) other than the following:
- Seller** will immediately inform **Broker** of any material facts that arise after signing this Agreement.
- (h) Consult appropriate professionals for related legal, tax, property condition, environmental, foreign reporting requirements, and other specialized advice.

Seller (JE) () and Broker/Sales Associate (MO) () acknowledge receipt of a copy of this page, which is Page 2 of 4.

- 106 **8. Compensation:** Seller will compensate Broker as specified below for procuring a buyer who is ready, willing,
107 and able to purchase the Property or any interest in the Property on the terms of this Agreement or on any other
108 terms acceptable to Seller. Seller will pay Broker as follows (plus applicable sales tax):
- 109* (a) 4% of the total purchase price plus \$_____ OR \$_____, no
110 later than the date of closing specified in the sales contract. However, closing is not a prerequisite for Broker's
111 fee being earned.
- 112* (b) _____ (\$ or %) of the consideration paid for an option, at the time an option is created. If the option is
113 exercised, Seller will pay Broker the Paragraph 8(a) fee, less the amount Broker received under this
114 subparagraph.
- 115* (c) _____ (\$ or %) of gross lease value as a leasing fee, on the date Seller enters into a lease or
116 agreement to lease, whichever is earlier. This fee is not due if the Property is or becomes the subject of a
117 contract granting an exclusive right to lease the Property.
- 118 (d) Broker's fee is due in the following circumstances: (1) If any interest in the Property is transferred, whether by
119 sale, lease, exchange, governmental action, bankruptcy, or any other means of transfer, regardless of whether
120 the buyer is secured by Seller, Broker, or any other person. (2) If Seller refuses or fails to sign an offer at the
121 price and terms stated in this Agreement, defaults on an executed sales contract, or agrees with a buyer to
122* cancel an executed sales contract. (3) If, within 10 days after Termination Date ("Protection Period"),
123 Seller transfers or contracts to transfer the Property or any interest in the Property to any prospects with whom
124 Seller, Broker, or any real estate licensee communicated regarding the Property before Termination Date.
125 However, no fee will be due Broker if the Property is relisted after Termination Date and sold through another
126 broker.
- 127* (e) Retained Deposits: As consideration for Broker's services, Broker is entitled to receive 50% (50% if
128 left blank) of all deposits that Seller retains as liquidated damages for a buyer's default in a transaction, not to
129 exceed the Paragraph 8(a) fee.

- 130 **9. Cooperation with and Compensation to Other Brokers: Notice to Seller:** The buyer's broker, even if
131 compensated by Seller or Broker, may represent the interests of the buyer. Broker's office policy is to cooperate
132* with all other brokers except when not in Seller's best interest and to offer compensation in the amount of ☒
133* 2% of the purchase price or \$_____ to a single agent for the buyer; ☐ _____% of the
134* purchase price or \$_____ to a transaction broker for the buyer; and ☐ _____% of the purchase
135* price or \$_____ to a broker who has no brokerage relationship with the buyer. ☐ None of the above.
136 (If this is checked, the Property cannot be placed in the MLS.)

137 **10. Brokerage Relationship:**

138 **SINGLE AGENT NOTICE**

139 **FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES OPERATING AS SINGLE AGENTS DISCLOSE TO**
140 **BUYERS AND SELLERS THEIR DUTIES.**

141* As a single agent, Mathew Ortiz
142 and its associates owe to you the following duties:

- 143 1. Dealing honestly and fairly;
144 2. Loyalty;
145 3. Confidentiality;
146 4. Obedience;
147 5. Full Disclosure;
148 6. Accounting for all funds;
149 7. Skill, care, and diligence in the transaction;
150 8. Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee
151 otherwise in writing; and
152 9. Disclosing all known facts that materially affect the value of residential real property and are not readily observable.

153* Joseph Encina
154 Signature

12/3/2021

Date

155* _____
156 Signature

Date

Seller (JE) (_____) and Broker/Sales Associate (MO) (_____) acknowledge receipt of a copy of this page, which is Page 3 of 4.

157 **11. Conditional Termination:** At **Seller's** request, **Broker** may agree to conditionally terminate this Agreement. If
158 **Broker** agrees to conditional termination, **Seller** must sign a withdrawal agreement, reimburse **Broker** for all direct
159* expenses incurred in marketing the Property, and pay a cancellation fee of \$500.00 plus
160 applicable sales tax. **Broker** may void the conditional termination, and **Seller** will pay the fee stated in Paragraph
161 8(a) less the cancellation fee if **Seller** transfers or contracts to transfer the Property or any interest in the Property
162 during the time period from the date of conditional termination to Termination Date and Protection Period, if
163 applicable.

164 **12. Dispute Resolution:** This Agreement will be construed under Florida law. All controversies, claims, and other
165 matters in question between the parties arising out of or relating to this Agreement or the breach thereof will be
166 settled by first attempting mediation under the rules of the American Mediation Association or other mediator
167 agreed upon by the parties. If litigation arises out of this Agreement, the prevailing party will be entitled to recover
168 reasonable attorney's fees and costs, unless the parties agree that disputes will be settled by arbitration as follows:
169* **Arbitration:** By initialing in the space provided, **Seller** (____) (____), Sales Associate (____), and **Broker** (____)
170 agree that disputes not resolved by mediation will be settled by neutral binding arbitration in the county in which
171 the Property is located in accordance with the rules of the American Arbitration Association or other arbitrator
172 agreed upon by the parties. Each party to any arbitration (or litigation to enforce the arbitration provision of this
173 Agreement or an arbitration award) will pay its own fees, costs, and expenses, including attorney's fees, and will
174 equally split the arbitrator's fees and administrative fees of arbitration.

175 **13. Miscellaneous:** This Agreement is binding on **Seller's** and **Broker's** heirs, personal representatives,
176 administrators, successors, and assigns. **Broker** may assign this Agreement to another listing office. This
177 Agreement is the entire agreement between **Seller** and **Broker**. No prior or present agreements or representations
178 will be binding on **Seller** or **Broker** unless included in this Agreement. Electronic signatures are acceptable and
179 will be binding. Signatures, initials, and modifications communicated by facsimile will be considered as originals.
180 The term "buyer" as used in this Agreement includes buyers, tenants, exchangors, optionees, and other categories
181 of potential or actual transferees.

182* **14. Additional Terms:** _____
183 _____
184 _____
185 _____
186 _____

187* **Seller's Signature:** _____ *Joseph Enam* Date: 12/3/2021

188* Home Telephone: _____ Work Telephone: _____ Facsimile: _____

189* Address: _____

190* Email Address: _____

191* **Seller's Signature:** _____ Date: _____

192* Home Telephone: _____ Work Telephone: _____ Facsimile: _____

193* Address: _____

194* Email Address: _____

195* **Authorized Sales Associate or Broker:** _____ Date: _____

196* Brokerage Firm Name: _____ Mathew Ortiz Telephone: 786-553-0897

197* Address: _____ 13004 sw 45th ter miami fl 33175

198* Copy returned to **Seller** on Nov 29, 2021 by ☒ email ☐ facsimile ☐ mail ☐ personal delivery.

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