

EXCLUSIVE BUYER BROKER AGREEMENT

1. **PARTIES:** This agreement, between **WATERMARK REALTY, INC. d/b/a BERKSHIRE HATHAWAY HOMESERVICES FLORIDA REALTY**, ("Buyer's Broker or Broker"), and _____

_____, their heirs, successors, or assigns, as ("Buyer(s)"), grants to Broker the exclusive right to work with and assist Buyer in locating and negotiating the acquisition of suitable real property as described below. The term "acquire" or "acquisition" includes any purchase, option, exchange, lease, or other acquisition of an ownership or equity interest in real property in the State of Florida. The Broker and Buyer shall be referred to as the "Parties."

2. **TERM:** This Agreement will begin on the _____ day of _____, 20__ and will terminate at 11:59 p.m. on the _____ day of _____, 20__ ("Termination Date"). However, if Buyer enters into an agreement to purchase property that is pending on the Termination Date, this Agreement will continue in effect until that transaction has closed or is terminated in writing by the Parties.

3. **PROPERTY:** Buyer is interested in acquiring property acceptable to Buyer, as more particularly described below ("Property"):

A. Property:

B. Location: _____

C. Price: Up to \$ _____ or otherwise, at a price agreed to by the Buyer. If not yet pre-approved with a lender, or you are interested in seeking a second opinion, Buyer agrees to be introduced to a Mortgage Loan Officer affiliated with Broker's affiliated lender, Prosperity Home Mortgage.

D. Preferred terms and conditions:

4. **BROKER'S OBLIGATIONS:**

A. **Broker Assistance.** Broker will:

1. use Broker's professional knowledge, skill and diligence as a real estate licensee in the State of Florida;
2. assist Buyer in determining Buyer's financial capability and financing options;
3. discuss property requirements and assist Buyer in locating and viewing suitable properties;
4. assist Buyer to enter into a contract to purchase property, monitor deadlines throughout any contracted-for transaction;
5. cooperate in securing inspections of the property and homeowner's insurance from third party vendors, including an introduction to Broker's affiliated insurance company, HomeServices Insurance.
6. cooperate with real estate licensees working with the seller, if any, to close a transaction. Buyer understands that even if Broker is compensated by a seller or a real estate licensee who is working with a seller, such compensation does not compromise Broker's duties to Buyer.

B. **Other Buyers.** Buyer understands that Broker may work with other prospective buyers who want to acquire the same Property as Buyer. If Broker submits offers by competing buyers, Broker will notify Buyer that a competing offer has been made, but will not disclose any of the offer's material terms or conditions. Buyer agrees that Broker may make competing buyers aware of the existence of any offer Buyer makes, so long as Broker does not reveal any material terms or conditions of the offer without Buyer's prior written consent.

C. **Fair Housing.** Broker adheres to the principles expressed in the Fair Housing Act and will not participate in any act that unlawfully discriminates on the basis of race, color, religion, sex, handicap, familial status, country of national origin or any other category protected under federal, state or local law.

D. **Service Providers.** Broker does not warrant or guarantee products or services provided by any third party whom Broker, at Buyer's request, refers or recommends to Buyer in connection with acquisition of any real property.

5. **BUYER'S OBLIGATIONS:** Buyer agrees to cooperate with Broker in accomplishing the objectives of this Agreement, including:

A. Conducting all negotiations and efforts to locate suitable property only through Broker and referring to Broker all inquiries of any kind from real estate licensees, property owners or any other source. If Buyer contacts or is contacted by a seller or a real estate licensee who is working with a seller or views a property unaccompanied by Broker, Buyer, will, at first opportunity, advise the seller or real estate licensee that Buyer is working with and represented exclusively by Broker.

B. Providing Broker with accurate personal and financial information requested by Broker in connection with ensuring Buyer's ability to acquire property.

C. Being available to meet with Broker at reasonable times for consultations and to view properties.

- D. Indemnifying and holding Broker harmless from and against all losses, damages, costs and expenses of any kind, including attorney's fees, and from liability to any person, that Broker incurs because of acting on Buyer's behalf.
- E. Not asking or expecting to restrict the acquisition of a property according to race, color, religion, sex, handicap, familial status, country of national origin or any other category protected under federal, state or local law.
- F. Consulting an appropriate professional for legal, tax, inspections, environmental, engineering, foreign reporting requirements and other specialized advice.

Audio/Video Recording Disclosure. Buyer should be aware that property owners may utilize audio and/or video devices to monitor their property. Buyer should not discuss negotiation strategies or other confidential information within the property. Buyer releases Broker, its agents and employees from any liability which may result from any recording occurring within a property.

No Other Agreements with Brokers. Buyer acknowledges that Buyer has not entered into an Exclusive Buyer Brokerage Agreement or any agreement with any other broker and/or any previous buyer brokerage agreements have expired or been terminated. Buyer agrees to work exclusively with the Broker and will inform other brokers of the existence of this Agreement.

6. COMPENSATION TO BROKER: Although Broker individually sets brokerage fees that it deems to be acceptable for its services, Broker's fees are not set by law and are fully negotiable. In consideration of the services rendered by Broker on behalf of Buyer, Broker shall be compensated, as follows:

A. Compensation from Buyer. The Buyer agrees to pay to Broker a fee of \$395 plus 3% of the gross purchase price. The Broker's Fee shall be due and payable at distribution of proceeds from the sale and transfer of title to the property at closing of any contract or other agreement to acquire the Property. The Broker's fee shall be earned, due and payable by Buyer to Buyer's Broker under any of the following circumstances:

1. If the Buyer, the Buyer's assignee, or legal representative enters into an agreement to purchase, trade, exchange and/or an option to purchase any real estate seen during the Term of this Agreement; or
2. If, within ninety (90) days after the expiration of this Agreement, Buyer enters into a contract to acquire properties viewed in person by and/or introduced to Buyer during the Term of this Agreement (as long as Buyer's Broker provides to Buyer a list of all such properties in writing within ten (10) days of the termination of this Agreement). However, Buyer's obligation to pay Broker's fee ceases upon Buyer entering into a good faith exclusive buyer brokerage agreement with another broker after the Termination Date of this Agreement; or
3. If, having entered into an enforceable contract to acquire property during the Term of this Agreement, Buyer defaults under the terms of that contract. If upon Buyer's failure to close on a Sale and Purchase Contract, Buyer shall pay to Broker an amount equal to fifty percent (50%) of the escrow deposit (including deposit(s)) made or agreed to be made by the Buyer) which is retained or recovered by or for the account of the listing broker of the Property.

B. Compensation from Seller. A seller or seller's broker may offer compensation to assist in the payment of some or all of any fees agreed to be paid by the Buyer under section 6(A) this Agreement. If compensation is provided by the seller or seller's broker that exceeds the amount or rate set as set forth in 6(A), subject to compliance with local rules and regulations, acceptance of additional compensation could be accomplished by (1) providing disclosure to the buyer before the buyer makes or accepts an offer, and (2) confirming the revision to the amount or rate of compensation in writing.

Broker is required to show all available properties to Buyer, regardless of whether the Seller or Seller's Broker is making an offer of compensation to assist the Buyer with their obligations under this Agreement. In this context, "to show" is defined as the introduction to a property by any of the following means: electronic, visual, virtual, or in-person. Sellers are not required to make offers of compensation to list a property. Buyer acknowledges that Sellers may elect not to disclose or display offers of compensation for each property shown to the Buyer. However, the Seller may still be open to considering and accepting requests by the Buyer for compensation or concessions as part of an offer to purchase. Buyer has the right to select which properties to be shown based on their own criteria, including whether a Seller is offering Buyer's Broker compensation. Buyer elects, at their sole discretion (initial either options 1 or 2):

(1) _____ _____
Initial *Initial*
 to be shown and negotiate offers on properties where the Seller has not disclosed an offer of buyer broker compensation and may not agree to the payment of buyer broker compensation as part of the offer to purchase. In such a case, the Buyer would remain obligated to pay all of or part of the compensation due under this Agreement if Buyer elected to purchase such property; or

(2) _____ _____
Initial *Initial*
 to not be shown properties where the Seller is not offering buyer broker compensation and will not agree to the payment of buyer broker compensation as part of the offer. In such a case, the Buyer may not be shown properties that might otherwise meet their criteria.

C. Compensation for Lease: If Buyer enters into a lease for property, Broker shall be paid \$75 plus 5% of the total lease value, to be paid when Buyer executes the Lease. If Buyer executes a lease to purchase agreement, the amount of the leasing fee which Broker receives will be credited

toward the amount due Broker for the purchase. Landlord may offer compensation to assist in the payment of some or all of any fees agreed to be paid under this Agreement.

7. EARLY TERMINATION: Buyer may terminate this Agreement at any time by written notice to Broker, but will remain responsible for paying Broker's compensation if, from the early termination date to Termination Date plus the Protection Period as set forth in 6(A)(2), if applicable, Buyer contracts to acquire any property which, prior to the early termination date, was found by Buyer or called to Buyer's attention by Broker or any other person.

8. ASSIGNMENT; PERSONS BOUND: Broker may assign this Agreement to another broker. This Agreement will bind and inure to Broker's and Buyer's heirs, personal representatives, successors and assigns.

9. BROKERAGE RELATIONSHIP: Broker will act as a transaction broker. Broker will deal honestly and fairly; will account for all funds; will use skill, care, and diligence in the transaction; will disclose all known facts that materially affect the value of the residential property which are not readily observable to buyer and known to Broker; will present all offers and counteroffers in a timely manner unless directed otherwise in writing; and will have limited confidentiality with Buyer unless waived in writing.

10. DISPUTE RESOLUTION: Buyer and Broker agree that any claims or disputes arising out of this agreement will be resolved pursuant to the alternative dispute resolution methods of mediation and arbitration as set forth below, with the prevailing party entitled to recover costs incurred including reasonable attorney fees. Buyer acknowledges that there are no existing agency relationships in conflict with this agreement. In this mediation and arbitration section, Buyer is referred to as "you" or "your"; Broker, its ultimate parent company HomeServices of America, Inc., and their affiliates, subsidiaries, employees, and agents are collectively referred to as "Broker-Related Party"; Broker-Related Party and you are individually referred to as a "party," and, collectively, the "parties." Any Broker-Related Party may enforce this section and this Agreement. This section will survive any expiration or termination of this agreement.

(a) **Agreement to Mediate; Small Claims.** If a dispute or other claim or controversy between you and a Broker-Related Party (collectively, "Claims") arises out of this agreement, or a breach of this agreement, and if the parties cannot settle the Claims informally, then the parties first must attempt to resolve the Claims by mediation administered by the American Arbitration Association ("AAA") under its Commercial Mediation Procedures in effect on the date of this Agreement (see www.adr.org). The parties also may agree on another mediation provider to conduct the mediation. If you can show that you cannot afford the initial mediation fee, if any, then the Broker-Related Party will pay that initial mediation fee, but you must pay your own attorney's fees and costs for the mediation and your pro rata share of the AAA's or other provider's post-filing mediation fees and costs. If a small-claims or equivalent court ("Small Claims Court") in the county where Broker's principal business office is located (the "County Jurisdiction") has jurisdiction over the Claims, and you want to resolve the Claims in the Small Claims Court, then the Broker-Related Party will waive the mediation and arbitration requirements in this section and the parties will finally resolve the Claims in the Small Claims Court, on the condition that you waive in writing your rights, if any, to (a) appeal the final judgment or decision of the Small Claims Court; or (b) remove or transfer the case from the Small Claims Court to another court.

(b) **Agreement to Arbitrate; Excluded Claims.** If the parties cannot resolve the Claims as set forth above, then, unless limited below, they must submit and resolve the Claims using binding arbitration conducted by the AAA under its Commercial Arbitration Rules ("AAA Rules") (see www.adr.org) in effect on the date of this Agreement, except to the extent that this section conflicts with the AAA Rules. Alternatively, the parties may agree in writing to use another arbitration provider and/or different rules for the arbitration. You are not, however, required to arbitrate Claims that you are authorized by law or regulation to file in an administrative agency, commission, or board, unless the law or regulations governing these types of Claims require or allow you to first bring them in arbitration.

(c) **The Arbitration & Arbitrator.** The Broker-Related Party or you must commence the arbitration by filing a written demand with the AAA (or the other chosen arbitration provider). The arbitration will take place in the County Jurisdiction. If you can show that you cannot afford the initial arbitration filing fee, then the Broker-Related Party will pay your initial filing fee, but you must pay your own attorney's and expert fees and costs and your pro rata share of the AAA's or other arbitration provider's post-filing fees and costs. The AAA or other arbitration provider must designate one neutral arbitrator for the arbitration. This agreement evidences a transaction involving interstate commerce and this section must be interpreted and the arbitration conducted under the Federal Arbitration Act ("FAA"). The arbitrator will have the exclusive authority to resolve any Claims between the parties relating to the formation, enforceability, enforcement (including by non-signatories to this agreement), applicability, waiver, or interpretation of this section under the FAA, including whether all or any part of this section is void or voidable. The arbitrator must rule on (a) his or her jurisdiction, including any objections with respect to the existence, scope, or validity of this section; (b) the arbitrability of any Claims; and (c) the existence or validity of this agreement. The arbitrator must interpret this section as an enforceable contract independent of the other terms of this agreement, and the arbitrator's decision that this agreement, or any other part of this agreement, is null and void will not for that reason alone render this section invalid or unenforceable.

(d) **Discovery; Confidentiality.** The arbitrator may order discovery sufficient to enable a full and fair exploration of the facts and legal issues underlying the Claims, consistent with the expedited nature of arbitration. The parties and the arbitrator must keep all aspects of the arbitration confidential and not make them part of the public record, including all (a) pleadings, motions, discovery, memoranda, and other work product in the parties' or the arbitrator's files that were prepared for use in an arbitration hearing or conference or used in an arbitral award; and (b) communications made by or to a party, the arbitrator, or any other person in or in connection with the arbitration (the "Confidential Materials"). The parties must not disclose any Confidential Materials in any judicial or administrative proceeding, except that a party may disclose certain Confidential Materials if the parties agree in writing to waive confidentiality over the Confidential Materials.

(e) Award Limitations. The arbitrator may award a party any remedy that would have been available had the parties litigated the Claims in court, including money damages and injunctive relief. The arbitrator, however, cannot issue any award that includes any punitive, special, consequential, incidental, indirect, or exemplary damages. Any arbitrator determination, finding, or award will be final and binding on the parties, and either party may confirm any of them in a court with jurisdiction in the County Jurisdiction. A party cannot arbitrate any Claims unless the party commences the arbitration within the statutes of limitation governing the Claims.

(f) **Jury Waiver & Class Action Waiver. THE PARTIES WILL HAVE ALL THE RIGHTS AND BENEFITS OF ARBITRATION, BUT THEY ARE GIVING UP THEIR RIGHTS TO RESOLVE THEIR CLAIMS IN A COURT OR JURY TRIAL.** The parties must submit their own, individual Claims for resolution in the arbitration. **The parties knowingly waive the following rights:** (a) the right to represent the interests of any other person or join or consolidate any Claims by or against third parties; (b) the right to bring, join, or maintain any Claims (in arbitration or otherwise) where the party or another person seeks to act (i) as a representative or member of a class, collective, or mass action, (ii) in the general-public interest, or (iii) in any private-attorney-general capacity; and (c) the right to participate in a class-action lawsuit or class-wide arbitration; and (d) the right to participate as a representative or member in a class arbitration or any consolidation of individual arbitrations (collectively, the "Class Action Waivers"). The Class Action Waivers will control and supersede any contrary agreements, statements, or rules in the AAA Rules or other arbitration provider's rules.

(g) **Validity.** If any part of this mediation and arbitration section, other than the Class Action Waivers, is determined to be invalid or unenforceable, then the remaining parts of this section still will remain fully enforceable. If any part of the Class Action Waivers is determined to be unenforceable against a party or another person, then the party or the other person will have the unilateral right to determine whether to proceed in arbitration or require that the Claims be brought in a court with jurisdiction over the Claims, on the condition that a determination that the Class Action Waivers are unenforceable will be subject to appeal.

11. SPECIAL CLAUSES:

12. ACKNOWLEDGMENT; MODIFICATIONS: Buyer has read this Agreement and understands its contents. This Agreement cannot be changed except by written agreement signed by both parties.

BUYER:

Signature

Email: _____

Address: _____

Phone: _____

Date: _____

BUYER:

Signature

Email: _____

Address: _____

Phone: _____

Date: _____

BROKER or its AUTHORIZED SALES PROFESSIONAL:

Signature of Broker or Authorized Sales Professional

Email: _____

Address: _____

Phone: _____

Date: _____