



**Materials for the May 2, 2011
Meeting of the
Texas Real Estate Commission
Room 235
Austin, Texas**

AGENDA FOR TEXAS REAL ESTATE COMMISSION (TREC) MEETING

Conference Room 235, TREC Headquarters Office

1101 Camino La Costa, Austin, Texas

May 2, 2011 at 10:00 a.m.

CALL TO ORDER

1. Call to order and pledges of allegiance
2. Discussion and possible action to excuse Commissioner absence(s), if any

MINUTES

3. Approval of minutes of February 14, 2011 Commission meeting

STAFF AND COMMITTEE REPORTS

4. Reports by administrator, general counsel, and division directors of monthly activities and statistical data for communications, licensing, education, enforcement, information technology, staff services, recovery trust account and fund activity, and updates on new and ongoing agency activity; questions by commissioners to division directors regarding issues raised by the monthly activities reports; discussion of current topics raised by monthly reports; requests by commissioners for additional information or reports from staff; and introduction of new employees
5. Report by Texas Real Estate Inspector Committee

PUBLIC COMMENTS

6. General comments from visitors on non-agenda items

RULES FOR POSSIBLE PROPOSAL

7. Discussion and possible action to propose amendments to 22 TAC §535.191 regarding Schedule of Administrative Penalties
8. Discussion and possible action to propose amendments to 22 TAC §535.219 regarding Schedule of Administrative Penalties
9. Discussion and possible action to propose amendments to 22 TAC Chapter 537 as follows:

Pursuant to the Americans with Disabilities Act, any requests for reasonable accommodation needed by persons wishing to attend this meeting should be submitted to Loretta DeHay at 512-465-3900.

- a. §537.20 concerning Standard Contract Form TREC No. 9-9
- b. §537.28 concerning Standard Contract Form TREC No. 20-10
- c. §537.30 concerning Standard Contract Form TREC No. 23-11
- d. §537.31 concerning Standard Contract Form TREC No. 24-11
- e. §537.32 concerning Standard Contract Form TREC No. 25-8
- f. §537.37 concerning Standard Contract Form TREC No. 30-9

RULES FOR POSSIBLE ADOPTION

10. Discussion and possible action to adopt amendments to 22 TAC Chapter 533 regarding Practice and Procedure
11. Discussion and possible action to adopt amendments to 22 TAC §535.217 regarding Contact Information
12. Discussion and possible action to adopt or withdraw amendments to 22 TAC Chapter 537 as follows:
 - a. Amend §537.45 concerning Standard Contract Form TREC No. 38-3, Notice of Buyer's Termination of Contract
 - b. Withdraw amendments to §537.46 concerning Standard Contract Form TREC No. 39-7, Amendment to Contract

PENDING BUSINESS

13. Discussion and possible action to renew for an additional 60-day period emergency rules concerning:
 - a. §537.20 concerning Standard Contract Form TREC No. 9-9
 - b. §537.28 concerning Standard Contract Form TREC No. 20-10
 - c. §537.30 concerning Standard Contract Form TREC No. 23-11
 - d. §537.31 concerning Standard Contract Form TREC No. 24-11
 - e. §537.32 concerning Standard Contract Form TREC No. 25-8
 - f. §537.37 concerning Standard Contract Form TREC No. 30-9
14. Discussion regarding legislative housekeeping measures and other legislative items
15. Discussion and possible action to appoint working groups to address possible legislative matters regarding:
 - a. Education requirements for a broker and salesperson license
 - b. Experience requirements for a broker license

NEW BUSINESS

16. Discussion and possible action to approve annual audit plan
17. Discussion and possible action to approve training for investment officers pursuant to Public Funds Investment Act, Texas Government Code, Section 2256.007(d)
18. Discussion and possible action to adopt a code of conduct for members of advisory committees and working groups
19. Discussion and possible action regarding appointment of members to Broker Lawyer Committee
20. Discussion and possible action concerning the Real Estate Inspector Committee recommendation to the Commission regarding the development of a National Home Inspector Examination.

CONTESTED CASES

21. Consideration and possible action regarding Proposal for Decision from State Office of Administrative Hearings in the matter of:
 - a. SOAH Docket No. 329-11-0448.REC, Texas Real Estate Commission v. Robin J. Muir
 - b. SOAH Docket No. 329-11-1036.REC, Texas Real Estate Commission v. Derek Roy Evans

RECOVERY FUND

22. Recovery fund matters
 - a. Executive session to discuss pending litigation pursuant to Texas Government Code §551.071
 - b. Discussion and possible action to authorize settlement of recovery fund claims

FUTURE MEETINGS

23. Discussion and possible action to schedule future meetings
24. Adjourn

The Texas Real Estate Commission may meet with its attorney in executive session on any item listed above as authorized by the Texas Open Meetings Act, Tex. Gov't Code, §551.071.



Agenda Item 1:

Call to order and pledges of allegiance

Texas Pledge

"Honor the Texas flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible."

Agenda Item 2:

Discussion and possible action to excuse Commissioner absence(s), if any

SUMMARY

Provides for excused absences for commission members not in attendance

MOTION

MOVED, that the absence(s) of _____
_____ for the May 2, 2011
Commission meeting is/are hereby excused.

Agenda Item 3:

Approval of minutes of February 14, 2011 Commission meeting

SUMMARY

Provides for the approval of the minutes as submitted to the Commission by staff.

**STAFF
RECOMMENDATION**

Approve minutes for February 14, 2011 Commission meeting.

MOTION

MOVED, that the Commission approves the minutes of the February 14, 2011 meeting of the Commission as submitted.

MINUTES OF THE MEETING OF THE TEXAS REAL ESTATE COMMISSION
February 14, 2011
Room 235, 1101 Camino La Costa Austin, Texas

On Monday, February 14, 2011, at 10:04 a.m. there was a duly posted regular meeting of the Texas Real Estate Commission (the "Commission"). Chairman Eckstrum introduced Charles McMillan, the current president of the National Association of Realtors. The Chairman also introduced his wife, Alice Eckstrum, and Louise Hull Patella, a past TREC Commissioner, who were in the audience. The Chairman led the attendees in the pledges of allegiance to the United States and Texas flags. Chairman John Eckstrum presided, and Patricia Holder recorded the minutes. The following commissioners, constituting a quorum, were in attendance:

John Eckstrum, Chairman

Troy C. Alley, Jr.

Adrian Arriaga

Chris Day

Jaime Hensley

Joanne Justice

Tom Mesa

Dona Scurry

Avis Wukasch

Staff present included Karen Alexander, Devon Bijansky, Lorie DeAnda, Loretta DeHay, Kerri Galvin, Gwen Jackson, Douglas Oldmixon and Tom Watson.

Chairman Eckstrum moved to agenda item three, election of officers. Upon motion of Ms. Hensley, duly seconded by Mr. Justice, the Commission elected Ms. Wukasch vice-chairman. Upon motion of Ms. Justice, duly seconded by Mr. Day, the Commission elected Ms. Hensley, secretary.

The Chairman moved to agenda item four, discussion and possible action to appoint three Inspector Committee Members. The Chairman brought forward three nominees for the positions on the committee. They were Stephen Rhinehart and Greg Eakin as industry members and Nancy Carroll as the public member. Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the nominees were elected as members of the Texas Real Estate Inspector Committee. The Chairman presented former member and Chairman of the Inspector Committee, Larry Foster, with a certificate of appreciation.

The Commission adopted the minutes as presented in the meeting materials by unanimous consent.

Mr. Eckstrum moved to agenda item six, reports by administrator, general counsel, and division directors which may include reports of monthly activities and statistical data for communications, licensing, education, enforcement,, information technology, staff services, recovery trust account and fund activity, and updates on new and ongoing agency activity; questions by commissioners to division directors regarding issues raised by the monthly activities reports; discussion of current topics raised by monthly reports; requests by commissioners for additional information or reports from staff; and introduction of new employees. Douglas Oldmixon, administrator, spoke concerning the status of the exceptions request to the Legislative Appropriations Requests. He reported the staff's efforts in response to the backlog of paperwork and email. He spoke concerning recent shut downs due to bad weather and rolling blackouts. He reported on a problem with the online functions and the steps being taken to correct it. He introduced Christine Anderson who was replacing Betsy Bird as the Public Information Specialist and Mark Mrnack, the director of the Texas Appraiser Certification and Licensing Board's Standards and Enforcement Services Division. Mr. Oldmixon reported on various speaking engagements during the months since the last meeting,

Lorie DeAnda, Director of Reception and Communications Services spoke concerning the volume of calls and emails being handled by her division. She presented the C1 report concerning Customer Service Statistics.

Gwen Jackson, Director of Education and Licensing Services presented the L1 report concerning fiscal year comparisons between the number of applications and license renewals received by the Commission; the L2 report concerning licensee and registrant status; the L3 report, concerning examination activity and the L4 report concerning the number of improved instructors. She stated that decreases in the numbers contained in the L1 report were due to changes in the way applications are counted and the fact that applications were open longer due to the new education requirements. Mr. Arriaga asked about totals for the reports concerning September through December. There was discussion concerning the current data program's ability to capture data for certain time periods. Ms. Justice asked about the ability to track the number of applicants under the new education requirements. The Chairman asked for verification concerning the security of licensees' information during recent data base problems. Mr. Oldmixon stated that all data was secure and available to staff on the new system.

Kerri Galvin, Director of Standards and Enforcement Services, introduced a new staff attorney, Kyle Smith. Mr. Smith had been employed with the Texas Department Licensing and Regulation and more recently with the Medical Board. He is also a trained mediator. Ms. Galvin presented the case status report, and the case age report. She stated that due to staff in her division helping with the licensing backlog the numbers in these reports were lower than normal.

There was discussion concerning the licensing backlog and how other divisions had been cross trained to assist that department. Mr. Oldmixon stated that the area with the largest backlog was changes of sponsorship and that additional staff was being trained to process them. Also an online change of sponsorship process was being developed.

Tom Watson, Director in Information and Technology Services, presented the I1 report concerning electronic outlet services statistics. Mr. Watson stated that the low numbers were due to the agency's shutdown of the online application process in September and to the recent problems with access to online functions. He stated that utilization of the website was improving. He also reported that an additional T1 line was being installed and hoped that this would alleviate many of the current problems. There was further discussion concerning the online efficiency and current and future usage of online functions.

Karen Alexander reported on the S1 report showing the financial status as of December 31, 2010. She moved to the S2 report concerning the Real Estate Recovery Trust Account No. 971 Investments, Current Securities; the S3 report, concerning the Real Estate Recovery Trust Account No. 971 Investments, Payments and Repayments; and the S4 report concerning the Real Estate Inspector Recovery Fund. There was discussion concerning projected payments from the Real Estate Recovery Trust Account. There was additional discussion concerning the trend of increasing claims and claims for larger amounts.

Chairman Eckstrum moved to agenda item seven, report by the Texas Real Estate Inspector Advisory Committee. Mr. Wilcox, Chairman of the Committee, spoke briefly.

Mr. Eckstrum moved to agenda item eight, general comments from visitors on non-agenda items. Comments were offered by Bob Baker, broker from Plano, spoke concerning the recovery fund. Sam Davis, Wimberley, Texas, spoke concerning the problems he had experienced when trying to renew online.

Mr. Eckstrum announced an executive session beginning at 11:22 a.m. to allow the Commission to meet with its attorney on any listed agenda item as authorized by the Texas Open Meetings Act, Tex. Gov't Code, §551.071. The open meeting resumed at 12:02 p.m.

The Chairman moved to agenda item twenty-two (b), discussion and possible action to authorize settlement of recovery fund claims. Ms. Bijansky presented the agenda item for consideration. The following claims were submitted for approval:

RF11-001, Amina Ray v. Gregory Wesley Real Estate, LLC and Susan Gillespie Chastain, actual damages of \$1,500 against the LLC and \$2,500 against Chastain. Upon motion of Ms. Wukach, duly seconded by Ms. Justice, the Commission authorized the payment of \$750 on behalf of the LLC and \$1,250 on behalf of Chastain.

RF11-006, Joshua and Ralitsa Sundquist v. Prime Realtors Property Management, LLC and Michael Duane Cade, actual damages of \$29,925.57 and attorney's fees of \$4,800. Upon motion of Mr. Alley, duly seconded by Mr. Mesa, the Commission authorized staff to make payment as requested.

RF11-007, BPR Shopping Center, LLP v. William Perry Jones and J&B Commercial, LLC, actual damages of \$14,760 and attorney's fees of \$5,000. Upon motion of Mr. Arriaga, duly seconded by Ms. Hensley, the Commission authorized staff to make payment as requested.

RF11-009, Saurabh Argawal, et al v. Bryan Frazier Owens and Stephanie Marie Scott, actual damages of \$153,467.21 and attorney's fees of \$175,000. Upon motion of Ms. Hensley, duly seconded by Mr. Day, the Commission authorized staff to make payment of actual damages and attorney fees up to the statutory cap of \$200,000.

RF11-012, Joanna M. Varenhorst v. Kent W. Hicks, actual damages of \$35,364.92 and attorney's fees that exceed the cap. Upon motion of Ms. Justice, duly seconded by Mr. Mesa, the Commission authorized staff to make payment as requested, with Mr. Arriaga and Mr. Day voting against the motion.

IRF11-001, David and Heather Garecki v. Frank Delph, actual damages of \$3,000. Upon motion of Mr. Day, duly seconded by Ms. Justice, the Commission authorized staff to settle the matter on the best possible terms.

The Chairman moved to agenda item nine, discussion and possible action to: (a) adopt the repeal of 22 TAC §535.154 concerning Misleading Advertising and (b) adopt new 22 TAC §535.154 concerning Advertising. Ms. DeHay presented the agenda items for discussion and possible action Regarding agenda item nine (a), the repeal is necessary because the subject addressed in the section is covered in new amendments to Subchapter N which TREC is simultaneously adopting as part of a comprehensive rule review of 22 TAC Chapter 535. As the reformation of the subchapters comprehensively addresses the subjects of the repealed rule, repeal of the rule is necessary to avoid confusion and repetition. Upon motion of Ms. Wukasch, duly seconded by Ms. Hensley, the Commission adopted the repeal of 22 TAC §535.154 concerning Misleading Advertising.

Regarding agenda item nine (b), new §535.154 replaces existing §535.154. Subsection (a) provides a definition of "advertisement;" subsection (b) clarifies what types of communications are not considered advertisements for purposes of the Act and Rules. Subsection (c) requires salespersons and brokers to clearly and conspicuously include the broker's name in all advertising and permits the use of a broker's assumed name if it has been filed with the commission. If the broker's name includes the name of a salesperson, the advertisement must include another assumed name of the broker that does not include the salesperson's name or the name of the broker's designated broker. Subsection (d) provides a laundry list of types of advertising that are considered deceptive and misleading; subsection (e) requires brokers to file assumed names with the commission; subsection (f) requires an advertisement to contain a designation such as broker or agent; subsection (g) prohibits advertising that implies that a salesperson is the person responsible for the operation of a real estate brokerage business, or causes someone to believe that an unlicensed person is personally engaged in real estate brokerage; subsection (h) permits a business entity to do business in the name in which it was chartered or registered at the Office of the Secretary of State with certain exceptions; subsection (i) prohibits a licensee from using a copyrighted trade name unless the licensee has the authority to use the name; subsection (j) addresses use of advertisements on the Internet; subsection (k) addresses electronic communications; subsection (l) addresses road signs; subsection (m) addresses advertisements that contain an offer to rebate a portion of a licensee's commission; subsection (n) addresses advertising that recommends or promotes the use of a service provider;

subsection (o) prohibits licensees from advertising information regarding service providers that ranks the providers unless the ranking is based on disclosed objective criteria; subsection (p) prohibits licensees from advertising that a licensee offers, sponsors, or conducts commission approved courses unless the licensee is approved to offer the courses. The revisions to the rules as adopted would not change the nature or scope so much that they could be deemed different rules. Upon motion of Ms. Wukasch, seconded by Ms. Hensley, the Commission authorized, staff on behalf of this Commission, to submit the repeal of 22 TAC §535.154 concerning Misleading Advertising, in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable, for adoption to the *Texas Register*. Mr. Arriaga voted against the motion. Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the Commission authorized staff, on behalf of this Commission, to submit the adoption of new §535.154, regarding Advertising in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable, for adoption to the *Texas Register*. Upon motion of Ms. Wukasch, seconded by Ms. Justice, the Commission adopted a safe harbor policy for the staff and Enforcement to use in directing licensees as to what might be considered clear and conspicuous in advertising, which would cause the broker's name or assumed name to be at least fifty percent the size of the largest item on contact information on a sign or other advertising media.

The Chairman moved to agenda item ten, discussion and possible action to adopt amendments to 22 TAC Subchapter T regarding Easement or Right of Way Agents as follows: (a) Amend §535.400 regarding Registration of Easement or Right of Way Agents and (b) Amend §535.403 regarding Renewal of Registration. Ms. DeHay presented the agenda item for discussion and possible action. Application forms will no longer be promulgated by the commission, but they will be approved when substantive changes are made. The amendments to §535.403 change the renewal fee from \$83 to \$80 to remove the \$3 fee that registrants are required to pay for TexasOnline fees. Since such fees are adopted by Department of Information Resources Rules, the fee does not need to be separately adopted as a fee by the commission. No comments were received on the rules as proposed. Upon motion of Ms. Justice, duly seconded by Ms. Wukasch, the commission adopted the amendments to Subchapter T regarding Easement or Right-of-Way; §535.400 regarding Registration of Easement or Right-of-Way Agents; and §535.403 concerning Renewal of Registration without changes in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable.

Mr. Eckstrum moved to agenda item eleven, discussion and possible action to adopt amendments to 22 TAC Chapter 539 regarding Provisions of the Residential Service Company Act as follows: (a) Amend §539.61 concerning Applications and Licensing; (b) Amend §539.121 concerning Examinations; and New Subchapter P and new §539.150 concerning Complaints. Ms. DeHay presented the agenda item for discussion and possible action. The amendments revise subsection (a) to add a reference to the TREC website and add new subsection (c) to provide a deadline for applicants to provide information to the commission in connection with an application. There is currently no deadline for responding a request for information. Creating a time certain for termination of an incomplete application will allow the Commission to create a records retention period for TREC to maintain the application and related materials. No comments were received

on the rule as proposed. Upon motion of Mr. Alley, duly seconded by Mr. Mesa, the commission adopted the amendments to 22 TAC §539.61 concerning Applications and Licensing without changes to the proposed text and as presented at the meeting with technical and non-substantive changes as deemed necessary by staff.

The proposed amendments to §539.121 change the examination period from three to five years. Experience with recent examinations has shown that most, if not all, licensees are generally in compliance with the commission's requirements and that examinations may be conducted less frequently without compromising consumer protection. In addition, the significant increase in the number of licensed companies in recent years combined with limited staff and resources further necessitate extending the time between examinations from 3 years to 5 years. No comments were received on the rule as proposed. Upon motion of Ms. Hensley, duly seconded by Mr. Alley, the commission adopted the amendments to 22 TAC §539.121 concerning Examinations without changes to the proposed text and as presented at the meeting with technical and non-substantive changes as deemed necessary by staff.

The proposed new rule, §539.150 concerning Complaints, establishes a complaint procedure for filing complaints against residential service companies licensed by the commission. The new rule establishes a deadline in which complaints may be filed with the commission and established a deadline in which respondents must respond to requests for information from the commission. The procedure and time periods are the same as those established by rule for other licensees subject to the commission's jurisdiction. No comments were received on the rule as proposed. Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the commission adopted the amendments to 22 TAC §539.150 concerning Complaints without changes to the proposed text and as presented at the meeting with technical and non-substantive changes as deemed necessary by staff.

The Chairman moved to agenda item twelve, discussion and possible action to propose amendments to 22 TAC Chapter 533 regarding Practice and Procedure. Ms. DeHay presented the agenda item for discussion and possible action. The proposed amendment to §533.1 amends the definition of "last known mailing address" to "mailing address" to be consistent with other TREC rules. The proposed amendment to §533.3 clarifies that the Notice of Alleged Violation required by Occupations Code §1101.703 will be mailed to the respondent's mailing address. Upon motion of Mr. Arriaga, duly seconded by Ms. Hensley, the commission voted to propose the amendments to 22 TAC §533.1 and §533.3 as presented at the meeting with technical and non-substantive changes as deemed necessary by staff.

Chairman Eckstrum moved to agenda item thirteen, discussion and possible action to propose amendments to 22 TAC §535.217 regarding Contact Information. Ms. DeHay presented the agenda item for discussion and possible action. The proposed amendment to §535.217 amends the title of the rule to add "Mailing Address and Other" and deletes the term "permanent" from the rule to make it consistent with other TREC rules. Upon motion of Ms. Justice, duly seconded by Ms. Hensley, the commission voted to propose the amendments to 22 TAC §535.217 as presented at the meeting with technical and non-substantive changes as deemed necessary by staff.

The Chairman moved to agenda item fourteen, discussion and possible action on 22 TAC §535.148 regarding Receiving an Undisclosed Commission or Rebate. Ms. DeHay presented the agenda item for discussion and possible action. The form adopted by reference in §535.148 at the last meeting contained the phrase “for services provided to buyers and sellers”. This phrase needs to be deleted from the form. Upon motion of Mr. Alley, duly seconded by Mr. Arriaga, the commission does hereby approve the modifications to RSC-1, Disclosure of Relationship with Residential Service as presented by staff and as previously submitted to *Texas Register*.

Mr. Eckstrum moved to agenda item fifteen, discussion and possible action on legislative housekeeping measures and other legislative items. Mr. Oldmixon presented the agenda item for discussion. No action was necessary.

Chairman Eckstrum moved to agenda item sixteen, discussion and possible action to approve modifications to Legislative Appropriations Request. Mr. Oldmixon presented the agenda item for discussion and possible action. This agenda item calls for the withdrawal of the “Exceptional Items Request” and the submission of a Supplemental Appropriations Request. Upon motion of Mr. Mesa, duly seconded by Ms. Wukasch, the commission approved the withdrawal of the “Exceptional Items Request” and the submission of a Supplemental Appropriations Request as presented by staff.

The Chairman moved to agenda item seventeen, discussion and possible action to approve updates to required Legal and Ethics MCE courses. Ms. DeHay presented the agenda item for discussion and possible action. Upon motion of Ms. Justice, duly seconded by Ms. Wukasch, the commission approved the update to the required Legal and Ethics courses to address the recent amendments to the contract forms and recent amendments to Chapter 535 as presented by staff.

Chairman Eckstrum moved to agenda item eighteen, (a) discussion and possible action regarding TREC Standard Contract Form No. 20-9 and (b) discussion and possible action to take emergency rulemaking action to adopt amendments to the following rules and forms adopted by reference: (i) §537.20 concerning Standard Contract Form TREC No. 9-8, (ii) §537.28 concerning Standard Contract Form TREC No. 20-9, (iii) §537.30 concerning Standard Contract Form TREC No. 23-10, (iv) §537.31 concerning Standard Contract Form TREC No. 24-10, (v) §537.32 concerning Standard Contract Form TREC No. 25-7, and (vi) §537.37 concerning Standard Contract Form TREC No. 30-8. Ms. DeHay presented the agenda item for discussion and possible action. This agenda item adopts on an emergency basis amendments to §537.20, concerning TREC No. 9-7, Unimproved Property Contract; §537.28, concerning TREC No. 20-8, One to Four Family Residential Contract (Resale); §537.30, concerning TREC No. 23-9, New Home Contract (Incomplete Construction); §537.31, concerning TREC No. 24-9, New Home Contract (Completed Construction); §537.32, concerning TREC No. 25-6, Farm and Ranch Contract; and §537.37, concerning TREC No. 30-7, Residential Condominium Contract Resale).

The amendments are adopted on an emergency basis to eliminate from the contracts subparagraph 15B which requires a party to the contract to file suit for specific performance within 45 days of the closing date of the contract. Comments were offered by Bob Baker regarding the information on page nine of the contracts. Upon motion of Ms. Wukasch, duly

seconded by Mr. Day, the commission adopted amendments to §537.20 concerning Standard Contract Form TREC No. 9-8, §537.28 concerning Standard Contract Form TREC No. 20-9, §537.30 concerning Standard Contract Form TREC No. 23-10, (iv) §537.31 concerning Standard Contract Form TREC No. 24-10, §537.32 concerning Standard Contract Form TREC No. 25-7, and §537.37 concerning Standard Contract Form TREC No. 30-8.

The Chairman moved to agenda item nineteen, discussion and possible action to approve proposed 2.5% budget reduction. Mr. Oldmixon presented the agenda item for discussion and possible action. In December 6, 2010, the agency had received a request from state leadership to identify an additional 2.5% of the adjusted base general revenue as reduction of our expenditures for 2011. He reported that the material in the meeting book contained the reductions suggested by staff. Upon motion of Ms. Justice, seconded by Mr. Arriaga, the Commission approved the plan as presented and previously submitted by staff to the appropriate entities to reduce the budget by 2.5% of the general revenue and general revenue-dedicated appropriations for FY 2011 pursuant to the request from Texas Leadership dated December 6, 2010. There was discussion concerning the reduction

Mr. Eckstrum moved to agenda item twenty, discussion and possible action to approve updated policy for prioritization of complaint cases filed with the Standards and Enforcement Services Division. Ms. Galvin presented the agenda item for discussion and possible action. She stated that the policy was a revision of a previous policy adopted in 2007. The proposed prioritization emphasized issues involving loss of money or property with a value of \$10,000 or more, involve personal safety issues or unlicensed activity issues. Upon motion of Ms. Hensley, duly seconded by Mr. Day, the Commission approved the modifications to the TREC Policy for Prioritization of Complaint Cases Filed with the Standards and Enforcement Services Division as presented by staff. Fred Wilcox, Inspector Committee, stated that the Committee had not seen the policy or been consulted concerning it.

At 1:10 p.m. the gavel was passed to Mr. Day, as the Presiding Member for contested cases. Mr. Day moved to agenda item twenty-one (a), consideration and possible action regarding proposal for decision from the State Office of Administrative Hearing in the matter of SOAH Docket NO. 329-10-4249, REC., In the Matter of John Christopher Crawford. Ms. Galvin presented the agenda item. Mr. Crawford did not appear. The staff of the Texas Real Estate Commission brought this action against Mr. Crawford seeking to revoke his real estate salesperson license, and seeking to impose administrative penalties totaling \$30,000. The Administrative Law Judge (ALJ) recommends that Mr. Crawford's license be revoked and that he be assessed an administrative penalty totaling \$13,000. Standards and Enforcement Services agrees with the ALJ. Upon motion of Mr. Arriaga, duly seconded by Ms. Wukasz, the Commission approved the proposal as submitted.

Mr. Day moved to agenda item twenty-one (b), consideration and possible action regarding proposal for decision from the State Office of Administrative Hearing in the matter of SOAH Docket NO. 329-10-5173, REC., In the Matter of Rene L. Hernandez. Ms. Galvin presented the agenda item for consideration. Mr. Hernandez appeared pro se. Staff brought the action against

Rene L. Hernandez to deny his application for a real estate salesperson license for failing to disclose pending criminal charges at the time of his application and for being convicted of a crime that directly related to the duties and responsibilities of real estate salesperson. Staff asserts that Mr. Hernandez's actions have demonstrated that he is unable to represent the interest of another person with honesty, trustworthiness, and integrity. The ALJ agrees with Staff and recommends denial of the Application. Staff agrees with the ALJ's recommendation. Ms. Galvin presented the facts of the case. Mr. Hernandez responded. After discussion, upon motion of Mr. Arriaga, duly seconded by Mr. Eckstrum, the Commission approved the proposal as submitted.

Mr. Day moved to agenda item twenty-one (c), consideration and possible action regarding proposal for decision from the State Office of Administrative Hearing in the matter of SOAH Docket NO. 329-11-0448, REC., In the Matter of Robin J. Muir. Ms. Galvin stated that this item would be postponed until the next commission meeting because of insufficient notice.

Mr. Day moved to agenda item twenty-one (d), consideration and possible action regarding proposal for decision from the State Office of Administrative Hearing in the matter of SOAH Docket NO. 329-11-0449.REC. In the Matter of Travis Matthew Grochoske. Ms. Galvin presented the agenda item for consideration. The staff of the Texas Real Estate Commission proposed to deny the application of Travis Matthew Grochoske for an inactive real estate salesperson license. Basis for the denial was failure to demonstrate honesty, trustworthiness, and integrity as demonstrated by applicant's plea of guilty to the state jail felony offense of theft, sentence of deferred adjudication for a term of five years and assessment of \$500 fine. Mr. Grochoske did not appear at the hearing and the ALJ granted a default judgment. Staff agrees with the ruling of the ALJ. Upon motion of Ms. Wukasch, duly seconded by Mr. Mesa, the Commission approved the proposal as submitted.

The Chairman moved to agenda item twenty-two, discussion and possible action to schedule future meetings. After discussion, the next meetings are scheduled for May 2, 2011 and August 15, 2011 at 10:00 a.m. The Chairman adjourned the meeting at 1:30 p.m.

Patricia Holder, Secretary for the Meeting

APPROVED this the 2nd day of May, 2011.

John Eckstrum Chairman

ATTEST: Douglas E. Oldmixon Administrator



Agenda Item 4:

Reports by administrator, general counsel, and division directors of monthly activities and statistical data for communications, licensing, education, enforcement, information technology, staff services, recovery trust account and fund activity, and updates on new and ongoing agency activity; questions by commissioners to division directors regarding issues raised by the monthly activities reports; discussion of current topics raised by monthly reports; requests by commissioners for additional information or reports from staff; and introduction of new employees

Agenda Item 5:

Report by Texas Real Estate Inspector Committee

Agenda 6:

General comments from visitors on non-agenda items



March Commission Meeting Staff Reports

Texas Real Estate Commission

Contents

Report	Report Description	Division	Director
C1	Customer Service Statistics	Reception and Communications Services	Lorie DeAnda
L1	Fiscal Year Comparison	Education and Licensing Services	Gwen Jackson
L2	Real Estate Licensee Status	Education and Licensing Services	Gwen Jackson
L3	Examination Statistics	Education and Licensing Services	Gwen Jackson
L4	Instructor Distribution	Education and Licensing Services	Gwen Jackson
E1	Case Status	Standards and Enforcement	Kerri Galvin
E2	Open Case Age Report	Standards and Enforcement	Kerri Galvin
I1	Electronic Information Outlet Statistics	Information Technology Services	Tom Watson
S1	Agency Financial Statement	Staff and Support Services	Karen Alexander
S2	Real Estate Recovery Fund Investments - Current Securities	Staff and Support Services	Karen Alexander
S3	Real Estate Recovery Fund Payments and Repayments	Staff and Support Services	Karen Alexander
S4	Inspection Recovery Fund Status	Staff and Support Services	Karen Alexander

Reception and Communications Services

Customer Service Statistics

March, 2011

		FY2011		FY2010
RCS Measures	Current Month	YTD Total		Prior YTD Total
Agency Incoming Calls (target - 400,000)	24,406	151,950		206,335

		FY2011		FY2010
Communications Incoming Calls	Monthly Total	YTD Total		Prior YTD Total
CO Lines	11,094	90,675		57,092
TREC 1-800	0	0		65,055
TALCB Local Line	666	3,778		1,349
TALCB 1-877	0	0		1,965
Total	11,760	94,453		125,461

		FY2011		FY2010
Reception Walk Ins	Monthly Total	YTD Total		Prior YTD Total
Licensing	765	5,352		2,063
Education	255	1,880		904
Inspector	7	129		26
Enforcement	14	103		71
TALCB Licensing	15	144		52
TALCB Enforcement	6	41		15
Total	1,062	7,649		3,131

		FY2011		FY2010
Communications E-Mail	Current Month	YTD Total		Prior YTD Total
E-mail Inquiries	8,242	45,503		5,098

C1 Report

Licensing Services Division

Fiscal Year Comparison

Fiscal Year 2011 - Year-to-Date

MARCH

	This YTD 9/10 – 03/11	Last YTD 9/09 – 03/10	Change	
			Count	Percent
<i>Applications Received</i>				
Broker Original Applications Received	1,748	1,540	208	13.51%
Sales Original Applications Received	7,236	6,446	790	12.26%
<i>Total Original Applications</i>	8,984	7,986	998	12.50%
Broker Reinstatement Applications Received	121	846	-725	-85.70%
Sales Reinstatement Applications Received	828	4,106	-3,278	-79.83%
Total Reinstatement Applications Received	949	4,952	-4,003	-80.84%
<i>Licenses Issued from Applications</i>				
Broker Licenses from Original Applications	963	1,467	-504	-34.36%
Sales Licenses from Original Applications	5,159	5,049	-3,278	-64.92%
<i>Total Licenses from Original Applications</i>	6,122	6,516	-3,782	-58.04%
Broker Licenses from Reinstatement Applications	90	906	-816	-90.07%
Sales Licenses from Reinstatement Applications	509	4,262	-3,753	-88.06%
<i>Total Licenses from Reinstatement Application</i>	599	5,168	-4,569	-88.41%
<i>Renewal Activity</i>				
Broker Renewals and Percentage	14,701	8,798	5,903	67.09%
Salesperson Renewals and Percentage	38,783	22,289	16,494	74.00%
<i>Total Renewals from Broker and Sales</i>	53,484	31,087	22,397	72.05%

NOTE

Broker and sales reinstatement totals for this YTD are lower because they only include licenses expired > than 1 year. Licenses expired < than 1 year are now reflected in the totals for renewals.

Licensing Services Division
Licensee and Registrant Status
March 2011

Real Estate Licensees

	Mar 10	Apr 10	May 10	Jun 10	Jul 10	Aug 10	*Sep-Dec10	Jan 11	Feb 11	Mar 11
Broker Licensees										
Individual (Active)	34,249	34,283	34,261	34,247	34,229	34,248		33,639	33,774	33,928
Corporation (Active)	4,012	4,019	4,000	4,001	3,985	3,975		3,963	3,980	4,029
LLC (Active)	2,946	2,991	3,022	3,058	3,088	3,107		3,175	3,204	3,288
Non-resident (Active)	485	488	483	484	488	490		554	557	564
Partnership (Active)	2	2	2	2	2	2		1	1	1
Total Active Status	41,694	41,783	41,768	41,792	41,792	41,822		41,332	41,516	41,810
<i>Inactive Status</i>	1,648	1,617	1,623	1,614	1,614	1,613		1,587	1,585	1,635
Total Brokers	43,342	43,400	43,391	43,406	43,406	43,435		42,919	43,101	43,445
Sales Licensees										
Active Status	74,173	74,571	74,519	73,891	73,898	74,058		71,170	71,485	71,458
Inactive Status	26,954	26,684	26,567	27,184	27,113	26,905		25,741	25,844	26,770
Total Sales	101,127	101,255	101,086	101,075	101,011	100,963		96,911	97,329	98,228
Total Active	115,867	116,354	116,287	115,683	115,690	115,880		112,502	113,001	113,268
Total Inactive	28,602	28,301	28,190	28,798	28,727	28,518		27,328	27,429	27,429
Total Brokers & Sales	144,469	144,655	144,477	144,481	144,417	144,398		139,830	140,430	140,697

Inspectors

	Mar 10	Apr 10	May 10	Jun 10	Jul 10	Aug 10	*Sep-Dec10	Jan 11	Feb 11	Mar 11
Inspector Licensees										
Professional Inspectors(active)	2,328	2,339	2,323	2,310	2,290	2,271		2,096	2,101	2,126
Professional Inspectors(inactive)	995	991	976	968	957	951		771	779	825
Real Estate Inspectors(active)	106	105	106	101	95	97		92	91	91
Real Estate Inspectors(inactive)	34	34	32	33	34	33		21	22	24
Apprentice Inspectors(active)	62	68	67	71	72	72		60	60	62
Apprentice Inspectors(inactive)	19	20	17	17	13	15		15	15	15
Total Inspectors	3,544	3,557	3,521	3,500	3,461	3,439		3,055	3,068	3,143

Easement & Right-of-way Registrants

	Mar 10	Apr 10	May 10	Jun 10	Jul 10	Aug 10	*Sep10-Dec10	Jan 11	Feb 11	Mar 11
ERW Registrants										
Businesses	41	41	41	42	42	42		37	37	39
Individuals	1,659	1,643	1,631	1,667	1,683	1,705		1,749	1,765	1,929
Total Registrants	1,700	1,684	1,672	1,709	1,725	1,747		1,786	1,802	1,968

Total Licensees and Registrants

	Mar 10	Apr 10	May 10	Jun 10	Jul 10	Aug 10	*Sep10-Dec10	Jan 11	Feb 11	Mar 11
All Licensees & Registrants	149,713	149,896	149,670	149,690	149,603	149,584		144,671	145,300	145,808

* Totals for this month are not available due to system conversion.

Education & Licensing Services Division - TREC: L3 Report

Examination Activity

March 2011

Monthly Results

	Salesperson	Broker	R.E. Inspector	Prof. Inspector
Examinations Passed	796	120	1	22
Examinations Failed	637	94	1	12
Examinations Taken	1433	214	2	34
Applicants Examined	992	157	2	29
Passed on First Attempt	544	77	1	10
Examination Pass Rate	55.5 %	56.1 %	50.0 %	64.7 %
Applicant Pass Rate	80.2 %	76.4 %	50.0 %	75.9 %
First Attempt Pass Rate	54.8 %	49.0 %	50.0 %	34.5 %

Year-to-Date Results

	Salesperson	Broker	R.E. Inspector	Prof. Inspector
Examinations Passed	3607	571	9	118
Examinations Failed	4276	777	4	157
Examinations Taken	7883	1348	13	275
Applicants Examined	4425	658	11	175
Passed on First Attempt	2378	349	6	64
Examination Pass Rate	45.8 %	42.4 %	69.2 %	42.9 %
Applicant Pass Rate	81.5 %	86.8 %	81.8 %	67.4 %
First Attempt Pass Rate	53.7 %	53.0 %	54.5 %	36.6 %

Licensing Services Division

Instructor Distribution

PROPRIETARY SCHOOL (CORE) AND MCE INSTRUCTORS

Approved Instructor Distribution

	Jan 11	Feb 11	Mar 11	Apr 11	May 11	June 11	July 11	Aug 11	Sep 11	Oct 11	Nov 11	Dec 11	Jan 12
MCE Electives Only	2,583	2,617	2,669										
Core and MCE Electives	1,327	1,332	1,334										
MCE Legal Update	365	365	365										
MCE Ethics	366	366	366										
Total Approved Instructors	4,641	4,680	4,734										

Standards and Enforcement Services Division

Case Status

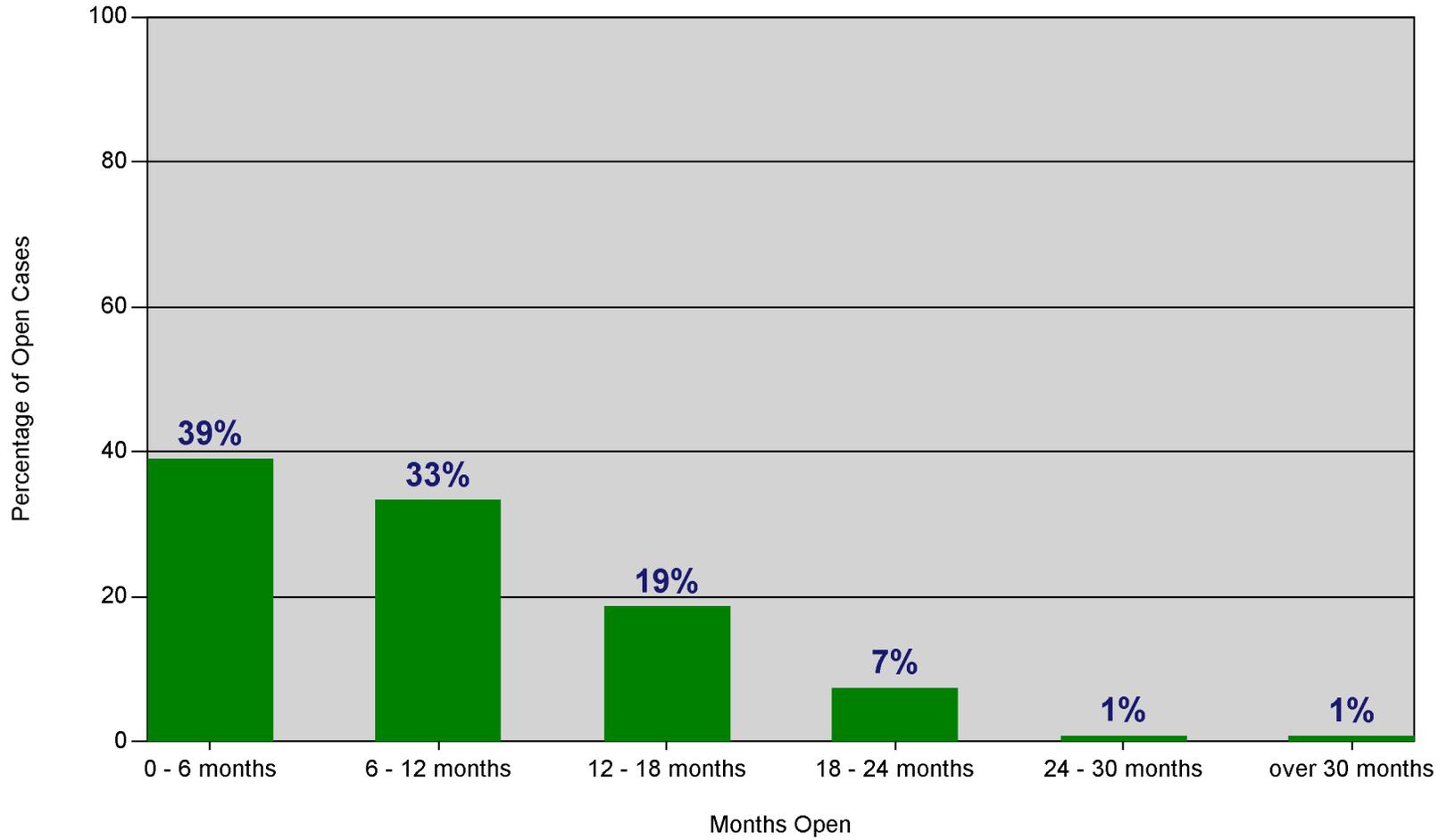
March 2011

	Sep - 10	Oct - 10	Nov - 10	Dec - 10	Jan - 11	Feb - 11	Mar - 11	Apr - 11	May - 11	Jun - 11	Jul - 11	Aug - 11
Received During Month	194	121	155	151	142	126	144					
Broker/Sales	91	68	82	87	75	62	74					
Inspector	9	5	4	4	2	4	2					
Timeshare	2	2	0	1	4	2	1					
Unlicensed Activity	6	2	1	2	4	6	5					
Residential Service Company	8	2	8	10	1	5	5					
No Jurisdiction	37	20	21	23	21	19	22					
Application Investigation	21	6	3	7	25	8	16					
MCD Inquiry	17	15	35	14	6	20	15					
Other	3	1	0	3	4	0	3					
Closed During Month	178	173	167	135	199	142	203					
Complaint Withdrawn	2	9	5	5	1	3	6					
Cease & Desist Issued	1	0	0	2	6	0	4					
Disciplinary Action	49	33	26	22	33	26	37					
Failure to Go Forward	14	16	12	6	14	16	12					
Insufficient Evidence	27	13	32	23	48	17	21					
Matter Settled	6	9	8	21	20	8	12					
No Jurisdiction	21	28	25	23	27	23	36					
No Violation	3	6	9	11	17	15	22					
Application Investigation	17	41	23	8	17	15	26					
MCD Inquiries	9	5	12	7	10	14	14					
Other	29	13	15	7	6	5	12					
Open at Beginning of Month						961	945					
Received During Month						126	144					
Closed During Month						142	202					
Open at End of Month						945	887					
Received During Fiscal Year						889	1033					
Closed During Fiscal Year						994	1196					

Standards & Enforcement Services Division - TREC: E2 Report

Open Cases Aging Report

as of 4/19/2011



Information Technology Services Division Electronic Information Outlet Statistics

As of March 2011

World Wide Web	Current Month	FYTD Total	Prior FYTD Total
Total Pages Viewed	3,062,619	17,893,469	14,928,943

TREC E-Mail Notification List	Current Total
Current Subscribers	223,924

Online Transactions	Total	Online	Online Percent	FYTD Online Percent	Prior FYTD Percent
Applications (Performance Measure: 70%)	949	341	35.9%	20.6%	80.8%
Broker Application	135	36	26.7%	15.8%	84.4%
Salesperson Application	767	295	38.5%	22.1%	85.9%
Corporate Application	47	10	21.3%	14.5%	18.8%
LLC Application	83	8	9.6%	10.4%	NA
Renewals (Performance Measure 80%)	6191	5240	84.6%	71.3%	88.5%
Broker Renewals	1547	1217	78.7%	71.0%	88.5%
Salesperson Renewal	4120	3606	87.5%	72.8%	91.0%
Corporate Renewals	179	150	83.8%	73.0%	91.1%
Limited Liability Company Renewals	141	112	79.4%	74.2%	92.8%
Professional Inspector Renewals	78	75	96.2%	37.2%	25.2%
Real Estate Inspector Renewals	3	2	66.7%	27.6%	30.4%
Apprentice Inspector Renewals	2	1	50.0%	60.0%	0.0%
Easement ROW Business Renewals	3	3	100.0%	63.6%	6.7%
Easement ROW Individual Renewals	118	74	62.7%	66.1%	17.8%

**Staff & Support Services Division
Agency Financial Statement**

March 2011

THRU 7TH MONTH OF FISCAL YEAR 2011

STRATEGIES	FY 2011 APPROPRIATION*	5% BUDGET REDUCTION	2.5% BUDGET REDUCTION	REVISED BUDGET	7/12 ANNUAL APPROPRIATION	SEVEN MONTHS EXPENDITURES AND A/P	\$ VARIANCE OVER(-) OR UNDER**	% VARIANCE OVER(-) OR UNDER	ENCUMBRANCES
Licensing	\$ 3,321,625.61	\$ (363,238.00)	\$ (98,830.00)	\$ 2,859,557.61	\$ 1,668,075.27	\$ 1,321,104.01	\$ 346,971.26	20.80%	\$ 210,873.83
Enforcement	1,777,346.97	(73,036.00)	(31,323.00)	1,672,987.97	975,909.65	959,919.27	15,990.38	1.64%	54,864.29
Communication/Information	863,884.00	(88,018.00)	(17,085.00)	758,781.00	442,622.25	447,898.50	(5,276.25)	-1.19%	14,131.70
Indirect Administration	1,630,951.70	(73,892.00)	(34,170.00)	1,522,889.70	888,352.33	762,001.95	126,350.38	14.22%	166,689.55
TOTAL	\$ <u>7,593,808.28</u>	\$ <u>(598,184.00)</u>	\$ <u>(181,408.00)</u>	\$ <u>6,814,216.28</u>	\$ <u>3,974,959.50</u>	\$ <u>3,490,923.73</u>	\$ <u>484,035.77</u>	12.18%	\$ <u>446,559.37</u>

* Total appropriations have been increased by \$22,529 for benefit replacement pay.

In the Licensing strategy, subscription fees in the amount of \$139,962 have been collected and remitted to the Texas Online vendor.

In the Licensing strategy, FBI criminal history background check fees in the amount of \$507,995.75 have been collected and accrued to pay DPS.

** Some expenditures are paid at the beginning of the fiscal year, such as computer and software maintenance, worker's compensation premium, etc.

*** Legislative provision requires the encumbrance of all contractual obligations through the end of the fiscal year. This includes items such as office rent, office equipment leases, or other contractual obligations. Encumbrances are not included in the "Seven Months Expenditures and A/P" column.

Staff Services Division
Real Estate Recovery Trust Account No. 971 Investments
Current Securities

March 2011

Purchase Date	Par Value	Purchase Price	Beginning Market Value	Additions Changes	Ending Market Value	Accrued Interest	Description	Maturity Date
05/24/2005	300,000.00	318,421.88	306,656.25	(1,312.50)	305,343.75	1,875.00	U.S. T-Notes, 5.00%	08/15/2011
02/28/2007	100,000.00	99,750.00	103,187.50	(375.00)	102,812.50	1,500.00	U.S. T-Notes, 4.50%	11/30/2011
08/29/2007	200,000.00	205,000.00	208,750.00	(812.50)	207,937.50	1,218.75	U.S. T-Notes, 4.875%	02/15/2012
02/20/2009	200,000.00	222,000.00	211,000.00	(937.50)	210,062.50	3,166.67	U.S. T-Notes, 4.750%	05/31/2012
12/06/2007	100,000.00	104,750.00	105,781.25	(468.75)	105,312.50	546.88	U.S. T-Notes, 4.375%	08/15/2012
05/27/2008	100,000.00	101,062.50	104,937.50	(375.00)	104,562.50	1,125.00	U.S. T-Notes, 3.375%	11/30/2012
02/20/2009	200,000.00	219,250.00	212,687.50	(875.00)	211,812.50	968.75	U.S. T-Notes, 3.875%	02/15/2013
04/28/2010	200,000.00	217,625.00	216,437.50	(1,125.00)	215,312.50	1,062.50	U.S. T-Notes, 4.25%	08/15/2013
08/31/2010	200,000.00	221,375.00	216,937.50	(1,062.50)	215,875.00	1,000.00	U.S. T-Notes, 4.00%	02/15/2014
08/31/2010	100,000.00	112,406.25	109,843.75	(625.00)	109,218.75	531.25	U.S. T-Notes, 4.25%	08/15/2014
Totals	\$ 1,700,000.00	\$ 1,821,640.63	\$ 1,796,218.75	\$ (7,968.75)	\$ 1,788,250.00	\$ 12,994.80		

	Current Month	Cumulative Totals
Receipts:		
License's Remittances to Recovery Fund	\$ 28,932.00	\$ 6,345,320.08
Interest Realized	0.00	6,044,292.45
Repayments to Recovery Fund (Principal and Interest)	2,273.75	1,115,067.46
Administrative Penalties	7,375.01	858,086.00
Total Received	\$ 38,580.76	\$ 14,362,765.99
Disbursements:		
Investments Purchased (Offset by Matured Security)	\$ 0.00	1,821,640.63
Accrued Interest Purchased	0.00	0.00
Payments from Recovery Fund	0.00	11,705,753.32
Rider Disbursements	358.70	14,291.69
Total Disbursed	\$ 358.70	\$ 13,541,685.64
Totals	\$ 38,222.06	\$ 821,080.35 *
	(Current Month)	
Reserved for Investment		0.00
Reserved for Potential Payments Within 90 Days		(1,111,100.00)
Balance		\$ (290,019.65)

Investment Position: The Fund is capable of meeting all known obligations.
Investment Compliance: The Investment Policy of the Commission has been followed.

Karen Alexander

Karen Alexander, Investment Officer

Barbara C Kolb

Barbara Kolb, Alternate Investment Officer

* Reconciled Balance includes revenue of \$64,202.90 which was in the Trust & Suspense fund pending transfer.

Staff Services Division

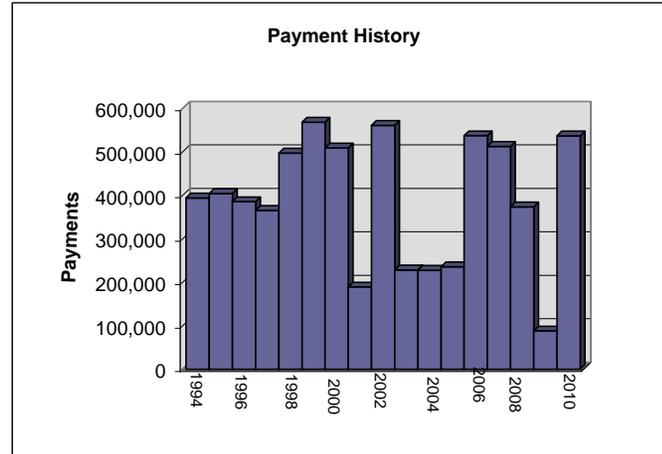
Real Estate Recovery Trust Account No. 971 Investments Payments and Repayments

March 2011

Month-Year	Payment Total	Repayment Total	Admin Penalties Total	Rider Disbursements	Payments FY2011-To-Date	Number of Payments
March 2010	73,847.53	1,984.41	2,283.33	43.00		
April 2010	27,465.00	7,795.06	11,458.33	94.70		
May 2010	0.00	1,876.98	2,708.33	0.00		
June 2010	0.00	1,705.53	6,208.33	0.00		
July 2010	20,627.43	589.70	98,808.38	0.00		
August 2010	23,684.38	1,674.70	6,388.33	93.10		
September 2010	35,610.61	0.00	3,458.33	0.00	35,610.61	1
October 2010	0.00	2,746.45	3,170.00	0.00	0.00	0
November 2010	0.00	(1,664.48)	5,008.33	0.00	0.00	0
December 2010	86,374.69	1,325.20	29,156.50	0.00	86,374.69	2
January 2011	100,000.00	2,111.23	5,858.33	0.00	100,000.00	2
February 2011	132,678.68	1,590.82	(23,882.17)	0.00	132,678.68	3
March 2011	0.00	2,273.75	7,375.01	358.70	0.00	0
	500,288.32	24,009.35	157,999.36	589.50	354,663.98	8

Payment History		
Fiscal Year	# of Payments	Total Payments
thru 1993	345	4,734,258.62
1994	31	394,466.36
1995	29	404,449.31
1996	26	385,724.99
1997	20	365,445.94
1998	27	497,406.17
1999	21	568,326.88
2000	18	509,279.95
2001	11	189,405.09
2002	19	561,110.81
2003	11	228,924.68
2004	8	227,794.75
2005	8	236,012.61
2006	22	537,356.93
2007	14	512,774.82
2008	12	373,414.95
2009	5	88,299.35
2010	20	536,637.13
Total	647	\$11,351,089.34

Potential Payments*
Next 3 Months **1,111,100.00**



*Potential Payments: Payments could be made in the time periods indicated. Several time/work variables can affect the actual payment dates.

Staff Services Division

Real Estate Inspection Recovery Fund No. 0988

March 2011

	Monthly Activity			Payment History		
	Beginning Balance	Current Month	Cumulative Totals	Fiscal Year	Number of Payments	Total Payments
Beginning Balance	\$ 606,240.08		\$ 606,240.08	1991	2	\$ 4,309.26
Receipts:				1992	0	0.00
Licensees' Remittances to Recovery Fund		\$ 2,221.00		1993	2	15,000.00
Interest Realized		1,382.74		1994	5	31,473.40
Repayments		909.25		1995	4	25,668.83
Administrative Penalties		0.00		1996	2	7,500.00
Total Received in Current Month		<u>4,512.99</u>	\$ 4,512.99	1997	1	7,500.00
Disbursements:				1998	4	30,000.00
Payments from Recovery Fund		\$ 0.00		1999	1	7,500.00
Cash Transfer to General Revenue		0.00		2000	6	45,000.00
Rider Disbursements		0.00		2001	0	0.00
Total Disbursed in Current Month		<u>0.00</u>	\$ 0.00	2002	2	15,000.00
Total			\$ 610,753.07	2003	1	7,500.00
Reserved for Payment within 90 Days			(37,500.00)	2004	4	32,523.96
Fund Balance			573,253.07	2005	5	28,567.39
				2006	5	49,837.11
				2007	1	12,500.00
				2008	0	0.00
				2009	1	12,500.00
				2010	2	16,205.00
				2011 YTD	0	0.00
				Total		\$ 348,584.95

Investment Position: The Fund is capable of meeting all known obligations.
 Investment Compliance: The Investment Policy of the Commission has been followed.

Karen Alexander

Karen Alexander, Investment Officer

Barbara C Kolb

Barbara Kolb, Alternate Investment Officer

*Reconciled balance includes revenue of \$5,845.73 which was in the Trust & Suspense fund pending transfer.

**Agenda Item 7:**

Discussion and possible action to propose amendments to 22 TAC §535.191 regarding Schedule of Administrative Penalties

SUMMARY

Proposes amendments to §535.191 regarding Schedule of Administrative Penalties as follows. Section 535.191 is amended to add additional provisions that apply to the schedule and to move an existing provision that should more appropriately fit under a different range.

**STAFF
RECOMMENDATION**

Propose amendments as submitted by staff.

MOTION

MOVED, that staff is authorized, on behalf of this Commission, to submit the amendments to §535.191 regarding Schedule of Administrative Penalties, as presented at this meeting, with any non-substantive changes as staff may deem necessary or advisable for proposal to the *Texas Register*.

Agenda Item 7
Subchapter Q. Administrative Penalties

§535.191. Schedule of Administrative Penalties.

(a) The commission may suspend or revoke a license or take other disciplinary action authorized by Chapter 1101 of the Act in addition to or instead of assessing the administrative penalties set forth in this section.

(b) The administrative penalties set forth in this section take into consideration all of the criteria listed in §1101.702(b) of the Act.

(c) An administrative penalty range of \$100 - \$1,500 per violation per day may be assessed for violations of the following sections of the Act and Rules:

(1)-(4) (No change.)

(5) 22 TAC §535.91(d) ~~[(e)]~~; **and**

(6) ~~22 TAC §535.144~~; **and**

~~[(7)]~~ 22 TAC §535.154.

(d) An administrative penalty range of \$500 - \$3,000 per violation per day may be assessed for violations of the following sections of the Act and Rules:

(1) - (7) (No change.)

(8) §1101.652(b)(30) - (31); **[and]**

(9) §1101.654(a);

(10) 22 TAC §535.2; and

(11) 22 TAC §535.144.

(e)-(f) (No change.)

**Agenda Item 8:**

Discussion and possible action to propose amendments to 22 TAC §535.219 regarding Schedule of Administrative Penalties

SUMMARY

Proposes §535.219, Schedule of Administrative Penalties. The new rule establishes a penalty matrix for the assessment of administrative penalties for different violations of the statute and rules governing real estate inspectors. The matrix was drafted in accordance with Section 1102.403 of the Texas Occupations Code (relating to administrative penalties imposed against inspectors) and Subchapter O, Chapter 1101 (relating to administrative penalties assessed by the Commission). As such, the highest category of administrative penalties provides for a maximum penalty of \$5,000 per violation, and each day a violation continues or occurs may be considered a separate violation for purposes of imposing a penalty. The rule was developed by the Texas Real Estate Inspector Committee's enforcement subcommittee and endorsed by the Committee.

STAFF

Propose rule as submitted by staff.

RECOMMENDATION**MOTION**

MOVED, that staff is authorized, on behalf of this Commission, to submit the amendments to §535.219 regarding Schedule of Administrative Penalties, as presented at this meeting, with any non-substantive changes as staff may deem necessary or advisable for proposal to the *Texas Register*.

Agenda Item 8

Subchapter R. Real Estate Inspectors

§535.219. Schedule of Administrative Penalties

(a) The commission may suspend or revoke a license or take other disciplinary action authorized by Chapter 1102 of the Texas Occupations Code in addition to or instead of assessing the administrative penalties set forth in this section.

(b) The administrative penalties set forth in this section take into consideration the criteria listed in §1101.702(b) of the Texas Occupations Code.

(c) An administrative penalty range of \$100-\$1,500 per violation per day may be assessed for violations of the following sections of the Texas Occupations and Administrative Codes:

- (1) §1102.118;** *(failure to report change of address)*
- (2) §1102.364;** *(failure to notify consumers of recovery fund)*
- (3) 22 TAC §535.216(d);** *(failure to provide information requested for a renewal)*
- (4) 22 TAC §535.220(a)-(d);** *(standards of conduct violations)*
- (5) 22 TAC §535.221; and** *(advertising violations)*
- (6) 22 TAC §535.223;** *(form violations)*

(d) An administrative penalty range of \$500-\$3,000 per violation per day may be assessed for violations of the following sections of the Texas Occupations and Administrative Codes:

- (1) §1102.301;** *(negligent or incompetent inspection)*
- (2) 22 TAC §535.222;** *(failure to provide a written inspection report w/ required info)*
- (3) 22 TAC §535.224(b)(1)-(3);** *(failure to provide info or make good on bad check)*
- (4) 22 TAC §535.226(d)-(e); and** *(failure to properly supervise sponsored inspector)*
- (5) 22 TAC §535.227-.233.** *Standards of Practice violations)*

(e) An administrative penalty of \$1,000-\$5,000 per violation per day may be assessed for violations of the following sections of the Texas Occupations and Administrative Codes:

- (1) §1102.101;** *(unlicensed activity -- apprentice)*
- (2) §1102.102;** *(unlicensed activity – real estate inspector)*
- (3) §1102.103;** *(unlicensed activity – professional inspector)*
- (4) §1102.302;** *(agreement for specific report; dishonesty)*
- (5) §1102.303;** *(acting as inspector and undisclosed principal/broker or salesperson)*
- (6) §1102.304;** *(repairs on inspected property)*
- (7) 22 TAC §535.208(f);** *(procuring a license by fraud)*
- (8) 22 TAC §535.211;** *(failure to maintain insurance while license is active)*
- (9) 22 TAC §535.215;** *(inspecting while license is on inactive status)*
- (10) 22 TAC §535.220(e)(1),(3)-(7); and** *(inspecting under contingent arrangements, impermissible referral fees, repairs within 12 months)*

*(failure to maintain insurance while license is active
or notify commission of cancellation or nonrenewal)*

(f) The commission may assess an administrative penalty of up to two times that outlined under subsections (c), (d), and (e) of this section, subject to the maximum penalties authorized under §1101.702(a) of the Texas Occupations Code, if a person has a history of previous violations.

**Agenda Item 9(a)-(f):**

Discussion and possible action to propose amendments to 22 TAC Chapter 537 as follows:

- a. §537.20 concerning Standard Contract Form TREC No. 9-9
- b. §537.28 concerning Standard Contract Form TREC No. 20-10
- c. §537.30 concerning Standard Contract Form TREC No. 23-11
- d. §537.31 concerning Standard Contract Form TREC No. 24-11
- e. §537.32 concerning Standard Contract Form TREC No. 25-8
- f. §537.37 concerning Standard Contract Form TREC No. 30-9

SUMMARY

Proposes amendments to 22 TAC §537.20 concerning Standard Contract Form TREC No. 9-9 Unimproved Contract; §537.28 concerning Standard Contract Form TREC No. 20-10, One to Four Family Residential Contract (Resale); §537.30 concerning Standard Contract Form TREC No. 23-11, New Home Contract (Incomplete Construction); §537.31 concerning Standard Contract Form TREC No. 24-11, New Home Contract (Completed Construction); §537.32 concerning Standard Contract Form TREC No. 25-8, Farm and Ranch Contract; and §537.37 concerning Standard Contract Form TREC No. 30-9, Residential Condominium Contract. The amendments to §537.28 propose to adopt by reference Standard Contract Form TREC No. 20-10, One to Four Family Residential Contract (Resale). Paragraph 2.B. is revised to include mounts and brackets for televisions and speakers; the phrase regarding controls in paragraph 2.C. is rewritten and placed at the end of the list of accessories. Paragraph 4.A.(1) is amended to provide examples of underwriting examples to include appraisal, insurability, and lender required repairs; the termination provision under this paragraph is revised. Paragraph 4.A.(2) is revised to change Financing Approval to Credit approval. The reference to the title of form no. 40-4 is changed to Third Party

**SUMMARY cont.**

Financing Addendum for Credit Approval. The sentence regarding Sellers failure to timely provide the existing survey or affidavit in paragraph 6.C.(1) is moved from the end of the paragraph to the middle of the paragraph; paragraph 6.E.(2) is revised to delete apostrophes to be consistent with statutory provisions; paragraph 6.E(2) is amended to provide notice that the property may be subject to more than one property owners associations. Paragraph 7.D.(2) is rewritten to include a blank line for specific repairs and an admonishment telling parties not to insert general phrases. A notice is added to the end of paragraph 7 reminding the parties about the buyer's rights to conduct inspections, negotiate repairs under a subsequent amendment, or terminate during the option period, if any. Paragraph 9.B.(3) is rewritten; new subparagraph 5 regarding leases is added to paragraph 9.B. The two sentences at the end of paragraph 10 are underlined. Paragraph 12.A.(2) is restructured. Paragraph 18.B. is rewritten for clarity. Addenda are added to and deleted from paragraph 22. Option Period is defined in paragraph 23. Paragraph 24 is rewritten. The Broker Information page is rewritten and restructured.

The amendment to §537.20 proposes to adopt by reference Standard Contract Form TREC No. 9-9, Unimproved Property Contract. The proposed revisions are the same as those proposed for Form TREC No. 20-10 as further described below, except for paragraph 2. Also, typographical errors in paragraph 7 are corrected.

The amendment to §537.30 proposes to adopt by reference Standard Contract Form TREC No. 23-11, New Home Contract (Incomplete Construction). The proposed revisions are the same as those proposed for Form TREC No. 20-10, except for paragraph 2, paragraph 6.C.(1), paragraph 7.B., and paragraph 9.B.(5).

The amendment to §537.31 proposes to adopt by reference Standard Contract Form TREC No. 24-11, New Home Contract (Completed Construction). The proposed revisions are the same as those proposed for Form TREC No. 20-10, except for paragraph 2, paragraph 6.C(1), paragraph 7.B., and paragraph 9.B.(5). Also, typographical errors in paragraph 7 are corrected.

**SUMMARY cont.**

The amendment to §537.32 proposes to adopt by reference Standard Contract Form TREC No. 25-6, Farm and Ranch Contract. The same amendments are made as those proposed for Form TREC No. 20-10. In addition, paragraph 2.F. is revised to delete "mineral" and "royalty."

The amendment to §537.37 proposes to adopt by reference Standard Contract Form TREC No. 30-9, Residential Condominium Contract. The same amendments are made to 30-9, Residential Condominium Contract as those proposed for Form TREC No. 20-10. In addition, paragraphs 2.B.(2) and 2.C.(2) are amended by adding a provision regarding Buyer's cancellation of the contract; subparagraph (3) is revised and subparagraph (4) is added to paragraph 12.

Typographical errors in the forms are corrected as necessary.

**STAFF
RECOMMENDATION**

Propose the amendments and forms adopted by reference as submitted by staff.

MOTION

MOVED, that staff is authorized, on behalf of this Commission, to submit the amendments and forms adopted by reference to 22 TAC §537.20 concerning Standard Contract Form TREC No. 9-9 Unimproved Contract; §537.28 concerning Standard Contract Form TREC No. 20-10, One to Four Family Residential Contract (Resale); §537.30 concerning Standard Contract Form TREC No. 23-11, New Home Contract (Incomplete Construction); §537.31 concerning Standard Contract Form TREC No. 24-11, New Home Contract (Completed Construction); §537.32 concerning Standard Contract Form TREC No. 25-8, Farm and Ranch Contract; and §537.37 concerning Standard Contract Form TREC No. 30-9, Residential Condominium Contract, as presented at this meeting, with any non-substantive changes as staff may deem necessary or advisable for proposal to the *Texas Register*.

Agenda Item 9
Chapter 537 Professional Agreements and Standard Contracts

§537.20. Standard Contract Form TREC No. 9-9 [~~9-7~~]. The Texas Real Estate Commission adopts by reference standard contract form TREC No. 9-9 [~~9-7~~] approved by the Texas Real Estate Commission in 2011 [~~2008~~] for use in the sale of unimproved property where intended use is for one to four family residences. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

§537.28. Standard Contract Form TREC No. 20-10 [~~20-8~~]. The Texas Real Estate Commission adopts by reference standard contract form TREC No. 20-10 [~~20-8~~] approved by the Texas Real Estate Commission in 2011 [~~2008~~] for use in the resale of residential real estate. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

§537.30. Standard Contract Form TREC No. 23-11 [~~23-9~~]. The Texas Real Estate Commission adopts by reference standard contract form TREC No. 23-11 [~~23-9~~] approved by the Texas Real Estate Commission in 2011 [~~2009~~] for use in the sale of a new home where construction is incomplete. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

§537.31. Standard Contract Form TREC No. 24-11 [~~24-9~~]. The Texas Real Estate Commission adopts by reference standard contract form TREC No. 24-11 [~~24-9~~] approved by the Texas Real Estate Commission in 2011 [~~2009~~] for use in the sale of a new home where construction is completed. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

§537.32. Standard Contract Form TREC No. 25-8 [~~25-6~~]. The Texas Real Estate Commission adopts by reference standard contract form TREC No. 25-8 [~~25-6~~] approved by the Texas Real Estate Commission in 2011 [~~2008~~] for use in the sale of a farm or ranch. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

§537.37. Standard Contract Form TREC No. 30-9 [~~30-7~~]. The Texas Real Estate Commission adopts by reference standard contract form TREC No. 30-9 [~~30-7~~] approved by the Texas Real Estate Commission in 2011 [~~2008~~] for use in the resale of a residential condominium unit. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.



PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)
ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE)

NOTICE: Not For Use For Condominium Transactions

1. PARTIES: The parties to this contract are _____(Seller) and _____(Buyer). Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller the Property defined below.

2. PROPERTY:

- A. LAND: Lot _____ Block _____, _____ Addition, City of _____, County of _____, Texas, known as _____ (address/zip code), or as described on attached exhibit.
B. IMPROVEMENTS: The house, garage and all other fixtures and improvements attached to the above-described real property, including without limitation, the following permanently installed and built-in items, if any: all equipment and appliances, valances, screens, shutters, awnings, wall-to-wall carpeting, mirrors, ceiling fans, attic fans, mail boxes, television antennas and satellite dish system and equipment, mounts and brackets for televisions and speakers, heating and air-conditioning units, security and fire detection equipment, wiring, plumbing and lighting fixtures, chandeliers, water softener system, kitchen equipment, garage door openers, cleaning equipment, shrubbery, landscaping, outdoor cooking equipment, and all other property owned by Seller and attached to the above described real property.
C. ACCESSORIES: The following described related accessories, if any: window air conditioning units, stove, fireplace screens, curtains and rods, blinds, window shades, draperies and rods, [controls for satellite dish system, controls for garage door openers, entry gate controls,] door keys, mailbox keys, above ground pool, swimming pool equipment and maintenance accessories, [and] artificial fireplace logs, and controls for: (i) satellite dish systems, (ii) garage doors, (iii) entry gates, and (iv) other improvements and accessories.
D. EXCLUSIONS: The following improvements and accessories will be retained by Seller and must be removed prior to delivery of possession: _____

The land, improvements and accessories are collectively referred to as the "Property".

3. SALES PRICE:

- A. Cash portion of Sales Price payable by Buyer at closing..... \$_____
B. Sum of all financing described below (excluding any loan funding fee or mortgage insurance premium)..... \$_____
C. Sales Price (Sum of A and B)..... \$_____

4. FINANCING: The portion of Sales Price not payable in cash will be paid as follows: (Check applicable boxes below)

- [] A. THIRD PARTY FINANCING: One or more third party mortgage loans in the total amount of \$_____ (excluding any loan funding fee or mortgage insurance premium).
(1) Property Approval: If the Property does not satisfy the lenders' underwriting requirements for the loan(s) (including, but not limited to appraisal, insurability and lender required repairs), Buyer may terminate this contract by giving notice to Seller prior to closing and the earnest money will be refunded to Buyer. [this contract will terminate and the earnest money will be refunded to Buyer.]
(2) Credit [Financing] Approval: (Check one box only)
[](a) This contract is subject to Buyer being approved for the financing described in the attached Third Party Financing [Condition] Addendum for Credit Approval.
[](b) This contract is not subject to Buyer being approved for financing and does not involve FHA or VA financing.
[] B. ASSUMPTION: The assumption of the unpaid principal balance of one or more promissory notes described in the attached TREC Loan Assumption Addendum.
[] C. SELLER FINANCING: A promissory note from Buyer to Seller of \$_____, secured by vendor's and deed of trust liens, and containing the terms and conditions described in the attached TREC Seller Financing Addendum. If an owner policy of title insurance is furnished, Buyer shall furnish Seller with a mortgagee policy of title insurance.

5. EARNEST MONEY: Upon execution of this contract by all parties, Buyer shall deposit \$ _____ as earnest money with _____, as escrow agent, at _____ (address). Buyer shall deposit additional earnest money of \$ _____ with escrow agent within _____ days after the effective date of this contract. If Buyer fails to deposit the earnest money as required by this contract, Buyer will be in default.

6. TITLE POLICY AND SURVEY:

A. TITLE POLICY: Seller shall furnish to Buyer at Seller's Buyer's expense an owner policy of title insurance (Title Policy) issued by _____ (Title Company) in the amount of the Sales Price, dated at or after closing, insuring Buyer against loss under the provisions of the Title Policy, subject to the promulgated exclusions (including existing building and zoning ordinances) and the following exceptions:

- (1) Restrictive covenants common to the platted subdivision in which the Property is located.
- (2) The standard printed exception for standby fees, taxes and assessments.
- (3) Liens created as part of the financing described in Paragraph 4.
- (4) Utility easements created by the dedication deed or plat of the subdivision in which the Property is located.
- (5) Reservations or exceptions otherwise permitted by this contract or as may be approved by Buyer in writing.
- (6) The standard printed exception as to marital rights.
- (7) The standard printed exception as to waters, tidelands, beaches, streams, and related matters.
- (8) The standard printed exception as to discrepancies, conflicts, shortages in area or boundary lines, encroachments or protrusions, or overlapping improvements. Buyer, at Buyer's expense, may have the exception amended to read, "shortages in area".

B. COMMITMENT: Within 20 days after the Title Company receives a copy of this contract, Seller shall furnish to Buyer a commitment for title insurance (Commitment) and, at Buyer's expense, legible copies of restrictive covenants and documents evidencing exceptions in the Commitment (Exception Documents) other than the standard printed exceptions. Seller authorizes the Title Company to deliver the Commitment and Exception Documents to Buyer at Buyer's address shown in Paragraph 21. If the Commitment and Exception Documents are not delivered to Buyer within the specified time, the time for delivery will be automatically extended up to 15 days or the Closing Date, whichever is earlier.

C. SURVEY: The survey must be made by a registered professional land surveyor acceptable to the Title Company and Buyer's lender(s). (Check one box only)

- (1) Within _____ days after the effective date of this contract, Seller shall furnish to Buyer and Title Company Seller's existing survey of the Property and a Residential Real Property Affidavit promulgated by the Texas Department of Insurance **(T-47 Affidavit) [(Affidavit)]**. **If Seller fails to furnish the existing survey or Affidavit within the time prescribed, Buyer shall obtain a new survey at Seller's expense no later than 3 days prior to Closing Date.** If the existing survey or Affidavit is not acceptable to Title Company or Buyer's lender(s), Buyer shall obtain a new survey at Seller's Buyer's expense no later than 3 days prior to Closing Date. **[If Seller fails to furnish the existing survey or Affidavit within the time prescribed, Buyer shall obtain a new survey at Seller's expense no later than 3 days prior to Closing Date.]**
- (2) Within _____ days after the effective date of this contract, Buyer shall obtain a new survey at Buyer's expense. Buyer is deemed to receive the survey on the date of actual receipt or the date specified in this paragraph, whichever is earlier.
- (3) Within _____ days after the effective date of this contract, Seller, at Seller's expense shall furnish a new survey to Buyer.

D. OBJECTIONS: Buyer may object in writing to defects, exceptions, or encumbrances to title: disclosed on the survey other than items 6A(1) through (7) above; disclosed in the Commitment other than items 6A(1) through (8) above; or which prohibit the following use or activity: _____

Buyer must object the earlier of (i) the Closing Date or (ii) _____ days after Buyer receives the Commitment, Exception Documents, and the survey. Buyer's failure to object within the time

allowed will constitute a waiver of Buyer's right to object; except that the requirements in Schedule C of the Commitment are not waived. Provided Seller is not obligated to incur any expense, Seller shall cure the timely objections of Buyer or any third party lender within 15 days after Seller receives the objections and the Closing Date will be extended as necessary. If objections are not cured within such 15 day period, this contract will terminate and the earnest money will be refunded to Buyer unless Buyer waives the objections.

E. TITLE NOTICES:

- (1) ABSTRACT OR TITLE POLICY: Broker advises Buyer to have an abstract of title covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a Title Policy. If a Title Policy is furnished, the Commitment should be promptly reviewed by an attorney of Buyer's choice due to the time limitations on Buyer's right to object.
- (2) PROPERTY OWNERS ['] ASSOCIATION(S) MANDATORY MEMBERSHIP: The Property is is not subject to mandatory membership in a property owners association(s). If the Property is subject to mandatory membership in a property owners ['] association(s), Seller notifies Buyer under §5.012, Texas Property Code, that, as a purchaser of property in the residential community identified in Paragraph 2A in which the Property is located, you are obligated to be a member of the property owners ['] association(s). Restrictive covenants governing the use and occupancy of the Property and a dedicatory instrument governing the establishment, maintenance, and operation of this residential community have been or will be recorded in the Real Property Records of the county in which the Property is located. Copies of the restrictive covenants and dedicatory instrument may be obtained from the county clerk. You are obligated to pay assessments to the property owners association(s). The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of the Property. **If Buyer is concerned about these matters, the TREC promulgated Addendum for Property Subject to Mandatory Membership in a Property Owners ['] Association should be used for each association.**
- (3) STATUTORY TAX DISTRICTS: If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this contract.
- (4) TIDE WATERS: If the Property abuts the tidally influenced waters of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included in the contract. An addendum containing the notice promulgated by TREC or required by the parties must be used.
- (5) ANNEXATION: If the Property is located outside the limits of a municipality, Seller notifies Buyer under §5.011, Texas Property Code, that the Property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Property for further information.
- (6) PROPERTY LOCATED IN A CERTIFICATED SERVICE AREA OF A UTILITY SERVICE PROVIDER: Notice required by §13.257, Water Code: The real property, described in Paragraph 2, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned Buyer

hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in Paragraph 2 or at closing of purchase of the real property.

- (7) PUBLIC IMPROVEMENT DISTRICTS: If the Property is in a public improvement district, §5.014, Property Code, requires Seller to notify Buyer as follows: As a purchaser of this parcel of real property you are obligated to pay an assessment to a municipality or county for an improvement project undertaken by a public improvement district under Chapter 372, Local Government Code. The assessment may be due annually or in periodic installments. More information concerning the amount of the assessment and the due dates of that assessment may be obtained from the municipality or county levying the assessment. The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of your property.

7. PROPERTY CONDITION:

- A. ACCESS, INSPECTIONS AND UTILITIES: Seller shall permit Buyer and Buyer's agents access to the Property at reasonable times. Buyer may have the Property inspected by inspectors selected by Buyer and licensed by TREC or otherwise permitted by law to make inspections. Seller at Seller's expense shall turn on existing utilities for inspections.
- B. SELLER'S DISCLOSURE NOTICE PURSUANT TO §5.008, TEXAS PROPERTY CODE (Notice):
(Check one box only)
- (1) Buyer has received the Notice.
- (2) Buyer has not received the Notice. Within _____ days after the effective date of this contract, Seller shall deliver the Notice to Buyer. If Buyer does not receive the Notice, Buyer may terminate this contract at any time prior to the closing and the earnest money will be refunded to Buyer. If Seller delivers the Notice, Buyer may terminate this contract for any reason within 7 days after Buyer receives the Notice or prior to the closing, whichever first occurs, and the earnest money will be refunded to Buyer.
- (3) The Seller is not required to furnish the notice under the Texas Property Code.
- C. SELLER'S DISCLOSURE OF LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS is required by Federal law for a residential dwelling constructed prior to 1978.
- D. ACCEPTANCE OF PROPERTY CONDITION: (Check one box only)
- (1) Buyer accepts the Property in its present condition.
- (2) Buyer accepts the Property in its present condition provided Seller, at Seller's expense, shall complete the following specific repairs and treatments: _____
_____. (Do not insert general phrases, such as "subject to inspections" that do not identify specific repairs.)
- NOTICE TO BUYER AND SELLER: Buyer's agreement to accept the Property in its present condition under Paragraph 7D(1) or (2) does not preclude Buyer from inspecting the Property under Paragraph 7A, from negotiating repairs or treatments in a subsequent amendment, or from terminating this contract during the Option Period, if any.
- E. LENDER REQUIRED REPAIRS AND TREATMENTS: Unless otherwise agreed in writing, neither party is obligated to pay for lender required repairs, which includes treatment for wood destroying insects. If the parties do not agree to pay for the lender required repairs or treatments, this contract will terminate and the earnest money will be refunded to Buyer. If the cost of lender required repairs and treatments exceeds 5% of the Sales Price, Buyer may terminate this contract and the earnest money will be refunded to Buyer.
- F. COMPLETION OF REPAIRS AND TREATMENTS: Unless otherwise agreed in writing, Seller shall complete all agreed repairs and treatments prior to the Closing Date. All required permits must be obtained, and repairs and treatments must be performed by persons who are licensed or otherwise authorized by law to provide such repairs or treatments. At Buyer's election, any transferable warranties received by Seller with respect to the repairs and treatments will be transferred to Buyer at Buyer's expense. If Seller fails to complete any agreed repairs and treatments prior to the Closing Date, Buyer may do so and receive reimbursement from Seller at closing. The Closing Date will be extended up to 15 days, if necessary, to complete repairs and treatments.
- G. ENVIRONMENTAL MATTERS: Buyer is advised that the presence of wetlands, toxic substances, including asbestos and wastes or other environmental hazards, or the presence of a threatened or endangered species or its habitat may affect Buyer's intended use of the Property. If Buyer is concerned about these matters, an addendum promulgated by TREC or required by the parties should be used.

H. RESIDENTIAL SERVICE CONTRACTS: Buyer may purchase a residential service contract from a residential service company licensed by TREC. If Buyer purchases a residential service contract, Seller shall reimburse Buyer at closing for the cost of the residential service contract in an amount not exceeding \$_____. Buyer should review any residential service contract for the scope of coverage, exclusions and limitations. **The purchase of a residential service contract is optional. Similar coverage may be purchased from various companies authorized to do business in Texas.**

8. **BROKERS' FEES:** All obligations of the parties for payment of brokers' fees are contained in separate written agreements.

9. **CLOSING:**

A. The closing of the sale will be on or before _____, 20____, or within 7 days after objections made under Paragraph 6D have been cured or waived, whichever date is later (Closing Date). If either party fails to close the sale by the Closing Date, the non-defaulting party may exercise the remedies contained in Paragraph 15.

B. At closing:

(1) Seller shall execute and deliver a general warranty deed conveying title to the Property to Buyer and showing no additional exceptions to those permitted in Paragraph 6 and furnish tax statements or certificates showing no delinquent taxes on the Property.

(2) Buyer shall pay the Sales Price in good funds acceptable to the escrow agent.

(3) Seller and Buyer shall execute and deliver any notices, statements, certificates, affidavits, releases, loan documents and other documents reasonably required [of them by this contract, the Commitment or law necessary] for the closing of the sale and the issuance of the Title Policy.

(4) There will be no liens, assessments, or security interests against the Property which will not be satisfied out of the sales proceeds unless securing the payment of any loans assumed by Buyer and assumed loans will not be in default.

(5) If the Property is subject to a lease, Seller shall (i) deliver to Buyer the lease(s), and the move-in condition form signed by the tenant, if any, and (ii) transfer security deposits (as defined under §92.102, Property Code), if any, to Buyer. In such an event, Buyer shall deliver to the tenant a signed statement acknowledging that the Buyer has received the security deposit and is responsible for the return of the security deposit, and specifying the exact dollar amount of the security deposit.

10. **POSSESSION:** Seller shall deliver to Buyer possession of the Property in its present or required condition, ordinary wear and tear excepted: upon closing and funding according to a temporary residential lease form promulgated by TREC or other written lease required by the parties. Any possession by Buyer prior to closing or by Seller after closing which is not authorized by a written lease will establish a tenancy at sufferance relationship between the parties. Consult your insurance agent prior to change of ownership and possession because insurance coverage may be limited or terminated. The absence of a written lease or appropriate insurance coverage may expose the parties to economic loss.

11. **SPECIAL PROVISIONS:** (Insert only factual statements and business details applicable to the sale. TREC rules prohibit licensees from adding factual statements or business details for which a contract addendum, lease or other form has been promulgated by TREC for mandatory use.)

12. SETTLEMENT AND OTHER EXPENSES:

A. The following expenses must be paid at or prior to closing:

(1) Expenses payable by Seller (Seller's Expenses):

(a) Releases of existing liens, including prepayment penalties and recording fees; release of Seller's loan liability; tax statements or certificates; preparation of deed; one-half of escrow fee; and other expenses payable by Seller under this contract.

(b) Seller shall also pay an amount not to exceed \$ _____ to be applied in the following order: Buyer's Expenses which Buyer is prohibited from paying by FHA, VA, Texas Veterans Land Board or other governmental loan programs, and then to other Buyer's Expenses as allowed by the lender.

(2) Expenses payable by Buyer (Buyer's Expenses): [(a) Loan origination, discount, buy-down, and commitment fees (Loan Fees). (b)] Appraisal fees; loan application fees; adjusted origination charges; credit reports; preparation of loan documents; interest on the notes from date of disbursement to one month prior to dates of first monthly payments; recording fees; copies of easements and restrictions; loan [mortgagee] title policy with endorsements required by lender; loan-related inspection fees; photos; amortization schedules; one-half of escrow fee; all prepaid items, including required premiums for flood and hazard insurance, reserve deposits for insurance, ad valorem taxes and special governmental assessments; final compliance inspection; courier fee; repair inspection; underwriting fee; wire transfer fee; expenses incident to any loan; Private Mortgage Insurance Premium (PMI), VA Loan Funding Fee, or FHA Mortgage Insurance Premium (MIP) as required by the lender; and other expenses payable by Buyer under this contract.

[Buyer shall pay Private Mortgage Insurance Premium (PMI), VA Loan Funding Fee, or FHA Mortgage Insurance Premium (MIP) as required by the lender.]

B[C]. If any expense exceeds an amount expressly stated in this contract for such expense to be paid by a party, that party may terminate this contract unless the other party agrees to pay such excess. Buyer may not pay charges and fees expressly prohibited by FHA, VA, Texas Veterans Land Board or other governmental loan program regulations.

13. PRORATIONS: Taxes for the current year, interest, maintenance fees, assessments, dues and rents will be prorated through the Closing Date. The tax proration may be calculated taking into consideration any change in exemptions that will affect the current year's taxes. If taxes for the current year vary from the amount prorated at closing, the parties shall adjust the prorations when tax statements for the current year are available. If taxes are not paid at or prior to closing, Buyer shall pay taxes for the current year.

14. CASUALTY LOSS: If any part of the Property is damaged or destroyed by fire or other casualty after the effective date of this contract, Seller shall restore the Property to its previous condition as soon as reasonably possible, but in any event by the Closing Date. If Seller fails to do so due to factors beyond Seller's control, Buyer may (a) terminate this contract and the earnest money will be refunded to Buyer (b) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (c) accept the Property in its damaged condition with an assignment of insurance proceeds and receive credit from Seller at closing in the amount of the deductible under the insurance policy. Seller's obligations under this paragraph are independent of any other obligations of Seller under this contract.

15. DEFAULT: If Buyer fails to comply with this contract, Buyer will be in default, and Seller may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money as liquidated damages, thereby releasing both parties from this contract. If, due to factors beyond Seller's control, Seller fails within the time allowed to make any non-casualty repairs or deliver the Commitment, or survey, if required of Seller, Buyer may (a) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (b) terminate this contract as the sole remedy and receive the earnest money. If Seller fails to comply with this contract for any other reason, Seller will be in default and Buyer may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money, thereby releasing both parties from this contract.

16. MEDIATION: It is the policy of the State of Texas to encourage resolution of disputes through alternative dispute resolution procedures such as mediation. Any dispute between Seller and Buyer related to this contract which is not resolved through informal discussion will will not be submitted to a mutually acceptable mediation service or provider. The parties to the mediation shall bear the mediation costs equally. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

17. ATTORNEY'S FEES: A Buyer, Seller, Listing Broker, Other Broker, or escrow agent who prevails in any legal proceeding related to this contract is entitled to recover reasonable attorney's fees and all costs of such proceeding.

18. ESCROW:

- A. ESCROW: The escrow agent is not (i) a party to this contract and does not have liability for the performance or nonperformance of any party to this contract, (ii) liable for interest on the earnest money and (iii) liable for the loss of any earnest money caused by the failure of any financial institution in which the earnest money has been deposited unless the financial institution is acting as escrow agent.
- B. EXPENSES: At closing, the earnest money must be applied first to any cash down payment, then to Buyer's Expenses and any excess refunded to Buyer. If no closing occurs, escrow agent may: (i) require a written release of liability of the escrow agent from all parties, (ii) require payment of unpaid expenses incurred on behalf of a party, [the parties] and (iii) only deduct from the earnest money the amount of unpaid expenses incurred on behalf of the party receiving the earnest money [a written release of liability of escrow agent from all parties].
- C. DEMAND: Upon termination of this contract, either party or the escrow agent may send a release of earnest money to each party and the parties shall execute counterparts of the release and deliver same to the escrow agent. If either party fails to execute the release, either party may make a written demand to the escrow agent for the earnest money. If only one party makes written demand for the earnest money, escrow agent shall promptly provide a copy of the demand to the other party. If escrow agent does not receive written objection to the demand from the other party within 15 days, escrow agent may disburse the earnest money to the party making demand reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and escrow agent may pay the same to the creditors. If escrow agent complies with the provisions of this paragraph, each party hereby releases escrow agent from all adverse claims related to the disbursal of the earnest money.
- D. DAMAGES: Any party who wrongfully fails or refuses to sign a release acceptable to the escrow agent within 7 days of receipt of the request will be liable to the other party for liquidated damages in an amount equal to the sum of: (i) three times the amount of the earnest money; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.
- E. NOTICES: Escrow agent's notices will be effective when sent in compliance with Paragraph 21. Notice of objection to the demand will be deemed effective upon receipt by escrow agent.

19. REPRESENTATIONS: All covenants, representations and warranties in this contract survive closing. If any representation of Seller in this contract is untrue on the Closing Date, Seller will be in default. Unless expressly prohibited by written agreement, Seller may continue to show the Property and receive, negotiate and accept back up offers.

20. FEDERAL TAX REQUIREMENTS: If Seller is a "foreign person," as defined by applicable law, or if Seller fails to deliver an affidavit to Buyer that Seller is not a "foreign person," then Buyer shall withhold from the sales proceeds an amount sufficient to comply with applicable tax law and deliver the same to the Internal Revenue Service together with appropriate tax forms. Internal Revenue Service regulations require filing written reports if currency in excess of specified amounts is received in the transaction.

21. NOTICES: All notices from one party to the other must be in writing and are effective when mailed to, hand-delivered at, or transmitted by facsimile or electronic transmission as follows:

To Buyer at: _____ To Seller at: _____

Telephone: () _____ Telephone: () _____

Facsimile: () _____ Facsimile: () _____

E-mail: _____ E-mail: _____

22. AGREEMENT OF PARTIES: This contract contains the entire agreement of the parties and cannot be changed except by their written agreement. Addenda which are a part of this contract are (Check all applicable boxes):

- | | |
|--|--|
| <input type="checkbox"/> Third Party Financing [Condition] Addendum for Credit Approval | <input type="checkbox"/> Addendum for "Back-Up" Contract |
| <input type="checkbox"/> Seller Financing Addendum | <input type="checkbox"/> Addendum for Coastal Area Property |
| <input type="checkbox"/> Addendum for Property Subject to Mandatory Membership in a Property Owners['] Association | <input type="checkbox"/> Environmental Assessment, Threatened or Endangered Species and Wetlands Addendum |
| <input type="checkbox"/> Buyer's Temporary Residential Lease | <input type="checkbox"/> Seller's Temporary Residential Lease |
| <input type="checkbox"/> Loan Assumption Addendum | <input type="checkbox"/> Short Sale Addendum |
| <input type="checkbox"/> Addendum for Sale of Other Property by Buyer | <input type="checkbox"/> Addendum for Property Located Seaward of the Gulf Intracoastal Waterway |
| <input type="checkbox"/> Addendum for Reservation of Oil, Gas and Other Minerals [Addendum Containing Required Notices Under §5.016, §420.001 and §420.002, Texas Property Code] | <input type="checkbox"/> Addendum for Seller's Disclosure of Information on Lead-based Paint and Lead-based Paint Hazards as Required by Federal Law |
| <input type="checkbox"/> Other (list): _____ | |

23. TERMINATION OPTION: For nominal consideration, the receipt of which is hereby acknowledged by Seller, and Buyer's agreement to pay Seller \$_____ (Option Fee) within 2 days after the effective date of this contract, Seller grants Buyer the unrestricted right to terminate this contract by giving notice of termination to Seller within _____ days after the effective date of this contract ([Option Period](#)). If no dollar amount is stated as the Option Fee or if Buyer fails to pay the Option Fee to Seller within the time prescribed, this paragraph will not be a part of this contract and Buyer shall not have the unrestricted right to terminate this contract. If Buyer gives notice of termination within the time prescribed, the Option Fee will not be refunded; however, any earnest money will be refunded to Buyer. The Option Fee will will not be credited to the Sales Price at closing. **Time is of the essence for this paragraph and strict compliance with the time for performance is required.**

24. CONSULT AN ATTORNEY: [TREC rules prohibit real estate licensees from giving legal advice.](#) [Real estate licensees cannot give legal advice.] READ THIS CONTRACT CAREFULLY. If you do not understand the effect of this contract, consult an attorney BEFORE signing.

Buyer's Attorney is: _____	Seller's Attorney is: _____
Telephone: () _____	Telephone: () _____
Facsimile: () _____	Facsimile: () _____
E-mail: _____	E-mail: _____

**EXECUTED the _____ day of _____, 20____ (EFFECTIVE DATE).
 (BROKER: FILL IN THE DATE OF FINAL ACCEPTANCE.)**

_____ Buyer	_____ Seller
_____ Buyer	_____ Seller

The form of this contract has been approved by the Texas Real Estate Commission. TREC forms are intended for use only by trained real estate licensees. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, (512) 459-6544 (<http://www.trec.state.tx.us>) TREC NO. 20-9[8]. This form replaces TREC NO. 20-10[9].

BROKER INFORMATION [AND RATIFICATION OF FEE]

[Listing Broker has agreed to pay Other Broker _____ of the total sales price when Listing Broker's fee is received. Escrow Agent is authorized and directed to pay Other Broker from Listing Broker's fee at closing.]

Other Broker Firm License No. _____
 represents Buyer only as Buyer's agent
 Seller as Listing Broker's subagent

Listing Broker Firm License No. _____
 represents Seller and Buyer as an intermediary
 Seller only as Seller's agent

Licensed Supervisor of Associate Telephone _____

Licensed Supervisor of Associate Telephone _____

Associate Telephone _____

Listing Associate Telephone _____

Other Broker's Address Facsimile _____

Listing Broker's [Associate's] Office Address Facsimile _____

City State Zip _____

City State Zip _____

Associate Email Address [Facsimile]

Listing Associate's Email Address _____

[Email Address]

Selling Associate Telephone _____

Selling Associate's Office Address Facsimile _____

City State Zip _____

Selling Associate's Email Address _____

Listing Broker has agreed to pay Other Broker _____ of the total sales price when the Listing Broker's fee is received. Escrow agent is authorized and directed to pay other Broker from Listing Broker's fee at closing.

OPTION FEE RECEIPT

Receipt of \$ _____ (Option Fee) in the form of _____ is acknowledged.

 Seller or Listing Broker Date

CONTRACT AND EARNEST MONEY RECEIPT

Receipt of Contract and \$ _____ Earnest Money in the form of _____ is acknowledged.

Escrow Agent: _____ Date: _____

By: _____ Email Address _____

Address Telephone (_____) _____

City State Zip Facsimile: (_____) _____



UNIMPROVED PROPERTY CONTRACT

NOTICE: Not For Use For Condominium Transactions

1. PARTIES: The parties to this contract are _____ (Seller) and _____ (Buyer). Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller the Property defined below.

2. PROPERTY: Lot _____, Block _____, _____ Addition, City of _____, County of _____, Texas, known as _____ (address/zip code), or as described on attached exhibit together with all rights, privileges and appurtenances pertaining thereto, including but not limited to: water rights, claims, permits, strips and gores, easements, and cooperative or association memberships (the Property).

3. SALES PRICE:

- A. Cash portion of Sales Price payable by Buyer at closing \$ _____
B. Sum of all financing described below (excluding any loan funding fee or mortgage insurance premium) \$ _____
C. Sales Price (Sum of A and B) \$ _____

4. FINANCING: The portion of Sales Price not payable in cash will be paid as follows: (Check applicable boxes below)

- [] A. THIRD PARTY FINANCING: One or more third party mortgage loans in the total amount of \$ _____ (excluding any loan funding fee or mortgage insurance premium).
(1) Property Approval: If the Property does not satisfy the lenders' underwriting requirements for the loan(s) (including, but not limited to appraisal, insurability and lender required repairs), Buyer may terminate this contract by giving notice to Seller prior to closing and the earnest money will be refunded to Buyer.
(2) Credit Approval: (Check one box only)
[] (a) This contract is subject to Buyer being approved for the financing described in the attached Third Party Financing Addendum for Credit Approval.
[] (b) This contract is not subject to Buyer being approved for financing and does not involve FHA or VA financing.
[] B. ASSUMPTION: The assumption of the unpaid principal balance of one or more promissory notes described in the attached TREC Loan Assumption Addendum.
[] C. SELLER FINANCING: A promissory note from Buyer to Seller of \$ _____, secured by vendor's and deed of trust liens, and containing the terms and conditions described in the attached TREC Seller Financing Addendum. If an owner policy of title insurance is furnished, Buyer shall furnish Seller with a mortgagee policy of title insurance.

5. EARNEST MONEY: Upon execution of contract by all parties, Buyer shall deposit \$ _____ as earnest money with _____, as escrow agent, at _____ (address). Buyer shall deposit additional earnest money of \$ _____ with escrow agent within ____ days after the effective date of this contract. If Buyer fails to deposit the earnest money as required by this contract, Buyer will be in default.

6. TITLE POLICY AND SURVEY:

- A. TITLE POLICY: Seller shall furnish to Buyer at [] Seller's [] Buyer's expense an owner policy of title insurance (Title Policy) issued by _____ (Title Company) in the amount of the Sales Price, dated at or after closing, insuring Buyer against loss under the provisions of the Title Policy, subject to the promulgated exclusions (including existing building and zoning ordinances) and the following exceptions:
(1) Restrictive covenants common to the platted subdivision in which the Property is located.
(2) The standard printed exception for standby fees, taxes and assessments.
(3) Liens created as part of the financing described in Paragraph 4.
(4) Utility easements created by the dedication deed or plat of the subdivision in which the Property is located.
(5) Reservations or exceptions otherwise permitted by this contract or as may be approved by Buyer in writing.
(6) The standard printed exception as to marital rights.
(7) The standard printed exception as to waters, tidelands, beaches, streams, and related matters.
(8) The standard printed exception as to discrepancies, conflicts, shortages in area or boundary lines, encroachments or protrusions, or overlapping improvements. Buyer, at Buyer's expense, may have the exception amended to read, "shortages in area".

B. COMMITMENT: Within 20 days after the Title Company receives a copy of this contract, Seller shall furnish to Buyer a commitment for title insurance (Commitment) and, at Buyer's expense, legible copies of restrictive covenants and documents evidencing exceptions in the Commitment (Exception Documents) other than the standard printed exceptions. Seller authorizes the Title Company to deliver the Commitment and Exception Documents to Buyer at Buyer's address shown in Paragraph 21. If the Commitment and Exception Documents are not delivered to Buyer within the specified time, the time for delivery will be automatically extended up to 15 days or the Closing Date, whichever is earlier.

C. SURVEY: The survey must be made by a registered professional land surveyor acceptable to the Title Company and Buyer's lender(s). (Check one box only)

(1) Within _____ days after the effective date of this contract, Seller shall furnish to Buyer and Title Company Seller's existing survey of the Property and a Residential Real Property Affidavit promulgated by the Texas Department of Insurance (T-47 Affidavit). **If Seller fails to furnish the existing survey or affidavit within the time prescribed, Buyer shall obtain a new survey at Seller's expense no later than 3 days prior to Closing Date.** If the existing survey or affidavit is not acceptable to Title Company or Buyer's lender(s), Buyer shall obtain a new survey at Seller's Buyer's expense no later than 3 days prior to Closing Date.

(2) Within _____ days after the effective date of this contract, Buyer shall obtain a new survey at Buyer's expense. Buyer is deemed to receive the survey on the date of actual receipt or the date specified in this paragraph, whichever is earlier.

(3) Within _____ days after the effective date of this contract, Seller, at Seller's expense shall furnish a new survey to Buyer.

D. OBJECTIONS: Buyer may object in writing to (i) defects, exceptions, or encumbrances to title: disclosed on the survey other than items 6A(1) through (7) above; or disclosed in the Commitment other than items 6A(1) through (8) above; (ii) any portion of the Property lying in a special flood hazard area (Zone V or A) as shown on the current Federal Emergency Management Agency map; or (iii) any exceptions which prohibit the following use or activity:

Buyer must object the earlier of (i) the Closing Date or (ii) _____ days after Buyer receives the Commitment, Exception Documents, and the survey. Buyer's failure to object within the time allowed will constitute a waiver of Buyer's right to object; except that the requirements in Schedule C of the Commitment are not waived. Provided Seller is not obligated to incur any expense, Seller shall cure the timely objections of Buyer or any third party lender within 15 days after Seller receives the objections and the Closing Date will be extended as necessary. If objections are not cured within such 15 day period, this contract will terminate and the earnest money will be refunded to Buyer unless Buyer waives the objections.

E. TITLE NOTICES:

(1) ABSTRACT OR TITLE POLICY: Broker advises Buyer to have an abstract of title covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a Title Policy. If a Title Policy is furnished, the Commitment should be promptly reviewed by an attorney of Buyer's choice due to the time limitations on Buyer's right to object.

(2) PROPERTY OWNERS ASSOCIATION(S) MANDATORY MEMBERSHIP: The Property is is not subject to mandatory membership in a property owners association(s). If the Property is subject to mandatory membership in a property owners association(s), Seller notifies Buyer under §5.012, Texas Property Code, that, as a purchaser of property in the residential community identified in Paragraph 2 in which the Property is located, you are obligated to be a member of the property owners association(s). Restrictive covenants governing the use and occupancy of the Property and a dedicatory instrument governing the establishment, maintenance, and operation of this residential community have been or will be recorded in the Real Property Records of the county in which the Property is located. Copies of the restrictive covenants and dedicatory instrument may be obtained from the county clerk. You are obligated to pay assessments to the property owners association(s). The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of the Property. **If Buyer is concerned about these matters, the TREC promulgated Addendum for Property Subject to Mandatory Membership in a Property Owners Association should be used for each association.**

(3) STATUTORY TAX DISTRICTS: If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this contract.

(4) TIDE WATERS: If the Property abuts the tidally influenced waters of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included in the contract. An addendum containing the notice promulgated by TREC or required by the parties must be used.

(Address of Property)

- (5) ANNEXATION: If the Property is located outside the limits of a municipality, Seller notifies Buyer under §5.011, Texas Property Code, that the Property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Property for further information.
- (6) PROPERTY LOCATED IN A CERTIFICATED SERVICE AREA OF A UTILITY SERVICE PROVIDER: Notice required by §13.257, Water Code: The real property, described in Paragraph 2, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned Buyer hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in Paragraph 2 or at closing of purchase of the real property.
- (7) PUBLIC IMPROVEMENT DISTRICTS: If the Property is in a public improvement district, §5.014, Property Code, requires Seller to notify Buyer as follows: As a purchaser of this parcel of real property you are obligated to pay an assessment to a municipality or county for an improvement project undertaken by a public improvement district under Chapter 372, Local Government Code. The assessment may be due annually or in periodic installments. More information concerning the amount of the assessment and the due dates of that assessment may be obtained from the municipality or county levying the assessment. The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of your property.
- (8) TEXAS AGRICULTURAL DEVELOPMENT DISTRICT: The Property is is not located in a Texas Agricultural Development District. For additional information, contact the Texas Department of Agriculture.

7. PROPERTY CONDITION:

- A. ACCESS, INSPECTIONS AND UTILITIES: Seller shall permit Buyer and Buyer's agents access to the Property at reasonable times. Buyer may have the Property inspected by inspectors selected by Buyer and licensed by TREC or otherwise permitted by law to make inspections. Seller at Seller's expense shall turn on existing utilities for inspections.

NOTICE: Buyer should determine the availability of utilities to the Property suitable to satisfy Buyer's needs.

- B. ACCEPTANCE OF PROPERTY CONDITION: (Check one box only)

- (1) Buyer accepts the Property in its present condition.
- (2) Buyer accepts the Property in its present condition provided Seller, at Seller's expense, shall complete the following specific repairs and treatments: _____

_____. (Do not insert general phrases, such as "subject to inspections," that do not identify specific repairs.)

NOTICE TO BUYER AND SELLER: Buyer's agreement to accept the Property in its present condition under Paragraph 7B (1) or (2) does not preclude Buyer from inspecting the Property under Paragraph 7A, from negotiating repairs or treatments in a subsequent amendment, or from terminating this contract during the Option Period, if any.

- C. COMPLETION OF REPAIRS: Unless otherwise agreed in writing, Seller shall complete all agreed repairs prior to the Closing Date. All required permits must be obtained, and repairs must be performed by persons who are licensed or otherwise permitted by law to provide such repairs. At Buyer's election, any transferable warranties received by Seller with respect to the repairs will be transferred to Buyer at Buyer's expense. If Seller fails to complete any agreed repairs prior to the Closing Date, Buyer may do so and receive reimbursement from Seller at closing. The Closing Date will be extended up to 15 days, if necessary, to complete repairs.
- D. ENVIRONMENTAL MATTERS: Buyer is advised that the presence of wetlands, toxic substances, including asbestos and wastes or other environmental hazards, or the presence of a threatened or endangered species or its habitat may affect Buyer's intended use of the Property. If Buyer is concerned about these matters, an addendum promulgated by TREC or required by the parties should be used.
- E. SELLER'S DISCLOSURES: Except as otherwise disclosed in this contract, Seller has no knowledge of the following:
- (1) any flooding of the Property;
 - (2) any pending or threatened litigation, condemnation, or special assessment affecting the Property;
 - (3) any environmental hazards or conditions affecting the Property;
 - (4) any dumpsite, landfill, or underground tanks or containers now or previously located on the Property;

- (5) any wetlands, as defined by federal or state law or regulation, affecting the Property; or
- (6) any threatened or endangered species or their habitat affecting the Property.

8. BROKERS' FEES: All obligations of the parties for payment of brokers' fees are contained in separate written agreements.

9. CLOSING:

- A. The closing of the sale will be on or before _____, 20____, or within 7 days after objections made under Paragraph 6D have been cured or waived, whichever date is later (Closing Date). If either party fails to close the sale by the Closing Date, the non-defaulting party may exercise the remedies contained in Paragraph 15.
- B. At closing:
 - (1) Seller shall execute and deliver a general warranty deed conveying title to the Property to Buyer and showing no additional exceptions to those permitted in Paragraph 6 and furnish tax statements or certificates showing no delinquent taxes on the Property.
 - (2) Buyer shall pay the Sales Price in good funds acceptable to the escrow agent.
 - (3) Seller and Buyer shall execute and deliver any notices, statements, certificates, affidavits, releases, loan documents and other documents reasonably required for the closing of the sale and the issuance of the Title Policy.
 - (4) There will be no liens, assessments, or security interests against the Property which will not be satisfied out of the sales proceeds unless securing the payment of any loans assumed by Buyer and assumed loans will not be in default.
 - (5) If the Property is subject to a lease, Seller shall (i) deliver to Buyer the lease(s) and the move-in condition form signed by the tenant, if any, and (ii) transfer security deposits (as defined under §92.102, Property Code), if any, to Buyer. In such an event, Buyer shall deliver to the tenant a signed statement acknowledging that the Buyer has received the security deposit and is responsible for the return of the security deposit, and specifying the exact dollar amount of the security deposit.

10. POSSESSION: Seller shall deliver to Buyer possession of the Property in its present or required condition upon closing and funding.

11. SPECIAL PROVISIONS: (Insert only factual statements and business details applicable to the sale. TREC rules prohibit licensees from adding factual statements or business details for which a contract addendum or other form has been promulgated by TREC for mandatory use.)

12. SETTLEMENT AND OTHER EXPENSES:

- A. The following expenses must be paid at or prior to closing:
 - (1) Expenses payable by Seller (Seller's Expenses):
 - (a) Releases of existing liens, including prepayment penalties and recording fees; release of Seller's loan liability; tax statements or certificates; preparation of deed; one-half of escrow fee; and other expenses payable by Seller under this contract.
 - (b) Seller shall also pay an amount not to exceed \$ _____ to be applied in the following order: Buyer's Expenses which Buyer is prohibited from paying by FHA, VA, Texas Veterans Land Board or other governmental loan programs, and then to other Buyer's Expenses as allowed by the lender.
 - (2) Expenses payable by Buyer (Buyer's Expenses): Appraisal fees; loan application fees; adjusted origination charges; credit reports; preparation of loan documents; interest on the notes from date of disbursement to one month prior to dates of first monthly payments; recording fees; copies of easements and restrictions; loan title policy with

endorsements required by lender; loan-related inspection fees; photos; amortization schedules; one-half of escrow fee; all prepaid items, including required premiums for flood and hazard insurance, reserve deposits for insurance, ad valorem taxes and special governmental assessments; final compliance inspection; courier fee; repair inspection; underwriting fee; wire transfer fee; expenses incident to any loan; Private Mortgage Insurance Premium (PMI), VA Loan Funding Fee, or FHA Mortgage Insurance Premium (MIP) as required by the lender; and other expenses payable by Buyer under this contract.

- B. If any expense exceeds an amount expressly stated in this contract for such expense to be paid by a party, that party may terminate this contract unless the other party agrees to pay such excess. Buyer may not pay charges and fees expressly prohibited by FHA, VA, Texas Veterans Land Board or other governmental loan program regulations.

13. PRORATIONS AND ROLLBACK TAXES:

- A. PRORATIONS: Taxes for the current year, interest, maintenance fees, assessments, dues and rents will be prorated through the Closing Date. The tax proration may be calculated taking into consideration any change in exemptions that will affect the current year's taxes. If taxes for the current year vary from the amount prorated at closing, the parties shall adjust the prorations when tax statements for the current year are available. If taxes are not paid at or prior to closing, Buyer shall pay taxes for the current year.
- B. ROLLBACK TAXES: If this sale or Buyer's use of the Property after closing results in the assessment of additional taxes, penalties or interest (Assessments) for periods prior to closing, the Assessments will be the obligation of Buyer. If Seller's change in use of the Property prior to closing or denial of a special use valuation on the Property claimed by Seller results in Assessments for periods prior to closing, the Assessments will be the obligation of Seller. Obligations imposed by this paragraph will survive closing.

- 14. CASUALTY LOSS:** If any part of the Property is damaged or destroyed by fire or other casualty after the effective date of this contract, Seller shall restore the Property to its previous condition as soon as reasonably possible, but in any event by the Closing Date. If Seller fails to do so due to factors beyond Seller's control, Buyer may (a) terminate this contract and the earnest money will be refunded to Buyer (b) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (c) accept the Property in its damaged condition with an assignment of insurance proceeds and receive credit from Seller at closing in the amount of the deductible under the insurance policy. Seller's obligations under this paragraph are independent of any other obligations of Seller under this contract.

- 15. DEFAULT:** If Buyer fails to comply with this contract, Buyer will be in default, and Seller may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money as liquidated damages, thereby releasing both parties from this contract. If, due to factors beyond Seller's control, Seller fails within the time allowed to make any non-casualty repairs or deliver the Commitment, or survey, if required of Seller, Buyer may (a) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (b) terminate this contract as the sole remedy and receive the earnest money. If Seller fails to comply with this contract for any other reason, Seller will be in default and Buyer may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money, thereby releasing both parties from this contract.

- 16. MEDIATION:** It is the policy of the State of Texas to encourage resolution of disputes through alternative dispute resolution procedures such as mediation. Any dispute between Seller and Buyer related to this contract which is not resolved through informal discussion will will not be submitted to a mutually acceptable mediation service or provider. The parties to the mediation shall bear the mediation costs equally. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

- 17. ATTORNEY'S FEES:** A Buyer, Seller, Listing Broker, Other Broker, or escrow agent who prevails in any legal proceeding related to this contract is entitled to recover reasonable attorney's fees and all costs of such proceeding.

18. ESCROW:

- A. ESCROW: The escrow agent is not (i) a party to this contract and does not have liability for the performance or nonperformance of any party to this contract, (ii) liable for interest on the earnest money and (iii) liable for the loss of any earnest money caused by the failure of any financial institution in which the earnest money has been deposited unless the financial institution is acting as escrow agent.
- B. EXPENSES: At closing, the earnest money must be applied first to any cash down payment, then to Buyer's Expenses and any excess refunded to Buyer. If no closing occurs, escrow agent may: (i) require a written release of liability of the escrow agent from all parties, (ii) require payment of unpaid expenses incurred on behalf of a party, and (iii) only deduct from

the earnest money the amount of unpaid expenses incurred on behalf of the party receiving the earnest money.

- C. DEMAND: Upon termination of this contract, either party or the escrow agent may send a release of earnest money to each party and the parties shall execute counterparts of the release and deliver same to the escrow agent. If either party fails to execute the release, either party may make a written demand to the escrow agent for the earnest money. If only one party makes written demand for the earnest money, escrow agent shall promptly provide a copy of the demand to the other party. If escrow agent does not receive written objection to the demand from the other party within 15 days, escrow agent may disburse the earnest money to the party making demand reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and escrow agent may pay the same to the creditors. If escrow agent complies with the provisions of this paragraph, each party hereby releases escrow agent from all adverse claims related to the disbursement of the earnest money.
- D. DAMAGES: Any party who wrongfully fails or refuses to sign a release acceptable to the escrow agent within 7 days of receipt of the request will be liable to the other party for liquidated damages in an amount equal to the sum of: (i) three times the amount of the earnest money; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.
- E. NOTICES: Escrow agent's notices will be effective when sent in compliance with Paragraph 21. Notice of objection to the demand will be deemed effective upon receipt by escrow agent.

19. REPRESENTATIONS: All covenants, representations and warranties in this contract survive closing. If any representation of Seller in this contract is untrue on the Closing Date, Seller will be in default. Unless expressly prohibited by written agreement, Seller may continue to show the Property and receive, negotiate and accept back up offers.

20. FEDERAL TAX REQUIREMENTS: If Seller is a "foreign person," as defined by applicable law, or if Seller fails to deliver an affidavit to Buyer that Seller is not a "foreign person," then Buyer shall withhold from the sales proceeds an amount sufficient to comply with applicable tax law and deliver the same to the Internal Revenue Service together with appropriate tax forms. Internal Revenue Service regulations require filing written reports if currency in excess of specified amounts is received in the transaction.

21. NOTICES: All notices from one party to the other must be in writing and are effective when mailed to, hand-delivered at, or transmitted by facsimile or electronic transmission as follows:

To Buyer at:

To Seller at:

Telephone: () _____

Telephone: () _____

Facsimile: () _____

Facsimile: () _____

E-mail: _____

E-mail: _____

22. AGREEMENT OF PARTIES: This contract contains the entire agreement of the parties and cannot be changed except by their written agreement. Addenda which are a part of this contract are (check all applicable boxes):

- | | |
|---|---|
| <input type="checkbox"/> Third Party Financing Addendum for Credit Approval | <input type="checkbox"/> Addendum for "Back-Up" Contract |
| <input type="checkbox"/> Seller Financing Addendum | <input type="checkbox"/> Addendum for Coastal Area Property |
| <input type="checkbox"/> Addendum for Property Subject to Mandatory Membership in a Property Owners Association | <input type="checkbox"/> Environmental Assessment, Threatened or Endangered Species and Wetlands Addendum |
| <input type="checkbox"/> Buyer's Temporary Residential Lease | <input type="checkbox"/> Addendum for Property Located Seaward of the Gulf Intracoastal Waterway |
| <input type="checkbox"/> Seller's Temporary Residential Lease | <input type="checkbox"/> Addendum for Sale of Other Property by Buyer |
| <input type="checkbox"/> Addendum for Reservation of Oil, Gas and Other Minerals | <input type="checkbox"/> Other (list): _____ |

23. TERMINATION OPTION: For nominal consideration, the receipt of which is hereby acknowledged by Seller, and Buyer's agreement to pay Seller \$_____ (Option Fee) within 2 days after the effective date of this contract, Seller grants Buyer the unrestricted right to terminate this contract by giving notice of termination to Seller within _____ days after the effective date of this contract (Option Period). If no dollar amount is stated as the Option Fee or if Buyer fails to pay the Option Fee to Seller within the time prescribed, this paragraph will not be a part of this contract and Buyer shall not have the unrestricted right to terminate this contract. If Buyer gives notice of termination within the time prescribed, the Option Fee will not be refunded; however, any earnest money will be refunded to Buyer. The Option Fee will will not be credited to the Sales Price at closing. **Time is of the essence for this paragraph and strict compliance with the time for performance is required.**

24. CONSULT AN ATTORNEY: TREC rules prohibit real estate licensees from giving legal advice. READ THIS CONTRACT CAREFULLY. If you do not understand the effect of this contract, consult an attorney BEFORE signing.

Buyer's Attorney is: _____

Seller's Attorney is: _____

Telephone: () _____

Telephone: () _____

Facsimile: () _____

Facsimile: () _____

E-mail: _____

E-mail: _____

**EXECUTED the _____ day of _____, 20____ (EFFECTIVE DATE).
(BROKER: FILL IN THE DATE OF FINAL ACCEPTANCE.)**

Buyer

Seller

Buyer

Seller

The form of this contract has been approved by the Texas Real Estate Commission. TREC forms are intended for use only by trained real estate licensees. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, (512) 459-6544 (<http://www.trec.state.tx.us>) TREC NO. 9-9. This form replaces TREC NO. 9-7.

BROKER INFORMATION

Other Broker Firm _____ License No. _____

represents Buyer only as Buyer's agent
 Seller as Listing Broker's subagent

Licensed Supervisor of Associate _____ Telephone _____

Associate _____ Telephone _____

Other Broker's Address _____ Facsimile _____

City _____ State _____ Zip _____

Associate Email Address _____

Listing Broker Firm _____ License No. _____

represents Seller and Buyer as an intermediary
 Seller only as Seller's agent

Licensed Supervisor of Listing Associate _____ Telephone _____

Listing Associate _____ Telephone _____

Listing Broker's Office Address _____ Facsimile _____

City _____ State _____ Zip _____

Listing Associate's Email Address _____

Selling Associate _____ Telephone _____

Selling Associate's Office Address _____ Facsimile _____

City _____ State _____ Zip _____

Selling Associate's Email Address _____

Listing Broker has agreed to pay Other Broker _____ of the total sales price when the Listing Broker's fee is received. Escrow agent is authorized and directed to pay other Broker from Listing Broker's fee at closing.

OPTION FEE RECEIPT

Receipt of \$ _____ (Option Fee) in the form of _____ is acknowledged.

Seller or Listing Broker _____ Date _____

CONTRACT AND EARNEST MONEY RECEIPT

Receipt of Contract and \$ _____ Earnest Money in the form of _____ is acknowledged.

Escrow Agent: _____ Date: _____

By: _____ Email Address _____

Address _____ Telephone (_____) _____

City _____ State _____ Zip _____ Facsimile: (_____) _____



NEW HOME CONTRACT

(Incomplete Construction)

NOTICE: Not For Use For Condominium Transactions or Closings Prior to Completion of Construction

1. PARTIES: The parties to this contract are _____(Seller) and _____(Buyer). Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller the Property defined below.

2. PROPERTY: Lot _____, Block _____, Addition, City of _____, County of _____ Texas, known as _____ (address/zip code), or as described on attached exhibit, together with: (i) improvements, fixtures and all other property described in the Construction Documents; and (ii) all rights, privileges and appurtenances thereto, including but not limited to: permits, easements, and cooperative and association memberships. All property sold by this contract is called the "Property".

3. SALES PRICE:

- A. Cash portion of Sales Price payable by Buyer at closing \$ _____
- B. Sum of all financing described below (excluding any loan funding fee or mortgage insurance premium) \$ _____
- C. Sales Price (Sum of A and B)..... \$ _____

4. FINANCING: The portion of Sales Price not payable in cash will be paid as follows: (Check applicable boxes below)

- A. THIRD PARTY FINANCING: One or more third party mortgage loans in the total amount of \$ _____ (excluding any loan funding fee or mortgage insurance premium).
 - (1) Property Approval: If the Property does not satisfy the lenders' underwriting requirements for the loan(s), (including, but not limited to appraisal, insurability and lender required repairs), Buyer may terminate this contract by giving notice to Seller prior to closing and the earnest money will be refunded to Buyer.
 - (2) Credit Approval: (Check one box only)
 - (a) This contract is subject to Buyer being approved for the financing described in the attached Third Party Financing Addendum for Credit Approval.
 - (b) This contract is not subject to Buyer being approved for financing and does not involve FHA or VA financing.
- B. ASSUMPTION: The assumption of the unpaid principal balance of one or more promissory notes described in the attached TREC Loan Assumption Addendum.
- C. SELLER FINANCING: A promissory note from Buyer to Seller of \$ _____, secured by vendor's and deed of trust liens, and containing the terms and conditions described in the attached TREC Seller Financing Addendum. If an owner policy of title insurance is furnished, Buyer shall furnish Seller with a mortgagee policy of title insurance.

5. EARNEST MONEY: Upon execution of this contract by all parties, Buyer shall deposit \$ _____ as earnest money with _____, as escrow agent, at _____ (address). Buyer shall deposit additional earnest money of \$ _____ with escrow agent within _____ days after the effective date of this contract. If Buyer fails to deposit the earnest money as required by this contract, Buyer will be in default.

6. TITLE POLICY AND SURVEY:

- A. TITLE POLICY: Seller shall furnish to Buyer at Seller's Buyer's expense an owner policy of title insurance (Title Policy) issued by _____ (Title Company) in the amount of the Sales Price, dated at or after closing, insuring Buyer against loss under the provisions of the Title Policy, subject to the promulgated exclusions (including existing building and zoning ordinances) and the following exceptions:
 - (1) Restrictive covenants common to the platted subdivision in which the Property is located.
 - (2) The standard printed exception for standby fees, taxes and assessments.
 - (3) Liens created as part of the financing described in Paragraph 4.
 - (4) Utility easements created by the dedication deed or plat of the subdivision in which the Property is located.
 - (5) Reservations or exceptions otherwise permitted by this contract or as may be approved by Buyer in writing.
 - (6) The standard printed exception as to marital rights.
 - (7) The standard printed exception as to waters, tidelands, beaches, streams, and related matters.
 - (8) The standard printed exception as to discrepancies, conflicts, shortages in area or boundary lines,

encroachments or protrusions, or overlapping improvements. Buyer, at Buyer's expense, may have the exception amended to read, "shortages in area".

B. COMMITMENT: Within 20 days after the Title Company receives a copy of this contract, Seller shall furnish to Buyer a commitment for title insurance (Commitment) and, at Buyer's expense, legible copies of restrictive covenants and documents evidencing exceptions in the Commitment (Exception Documents) other than the standard printed exceptions. Seller authorizes the Title Company to deliver the Commitment and Exception Documents to Buyer at Buyer's address shown in Paragraph 21. If the Commitment and Exception Documents are not delivered to Buyer within the specified time, the time for delivery will be automatically extended up to 15 days or the Closing Date, whichever is earlier.

C. SURVEY: The survey must be made after the Substantial Completion Date by a registered professional land surveyor acceptable to the Title Company and Buyer's lender(s).

(Check one box only)

(1) At least _____ days prior to the Closing Date, Seller, at Seller's expense, shall provide a new survey to Buyer.

(2) At least _____ days prior to the Closing Date, Buyer, at Buyer's expense, shall obtain a new survey. Buyer is deemed to receive the survey on the date of actual receipt or the date specified in this paragraph, whichever is earlier.

D. OBJECTIONS: Buyer may object in writing to defects, exceptions, or encumbrances to title: disclosed on the survey other than items 6A(1) through (7) above; disclosed in the Commitment other than items 6A(1) through (8) above; or which prohibit the following use or activity: _____

Buyer must object the earlier of (i) the Closing Date or (ii) _____ days after Buyer receives the Commitment, Exception Documents, and the survey. Buyer's failure to object within the time allowed will constitute a waiver of Buyer's right to object; except that the requirements in Schedule C of the Commitment are not waived. Provided Seller is not obligated to incur any expense, Seller shall cure the timely objections of Buyer or any third party lender within 15 days after Seller receives the objections and the Closing Date will be extended as necessary. If objections are not cured within such 15 day period, this contract will terminate and the earnest money will be refunded to Buyer unless Buyer waives the objections.

E. TITLE NOTICES:

(1) ABSTRACT OR TITLE POLICY: Broker advises Buyer to have an abstract of title covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a Title Policy. If a Title Policy is furnished, the Commitment should be promptly reviewed by an attorney of Buyer's choice due to the time limitations on Buyer's right to object.

(2) PROPERTY OWNERS ASSOCIATION(S) MANDATORY MEMBERSHIP: The Property is is not subject to mandatory membership in a property owners association(s). If the Property is subject to mandatory membership in a property owners association(s), Seller notifies Buyer under §5.012, Texas Property Code, that, as a purchaser of property in the residential community identified in Paragraph 2A in which the Property is located, you are obligated to be a member of the property owners association(s). Restrictive covenants governing the use and occupancy of the Property and a dedicatory instrument governing the establishment, maintenance, and operation of this residential community have been or will be recorded in the Real Property Records of the county in which the Property is located. Copies of the restrictive covenants and dedicatory instrument may be obtained from the county clerk. You are obligated to pay assessments to the property owners association(s). The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of the Property. **If Buyer is concerned about these matters, the TREC promulgated Addendum for Property Subject to Mandatory Membership in a Property Owners Association should be used for each association.**

(3) STATUTORY TAX DISTRICTS: If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this contract.

(4) TIDE WATERS: If the Property abuts the tidally influenced waters of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included in the contract. An addendum containing the notice promulgated by TREC or required by the parties must be used.

(5) ANNEXATION: If the Property is located outside the limits of a municipality, Seller notifies Buyer under §5.011, Texas Property Code, that the Property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Property for further information.

- (6) PROPERTY LOCATED IN A CERTIFICATED SERVICE AREA OF A UTILITY SERVICE PROVIDER: Notice required by §13.257, Water Code: The real property, described in Paragraph 2, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned Buyer hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in Paragraph 2 or at closing of purchase of the real property.
- (7) PUBLIC IMPROVEMENT DISTRICTS: If the Property is in a public improvement district, §5.014, Property Code, requires Seller to notify Buyer as follows: As a purchaser of this parcel of real property you are obligated to pay an assessment to a municipality or county for an improvement project undertaken by a public improvement district under Chapter 372, Local Government Code. The assessment may be due annually or in periodic installments. More information concerning the amount of the assessment and the due dates of that assessment may be obtained from the municipality or county levying the assessment. The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of your property.

7. PROPERTY CONDITION:

- A. ACCESS AND INSPECTIONS: Seller shall permit Buyer and Buyer's agents access to the Property at reasonable times. Buyer may have the Property inspected by inspectors selected by Buyer and licensed by TREC or otherwise permitted by law to make inspections.
- B. CONSTRUCTION DOCUMENTS: Seller shall complete all improvements to the Property with due diligence in accordance with the Construction Documents. "Construction Documents" means the plans and specifications, the finish out schedules, any change orders, and any allowances related to the plans and specifications, finish out schedules, and change orders. The Construction Documents have been signed by the parties and are incorporated into this contract by reference.
- C. COST ADJUSTMENTS: All change orders must be in writing. Increase in costs resulting from change orders or items selected by Buyer which exceed the allowances specified in the Construction Documents will be paid by Buyer as follows: _____

A decrease in costs resulting from change orders and unused allowances will reduce the Sales Price, with proportionate adjustments to the amounts in Paragraphs 3A and 3B as required by lender.

- D. BUYER'S SELECTIONS: If the Construction Documents permit selections by Buyer, Buyer's selections will conform to Seller's normal standards as set out in the Construction Documents or will not, in Seller's judgment, adversely affect the marketability of the Property. Buyer will make required selections within _____ days after notice from Seller.
- E. COMPLETION: Seller must commence construction no later than _____ days after the effective date of this contract. The improvements will be substantially completed in accordance with the Construction Documents and ready for occupancy not later than _____, 20____. The improvements will be deemed to be substantially completed in accordance with the Construction Documents upon the final inspection and approval by all applicable governmental authorities and any lender (Substantial Completion Date). Construction delays caused by acts of God, fire or other casualty, strikes, boycotts or nonavailability of materials for which no substitute of comparable quality and price is available will be added to the time allowed for substantial completion of the construction. However, in no event may the time for substantial completion extend beyond the Closing Date. Seller may substitute materials, equipment and appliances of comparable quality for those specified in the Construction Documents.
- F. WARRANTIES: Except as expressly set forth in this contract, a separate writing, or provided by law, Seller makes no other express warranties. Seller shall assign to Buyer at closing all assignable manufacturer warranties.
- G. INSULATION: As required by Federal Trade Commission Regulations, the information relating to the insulation installed or to be installed in the Improvements at the Property is: (check only one box below)
 - (1) as shown in the attached specifications.
 - (2) as follows:
 - a) Exterior walls of improved living areas: insulated with _____ insulation to a thickness of _____ inches which yields an R-Value of _____.
 - b) Walls in other areas of the home: insulated with _____ insulation to a thickness of _____ inches which yields an R-Value of _____.
 - c) Ceilings in improved living areas: insulated with _____ insulation to a thickness of _____ inches which yields an R-Value of _____.

- d) Floors of improved living areas not applied to a slab foundation: insulated with insulation to a thickness of ___ inches which yields an R-Value of _____.
- e) Other insulated areas: insulated with _____ insulation to a thickness of _____ inches which yields an R-Value of _____.

All stated R-Values are based on information provided by the manufacturer of the insulation.

H. ENVIRONMENTAL MATTERS: Buyer is advised that the presence of wetlands, toxic substances, including asbestos and wastes or other environmental hazards, or the presence of a threatened or endangered species or its habitat may affect Buyer's intended use of the Property. If Buyer is concerned about these matters, an addendum promulgated by TREC or required by the parties should be used.

I. SELLER'S DISCLOSURE: Except as otherwise disclosed in this contract, Seller has no knowledge of the following:

- (1) any flooding of the Property which has had a material adverse effect on the use of the Property;
- (2) any pending or threatened litigation, condemnation, or special assessment affecting the Property;
- (3) any environmental hazards or conditions materially affecting the Property;
- (4) any dumpsite, landfill, or underground tanks or containers now or previously located on the Property;
- (5) any wetlands, as defined by federal or state law or regulation, affecting the Property; or
- (6) any threatened or endangered species or their habitat affecting the Property.

8. BROKERS' FEES: All obligations of the parties for payment of brokers' fees are contained in separate written agreements.

9. CLOSING:

A. The closing of the sale will be on or before _____, 20____, or within 7 days after objections made under Paragraph 6D have been cured or waived, whichever date is later (Closing Date). If either party fails to close the sale by the Closing Date, the non-defaulting party may exercise the remedies contained in Paragraph 15.

B. At closing:

- (1) Seller shall execute and deliver a general warranty deed conveying title to the Property to Buyer and showing no additional exceptions to those permitted in Paragraph 6 and furnish tax statements or certificates showing no delinquent taxes on the Property.
- (2) Buyer shall pay the Sales Price in good funds acceptable to the escrow agent.
- (3) Seller and Buyer shall execute and deliver any notices, statements, certificates, affidavits, releases, loan documents and other documents reasonably required for the closing of the sale and the issuance of the Title Policy.
- (4) There will be no liens, assessments, or security interests against the Property which will not be satisfied out of the sales proceeds unless securing payment of any loans assumed by Buyer and assumed loans will not be in default.

10. POSSESSION: Seller shall deliver to Buyer possession of the Property: upon closing and funding according to a temporary residential lease form promulgated by TREC or other written lease required by the parties. Any possession by Buyer prior to closing or by Seller after closing which is not authorized by a written lease will establish a tenancy at sufferance relationship between the parties. Consult your insurance agent prior to change of ownership and possession because insurance coverage may be limited or terminated. The absence of a written lease or appropriate insurance coverage may expose the parties to economic loss.

11. SPECIAL PROVISIONS: (Insert only factual statements and business details applicable to the sale. TREC rules prohibit licensees from adding factual statements or business details for which a contract addendum, lease or other form has been promulgated by TREC for mandatory use.)

12. SETTLEMENT AND OTHER EXPENSES:

A. The following expenses must be paid at or prior to closing:

(1) Expenses payable by Seller (Seller's Expenses):

(a) Releases of existing liens, including prepayment penalties and recording fees; release of Seller's loan liability; tax statements or certificates; preparation of deed; one-half of escrow fee; and other expenses payable by Seller under this contract.

(b) Seller shall also pay an amount not to exceed \$ _____ to be applied in the following order: Buyer's Expenses which Buyer is prohibited from paying by FHA, VA, Texas Veterans Land Board or other governmental loan programs, and then to other Buyer's Expenses as allowed by the lender.

(2) Expenses payable by Buyer (Buyer's Expenses): Appraisal fees; loan application fees; adjusted origination charges; credit reports; preparation of loan documents; interest on the notes from date of disbursement to one month prior to dates of first monthly payments; recording fees; copies of easements and restrictions; loan title policy with endorsements required by lender; loan-related inspection fees; photos; amortization schedules; one-half of escrow fee; all prepaid items, including required premiums for flood and hazard insurance, reserve deposits for insurance, ad valorem taxes and special governmental assessments; final compliance inspection; courier fee; repair inspection; underwriting fee; wire transfer fee; expenses incident to any loan; Private Mortgage Insurance Premium (PMI), VA Loan Funding Fee, or FHA Mortgage Insurance Premium (MIP) as required by the lender; and other expenses payable by Buyer under this contract.

B. If any expense exceeds an amount expressly stated in this contract for such expense to be paid by a party, that party may terminate this contract unless the other party agrees to pay such excess. Buyer may not pay charges and fees expressly prohibited by FHA, VA, Texas Veterans Land Board or other governmental loan program regulations.

13. PRORATIONS AND ROLLBACK TAXES:

A. PRORATIONS: Taxes for the current year, maintenance fees, assessments, dues and rents will be prorated through the Closing Date. The tax proration may be calculated taking into consideration any change in exemptions that will affect the current year's taxes. If taxes for the current year vary from the amount prorated at closing, the parties shall adjust the prorations when tax statements for the current year are available. If taxes are not paid at or prior to closing, Buyer will be obligated to pay taxes for the current year.

B. ROLLBACK TAXES: If Seller's change in use of the Property prior to closing or denial of a special use valuation on the Property results in additional taxes, penalties or interest (Assessments) for periods prior to closing, the Assessments will be the obligation of Seller. Obligations imposed by this paragraph will survive closing.

14. CASUALTY LOSS: If any part of the Property is damaged or destroyed by fire or other casualty after the effective date of this contract, Seller shall restore the Property to its previous condition as soon as reasonably possible, but in any event by the Closing Date. If Seller fails to do so due to factors beyond Seller's control, Buyer may (a) terminate this contract and the earnest money will be refunded to Buyer (b) extend the time for performance up to 45 days and the Closing Date will be extended as necessary or (c) accept the Property in its damaged condition with an assignment of insurance proceeds and receive credit from Seller at closing in the amount of the deductible under the insurance policy. Seller's obligations under this paragraph are independent of any other obligations of Seller under this contract.

15. DEFAULT: If Buyer fails to comply with this contract, Buyer will be in default, and Seller may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money as liquidated damages, thereby releasing both parties from this contract. If, due to factors beyond Seller's control, Seller fails within the time allowed to make any non-casualty repairs or deliver the Commitment, or survey, if required of Seller, Buyer may (a) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (b) terminate this contract as the sole remedy and receive the earnest money. If Seller fails to comply with this contract for any other reason, Seller will be in default and Buyer may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money, thereby releasing both parties from this contract.

16. MEDIATION: It is the policy of the State of Texas to encourage resolution of disputes through alternative dispute resolution procedures such as mediation. Subject to applicable law, any dispute between Seller and Buyer related to this contract which is not resolved through informal discussion will will not be submitted to a mutually acceptable mediation service or provider. The parties to the mediation shall bear the mediation costs equally. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

17. ATTORNEY'S FEES: A Buyer, Seller, Listing Broker, Other Broker, or escrow agent who prevails in any legal proceeding related to this contract is entitled to recover reasonable attorney's fees and all costs of such proceeding.

18. ESCROW:

- A. **ESCROW:** The escrow agent is not (i) a party to this contract and does not have liability for the performance or nonperformance of any party to this contract, (ii) liable for interest on the earnest money and (iii) liable for the loss of any earnest money caused by the failure of any financial institution in which the earnest money has been deposited unless the financial institution is acting as escrow agent.
- B. **EXPENSES:** At closing, the earnest money must be applied first to any cash down payment, then to Buyer's Expenses and any excess refunded to Buyer. If no closing occurs, escrow agent may: (i) require a written release of liability of the escrow agent from all parties, (ii) require payment of unpaid expenses incurred on behalf of a party, and (iii) only deduct from the earnest money the amount of unpaid expenses incurred on behalf of the party receiving the earnest money.
- C. **DEMAND:** Upon termination of this contract, either party or the escrow agent may send a release of earnest money to each party and the parties shall execute counterparts of the release and deliver same to the escrow agent. If either party fails to execute the release, either party may make a written demand to the escrow agent for the earnest money. If only one party makes written demand for the earnest money, escrow agent shall promptly provide a copy of the demand to the other party. If escrow agent does not receive written objection to the demand from the other party within 15 days, escrow agent may disburse the earnest money to the party making demand reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and escrow agent may pay the same to the creditors. If escrow agent complies with the provisions of this paragraph, each party hereby releases escrow agent from all adverse claims related to the disbursement of the earnest money.
- D. **DAMAGES:** Any party who wrongfully fails or refuses to sign a release acceptable to the escrow agent within 7 days of receipt of the request will be liable to the other party for liquidated damages in an amount equal to the sum of: (i) three times the amount of the earnest money; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.
- E. **NOTICES:** Escrow agent's notices will be effective when sent in compliance with Paragraph 21. Notice of objection to the demand will be deemed effective upon receipt by escrow agent.

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21. NOTICES: All notices from one party to the other must be in writing and are effective when mailed to, hand-delivered at, or transmitted by facsimile or electronic transmission as follows:

To Buyer at: _____

To Seller at: _____

Telephone: () _____

Telephone: () _____

Facsimile: () _____

Facsimile: () _____

E-mail: _____

E-mail: _____

22. AGREEMENT OF PARTIES: This contract contains the entire agreement of the parties and cannot be changed except by their written agreement. Addenda which are a part of this contract are (check all applicable boxes):

- Third Party Financing Addendum for Credit Approval
- Seller Financing Addendum
- Addendum for Property Subject to Mandatory Membership in a Property Owners Association
- Buyer's Temporary Residential Lease
- Loan Assumption Addendum
- Addendum for Sale of Other Property by Buyer
- Addendum for Reservation of Oil, Gas and Other Minerals
- Addendum for "Back-Up" Contract
- Addendum for Coastal Area Property
- Environmental Assessment, Threatened or Endangered Species and Wetlands Addendum
- Seller's Temporary Residential Lease
- Short Sale Addendum
- Addendum for Property Located Seaward of the Gulf Intracoastal Waterway
- Other (list): _____

23. TERMINATION OPTION: For nominal consideration, the receipt of which is hereby acknowledged by Seller, and Buyer's agreement to pay Seller \$_____ (Option Fee) within 2 days after the effective date of this contract, Seller grants Buyer the unrestricted right to terminate this contract by giving notice of termination to Seller within _____ days after the effective date of this contract (Option Period). If no dollar amount is stated as the Option Fee or if Buyer fails to pay the Option Fee to Seller within the time prescribed, this paragraph will not be a part of this contract and Buyer shall not have the unrestricted right to terminate this contract. If Buyer gives notice of termination within the time prescribed, the Option Fee will not be refunded; however, any earnest money will be refunded to Buyer. The Option Fee will will not be credited to the Sales Price at closing. **Time is of the essence for this paragraph and strict compliance with the time for performance is required.**

24. CONSULT AN ATTORNEY: TREC rules prohibit real estate licensees from giving legal advice. READ THIS CONTRACT CAREFULLY. If you do not understand the effect of this contract, consult an attorney BEFORE signing.

Buyer's Attorney is: _____

Seller's Attorney is: _____

Telephone: () _____

Telephone: () _____

Facsimile: () _____

Facsimile: () _____

E-mail: _____

E-mail: _____

**EXECUTED the _____ day of _____, 20____ (EFFECTIVE DATE).
(BROKER: FILL IN THE DATE OF FINAL ACCEPTANCE.)**

This contract is subject to Chapter 27 of the Texas Property Code. The provisions of that chapter may affect your right to recover damages arising from a construction defect. If you have a complaint concerning a construction defect and that defect has not been corrected as may be required by law or by contract, you must provide the notice required by Chapter 27 of the Texas Property Code to the contractor by certified mail, return receipt requested, not later than the 60th day before the date you file suit to recover damages in a court of law or initiate arbitration. The notice must refer to Chapter 27 of the Texas Property Code and must describe the construction defect. If requested by the contractor, you must provide the contractor an opportunity to inspect and cure the defect as provided by Section 27.004 of the Texas Property Code.

Buyer

Buyer

Seller

Seller

DRAFT

The form of this contract has been approved by the Texas Real Estate Commission. TREC forms are intended for use only by trained real estate licensees. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, 1-800-250-8732 or (512) 459-6544 (<http://www.trec.state.tx.us>) TREC NO. 23-11. This form replaces TREC NO. 23-9.

BROKER INFORMATION

Other Broker Firm _____ License No. _____
 represents Buyer only as Buyer's agent
 Seller as Listing Broker's subagent

Listing Broker Firm _____ License No. _____
 represents Seller and Buyer as an intermediary
 Seller only as Seller's agent

Licensed Supervisor of Associate _____ Telephone _____

Licensed Supervisor of Associate _____ Telephone _____

Associate _____ Telephone _____

Listing Associate _____ Telephone _____

Other Broker's Address _____ Facsimile _____

Listing Broker's Office Address _____ Facsimile _____

City _____ State _____ Zip _____

City _____ State _____ Zip _____

Associate Email Address _____

Listing Associate's Email Address _____

Selling Associate _____ Telephone _____

Selling Associate's Office Address _____ Facsimile _____

City _____ State _____ Zip _____

Selling Associate's Email Address _____

Listing Broker has agreed to pay Other Broker _____ of the total sales price when the Listing Broker's fee is received. Escrow agent is authorized and directed to pay other Broker from Listing Broker's fee at closing.

OPTION FEE RECEIPT

Receipt of \$ _____ (Option Fee) in the form of _____ is acknowledged.

 Seller or Listing Broker

 Date

CONTRACT AND EARNEST MONEY RECEIPT

Receipt of Contract and \$ _____ Earnest Money in the form of _____ is acknowledged.

Escrow Agent: _____ Date: _____

By: _____

 Email Address

Address _____ Telephone (_____) _____

City _____ State _____ Zip _____ Facsimile: (_____) _____



NEW HOME CONTRACT

(Completed Construction)

NOTICE: Not For Use For Condominium Transactions or Closings Prior to Completion of Construction

1. PARTIES: The parties to this contract are _____ (Seller) and _____ (Buyer). Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller the Property defined below.

2. PROPERTY: Lot _____, Block _____, Addition, City of _____, County of _____, Texas, known as _____ (address/zip code), or as described on attached exhibit, together with: (i) improvements, fixtures and all other property located thereon; and (ii) all rights, privileges and appurtenances thereto, including but not limited to: permits, easements, and cooperative and association memberships. All property sold by this contract is called the "Property".

3. SALES PRICE:

- A. Cash portion of Sales Price payable by Buyer at closing\$ _____
- B. Sum of all financing described below (excluding any loan funding fee or mortgage insurance premium)\$ _____
- C. Sales Price (Sum of A and B)\$ _____

4. FINANCING: The portion of Sales Price not payable in cash will be paid as follows: (Check applicable boxes below)

- A. THIRD PARTY FINANCING:** One or more third party mortgage loans in the total amount of \$ _____ (excluding any loan funding fee or mortgage insurance premium).
 - (1) **Property Approval:** If the Property does not satisfy the lenders' underwriting requirements for the loan(s), (including, but not limited to appraisal, insurability and lender required repairs), Buyer may terminate this contract by giving notice to Seller prior to closing and the earnest money will be refunded to Buyer.
 - (2) **Credit Approval:** (Check one box only)
 - (a) This contract is subject to Buyer being approved for the financing described in the attached Third Party Financing Addendum for Credit Approval.
 - (b) This contract is not subject to Buyer being approved for financing and does not involve FHA or VA financing.
- B. ASSUMPTION:** The assumption of the unpaid principal balance of one or more promissory notes described in the attached TREC Loan Assumption Addendum.
- C. SELLER FINANCING:** A promissory note from Buyer to Seller of \$ _____, secured by vendor's and deed of trust liens, and containing the terms and conditions described in the attached TREC Seller Financing Addendum. If an owner policy of title insurance is furnished, Buyer shall furnish Seller with a mortgagee policy of title insurance.

5. EARNEST MONEY: Upon execution of this contract by all parties, Buyer shall deposit \$ _____ as earnest money with _____, as escrow agent, at _____ (address). Buyer shall deposit additional earnest money of \$ _____ with escrow agent within _____ days after the effective date of this contract. If Buyer fails to deposit the earnest money as required by this contract, Buyer will be in default.

6. TITLE POLICY AND SURVEY:

- A. TITLE POLICY:** Seller shall furnish to Buyer at Seller's Buyer's expense an owner policy of title insurance (Title Policy) issued by _____ (Title Company) in the amount of the Sales Price, dated at or after closing, insuring Buyer against loss under the provisions of the Title Policy, subject to the promulgated exclusions (including existing building and zoning ordinances) and the following exceptions:
 - (1) Restrictive covenants common to the platted subdivision in which the Property is located.
 - (2) The standard printed exception for standby fees, taxes and assessments.
 - (3) Liens created as part of the financing described in Paragraph 4.
 - (4) Utility easements created by the dedication deed or plat of the subdivision in which the Property is located.
 - (5) Reservations or exceptions otherwise permitted by this contract or as may be approved by Buyer in writing.
 - (6) The standard printed exception as to marital rights.
 - (7) The standard printed exception as to waters, tidelands, beaches, streams, and related matters.
 - (8) The standard printed exception as to discrepancies, conflicts, shortages in area or boundary

lines, encroachments or protrusions, or overlapping improvements. Buyer, at Buyer's expense, may have the exception amended to read, "shortages in area".

B. COMMITMENT: Within 20 days after the Title Company receives a copy of this contract, Seller shall furnish to Buyer a commitment for title insurance (Commitment) and, at Buyer's expense, legible copies of restrictive covenants and documents evidencing exceptions in the Commitment (Exception Documents) other than the standard printed exceptions. Seller authorizes the Title Company to deliver the Commitment and Exception Documents to Buyer at Buyer's address shown in Paragraph 21. If the Commitment and Exception Documents are not delivered to Buyer within the specified time, the time for delivery will be automatically extended up to 15 days or the Closing Date, whichever is earlier.

C. SURVEY: The survey must be made by a registered professional land surveyor acceptable to the Title Company and Buyer's lender(s). (Check one box only)

(1) Within _____ days after the effective date of this contract, Seller shall furnish to Buyer and Title Company Seller's existing survey of the Property and a Residential Real Property Affidavit promulgated by the Texas Department of Insurance (T-47 Affidavit). **If Seller fails to furnish the existing survey or affidavit within the time prescribed, Buyer shall obtain a new survey at Seller's expense no later than 3 days prior to Closing Date.** If the existing survey or affidavit is not acceptable to Title Company or Buyer's lender(s), Buyer shall obtain a new survey at Seller's Buyer's expense no later than 3 days prior to Closing Date.

(2) Within _____ days after the effective date of this contract, Buyer shall obtain a new survey at Buyer's expense. Buyer is deemed to receive the survey on the date of actual receipt or the date specified in this paragraph, whichever is earlier.

(3) Within _____ days after the effective date of this contract, Seller, at Seller's expense shall furnish a new survey to Buyer.

D. OBJECTIONS: Buyer may object in writing to defects, exceptions, or encumbrances to title: disclosed on the survey other than items 6A(1) through (7) above; disclosed in the Commitment other than items 6A(1) through (8) above; or which prohibit the following use or activity: _____

Buyer must object the earlier of (i) the Closing Date or (ii) _____ days after Buyer receives the Commitment, Exception Documents, and the survey. Buyer's failure to object within the time allowed will constitute a waiver of Buyer's right to object; except that the requirements in Schedule C of the Commitment are not waived. Provided Seller is not obligated to incur any expense, Seller shall cure the timely objections of Buyer or any third party lender within 15 days after Seller receives the objections and the Closing Date will be extended as necessary. If objections are not cured within such 15 day period, this contract will terminate and the earnest money will be refunded to Buyer unless Buyer waives the objections.

E. TITLE NOTICES:

(1) ABSTRACT OR TITLE POLICY: Broker advises Buyer to have an abstract of title covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a Title Policy. If a Title Policy is furnished, the Commitment should be promptly reviewed by an attorney of Buyer's choice due to the time limitations on Buyer's right to object.

(2) PROPERTY OWNERS ASSOCIATION(S) MANDATORY MEMBERSHIP: The Property is is not subject to mandatory membership in a property owners association(s). If the Property is subject to mandatory membership in a property owners association(s), Seller notifies Buyer under §5.012, Texas Property Code, that, as a purchaser of property in the residential community identified in Paragraph 2A in which the Property is located, you are obligated to be a member of the property owners association(s). Restrictive covenants governing the use and occupancy of the Property and a dedicatory instrument governing the establishment, maintenance, and operation of this residential community have been or will be recorded in the Real Property Records of the county in which the Property is located. Copies of the restrictive covenants and dedicatory instrument may be obtained from the county clerk. You are obligated to pay assessments to the property owners association(s). The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of the Property. **If Buyer is concerned about these matters, the TREC promulgated Addendum for Property Subject to Mandatory Membership in a Property Owners Association should be used for each association.**

(3) STATUTORY TAX DISTRICTS: If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory

- notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this contract.
- (4) TIDE WATERS: If the Property abuts the tidally influenced waters of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included in the contract. An addendum containing the notice promulgated by TREC or required by the parties must be used.
 - (5) ANNEXATION: If the Property is located outside the limits of a municipality, Seller notifies Buyer under §5.011, Texas Property Code, that the Property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Property for further information.
 - (6) PROPERTY LOCATED IN A CERTIFICATED SERVICE AREA OF A UTILITY SERVICE PROVIDER: Notice required by §13.257, Water Code: The real property, described in Paragraph 2, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned Buyer hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in Paragraph 2 or at closing of purchase of the real property.
 - (7) PUBLIC IMPROVEMENT DISTRICTS: If the Property is in a public improvement district, §5.014, Property Code, requires Seller to notify Buyer as follows: As a purchaser of this parcel of real property you are obligated to pay an assessment to a municipality or county for an improvement project undertaken by a public improvement district under Chapter 372, Local Government Code. The assessment may be due annually or in periodic installments. More information concerning the amount of the assessment and the due dates of that assessment may be obtained from the municipality or county levying the assessment. The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of your property.

7. PROPERTY CONDITION:

- A. ACCESS, INSPECTIONS AND UTILITIES: Seller shall permit Buyer and Buyer's agents access to the Property at reasonable times. Buyer may have the Property inspected by inspectors selected by Buyer and licensed by TREC or otherwise permitted by law to make inspections. Seller shall pay for turning on existing utilities for inspections.
- B. ACCEPTANCE OF PROPERTY CONDITION: (Check one box only)
 - (1) Buyer accepts the Property in its present condition.
 - (2) Buyer accepts the Property in its present condition provided Seller, at Seller's expense, shall complete the following specific repairs and treatments: _____
 _____ (Do not insert general phrases, such as "subject to inspections," that do not identify specific repairs.)
- NOTICE TO BUYER AND SELLER: Buyer's agreement to accept the Property in its present condition under Paragraph 7B(1) or (2) does not preclude Buyer from inspecting the Property under Paragraph 7A, from negotiating repairs or treatments in a subsequent amendment, or from terminating this contract during the Option Period, if any.
- C. WARRANTIES: Except as expressly set forth in this contract, a separate writing, or provided by law, Seller makes no other express warranties. Seller shall assign to Buyer at closing all assignable manufacturer warranties.
- D. INSULATION: As required by Federal Trade Commission Regulations, the information relating to the insulation installed or to be installed in the Improvements at the Property is: (check only one box below)
 - (1) as shown in the attached specifications.
 - (2) as follows:
 - a) Exterior walls of improved living areas: insulated with _____ insulation to a thickness of _____ inches which yields an R-Value of _____.
 - b) Walls in other areas of the home: insulated with _____

- insulation to a thickness of _____ inches which yields an R-Value of _____.
- c) Ceilings in improved living areas: insulated with _____ insulation to a thickness of _____ inches which yields an R-Value of _____.
- d) Floors of improved living areas not applied to a slab foundation: insulated with insulation to a thickness of _____ inches which yields an R-Value of _____.
- e) Other insulated areas: insulated with _____ insulation to a thickness of _____ inches which yields an R-Value of _____.

All stated R-Values are based on information provided by the manufacturer of the insulation.

- E. LENDER REQUIRED REPAIRS AND TREATMENTS: Unless otherwise agreed in writing, neither party is obligated to pay for lender required repairs, which includes treatment for wood destroying insects. If the parties do not agree to pay for the lender required repairs or treatments, this contract will terminate and the earnest money will be refunded to Buyer. If the cost of lender required repairs and treatments exceeds 5% of the Sales Price, Buyer may terminate this contract and the earnest money will be refunded to Buyer.
- F. COMPLETION OF REPAIRS, TREATMENTS, AND IMPROVEMENTS: Unless otherwise agreed in writing, Seller shall complete all agreed repairs, treatments, and improvements (Work) prior to the Closing Date. All required permits must be obtained, and Work must be performed by persons who are licensed or otherwise authorized by law to provide such Work. At Buyer's election, any transferable warranties received by Seller with respect to the Work will be transferred to Buyer at Buyer's expense. If Seller fails to complete any agreed Work prior to the Closing Date, Buyer may do so and receive reimbursement from Seller at closing. The Closing Date will be extended up to 15 days, if necessary, to complete Work.
- G. ENVIRONMENTAL MATTERS: Buyer is advised that the presence of wetlands, toxic substances, including asbestos and wastes or other environmental hazards or the presence of a threatened or endangered species or its habitat may affect Buyer's intended use of the Property. If Buyer is concerned about these matters, an addendum promulgated by TREC or required by the parties should be used.
- H. SELLER'S DISCLOSURE: Except as otherwise disclosed in this contract, Seller has no knowledge of the following:
 - (1) any flooding of the Property which has had a material adverse effect on the use of the Property;
 - (2) any pending or threatened litigation, condemnation, or special assessment affecting the Property;
 - (3) any environmental hazards or conditions materially affecting the Property;
 - (4) any dumpsite, landfill, or underground tanks or containers now or previously located on the Property;
 - (5) any wetlands, as defined by federal or state law or regulation, affecting the Property; or
 - (6) any threatened or endangered species or their habitat affecting the Property.
- I. RESIDENTIAL SERVICE CONTRACTS: Buyer may purchase a residential service contract from a residential service company licensed by TREC. If Buyer purchases a residential service contract, Seller shall reimburse Buyer at closing for the cost of the residential service contract in an amount not exceeding \$_____. Buyer should review any residential service contract for the scope of coverage, exclusions and limitations. **The purchase of a residential service contract is optional. Similar coverage may be purchased from various companies authorized to do business in Texas.**

8. **BROKERS' FEES:** All obligations of the parties for payment of brokers' fees are contained in separate written agreements.

9. **CLOSING:**

- A. The closing of the sale will be on or before _____, 20____, or within 7 days after objections made under Paragraph 6D have been cured or waived, whichever date is later (Closing Date). If either party fails to close the sale by the Closing Date, the non-defaulting party may exercise the remedies contained in Paragraph 15.
- B. At closing:
 - (1) Seller shall execute and deliver a general warranty deed conveying title to the Property to Buyer and showing no additional exceptions to those permitted in Paragraph 6 and furnish tax statements or certificates showing no delinquent taxes on the Property.
 - (2) Buyer shall pay the Sales Price in good funds acceptable to the escrow agent.
 - (3) Seller and Buyer shall execute and deliver any notices, statements, certificates, affidavits, releases, loan documents and other documents reasonably required for the closing of the sale and the issuance of the Title Policy.
 - (4) There will be no liens, assessments, or security interests against the Property which will not be satisfied out of the sales proceeds unless securing the payment of any loans assumed by Buyer and assumed loans will not be in default.

10. **POSSESSION:** Seller shall deliver to Buyer possession of the Property in its present or required condition, ordinary wear and tear excepted: upon closing and funding according to a temporary residential lease form promulgated by TREC or other written lease required by the parties. Any

possession by Buyer prior to closing or by Seller after closing which is not authorized by a written lease will establish a tenancy at sufferance relationship between the parties. **Consult your insurance agent prior to change of ownership and possession because insurance coverage may be limited or terminated. The absence of a written lease or appropriate insurance coverage may expose the parties to economic loss.**

11. SPECIAL PROVISIONS: (Insert only factual statements and business details applicable to the sale. TREC rules prohibit licensees from adding factual statements or business details for which a contract addendum, lease or other form has been promulgated by TREC for mandatory use.)

12. SETTLEMENT AND OTHER EXPENSES:

A. The following expenses must be paid at or prior to closing:

(1) Expenses payable by Seller (Seller's Expenses):

(a) Releases of existing liens, including prepayment penalties and recording fees; release of Seller's loan liability; tax statements or certificates; preparation of deed; one-half of escrow fee; and other expenses payable by Seller under this contract.

(b) Seller shall also pay an amount not to exceed \$ _____ to be applied in the following order: Buyer's Expenses which Buyer is prohibited from paying by FHA, VA, Texas Veterans Land Board or other governmental loan programs, and then to other Buyer's Expenses as allowed by the lender.

(2) Expenses payable by Buyer (Buyer's Expenses): Appraisal fees; loan application fees; adjusted origination charges; credit reports; preparation of loan documents; interest on the notes from date of disbursement to one month prior to dates of first monthly payments; recording fees; copies of easements and restrictions; loan title policy with endorsements required by lender; loan-related inspection fees; photos; amortization schedules; one-half of escrow fee; all prepaid items, including required premiums for flood and hazard insurance, reserve deposits for insurance, ad valorem taxes and special governmental assessments; final compliance inspection; courier fee; repair inspection; underwriting fee; wire transfer fee; expenses incident to any loan; Private Mortgage Insurance Premium (PMI), VA Loan Funding Fee, or FHA Mortgage Insurance Premium (MIP) as required by the lender; and other expenses payable by Buyer under this contract.

B. If any expense exceeds an amount expressly stated in this contract for such expense to be paid by a party, that party may terminate this contract unless the other party agrees to pay such excess. Buyer may not pay charges and fees expressly prohibited by FHA, VA, Texas Veterans Land Board or other governmental loan program regulations.

13. PRORATIONS AND ROLLBACK TAXES:

A. PRORATIONS: Taxes for the current year, maintenance fees, assessments, dues and rents will be prorated through the Closing Date. The tax proration may be calculated taking into consideration any change in exemptions that will affect the current year's taxes. If taxes for the current year vary from the amount prorated at closing, the parties shall adjust the prorations when tax statements for the current year are available. If taxes are not paid at or prior to closing, Buyer will be obligated to pay taxes for the current year.

B. ROLLBACK TAXES: If Seller's change in use of the Property prior to closing or denial of a special use valuation on the Property results in additional taxes, penalties or interest (Assessments) for periods prior to closing, the Assessments will be the obligation of Seller. Obligations imposed by this paragraph will survive closing.

14. CASUALTY LOSS: If any part of the Property is damaged or destroyed by fire or other casualty after the effective date of this contract, Seller shall restore the Property to its previous condition as soon as reasonably possible, but in any event by the Closing Date. If Seller fails to do so due to factors beyond Seller's control, Buyer may (a) terminate this contract and the earnest money will be refunded to Buyer (b) extend the time for performance up to 15 days and the

(Address of Property)

Closing Date will be extended as necessary or (c) accept the Property in its damaged condition with an assignment of insurance proceeds and receive credit from Seller at closing in the amount of the deductible under the insurance policy. Seller's obligations under this paragraph are independent of any other obligations of Seller under this contract.

- 15. DEFAULT:** If Buyer fails to comply with this contract, Buyer will be in default, and Seller may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money as liquidated damages, thereby releasing both parties from this contract. If, due to factors beyond Seller's control, Seller fails within the time allowed to make any non-casualty repairs or deliver the Commitment, or survey, if required of Seller, Buyer may (a) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (b) terminate this contract as the sole remedy and receive the earnest money. If Seller fails to comply with this contract for any other reason, Seller will be in default and Buyer may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money, thereby releasing both parties from this contract.
- 16. MEDIATION:** It is the policy of the State of Texas to encourage resolution of disputes through alternative dispute resolution procedures such as mediation. Subject to applicable law, any dispute between Seller and Buyer related to this contract which is not resolved through informal discussion will not be submitted to a mutually acceptable mediation service or provider. The parties to the mediation shall bear the mediation costs equally. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.
- 17. ATTORNEY'S FEES:** A Buyer, Seller, Listing Broker, Other Broker, or escrow agent who prevails in any legal proceeding related to this contract is entitled to recover reasonable attorney's fees and all costs of such proceeding.
- 18. ESCROW:**
- A. **ESCROW:** The escrow agent is not (i) a party to this contract and does not have liability for the performance or nonperformance of any party to this contract, (ii) liable for interest on the earnest money and (iii) liable for the loss of any earnest money caused by the failure of any financial institution in which the earnest money has been deposited unless the financial institution is acting as escrow agent.
 - B. **EXPENSES:** At closing, the earnest money must be applied first to any cash down payment, then to Buyer's Expenses and any excess refunded to Buyer. If no closing occurs, escrow agent may: (i) require a written release of liability of the escrow agent from all parties, (ii) require payment of unpaid expenses incurred on behalf of a party, and (iii) only deduct from the earnest money the amount of unpaid expenses incurred on behalf of the party receiving the earnest money.
 - C. **DEMAND:** Upon termination of this contract, either party or the escrow agent may send a release of earnest money to each party and the parties shall execute counterparts of the release and deliver same to the escrow agent. If either party fails to execute the release, either party may make a written demand to the escrow agent for the earnest money. If only one party makes written demand for the earnest money, escrow agent shall promptly provide a copy of the demand to the other party. If escrow agent does not receive written objection to the demand from the other party within 15 days, escrow agent may disburse the earnest money to the party making demand reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and escrow agent may pay the same to the creditors. If escrow agent complies with the provisions of this paragraph, each party hereby releases escrow agent from all adverse claims related to the disbursement of the earnest money.
 - D. **DAMAGES:** Any party who wrongfully fails or refuses to sign a release acceptable to the escrow agent within 7 days of receipt of the request will be liable to the other party for liquidated damages in an amount equal to the sum of: (i) three times the amount of the earnest money; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.
 - E. **NOTICES:** Escrow agent's notices will be effective when sent in compliance with Paragraph 21. Notice of objection to the demand will be deemed effective upon receipt by escrow agent.
- 19. REPRESENTATIONS:** All covenants, representations and warranties in this contract survive closing. If any representation of Seller in this contract is untrue on the Closing Date, Seller will be in default. Unless expressly prohibited by written agreement, Seller may continue to show the Property and receive, negotiate and accept back up offers.
- 20. FEDERAL TAX REQUIREMENTS:** If Seller is a "foreign person," as defined by applicable law, or if Seller fails to deliver an affidavit to Buyer that Seller is not a "foreign person," then Buyer shall withhold from the sales proceeds an amount sufficient to comply with applicable tax law and deliver the same to the Internal Revenue Service together with appropriate tax forms. Internal Revenue Service regulations require filing written reports if currency in excess of specified amounts is received in the transaction.

21. NOTICES: All notices from one party to the other must be in writing and are effective when mailed to, hand-delivered at, or transmitted by facsimile or electronic transmission as follows:

To Buyer at:

To Seller at:

Telephone: () _____

Telephone: () _____

Facsimile: () _____

Facsimile: () _____

E-mail: _____

E-mail: _____

22. AGREEMENT OF PARTIES: This contract contains the entire agreement of the parties and cannot be changed except by their written agreement. Addenda which are a part of this contract are (check all applicable boxes):

- Third Party Financing Addendum for Credit Approval
- Seller Financing Addendum
- Addendum for Property Subject to Mandatory Membership in a Property Owners Association
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- Addendum for Property Located Seaward of the Gulf Intracoastal Waterway
- Other (list): _____

23. TERMINATION OPTION: For nominal consideration, the receipt of which is hereby acknowledged by Seller, and Buyer's agreement to pay Seller \$_____ (Option Fee) within 2 days after the effective date of this contract, Seller grants Buyer the unrestricted right to terminate this contract by giving notice of termination to Seller within _____ days after the effective date of this contract (Option Period). If no dollar amount is stated as the Option Fee or if Buyer fails to pay the Option Fee to Seller within the time prescribed, this paragraph will not be a part of this contract and Buyer shall not have the unrestricted right to terminate this contract. If Buyer gives notice of termination within the time prescribed, the Option Fee will not be refunded; however, any earnest money will be refunded to Buyer. The Option Fee will will not be credited to the Sales Price at closing. **Time is of the essence for this paragraph and strict compliance with the time for performance is required.**

24. CONSULT AN ATTORNEY: TREC rules prohibit real estate licensees from giving legal advice. **READ THIS CONTRACT CAREFULLY.** If you do not understand the effect of this contract, consult an attorney BEFORE signing.

Buyer's Attorney is: _____

Seller's Attorney is: _____

Telephone: () _____

Telephone: () _____

Facsimile: () _____

Facsimile: () _____

E-mail: _____

E-mail: _____

**EXECUTED the _____ day of _____, 20____ (EFFECTIVE DATE).
(BROKER: FILL IN THE DATE OF FINAL ACCEPTANCE.)**

This contract is subject to Chapter 27 of the Texas Property Code. The provisions of that chapter may affect your right to recover damages arising from a construction defect. If you have a complaint concerning a construction defect and that defect has not been corrected as may be required by law or by contract, you must provide the notice required by Chapter 27 of the Texas Property Code to the contractor by certified mail, return receipt requested, not later than the 60th day before the date you file suit to recover damages in a court of law or initiate arbitration. The notice must refer to Chapter 27 of the Texas Property Code and must describe the construction defect. If requested by the contractor, you must provide the contractor an opportunity to inspect and cure the defect as provided by Section 27.004 of the Texas Property Code.

Buyer

Buyer

Seller

Seller

The form of this contract has been approved by the Texas Real Estate Commission. TREC forms are intended for use only by trained real estate licensees. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, (512) 459-6544 (<http://www.trec.state.tx.us>) TREC NO. 24-11. This form replaces TREC NO. 24-9.

BROKER INFORMATION

Other Broker Firm _____ License No. _____

represents Buyer only as Buyer's agent
 Seller as Listing Broker's subagent

Licensed Supervisor of Associate _____ Telephone _____

Associate _____ Telephone _____

Other Broker's Address _____ Facsimile _____

City _____ State _____ Zip _____

Associate Email Address _____

Listing Broker Firm _____ License No. _____

represents Seller and Buyer as an intermediary
 Seller only as Seller's agent

Licensed Supervisor of Associate _____ Telephone _____

Listing Associate _____ Telephone _____

Listing Broker's Office Address _____ Facsimile _____

City _____ State _____ Zip _____

Listing Associate's Email Address _____

Selling Associate _____ Telephone _____

Selling Associate's Office Address _____ Facsimile _____

City _____ State _____ Zip _____

Selling Associate's Email Address _____

Listing Broker has agreed to pay Other Broker _____ of the total sales price when the Listing Broker's fee is received. Escrow agent is authorized and directed to pay other Broker from Listing Broker's fee at closing.

OPTION FEE RECEIPT

Receipt of \$ _____ (Option Fee) in the form of _____ is acknowledged.

Seller or Listing Broker _____ Date _____

CONTRACT AND EARNEST MONEY RECEIPT

Receipt of Contract and \$ _____ Earnest Money in the form of _____ is acknowledged.

Escrow Agent: _____ Date: _____

By: _____ Email Address _____

Address _____ Telephone (_____) _____

City _____ State _____ Zip _____ Facsimile: (_____) _____



FARM AND RANCH CONTRACT

1. PARTIES: The parties to this contract are _____ (Seller) and _____ (Buyer). Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller the Property defined below.

2. PROPERTY: The land, improvements, accessories and crops are collectively referred to as the "Property".

A. LAND: The land situated in the County of _____, Texas, described as follows: _____

or as described on attached exhibit, also known as _____ (address/zip code), together with all rights, privileges, and appurtenances pertaining thereto, including but not limited to: water rights, claims, permits, strips and gores, easements, and cooperative or association memberships.

B. IMPROVEMENTS:

(1) FARM and RANCH IMPROVEMENTS: The following **permanently installed and built-in items**, if any: windmills, tanks, barns, pens, fences, gates, sheds, outbuildings, and corrals.

(2) RESIDENTIAL IMPROVEMENTS: The house, garage, and all other fixtures and improvements attached to the above-described real property, including without limitation, the following **permanently installed and built-in items**, if any: all equipment and appliances, valances, screens, shutters, awnings, wall-to-wall carpeting, mirrors, ceiling fans, attic fans, mail boxes, television antennas and satellite dish system and equipment, mounts and brackets for televisions and speakers, heating and air-conditioning units, security and fire detection equipment, wiring, plumbing and lighting fixtures, chandeliers, water softener system, kitchen equipment, garage door openers, cleaning equipment, shrubbery, landscaping, outdoor cooking equipment, and all other property owned by Seller and attached to the above described real property.

C. ACCESSORIES:

(1) FARM AND RANCH ACCESSORIES: The following described related accessories: (check boxes of conveyed accessories) portable buildings hunting blinds game feeders livestock feeders and troughs irrigation equipment fuel tanks submersible pumps pressure tanks corrals gates chutes other: _____

(2) RESIDENTIAL ACCESSORIES: The following described related accessories, if any: window air conditioning units, stove, fireplace screens, curtains and rods, blinds, window shades, draperies and rods, door keys, mailbox keys, above ground pool, swimming pool equipment and maintenance accessories, artificial fireplace logs, and controls for: (i) satellite dish systems, (ii) garages, (iii) entry gates, and (iv) other improvements and accessories.

D. CROPS: Unless otherwise agreed in writing, Seller has the right to harvest all growing crops until delivery of possession of the Property.

E. EXCLUSIONS: The following improvements, accessories, and crops will be retained by Seller and must be removed prior to delivery of possession: _____

F. RESERVATIONS: Any reservation for oil, gas, or other minerals is described on the attached TREC addendum. Seller reserves the following water, timber, or other interests: _____

3. SALES PRICE:

A. Cash portion of Sales Price payable by Buyer at closing \$ _____

B. Sum of all financing described below (excluding any loan funding fee or mortgage insurance premium) \$ _____

C. Sales Price (Sum of A and B) \$ _____

D. The Sales Price will will not be adjusted based on the survey required by Paragraph 6C. If the Sales Price is adjusted, the Sales Price will be calculated on the basis of \$ _____ per acre. If the Sales Price is adjusted by more than 10%, either party may terminate this contract by providing written notice to the other party within _____ days after the terminating party receives the survey. If neither party terminates this contract or if the variance is 10% or less, the adjustment will be made to the amount in 3A 3B proportionately to 3A and 3B.

4. FINANCING: The portion of Sales Price not payable in cash will be paid as follows: (Check applicable boxes below)

(Address of Property)

- A. THIRD PARTY FINANCING: One or more third party mortgage loans in the total amount of \$ _____ (excluding any loan funding fee or mortgage insurance premium).
- (1) Property Approval: If the Property does not satisfy the lenders' underwriting requirements for the loan(s) (including, but not limited to appraisal, insurability and lender required repairs), Buyer may terminate this contract by giving notice to Seller prior to closing and the earnest money will be refunded to Buyer.
- (1) Credit Approval: (Check one box only)
- (a) This contract is subject to Buyer being approved for the financing described in the attached Third Party Financing Addendum for Credit Approval.
- (b) This contract is not subject to Buyer being approved for financing and does not involve FHA or VA financing.
- B. ASSUMPTION: The assumption of the unpaid principal balance of one or more promissory notes described in the attached TREC Loan Assumption Addendum.
- C. SELLER FINANCING: A promissory note from Buyer to Seller of \$ _____, secured by vendor's and deed of trust liens, and containing the terms and conditions described in the attached TREC Seller Financing Addendum. If an owner policy of title insurance is furnished, Buyer shall furnish Seller with a mortgagee policy of title insurance.

5. EARNEST MONEY: Upon execution of this contract by all parties, Buyer shall deposit \$ _____ as earnest money with _____ as escrow agent, at _____ (address). Buyer shall deposit additional earnest money of \$ _____ with escrow agent within _____ days after the effective date of this contract. If Buyer fails to deposit the earnest money as required by this contract, Buyer will be in default.

6. TITLE POLICY AND SURVEY:

- A. TITLE POLICY: Seller shall furnish to Buyer at Seller's Buyer's expense an owner policy of title insurance (Title Policy) issued by: _____ (Title Company) in the amount of the Sales Price, dated at or after closing, insuring Buyer against loss under the provisions of the Title Policy, subject to the promulgated exclusions (including existing building and zoning ordinances) and the following exceptions:
- (1) The standard printed exception for standby fees, taxes and assessments.
- (2) Liens created as part of the financing described in Paragraph 4.
- (3) Reservations or exceptions otherwise permitted by this contract or as may be approved by Buyer in writing.
- (4) The standard printed exception as to marital rights.
- (5) The standard printed exception as to waters, tidelands, beaches, streams, and related matters.
- (6) The standard printed exception as to discrepancies, conflicts, shortages in area or boundary lines, encroachments or protrusions, or overlapping improvements. Buyer, at Buyer's expense, may have the exception amended to read, "shortages in area".
- B. COMMITMENT: Within 20 days after the Title Company receives a copy of this contract, Seller shall furnish to Buyer a commitment for title insurance (Commitment) and, at Buyer's expense, legible copies of restrictive covenants and documents evidencing exceptions in the Commitment (Exception Documents) other than the standard printed exceptions. Seller authorizes the Title Company to deliver the Commitment and Exception Documents to Buyer at Buyer's address shown in Paragraph 21. If the Commitment and Exception Documents are not delivered to Buyer within the specified time, the time for delivery will be automatically extended up to 15 days or the Closing Date, whichever is earlier.
- C. SURVEY: The survey must be made by a registered professional land surveyor acceptable to the Title Company and Buyer's lender(s). (Check one box only):
- (1) Within _____ days after the effective date of this contract, Seller shall furnish to Buyer and Title Company Seller's existing survey of the Property and a Residential Real Property Affidavit promulgated by the Texas Department of Insurance (T-47 Affidavit). **If Seller fails to furnish the existing survey or affidavit within the time prescribed, Buyer shall obtain a new survey at Seller's expense no later than 3 days prior to Closing Date.** The existing survey will will not be recertified to a date subsequent to the effective date of this contract at the expense of Buyer Seller. If the existing survey is not approved by the Title Company or Buyer's lender (s), a new survey will be obtained at the expense of Buyer Seller no later than 3 days prior to Closing Date.
- (2) Within _____ days after the effective date of this contract, Buyer shall obtain a new survey at Buyer's expense. Buyer is deemed to receive the survey on the date of actual receipt or the date specified in this paragraph, whichever is earlier.
- (3) Within _____ days after the effective date of this contract, Seller, at Seller's expense shall furnish a new survey to Buyer.
- (4) No survey is required.
- D. OBJECTIONS: Buyer may object in writing to (i) defects, exceptions, or encumbrances to title disclosed on the survey other than items 6A(1) through (5) above; or disclosed in the Commitment other than items 6A(1) through (6) above; (ii) any portion of the Property

(Address of Property)

lying in a special flood hazard area (Zone V or A) as shown on the current Federal Emergency Management Agency map; or (iii) any exceptions which prohibit the following use or activity:

Buyer must object the earlier of (i) the Closing Date or (ii) _____ days after Buyer receives the Commitment, Exception Documents, and the survey. Buyer's failure to object within the time allowed will constitute a waiver of Buyer's right to object; except that the requirements in Schedule C of the Commitment are not waived. Provided Seller is not obligated to incur any expense, Seller shall cure the timely objections of Buyer or any third party lender within 15 days after Seller receives the objections and the Closing Date will be extended as necessary. If objections are not cured within such 15 day period, this contract will terminate and the earnest money will be refunded to Buyer unless Buyer waives the objections.

E. EXCEPTION DOCUMENTS: Prior to the execution of the contract, Seller has provided Buyer with copies of the Exception Documents listed below or on the attached exhibit. Matters reflected in the Exception Documents listed below or on the attached exhibit will be permitted exceptions in the Title Policy and will not be a basis for objection to title:

<u>Document</u>	<u>Date</u>	<u>Recording Reference</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

F. SURFACE LEASES: Prior to the execution of the contract, Seller has provided Buyer with copies of written leases and given notice of oral leases (Leases) listed below or on the attached exhibit. The following Leases will be permitted exceptions in the Title Policy and will not be a basis for objection to title: _____

G. TITLE NOTICES:

- (1) ABSTRACT OR TITLE POLICY: Broker advises Buyer to have an abstract of title covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a Title Policy. If a Title Policy is furnished, the Commitment should be promptly reviewed by an attorney of Buyer's choice due to the time limitations on Buyer's right to object.
- (2) STATUTORY TAX DISTRICTS: If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this contract.
- (3) TIDE WATERS: If the Property abuts the tidally influenced waters of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included in the contract. An addendum containing the notice promulgated by TREC or required by the parties must be used.
- (4) ANNEXATION: If the Property is located outside the limits of a municipality, Seller notifies Buyer under §5.011, Texas Property Code, that the Property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Property for further information.
- (5) PROPERTY LOCATED IN A CERTIFICATED SERVICE AREA OF A UTILITY SERVICE PROVIDER: Notice required by §13.257, Water Code: The real property, described in Paragraph 2, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to

(Address of Property)

determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned Buyer hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in Paragraph 2 or at closing of purchase of the real property.

- (6) PUBLIC IMPROVEMENT DISTRICTS: If the Property is in a public improvement district, §5.014, Property Code, requires Seller to notify Buyer as follows: As a purchaser of this parcel of real property you are obligated to pay an assessment to a municipality or county for an improvement project undertaken by a public improvement district under Chapter 372, Local Government Code. The assessment may be due annually or in periodic installments. More information concerning the amount of the assessment and the due dates of that assessment may be obtained from the municipality or county levying the assessment. The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of your property.
- (7) TEXAS AGRICULTURAL DEVELOPMENT DISTRICT: The Property is is not located in a Texas Agricultural Development District. For additional information contact the Texas Department of Agriculture.

7. PROPERTY CONDITION:

A. ACCESS, INSPECTIONS AND UTILITIES: Seller shall permit Buyer and Buyer's agents access to the Property at reasonable times. Buyer may have the Property inspected by inspectors selected by Buyer and licensed by TREC or otherwise permitted by law to make inspections. Seller at Seller's expense shall turn on existing utilities for inspections.

NOTICE: Buyer should determine the availability of utilities to the Property suitable to satisfy Buyer's needs.

B. SELLER'S DISCLOSURE NOTICE PURSUANT TO §5.008, TEXAS PROPERTY CODE (Notice):

(Check one box only)

(1) Buyer has received the Notice

(2) Buyer has not received the Notice. Within _____ days after the effective date of this contract, Seller shall deliver the Notice to Buyer. If Buyer does not receive the Notice, Buyer may terminate this contract at any time prior to the closing and the earnest money will be refunded to Buyer. If Seller delivers the Notice, Buyer may terminate this contract for any reason within 7 days after Buyer receives the Notice or prior to the closing, whichever first occurs, and the earnest money will be refunded to Buyer.

(3) The Texas Property Code does not require this Seller to furnish the Notice.

C. SELLER'S DISCLOSURE OF LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS is required by Federal law for a residential dwelling constructed prior to 1978.

D. ACCEPTANCE OF PROPERTY CONDITION: (Check one box only)

(1) Buyer accepts the Property in its present condition.

(2) Buyer accepts the Property in its present condition provided Seller, at Seller's expense, shall complete the following specific repairs and treatments: _____
(Do not insert general phrases, such as "subject to inspections," that do not identify specific repairs.)

NOTICE TO BUYER AND SELLER: Buyer's agreement to accept the Property in its present condition under Paragraph 7D(1) or (2) does not preclude Buyer from inspecting the Property under Paragraph 7A, from negotiating repairs or treatments in a subsequent amendment, or from terminating this contract during the Option Period, if any.

E. COMPLETION OF REPAIRS: Unless otherwise agreed in writing, Seller shall complete all agreed repairs prior to the Closing Date. All required permits must be obtained, and repairs must be performed by persons who are licensed or otherwise permitted by law to provide such repairs. At Buyer's election, any transferable warranties received by Seller with respect to the repairs will be transferred to Buyer at Buyer's expense. If Seller fails to complete any agreed repairs prior to the Closing Date, Buyer may do so and receive reimbursement from Seller at closing. The Closing Date will be extended up to 15 days, if necessary, to complete repairs.

F. LENDER REQUIRED REPAIRS AND TREATMENTS: Unless otherwise agreed in writing, neither party is obligated to pay for lender required repairs, which includes treatment for wood destroying insects. If the parties do not agree to pay for the lender required repairs or treatments, this contract will terminate and the earnest money will be refunded to Buyer. If the cost of lender required repairs and treatments exceeds 5% of the Sales Price, Buyer may terminate this contract and the earnest money will be refunded to Buyer.

G. ENVIRONMENTAL MATTERS: Buyer is advised that the presence of wetlands, toxic substances, including asbestos and wastes or other environmental hazards, or the presence of a threatened or endangered species or its habitat may affect Buyer's intended use of the Property. If Buyer is concerned about these matters, an addendum promulgated by TREC or required by the parties should be used.

H. SELLER'S DISCLOSURES: Except as otherwise disclosed in this contract, Seller has no knowledge of the following:

- (1) any flooding of the Property which has had a material adverse effect on the use of the Property;

(Address of Property)

- (2) any pending or threatened litigation, condemnation, or special assessment affecting the Property;
- (3) any environmental hazards or conditions materially affecting the Property;
- (4) any dumpsite, landfill, or underground tanks or containers now or previously located on the Property;
- (5) any wetlands, as defined by federal or state law or regulation, affecting the Property; or
- (6) any threatened or endangered species or their habitat affecting the Property.

I. **RESIDENTIAL SERVICE CONTRACTS:** Buyer may purchase a residential service contract from a residential service company licensed by TREC. If Buyer purchases a residential service contract, Seller shall reimburse Buyer at closing for the cost of the residential service contract in an amount not exceeding \$ _____. Buyer should review any residential service contract for the scope of coverage, exclusions and limitations. **The purchase of a residential service contract is optional. Similar coverage may be purchased from various companies authorized to do business in Texas.**

J. **GOVERNMENT PROGRAMS:** The Property is subject to the government programs listed below or on the attached exhibit: _____. Seller shall provide Buyer with copies of all governmental program agreements. Any allocation or proration of payment under governmental programs is made by separate agreement between the parties which will survive closing.

8. **BROKERS' FEES:** All obligations of the parties for payment of brokers' fees are contained in separate written agreements.

9. **CLOSING:**

A. The closing of the sale will be on or before _____, 20____, or within 7 days after objections made under Paragraph 6D have been cured or waived, whichever date is later (Closing Date). If either party fails to close the sale by the Closing Date, the non-defaulting party may exercise the remedies contained in Paragraph 15.

B. At closing:

- (1) Seller shall execute and deliver a general warranty deed conveying title to the Property to Buyer and showing no additional exceptions to those permitted in Paragraph 6, an assignment of Leases, and furnish tax statements or certificates showing no delinquent taxes on the Property.
- (2) Buyer shall pay the Sales Price in good funds acceptable to the escrow agent.
- (3) Seller and Buyer shall execute and deliver any notices, statements, certificates, affidavits, releases, loan documents and other documents reasonably required for the closing of the sale and the issuance of the Title Policy.
- (4) There will be no liens, assessments, or security interests against the Property which will not be satisfied out of the sales proceeds unless securing the payment of any loans assumed by Buyer and assumed loans will not be in default.
- (5) If the Property is subject to a lease, Seller shall (i) deliver to Buyer the lease(s) and the move-in condition form signed by the tenant, if any, and (ii) transfer security deposits (as defined under §92.102, Property Code), if any, to Buyer. In such an event, Buyer shall deliver to the tenant a signed statement acknowledging that the Buyer has received the security deposit and is responsible for the return of the security deposit, and specifying the exact dollar amount of the security deposit.

10. **POSSESSION:** Seller shall deliver to Buyer possession of the Property in its present or required condition, ordinary wear and tear excepted: upon closing and funding according to a temporary residential lease form promulgated by TREC or other written lease required by the parties. Any possession by Buyer prior to closing or by Seller after closing which is not authorized by a written lease will establish a tenancy at sufferance relationship between the parties. **Consult your insurance agent prior to change of ownership and possession because insurance coverage may be limited or terminated. The absence of a written lease or appropriate insurance coverage may expose the parties to economic loss.**

11. **SPECIAL PROVISIONS:** (Insert only factual statements and business details applicable to the sale. TREC rules prohibit licensees from adding factual statements or business details for which a contract addendum or other form has been promulgated by TREC for mandatory use.)

12. SETTLEMENT AND OTHER EXPENSES:

A. The following expenses must be paid at or prior to closing:

(1) Expenses payable by Seller (Seller's Expenses):

(a) Releases of existing liens, including prepayment penalties and recording fees; release of Seller's loan liability; tax statements or certificates; preparation of deed; one-half of escrow fee; and other expenses payable by Seller under this contract.

(b) Seller shall also pay an amount not to exceed \$ _____ to be applied in the following order: Buyer's Expenses which Buyer is prohibited from paying by FHA, VA, Texas Veterans Land Board or other governmental loan programs, and then to other Buyer's Expenses as allowed by the lender.

(2) Expenses payable by Buyer (Buyer's Expenses) Appraisal fees; loan application fees; adjusted origination charges; credit reports; preparation of loan documents; interest on the notes from date of disbursement to one month prior to dates of first monthly payments; recording fees; copies of easements and restrictions; loan title policy with endorsements required by lender; loan-related inspection fees; photos; amortization schedules; one-half of escrow fee; all prepaid items, including required premiums for flood and hazard insurance, reserve deposits for insurance, ad valorem taxes and special governmental assessments; final compliance inspection; courier fee; repair inspection; underwriting fee; wire transfer fee; expenses incident to any loan; Private Mortgage Insurance Premium (PMI), VA Loan Funding Fee, or FHA Mortgage Insurance Premium (MIP) as required by the lender; and other expenses payable by Buyer under this contract.

B. If any expense exceeds an amount expressly stated in this contract for such expense to be paid by a party, that party may terminate this contract unless the other party agrees to pay such excess. Buyer may not pay charges and fees expressly prohibited by FHA, VA, Texas Veterans Land Board or other governmental loan program regulations.

13. PRORATIONS AND ROLLBACK TAXES:

A. PRORATIONS: Taxes for the current year, interest, maintenance fees, assessments, dues and rents will be prorated through the Closing Date. The tax proration may be calculated taking into consideration any change in exemptions that will affect the current year's taxes. If taxes for the current year vary from the amount prorated at closing, the parties shall adjust the prorations when tax statements for the current year are available. If taxes are not paid at or prior to closing, Buyer shall pay taxes for the current year. Rentals which are unknown at time of closing will be prorated between Buyer and Seller when they become known.

B. ROLLBACK TAXES: If this sale or Buyer's use of the Property after closing results in the assessment of additional taxes, penalties or interest (Assessments) for periods prior to closing, the Assessments will be the obligation of Buyer. If Seller's change in use of the Property prior to closing or denial of a special use valuation on the Property claimed by Seller results in Assessments for periods prior to closing, the Assessments will be the obligation of Seller. Obligations imposed by this paragraph will survive closing.

14. CASUALTY LOSS: If any part of the Property is damaged or destroyed by fire or other casualty after the effective date of this contract, Seller shall restore the Property to its previous condition as soon as reasonably possible, but in any event by the Closing Date. If Seller fails to do so due to factors beyond Seller's control, Buyer may (a) terminate this contract and the earnest money will be refunded to Buyer, (b) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (c) accept the Property in its damaged condition with an assignment of insurance proceeds and receive credit from Seller at closing in the amount of the deductible under the insurance policy. Seller's obligations under this paragraph are independent of any other obligations of Seller under this contract.

15. DEFAULT: If Buyer fails to comply with this contract, Buyer will be in default, and Seller may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money as liquidated damages, thereby releasing both parties from this contract. If, due to factors beyond Seller's control, Seller fails within the time allowed to make any non-casualty repairs or deliver the Commitment, or survey, if required of Seller, Buyer may (a) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (b) terminate this contract as the sole remedy and receive the earnest money. If Seller fails to comply with this contract for any other reason, Seller will be in default and Buyer may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money, thereby releasing both parties from this contract.

16. MEDIATION: It is the policy of the State of Texas to encourage resolution of disputes through alternative dispute resolution procedures such as mediation. Any dispute between Seller and Buyer related to this contract which is not resolved through informal discussion will will not be submitted to a mutually acceptable mediation service or provider. The parties to the mediation

shall bear the mediation costs equally. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

17. ATTORNEY'S FEES: A Buyer, Seller, Listing Broker, Other Broker, or escrow agent who prevails in any legal proceeding related to this contract is entitled to recover reasonable attorney's fees and all costs of such proceeding.

18. ESCROW:

- A. ESCROW: The escrow agent is not (i) a party to this contract and does not have liability for the performance or nonperformance of any party to this contract, (ii) liable for interest on the earnest money and (iii) liable for the loss of any earnest money caused by the failure of any financial institution in which the earnest money has been deposited unless the financial institution is acting as escrow agent.
- B. EXPENSES: At closing, the earnest money must be applied first to any cash down payment, then to Buyer's Expenses and any excess refunded to Buyer. If no closing occurs, escrow agent may: (i) require a written release of liability of the escrow agent from all parties, (ii) require payment of unpaid expenses incurred on behalf of a party, and (iii) only deduct from the earnest money the amount of unpaid expenses incurred on behalf of the party receiving the earnest money.
- C. DEMAND: Upon termination of this contract, either party or the escrow agent may send a release of earnest money to each party and the parties shall execute counterparts of the release and deliver same to the escrow agent. If either party fails to execute the release, either party may make a written demand to the escrow agent for the earnest money. If only one party makes written demand for the earnest money, escrow agent shall promptly provide a copy of the demand to the other party. If escrow agent does not receive written objection to the demand from the other party within 15 days, escrow agent may disburse the earnest money to the party making demand reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and escrow agent may pay the same to the creditors. If escrow agent complies with the provisions of this paragraph, each party hereby releases escrow agent from all adverse claims related to the disbursal of the earnest money.
- D. DAMAGES: Any party who wrongfully fails or refuses to sign a release acceptable to the escrow agent within 7 days of receipt of the request will be liable to the other party for liquidated damages in an amount equal to the sum of: (i) three times the amount of the earnest money; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.
- E. NOTICES: Escrow agent's notices will be effective when sent in compliance with Paragraph 21. Notice of objection to the demand will be deemed effective upon receipt by escrow agent.

19. REPRESENTATIONS: All covenants, representations and warranties in this contract survive closing. If any representation of Seller in this contract is untrue on the Closing Date, Seller will be in default. Unless expressly prohibited by written agreement, Seller may continue to show the Property and receive, negotiate and accept back up offers.

20. FEDERAL TAX REQUIREMENTS: If Seller is a "foreign person," as defined by applicable law, or if Seller fails to deliver an affidavit to Buyer that Seller is not a "foreign person," then Buyer shall withhold from the sales proceeds an amount sufficient to comply with applicable tax law and deliver the same to the Internal Revenue Service together with appropriate tax forms. Internal Revenue Service regulations require filing written reports if currency in excess of specified amounts is received in the transaction.

21. NOTICES: All notices from one party to the other must be in writing and are effective when mailed to, hand-delivered at, or transmitted by facsimile or electronic transmission as follows:

To Buyer at:

Telephone: () _____

Facsimile: () _____

E-mail: _____

To Seller at:

Telephone: () _____

Facsimile: () _____

E-mail: _____

(Address of Property)

22. AGREEMENT OF PARTIES: This contract contains the entire agreement of the parties and cannot be changed except by their written agreement. Addenda which are a part of this contract are (check all applicable boxes):

- Third Party Financing Addendum for Credit Approval
- Seller Financing Addendum
- Addendum for Property Subject to Mandatory Membership in a Property Owners Association
- Buyer's Temporary Residential Lease
- Loan Assumption Addendum
- Addendum for Sale of Other Property by Buyer
- Addendum for Reservation of Oil, Gas and Other Minerals
- Addendum for "Back-Up" Contract
- Addendum for Coastal Area Property
- Environmental Assessment, Threatened or Endangered Species and Wetlands Addendum
- Seller's Temporary Residential Lease
- Short Sale Addendum
- Addendum for Property Located Seaward of the Gulf Intracoastal Waterway
- Addendum for Seller's Disclosure of Information on Lead-based Paint and Lead-based Paint Hazards as Required by Federal Law
- Other (list): _____

23. TERMINATION OPTION: For nominal consideration, the receipt of which is hereby acknowledged by Seller, and Buyer's agreement to pay Seller \$_____ (Option Fee) within 2 days after the effective date of this contract, Seller grants Buyer the unrestricted right to terminate this contract by giving notice of termination to Seller within _____ days after the effective date of this contract (Option Period). If no dollar amount is stated as the Option Fee or if Buyer fails to pay the Option Fee to Seller within the time prescribed, this paragraph will not be a part of this contract and Buyer shall not have the unrestricted right to terminate this contract. If Buyer gives notice of termination within the time prescribed, the Option Fee will not be refunded; however, any earnest money will be refunded to Buyer. The Option Fee will will not be credited to the Sales Price at closing. Time is of the essence for this paragraph and strict compliance with the time for performance is required.

24. CONSULT AN ATTORNEY: TREC rules prohibit real estate licensees from giving legal advice. READ THIS CONTRACT CAREFULLY. If you do not understand the effect of this contract, consult an attorney BEFORE signing.

Buyer's Attorney is: _____

Seller's Attorney is: _____

Telephone: () _____

Telephone: () _____

Facsimile: () _____

Facsimile: () _____

E-mail: _____

E-mail: _____

EXECUTED the _____ day of _____, 20____ (EFFECTIVE DATE). (BROKER: FILL IN THE DATE OF FINAL ACCEPTANCE.)

Buyer _____

Seller _____

Buyer _____

Seller _____

The form of this contract has been approved by the Texas Real Estate Commission. TREC forms are intended for use only by trained real estate licensees. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, (512) 459-6544 (http://www.trec.state.tx.us) TREC NO. 25-8. This form replaces TREC NO. 25-6.

RATIFICATION OF FEE

Listing Broker has agreed to pay Other Broker _____ of the total Sales Price when Listing Broker's fee is received. Escrow Agent is authorized and directed to pay Other Broker from Listing Broker's fee at closing.

Other Broker: _____ Listing Broker: _____
 By: _____ By: _____

BROKER INFORMATION AND AGREEMENT FOR PAYMENT OF BROKERS' FEES

Other Broker _____	License No. _____	Listing or Principal Broker _____	License No. _____
Licensed Supervisor of Associate _____	Telephone _____	Licensed Supervisor of Associate _____	Telephone _____
Associate _____		Associate _____	
Address _____		Address _____	
City _____	State _____	Zip _____	
Telephone _____	Facsimile _____	Telephone _____	Facsimile _____

E-mail _____ represents Buyer only as Buyer's agent
 Seller as Listing Broker's subagent

E-mail _____ represents Seller only
 Buyer only
 Seller and Buyer as an intermediary

Upon closing of the sale by Seller to Buyer of the Property described in the contract to which this fee agreement is attached: (a) Seller Buyer will pay Listing/Principal Broker a cash fee of \$ _____ or _____% of the total Sales Price; and (b) Seller Buyer will pay Other Broker a cash fee of \$ _____ or _____% of the total Sales Price. Seller/Buyer authorizes and directs Escrow Agent to pay the brokers from the proceeds at closing.

Brokers' fees are negotiable. Brokers' fees or the sharing of fees between brokers are not fixed, controlled, recommended, suggested or maintained by the Texas Real Estate Commission.

Seller _____ Buyer _____
 Seller _____ Buyer _____

Do not sign if there is a separate written agreement for payment of Brokers' fees.

OPTION FEE RECEIPT

Receipt of \$ _____ (Option Fee) in the form of _____ is acknowledged.

Seller or Listing Broker _____ Date _____

CONTRACT AND EARNEST MONEY RECEIPT

Receipt of Contract and \$ _____ Earnest Money in the form of _____ is acknowledged.

Escrow Agent: _____ Date: _____

By: _____
 Address _____ Email Address _____
 Telephone (_____) _____
 Facsimile: (_____) _____



RESIDENTIAL CONDOMINIUM CONTRACT (RESALE)

1. PARTIES: The parties to this contract are _____ (Seller) and _____ (Buyer). Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller the Property defined below.

2. PROPERTY AND CONDOMINIUM DOCUMENTS:

A. The Condominium Unit, improvements and accessories described below are collectively referred to as the "Property".

(1) CONDOMINIUM UNIT: Unit _____, in Building _____, of _____, a condominium project, located at _____ (address/zip code), City of _____, County of _____, Texas, described in the Condominium Declaration and Plat and any amendments thereto of record in said County; together with such Unit's undivided interest in the Common Elements designated by the Declaration, including those areas reserved as Limited Common Elements appurtenant to the Unit and such other rights to use the Common Elements which have been specifically assigned to the Unit in any other manner. Parking areas assigned to the Unit are: _____

(2) IMPROVEMENTS: All fixtures and improvements attached to the above described real property including without limitation, the following permanently installed and built-in items, if any: all equipment and appliances, valances, screens, shutters, awnings, wall-to-wall carpeting, mirrors, ceiling fans, attic fans, mail boxes, television antennas and satellite dish system and equipment, mounts and brackets for televisions and speakers, heating and air conditioning units, security and fire detection equipment, wiring, plumbing and lighting fixtures, chandeliers, shrubbery, landscaping, outdoor cooking equipment, and all other property owned by Seller and attached to the above described Condominium Unit.

(3) ACCESSORIES: The following described related accessories, if any: window air conditioning units, stove, fireplace screens, curtains and rods, blinds, window shades, draperies and rods, door keys, mailbox keys, above ground pool, swimming pool equipment and maintenance accessories, artificial fireplace logs, and controls for: (i) satellite dish system, (ii) garage doors, (iii) entry gates, and (iv) other improvements and accessories.

(4) EXCLUSIONS: The following improvements and accessories will be retained by Seller and must be removed prior to delivery of possession: _____

B. The Declaration, Bylaws and any Rules of the Association are called "Documents". (Check one box only):

[] (1) Buyer has received a copy of the Documents. Buyer is advised to read the Documents before signing the contract.

[] (2) Buyer has not received a copy of the Documents. Seller shall deliver the Documents to Buyer within _____ days after the effective date of the contract. Buyer may cancel the contract before the sixth day after Buyer receives the Documents by hand-delivering or mailing written notice of cancellation to Seller by certified United States mail, return receipt requested. If Buyer cancels the contract pursuant to this paragraph, the contract will terminate and the earnest money will be refunded to Buyer.

[] (3) Buyer has received Seller's affidavit that Seller requested information

C. The Resale Certificate from the condominium owners association (the Association) is called the "Certificate". The Certificate must be in a form promulgated by TREC or required by the parties. The Certificate must have been prepared no more than 3 months before the date it is delivered to Buyer and must contain at a minimum the information required by Section 82.157, Texas Property Code.

(Check one box only):

[] (1) Buyer has received the Certificate.

[] (2) Buyer has not received the Certificate. Seller shall deliver the Certificate to Buyer within _____ days after the effective date of the contract. Buyer may cancel the contract before the sixth day after the date Buyer receives the Certificate by hand-delivering or mailing written notice of cancellation to Seller by certified United States mail, return receipt requested. If Buyer cancels the contract pursuant to this paragraph, the contract will terminate and the earnest money will be refunded to Buyer.

[] (3) Buyer has received Seller's affidavit that Seller requested information from the Association concerning its financial condition as required by the Texas Property Code, and that the Association did not provide a Certificate or information required in the Certificate. Buyer and Seller agree to waive the requirement to furnish the Certificate.

3. SALES PRICE:

A. Cash portion of Sales Price payable by Buyer at closing \$ _____

B. Sum of all financing described below (excluding any loan funding)

fee or mortgage insurance premium).....\$ _____
C. Sales Price (Sum of A and B)\$ _____

4. FINANCING: The portion of Sales Price not payable in cash will be paid as follows: (Check applicable boxes below)

- A. THIRD PARTY FINANCING: One or more third party mortgage loans in the total amount of \$ _____ (excluding any loan funding fee or mortgage insurance premium).
 - (1) Property Approval: If the Property does not satisfy the lenders' underwriting requirements for the loan(s), (including, but not limited to appraisal, insurability and lender required repairs), Buyer may terminate this contract by giving notice to Seller prior to closing and the earnest money will be refunded to Buyer.
 - (2) Credit Approval: (Check one box only)
 - (a) This contract is subject to Buyer being approved for the financing described in the attached Third Party Financing Addendum for Credit Approval.
 - (b) This contract is not subject to Buyer being approved for financing and does not involve FHA or VA financing.
- B. ASSUMPTION: The assumption of the unpaid principal balance of one or more promissory notes described in the attached TREC Loan Assumption Addendum.
- C. SELLER FINANCING: A promissory note from Buyer to Seller of \$ _____, secured by vendor's and deed of trust liens, and containing the terms and conditions described in the attached TREC Seller Financing Addendum. If an owner policy of title insurance is furnished, Buyer shall furnish Seller with a mortgagee policy of title insurance.

5. EARNEST MONEY: Upon execution of this contract by all parties, Buyer shall deposit \$ _____ as earnest money with _____, as escrow agent, at _____ (address). Buyer shall deposit additional earnest money of \$ _____ with escrow agent within _____ days after the effective date of this contract. If Buyer fails to deposit the earnest money as required by this contract, Buyer will be in default.

6. TITLE POLICY:

- A. TITLE POLICY: Seller shall furnish to Buyer at Seller's Buyer's expense an owner policy of title insurance (Title Policy) issued by _____ (Title Company) in the amount of the Sales Price, dated at or after closing, insuring Buyer against loss under the provisions of the Title Policy, subject to the promulgated exclusions (including existing building and zoning ordinances) and the following exceptions:
 - (1) Restrictive covenants common to the platted subdivision in which the Property is located.
 - (2) The standard printed exception for standby fees, taxes and assessments.
 - (3) Liens created as part of the financing described in Paragraph 4.
 - (4) Terms and provisions of the Documents including the assessments and platted easements.
 - (5) Reservations or exceptions otherwise permitted by this contract or as may be approved by Buyer in writing.
 - (6) The standard printed exception as to marital rights.
 - (7) The standard printed exception as to waters, tidelands, beaches, streams, and related matters.
 - (8) The standard printed exception as to discrepancies, conflicts, shortages in area or boundary lines, encroachments or protrusions, or overlapping improvements.
- B. COMMITMENT: Within 20 days after the Title Company receives a copy of this contract, Seller shall furnish to Buyer a commitment for title insurance (Commitment) and, at Buyer's expense, legible copies of restrictive covenants and documents evidencing exceptions in the Commitment (Exception Documents) other than the standard printed exceptions. Seller authorizes the Title Company to deliver the Commitment and Exception Documents to Buyer at Buyer's address shown in Paragraph 21. If the Commitment and Exception Documents are not delivered to Buyer within the specified time, the time for delivery will be automatically extended up to 15 days or the Closing Date, whichever is earlier.
- C. OBJECTIONS: Buyer may object in writing to defects, exceptions, or encumbrances to title: disclosed in the Commitment other than items 6A(1) through (8) above; or which prohibit the following use or activity: _____ . Buyer must object the earlier of (i) the Closing Date or (ii) _____ days after Buyer receives the Commitment and Exception Documents. Buyer's failure to object within the time allowed will constitute a waiver of Buyer's right to object; except that the requirements in Schedule C of the Commitment are not waived. Provided Seller is not obligated to incur any expense, Seller shall cure the timely objections of Buyer or any third party lender within 15 days after Seller receives the objections and the Closing Date will be extended as necessary. If objections are not cured within such 15 day period, this contract will terminate and the earnest money will be refunded to Buyer unless Buyer waives the objections.
- D. TITLE NOTICES:
 - (1) ABSTRACT OR TITLE POLICY: Broker advises Buyer to have an abstract of title covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a Title Policy. If a Title Policy is furnished, the Commitment should be promptly reviewed by an attorney of Buyer's choice due to the time limitations on Buyer's right to object.

(Address of Property)

- (2) **STATUTORY TAX DISTRICTS:** If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this contract.
- (3) **TIDE WATERS:** If the Property abuts the tidally influenced waters of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included in the contract. An addendum containing the notice promulgated by TREC or required by the parties must be used.
- (4) **ANNEXATION:** If the Property is located outside the limits of a municipality, Seller notifies Buyer under §5.011, Texas Property Code, that the Property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Property for further information.
- (5) **PROPERTY LOCATED IN A CERTIFICATED SERVICE AREA OF A UTILITY SERVICE PROVIDER:** Notice required by §13.257, Water Code: The real property, described in Paragraph 2, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned Buyer hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in Paragraph 2 or at closing of purchase of the real property.

7. PROPERTY CONDITION:

- A. **ACCESS, INSPECTIONS AND UTILITIES:** Seller shall permit Buyer and Buyer's agents access to the Property at reasonable times. Buyer may have the Property inspected by inspectors selected by Buyer and licensed by TREC or otherwise permitted by law to make inspections. Seller at Seller's expense shall turn on existing utilities for inspections.
- B. **SELLER'S DISCLOSURE NOTICE PURSUANT TO §5.008, TEXAS PROPERTY CODE (Notice):**
(Check one box only)
- (1) Buyer has received the Notice.
- (2) Buyer has not received the Notice. Within _____ days after the effective date of this contract, Seller shall deliver the Notice to Buyer. If Buyer does not receive the Notice, Buyer may terminate this contract at any time prior to the closing and the earnest money will be refunded to Buyer. If Seller delivers the Notice, Buyer may terminate this contract for any reason within 7 days after Buyer receives the Notice or prior to the closing, whichever first occurs, and the earnest money will be refunded to Buyer.
- (3) The Texas Property Code does not require this Seller to furnish the Notice.
- C. **SELLER'S DISCLOSURE OF LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS** is required by Federal law for a residential dwelling constructed prior to 1978.
- D. **ACCEPTANCE OF PROPERTY CONDITION:** (Check one box only)
- (1) Buyer accepts the Property in its present condition.
- (2) Buyer accepts the Property in its present condition provided Seller, at Seller's expense, shall complete the following specific repairs and treatments: _____

(Do not insert general phrases, such as "subject to inspections" that do not identify specific repairs.)

NOTICE TO BUYER AND SELLER: Buyer's agreement to accept the Property in its present condition under Paragraph 7D(1) or (2) does not preclude Buyer from inspecting the Property under Paragraph 7A, from negotiating repairs or treatments in a subsequent amendment, or from terminating this contract during the Option Period, if any.

- E. **LENDER REQUIRED REPAIRS AND TREATMENTS:** Unless otherwise agreed in writing, neither party is obligated to pay for lender required repairs, which includes treatment for wood destroying insects. If the parties do not agree to pay for the lender required repairs or treatments, this contract will terminate and the earnest money will be refunded to Buyer. If the cost of lender required repairs and treatments exceeds 5% of the Sales Price, Buyer may terminate this contract and the earnest money will be refunded to Buyer.
- F. **COMPLETION OF REPAIRS AND TREATMENTS:** Unless otherwise agreed in writing, Seller shall complete all agreed repairs and treatments prior to the Closing Date. All required permits must be obtained, and repairs and treatments must be performed by persons who are licensed or otherwise authorized by law to provide such repairs or treatments. At Buyer's election, any transferable warranties received by Seller with respect to the repairs and treatments will be transferred to Buyer at Buyer's expense. If Seller fails to complete any agreed repairs and

treatments prior to the Closing Date, Buyer may do so and receive reimbursement from Seller at closing. The Closing Date will be extended up to 15 days, if necessary, to complete repairs and treatments.

G. ENVIRONMENTAL MATTERS: Buyer is advised that the presence of wetlands, toxic substances, including asbestos and wastes or other environmental hazards or the presence of a threatened or endangered species or its habitat may affect Buyer's intended use of the Property. If Buyer is concerned about these matters, an addendum promulgated by TREC or required by the parties should be used.

H. RESIDENTIAL SERVICE CONTRACTS: Buyer may purchase a residential service contract from a residential service company licensed by TREC. If Buyer purchases a residential service contract, Seller shall reimburse Buyer at closing for the cost of the residential service contract in an amount not exceeding \$_____. Buyer should review any residential service contract for the scope of coverage, exclusions and limitations. **The purchase of a residential service contract is optional. Similar coverage may be purchased from various companies authorized to do business in Texas.**

8. BROKERS' FEES: All obligations of the parties for payment of brokers' fees are contained in separate written agreements.

9. CLOSING:

A. The closing of the sale will be on or before _____, 20____, or within 7 days after objections to matters disclosed in the Commitment have been cured, whichever date is later (Closing Date). If either party fails to close the sale by the Closing Date, the non-defaulting party may exercise the remedies contained in Paragraph 15.

B. At closing:

- (1) Seller shall execute and deliver a general warranty deed conveying title to the Property to Buyer and showing no additional exceptions to those permitted in Paragraph 6 and furnish tax statements or certificates showing no delinquent taxes on the Property.
- (2) Buyer shall pay the Sales Price in good funds acceptable to the escrow agent.
- (3) Seller and Buyer shall execute and deliver any notices, statements, certificates, affidavits, releases, loan documents and other documents reasonably required for the closing of the sale and the issuance of the Title Policy.
- (4) There will be no liens, assessments, or security interests against the Property which will not be satisfied out of the sales proceeds unless securing the payment of any loans assumed by Buyer and assumed loans will not be in default.
- (5) If the Property is subject to a lease, Seller shall (i) deliver to Buyer the lease(s) and the move-in condition form signed by the tenant, if any, and (ii) transfer security deposits (as defined under §92.102, Property Code), if any, to Buyer. In such an event, Buyer shall deliver to the tenant a signed statement acknowledging that the Buyer has received the security deposit and is responsible for the return of the security deposit, and specifying the exact dollar amount of the security deposit.

10. POSSESSION: Seller shall deliver to Buyer possession of the Property in its present or required condition, ordinary wear and tear excepted: upon closing and funding according to a temporary residential lease form promulgated by TREC or other written lease required by the parties. Any possession by Buyer prior to closing or by Seller after closing which is not authorized by a written lease will establish a tenancy at sufferance relationship between the parties. **Consult your insurance agent prior to change of ownership and possession because insurance coverage may be limited or terminated. The absence of a written lease or appropriate insurance coverage may expose the parties to economic loss.**

11. SPECIAL PROVISIONS: (Insert only factual statements and business details applicable to the sale. TREC rules prohibit licensees from adding factual statements or business details for which a contract addendum, lease or other form has been promulgated by TREC for mandatory use.)

12. SETTLEMENT AND OTHER EXPENSES:

A. The following expenses must be paid at or prior to closing:

(1) Expenses payable by Seller (Seller's Expenses):

(a) Releases of existing liens, including prepayment penalties and recording fees; lender, FHA, or VA completion requirements; tax statements or certificates; preparation of deed; one-half of escrow fee; and other expenses payable by Seller under this contract.

(b) Seller shall also pay an amount not to exceed \$ _____ to be applied in the following order: Buyer's Expenses which Buyer is prohibited from paying by FHA, VA, Texas Veterans Land Board or other governmental loan programs, and then to other Buyer's Expenses as allowed by the lender.

(2) Expenses payable by Buyer (Buyer's Expenses): Appraisal fees; loan application fees; adjusted origination charges; credit reports; preparation of loan documents; interest on the notes from date of disbursement to one month prior to dates of first monthly payments; recording fees; copies of easements and restrictions; loan title policy with endorsements required by lender; loan-related inspection fees; photos; amortization schedules; one-half of escrow fee; all prepaid items, including required premiums for flood and hazard insurance, reserve deposits for insurance, ad valorem taxes and special governmental assessments; final compliance inspection; courier fee; repair inspection; underwriting fee; wire transfer fee; expenses incident to any loan; Private Mortgage Insurance Premium (PMI), VA Loan Funding Fee, or FHA Mortgage Insurance Premium (MIP) as required by the lender; and other expenses payable by Buyer under this contract.

(3) Except as provided by 12(A)(4) below, Buyer shall pay any and all Association fees or other charges resulting from the transfer of the Property not to exceed \$ _____ and Seller shall pay any excess.

(4) Buyer shall pay any deposits for reserves required at closing by the Association.

B. If any expense exceeds an amount expressly stated in this contract for such expense to be paid by a party, that party may terminate this contract unless the other party agrees to pay such excess. Buyer may not pay charges and fees expressly prohibited by FHA, VA, Texas Veterans Land Board or other governmental loan program regulations.

13. PRORATIONS: Taxes for the current year, interest, maintenance fees, regular condominium assessments, dues and rents will be prorated through the Closing Date. The tax proration may be calculated taking into consideration any change in exemptions that will affect the current year's taxes. If taxes for the current year vary from the amount prorated at closing, the parties shall adjust the prorations when tax statements for the current year are available. If taxes are not paid at or prior to closing, Buyer shall pay taxes for the current year. Cash reserves from regular condominium assessments for deferred maintenance or capital improvements established by the Association will not be credited to Seller. Any special condominium assessment due and unpaid at closing will be the obligation of Seller.

14. CASUALTY LOSS: If any part of the Unit which Seller is solely obligated to maintain and repair under the terms of the Declaration is damaged or destroyed by fire or other casualty, Seller shall restore the same to its previous condition as soon as reasonably possible, but in any event by the Closing Date. If Seller fails to do so due to factors beyond Seller's control, Buyer may (a) terminate this contract and the earnest money will be refunded to Buyer, (b) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (c) accept the Property in its damaged condition with an assignment of insurance proceeds and receive credit from Seller at closing in the amount of the deductible under the insurance policy. If any part of the Common Elements or Limited Common Elements appurtenant to the Unit is damaged or destroyed by fire or other casualty loss, Buyer will have 7 days from receipt of notice of such casualty loss within which to notify Seller in writing that the contract will be terminated unless Buyer receives written confirmation from the Association that the damaged condition will be restored to its previous condition within a reasonable time at no cost to Buyer. Unless Buyer gives such notice within such time, Buyer will be deemed to have accepted the Property without confirmation of such restoration. Seller will have 7 days from the date of receipt of Buyer's notice within which to cause to be delivered to Buyer such confirmation. If written confirmation is not delivered to Buyer as required above, Buyer may terminate this contract and the earnest money will be refunded to Buyer. Seller's obligations under this paragraph are independent of any other obligations of Seller under this contract.

15. DEFAULT: If Buyer fails to comply with this contract, Buyer will be in default, and Seller may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money as liquidated damages, thereby releasing both parties from this contract. If, due to factors beyond Seller's control, Seller fails within the time allowed to make any non-casualty repairs or deliver the Commitment, or survey, if required of Seller, Buyer may (a) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (b) terminate this contract as the sole remedy and receive the earnest money. If Seller fails to comply with this contract for any other reason, Seller will be in default and Buyer may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money, thereby releasing both parties from this contract.

16. MEDIATION: It is the policy of the State of Texas to encourage resolution of disputes through alternative dispute resolution procedures such as mediation. Any dispute between Seller and Buyer related to this contract which is not resolved through informal discussion will will not be submitted to a mutually acceptable mediation service or provider. The parties to the mediation shall bear the mediation costs equally. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

17. ATTORNEY'S FEES: A Buyer, Seller, Listing Broker, Other Broker, or escrow agent who prevails in any legal proceeding related to this contract is entitled to recover reasonable attorney's fees and all costs of such proceeding.

18. ESCROW:

A. ESCROW: The escrow agent is not (i) a party to this contract and does not have liability for the performance or nonperformance of any party to this contract, (ii) liable for interest on the earnest money and (iii) liable for the loss of any earnest money caused by the failure of any financial institution in which the earnest money has been deposited unless the financial institution is acting as escrow agent.

B. EXPENSES: At closing, the earnest money must be applied first to any cash down payment, then to Buyer's Expenses and any excess refunded to Buyer. If no closing occurs, escrow agent may: (i) require a written release of liability of the escrow agent from all parties, (ii) require payment of unpaid expenses incurred on behalf of a party, and (iii) only deduct from the earnest money the amount of unpaid expenses incurred on behalf of the party receiving the earnest money.

C. DEMAND: Upon termination of this contract, either party or the escrow agent may send a release of earnest money to each party and the parties shall execute counterparts of the release and deliver same to the escrow agent. If either party fails to execute the release, either party may make a written demand to the escrow agent for the earnest money. If only one party makes written demand for the earnest money, escrow agent shall promptly provide a copy of the demand to the other party. If escrow agent does not receive written objection to the demand from the other party within 15 days, escrow agent may disburse the earnest money to the party making demand reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and escrow agent may pay the same to the creditors. If escrow agent complies with the provisions of this paragraph, each party hereby releases escrow agent from all adverse claims related to the disbursement of the earnest money.

D. DAMAGES: Any party who wrongfully fails or refuses to sign a release acceptable to the escrow agent within 7 days of receipt of the request will be liable to the other party for liquidated damages in an amount equal to the sum of: (i) three times the amount of the earnest money; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.

E. NOTICES: Escrow agent's notices will be effective when sent in compliance with Paragraph 21. Notice of objection to the demand will be deemed effective upon receipt by escrow agent.

19. REPRESENTATIONS: All covenants, representations and warranties in this contract survive closing. If any representation of Seller in this contract is untrue on the Closing Date, Seller will be in default. Unless expressly prohibited by written agreement, Seller may continue to show the Property and receive, negotiate and accept back up offers.

20. FEDERAL TAX REQUIREMENTS: If Seller is a "foreign person," as defined by applicable law, or if Seller fails to deliver an affidavit to Buyer that Seller is not a "foreign person," then Buyer shall withhold from the sales proceeds an amount sufficient to comply with applicable tax law and deliver the same to the Internal Revenue Service together with appropriate tax forms. Internal Revenue Service regulations require filing written reports if currency in excess of specified amounts is received in the transaction.

21. NOTICES: All notices from one party to the other must be in writing and are effective when mailed to, hand-delivered at, or transmitted by facsimile or electronic transmission as follows:

To Buyer at:

To Seller at:

Telephone: () _____

Telephone: () _____

Facsimile: () _____

Facsimile: () _____

E-mail: _____

E-mail: _____

22. AGREEMENT OF PARTIES: This contract contains the entire agreement of the parties and cannot be changed except by their written agreement. Addenda which are a part of this contract are (check all applicable boxes):

- Third Party Financing Addendum for Credit Approval
- Loan Assumption Addendum
- Buyer's Temporary Residential Lease
- Seller's Temporary Residential Lease
- Addendum for Sale of Other Property by Buyer
- Addendum for "Back-Up" Contract
- Seller Financing Addendum
- Addendum for Coastal Area Property
- Short Sale Addendum
- Other (list): _____
- Addendum for Seller's Disclosure of Information on Lead-based Paint and Lead-based Paint Hazards as Required by Federal Law
- Environmental Assessment, Threatened or Endangered Species and Wetlands Addendum
- Addendum for Property Located Seaward of the Gulf Intracoastal Waterway
- Addendum for Release of Liability on Assumption of FHA, VA, or Conventional Loan Restoration of Seller's Entitlement for VA Guaranteed Loan

23. TERMINATION OPTION: For nominal consideration, the receipt of which is hereby acknowledged by Seller, and Buyer's agreement to pay Seller \$ _____ (Option Fee) within 2 days after the effective date of this contract, Seller grants Buyer the unrestricted right to terminate this contract by giving notice of termination to Seller within _____ days after the effective date of this contract (Option Period). If no dollar amount is stated as the Option Fee or if Buyer fails to pay the Option Fee to Seller within the time prescribed, this paragraph will not be a part of this contract and Buyer shall not have the unrestricted right to terminate this contract. If Buyer gives notice of termination within the time prescribed, the Option Fee will not be refunded; however, any earnest money will be refunded to Buyer. The Option Fee will will not be credited to the Sales Price at closing. **Time is of the essence for this paragraph and strict compliance with the time for performance is required.**

24. CONSULT AN ATTORNEY: TREC rules prohibit real estate licensees from giving legal advice. READ THIS CONTRACT CAREFULLY. If you do not understand the effect of this contract, consult an attorney BEFORE signing.

Buyer's Attorney is: _____

Seller's Attorney is: _____

Telephone: () _____

Telephone: () _____

Facsimile: () _____

Facsimile: () _____

E-mail: _____

E-mail: _____

**EXECUTED the _____ day of _____, 20____ (EFFECTIVE DATE).
(BROKER: FILL IN THE DATE OF FINAL ACCEPTANCE.)**

Buyer

Seller

Buyer

Seller

The form of this contract has been approved by the Texas Real Estate Commission. TREC forms are intended for use only by trained real estate licensees. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, (512) 459-6544 (<http://www.trec.state.tx.us>) TREC NO. 30-9. This form replaces TREC NO. 30-7.

BROKER INFORMATION

_____ Other Broker Firm License No. represents <input type="checkbox"/> Buyer only as Buyer's agent <input type="checkbox"/> Seller as Listing Broker's subagent _____ Licensed Supervisor of Associate Telephone _____ Associate Telephone _____ Other Broker's Address Facsimile _____ City State Zip _____ Associate Email Address	_____ Listing Broker Firm License No. represents <input type="checkbox"/> Seller and Buyer as an intermediary <input type="checkbox"/> Seller only as Seller's agent _____ Licensed Supervisor of Associate Telephone _____ Listing Associate Telephone _____ Listing Broker's Office Address Facsimile _____ City State Zip _____ Listing Associate's Email Address _____ Selling Associate Telephone _____ Selling Associate's Office Address Facsimile _____ City State Zip _____ Selling Associate's Email Address
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Listing Broker has agreed to pay Other Broker _____ of the total sales price when the Listing Broker's fee is received. Escrow agent is authorized and directed to pay other Broker from Listing Broker's fee at closing.

OPTION FEE RECEIPT

Receipt of \$ _____ (Option Fee) in the form of _____ is acknowledged.

 Seller or Listing Broker Date

CONTRACT AND EARNEST MONEY RECEIPT

Receipt of Contract and \$ _____ Earnest Money in the form of _____ is acknowledged.

Escrow Agent: _____ Date: _____

By: _____

 Email Address

 Address Telephone (_____) _____

 City State Zip Facsimile: (_____) _____

**Agenda Item 10:**

Discussion and possible action to adopt amendments to 22 TAC Chapter 533 regarding Practice and Procedure

SUMMARY

Adopts amendments to 22 TAC §533.1 Definitions and §533.3. Filing and Notice without changes to the proposed text as published in the March 4, 2011, issue of the *Texas Register* (36 TexReg 1467), and will not be republished.

The amendment to §533.1 amends the definition of "last known mailing address" to "mailing address" to be consistent with other TREC rules. The amendment to §533.3 clarifies that the Notice of Alleged Violation required by Occupations Code §1101.703 will be mailed to the respondent's mailing address.

No comments were received on the rule as proposed.

STAFF

Adoption of amendments as proposed.

RECOMMENDATION**MOTION**

MOVED, that staff is authorized, on behalf of this Commission, to submit the amendments to TAC §533.1 Definitions and §533.3. Filing and Notice as presented at this meeting for adoption, with any non-substantive changes as staff may deem necessary or advisable.

Agenda Item 10
Chapter 533 Practice and Procedures

§533.1. Definitions. The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) - (12) (No change).

(13) [~~Last Known~~] Mailing Address--The [~~permanent~~] mailing address as provided to the commission by a Licensee **and maintained as required by 22 TAC §535.96 and §535.217 of this title (Relating to Mailing Address or Other Contact Information) or as provided to the commission by an** [~~or~~] Applicant or as shown in the commission's records for a Respondent who is not a license holder. **The mailing address for a Respondent that holds an active salesperson license shall be the mailing address of the salesperson's sponsoring broker as shown in the commission's records.**

(14) – (22) (No change).

§533.3. Filing and Notice.

(a) The commission shall provide notice to all parties in accordance with the APA §2001.052, Chapters 1101 and 1102, Texas Occupations Code, and the following:

(1) If, after investigation of a possible violation and the facts surrounding that possible violation, the commission determines that a violation has occurred, the commission may issue a written Notice of Alleged Violation.

(2) The Notice of Alleged Violation shall be sent to the Respondent's [~~last known~~] mailing address by certified or registered mail.

(3) The Notice of Alleged Violation shall include:

(A) a brief summary of the alleged violation(s);

(B) a statement of the amount of the penalty and/or sanction recommended;
and

(C) a statement of the right of the Respondent to a hearing.

(4) The commission shall base the recommendation on the factors set forth in this chapter.

(b) – (d) (No change).

(e) If a real estate salesperson is a respondent, the commission also will notify the salesperson's sponsoring broker of the hearing. **Such notice need not be provided by certified or registered mail.** If an apprentice inspector or real estate inspector is a **Respondent** [~~respondent~~], the commission also will notify the sponsoring professional inspector of the hearing.

(f) Any document served upon a party is prima facie evidence of receipt if it is directed to the party's [~~last known~~] mailing address. This presumption is rebuttable. Failure to claim properly addressed certified or registered mail will not support a finding of nondelivery.

**Agenda Item 11:**

Discussion and possible action to adopt amendments to 22 TAC §535.217 regarding Contact Information

SUMMARY

Adopts amendments to 22 TAC §535.217 regarding Contact Information without changes to the proposed text as published in the March 4, 2011, issue of the *Texas Register* (36 TexReg 1468), and will not be republished.

The amendment to §535.217 amends the title of the rule to add "Mailing Address and Other" and deletes the term "permanent" from the rule to make it consistent with other TREC rules.

No comments were received on the amendments to the rule as proposed.

STAFF

Adoption of amendments as proposed.

RECOMMENDATION**MOTION**

MOVED, that staff is authorized, on behalf of this Commission, to submit the amendments to 22 TAC §535.217 regarding Contact Information as presented at this meeting for adoption, with any non-substantive changes as staff may deem necessary or advisable.

Agenda Item 11
Subchapter R. Real Estate Inspectors

§535.217 Mailing Address and Other Contact Information. Each licensee shall furnish a [~~permanent~~] mailing address, phone number, and email address to the commission and shall report all subsequent changes within 10 days after a change of any of the listed contact information. If a licensee fails to update [~~a permanent~~] the mailing address, the last known mailing address for the licensee will be deemed to be the licensee's [~~permanent~~] mailing address.

**Agenda Item 12:**

Discussion and possible action to adopt or withdraw amendments to 22 TAC Chapter 537 as follows:

- a. Amend §537.45 concerning Standard Contract Form TREC No. 38-3, Notice of Buyer's Termination of Contract
- b. Withdraw amendments to §537.46 concerning Standard Contract Form TREC No. 39-7, Amendment to Contract

SUMMARY

Adopts amendments to §537.45 concerning Standard Contract Form TREC No. 38-3, Notice of Buyer's Termination of Contract with changes to the proposed text as published in the February 11, 2011, issue of the *Texas Register* (36 TexReg 707). The difference between the rules as proposed and as finally adopted is that no changes were made to §537.46 concerning Standard Contract Form TREC No. 39-7, Amendment to Contract.

The amendments to §537.45 adopts by reference Standard Contract Form TREC No. 38-3, Notice of Buyer's Termination of Contract. Paragraph 2 of the notice would be amended to read: "(2) Buyer cannot obtain Credit Approval in accordance with the Third Party Financing Addendum for Credit Approval to the contract" to be consistent with a recent change to the title of TREC Form No. 40-4 Third Party Financing Condition Addendum for Credit Approval.

No comments were received on the amendments to the rule as proposed.

STAFF

Adoption of amendments and the form as presented.

RECOMMENDATION**MOTION**

MOVED, that staff is authorized, on behalf of this Commission, to submit the amendments to §537.45 concerning Standard Contract Form TREC No. 38-3, Notice of Buyer's Termination of Contract, with any non-substantive changes as staff may deem necessary or advisable for adoption, and withdraw the proposed amendments to §537.46 concerning Standard Contract Form TREC No. 39-7, Amendment to Contract.

Agenda Item 12
Chapter 537 Professional Agreements and Standard Contracts

§537.45. Standard Contract Form TREC No. 38-3[2]. The Texas Real Estate Commission adopts by reference standard contract form TREC No. 38-3[2] approved by the Texas Real Estate Commission in **2011[2008]** for use as a notice of termination of contract. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711- 2188, www.trec.state.tx.us.

§537.46. Standard Contract Form TREC No. 39-7[6] The Texas Real Estate Commission adopts by reference standard contract form TREC No. 39-7[6] approved by the Texas Real Estate Commission in **2011[2006]** for use as an amendment to promulgated forms of contracts. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711- 2188, www.trec.state.tx.us.



PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)

NOTICE OF BUYER'S TERMINATION OF CONTRACT

CONCERNING THE CONTRACT FOR THE SALE OF THE PROPERTY AT

(Street Address and City)

BETWEEN THE UNDERSIGNED BUYER AND _____

(SELLER)

Buyer notifies Seller that the contract is terminated pursuant to the following:

- (1) the unrestricted right of Buyer to terminate the contract under Paragraph 23 of the contract.
- (2) Buyer cannot obtain Credit [Financing] Approval in accordance with the Third Party Financing [Condition] Addendum for Credit Approval to the contract.
- (3) the Property does not satisfy the lenders' underwriting requirements for the loan under Paragraph 4A(1) of the contract.
- (4) Buyer elects to terminate under Paragraph A of the Addendum for Property Subject to Mandatory Membership in a Property Owners' Association.
- (5) Buyer elects to terminate under Paragraph 7B(2) of the contract relating to the Seller's Disclosure Notice.
- (6) Other (*identify the paragraph number of contract or the addendum*): _____

NOTE: Release of the earnest money is governed by the terms of the contract.

Buyer	Date	Buyer	Date
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This form has been approved by the Texas Real Estate Commission for use with similarly approved or promulgated contract forms. Such approval relates to this form only. TREC forms are intended for use only by trained real estate licensees. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not suitable for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, 1-800-250-8732 or (512) 459-6544 (<http://www.trec.state.tx.us>) TREC No. 38-3[2]. This form replaces TREC No. 38-2[1].



AMENDMENT TO CONTRACT CONCERNING THE PROPERTY AT

(Street Address and City)

Seller and Buyer amend the contract as follows: (check each applicable box)

- (1) The Sales Price in Paragraph 3 of the contract is:
A. Cash portion of Sales Price payable by Buyer at closing
B. Sum of financing described in the contract
C. Sales Price (Sum of A and B)
(2) In addition to any repairs and treatments otherwise required by the contract, Seller, at Seller's expense, shall complete the following repairs and treatments:
(3) The date in Paragraph 9 of the contract is changed to
NOTE: Failure to deliver this amendment to escrow agent may affect the parties' rights to specific performance.
(4) The amount in Paragraph 12A(1)(b) of the contract is changed to
(5) The cost of lender required repairs and treatment, as itemized on the attached list, will be paid as follows:
(6) Buyer has paid Seller an additional Option Fee of \$
(7) Buyer waives the unrestricted right to terminate the contract for which the Option Fee was paid.
(8) The date for Buyer to give written notice to Seller that Buyer cannot obtain Financing Approval as set forth in the Third Party Financing Condition Addendum is changed to
(9) Other Modifications: (Insert only factual statements and business details applicable to this sale.)

EXECUTED the day of , 20 . (BROKER: FILL IN THE DATE OF FINAL ACCEPTANCE.)

Buyer

Seller

Buyer

Seller

This form has been approved by the Texas Real Estate Commission for use with similarly approved or promulgated contract forms. Such approval relates to this form only. TREC forms are intended for use only by trained real estate licensees. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, [1-800-250-8732 or] (512) 459-6544 (http://www.trec.state.tx.us) TREC No. 39-7[6]. This form replaces TREC No. 39-6[5].

**Agenda Item 13:**

Discussion and possible action to renew for an additional 60-day period emergency rules concerning:

- a. §537.20 concerning Standard Contract Form TREC No. 9-9
- b. §537.28 concerning Standard Contract Form TREC No. 20-10
- c. §537.30 concerning Standard Contract Form TREC No. 23-11
- d. §537.31 concerning Standard Contract Form TREC No. 24-11
- e. §537.32 concerning Standard Contract Form TREC No. 25-8
- f. §537.37 concerning Standard Contract Form TREC No. 30-9

SUMMARY

Extends the initial period of adoption by emergency action for an addition 60-day period to allow use of the forms until the adoption of agenda item 9. **(Forms available under agenda item 9)**

**STAFF
RECOMMENDATION**

Approve the additional 60-day period for the emergency rules.

MOTION

MOVED, that staff is authorized, on behalf of this Commission, to request an additional 60-day period for the adoption by emergency action of §537.20 concerning Standard Contract Form TREC No. 9-9, §537.28 concerning Standard Contract Form TREC No. 20-10, §537.30 concerning Standard Contract Form TREC No. 23-11, §537.31 concerning Standard Contract Form TREC No. 24-11, §537.32 concerning Standard Contract Form TREC No. 25-8 and §537.37 concerning Standard Contract Form TREC No. 30-9.

TEXAS



REAL ESTATE COMMISSION

Agenda Item 14: Discussion regarding legislative housekeeping measures and other legislative items

SUMMARY See attached documentation

STAFF Discussion item only

RECOMMENDATION

2011 Legislative Update

Each of the following bills has a hyperlink to information about the bill, including the text, on the Texas Legislature website.

Agency-Specific Licensing

[SB 747](#) by Carona; [HB 1637](#) by Hamilton -- TREC (broker/sales) housekeeping bill
SB 747 passed Senate, first read and referred to House Licensing and Administrative Procedures Committee 4/4/11; House substitute voted out of LAP 3/22/11

[HB 1680](#) by Geren; [SB 1000](#) by Eltife et al – Provides for self-directed, semi-independent (SDSI) status for TREC
No action taken in LAP 3/15/11; Voted out of Business and Commerce 4/5/11

[HB 937](#) by Harless; [SB 379](#) by Nichols – Repeals the requirement that inspectors have professional liability (errors and omissions) insurance to obtain or renew a license
Referred to LAP 2/24/11; Referred to Business and Commerce 2/2/11

[HB 1146](#) by Kuempel; [SB 734](#) by Carona – Provides for registration and regulation of appraisal management companies (AMCs) by the Texas Appraiser Licensing and Certification Board
Substitute voted out of LAP 3/29/11; Left pending in B&C 3/30/11 but consensus among stakeholders

General Licensing

[HB 177](#) by Jackson – Requires occupational licensing agencies to verify eligibility for employment in the United States of a person applying for or renewing an occupational license
Referred to State Affairs 2/11/11

Related Substantive Law

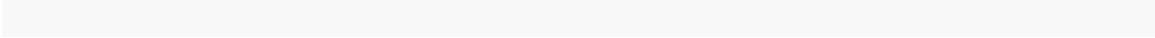
[SB 299](#) by Wentworth – Prohibits the recording of an instrument conveying real property under a contract for sale if the record does not include the sales price; provides that a purchaser of real property is liable for a civil penalty of five percent of the sales price if the recorded document does not include the sales price
Referred to Intergovernmental Relations 1/31/11

[HB 666](#) by Villarreal – Requires the Comptroller to conduct a study to examine the impact that requiring disclosure of the sales price of real property would have on the property tax system, property tax revenues, and the allocation of property tax burdens among taxpayers
Referred to Ways and Means 2/21/11

[HB 1887](#) by Villarreal – Modifies the tax protest appeal process, allowing expert testimony by non-appraisers about market value and uniform and equal value.
Committee substitute left pending in Ways and Means 4/4/11

[HB 8](#) by Darby et al; [SB 1459](#) by Harris – Prohibits certain transfer fees in real estate transactions.

Voted out of Business and Industry 4/1/11; Referred to Business and Commerce 3/22/11



SECTION BY SECTION ANALYSIS – CSSB 1000

SECTION 1. Amends Chapter 1101, Occupations Code, by adding Subchapter B-1 to give the Texas Real Estate Commission (TREC) self-directed and semi-independent status. The bill requires TREC to adopt an annual budget, requires TREC to be responsible for all direct and indirect costs of TREC's existence and operation, and prohibits TREC from directly or indirectly causing the general revenue fund to incur any cost. The bill authorizes TREC to set the amounts of fees, penalties, charges, and revenues necessary for the purpose of carrying out agency functions and funding the TREC budget. The bill requires that all fees and funds collected by TREC and any funds appropriated to TREC be deposited in interest-bearing deposit accounts in the Texas Treasury Safekeeping Trust Company (TTSTC), except that certain fees enumerated in the bill must be deposited in the appropriate fund in the state treasury. The bill requires TREC, not later than August 31 of each fiscal year, to remit \$750,000 to the general revenue fund. TREC must contract with the comptroller for the maintenance of the deposit accounts.

The state auditor would continue to have the authority to audit TREC and would be required to enter into a contract and schedule with TREC to conduct audits. TREC would be required to remit a nonrefundable retainer to the state auditor of \$10,000 per fiscal year and would be required to reimburse the state auditor for all costs incurred, in excess of the retainer paid each fiscal year, in performing the audits and to provide to the governor a copy of any audit performed.

Before the beginning of each regular session of the legislature, TREC would be required to submit to the legislature and the governor various detailed reports describing all of TREC's activities in the previous biennium.

TREC would be authorized to enter into contracts necessary to administer agency affairs and attain TREC's purposes, except that TREC would be prohibited from incurring any indebtedness, liability, or obligation that would create a debt or other liability of the state or any other entity other than the commission, or that would create personal liability for members or employees of TREC.

TREC would be authorized to acquire and sell real, personal, or mixed property; construct, maintain and operate facilities necessary for its functions; and borrow money under the terms detailed in the bill.

The office of the attorney general (OAG) would be required to represent TREC in any litigation. TREC would be required to remit a nonrefundable retainer to the OAG of \$75,000 per fiscal year which would be applied to any services provided to TREC. The OAG would be authorized to assess and collect from TREC reasonable attorney's fees, in excess of the retainer paid each fiscal year, associated with any litigation in which the OAG represents TREC. TREC would be required to remit a nonrefundable retainer to the State Office of Administrative Hearings

(SOAH) of \$75,000 for hearings conducted for TREC. The retainer would be applied to the costs associated with conducting the hearings, and SOAH would be authorized to assess and collect from TREC reasonable fees, in excess of the retainer paid each fiscal year, for additional costs associated with conducting a hearing for TREC.

If TREC loses its status as a self-directed semi-independent agency for any reason, it would be liable for any expenses or debts incurred, including any lease entered into by TREC, during the time it was a self-directed semi-independent agency. The state would not be liable for any expense or debt incurred by the agency, and money from the general revenue fund could not be used to repay the expense or debt. Ownership of any property or other asset acquired by TREC during the time TREC was a self-directed semi-independent agency, including unexpended fees in a deposit account in the TTSTC, would be transferred to the state if TREC no longer has status under this subchapter as a self-directed semi-independent agency for any reason.

TREC would be considered to be a governmental body for purposes of The Open Meetings Act and the Public Information Act; and a state agency for purposes of Chapters 2001 (Administrative Procedure) and 2005 (Miscellaneous Provisions Relating to State Licenses and Permits), Government Code. TREC employees would continue to be members of the Employees Retirement System of Texas under Chapter 812 (Membership), Government Code, and TREC's transition to independent status would have no effect on their membership or any benefits under that system.

SECTION 2. Amends Section 1101.059(c), Occupations Code, to provide that a person appointed to TREC is entitled to reimbursement, rather than reimbursement as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

SECTION 3. Amends Section 1101.101(d), Occupations Code, to require TREC to determine the salaries of the administrator, officers, and employees of TREC and to delete existing text prohibiting the amounts of the salaries from exceeding the amounts specified by the General Appropriations Act.

SECTION 4. (a) Provides for appropriations out of the general revenue fund, for fiscal year ending August 31, 2012, 50 percent of the amount of general revenue appropriated to the agency for fiscal year ending August 31, 2011; and for fiscal year ending August 31, 2013, 50 percent of the amount of general revenue appropriated to the agency for fiscal year ending August 31, 2011.

(b) Authorizes the appropriations made by Subsection (a) of this section to be spent by TREC as TREC directs, subject to Subchapter B-1, Chapter 1101, Occupations Code, as added by this Act. Requires TREC to repay to the general revenue fund the appropriations made to TREC for the fiscal year ending August 31, 2012, not later than that date and as funds become available. Requires TREC to repay to the general revenue fund the appropriation made to TREC for the fiscal year ending August 31, 2013, not later than that date and as funds become available.

SECTION 5. Prohibits the transfer of TREC to self-directed and semi-independent status or the expiration of self-directed and semi-independent status from cancelling, suspending, or preventing any debt owed to or by TREC; any fine, tax, penalty, or obligation of any party; any contract or other obligation of any party; or any action taken by TREC in the administration or enforcement of TREC's duties.

SECTION 6. Requires TREC to continue to have and exercise the powers and duties allocated to TREC in TREC's enabling legislation, except as specifically amended by the Act.

SECTION 7. Transfers title to or ownership of all supplies, materials, records, equipment, books, papers, and furniture used by TREC to TREC. Provides that this Act does not affect any property owned by TREC on or before the effective date of the Act.

SECTION 8. Requires TREC to relocate to state-owned office space not later than September 1, 2011, and requires TREC to pay rent to the state in a reasonable amount to be determined by the Texas Facilities Commission for the use and occupancy of the office space. Prohibits aggregate rental payments from being less than \$550,000 per fiscal year for the fiscal years ending August 31, 2012, and August 31, 2013. Prohibits aggregate rental payments from being less than \$425,000 per fiscal year for each fiscal year ending August 31, 2014, August 31, 2015, and August 31, 2016.

SECTION 9. Provides an effective date of September 1, 2011.

Section by Section Summary of CSHB1637

SECTION 1. Amends §1101.002, Occupations Code, to remove “appraisal of real property” by adding “provides a written opinion as to the estimated price of real property” to the definition of “broker” to clarify the distinction between written price opinions routinely performed by brokers and “appraisal of real property” that requires licensure under Occupations Code Chapter 1103; adds “controls the acceptance or deposit of rent from a resident of a single-family residential real property unit” to the definition of “broker” to require licensing for that type of activity; adds a definition of “business entity” to include a domestic or foreign entity as defined in the Business Organizations Code.

SECTION 2. Amends §1101.005, Occupations Code, to change the exception for licensure for attorneys licensed in “any” state to attorneys licensed in “this” state only; eliminates the exception for licensure for a partnership or limited liability partnership acting through a partner who is a licensed broker.

SECTION 3. Adds §1101.161, Occupations Code, to authorize the commission to solicit and accept gifts, grants and donations.

SECTION 4. Amends §1101.301, Occupations Code, to change the first time examination pass rate benchmark for pre-license education programs from 55% to an average percentage of examinees; requires an education program accredited by the commission to meet or exceed the benchmark for each license category before the commission may renew the program’s accreditation for the license category; authorizes the commission to deny accreditation if an applicant at any time owns or controls an educational program that has been revoked.

SECTION 5. Amends §1101.351, Occupations Code, to require a license of a business entity before the entity may act as a broker.

SECTION 6. Amends §1101.352, Occupations Code, to require an applicant to provide the commission with the applicant’s current mailing address, telephone number and email address if available and to require an applicant to notify the commission of any change to such information while an application is pending.

SECTION 7. Amends §1101.355, Occupations Code, to require errors and omissions insurance of at least \$1 million for a licensed business entity if the designated broker agent of the entity owns less than 10% of the entity; requires the designated agent of a business entity to be a licensed broker in active status and good standing before the business entity may act as a broker; requires a business entity that receives compensation on behalf of a license holder to be licensed as a broker.

SECTION 8. Amends §1101.356, Occupations Code, to require an applicant for a broker license to have at least four years of active experience in this state as a license holder during the preceding 60 month period before the date the application is filed, rather than 2 years of active experience in the preceding 36 month period; authorizes the commission to establish “active experience” by rule.

SECTION 9. Amends §1101.357, Occupations Code, to require an applicant for a broker license who does not satisfy the requirements §1101.356 to have at least four years of active experience in another state as a license holder during the preceding 60 month period before the date the application is filed, rather than 2 years of active experience in the preceding 36 month period.

SECTION 10. Amends §1101.358, Occupations Code, to reduce the pre-license education course hours from 210 total to 180 core hours, to specify the core courses required for pre-license education, and to remove related education requirements.

SECTION 11. Amends §1101.367(c), Occupations Code, to delete the term “annual.”

SECTION 12. Amends §1101.401(f), Occupations Code, to change the period in which an applicant must satisfy an examination requirement from six months to one year.

SECTION 13. Amends §1101.451(e) and (f), Occupations Code, to change the maximum period of time in which a person can late renew a license from one year to six months.

SECTION 14. Amends §1101.452(a), Occupations Code, to delete the term “annual.”

SECTION 15. Amends §1101.453, Occupations Code, to require proof of errors and omissions insurance of at least \$1 million for a licensed business entity to renew a license if the designated broker agent owns less than 10% of the entity; requires the designated agent of a business entity to be a licensed broker in active status and good standing before the entity may renew its license as a broker.

SECTION 16. Amends §1101.454(a), Occupations Code, to increase the education requirements for the first renewal of a salesperson license from 60 to 90 core hours and to remove related education requirements.

SECTION 17. Amends §1101.455(b), Occupations Code, to delete the term “annual.”

SECTION 18. Adds §1101.458, Occupations Code, to require brokers who sponsor salespersons and any licensees, either brokers or salespersons, who are authorized by brokers to supervise other licensees to take a 6 hour Mandatory Broker Responsibility course to renew a license; the course may be used to meet Mandatory Continuing Education (MCE) requirements; the renewal requirement does not apply to brokers who are exempt from MCE requirements.

SECTION 19. Amends §1101.502, Occupations Code, to change the reference to a “corporation, limited liability company, partnership or other entity” to a “business entity.”

SECTION 20. Adds §1101.5041, Occupations Code, to require fingerprinting and background checks for an application for or renewal of an easement or right of way certificate.

SECTION 21. Amends §1101.552, Occupations Code, to require a license holder to provide the commission with the license holder’s current mailing address, telephone number and email address if available and to require a license holder to notify the commission of any change to such information.

SECTION 22. Amends §1101.554, Occupations Code, to change the term “custody” to “copy” to remove the requirement that a broker retain custody and control of a sponsored salesperson’s license and to require the commission to mail a copy of the salesperson’s license to the sponsoring broker.

SECTION 23. Adds §1101.6561, Occupations Code, to authorize the commission to suspend or revoke an educational program accreditation or take other any other action authorized under Chapter 1101 against an education program that violates the Chapter or a rule adopted under the Chapter.

SECTION 24. Repeals §1101.356(c), Occupations Code.

SECTION 25. (a) Requires the commission to adopt rules necessary to implement §1101.301, §1101.356(b-1), and §1101.458 as added not later than December 1, 2011.

(b) provides that §1101.552(e) regarding addresses, telephone numbers, and email addresses, if available, applies only to a broker or salesperson license issued or renewed on or after December 1, 2011.

(c) provides that §1101.502(b) and §1101.5041 regarding fingerprinting requirements as added apply only to an application or renewal of a certificate of registration filed on or after December 1, 2011.

(d) provides that §1101.458 regarding broker responsibility education course as added applies only to a license issued or renewed on or after September 1, 2012.

(e) provides that §1101.352 regarding addresses, telephone numbers, and email addresses, if available, §1101.355 regarding E&O insurance for business entity applicants, and §1101.401 regarding application expiration as amended apply only to an application for a real estate broker or salesperson license submitted on or after the effective date.

(f) provides that §1101.356 and §1101.357 regarding experience requirement as amended apply only to an application for a real estate broker license submitted on or after January 1, 2012.

(g) provides that §1101.358 regarding education requirements as amended applies only to an application for a real estate salesperson license submitted on or after September 1, 2012.

(h) provides that §1101.454 regarding education requirements as amended apply only to the renewal of a real estate broker or salesperson license that expires on or after September 1, 2012.

(i) provides that §1101.451 regarding late renewals and §1101.453 regarding E&O insurance to renew a business entity license apply to the renewal of a real estate salesperson or broker license on or after the effective date.

(j) provides that a person who holds a license as a real estate broker issued before the effective date may continue to renew that license without complying with the changes made to §1101.356 and §1101.357.

(k) provides that §1101.002 and §1101.005 as amended apply to conduct engaged in on or after the effective date.

SECTION 26. Provides that SECTIONS 8 and 9 take effect January 1, 2012. All other sections have an effective date of September 1, 2011.



Agenda Item 15:

Discussion and possible action to appoint working groups to address possible legislative matters regarding:

- a. Education requirements for a broker and salesperson license
- b. Experience requirements for a broker license

SUMMARY To be presented at the meeting.

STAFF Appoint working groups.

RECOMMENDATION

MOTION MOVED, that the following persons are appointed to a working group to recommend rules regarding proposed amendments to the Real Estate License Act concerning education requirements for a broker and salesperson license:

MOVED, that the following persons are appointed to a working group to recommend rules regarding proposed amendments to the Real Estate License Act concerning experience requirements for a broker license:



Agenda Item 16:

Discussion and possible action to approve annual audit plan

SUMMARY

To be presented at the meeting.

**STAFF
RECOMMENDATION**

Approve annual audit plan.

MOTION

MOVED, that the Commission does hereby approve the annual audit plan as submitted under this agenda item.

TEXAS REAL ESTATE COMMISSION

Austin, Texas

INTERNAL AUDIT PLAN

Fiscal Year 2011

TEXAS REAL ESTATE COMMISSION
Austin, Texas

Internal Audit Plan
Fiscal Year 2011

I. Purpose

The Texas Real Estate Commission (the Commission) Internal Audit Plan for the fiscal year 2011 reflects the risk assessment results and the identification of the auditable areas. This audit plan is used to communicate the risk assessment, the scope of the engagement, and the recommended internal audit areas. Specific planning for audit procedures is a continual process; therefore the audit plan may be reviewed during the year and revised as necessary.

This plan has been prepared using generally accepted auditing standards and the standards for the Professional Practice of Internal Auditing as determined by the Institute of Internal Auditors.

II. Methodology

In preparing the internal audit plan, certain agency specific documents were reviewed to gain an understanding of the Commission. This documentation included:

- Goals, Objectives and Strategies
- Strategic Plan
- Legislative Appropriation Requests/Operating Budget
- Annual Financial Report
- Policies and Procedures
- Prior external and internal audits

Additionally, interviews with the pertinent management representatives of the various auditable areas were conducted to gain an understanding of each auditable area, the effect on related areas and the impact of each area on the agency as a whole. Topics discussed in the interviews included dollar impact, business process activities, internal controls, personnel changes and past performance. Utilizing information obtained through the inquiries and background information reviewed, audit areas were identified as the potential audit topics for the year. A risk analysis was completed for each auditable area and then compiled to develop an overall risk assessment for the Commission.

TEXAS REAL ESTATE COMMISSION
Austin, Texas

Internal Audit Plan
Fiscal Year 2011

III. Scope

In accordance with the **Standards for the Professional Practice of Internal Auditing**, the audit scope will encompass the examination and evaluation of the adequacy and effectiveness of the Commission's system of internal control and the quality of performance in carrying out assigned responsibilities. The audit scope includes:

- **Reliability and Integrity of Information**
Internal auditors should review the reliability and integrity of financial and operating information and the means used to identify, measure, classify, and report such information.
- **Compliance with Policies, Plans, Procedures, Laws, and Regulations**
Internal auditors should review the systems established to ensure compliance with those policies, plans, procedures, laws, and regulations, which could have a significant impact on operations and reports and should determine whether the organization is in compliance.
- **Safeguarding of Assets**
Internal auditors should review the means of safeguarding assets and, as appropriate, verify the existence of such assets.
- **Economical and Efficient Use of Resources**
Internal auditors should appraise the economy and efficiency with which resources are employed.
- **Accomplishment of Established Objectives and Goals for Operations or Programs**
Internal auditors should review operations or programs to ascertain whether results are consistent with established objectives and goals and whether the operations or programs are being carried out as planned.

TEXAS REAL ESTATE COMMISSION
Austin, Texas

Internal Audit Plan
Fiscal Year 2011

IV. Internal Audit Plan

The fiscal year 2011 internal audit plan for the Commission is based on the Risk Assessment performed for the fiscal year ended 2011. The internal audit plan includes three (3) audits to be performed during the fiscal year and other internal audit activities as assigned by the Commissioners. The internal audit plan also includes preparation of the Annual Internal Audit Report for fiscal year 2011.

Risk Assessment

Based on the review of significant documents, inquiries of management and the Commission's current practices and procedures seventeen (17) audit areas have been identified in the Internal Audit Plan for fiscal year 2011. We performed an assessment of the potential audit areas using risk assessment techniques. Following are the results of the risk assessment performed:

High	Moderate	Low
Information Systems	Purchasing and Receiving	Cash Disbursement and Travel Processing
Cash Collection Fee Process/Remittance	Residential Service Companies	Complaint/Investigation Process
License Application & Registration Process	Performance Measures	Examination Process
	Education Program	Reporting and Budgeting
	Customer Communications	Fixed Assets
		Payroll and Personnel Process
		Recovery Fund
		Records Retention
		HUB Compliance

The Risk Factors and the Risk Assessment Summary are included in Attachments A and B, respectively.

TEXAS REAL ESTATE COMMISSION
Austin, Texas

Internal Audit Plan
Fiscal Year 2011

In prior years, the following internal audits were performed:

Fiscal Year 2010

1. Residential Service Companies
2. Fixed Assets

Fiscal Year 2009

1. Compliance with the Texas Public Funds Investment Act
2. License Application and Registration Process
3. Recovery Fund

Fiscal Year 2008

1. Complaint/Investigation Process
2. Education Program

Based on the risk assessment process an Internal Audit Plan was developed that includes the following recommended internal audits for fiscal year 2011, the proposed audit procedures are as follows:

Fiscal Year 2011

1. Compliance with the Texas Public Funds Investment Act

The objective of our audit is to perform a compliance audit of management controls on investments and the Commission's adherence to its established investment policies.

As part of the engagement our audit procedures will include:

- Identification of the Commission's policies and procedures for compliance with the Public Funds Investment Act (Government Code 2256) and determine that such policies and procedures are appropriate and reasonable for the Commission's Investment types, goals and strategies.
- Determine if the Commission's policies and procedures and established internal controls are sufficient to safeguard investments, ensure proper conduct by participants in the investment process, and effectively eliminate conflicts of interest over the investments of the Commission.

TEXAS REAL ESTATE COMMISSION
Austin, Texas

Internal Audit Plan
Fiscal Year 2011

- Determine if the Commission's policies and procedures limit political and personal interference in the investment decision-making process.
- Consider the appropriateness of the Commission's investments as reflected in the policies, strategies and plan.
- Test required reports and data for effectiveness and timeliness.
- Test investment officer training for compliance with the Public Funds Investment Act.

2. Information Systems

The scope of our audit is to gain an understanding of the IT Department's processes and controls to determine if:

- a. Controls are in place over the recording, reporting, and safeguarding of IT Department assets.
- b. Reports, and/or schedules are generated, as required by and to support established policies and procedures.
- c. Disaster Recovery procedures are tested on a regular basis.
- d. Computer access was granted or terminated appropriately based on employees that are newly hired or terminated during the current year.

The planned procedures to achieve the scope of our audit are as follows:

- Review the written policies, procedures, and current practices for compliance with applicable state requirements.
- Review the organizational chart to determine whether it is adequate to achieve known objectives.
- Review job descriptions to determine if they are sufficiently detailed to describe the position's major responsibilities, classification, minimum qualifications, skills, etc.
- Conduct interviews with IT personnel to obtain an understanding of the activities, controls, and operations.
- Obtain a list of current system users and current employees and reconcile users to current employees.
- Review management's physical controls over the recording, reporting, and safeguarding of Information Technology assets.
- Review internally generated reports, logs and/or schedules for compliance with established policies, procedures, and state and/or federal requirements.

TEXAS REAL ESTATE COMMISSION
Austin, Texas

Internal Audit Plan
Fiscal Year 2011

- Review the Disaster Recovery plan and evaluate the results of the last test of the disaster recovery plan.
- Obtain the Department of Information Resources (DIR) penetration test report, review the results, recommendations, and ensure that corrective action was taken, if necessary.
- Obtain a listing of computer applications available to Commission staff and perform a walkthrough of the application capabilities and related security access.
- Obtain a listing of employees who left the Commission or were terminated and ensure computer access termination procedures were appropriately followed.
- Review system backup procedures and select a sample to ensure that back-ups of critical data is being performed on a timely basis.
- Obtain a listing of training attended by IT Dept. staff and ensure the staff received training in the past fiscal year.

3. HUB Compliance

The scope of the audit of the HUB Compliance audit area is to determine that the Commission complies with the policies and procedures for purchases related to HUB compliance including:

- The utilization of the Texas Building and Procurement Commissions HUBs directory for HUB certified vendors in acquiring vendors for purchases of goods and services or utilizes other means to identify HUBs.
- The information included in the automated system tracking and reporting the use of HUBs for the purchase of goods and services is efficient and accurate.
- The supplemental report which includes the number of HUBs submitting bids and/or proposals and the number of contracts awarded to HUBs is compiled in a efficient, accurate, and timely manner.

To determine compliance with the policies, procedures and reporting requirements we will perform audit procedures as follows:

- a. Obtain and review the Commission's written policies and procedures and ascertain that they are consistent with the purpose, goals, and policies of the Texas Procurement and Support Services as it relates to HUB.

TEXAS REAL ESTATE COMMISSION
Austin, Texas

Internal Audit Plan
Fiscal Year 2011

- b. Interview Commission personnel responsible for HUB compliance to obtain an understanding of the agencies current practices and the adequacy of accountability maintained over procurement and reporting requirements.
 - c. Obtain the Semi-Annual and Annual HUB Reports and determine whether the reports were prepared and submitted on a timely manner, are accurate based on support documentation, and that the HUB supplemental reports are properly supported.
 - d. Select certain procurement actions included in the monthly reports and determine that contact with HUB vendors were documented and determine whether HUB vendors were selected as reported.
4. Perform follow-up of audits performed by the internal auditor.
5. Other Potential Internal Audit Activities:
- Perform other audits as directed by the Commission during the fiscal year.

**Texas Real Estate Commission
Risk Assessment Summary
August 31, 2011**

	Potential Audit Topic	Risk Factor Scores								Total
		1	2	3	4	5	6	7	8	
High Risk: > 192										
1	Information Systems	3	2	2	2	2	2	2	2	212.00
2	Cash collection fee process / remittance	3	2	1	3	1	2	2	2	196.00
3	License application and registration process	3	1	1	2	2	3	2	2	196.00
Moderate Risk: 173 - 191										
4	Purchasing and receiving	3	2	1	2	1	3	2	1	183.00
5	Residential Service Companies	3	1	2	1	1	3	2	2	182.00
6	Performance Measures	3	2	2	1	1	2	2	2	182.00
7	Education program	3	2	1	1	1	3	2	2	178.00
8	Customer communications	3	2	1	2	1	2	1	2	173.00
Low Risk: < 172										
9	Cash disbursement and travel processing	3	2	1	2	1	2	2	1	171.00
10	Complaint / Investigation process	3	2	1	1	1	3	2	1	168.00
11	Examination process	3	2	1	1	1	2	2	2	166.00
12	Reporting and budgeting	3	1	2	1	1	2	1	2	162.00
13	Fixed assets	3	1	2	1	1	2	2	1	160.00
14	Payroll and personnel process	3	2	1	1	1	2	2	1	156.00
15	Recovery Fund	3	1	1	1	1	3	2	1	156.00
16	Records retention	2	2	2	1	1	1	1	2	150.00
17	HUB - compliance	1	3	1	1	1	2	1	1	136.00

Risk Factor Scores**Average Score****172**

- 1 Low Risk
- 2 Moderate Risk
- 3 High Risk

**Texas Real Estate Commission
Risk Assessment Factors
August 31, 2011**

	Risk Factor	Weight
1	Financial Materiality	12.00%
2	Time Since Last Audit	12.00%
3	Results of Last Audit	16.00%
4	Adequacy of Staffing Levels	15.00%
5	Policies and Procedures	15.00%
6	Compliance with Contracts, Laws and Regulations	12.00%
7	Susceptibility of Material Theft or Fraud	8.00%
8	Adverse Issues or Concerns	10.00%
	Total Score	100.00%



Agenda Item 17:

Discussion and possible action to approve training for investment officers pursuant to Public Funds Investment Act, Texas Government Code, Section 2256.007(d)

SUMMARY To be presented at meeting.

STAFF Approve training for investment officers.
RECOMMENDATION

MOTION MOVED, that the Commission hereby authorizes the training for investment officers pursuant to Public Funds Investment Act, Texas Government Code, Section 2256.007(d) attended by Karen Alexander and Barbara Kolb on February 18, 2011.



Agenda Item 18:

Discussion and possible action to adopt a code of conduct for members of advisory committees and working groups

SUMMARY See attached documentation

STAFF Approve code of conduct.

RECOMMENDATION

MOTION MOVED, that the Commission approves posting the code of conduct for members of advisory committees and working groups as submitted under this agenda item for public comment

Texas Real Estate Commission Code of Conduct for Appointees to Advisory Committees

Introduction - The people of Texas have a right to expect the business of the State to be conducted with efficiency, fairness, impartiality and integrity. Volunteer service to the public as an appointed member of an advisory committee is a revocable privilege and carries with it a particular obligation to the public interest. Such service requires standards of professional behavior from all participants that promote and maintain public confidence and trust in the work of the agency.

This code of conduct explains the principles covering appropriate conduct in a variety of contexts and outlines the minimum standards of behavior expected of members who serve on advisory committees.

Relevant Legal Standards - The main legislation applying to appointed members is found in Chapters 1101-1103 of the Texas Occupations Code. The Administrative Rules adopted under such legislation also apply. Guidance found in opinions of the Texas Ethics Commission may also be relevant to such service.

Applicability of this Code of Conduct – Appointed advisory committees should use the standards, principles and specific requirements in this code to guide and assist their members while serving.

Responsibility to the Commission - Committee members will implement the policies of the governing body as directed, and in a professional manner produce the work requested of the committee.

Respect for People - Members will perform their duties in a professional and responsible manner. Members are to treat their colleagues, agency staff and members of the public respectfully and consistently, in a non-discriminatory manner with due regard for their rights and dignity. Members must not harass or discriminate against their colleagues, agency staff or members of the public on the basis of any protected category, or of political conviction.

Integrity and Public Interest - Members are to promote due confidence in the integrity of public administration and always act in the public interest and not in their private interest. Members should protect the reputation of the agency. They should not engage in any activities that would bring the committee or the agency into disrepute.

Responsive Service - The agency's standards require members to commence work in a timely manner, and provide requested information promptly and in a form that is clear, accurate, current and complete. They should also ensure that their decisions and actions are reasonable, fair and appropriate to the circumstances, based on consideration of all relevant facts, and supported by adequate documentation.

Economy and Efficiency - Members should keep current with advances and changes in their area of expertise and strive to improve performance and achieve high standards of service. They should use their authority, available resources and information only for the work-related purpose intended.

Fairness and Equity - Issues or cases being considered by members should be dealt with consistently, promptly and fairly. This involves dealing with matters in accordance with approved procedures, in a

non-discriminatory manner, and in conformity with justice. When using any discretionary powers, members should ensure that they take all relevant facts into consideration, have regard to the particular merits of each case, and not take irrelevant matters or circumstances into consideration.

Protecting Confidential Information – The agency has clearly documented procedures regarding the storage, disclosure and distribution of confidential or sensitive personal, commercial or political information. Any request for information should be referred to the agency director for handling.

Guide to Ethical Decision Making - To assist in fostering a climate of ethical awareness, conduct and decision-making, members may find it useful to refer to or consider, alone or as a body, these 5 points: Is the decision or conduct lawful? Is the decision or conduct consistent with agency policy and in line with the agency's objectives and code of conduct? What will the outcome be for all parties involved? Do these outcomes raise a conflict of interest or lead to private gain at public expense? Can the decision or conduct be justified in terms of the public interest and would it withstand public scrutiny?

Conflicts of Interest - Conflicts of interest exist when it is likely that a member could be influenced, or could be perceived to be influenced, by a personal interest in carrying out their public duty. Conflicts of interest that lead to partial decision-making may constitute corrupt conduct.

Some related interests that may give rise to a conflict of interest include: financial interests in a matter the agency deals with or having friends or relatives with such an interest that the member is aware of; personal beliefs or attitudes that influence the impartiality of advice given; personal relationships with the people the agency is dealing with that go beyond the level of a professional working relationship; other employment that compromises the integrity of the member and the agency; and partisan political activities or making adverse political comments related to the agency's work.

An individual member may often be the only person aware of the potential for conflict. It is therefore their responsibility to avoid any financial or other interest that could compromise impartial performance of their duties, and disclose any potential or actual conflicts of interest to the agency's director. If members are uncertain whether a conflict exists, they should discuss the related interest matter with the director and attempt to resolve any conflicts of interest that may exist.

To resolve any conflicts of interest that occur, or could occur, a range of options is available depending on the significance of the conflict. These options include: recording the details of the disclosure and taking no further action because the potential for conflict is minimal or can be eliminated by disclosure; the member relinquishing the personal interest; the member withdrawing from the consideration or particular task where the conflict arises; or the member resigning from the appointed position. Disputes over alleged conflicts of interests will be resolved through the agency director and governing body Chair.

Acceptance of Gifts or Benefits – Members should not accept a gift or benefit that is intended, or likely, to cause them to act in a partial manner in the course of their duties. The governing body Chair may approve the acceptance of token gifts or benefits under certain circumstances provided that there is no possibility that the recipient might be, or might appear to be, compromised in the process.

Members should advise the director if they believe they have been offered a bribe or if they have been offered or received a favor or benefit. Members dealing with or having access to sensitive investigations or commercially sensitive information should be particularly alert to undue attempts to influence them.

Public Comment on the Work of the Committee or Agency - Public comment by members includes public speaking engagements, comments on radio and television or in letters to newspapers, and expressing views in books, journals or notices if it is expected that the comments will spread to the community at large. Members, as individual citizens of the community, have the right to make public comment and enter into public debate on political and social issues. However, there are some circumstances in which this can be inappropriate. For example, situations when the public comment, although made in a private capacity, may appear to be an official comment on behalf of the agency. In such circumstances, members should preface their remarks with a comment that they are made in a private capacity and do not represent the official view of the agency.

As a general rule, members can disclose official information that is normally given to the public seeking that information, but should only disclose other official information or documents when proper authority has been given; as required or authorized to do so by law; or when called to give evidence in court. In these cases, comments made by members should be confined to factual information and should not, as far as possible, express an opinion on official policy or practice unless required to do so by the circumstances of the particular situation (for example, when asked to do so in court).

Political and Community Participation – Members must make sure that any participation in political activities does not conflict with their duty as a volunteer to serve the agency and its policies.

Use of Official Facilities and Equipment - Members should be scrupulous in their use of public property and services. Facilities and equipment may not be used for private purposes.

Reporting Corrupt Conduct or Waste – Members are urged to report suspected corrupt conduct, as well as serious and substantial waste of public resources. Disclosures should be made to the agency director, or if the director is suspected, then to the governing body Chair.

Violations of the Code of Conduct – Violations of one or more of the standards or requirements of this Code of Conduct may result in the immediate termination of a member's appointment to serve on an advisory committee to the agency. Termination may be made in writing by the governing body Chair. Appeal of a termination may be made in writing to the full governing body. In the event of a written appeal, the final decision of the appropriate governing body will be given in writing.



Agenda Item 19:

Discussion and possible action regarding appointment of members to Broker Lawyer Committee

SUMMARY

To be presented at meeting.

**STAFF
RECOMMENDATION**

Establish method for appointing members to the Broker Lawyer Committee

MOTION

MOVED, that an Appointment Committee is hereby created, consisting of _____ Commissioners _____ and _____ to recommend two broker members for appointment to the Broker Lawyer Committee to be approved by the full Commission at the August 15, 2011 Commission meeting, and that staff is hereby authorized to notify the public that the commission is taking applications for the two positions.



Agenda Item 20:

Discussion and possible action concerning the Real Estate Inspector Committee recommendation to the Commission regarding the development of a National Home Inspector Examination.

SUMMARY

To be presented at meeting.

**STAFF
RECOMMENDATION**

To direct staff to explore procurement options and issue a request for proposals or other documentation as required by law to solicit vendors to develop, maintain, and administer a national home inspector examination for TREC

MOTION

MOVED, that staff is hereby authorized, on behalf of this Commission, to explore procurement options and issue a request for proposals or other documentation as required by law to solicit vendors to develop, maintain, and administer a national home inspector examination for TREC



Agenda Item 21(a): Consideration and possible action regarding Proposal for Decision from State Office of Administrative Hearings in the matter of: (a) SOAH Docket No. 329-11-0448.REC, Texas Real Estate Commission v. Robin J. Muir

SUMMARY See attached documentation.

STAFF
RECOMMENDATION See attached documentation.

MOTION

TEXAS



REAL ESTATE COMMISSION

DOUGLAS E. OLDMIXON, ADMINISTRATOR

Standards & Enforcement Services
Direct Line: (512) 465-3960
Facsimile: (512) 465-3962

MEMORANDUM

To: THE COMMISSION MEMBERS

From: KERRI T. GALVIN, DIRECTOR OF STANDARDS & ENFORCEMENT SERVICES

Date: April 11, 2011

**Subject: PROPOSAL FOR DECISION
IN THE MATTER OF
ROBIN J. MUIR**

The enclosed Proposal for Decision has been filed in SOAH Docket No. 329-11-0448.REC. The Proposal for Decision will be considered for Final Order at the meeting of the Commission scheduled for May 2, 2011, at 10:00 a.m. in the Commission Conference Room, Room 235, Texas Real Estate Commission Offices, 1101 Camino La Costa, Austin, Texas.

A handwritten signature in cursive script that reads "Kerri T. Galvin".

Kerri T. Galvin
Director of Standards & Enforcement Services

KTG:sm
Enclosure

cc: Douglas E. Oldmixon, Administrator

Loretta R. DeHay, General Counsel & Deputy Administrator

Devon V. Bijansky, Deputy General Counsel

Patricia Holder, Administrative Assistant

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

January 10, 2011

RECEIVED

JAN 11 2011

Texas Real Estate Commission

Douglas E. Oldmixon
Administrator
Texas Real Estate Commission
1101 Camino La Costa
Austin, Texas 78752

INTER-AGENCY

RE: Docket No. 329-11-0448.REC; Texas Real Estate Commission v.
Robin J. Muir

Dear Mr. Oldmixon:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.507(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,


Stephen J. Pacey
Administrative Law Judge

SJP/Ls
Enclosure

xc: Aimee Cooper, Staff Attorney, TREC, 1101 Camino La Costa, Austin TX 78752 – VIA INTER-AGENCY
Robin J. Muir, 254 S. Timbercreek Dr., Amarillo, TX 79118 - VIA REGULAR MAIL
Kerri Galvin, Director of Standards & Enforcement Services, TREC, 1101 Camino La Costa, Austin, TX 78752 - (with 1 CD; Certified Evidentiary Record) – VIA INTER-AGENCY

TEXAS REAL ESTATE COMMISSION,
Petitioner

v.

ROBIN J. MUIR,
Respondent

§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Staff of the Texas Real Estate Commission (Staff/Commission) seeks to revoke Robin J. Muir's (Respondent) real estate broker's license because in 2010, he pled guilty to the felony offense of Misapplication of Fiduciary Property. The Administrative Law Judge (ALJ) recommends that the Commission revoke Respondent's license.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

A hearing in this matter convened and the record closed on November 10, 2010. Staff was represented by attorney Aimee Cooper. Respondent appeared *pro se*. There were no disputed issues of notice or jurisdiction. Therefore, those matters are addressed in the findings of fact and conclusions of law without further discussion here.

II. DISCUSSION

The basic facts of the issue in this case are relatively simple. On or about May 20, 2010, Respondent entered a plea of guilty in the 47th District Court of Potter County, Texas, to the first degree felony offense of Misapplication of Fiduciary Property. The district court entered an Order of Deferred Adjudication and ordered that Respondent be placed on Community Supervision for a term of 10 years; submit to confinement in the Potter County jail for a term of thirty days on weekends; pay \$100,000 in restitution; complete 400 hours of community service; and pay other fees and court costs. At the hearing, Respondent testified that he did plead guilty to this felony charge.

Prior to the criminal proceeding, a judgment was entered against Respondent in the United States Bankruptcy Court for the Northern District of Texas Amarillo Division. The jury held against Respondent on claims of breach of contract, actual fraud, theft and breach of fiduciary duty relating to his failure to remit real estate commissions in the sum of \$428,247.00. The facts concerning Respondent's conduct that is the basis of these cases is rather opaque because the facts were not fully developed at the hearing. Apparently, Respondent was employed by Hastings Entertainment, Inc. (Hastings), where, as a broker, he would receive a commission for representing his employer, Hastings in real estate transactions. The commissions were remitted to Respondent because of his real estate broker's license. It was Hastings understanding that the commissions would be rebated from Respondent to it. Respondent indicated that there was no written agreement to do so; therefore he was not obligated to rebate the commissions.

III. ARGUMENT

A. Staff

Staff asserted that Respondent's license should be revoked because Respondent violated TEX. OCC. CODE (Code) § 1101.652(a)(1) which states:

(a) The commission may suspend or revoke a license issued under this chapter or take other disciplinary action authorized by this chapter if the license holder:

- (1) enters a plea of guilty or nolo contendere to or is convicted of a felony or a criminal offense involving fraud, and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal, without regard to an order granting community supervision that suspends the imposition of the sentence.

Staff argued that Respondent pled guilty to a felony involving fraud, consequently, revocation is proper. Staff asserted that Respondent failed to sufficiently demonstrate that he currently has the honesty, trustworthiness, and integrity required to hold his broker's license. Staff pointed out that under the Commission's rules, the criminal offense for which Respondent pled guilty is directly

related to the duties and responsibilities of the occupation of a real estate licensee.¹ Staff further contended that Respondent commission of this offense tends to demonstrate his inability to represent the interests of another with the necessary honesty, trustworthiness, and integrity. Consequently, Staff argued that his license should be revoked.

B. Mr. Muir

Mr. Muir acknowledged his guilty plea at the hearing, but said that he did so because he felt trapped. Respondent argued that he had no money after the bankruptcy and when the District Attorney gave him the ultimatum of going to jail or pleading guilty, he entered the guilty plea. Respondent also collaterally attacked both the bankruptcy action and the criminal judgment.

Respondent concluded his testimony by saying that the real estate industry is the only work he has ever done and is his sole source of income. He said that he should be allowed to keep his license because he did nothing wrong.

IV. ANALYSIS AND RECOMMENDATION

Respondent pled guilty to a serious felony. He was placed on deferred adjudication. The Commission may revoke a license if a licensee enters a plea of guilty or nolo contendere to a felony in which fraud is an essential element.² Misapplying fiduciary funds is classified as an offense involving fraud.³ Therefore, the Commission may revoke his license as a result of the guilty plea.

The type of offense for which Respondent has pled guilty, according to the Commission's rules, may be analyzed to determine whether it is directly related to the duties and responsibilities of a real estate professional. The factors used to determine whether the crime is directly related to the occupation are: the nature and seriousness of the crime; the relationship of the crime to the purposes for requiring a license; the extent to which a license might offer an opportunity to engage in further criminal activity of the same type; and the relationship of the crime to the ability, capacity, or fitness

¹ 22 TEX. ADMIN. CODE §§ 541.1(a) and (b).

² TEX. OCC. CODE ANN. § 1101.652(a)(1).

required to perform the duties of the licensed occupation.⁴ The crime to which Respondent pled guilty is extremely serious. Given that the offense of Misapplication of Fiduciary Property is classified as fraud by the penal code, having a real estate broker's license would offer additional opportunities to engage in further similar criminal activity.

Moreover, Respondent shows no remorse and portrays himself as the victim. He did not indicate that there were any underlying mitigating circumstances. The Commission's rules require the consideration of mitigating circumstances.⁵ He offered no evidence of any rehabilitation.

For the reasons stated above, the preponderance of the evidence presented does not establish that Respondent currently possesses the honesty, trustworthiness, and integrity necessary to hold a real estate brokers license at this time. Accordingly, the ALJ recommends revocation of his license.

V. FINDINGS OF FACT

1. On May 20, 2010, in the 47th District Court of Potter County, Texas cause number 61,693-A, Robert J. Muir (Respondent) pled guilty to the first degree felony of Misapplication of Fiduciary Property in an amount greater than \$200,000. On that same date, the Court withheld a finding of guilt, deferred further proceedings, and placed Respondent on community supervision for a period of ten years, subject to various terms and conditions.
2. Respondent's guilty plea to Misapplication of Fiduciary Property demonstrates that he is not currently able to represent the interests of others with honesty, trustworthiness, and integrity.
3. In a letter dated August 16, 2010, Commission Staff (Staff) notified Respondent of its proposed revocation of his license.
4. Respondent timely requested a hearing on the proposed revocation.
5. On October 11, 2010, Staff sent Respondent a notice of hearing.
6. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.

³ TEX. PENAL CODE § 32.45.

⁴ 22 TEX. ADMIN. CODE § 541.1(b).

⁵ 22 TEX. ADMIN. CODE § 541.1(c).

7. A hearing was held in this matter on November 10, 2010. All parties appeared and participated in the hearing. The record closed the same date

VI. CONCLUSIONS OF LAW

1. The Texas Real Estate Commission (Commission) has jurisdiction over the licenses of real estate brokers, salespersons, and inspectors, pursuant to the TEX. OCC. CODE ANN. ch. 1101.
2. The State Office of Administrative Hearings has jurisdiction over all matters related to conducting a contested case in this matter, including the preparation of a Proposal for Decision with proposed Findings of Fact and Conclusions of Law, under TEX GOV'T CODE ANN. ch. 2003.
3. Respondent received proper and timely notice of hearing as required by TEX GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. The Commission may revoke a real estate salesperson's license for pleading guilty to a felony involving fraud pursuant to TEX. OCC. CODE ANN. § 1101.652(a)(1).
5. Based on the above Findings of Fact and Conclusions of Law, Respondent's license should be revoked.

SIGNED January 10, 2010.



STEPHEN J. PACEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



Agenda Item 21(b): Consideration and possible action regarding Proposal for Decision from State Office of Administrative Hearings in the matter of: (b) SOAH Docket No. 329-11-1036.REC, Texas Real Estate Commission v. Derek Roy Evans

SUMMARY See attached documentation.

STAFF See attached documentation.

RECOMMENDATION

MOTION



Standards & Enforcement Services

Direct Line: (512) 465-3960

Facsimile: (512) 465-3962

MEMORANDUM

To: THE COMMISSION MEMBERS

From: KERRI T. GALVIN, DIRECTOR OF STANDARDS & ENFORCEMENT SERVICES

Date: APRIL 11, 2011

**Subject: PROPOSAL FOR DECISION
IN THE MATTER OF
DEREK ROY EVANS**

The enclosed Proposal for Decision has been filed in SOAH Docket No. 329-11-1036.REC. The Proposal for Decision will be considered for Final Order at the meeting of the Commission scheduled for May 2, 2011, at 10:00 a.m. in the Commission Conference Room, Room 235, Texas Real Estate Commission Offices, 1101 Camino La Costa, Austin, Texas.

Enclosed for your consideration are copies of the following:

- 1) Proposal for Decision dated January 24, 2011;
- 2) Exceptions to Proposal for Decision file by Applicant dated February 3, 2011;
- 3) Petitioner's Response to Exceptions filed by Applicant dated February 9, 2011;
- 4) Exceptions Letter by Administrative Law Judge dated February 24, 2011; and
- 5) Exceptions Letter (2) by Administrative Law Judge dated February 25, 2011.


Kerri T. Galvin

Director of Standards & Enforcement Services

KTG:sm
Enclosure

cc: Douglas E. Oldmixon, Administrator

Loretta R. DeHay, General Counsel & Deputy Administrator

Devon V. Bijansky, Deputy General Counsel

Patricia Holder, Administrative Assistant

TEXAS REAL ESTATE COMMISSION,
Petitioner

V.

DEREK ROY EVANS,
Respondent

§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Derek Roy Evans applied to the Texas Real Estate Licensing Commission (Commission) for a moral character determination, and the Commission's staff seeks denial of the application based on his criminal convictions. The Administrative Law Judge (ALJ) finds that Mr. Evans' application should be denied because of the seriousness of his crimes and because not enough time has elapsed since his release from prison and completion of parole for him to demonstrate his fitness for a license.

I. PROCEDURAL HISTORY, JURISDICTION, AND NOTICE

There are no contested issues of notice or jurisdiction. Those matters are discussed in the findings of fact and conclusions of law. The hearing on the merits was held on January 11, 2011, at the State Office of Administrative Hearings, 300 W. 15th Street, Austin, Texas. Attorneys Mary Winston and Kyle Smith represented Staff, and Mr. Evans represented himself. The record closed the same day.

II. DISCUSSION

A. Background and Convictions

Mr. Evans is 32 years old and has a lengthy criminal history. Beginning in 1999, Mr. Evans was convicted of possession of marijuana, two instances of driving while intoxicated, three instances of driving while license was suspended, an occupational license violation,

discharging a firearm in a municipality, failure to properly identify himself to a police officer, felony possession of a narcotic, conspiracy to commit a felony, and trafficking in marijuana in the amount of 25 pounds or more. The last convictions were in 2003. He was incarcerated in Oklahoma in 2006 for two terms of four years to run concurrently for conspiracy to commit a felony and for trafficking in marijuana.¹

Mr. Evans was incarcerated starting January 27, 2006, and was released in August 2008. He completed his parole on November 12, 2009.²

B. Mr. Evans' Testimony

Mr. Evans testified that he has changed his life. He has a girlfriend and a child. He wants to be able to make a living to support them. He currently works as a waiter and is trying to get a chauffeur's license so that he can make more money. He testified that his crimes were a result of a substance abuse problem and that he no longer abuses drugs. He testified that he feels like he has paid his debt to society. In support of his application, he submitted a letter from his parole officer and recommendations from friends.

While in prison, Mr. Evans took classes on cognitive behavior and a class called "Thinking for a Change." He did not participate in any drug rehabilitation programs. As part of his sentence from the DWI, narcotics, and marijuana possession convictions he participated in Travis County's drug and alcohol abuse program. He also had to take a substance abuse class in Oklahoma to be eligible for a driver's license. He does not currently attend Alcoholics Anonymous meetings. And he admitted to currently drinking alcohol. He testified that he does not believe he would abuse drugs again because he stays busy, has a routine, and has a family.

¹ Ex.C-10

² Ex. C-10

C. Arguments

Staff argued that Mr. Evans failed to demonstrate good moral character. His letters of recommendation indicated only that his friends knew of a drug problem, not of an incarceration. He has no letters from anyone in the real estate business or from his current employer. Staff further argues that Mr. Evans has not been out of prison long enough to demonstrate his fitness for a license. He has been out of prison only two and a half years, and off parole for only 15 months.

Mr. Evans believes he has demonstrated his trustworthiness by not reoffending and by successfully completing his parole. He testified that he has not used drugs since before he went to prison. He wants an opportunity to show he has changed. He testified he also knows felons with real estate licenses.

D. Analysis

A person may not act as a real estate salesperson unless he is licensed by the Commission.³ A real estate salesperson has a special obligation to exercise integrity in the discharge of the licensee's responsibilities,⁴ and an applicant must "satisfy the commission as to the applicant's honesty, trustworthiness, and integrity."⁵ Before applying for a license, a person may request that the Commission determine whether his moral character complies with the Commission's standards regarding honesty, trustworthiness, and integrity.⁶

The ALJ finds that Mr. Evans has not demonstrated the moral character required to obtain a real estate salesperson's license. He is a repeat offender who has been convicted of numerous crimes, including felonies and crimes of moral turpitude. He did not indicate he has

³ TEX. OCC. CODE ANN. (Code) § 1101.351.

⁴ 22 TEX. ADMIN. CODE § 531.2.

⁵ Code § 1101.354(2).

⁶ Code § 1101.353.

taken any action to work in the real estate field, whether by applying for jobs or volunteering at businesses, non-profits, or charities that deal in the housing sector.

The Code authorizes a licensing agency to disqualify a person from receiving a license on the grounds that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the license occupation.⁷ Pursuant to Code § 53.025, the Commission adopted Criminal Offense Guidelines (Guidelines) to assist in determining whether a criminal offense directly relates to the duties or responsibilities of an applicant for a real estate salesperson's license. The Guidelines provide that offenses involving moral turpitude directly relate to the duties and responsibilities of a real estate salesperson.⁸ The crimes for which Mr. Evans has been convicted are crimes of moral turpitude.⁹ Thus, Mr. Evans' crimes directly relate to the license he seeks and tend to "demonstrate inability to represent the interest of another with honesty, trustworthiness, and integrity."¹⁰

Furthermore, Mr. Evans' crimes were quite serious, particularly considering the amount of marijuana involved. Having a real estate salesperson's license would afford him other opportunities to attempt to conceal large amounts of drugs in vacant houses. Moreover, only two and a half years have elapsed since Mr. Evans was released from prison, and he has been off of parole for only 15 months. Based on these factors, the ALJ finds that Mr. Evans needs to have a longer period of demonstrated good conduct before he can show that he has the requisite moral character to be a licensed real estate salesperson. Therefore, Mr. Evans' application for a good moral conduct determination should be denied at this time.

III. FINDINGS OF FACT

1. On December 31, 2009, Derek Roy Evans filed an application for moral character determination with the Texas Real Estate Commission (Commission).

⁷ Code § 53.021(a).

⁸ 22 TEX. ADMIN. CODE § 541.1(a)(8).

⁹ *Muniz v. State*, 575 S.W.2d 408, 413 (Tex. Civ. App.—Corpus Christi 1978, writ ref'd n.r.e.)

¹⁰ 22 TEX. ADMIN. CODE § 541.1(a).

2. The Commission's Staff proposed disapproval of the application, and by letter dated October 28, 2010, Mr. Evans requested a hearing.
3. Staff sent a notice of hearing to Mr. Evans at his address of record on November 1, 2010.
4. The notice of hearing included the date, time, and location of the hearing; the legal authority for the proceeding; the basis for the determination; and a short, plain statement of the matters asserted.
5. The hearing on the merits was held on January 11, 2011, at the State Office of Administrative Hearings (SOAH) in Austin, Texas. Attorneys Mary Winston and Kyle Smith represented Staff. Mr. Evans represented himself. The record closed the same day.
6. Mr. Evans has a lengthy criminal record, including Oklahoma felony convictions for drug possession and trafficking in marijuana. He also has a Texas conviction for providing false information to a peace officer and other Texas convictions for drug and alcohol offenses, including felony possession of a narcotic.
7. On January 27, 2006, Mr. Evans was incarcerated in Oklahoma for two terms of 4 years to run concurrently for trafficking in marijuana in an amount greater than 25 pounds and for conspiracy to commit a felony.
8. Mr. Evans' crimes were quite serious, particularly considering the amount of marijuana involved.
9. Having a real estate salesperson's license would afford Mr. Evans other opportunities to attempt to conceal large amounts of drugs in vacant houses.
10. About nine years have elapsed since Mr. Evans committed the crime of trafficking in marijuana. He spent almost three of those years in prison.
11. Mr. Evans was released from prison about two and a half years ago and was released from parole about 15 months ago.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter. TEX. OCC. CODE ANN. (Code) ch. 1101.
2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this matter, including the preparation of a proposal for decision with findings of fact and conclusions of law. TEX. GOV'T CODE ANN. ch. 2003.

3. Notice of the hearing was provided in compliance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. A person may not act as a real estate salesperson unless he is licensed by the Commission. Code § 1101.351.
5. An applicant for a real estate salesperson license must satisfy the Commission as to his honesty, trustworthiness, and integrity. Code § 1101.354(2).
6. A person who contemplates applying for a license in the future may request that the Commission determine whether his moral character complies with the Commission's standards regarding honesty, trustworthiness, and integrity. Code § 1101.353.
7. A licensing agency may disqualify a person from receiving a license on the grounds that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the license occupation. Code § 53.021(a).
8. Pursuant to Code § 53.025, the Commission adopted Criminal Offense Guidelines (Guidelines) to assist in determining whether a criminal offense directly relates to the duties or responsibilities of an applicant for a real estate salesperson's license.
9. The Guidelines provide that offenses involving moral turpitude directly relate to the duties and responsibilities of a real estate salesperson. 22 TEX. ADMIN. CODE § 541.1(a)(8).
10. The crimes for which Mr. Evans has been convicted are crimes of moral turpitude. *Muniz v. State*, 575 S.W.2d 408, 413 (Tex. Civ. App.—Corpus Christi 1978, writ ref'd n.r.e.)
11. Mr. Evans needs to have a longer time of demonstrated good conduct before he can show that he has the requisite moral character to be a licensed real estate salesperson.
12. Mr. Evans' application for a good moral conduct determination should be denied at this time.

SIGNED January 24, 2011.


WENDY L. HARVEL
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

Zimbra

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mary.winston@trec.state.tx.us

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Fwd: attn: mary winston- 15 day deadline to appeal has been met

From : enforcement@trec.state.tx.us

Thu, Feb 03, 2011 05:38 PM

Sender : aimee cooper <aimee.cooper@trec.state.tx.us>

 1 attachment

Subject : Fwd: attn: mary winston- 15 day deadline to appeal has been met

To : mary winston <mary.winston@trec.state.tx.us>

Aimée Cooper
Staff Attorney
Standards & Enforcement Services
Texas Real Estate Commission

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From: "derek" <derquilla@yahoo.com>

To: enforcement@trec.state.tx.us

Sent: Thursday, February 3, 2011 2:40:16 AM

Subject: attn: mary winston- 15 day deadline to appeal has been met

good morning, mary. here is my filing of exceptions and replies to give this another go. it's not too late to give me my approval and let bygones be bygones, you know..... haha, j/k, i know it will never be that easy! getting back to business though, please notify me if further procedural steps must be taken on my behalf. thanks for your assistance in these matters, in case i never mentioned it before. i have also mailed a copy of this to SOAH, attn: judge wendy harvel.

 **TREC.doc**
28 KB

TO WHOM IT MAY CONCERN,

I AM APPEALING THE FINDINGS OF THE ALJ HEARING UNDER DOCKET NO. 329-11-1036.REC; TEXAS REAL ESTATE COMMISSION V. DEREK ROY EVANS. MY FILE NO. WITH TREC IS 100926. I AM UTILIZING TX OCCUPATION CODE 533.6 FILING OF EXCEPTIONS AND REPLIES WITHIN MY 15 DAY MARK TO KEEP THE BALL ROLLING ON THIS APPEAL. I HAVE ALSO LOOKED AT TEX. ADMIN. CODE 155.507 IN THE SOAH SECTOR OF PROPOSAL FOR DECISION AND DETERMINED THESE TO PERFORM THE SAME FUNCTION.

MY BASIS FOR APPEAL IS SIMPLY THIS: I DON'T BELIEVE I PLAYED MY BEST HAND AT THIS HEARING DUE TO THE FACT THAT I'VE NEVER ATTENDED ONE AND COULD NOT PRESENT AN INFLUENTIAL CASE AS THE STATE'S ATTORNEY DID. HAD I KNOWN THAT MY 8 YEAR OLD + PAST CRIMINAL HISTORY WOULD BE DWELLED UPON SOLEY THROUGHOUT THE HEARING AS OPPOSED TO MY PLEAS TO TALK ABOUT MY RECENT PAST, PRESENT, AND FUTURE THEN I WOULD'VE BROUGHT MUCH MORE DOCUMENTATION STATING CHANGE, CERTIFICATES OF CLASS COMPLETION, MERITS ACROSS THE BOARD FOR ACHEIVEMENTS, TONS MORE LETTERS OF RECOMMENDATION FROM UPSTANDING MEMBERS OF SOCIETY, RECIPTS FOR ALL FINES AND RESTITUTION PAID, COMMUNITY SERVICE HOURS, LETTERS OF PRAISE FROM MY CURRENT MANAGERS AT DAVE AND BUSTERS WHO KNOW HOW HARD I WORK. I OPERATE WITH MORAL TURPITUDE DAILY WITH CASH HANDLING AND PEOPLES CREDIT CARDS IN AN ESTABLISHMENT WHERE DRINKING IS PREVALENT AND OPPURTUNITY TO COMMIT FRAUD AGAINST PATRONS IS ABUNDANT. I HAVE BEEN IN THE SERVICE INDUSTRY RELYING ON MY ETHICAL SALES SKILLS TO DETERMINE MY WAGES THROUGH GRATUITY GOING ON 3 YEARS NOW, AND HAVE NO PROBLEM WITH MORALITY.

FURTHERMORE, MY CRIMES HARDLY INVOLVE MORALITY. THEY'RE ALL RELATED TO SUBSTANCE ABUSE, NOT CRIMES OF MORAL TURPITUDE THAT DIRECTLY RELATE TO THE ABILITY TO REPRESENT THE INTEREST OF ANOTHER WITH HONESTY, TRUSTWORTHINESS, AND INTEGRITY. I DON'T SEE HOW DRIVING UNDER THE INFLUENCE, MARIJUANA RELATED OFFENSES, OR DRIVING ON A SUSPENDED LICENSE RELATES TO ME MISREPRESENTING A CLIENT'S INTERESTS. I COULD UNDERSTAND IF I HAD FRAUD, EMBEZZLEMENT, OR LARCENY CONVICTIONS, BUT WE'RE TALKING A DRUG PROBLEM FROM 8 YEARS AGO AND A DEAD CHAPTER OF MY LIFE. TO READ IN THE ALJ'S REPORT THAT HAVING A REAL ESTATE LICENSE WOULD AFFORD ME THE OPPURTUNITY TO CONCEAL LARGE AMOUNTS OF DRUGS IN VACANT HOUSES BECAUSE I HAVE A TRAFFICKING MARIJUANA CONVICTION, AND THAT MAKES IT AN OFFENSE THAT RELATES TO THE DUTIES OF A REALTOR BECAUSE I HAVE ACCESS TO THESE VACANT HOMES, IS, AT BEST, A FAR FETCHED NOTION.

ASIDE FROM THE FACT THAT IT'S COMPLETELY ILLOGICAL TO STORE LARGE AMOUNTS OF DRUGS IN A HOME THAT ANY REALTOR AND CLIENT CAN ACCESS, IT'S JUST NOT A CORRELATION I CAN ACCEPT AS A PRACTICAL REJECTION FOR MY LICENSE. I'LL NEED SOMETHING BETTER BEFORE I GIVE UP A YEAR LONG STRUGGLE NOW WITH DOZENS OF INVESTED MAN-HOURS AND HUNDREDS OF DOLLARS IN FEES PUTTING TOGETHER THIS FILE FOR THE REAL ESTATE COMMISSION.

THE CONCLUSION OF MY DISAPPROVAL FOR LICENSING STATES THAT MY LAST CRIME OF TRAFFICKING MARIJUANA WAS 9 YEARS AGO, 3 OF WHICH I SERVED IN PRISON, LEAVING ME WITH 6 UNEVENTFUL YEARS OF ARREST. IT ALSO STATES THAT I'VE ONLY BEEN RELEASED FROM PRISON 2 ½ YEARS AND HAVE NOT DISPLAYED ADEQUATE CLEAN TIME. IT ONLY TOOK ME 2 ½ MINUTES TO GET ARRESTED HOWEVER. FOR 6 YEARS I'VE PRACTICED REDEMPTION. FOR 3 I PAID THE ULTIMATE DEBT TO SOCIETY. HOW MUCH MORE TIME IS GOING TO BE SUFFICIENT IF NOT 9 YEARS? TALKING ABOUT LOWERING THE RECIDIVISM RATE AND IMPLEMENTING PRACTICES TO LOWER THE RECIDIVISM RATE ARE 2 ENTIRELY DIFFERENT ACTIONS. WHAT ARE THE CHANCES OF SOMEONE RECIDIVISING IF YOU CONDEMN THEM TO A LIFELONG CAREER OF LOW PAYING FAST FOOD AND CONSTRUCTION JOBS, VERSUS THE CHANCES OF SOMEBODY WHO'S PAID THEIR DUES IN THE LOW PAYING FOOD INDUSTRY FOR YEARS BUT HAS BEEN GIVEN THE BENEFIT OF THE DOUBT AFTER THESE YEARS TO EXCEL IN SOMETHING THEY KNOW THEY WERE MEANT TO DO? I KNOW I WAS MEANT TO SELL HOMES. MY BUSINESS IS PEOPLE AND PROVIDING WHAT THEY WANT IN A MANNER THAT BOTH PARTIES WALK AWAY HAPPY AND SATISFIED. GIVE ME THE CHANCE TO DO THAT. IF I ACT UNACCORDINGLY, I KNOW THE CONSEQUENCES, BUT I CAN ASSURE YOU I HAVE NOT FOUGHT THIS HARD FOR SOMETHING ONLY TO SABATOGUE IT IN THE SLIM CHANCE I HAVE OF OBTAINING IT. IF YOU GRANT ME ANOTHER HEARING I WILL COME IN MUCH MORE PREPARED WITH EXHIBIT A-Z AS TO WHY I'M MORE THAN COMPETANT AND CAPABLE OF EXCELLING IN THIS INDUSTRY WITHOUT HAVING TO ACT UNETHICALLY. THANK YOU FOR YOUR CONSIDERATION IN THESE MATTERS.

SINCERELY,
DEREK EVANS

TEXAS REAL ESTATE COMMISSION	§	BEFORE THE STATE OFFICE
VS.	§	OF
DEREK ROY EVANS	§	ADMINISTRATIVE HEARINGS

RESPONSE TO EXCEPTIONS FILED BY APPLICANT

COMES NOW, Mary N. Winston, Texas Real Estate Commission Staff Attorney, pursuant to §533.6 of the Texas Government Code and §155:507(c) of the Texas Administrative Code. Upon receipt of a copy of Applicant's Exceptions filed with the Court on or about February 3, 2011, hereby files with the Court her written reply to those Exceptions.

A hearing was held in this matter on or about January 11, 2011, and a Proposal for Decision issued by the Court on or about January 24, 2011, denying Applicant's Moral Character Determination Application.

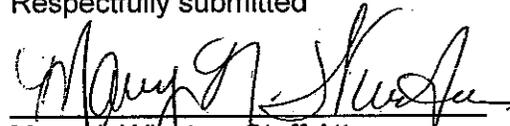
On or about February 3, 2011, Applicant submitted to the Commission a copy of Exceptions he filed with the Court in this matter. (Please find attached as Exhibit A.)

A review of those Exceptions reveals that they are based on the Applicant's desire to introduce new evidence to be taken into consideration by the Court subsequent to the hearing and the record being closed, or in the alternative, Applicant requests a new hearing.

Applicant does not assert that the Proposal for Decision was factually wrong, nor does he assert that there were any clerical errors present.

Accordingly, the Commission submits that Applicant has failed to assert sufficient grounds for amendment of the Proposal for Decision issued on or about January 24, 2011, in this matter; and requests that the Judge's Proposal for Decision stand.

Respectfully submitted



Mary N. Winston, Staff Attorney
Standards & Enforcement Services
State Bar No.: 24066299
Texas Real Estate Commission
1101 Camino La Costa
Austin, Texas 78751
(512) 465-3960 Telephone
(512) 465-3962 Facsimile

Derek Roy Evans
February 9, 2011
Page Two

CERTIFICATE OF SERVICE

I certify that true and correct copies of the foregoing Response to Exceptions Files by Applicant have been sent on this 9th day of February, 2011 as follows:

Derek Roy Evans
11311 April Drive
Austin, Texas 78753
And By Regular Mail
Via Email derquilla@yahoo.com

CM:RRR No. 91 7108 2133 3938 0679 2976

State Office of Administrative Hearings
Docketing Division
300 West 15th Street, Room 504
Austin, Texas 78701

Via Facsimile: 512 322-2061


Sharon Martinets, Legal Assistant, II
Standards & Enforcement Services
Texas Real Estate Commission

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE
300 West 15th Street Suite 502
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REGARDING:

EXCEPTIONS LETTER (BY ALJ)

DOCKET NUMBER:

329-11-1036.REC

JUDGE WENDY KL HARVEI

FAX TO:

FAX TO:

DOUGLAS OLDMIXON (TEXAS REAL ESTATE
COMMISSION)

(512) 465-3910

MARY N. WINSTON (TEXAS REAL ESTATE
COMMISSION)

(512) 465-3962

DEREK ROY EVANS

VIA REGULAR MAIL

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State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

February 24, 2011

Douglas E. Oldmixon
Administrator
Texas Real Estate Commission
1101 Camino La Costa
Austin, Texas 78752

VIA FACSIMILE (512) 465-3910

**RE: Docket No. 329-11-1036.REC; Texas Real Estate Commission v.
Derek Roy Evans**

Dear Mr. Oldmixon:

On February 3, 2011, Derek Evans filed exceptions to the Proposal for Decision in this case. Staff of the Texas Real Estate Commission did not file exceptions or replies to Mr. Evans' exceptions. After reviewing Mr. Evans' exceptions and the applicable law, I do not recommend any changes to the Proposal for Decision.

Sincerely,

A handwritten signature in black ink, appearing to read "Wendy K. L. Harvel".

Wendy K. L. Harvel
Administrative Law Judge

xc: Mary N. Winston, Staff Attorney, Standards & Enforcement Services, TREC, 1101 Camino La Costa, Austin TX 78752 - **VIA FACSIMILE (512) 465-3962**
Derek Roy Evans, 11311 April Drive, Austin, TX 78753 - **VIA REGULAR MAIL**

STATE OFFICE OF ADMINISTRATIVE HEARINGS

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 300 West 15th Street Suite 502
 Austin, Texas 78701
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REGARDING:

EXCEPTIONS LETTER 2 (BY ALJ)

DOCKET NUMBER:

329-11-1036.REC

JUDGE WENDY KL HARVEL

FAX TO:

FAX TO:

DOUGLAS OLDMIXON (TEXAS REAL ESTATE
 COMMISSION)

(512) 465-3910

MARY N. WINSTON (TEXAS REAL ESTATE
 COMMISSION)

(512) 465-3962

DEREK ROY EVANS

VIA REGULAR MAIL

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State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

February 25, 2011

Douglas E. Oldmixon
Administrator
Texas Real Estate Commission
1101 Camino La Costa
Austin, Texas 78752

VIA FACSIMILE (512) 465-3910

**RE: Docket No. 329-11-1036.REC; Texas Real Estate Commission v.
Derek Roy Evans**

Dear Mr. Oldmixon:

In my letter yesterday, I indicated that Staff did not file a reply to Mr. Evans' exceptions. Staff did file a reply to the exceptions, which I overlooked. After reviewing Staff's replies, I still recommend no changes to the Proposal for Decision.

Sincerely,

A handwritten signature in black ink, appearing to read "Wendy K. L. Harvel".

Wendy K. L. Harvel
Administrative Law Judge

xc: Mary N. Winston, Staff Attorney, Standards & Enforcement Services, TREC, 1101 Camino La Costa,
Austin TX 78752 - **VIA FACSIMILE (512) 465-3962**
Derek Roy Evans, 11311 April Drive, Austin, TX 78753 - **VIA REGULAR MAIL**



Agenda Item 22(a)- Recovery fund matters

(b):

- a. Executive session to discuss pending litigation pursuant to Texas Government Code §551.071
- b. Discussion and possible action to authorize settlement of recovery fund claims

SUMMARY To be presented at meeting.

STAFF
RECOMMENDATION

MOTION



Agenda Item 22:

Discussion and possible action to schedule future meetings

SUMMARY

August 15, 2011 has been tentatively scheduled for the next meeting of the Commission.

STAFF

Tentatively schedule meeting for November 14, 2011

RECOMMENDATION

MOTION

Agenda Item 23:

Adjourn

May 2, 2011

June 11

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

June

- 2** Ascension Day
- 12** Pentecost
- 14** Flag Day
- 19** Father's Day
- 23** Corpus Christi

July 11

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

July

- 4** Independence Day

August

- 15** *Commission Meeting*

August 11

S	M	T	W	T	F	S
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6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

September

- 5** Labor Day

October

- 10** Columbus Day (Observed)
- 30** Daylight Savings--set back 1 hour
- 31** Halloween

September 11

S	M	T	W	T	F	S
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17	18	19	20	21	22	23
24	25	26	27	28	29	30

November

- 1** Election Day
- 11** Veterans Day
- 14** *Commission Meeting*
- 24** Thanksgiving

October 11

S	M	T	W	T	F	S
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23	24	25	26	27	28	29
30	31					

December

- 25** Christmas Holidays
- 31** New Year's Eve

January

- 1** New Year's Day
- 16** Martin Luther King, Jr.

November 11

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19	20	21	22	23	24	25
26	27	28	29	30		

February

- 2** Groundhog Day
- 12** Lincoln's Birthday
- 20** President's Day
- 22** Ash Wednesday
Washington's Birthday

March

- 17** St. Patrick's Day

April

- 1** Daylight Savings--set ahead 1 hour
Palm Sunday
April Fools Day

- 6** Good Friday

- 8** Easter

May

- 1** May Day
- 5** Cinco de Mayo
- 13** Mother's Day
- 17** Ascension Day
- 19** Armed Forces Day
- 27** Pentecost
- 28** Memorial Day (Observed)

December 11

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25	26	27	28	29	30	31

January 12

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22	23	24	25	26	27	28
29	30	31				

February 12

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18	19	20	21	22	23	24
25	26	27	28	29		

March 12

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24	25	26	27	28	29	30
31						

April 12

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22	23	24	25	26	27	28
29	30					

May 12

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19	20	21	22	23	24	25
26	27	28	29	30	31	