Materials for the October 10, 2011 Meeting of the Texas Real Estate Commission 1700 N. Congress Ave., Room 170 Austin, Texas

AGENDA FOR TEXAS REAL ESTATE COMMISSION (TREC) MEETING
Conference Room 170
Stephen F. Austin Bldg., 1700 N. Congress Avenue
Austin, Texas 78701

October 10, 2011 at 9:00 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 August 1, 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 ADOPTION

7. Discussion and possible action to adopt amendments to 22 TAC Chapter 535 as follows:
    a. Subchapter B §535.17 concerning Appraisals
    b. Subchapter C, §535.31 concerning Attorneys at Law
    c. Subchapter E, Requirements for Licensure as follows:
        i. §535.50 concerning Definitions
        ii. §535.51 concerning General Requirements
        iii. §535.53 concerning Corporations and Limited Liability Companies
        iv. §535.55 concerning Education Requirements for a Salesperson License
        v. §535.56 concerning Education and Experience Requirements for a Broker License
    d. Subchapter F, §535.63 concerning Accreditation of Core Education Schools

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.

e. Subchapter G, Mandatory Continuing Education as follows:

i. §535.71 concerning Approval of Providers, Courses and Instructors

ii. §535.72 concerning Presentation of Courses, Advertising and Records

f. Subchapter I, Licenses as follows:

i. §535.91 concerning Renewal Notices

ii. §535.93 concerning Late Renewal Applications

iii. §535.96 concerning Mailing Address and Other Contact Information

g. Subchapter J, §535.101 concerning Fees

h. Subchapter L, Termination of Salesperson's Association with Sponsoring Broker as follows:

i. §535.121 concerning Inactive License

ii. §535.122 concerning Reactivation of License

i. Subchapter M, §535.132 concerning Eligibility for Licensure

j. Subchapter N, §535.141 concerning Initiation of Investigation

k. Subchapter R, §535.210 concerning Inspector Fees

EMERGENCY RULES

8. Discussion and possible action to renew for an additional 60-day period emergency rules concerning 22 TAC:

a. Subchapter B, §535.17 concerning Appraisals

b. Subchapter C, §535.31 concerning Attorneys at Law

c. Subchapter E, Requirements for Licensure as follows:

i. §535.50 concerning Definitions

ii. §535.51 concerning General Requirements

iii. §535.53 concerning Corporations and Limited Liability Companies

d. Subchapter I, §535.93 concerning Late Renewals

e. Subchapter J, §535.101 concerning Fees

f. Subchapter M, §535.132 concerning Eligibility for Licensure

g. Subchapter N, §535.141 concerning Initiation of Investigation

RULES FOR POSSIBLE PROPOSAL

9. Discussion and possible action to propose amendments to 22 TAC Chapter 535 as follows:

a. §535.4 regarding License Required

b. §535.211 regarding Professional Liability Insurance, or Any Other Insurance That Provides Coverage for Violations of Subchapter G of Texas Occupations Code, Chapter 1102

10. 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. §537.21 concerning Standard Contract Form TREC No. 10-5
    c. §537.22 concerning Standard Contract Form TREC No. 11-6
    d. §537.23 concerning Standard Contract Form TREC No. 12-2
    e. §537.26 concerning Standard Contract Form TREC No. 15-4
    f. §537.27 concerning Standard Contract Form TREC No. 16-4
    g. §537.28 concerning Standard Contract Form TREC No. 20-10
    h. §537.30 concerning Standard Contract Form TREC No. 23-11
    i. §537.31 concerning Standard Contract Form TREC No. 24-11
    j. §537.32 concerning Standard Contract Form TREC No. 25-8
    k. §537.33 concerning Standard Contract Form TREC No. 26-4
    l. §537.35 concerning Standard Contract Form TREC No. 28-1
    m. §537.37 concerning Standard Contract Form TREC No. 30-9
    n. §537.39 concerning Standard Contract Form TREC No. 32-2
    o. §537.40 concerning Standard Contract Form TREC No. 33-1
    p. §537.41 concerning Standard Contract Form TREC No. 34-3
    q. §537.43 concerning Standard Contract Form TREC No. 36-5
    r. §537.44 concerning Standard Contract Form TREC No. 37-3
    s. §537.45 concerning Standard Contract Form TREC No. 38-3
    t. §537.46 concerning Standard Contract Form TREC No. 39-6
    u. §537.47 concerning Standard Contract Form TREC No. 40-3
    v. §537.48 concerning Standard Contract Form TREC No. 41-1
    w. §537.51 concerning Standard Contract Form TREC No. 44-0
    x. §537.52 concerning Standard Contract Form TREC No. 45-0

PENDING BUSINESS

11. Discussion and possible action to adopt a code of conduct for members of advisory committees and working groups
12. Discussion and possible action to approve changes to TREC application forms to incorporate amendments to Texas Occupations Code Chapter 1101 under Senate Bill 747, 82nd Texas

Legislature, Regular Session (2011)

13. Executive session to discuss personnel matters regarding the TREC administrator position under Texas Government Code, §551.074
14. Discussion and possible action on items considered in executive session
15. Discussion and possible action on Broker Responsibility Working Group recommendations on experience requirements for a broker license

NEW BUSINESS

16. Discussion and possible action to approve non-substantive revisions to TREC notices and forms approved for use by TREC licensees including OP-C, OP-H, OP-I, OP-K, OP-L and OP-M
17. Discussion and possible action on Education Working Group recommendations on education related matters
18. Discussion and possible action to amend the Memorandum of Understanding with the Real Estate Center
19. Discussion and possible action to amend the Memorandum of Understanding with the Texas Appraiser Licensing and Certification Board
20. Discussion and possible action to approve the Required Legal Update and Ethics MCE course materials
21. Discussion and possible action to authorize the administrator to request an opinion from the Office of the Attorney General regarding insurance requirements for real estate inspectors in Texas
22. Discussion and possible action to accept the Texas Comptroller of Public Accounts' post payment audit report of certain TREC payroll, purchase, refund, and travel transactions
23. Discussion and possible action to establish policies related to self-directed semi-independent status, including:
    a. Cash flow management reserves
    b. Technology replacement reserves
    c. A target reserve balance in excess of which the agency may reduce fees

CONTESTED CASES

24. Consideration and possible action regarding:
    a. Proposal for Decision from State Office of Administrative Hearings in the matter of Luis Acosta, SOAH Docket No. 329-11-4255.REC
    b. Proposal for Decision from State Office of Administrative Hearings in the matter of Ericka Kristin Rawles, SOAH Docket No. 329-11-5991.REC

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.

c. Proposal for Decision from State Office of Administrative Hearings in the matter of Martina S. Perez, SOAH Docket No. 329-11-4372.REC

RECOVERY FUND

25. Recovery fund matters:

a. Executive session to discuss pending litigation pursuant to Texas Government Code §551.071

b. Discussion and possible action to approve payment of claims from the Real Estate Recovery Trust Account:

i. RF 11-031, Fasoro v. Cade

ii. RF 11-032, Kennedy v. Joraf Group, LLC and Jordan

iii. RF 11-041, Gioia v. Pruett

iv. RF 11-042, Owens v. Cade

v. RF 12-002, Becca Properties, LLC v. Emmons

vi. RF 12-003, Feely v. Hoover

FUTURE MEETINGS

26. Discussion and possible action to schedule future meetings

26. 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.

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.

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

RECOMMENDED MOTION:

MOVED, that the absence(s) of _____for the October 10, 2011 Commission meeting is/are hereby excused.

Agenda Item 3:

Approval of minutes of August 1, 2011 Commission meeting

SUMMARY

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

STAFF RECOMMENDATION

Approve minutes for August 1, 2011 Commission meeting.

MINUTES OF THE MEETING OF THE TEXAS REAL ESTATE COMMISSION
August 1, 2011
Room 170, 1700 N. Congress Ave., Austin, Texas

On Monday, August 1, 2011, at 10:02 a.m. there was a duly posted regular meeting of the Texas Real Estate Commission (the "Commission"). Commissioner Jones led the attendees in the pledges of allegiance to the United States and Texas flags. Chairman Avis Wukasch presided, and Patricia Holder recorded the minutes. The following commissioners, constituting a quorum, were in attendance:

Avis Wukasch, Chair

Troy C. Alley, Jr.

Adrian Arriaga

Jaime Hensley

Bill Jones

Joanne Justice

Weston Martinez

Dona Scurry

The Chairman moved to agenda item two, discussion and possible action to excuse Commissioner absence(s), if any. There were no absences.

The Chair recognized the two new commissioners: Bill Jones from Temple, Texas and Weston Martinez from San Antonio. She also recognized members of the audience: Dwight Hale, Travis Kessler, Lori Levy, Deb Waldman and Mark Lehman from the Texas Association of Realtors and Gary Maylor from the Real Estate Center at Texas A&M.

Chairman Wukasch moved to agenda item three, election of vice-chair. Upon motion of Ms. Hensley, duly seconded by Ms. Scurry, Commissioner Justice was elected vice-chair.

Ms. Wukasch moved to agenda item four, approval of the minutes of the May 2, 20111 meeting. Upon motion of Ms. Hensley, seconded by Ms. Justice, the Commission approved minutes of May 2, 2011, Commission Meeting.

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

Chairman Wukasch moved to agenda item five, 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, welcomed the commissioners to the new offices and meeting room of Texas Real Estate Commission in the Stephen F. Austin building in the Capitol complex. He reported on the passage of SB 1000 and its effect on the agency. Mr. Oldmixon and the Commissioners thanked the staff for the seamless move to the new location. He stated that special thanks was due to Sandy Jones the move coordinator and Tom Watson and the Information and Technology Services division for their efforts in making the move work so well.

Lorie DeAnda, Director of Reception and Communications Services (RCS) presented the C1 report concerning Customer Service Statistics. There was discussion concerning the number of walk-ins and the services provided at the reception desk. Mr. Martinez requested a breakdown of the types of emails received by RCS.

Gwen Jackson, Director of Education and Licensing Services (ELS) 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. Ms. Jackson stated that changes in the way some of the reported measures were calculated had caused the numbers to fluctuate from what was previously reported. There was discussion concerning the peak year for the number of licensees. There was also discussion concerning the pass rate for persons taking the licensing exam for the first time.

Kerri Galvin, Director of Standards and Enforcement Services (SES), presented the case status report, and the open case age report. Ms. Galvin explained the process used to prepare the case age report and the actual numbers the percentages represented. After discussion, Mr. Martinez requested that in the future the reports include the actual number of cases being reported along with the percentage.

Tom Watson, Director in Information and Technology Services, introduced a new systems analyst, Sunny Sun. He then presented the I1 report concerning electronic outlet services statistics. Mr. Watson stated that online renewal numbers were comparable with the numbers before the system conversion, but that online application numbers were still low. There was discussion concerning simplifying the registration process to access online services. There was further discussion concerning a scheduled trial run of the new online processes. There was discussion concerning the purging, prepping and scanning of the licensing records. Mr. Watson reported on the status of the imaging project. There was discussion concerning the upgrade in the hardware that was available with the move to the new location.

Karen Alexander reported on the S1 report showing the financial status as of June 30, 2011. There was discussion concerning funding received and the status of the budget for the end of the fiscal year. 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. She reported that FY 2011 would be a record year for payments from the Real Estate Recovery Trust Account. There was discussion concerning the types and size of the judgments being obtained against licensees. There was discussion concerning the balance in the trust account and how replenishment of the fund would be accomplished if needed.

Chairman Wukasch moved to agenda item six, report by the Texas Real Estate Inspector Advisory Committee. Mr. Willcox, Chairman of the Committee, reported on the last meeting of the Committee. There was discussion concerning items the Committee had voted on for the Commission to consider. After discussion, it was decided that these items would be placed on the agenda for the October meeting.

Ms. Wukasch moved to agenda item nineteen discussion and possible action to approve annual internal audit report. Rene Gonzales, Garza-Gonzales and Associates, the internal auditor for the agency, presented his report, referencing the material contained in the meeting packet. There was discussion concerning the figures in the HUB reporting and the percentage of HUBs. Upon motion of Ms. Scurry, duly seconded by Mr. Arriaga, the Commission approved the annual internal audit report.

Ms. Wukasch moved to agenda item seven, general comments from visitors on non-agenda items. No comments were offered.

The Chair moved to agenda item eight, discussion and possible action to adopt amendments to 22 TAC §535.191 regarding Schedule of Administrative Penalties. Ms. DeHay presented the agenda items for discussion and possible action. Section 535.191 adopts additional provisions that apply to the schedule and to move an existing provision that should more appropriately fit under a different range. Upon motion of Ms. Justice, duly seconded by Mr. Jones, the Commission authorized staff, on behalf of the Commission, to submit the amendments to §535.191 regarding Schedule of Administrative Penalties, as presented at the meeting, with any non-substantive changes as staff may deem necessary or advisable for adoption to the *Texas Register*.

The Chairman moved to agenda item ten, discussion and possible action to adopt 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 and f. §537.37 concerning Standard Contract Form TREC No. 30-9 with changes to the forms as submitted to the *Texas Register* consisting of the updating of the web address and phone number on the forms. The amendments adopt by reference six revised contract forms for use by Texas real estate licensees. Ms. DeHay presented the agenda item for discussion and possible action.

Upon motion of Ms. Hensely, duly seconded by Mr. Alley, the commission authorized, on behalf of the 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, with changes as presented at this meeting and any non-substantive changes as staff may deem necessary or advisable for adoption to the *Texas Register*.

Chairman Wukasch moved to agenda item nine, discussion and possible action to adopt amendments to 22 TAC §535.219 regarding Schedule of Administrative Penalties. Ms. Bijansky presented the agenda item for discussion and possible action. 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. Twelve comments were received during the notice and comment period. Mr. Jones, seconded by Ms. Justice, moved that the Commission authorize staff, 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 adoption to the *Texas Register*. Comments were offered by Mark Eberwine, Texas Association of Real Estate Inspectors, and Mike Cothran, Texas Professional Real Estate Inspectors Association, against the motion. There was discussion concerning the penalty matrix and the severity of the fine amount. Fred Willcox, Chair of the Texas Real Estate Inspector Committee, spoke in favor of the motion. The Chair called for a vote on the motion. The motion passed unanimously.

Chairman Wukasch moved to agenda item eleven, discussion and possible action to take emergency action to adopt amendments to 22 TAC Chapter 535 as follows: a. Subchapter B, §535.17 concerning Appraisals; b. Subchapter C, §535.31 concerning Attorneys at Law; c. Subchapter E, Requirements for Licensure as follows: i. §535.50 concerning Definitions, ii. §535.51 concerning General Requirements and iii. §535.53 concerning Corporations and Limited Liability Companies; d. Subchapter I, §535.93 concerning Late Renewals; d. Subchapter I, §535.93 concerning Late Renewals; e. Subchapter J, §535.101 concerning Fees; f. Subchapter M, §535.132 concerning Eligibility for Licensure; and g. Subchapter N, §535.141 concerning Initiation of Investigation.

Ms. DeHay presented agenda item eleven a. for discussion and possible action. This agenda item would adopt on an emergency basis amendments to 22 TAC §535.17 regarding Appraisals. The amendments are adopted on an emergency basis to implement the relevant provisions of Senate Bill 747, 82nd Session, Texas Legislature, Regular Session (2011). The effective date of the relevant provisions of SB 747 is September 1, 2011. The adoption of the amendment is necessary to comply with the effective date of the bill. In relevant part, SB 747 amended Texas

Occupations Code, §1101.002 to delete appraisals from the laundry list of activities that are considered real estate brokerage. In addition SB 747 added a new item to the list regarding broker price opinions.

The amendments to §535.17 clarify that a real estate licensee must be licensed under Texas Occupations Code, Chapter 1103 to conduct real estate appraisals. Further the rule is amended to provide that if a broker or salesperson provides a broker price opinion under Chapter 1101, the opinion must provide a written disclosure as provided in the rule. Upon motion of Ms. Hensley, seconded by Mr. Arriaga, the Commission authorized staff , on behalf of the Commission, to submit the amendments to 22 TAC §535.17 regarding Broker Price Opinion or Comparative Market Analysis as presented at the meeting for emergency adoption, with any non-substantive changes as staff may deem necessary or advisable.

Ms. DeHay presented agenda item eleven b for discussion and possible action. This agenda item adopts on an emergency basis amendments to 22 TAC §535.31 regarding Attorneys at Law. The amendments are adopted on an emergency basis to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). The effective date of the relevant provisions of SB 747 is September 1, 2011. The adoption of the amendment is necessary to comply with the effective date of the bill. In part, SB 747 amends Texas Occupations Code, §1101.005 regarding an exemption for attorneys. The amendment now exempts attorney licensed in the State of Texas; it previously applied to attorneys licensed in any state.

The amendments to §535.31 clarify that the exemption only applies to attorneys licensed in the State of Texas. Upon motion of Mr. Arriaga, duly seconded by Mr. Martinez, the Commission authorized staff to submit the emergency amendments to §535.31 concerning Attorneys at Law, with any non-substantive changes as staff may deem necessary or advisable for emergency adoption to the *Texas Register*.

Ms. DeHay stated that the effective date for all of these amendments would be September 1, 2011. Ms. DeHay presented agenda item eleven c for discussion and possible action. This agenda item would adopt amendments to 22 TAC Subchapter E, §535.50 regarding Definitions, §535.51 regarding General Requirements and §535.53 regarding Corporations and Limited Liability Companies on an emergency basis. The amendments are adopted on an emergency basis to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). The effective date of the relevant provisions of SB 747 is September 1, 2011. The adoption of the amendment is necessary to comply with the effective date of the bill. In relevant part, SB 747 amends Texas Occupations Code, §1101.401 to expand from six months to one year the period of time in which an applicant may satisfy an examination requirement from the date the application is filed. In addition, the application and renewal requirements for

business entities were changed in §§1101.355 and 1101.453 to require that business entities applying for and renewing a broker license must provide proof that the entity maintains errors and omissions insurance with a minimum annual limit of $1 Million if the designated broker owns less than 10 percent of the entity. Finally SB 747 amends Chapter 1101 to delete the exemption from licensing for partnerships in which a general partner is a broker and requires licensure as a broker for any business entity as defined in Section 1.002 of the Business Organizations Code Emergency action is necessary to amend §535.50, §535.51, and §535.53 to be consistent with SB 747.

The amendments to §535.50 amend the list of definitions to define a designated broker of a business entity and to clarify that the designated broker must be an officer of a corporation, a manager of a limited liability company or a general partner of a partnership. The amendments to §535.51 clarify that an applicant must meet education and experience requirements before the applicant may take a qualifying examination. The amendments to §535.53 change the title of the rule to apply to all business entities, not just corporations and limited liability companies, to add partnerships to the types of business entities that must be licensed, and to address the requirement that business entities must maintain errors and omissions insurance if the designated broker owns less than 10 percent of the entity.

Upon motion of Ms. Justice, duly seconded by Mr. Jones, the Commission authorized staff to submit the amendments to §535.50 regarding Definitions, §535.51 regarding General Requirements and §535.53 regarding Corporations and Limited Liability Companies with any non-substantive changes as staff may deem necessary or advisable for adoption on an emergency basis to the *Texas Register* effective as of September 1, 2011.

Ms. DeHay presented agenda item eleven d for discussion and possible action. This agenda item adopts on an emergency basis amendments to 22 TAC §535.93 regarding Late Renewal Applications. The amendments are adopted on an emergency basis to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). The effective date of the relevant provisions of SB 747 is September 1, 2011. The adoption of the amendment is necessary to comply with the effective date of the bill. In relevant part, SB 747 amended Texas Occupations Code, §1101.451 to change the maximum period of time in which a licensee can file a late renewal from one year to six months.

The amendments to §535.93 change to six months any references to the one year period for filing a late renewal.

Upon motion of Mr. Jones, duly seconded by Ms. Justice, the Commission authorized staff to submit the amendments to 22 TAC §535.93 regarding Late Renewal Applications with any non-

substantive changes as staff may deem necessary or advisable for adoption on an emergency basis to the *Texas Register.*

Ms. DeHay presented agenda item eleven e for discussion and possible action. This agenda item adopts on an emergency basis amendments to 22 TAC §535.101 regarding Fees. The amendments are adopted on an emergency basis to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). The effective date of the relevant provisions of SB 747 is September 1, 2011. The adoption of the amendment is necessary to comply with the effective date of the bill. In relevant part, SB 747 amended Texas Occupations Code, §1101 to change the maximum period of time in which a licensee can file a late renewal from one year to six months.

The amendments to §535.101 change to six months the reference to the one year period for filing a late renewal in subsection (b)(11)

Upon motion of Mr. Alley, duly seconded by Ms. Hensley, staff is authorized, on behalf of this Commission, to submit the amendments to 22 TAC §535.101 regarding Fees with any non-substantive changes as staff may deem necessary or advisable for adoption on an emergency basis to the Texas Register.

Ms. DeHay presented agenda item eleven f for discussion and possible action. This agenda item would adopts on an emergency basis amendments to 22 TAC §535.132 Eligibility for Licensure. The amendments are adopted on an emergency basis to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). The effective date of the relevant provisions of SB 747 is September 1, 2011. The adoption of the amendment is necessary to comply with the effective date of the bill. In relevant part, SB 747 amends Texas Occupations Code, Chapter 1101 to delete the exemption from licensing for partnerships in which a general partner is a broker and requires licensure as a broker for any business entity as defined in Section 1.002 of the Business Organizations Code. Emergency action is necessary to amend §535.132, to be consistent with SB 747. The amendment to §535.132 makes emergency conforming changes to be consistent with the statutory text amended by SB 747.

Upon motion of Mr. Arriaga, duly seconded by Mr. Martinez, staff is authorized, on behalf of this Commission, to submit the amendments to 22 TAC §535.132 Eligibility for Licensure with any non-substantive changes as staff may deem necessary or advisable for adoption on an emergency basis to the Texas Register.

Ms. DeHay presented eleven g for discussion and possible action. This agenda item adopts on an emergency basis amendments to 22 TAC Subchapter E, §535.141 regarding Initiation of Investigation. The amendments are adopted on an emergency basis to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). The effective date

of the relevant provisions of SB 747 is September 1, 2011. The adoption of the amendment is necessary to comply with the effective date of the bill. In relevant part, SB 747 amends Texas Occupations Code, Chapter 1101 to delete the exemption from licensing for partnerships in which a general partner is a broker and requires licensure as a broker for any business entity as defined in Section 1.002 of the Business Organizations Code Emergency action is necessary to amend §535.5141 to be consistent with SB 747.

The amendments to §535.141 clarify that the rule applies to all business entities that are required to have a broker license under Chapter 1101, and to make conforming changes to the rule to be consistent with other rules that have been adopted on an emergency basis due to the September 1, 2011 effective date of the relevant provisions of SB 747.

Upon motion of Mr. Day, duly seconded by Mr. Arriaga, staff is authorized, on behalf of this Commission, to submit the amendments to §535.141 regarding Initiation of Investigation with any non-substantive changes as staff may deem necessary or advisable for adoption on an emergency basis to the Texas Register.

The Chair moved to agenda item twelve, discussion and possible action to propose amendments to 22 TAC Chapter 535 as follows: a. Subchapter B §535.17 concerning Appraisals; b. Subchapter C, §535.31 concerning Attorneys at Law; c. Subchapter E, Requirements for Licensure as follows: i. §535.50 concerning Definitions; ii. §535.51 concerning General Requirements; iii. §535.53 concerning Corporations and Limited Liability Companies; iv. §535.55 concerning Education Requirements for a Salesperson License; and v. §535.56 concerning Education and Experience Requirements for a Broker License; d. Subchapter F, §535.63 concerning Accreditation of Core Education Schools; e. Subchapter G, Mandatory Continuing Education as follows: i. §535.71 concerning Approval of Providers, Courses and Instructors and ii. §535.72 concerning Presentation of Courses, Advertising and Records; f. Subchapter I, Licenses as follows: i. §535.91 concerning Renewal Notices; ii. §535.93 concerning Late Renewal Applications; and iii. §535.96 concerning Mailing Address and Other Contact Information; g. Subchapter J, §535.101 concerning Fees; h. Subchapter L, Termination of Salesperson's Association with Sponsoring Broker as follows: i. §535.121 concerning Inactive License and ii. §535.122 concerning Reactivation of License; i. Subchapter M, §535.132 concerning Eligibility for Licensure; and j. Subchapter N, §535.141 concerning Initiation of Investigation. Ms. DeHay stated that the rule amendments in agenda item twelve were identical to the amendments adopted by emergency action in agenda item eleven. This agenda item allows the Commission to propose these amendments for permanent adoption.

Upon motion of Ms. Justice, duly seconded by Mr. Alley, staff is authorized, on behalf of this Commission, to submit the amendments to §535.17 regarding Appraisals with any non-

substantive changes as staff may deem necessary or advisable for proposal to the Texas Register and for public comment.

Upon motion of Mr. Day, duly seconded by Ms. Justice, staff is authorized, on behalf of this Commission, to submit the amendments to §535.31 regarding Attorneys at Law with any non-substantive changes as staff may deem necessary or advisable for proposal to the Texas Register and for public comment.

Ms. DeHay explained that agenda item twelve c not only begins the permanent adoption process regarding amendments to 22 TAC Subchapter E, §535.50 regarding Definitions, §535.51 regarding General Requirements and §535.53 regarding Corporations and Limited Liability Companies, but also amends §535.55 regarding Education Requirements for a Salesperson License and §535.56 regarding Education and Experience Requirements for a Broker License. The amendments are proposed to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). In relevant part, SB 747 amends Texas Occupations Code, §1101.401 to expand from six months to one year the period of time in which an applicant may satisfy an examination requirement from the date the application is filed. In addition, the application and renewal requirements for business entities were changed in §§1101.355 and 1101.453 to require that business entities applying for and renewing a broker license must provide proof that the entity maintains errors and omissions insurance with a minimum annual limit of $1 Million if the designated broker owns less than 10 percent of the entity. Finally SB 747 amends Chapter 1101 to delete the exemption from licensing for partnerships in which a general partner is a broker and requires licensure as a broker for any business entity as defined in Section 1.002 of the Business Organizations Code Emergency action is simultaneously being taken to amend §535.50, §535.51, and §535.53 to be consistent with SB 747 because the effective date of those provisions is September 1, 2011.

Regarding the amendments to §§535.55 and .56, the commission has the authority under §1101.362 of the Act to waive some or all of the education and experience requirements for someone who has been licensed within the six years preceding the date the application is filed. Under current §535.55, the commission has waived the education required for a salesperson license for an applicant who was licensed in the preceding six years and otherwise meets the requirements of the section. The proposed amendment to §535.55 would change the period from six years to two years so that an applicant who was licensed as a salesperson or broker in the preceding two years and otherwise meets the requirements of the section regarding MCE could apply for a salesperson license Similarly, under current §535.56(a), the commission has waived the education and experience required for a broker license for a broker who was licensed in the preceding four years and otherwise meets the requirements of the subsection. The proposed rule would change the period from four years to two years and delete the reference to a salesperson so that a broker who had an active license in two of the preceding four years and otherwise meets the requirements of the section regarding MCE could apply for a broker license without meeting the new experience requirements.

In addition, amendments to §535.56 would add the rules required by amendments to §1101.356(b-1) of the Act to establish active experience requirements to apply for a broker

license under §1101.356 and §1101.357 of the Act. An applicant would be required to establish that the applicant has obtained 3600 points of active experience with documentary evidence and a statement from the applicant's sponsoring broker at the time the experience was earned. Certain types of transactions would be worth a certain number of points and the applicant would be required to use the forms adopted by reference in the rule to summarize the transactions. An applicant would be able to continue to gain experience after an application has been submitted until such time that the applicant meets the total number required but before the applicant may take the qualifying examination. Experience earned after the application is submitted would be reported on a different form adopted by reference in the rule. If an applicant is unable to obtain sufficient documentation and/or the signature of the sponsoring broker, the applicant would be required to use an affidavit adopted by reference in the rule to describe the applicant's efforts to obtain the documentation and/or signatures. In addition, the applicant would be required to provided two additional affidavits each signed by a different individual familiar with the applicant's circumstances and attesting to the applicant's efforts to obtain the appropriate documentation. Finally, the rule would give the commission the discretion to request additional documentation, rely on the documentation provided under this subsection, or utilize any other information provided by the applicant to determine whether the applicant has sufficient experience as required by Section 1101.356 of the Act and §535.56.

Mr. Jones spoke concerning the Broker Responsibility Working Groups part in recommending these amendments. After discussion, which included the Chair's thanks for the groups hard work, upon motion of Mr. Martinez, duly seconded by Ms. Scurry, staff is authorized, on behalf of this Commission, to submit the amendments to §535.50 regarding Definitions, §535.51 regarding General Requirements and §535.53 regarding Corporations and Limited Liability Companies, §535.55 regarding Education Requirements for a Salesperson License and §535.56 regarding Education and Experience Requirements for a Broker License with any non-substantive changes as staff may deem necessary or advisable for proposal to the Texas Register and for public comment.

Ms. DeHay presented agenda item twelve d for discussion and possible action. This agenda item proposes amendments to §535.63, Accreditation of Core Education Schools. The amendments are proposed to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). In relevant part, SB 747 amends Texas Occupations Code, §1101.301 to require the commission to adopt rules setting an examination passage rate benchmark for each category of license issued under Chapter 1101 and Chapter 1102, Texas Occupations Code.

The amendment to §535.63 establishes the method in which the benchmark passage rate would be calculated for each license category and makes other conforming changes to be consistent with the amendments made by SB 747. Upon motion of Mr. Alley, duly seconded by Mr. Jones, staff is authorized, on behalf of this Commission, to submit the amendments to §535.63, Accreditation of Core Education Schools with any non-substantive changes as staff may deem necessary or advisable for proposal to the Texas Register and for public comment.

Ms. DeHay moved to agenda item 12 e. The amendments to §535.71 and §535.72 provide the method by which the commission will create and approve the broker responsibility course, which will be the same way it deals with the 3 hour legal update and 3 hour ethics courses required under §1101.455, and provides conforming changes for consistency.

Upon motion of Mr. Jones, duly seconded by Mr. Arriaga, staff is authorized, on behalf of this Commission, to submit the amendments to §535.71, Approval of Providers, Courses and Instructors, and §535.72, Presentation of Courses, Advertising and Records with any non-substantive changes as staff may deem necessary or advisable for proposal to the Texas Register and for public comment.

At 12:15 p.m. the Chair announced an executive session so that the Texas Real Estate Commission could meet with its attorney in executive session on any item listed on the agenda as authorized by the Texas Open Meetings Act, Tex. Gov't Code, §551.071. The meeting resumed at 2:00 p.m.

Ms. DeHay moved to agenda item twelve f. The amendments to §535.91 clarify that a broker who sponsors salespersons, a designated broker of a business entity, and a license holder who is a delegated supervisor of one or more licensees under §535.2 for six months or more during the course of the current license must take the six hour broker responsibility course to renew a license. The amendments to §535.93 change to six months any references to the one year period for filing a late renewal. The amendments to §535.96 clarify that licensees must provide and maintain contact information with the commission, including an email address if available.

Upon motion of Mr. Arriaga, duly seconded by Ms. Hensley, staff is authorized, on behalf of this Commission, to submit the amendments to §535.91 regarding Renewal Notices, §535.93 regarding Late Renewals, and §535.96 regarding Mailing Address and Other Information with any non-substantive changes as staff may deem necessary or advisable for proposal to the Texas Register and for public comment.

Ms. DeHay moved to agenda item twelve h. The amendments to §535.121 makes conforming changes to be consistent with other rules that are being simultaneously proposed to implement the requirements of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). The amendments to §535.122 clarify that a salesperson on inactive status may act as the broker's salesperson from the date the notice and fee are mailed or delivered to the commission as long as the salesperson otherwise meets MCE requirements.

Upon motion of Ms. Justice, duly seconded by Ms. Hensley, staff is authorized, on behalf of this Commission, to submit the amendments to §535.121, Inactive License, and §535.122, Reactivation of License with any non-substantive changes as staff may deem necessary or advisable for proposal to the Texas Register and for public comment.

Ms. DeHay moved to agenda item twelve i. The amendments to §535.132 make conforming changes to be consistent with proposed changes to §§535.55 and .56 regarding waiver of education or experience requirements for a salesperson or broker license, and change the references from individual business entity types to "business entity" to make conforming changes to be consistent with the statutory text amended by SB 747.

Upon motion of Ms. Hensley, duly seconded by Ms. Justice, staff is authorized, on behalf of this Commission, to submit the amendments to §535.132 regarding Eligibility for Licensure with any non-substantive changes as staff may deem necessary or advisable for proposal to the Texas Register and for public comment.

Ms. DeHay moved to agenda item twelve j. The amendments to §535.141 clarify that the rule applies to all business entities that are required to have a broker license under Chapter 1101, and to make conforming changes to the rule to be consistent with other rules that have been adopted on an emergency basis due to the September 1, 2011 effective date of the relevant provisions of SB 747. Upon motion of Mr. Jones, duly seconded by Ms. Justice, staff is authorized, on behalf of this Commission, to submit the amendments to §535.141 regarding Initiation of Investigation with any non-substantive changes as staff may deem necessary or advisable for proposal to the Texas Register and for public comment.

The Chair stated that items twelve g and k would be taken up later in the meeting. Ms. Wukasch moved to agenda item thirteen, discussion regarding legislative housekeeping measures and other legislative items. There was no discussion on this item.

Chairman Wukasch moved to agenda item fourteen, discussion and possible action to adopt a code of conduct for members of advisory committees and working groups. Mr. Oldmixon presented this agenda item for discussion and possible action. Mr. Martinez, duly seconded by Mr. Alley, moved that the Commission approve the code of conduct for members of advisory committees and working groups as submitted under the agenda item. Mr. Willcox, spoke against adoption of the code of conduct. After discussion, Mr. Arriaga, seconded by Mr. Martinez, moved to table the previous motion. The motion passed by unanimous vote.

The Chair moved to agenda item fifteen, discussion and possible action to approve changes to TREC application forms to incorporate amendments to Texas Occupations Code Chapter 1101 Under Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). Ms. DeHay presented the agenda item for discussion and possible action.

Upon motion of Ms. Justice, duly seconded by Mr. Alley, the Commission approved all the changes to the applications for a license for a corporation, limited liability company or partnership and change of designated officer, manager or managing partner form and the changes to all application forms concerning the one year expiration period for applications and the six month period for filing a late renewal effective September 1, 2011, to reflect changes to Texas Occupations Code, Chapter 1101, under SB 747, as submitted under this agenda item.

Ms. Wukasch moved to agenda item sixteen, discussion and possible action on Broker Responsibility working group recommendations on experience requirements for a broker license. No action required under this agenda item.

Chairman Wukasch moved to agenda item seventeen, discussion and possible action to approve amendments to the Seller's Disclosure of Property Condition Form, TREC No. OP-H. Upon motion of Mr. Alley, duly seconded by Ms. Hensley, the Commission approved the

amendments made to the Seller's Disclosure of Property Condition Form, TREC No. OP-H effective September 1, 2011, as submitted under this agenda item.

The Chair moved to agenda item eighteen, discussion and possible action to appoint two members to the Broker-Lawyer Committee. Ms. Wukasch thanked the members of the committee, Ms. Justice, Ms. Hensley and Mr. Arriaga, for their work. Upon motion of Ms. Justice, duly seconded by Ms. Hensley, recommended that the Commission appoint Charlie Still and Greg Glen to the Broker-Lawyer Committee for terms of six years each. The Commission approved the recommendation by unanimous vote.

The Chair moved to agenda item twenty-five, recovery fund matters: a. executive session to discuss pending litigation pursuant to Texas Government Code, §551.071 and b. discussion and possible action to authorize settlement of recovery fund claims.

Ms. Bijansky presented the following claims against the recovery fund for possible action:

IRF 11-004, Jonathan and Veronica Deats v. Samuel Ryan Tanner, actual damages in the amount of $18, 370 and attorney fees in the amount of $6,500. Mr.Arriaga, seconded by Ms. Hensley, moved to approve payment of $12,500 in actual damages, provided that the judgment is final and no appeals are pending. The motion was adopted by unanimous vote.

RF 11-015, Bill and Theresa Hooper, Hooperville Inc and Alton and Iralee Haley (cross-plaintiffs) v. R.D. Harris, actual damages in the amount of $200,000 for the Hoopers and $427,900 for the Haleys, attorneys fees of $100,255.53 for the Hoopers and $117,658 for the Haleys. Ms. Justice, seconded by Mr. Alley, moved to approve payment up to the statutory limits. The motion was adopted by unanimous vote.

RF 11-021, Sangeeta and Chad Lerma v. Lonnie Paul Pruett and Justin Gibson, actual damages in the amount of $7,400 and $4,850 in attorney fees. Mr. Alley, seconded by Ms. Hensley, moved to approve payment of $7,400 in actual damages and $4,850 in attorney fees. The motion was adopted by unanimous vote.

RF 11-026, Leonard and Lois Nufer v. Cynthia Lynn Hickman, actual damages in the amount of $100,000 and $23,616.05 in attorney fees. Ms. Hensley, seconded by Mr. Jones, moved to approve payment of $37,630 in actual damages and $5,267.29 in attorney fees. The motion was adopted by unanimous vote.

RF 11-028, Gregory Potts v. Barry Powell, actual damages in the amount of $25,136.39 and $10,566.46 in attorney fees. Mr. Day, seconded by Mr. Alley, moved to approve payment of $13,114.56 in actual damages and $10,566.46 in attorney fees. The motion was adopted by unanimous vote.

RF 11-031, Ayotunde Fasoro v. Michael Duane Cade, actual damages in the amount of $18,022.64 and $8,250 in attorney fees. Ms. Scurry, seconded by Ms. Hensley, moved to authorize staff to settle this case on the best possible terms once the other claim is formally filed and all necessary documentation. The motion was adopted with Ms. Justice abstaining from the vote.

RF 11-033, Tina Watson v. Rachael Adams, actual damages in the amount of $75,500. Mr. Jones, seconded by Ms. Hensley, moved to settle this case on the best possible terms. The motion was adopted by unanimous vote.

RF 11-034, Julian Torres v. Jose Fernando Hernandez, actual damages in the amount of $43,253 and attorney fees in the amount of $7,500; and RF 11-035, Pablo Ocampo v. Jose Fernando Hernandez, actual damages in the amount of $35,300 and attorney fees in the amount of $6,500; and 11-036, State of Texas v. Jose Fernando Hernandez, actual damages in the amount of $100,000 and attorney fees of $300,000. Mr. Martinez, seconded by Mr. Jones, moved to approve payment of $100,000 in conjunction with 11-034, 11-035, and 11-036 and authorize staff to seek and consolidate these three cases into one proceeding to ensure that a proper allocation is made of all the monies available from the fund; and to interplead $100,000 into the bankruptcy court to allow the court to properly allocate the funds to the said victims. The motion was adopted by unanimous vote.

RF 11-037, Raymond T. Malkowski v. Richard H. Cook, actual damages in the amount of $3,464. Ms. Justice, seconded by Mr. Arriaga, moved to approve payment of $3,464 in actual. The motion was adopted by unanimous vote.

The Chair moved to agenda item twenty, executive session to discuss personnel matters regarding the TREC administrator position under Texas Government Code, §551.074 and announced an executive session at 2:30. Open meeting resumed at 2:47 p.m. Ms. Wukasch appointed Mr. Martinez, Ms. Hensley and Ms. Scurry to create a process and a form for the review of the executive director's performance and for that report to be given at the December 5, 2011 meeting of the Commission. She asked that the record show that the Commissioners take the charge from the Legislature to follow the processes of an independent agency very seriously.

Ms. Wukasch moved to agenda item twenty-two, discussion and possible action to establish policies related to self directed semi-independent status, including: a. Operating reserves; b. Technology replacement reserves and c. A target reserve balance in excess of which the agency may reduce fees. Mr. Oldmixon presented the agenda item for discussion and possible action. There was discussion concerning operating reserves and a target reserve balance in excess of which the agency may reduce fees.

Mr. Oldmixon presented agenda item twelve g for discussion and possible action to propose amendments to §535.101 regarding Fees. The amendments would increase the salesperson and broker application fees from $105 to $119, the annual renewal fees for brokers and salespersons from $34 to $41; the late renewal fee from $51 to $61.50 for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired 90 days or less; and late renewal fee from $68 to $82 for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired more than 90 days but less than six months. The amendments also change the maximum late renewal period from six months to one year and remove a reference to an application in the fee for moral character determination. Mr. Hale, Texas Association of Realtors, offered comments concerning financing the agency. Ms. Justice, duly seconded by Mr. Arriaga, the Commission moved that the Commission authorized staff to submit the amendments to §535.101 regarding Fees with any non-substantive changes as staff may deem necessary or advisable for proposal to the *Texas Register* and for public comment.

After discussion, Mr. Jones, seconded by Mr. Martinez, moved that the motion on the floor be amended in a manner that would make the $4 fee for the electronic delivery for the *TREC*Advisor continues to be an optional choice for licensees. Ms. Justice spoke against the amendment to the motion.

After further discussion, the Chair called the question. The amendment to the motion was approved by unanimous vote. Ms. Wukasch called for a vote on the amended motion which would propose the new fees without including a fee for the *Trec*Advisor. This additional $2 per year fee would remain optional. The motion as amended was adopted by unanimous vote.

Mr. Oldmixon presented agenda item twelve k for discussion and possible action to propose amendments to §535.210 regarding Inspector Fees. Ms. Hensely moved, seconded by Mr. Arriaga that staff be authorized, on behalf of the Commission, to submit the amendments to §535.210 regarding Inspector Fees with any non-substantive changes as staff may deem necessary or advisable for proposal to the Texas Register and for public comment. Mr. Willcox, chairman of the Inspector Committee, spoke concerning the motion. Mr. Jones moved to amend the motion to make the $4 fee for the electronic delivery for the agency newsletter continue to be an optional choice for inspectors. The amendment to the motion was adopted. The motion as amended was adopted.

Chairman Wukasch moved to agenda item twenty-three, discussion and possible action to adopt a budget. Mr. Oldmixon, administrator, presented agenda item twenty-three for discussion and possible action. After discussion, Ms. Justice, seconded by Mr. Arriaga, moved to adopt the budget as submitted by staff under this agenda item. The motion was adopted by unanimous vote.

The Chair moved to agenda item twenty-four, consideration and possible action regarding Proposal for Decision from State Office of Administrative Hearings in the matter of SOAH DOCKET NO. 329-10-3045.REC. After discussion and upon motion of Mr. Jones, duly seconded by Ms. Justice, the Commission approved the proposal to revoke the license of Melvin James, as submitted.

Ms.Wukasch moved to agenda item twenty-six, discussion and possible action to schedule future meetings. After discussion, the next meetings are scheduled for October 10, 2011 at 9:00 a.m. and December 5, 2011 at 10:00 a.m. The Chair adjourned the meeting at 4:30 p.m.

Patricia Holder

Patricia Holder, Secretary for the Meeting

APPROVED this the 10th day of October, 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

Staff Reports for August 2011

Texas Real Estate Commission

Monthly Staff Reports

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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

August 2011

Communications Incoming Calls	Monthly Total	FY2011 FYTD Total	FY2010 Prior FYTD Total
CO Lines	12,059	159,986	212,741
TALCB Lines	1,034	6,554	8,183
Total	**13,093**	**166,540**	**220,924**

Reception Walk Ins	Monthly Total	FY2011 FYTD Total	FY2010 Prior FYTD Total
Licensing	573	9,020	5,024
Education	160	3,061	2,226
Inspector	14	188	130
Enforcement	14	184	148
TALCB Licensing	16	218	152
TALCB Enforcement	4	69	30
Total	**781**	**12,740**	**7,710**

Communications E-Mail	Current Month	FY2011 FYTD Total	FY2010 Prior FYTD Total
Licensing	**4,722**	0	**0**
Education	618	0	0
Inspector	64	0	0
Enforcement	202	0	0
TALCB Licensing	127	0	0
TALCB Enforcement	28	0	0
Total	**5,761**	**74,569**	**14,450**

C1 Report
FY2011

Education & Licensing Services Division

Fiscal Year Comparison

Fiscal Year 2011 - Year-to-Date
AUGUST

	This YTD 9/10 – 08/11		Last YTD 9/09 – 08/10		Change Count	Change Percent
Applications Received						
Broker Original Applications Received	3,050		2,613		437	16.72%
Sales Original Applications Received	12,572		11,225		1,347	12.00%
Total Original Applications	15,622		13,838		1,784	12.89%
Broker Reinstatement Applications Received	230		1,454		-1,224	-84.18%
Sales Reinstatement Applications Received	1,422		6,953		-5,531	-79.55%
Total Reinstatement Applications Received	1,652		8,407		-6,755	-80.35%
Licenses Issued from Applications						
Broker Licenses from Original Applications	2,081		2,459		-378	-15.37%
Sales Licenses from Original Applications	9,403		8,936		467	5.23%
Total Licenses from Original Applications	11,484		11,395		89	0.78%
Broker Licenses from Reinstatement Applications	199		1,565		-1,366	-87.28%
Sales Licenses from Reinstatement Applications	1,160		7,101		-5,941	-83.66%
Total Licenses from Reinstatement Application	1,359		8,666		-7,307	-84.32%
Renewal Activity						
Broker Renewals and Percentage	18,712	85.12%	16,520	83.34%	2,192	13.27%
Salesperson Renewals and Percentage	40,578	73.23%	42,966	71.90%	-2,388	-5.56%
Total Renewals from Broker and Sales	59,290	76.56%	59,486	74.70%	-196	-0.33%

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.

Education & Licensing Services Division

Licensee and Registrant Status

August 2011

Real Estate Licensees

	Aug 10	*Sep-Dec10	Jan 11	Feb 11	Mar 11	Apr 11	May 11	Jun 11	Jul 11	Aug 11
Broker Licensees										
Individual (Active)	34,248		33,639	33,774	33,928	34,079	34,213	34,381	34,175	33,856
Corporation (Active)	3,975		3,963	3,980	4,029	4,056	4,091	4,127	4,046	4,018
LLC (Active)	3,107		3,175	3,204	3,288	3,336	3,409	3,451	3,381	3,404
Non-resident (Active)	490		554	557	564	567	575	582	579	563
Partnership (Active)	2		1	1	1	1	1	1	1	1
Total Active Status	41,822		41,332	41,516	41,810	42,039	42,289	42,542	42,182	41,842
Inactive Status	1,613		1,587	1,585	1,635	1,642	1,674	1,724	1,667	1,508
Total Brokers	**43,435**		**42,919**	**43,101**	**43,445**	**43,681**	**43,963**	**44,266**	**43,849**	**43,350**
Sales Licensees										
Active Status	74,058		71,170	71,485	71,458	72,059	72,460	71,947	70,958	70,805
Inactive Status	26,905		25,741	25,844	26,770	27,084	27,473	29,000	27,746	25,080
Total Sales	**100,963**		**96,911**	**97,329**	**98,228**	**99,143**	**99,933**	**100,947**	**98,704**	**95,885**
Total Active	115,880		112,502	113,001	113,268	114,098	114,749	114,489	113,140	112,647
Total Inactive	28,518		27,328	27,429	28,405	28,726	29,147	30,724	29,413	26,588
Total Brokers & Sales	**144,398**		**139,830**	**140,430**	**141,673**	**142,824**	**143,896**	**145,213**	**142,553**	**139,235**

Inspectors

	Aug 10	*Sep10-Dec10	Jan 11	Feb 11	Mar 11	Apr 11	May 11	Jun 11	Jul 11	Aug 11
Inspector Licensees										
Professional Inspectors(active)	2,271		2,096	2,101	2,126	2,140	2,063	2,106	2,124	2,086
Professional Inspectors(inactive)	951		771	779	825	835	778	791	805	782
Real Estate Inspectors(active)	97		92	91	91	92	91	89	95	93
Real Estate Inspectors(inactive)	33		21	22	24	22	17	18	17	16
Apprentice Inspectors(active)	72		60	60	62	64	60	67	65	52
Apprentice Inspectors(inactive)	15		15	15	15	15	14	16	18	17
Total Inspectors	**3,439**		**3,055**	**3,068**	**3,143**	**3,168**	**3,023**	**3,087**	**3,124**	**3,046**

Easement & Right-of-way Registrants

	Aug 10	*Sep10-Dec10	Jan 11	Feb 11	Mar 11	Apr 11	May 11	Jun 11	Jul 11	Aug 11
ERW Registrants										
Businesses	42		37	37	39	39	36	37	37	37
Individuals	1,705		1,749	1,765	1,929	1,987	1,803	1,913	2,008	2,128
Total Registrants	**1,747**		**1,786**	**1,802**	**1,968**	**2,026**	**1,839**	**1,950**	**2,045**	**2,165**

Total Licensees and Registrants

	Aug 10	*Sep10-Dec10	Jan 11	Feb 11	Mar 11	Apr 11	May 11	Jun 11	Jul 11	Aug 11
All Licensees & Registrants	**149,584**		**144,671**	**145,300**	**146,784**	**148,018**	**148,758**	**150,250**	**147,722**	**144,446**

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

Education & Licensing Services Division - TREC: L3 Report

Examination Activity

August 2011

Monthly Results

	Salesperson	Broker	R.E. Inspector	Prof. Inspector
Examinations Passed	495	87	1	26
Examinations Failed	445	85	0	16
Examinations Taken	**940**	**172**	**1**	**42**
Applicants Examined	883	152	1	31
Passed on First Attempt	461	82	0	11
Examination Pass Rate	52.7 %	50.6 %	100.0 %	61.9 %
Applicant Pass Rate	56.1 %	57.2 %	100.0 %	83.9 %
First Attempt Pass Rate	52.2 %	53.9 %	0.0 %	35.5 %

Year-to-Date Results

	Salesperson	Broker	R.E. Inspector	Prof. Inspector
Examinations Passed	5132	804	16	230
Examinations Failed	4559	792	10	239
Examinations Taken	**9691**	**1596**	**26**	**469**
Applicants Examined	7917	1314	17	305
Passed on First Attempt	4673	737	8	135
Examination Pass Rate	53.0 %	50.4 %	61.5 %	49.0 %
Applicant Pass Rate	64.8 %	61.2 %	94.1 %	75.4 %
First Attempt Pass Rate	59.0 %	56.1 %	47.1 %	44.3 %

Education & 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	2,702	2,736	2,753	2,773	2,816					
Core and MCE Electives	1,327	1,332	1,334	1,341	1,353	1,357	1,359	1,366					
MCE Legal Update	365	365	365	366	366	375	375	375					
MCE Ethics	366	366	366	367	367	376	376	376					
Total Approved Instructors	**4,641**	**4,680**	**4,734**	**4,776**	**4,822**	**4,861**	**4,883**	**4,933**					

Standards and Enforcement Services Division

Case Status

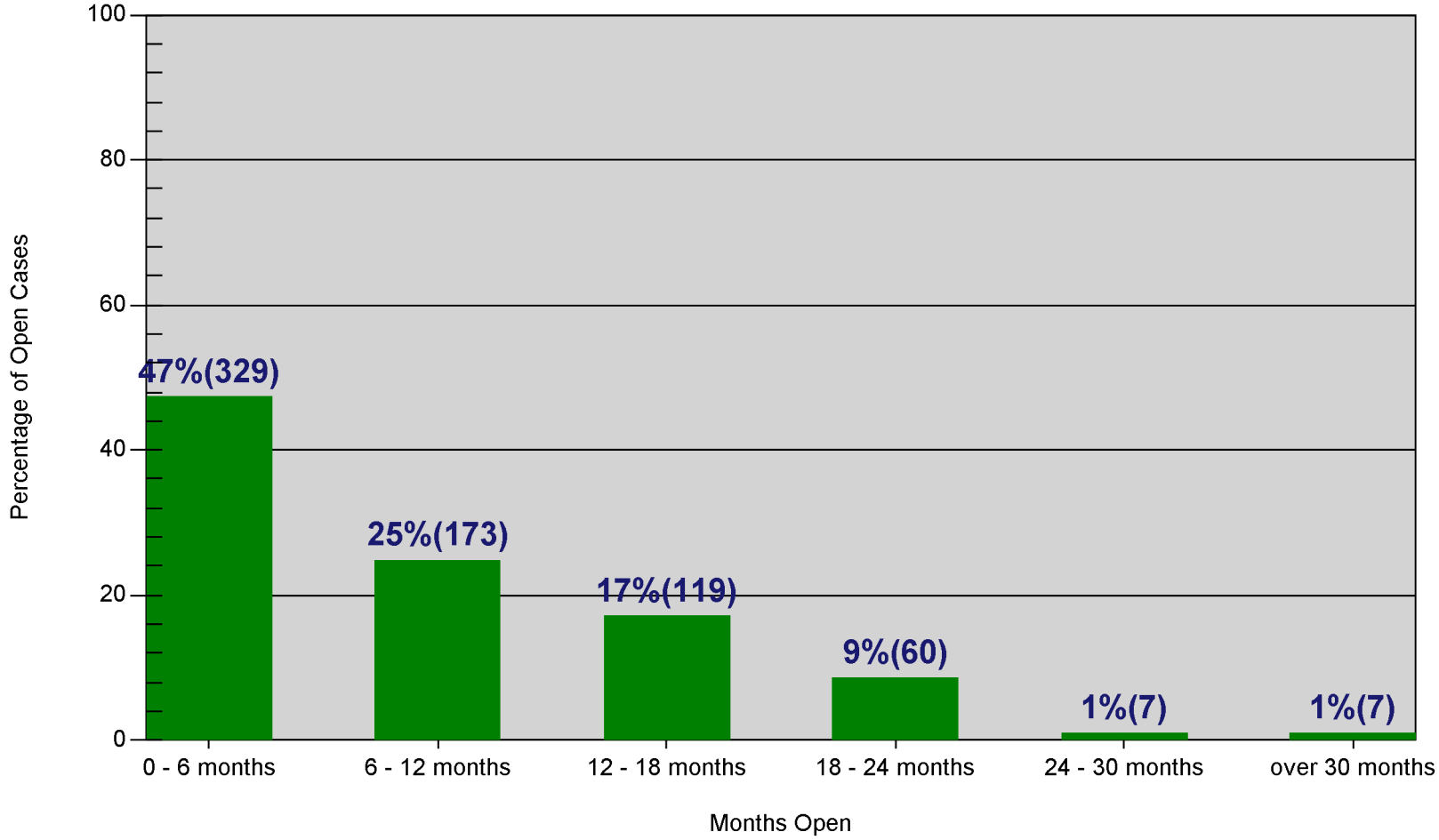
August 2011

	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	**200**	**128**	**157**	**153**	**143**	**126**	**147**	**129**	**209**	**173**	**159**	**186**
Broker/Sales	91	68	83	87	75	62	77	76	93	68	70	72
Inspector	9	5	4	4	2	4	2	5	5	7	7	7
Timeshare	2	2	0	1	4	2	1	2	3	2	1	2
Unlicensed Activity	6	2	1	2	4	6	5	4	5	3	6	8
Residential Service Company	8	2	8	10	1	5	5	5	11	17	8	15
No Jurisdiction	37	20	21	23	21	19	23	13	18	28	22	26
Application Investigation	21	6	3	7	25	8	16	15	35	25	27	29
MCD Inquiry	23	22	37	16	6	20	16	8	37	22	18	25
Other	3	1	0	3	5	0	2	1	2	1	0	1
Closed During Month	**179**	**176**	**180**	**135**	**197**	**141**	**205**	**169**	**222**	**192**	**174**	**255**
Complaint Withdrawn	2	9	5	5	1	3	6	0	5	5	3	4
Cease & Desist Issued	1	0	0	2	6	0	4	4	5	3	5	2
Disciplinary Action	49	33	26	22	33	26	38	48	48	39	32	50
Failure to Go Forward	14	16	12	6	14	16	11	10	11	9	14	10
Insufficient Evidence	27	13	32	23	48	17	21	40	28	32	16	56
Matter Settled	6	9	8	21	20	8	12	8	13	10	10	20
No Jurisdiction	21	31	25	23	26	22	37	23	32	25	34	41
No Violation	3	6	9	11	17	15	22	22	17	18	9	16
Application Investigation	17	42	24	8	16	15	27	3	15	22	22	20
MCD Inquiries	10	5	21	7	10	14	15	7	35	23	26	29
Other	29	12	18	7	6	5	12	4	13	6	3	7
Open at Beginning of Month								898	858	846	827	814
Received During Month								129	209	173	159	186
Closed During Month								169	222	192	174	255
Open at End of Month								**858**	**845**	**827**	**812**	**745**
Received During Fiscal Year								**1183**	**1392**	**1565**	**1724**	**1910**
Closed During Fiscal Year								**1382**	**1604**	**1795**	**1969**	**2222**

Standards & Enforcement Services Division - TREC: E2 Report

Open Cases Aging Report

as of 9/11/2011



Information Technology Services Division

Electronic Information Outlet Statistics

As of August 2011

World Wide Web	Latest Fiscal Quarter	Prior Yr Fiscal Quarter	Total Fiscal YTD	Total Prior Fiscal YTD
Total Pages Viewed	10,170,867	8,753,963	34,423,530	33,382,945

TREC E-Mail Notification List	Current Total
Current Subscribers	235,669

Online Transactions	Total Latest Fiscal Quarter	Online Latest Fiscal Quarter	Online Percent	Fiscal YTD Online Percent	Prior Fiscal YTD Online Percent
Applications (Performance Measure:70%)	**3885**	**2138**	**55.0%**	**35.8%**	**80.2%**
Broker Application	575	299	52.0%	34.2%	82.7%
Salesperson Application	3204	1802	56.2%	38.1%	84.8%
Corporate Application	106	37	34.9%	22.8%	18.1%
LLC Applications	227	35	15.4%	12.8%	
Renewals (Performance Measure 80%)	**20008**	**17589**	**87.9%**	**79.0%**	**88.2%**
Broker Renewals	4877	4152	85.1%	76.6%	88.3%
Salesperson Renewal	13909	12430	89.4%	81.0%	91.3%
Corporate Renewals	445	381	85.6%	78.1%	90.3%
Limited Liability Company Renewals	391	318	81.3%	78.2%	92.5%
Professional Inspector Renewals	157	127	80.9%	49.8%	26.3%
Real Estate Inspector Renewals	5	3	60.0%	40.9%	25.5%
Apprentice Inspector Renewals	3	1	33.3%	46.2%	20.0%
Easement ROW Business Renewals	1	1	100.0%	57.7%	5.0%
Easement ROW Individual Renewals	220	176	80.0%	70.5%	19.8%

Staff & Support Services Division

Agency Financial Statement

August 2011

THRU 12TH MONTH OF FISCAL YEAR 2011

STRATEGIES	FY 2011 APPROPRIATION*	5% BUDGET REDUCTION	2.5% BUDGET REDUCTION	HB 4 OFFSET	REVISED BUDGET	12/12 ANNUAL APPROPRIATION	TWELVE MONTHS EXPENDITURES AND A/P	$ VARIANCE OVER(-) OR UNDER**	% VARIANCE OVER(-) OR UNDER	ENCUMBRANCES
Licensing	$ 3,483,486.17	$ (363,238.00)	$ (98,830.00)	$ 216,598.00	$ 3,238,016.17	$ 3,238,016.17	$ 2,686,413.92	$ 551,602.25	17.04%	$ 104,835.33
Enforcement	1,779,914.63	(73,036.00)	(31,323.00)	31,323.00	1,706,878.63	1,706,878.63	1,673,062.11	33,816.52	1.98%	16,685.93
Communication/Information	866,834.08	(88,018.00)	(17,085.00)	17,085.00	778,816.08	778,816.08	764,556.50	14,259.58	1.83%	4,030.76
Indirect Administration	1,631,303.75	(73,892.00)	(34,170.00)	34,170.00	1,557,411.75	1,557,411.75	1,467,063.11	90,348.64	5.80%	33,477.38
TOTAL	**$ 7,761,538.63**	**$ (598,184.00)**	**$ (181,408.00)**	**$ 299,176.00**	**$ 7,281,122.63**	**$ 7,281,122.63**	**$ 6,591,095.64**	**$ 690,026.99**	9.48%	**$ 159,029.40**

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

In the Licensing strategy, subscription fees in the amount of $301,805 have been collected and remitted to the Texas Online vendor.

In the Licensing strategy, FBI criminal history background check fees in the amount of $1,131,838.75 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. In the Licensing strategy, $417,868.25 of the amount appropriated for criminal history background checks will be lapsed. That represents the difference between the amount appropriated and actual revenue collected.

*** 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 "Twelve Months Expenditures and A/P" column.

Staff Services Division

Real Estate Recovery Trust Account No. 971 Investments
Current Securities

August 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	0.00	301,734.30	(301,734.30)	0.00	0.00	U.S. T-Notes, 5.00%	08/15/2011
02/28/2007	100,000.00	99,750.00	101,828.10	(742.20)	101,085.90	1,125.00	U.S. T-Notes, 4.50%	11/30/2011
08/29/2007	200,000.00	205,000.00	205,875.00	(1,500.00)	204,375.00	406.25	U.S. T-Notes, 4.875%	02/15/2012
02/20/2009	200,000.00	222,000.00	208,250.00	(1,328.20)	206,921.80	2,375.00	U.S. T-Notes, 4.750%	05/31/2012
12/06/2007	100,000.00	104,750.00	104,593.80	(562.50)	104,031.30	182.29	U.S. T-Notes, 4.375%	08/15/2012
05/27/2008	100,000.00	101,062.50	104,335.90	(265.60)	104,070.30	843.75	U.S. T-Notes, 3.375%	11/30/2012
02/20/2009	200,000.00	219,250.00	211,218.80	(500.00)	210,718.80	322.92	U.S. T-Notes, 3.875%	02/15/2013
04/28/2010	200,000.00	217,625.00	215,843.80	(62.60)	215,781.20	354.17	U.S. T-Notes, 4.25%	08/15/2013
08/31/2010	200,000.00	221,375.00	217,218.80	1,125.00	218,343.80	333.33	U.S. T-Notes, 4.00%	02/15/2014
08/31/2010	100,000.00	112,406.25	110,515.60	1,015.70	111,531.30	177.08	U.S. T-Notes, 4.25%	08/15/2014
Totals	$ 1,700,000.00	$ 1,503,218.75	$ 1,781,414.10	$ (304,554.70)	$ 1,476,859.40	$ 6,119.79		

	Current Month		Cumulative Totals	
Receipts:				
License's Remittances to Recovery Fund	$ 26,550.00		$ 6,460,810.08	
Interest Realized	10,883.08		6,066,352.90	
Repayments to Recovery Fund (Principal and Interest)	3,237.89		1,125,717.88	
Administrative Penalties	11,658.41		895,812.56	
Total Received		**$ 52,329.38**		**$ 14,548,693.42**
Disbursements:				
Investments Purchased (Offset by Matured Security)	$ (318,421.88)		1,503,218.75	
Accrued Interest Purchased	0.00		0.00	
Payments from Recovery Fund	0.00		12,207,932.37	
Rider Disbursements	3.63		14,662.96	
Total Disbursed		**$ (318,418.25)**		**$ 13,725,814.08**
Totals		**370,747.63** (Current Month)		**822,879.34** *

Reserved for Investment	**0.00**
Reserved for Potential Payments Within 90 Days	**(639,745.00)**
Balance	**$ 183,134.34**

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

Karen Alexander, Investment Officer

Barbara Kolb, Alternate Investment Officer

* Reconciled Balance includes revenue of $10,363 which was in the Trust & Suspense fund pending transfer plus $492.46 accrued depository interest.

Staff Services Division

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

August 2011

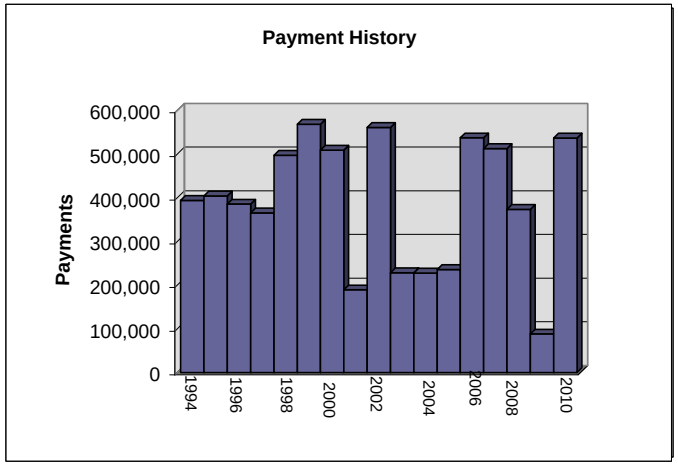
Month-Year	Payment Total	Repayment Total	Admin Penalties Total	Rider Disbursements	Payments FY2011-To-Date	Number of Payments
August 2010	23,684.38	1,674.70	6,388.33	93.10		
September 2010	35,610.61	0.00	4,158.33	0.00	35,610.61	1
October 2010	0.00	3,609.23	4,878.33	0.00	0.00	0
November 2010	0.00	(1,243.65)	6,008.33	0.00	0.00	0
December 2010	86,374.69	2,193.87	2,283.34	0.00	86,374.69	2
January 2011	100,000.00	1,087.59	2,900.00	0.00	100,000.00	2
February 2011	132,678.68	1,207.12	3,616.00	0.00	132,678.68	3
March 2011	0.00	1,405.08	5,500.00	358.70	0.00	0
April 2011	37,066.15	4,635.64	3,942.41	0.00	37,066.15	2
May 2011	100,000.00	1,096.01	5,083.41	255.20	100,000.00	1
June 2011	245,322.27	1,145.91	11,084.00	0.44	245,322.27	3
July 2011	119,790.63	275.00	6,758.33	112.00	119,790.63	5
August 2011	0.00	3,237.89	11,658.41	3.63	0.00	0
	880,527.41	**20,324.39**	**74,259.22**	**823.07**	**856,843.03**	**19**

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	**639,745.00**



*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

August 2011

	Monthly Activity		
	Beginning Balance	Current Month	Cumulative Totals
Beginning Balance	$ 599,469.85	$	**$ 599,469.85**
Receipts:			
Licensees' Remittances to Recovery Fund		$ 3,019.00	
Interest Realized		403.97	
Repayments		637.72	
Administrative Penalties		200.00	
Total Received in Current Month			**$ 4,260.69**
Disbursements:			
Payments from Recovery Fund		$ 0.00	
Cash Transfer to General Revenue		0.00	
Rider Disbursements		0.00	
Total Disbursed in Current Month			**$ 0.00**
Total			**$ 603,730.54**
Reserved for Payment within 90 Days			**(12,500.00)**
Unobligated Fund Balance			**$ 591,230.54**

Payment History			
Fiscal Year		Number of Payments	Total Payments
1991		2	$ 4,309.26
1992		0	0.00
1993		2	15,000.00
1994		5	31,473.40
1995		4	25,668.83
1996		2	7,500.00
1997		1	7,500.00
1998		4	30,000.00
1999		1	7,500.00
2000		6	45,000.00
2001		0	0.00
2002		2	15,000.00
2003		1	7,500.00
2004		4	32,523.96
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	2	25,000.00
Total			**$ 373,584.95**

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

Karen Alexander, Investment Officer

Barbara Kolb, Alternate Investment Officer

*Reconciled balance includes accrued revenue of $2,512.97 which consists of fees in the Trust & Suspense fund pending transfer & accrued interest.

Agenda Item 7:

Discussion and possible action to adopt amendments to 22 TAC Chapter 535 as follows:

a. Subchapter B §535.17 concerning Appraisals

SUMMARY:

Adopts amendments to 22 TAC §535.17 regarding Appraisals without changes to the proposed text as published in the August 19, 2011, issue of the *Texas Register* (36 TexReg 5183).

The amendments implement and explain the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). In part, SB 747 amends Texas Occupations Code, §1101.002 to delete appraisals from the laundry list of activities that are considered real estate brokerage which requires licensure as a real estate broker or salesperson. In addition SB 747 adds a new item regarding broker price opinions. Because the effective date of the relevant provisions of SB 747 is September 1, 2011, the commission simultaneously took emergency action to amend §535.17 to be consistent with SB 747.

The amendments to §535.17 clarify that a real estate licensee must be licensed under Texas Occupations Code, Chapter 1103 to conduct real estate appraisals. Further the rule is amended to provide that if a broker or salesperson provides a broker price opinion under Chapter 1101, the opinion must provide a written disclosure as provided in the rule.

No comments were received on the rule as proposed.

Staff Recommendation:

Adopt rule as proposed.

Recommended Motion:

MOVED, that staff is authorized, on behalf of this Commission, to submit the amendments to 22 TAC §535.17 regarding Appraisals as published in the August 19, 2011, issue of the *Texas Register*, with any no n-substantive changes as staff may deem necessary or advisable for adoption.

Agenda Item 7(a)

§535.17. Appraisals.

§535.17. Broker Price Opinion or Comparative Market Analysis. [~~Appraisals~~].

(a)**A real estate licensee may not perform an appraisal of real property unless the licensee is licensed or certified under Texas Occupations Code, Chapter 1103. [~~Except as provided by this section, appraisals of real property performed in this state by Texas real estate licensees must be conducted in accordance with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation in effect at the time the appraisal is performed.~~]**

(b) If a real estate licensee**,[~~for a separate fee,~~]** provides **a broker price [~~an~~]** opinion [**~~of value~~]** or comparative market analysis under **§1101.002(1)(A)(xi) of the Act, [~~which does not conform with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation,~~]** the licensee shall also provide the person for whom the opinion or analysis is prepared with a written statement containing the following language: "THIS IS **A BROKER PRICE [~~AN~~]** OPINION **[~~OF VALUE~~]** OR COMPARATIVE MARKET ANALYSIS AND SHOULD NOT BE CONSIDERED AN APPRAISAL. In making any decision that relies upon my work, you should know that I have not followed the guidelines for development of an appraisal or analysis contained in the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation."

(c) [~~(b)~~] The statement required by subsection **(b) [~~(a)~~]** of this section must be made part of any written opinion or analysis report and must be reproduced verbatim.

[~~(c) The exception allowed by subsection (a) of this section does not apply to a transaction in which the Resolution Trust Corporation or a federal financial institutions regulatory agency has required compliance with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation.~~]

(d) A salesperson may prepare, sign, and present **a broker price opinion or comparative market analysis [~~real estate appraisals~~]** for the salesperson's sponsoring broker, but the salesperson must submit **the broker price opinion or comparative market analysis [~~appraisals~~]** in the broker's name and the broker is responsible for **it [~~the appraisals~~]**.

[~~(e) The Act does not apply to appraisals performed by the employees of a financial institution or investment firm in connection with a contemplated loan or investment by their employers.~~]

Agenda Item 7:

Discussion and possible action to adopt amendments to 22 TAC Chapter 535 as follows:

b. Subchapter C, §535.31 concerning Attorneys at Law

SUMMARY:

Adopts amendments to 22 TAC §535.31 regarding Attorneys at Law without changes to the proposed text in the August 19, 2011, issue of the *Texas Register* (36 TexReg 5184).

The amendments implement and explain the requirements of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). In part, SB 747 amended Texas Occupations Code, §1101.005 regarding an exemption for attorneys. The amendment now exempts attorney licensed in the State of Texas; it previously applied to attorneys licensed in any state. Because the effective date of the relevant provisions of SB 747 is September 1, 2011, the commission is simultaneously taking emergency action to amend §535.31 to be consistent with SB 747.

The amendments to §535.31 clarify that the exemption only applies to attorneys licensed in the State of Texas.

No comments were received on the rule as proposed.

Staff Recommendation:

Adopt rule as proposed.

Recommended Motion:

MOVED, that staff is authorized, on behalf of this Commission, to submit the amendments to 22 TAC §535.31 regarding Attorneys at Law as published in the August 19, 2011, issue of the *Texas Register*, with any no n-substantive changes as staff may deem necessary or advisable for adoption.

Agenda Item 7(b)
22 TAC §535.31

§535.31. Attorneys at Law. **An** **[~~A licensed~~]** attorney **licensed in this state** is exempt from the requirements of the Act but cannot sponsor real estate salespersons or serve as the designated officer or manager of a licensed corporation or limited liability company**, or designated partner of a partnership** unless the attorney is also licensed as a real estate broker. This provision is not a waiver of the standards of eligibility and qualification elsewhere established in the Act.

Agenda Item 7:

Discussion and possible action to adopt amendments to 22 TAC Chapter 535 as follows:

c. Subchapter E, Requirements for Licensure as follows:

i. §535.50 concerning Definitions

ii. §535.51 concerning General Requirements

iii. §535.53 concerning Corporations and Limited Liability Companies

iv. §535.55 concerning Education Requirements for a Salesperson License

v. §535.56 concerning Education and Experience Requirements for a Broker License

SUMMARY:

Adopts amendments to amendments to 22 TAC Subchapter E, Requirements for Licensure, §535.50 regarding Definitions, §535.51 regarding General Requirements and §535.53 regarding Corporations and Limited Liability Companies, §535.55 regarding Education Requirements for a Salesperson License and §535.56 regarding Education and Experience Requirements for a Broker License with changes to the proposed text as published in the August 19, 2011, issue of the *Texas Register* (36 TexReg 5185). The difference between the rules as proposed and as adopted is as follows: Section 535.53(b) is rewritten for additional clarification.

The revisions to the rules as adopted do not change the nature or scope so much that they could be deemed different rules. The rules as adopted do not affect individuals other than those contemplated by the rules as proposed. The rules as adopted do not impose more onerous requirements than the proposed versions and do not materially alter the issues raised in the proposed rules. The changes in the rules reflect a non-substantive variation from the proposed rules to make the affected rule consistent with other rules.

7(c) SUMMARY cont.:

The amendments implement and further explain the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). In relevant part, SB 747 amends Texas Occupations Code, §1101.401 to expand from six months to one year the period of time in which an applicant may satisfy an examination requirement from the date the application is filed. In addition, the application and renewal requirements for business entities were changed in §§1101.355 and 1101.453 to require that business entities applying for and renewing a broker license must provide proof that the entity maintains errors and omissions insurance with a minimum annual limit of $1 Million if the designated broker owns less than 10 percent of the entity. Finally SB 747 amends Chapter 1101 to delete the exemption from licensing for partnerships in which a general partner is a broker and requires licensure as a broker for any business entity as defined in Section 1.002 of the Business Organizations Code Emergency action is simultaneously being taken to amend §535.50, §535.51, and §535.53 to be consistent with SB 747 because the effective date of those provisions is September 1, 2011.

The amendments to §535.50 amend the list of definitions to define a designated broker of a business entity, to clarify that the designated broker must be an officer of a corporation, a manager of a limited liability company or a general partner of a partnership, and to incorporate the relevant provisions regarding the new broker responsibility continuing education course required under amendments to §1101.458. The amendments to §535.51 clarify that an applicant must meet education and experience requirements before the applicant may take a qualifying examination. The amendments to §535.53 change the title of the rule to apply to all business entities, not just corporations and limited liability companies, to add partnerships to the types of business entities that must be licensed, and to address the requirement that business entities must maintain errors and omissions insurance if the designated broker owns less than 10 percent of the entity.

Regarding the amendments to §§535.55 and .56, the commission has the authority under §1101.362 of the Act to waive some or all of the education and experience requirements for someone who has been licensed within the six years preceding the date the application is filed. Under current §535.55, the commission has waived the education required for a salesperson license for an applicant who was licensed in

7(c) SUMMARY cont.:

the preceding six years and otherwise meets the requirements of the section.

The amendment to §535.55 changes the period from six years to two years so that an applicant who was licensed as a salesperson or broker in the preceding two years and otherwise meets the requirements of the section regarding MCE could apply for a salesperson license. Similarly, under current §535.56(a), the commission has waived the education and experience required for a broker license for a broker who was licensed in the preceding four years and otherwise meets the requirements of the subsection. The amendments to the rule change the period from four years to two years and delete the reference to a salesperson so that a broker who had an active license in two of the preceding four years and otherwise meets the requirements of the section regarding MCE could apply for a broker license without meeting the new experience requirements.

In addition, amendments to §535.56 add the rules required by amendments to §1101.356(b-1) of the Act to establish active experience requirements to apply for a broker license under §1101.356 and §1101.357 of the Act. An applicant is required to establish that the applicant has obtained 3600 points of active experience with documentary evidence and a statement from the applicant's sponsoring broker at the time the experience was earned. Certain types of transactions are worth a certain number of points and the applicant is required to use the forms adopted by reference in the rule to summarize the transactions. An applicant may continue to gain experience after an application has been submitted until such time that the applicant meets the total number required but before the applicant may take the qualifying examination. Experience earned after the application is submitted is to be reported on a different form adopted by reference in the rule. If an applicant is unable to obtain sufficient documentation and/or the signature of the sponsoring broker, the applicant is required to use an affidavit adopted by reference in the rule to describe the applicant's efforts to obtain the documentation and/or signatures. In addition, the applicant is required to provided two additional affidavits each signed by a different individual familiar with the applicant's circumstances and attesting to the applicant's efforts to obtain the appropriate documentation. The application forms and affidavits are adopted by reference in the rule. Finally, the rule gives the commission the discretion to request additional documentation, rely on the documentation provided under this subsection, or utilize any other information provided by the applicant to

7(c) SUMMARY cont.:

determine whether the applicant has sufficient experience as required by Section 1101.356 of the Act and §535.56.

As of September 27, 2011, four comments were received on the rules and forms as proposed, including a comment from the MetroTex Association of Realtors.

Comment: One commenter agreed with and expressed approval of the point system for measuring active experience.

Comment: One commenter agreed with the point system but suggests an additional line item for "closed purchase or sale – unimproved" in the residential section of the forms.

Response: The recommendation will be submitted to the Broker Responsibility Working Group for consideration on October 3, 2011.

Comment: One commenter had concerns about releasing confidential information to TREC if an applicant is asked to provide documentary proof of transactional experience, such as copies of contracts and HUD1's.

Response: The commission understands the concerns about the release of confidential information, but notes that licensees are already required to provide such information upon request by agency staff during the investigation of complaints.

Comment: One commenter believes that the statutory requirements of active experience are allegedly a restraint of trade for salespersons wishing to create their own real estate business. The commenter appears to be advocating for single licensure as the commenter points out that insurance agents and securities agents only have one license type.

Response: The commission is bound by the statutory requirements for salesperson and broker licenses and is unable to provide for single license types without a change to the statute. As to the restraint of trade argument, salespersons may currently own their own real estate business, however, if the company is a "domestic entity" as defined in the Business Organization Code, the business entity would need to be licensed as a broker and would be required to have a designated agent who is a licensed broker in active status and good standing.

Staff Recommendation:

Adopt rule as proposed; consider Broker Responsibility Working Group recommendations, if any, to be submitted under separate cover after its meeting October 3, 2011.

Recommended Motion:

MOVED, that staff is authorized, on behalf of this Commission, to submit the amendments to 22 TAC Subchapter E, Requirements for Licensure, §535.50 regarding Definitions, §535.51 regarding General Requirements and §535.53 regarding Corporations and Limited Liability Companies, §535.55 regarding Education Requirements for a Salesperson License and §535.56 regarding Education and Experience Requirements for a Broker License with changes to the proposed text as published in the August 19, 2011, issue of the *Texas Register* (36 TexReg 5185) as presented by staff and with any non-substantive changes as staff may deem necessary or advisable for adoption.

Agenda Item 7(c)

22 TAC §535.50, §535.51, §535.53, §535.55 and §535.56

§535.50 Definitions. The following words and terms, when used in Subchapter E, F or G of this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) -(2) (No change.)

(3) Broker Responsibility Course – The course required by §1101.458 of the Act.

(4) **[~~(3)~~]** Certified MCE instructor--An instructor approved by the Texas Real Estate Commission and certified to teach the required legal update course**, [~~or~~]** the required ethics course**, or the broker responsibility course**.

(5) Designated broker – An individual holding an active Texas real estate broker license designated by a business entity licensed by the commission to act on its behalf. The designated broker must be an officer of a corporation, a manager of a limited liability company or a general partner of a partnership.

(5) **[~~(4)~~]** Distance learning course--A correspondence course, alternative delivery method course or course offered through video presentation.

(6) **[~~(5)~~]** Elective credits--The hours of mandatory continuing education required to renew a license for which a specific course is not required.

(7) **[~~(6)~~]** Hour--Fifty minutes of actual session time.

(8) **[~~(7)~~]** Instructor--A person approved by the Texas Real Estate Commission to teach core or mandatory continuing education courses.

(9) **[~~(8)~~]** MCE--Mandatory Continuing Education.

(10) Non-elective Courses – The legal and ethics courses required by §1101.455 of the Act and the broker responsibility course required by §1101.458 of the Act.

(11) **[~~(9)~~]** Proctor--A person who monitors a final examination for a course offered by a provider under the guidelines contained in this section. A proctor may be a course instructor, the provider, an employee of a college or university testing center, a librarian, or other person approved by the commission.

(12) **[~~(10)~~]** Provider--Any person offering a course for which credit may be granted by the Commission to a licensee or applicant, regardless of whether the Commission must approve or certify the person to offer the course.

(13) **[~~(11)~~]** Related course--A course determined to be acceptable by the commission to count towards related credit. The commission will periodically publish lists of acceptable real estate related courses.

(14) **[~~(12)~~]** Required legal course or legal credits--The required legal update or legal ethics courses or credits earned for attending such courses.

(15) [~~(13)~~] Required legal ethics course--A required course created for and approved by the Texas Real Estate Commission to satisfy three of the six legal hours of mandatory continuing education required by §1101.455 of the Act.

(16) [~~(14)~~] Required legal update course--A required course created for and approved by the Texas Real Estate Commission to satisfy three of the six legal hours of mandatory continuing education required by §1101.455 of the Act.

(17) [~~(15)~~] School--A person accredited by the Texas Real Estate Commission to offer courses for which core credit is given.

(18) [~~(16)~~] Student--An individual taking a core or MCE course for TREC credit.

§535.51. General Requirements.

(a) – (c) (No change.)

(d) An application is considered void and is subject to no further evaluation or processing when one of the following events occurs:

(1) the applicant fails to satisfy a current education**, experience or [~~requirement or an~~]** examination requirement within **one year [~~six months~~]** from the date the application is filed;

(2) - (4) (No change.)

(e) An applicant must complete relevant education and experience requirements before the applicant is eligible to take a qualifying examination for a license.

§535.53 Business Entities [~~Corporations and Limited Liability Companies~~].

(a) For the purposes of qualifying for, maintaining, or renewing a license, a **business entity [~~corporation or limited liability company~~]** must designate **a broker [~~one individual holding an active Texas real estate broker license~~]** to act for it. **[~~The designated broker must be an officer of the corporation or a manager of a limited liability company~~.]** The **business entity [~~corporation or limited liability company~~]** may not act as a broker during any period in which it **does [~~has~~]** not **have a** designated ~~a~~ **broker [~~person~~]** to act for it who meets the requirements of the Act. Upon any change in the **business entity's [~~corporation or limited liability company's~~]** designated **broker [~~individual~~]**, the **entity [~~corporation or limited liability company~~]** must provide proof to the commission of the designated **broker's [~~individual's~~]** current status as an officer**,** ~~or~~ manager **or general partner** for that entity **and proof that the business entity maintains appropriate errors and omissions insurance if the designated broker owns less than 10 percent of the entity**. A broker may not act as a designated **broker [~~person~~]** at any time while the broker's license is inactive, expired, suspended or revoked.

(b) Section 1101.355 of the Act applies only to **business entities [~~corporations or limited liability companies~~]**-which are created under the laws of this state, provided, however, that a **business entity [~~corporation or limited liability company~~]** formed under the laws of a state other than Texas will be considered to be a Texas resident for purposes of this section

if it is qualified to do business in Texas; its officers**,** **[~~or~~]** managers**, or general partners are Texas residents and** its principal place of business and all of its assets are located in Texas**[~~; and all of its officers and directors managers and members are Texas residents~~**].

(c) (No change.)

§535.55 Education Requirements for a Salesperson License. Notwithstanding §1101.451(f) of the Act, the commission may waive the education required for a real estate salesperson license if the applicant:

(1) was licensed either as a Texas real estate broker or as a Texas real estate salesperson within **two** **[~~six~~]** years prior to the filing of the application; and

(2) (No change.)

§535.56 Education and Experience Requirements for a Broker License. (a) An applicant for a broker license must have **four** **[~~two~~]** years of experience actively practicing as a broker or salesperson in Texas during the **60** **[~~36~~]** months prior to filing the application, as follows:

(1) (No change.)

(2) Under §1101.357 of the Act, a person who is the designated **broker of a business entity** **[~~officer of a corporation or limited liability company~~]** that is licensed as a real estate broker in another state is deemed to be a licensed real estate broker in another state. A person licensed in another state may derive the required **four** **[~~two~~]** years' experience from periods in which the person was licensed in one or more states.

(b) An applicant for a broker license must possess four years of active experience as a licensed real estate broker or salesperson during the 60 months preceding the date the application is filed.

(c) An applicant for a broker license must demonstrate not less than 3600 points of qualifying practical experience obtained during the period required by subsection (b), using TREC No. BL-A, Supplement A-Qualifying Experience Report for a Broker License. An applicant must use TREC No. BL-B, Supplement B-Qualifying Experience Report for a Broker License After an Application Has Been Filed, to report qualifying experience after an application for a broker license is filed. An applicant must demonstrate experience for four out of five years.

(1) An applicant will receive credit for such experience according to the point system set forth in subsection (d).

(2) Upon request by the commission, either prior to or after licensure, an applicant shall provide documentation to substantiate any or all of the experience claimed by the applicant.

(3) Failure to promptly provide the requested documentation or proof shall be grounds to deny the application. Any false claim of experience shall be grounds to deny the application, or shall be grounds to suspend or revoke the applicant's current license.

(d) Experience points shall be credited to an applicant in accordance with the following schedule for active licensed salesperson or broker activity only:

(1) Residential transactions including single family, condo, co-op unit, multi- family (1 to 4-unit):

(A) Closed purchase or sale -- 300 points per transaction

(B) An executed lease, renewal or extension for a landlord or tenant -- 50 points per transaction

(C) Residential rental property management rent collection -- 25 points per property per year

(2) Commercial transactions, including apartments (5 units or more), office, retail, industrial, mixed use, hotel/motel, parking facility/garage, and specialty:

(A) Closed purchase or sale -- 450 points

(B) An executed lease, renewal or extension for a landlord or tenant -- 100 points per transaction

(C) Commercial rental property management rent collection --100 points per property per year

(3) Farm and Ranch transactions

(A) Closed purchase or sale on a farm and ranch contract – 300 points

(B) Closed purchase or sale on an unimproved contract -- 25 points

(4) Brokerage branch office or team management -- 20 points per month with a maximum of 1200 points credit toward the 3,600 points total requirement

(5) Listing or buyer representation agreements --10 points each.

(e) An applicant shall have the burden of establishing to the satisfaction of the commission that the applicant actually performed the work associated with the real estate transaction claimed for experience credit.

(f) If an applicant is unable to obtain documentation and/or the signature of a sponsoring broker to support their claim for experience, the applicant must use TREC No. AFF-A, Affidavit in Lieu of Documentation and/or Signature, to explain that the applicant made a good faith effort to obtain the documentation and/or signature, describing the effort to obtain the documentation and reasons why it is not available. In addition, the applicant must submit two TREC No. AFF-B, Affidavit in Support of Applicant's Claim of Experience, each signed by a different individual who knows the applicant or is familiar with the transaction(s) at issue attesting to the applicant's efforts to obtain the

documentation and/or signature, and attesting to the fact that the applicant performed the work for which the applicant is requesting points.

(g) The commission may request additional documentation, rely on the documentation provided under this subsection, or utilize any other information provided by the applicant to determine whether the applicant has sufficient experience as required by Section 1101.356 of the Act and this section.

(h)~~[(b)]~~ Notwithstanding §1101.451(f) of the Act and subsections (a) through (f) of this section, the commission may waive education and experience required for a real estate broker license if the applicant satisfies each of the following conditions.

(1) The applicant was licensed as a Texas real estate broker **[~~or salesperson~~]** within **two** **[~~four~~]** years prior to the filing of the application.

(2) **The** **[~~If the applicant was previously licensed as a Texas real estate broker~~, ~~the~~]** applicant has completed at least 15 hours of mandatory continuing education (MCE) courses within the two-year period prior to the filing of an application for an active license. If the applicant was previously licensed as a Texas real estate salesperson, the applicant satisfies all current education requirements for an original broker license.

(3) The applicant has at least two years of active experience as a licensed real estate broker or salesperson during the **four-year** **[~~six-year~~]** period prior to the filing of the application.

(i) Forms and affidavits required to be used to report experience under this section are adopted by reference, published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

Comments on Rules regarding Experience Requirements for a License

Ms. DeHay:

The MetroTex Association of REALTORS in their September 22nd meeting reviewed and approved the recommendation of the MetroTex Forms and Contracts Committee for submission for consideration to the Texas Real Estate Commission. The recommendation is that under the "Residential" section on both forms that an item be added for "Closed Purchase or Sale – unimproved". This would cover the sales of in town residential lots that would not necessarily qualify for inclusion under "Farm and Ranch". Those sales in many cases involve just as much effort as the improved residential sales.

Other than this addition the Association had no other recommendations for changes. We appreciate your consideration of our recommendation and as always welcome the opportunity to review these forms before they become mandatory. Thank you.

Cordially,

Claire Shahzad, RCE
Director of REALTOR Services
MetroTex Association of REALTORS
8201 N. Stemmons Frwy.
Dallas, TX 75247
214-637-6660
Direct & Fax: 214-540-2711
claires@dfwre.com

A contract between the agent and the Broker and the client, can not be sent to a Third Party as it is proprietary information, the party applying as a Broker would have to get permission from every buyer and seller to furnish a copy of a contract or a Listing Agreement.

MLS printouts however would show the Listing Broker so that should satisfy proof of listings carried,

The HUD 1 also can't be sent to an outside 3rd Party for viewing again, it is proprietary, they could send it with only the Address, showing and a close date and redact all other information except their Brokers name, but that does not show the Agents name on it,,,, it only shows the Broker to whom the commission was paid.

What TREC is requesting will get the agents and their Brokers sued, if a seller or buyer finds out their private documents were sent to an outside party, ie: Trec, without their written permission.

You need to restyle the requirements to show previous transactions.

Thank You
Pamela Weathers
SCG Properties,Inc.

I would be greatly in favor of a point system, or some other way, to determine if an agent has enough active experience to obtain a broker license. I believe it's way too easy for someone who is not very experienced to obtain a broker license currently. If the broker doesn't have the experience in selling real estate, how in the world can they supervise others? As it stands right now someone can obtain an agent license, wait 4 years, and apply for a broker license without ever handling a real estate transaction.

Jeanette

Norman Edwards, REALTOR®, SFR, TAHS
Jeanette Edwards, REALTOR®, CRS, GRI, SRES, ePRO,

I'd like to provide some perspective on changes recommended to Broker experience (proposed point system). First, my experience with agency law comes form 18 years as a Texas insurance agent and 7 years as an SEC licensed financial services Rep in Texas. In each of these cases the relationship is governed by Law of Agency. The similarities are many between these occupations and a Texas Broker.

In each of those occupations you don't "graduate" to a different level in Texas. Once licensed, you are regulated by a Texas Governmental body, the same as a Broker and TREC.

Based upon this premise, I feel that any rule changes to Broker qualifications are akin to State mandated "restraint of trade" for Texas salespeople wishing to create their own real estate business. I recommend we leave it as is.

Dave Howell, MS, LUTCF
CRO, Realtor®
210.618.6566 Cell
210.598.1224 Direct
210.695.3779 Fax

Texas Real Estate Commission
P.O. Box 12188
Austin, Texas 78711-2188
(512) 936-3000 www.trec.texas.gov

Application for a Real Estate Broker License

Supplement A-Qualifying Experience Report for a Broker License

Applicant Name (ENTER NAME EXACTLY AS SHOWN ON APPLICATION PAGE 1)

Last First Middle License Number

Instructions for Completing Supplement A

You must accumulate at least 3600 points to qualify for a broker's license based on experience as a real estate licensee. An applicant must also be actively licensed as a real estate salesperson or broker for a minimum period of **48 months** during the **60 months preceeding** the **date the application is filed**. For calculation purposes the experience period runs from the **date the application is filed** and should be listed in reverse chronological order beginning with the year the application is filed.

1. **Only experience gained during the period beginning 60 months before the date the broker application is filed may be used for this report.**
2. **Multiply the number of transactions performed by the point value indicated to arrive at the points earned for that category for each year.**
3. **Add the points earned for each category to arrive at your total points for that category.**
4. **Add the points earned for each year to arrive at your total points per year. You must have at least one category or transaction type for each year for at least 4 years.**
5. **Enter the total figure on the Total Qualifying Points line. You should have at least 3600 final qualifying points.**
6. **You must file "Supplement B" to receive credit for experience earned after the application is filed.**
7. **If you are unable to obtain sufficient documentation and/or signatures to support your claim for experience, you must file TREC No. AFF-A, Affidavit in Lieu of Documentation and/or Signature and two TREC No. AFF-B, Affidavit in Support of Applicant's Claim of Experience each signed by a different individual familiar with your circumstances.**
8. **Examples of documentation that supports experience may include executed contracts, listing agreements, HUD1s, etc.**

You must complete the entire experience report to report your qualifying experience including broker signature(s) and verification.
Points earned for experience must be calculated below.

CATEGORY OR TRANSACTION TYPE	POINT VALUE x # OF TRANSACTIONS	=	TOTAL POINTS EARNED PER CATEGORY PER YEAR					=	TOTAL POINTS EARNED
			YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5		
Residential: *Single Family, Condo, Co-op unit, Multi family (1 to 4 unit)*									
1. CLOSED PURCHASE OR SALE - with improvements.....	300 X TRANSACTIONS PER YEAR	=	_____	_____	_____	_____	_____	=	_____
2. EXECUTED LEASE LANDLORD OR TENANT - new, renewal or extension.....	50 X TRANSACTIONS PER YEAR	=	_____	_____	_____	_____	_____	=	_____
3. PROPERTY MANAGEMENT - Rent collections per property/per year.....	25 X TRANSACTIONS PER YEAR	=	_____	_____	_____	_____	_____	=	_____
4. EXCLUSIVE LISTINGS.....	10 X TRANSACTIONS PER YEAR	=	_____	_____	_____	_____	_____	=	_____
5. BUYER REPRESENTATION AGREEMENTS.....	10 X TRANSACTIONS PER YEAR	=	_____	_____	_____	_____	_____	=	_____
	TOTAL NUMBER OF POINTS EARNED PER YEAR		_____	_____	_____	_____	_____		

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CATEGORY OR TRANSACTION TYPE	POINT VALUE x # OF TRANSACTIONS	=	TOTAL POINTS EARNED PER CATEGORY PER YEAR					=	TOTAL POINTS EARNED
			YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5		
Commercial: *Apartments (5 units or more), Office, Retail, Industrial, Mixed Use, Hotel, Parking Facility, Specialty, Other*									
6. CLOSED PURCHASE OR SALE.....	450X TRANSACTIONS PER YEAR	=	_____	_____	_____	_____	_____	=	_____
7. EXECUTED LEASE LANDLORD OR TENANT - new, renewal or extension/ per year.....	50 X TRANSACTIONS PER YEAR	=	_____	_____	_____	_____	_____	=	_____
8. PROPERTY MANAGEMENT - Rent collections per property/per year.....	100 X TRANSACTIONS PER YEAR	=	_____	_____	_____	_____	_____	=	_____
9. LISTINGS.....	10 X TRANSACTIONS PER YEAR	=	_____	_____	_____	_____	_____	=	_____
10. BUYER REPRESENTATION AGREEMENTS.....	10 X TRANSACTIONS PER YEAR	=	_____	_____	_____	_____	_____	=	_____
	TOTAL NUMBER OF POINTS EARNED PER YEAR		_____	_____	_____	_____	_____		
Farm and Ranch, Unimproved Lot: *Farm and Ranch with residence, improved, or unimproved or unimproved lot*									
11. CLOSED PURCHASE OR SALE-Unimproved Lot Contract.....	25 X TRANSACTIONS PER YEAR	=	_____	_____	_____	_____	_____	=	_____
12. CLOSED PURCHASE OR SALE-Farm and Ranch Contract.....	300 X TRANSACTIONS PER YEAR	=	_____	_____	_____	_____	_____	=	_____
13. EXCLUSIVE LISTINGS.....	10 X TRANSACTIONS PER YEAR	=	_____	_____	_____	_____	_____	=	_____
14. BUYER REPRESENTATION AGREEMENTS.....	10 X TRANSACTIONS PER YEAR	=	_____	_____	_____	_____	_____	=	_____
	TOTAL NUMBER OF POINTS EARNED PER YEAR		_____	_____	_____	_____	_____		
Brokerage Branch Office or Team Management *(at least 1 agent supervised; written designation required)*									
15. 20 points per month (maximum of 1200 points).....		=	_____	_____	_____	_____	_____	=	_____
	TOTAL NUMBER OF POINTS EARNED FOR ALL YEARS LISTED		_____	_____	_____	_____	_____		

SUM OF TOTAL POINTS EARNED FOR EACH CATEGORY = TOTAL QUALIFYING POINTS ON SUPPLE MENT A [ ]

NOTE: You must have at least one transaction type per year for 4 of the 5 years (one listing, rent collection, closing, management, etc.)

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EMPLOYMENT HISTORY

Salesperson Experience - I was actively engaged as a licensed real estate salesperson as indicated below:

Broker's Name, Address and Telephone Number	License Number	FROM MM/ YYYY	TO MM/ YYYY

Notice to Applicant: The information given on this application is subject to verification. In order to prevent any unnecessary return of your application, we request your cooperation by providing us with information that will help us contact you by telephone or email if needed.

Business Number _____ Home Number _____ Alternate Number _____ Email address _____

CERTIFICATIONS

All claimed transactions are subject to verification. In order to claim experience points, the applicant must be able to provide documentation, such as an executed contract, listing agreement, or HUD 1, which clearly demonstrates the active participation of the applicant in each transaction. If the applicant is unable to provide documentation and/or obtain the sponsoring broker's signature the applicant must attest to that using a separate verification, Affidavit in Lieu of Documentation and/or Signature, TREC Form No. _____. In addition, the applicant must submit two of the TREC forms entitled "Affidavit in Support of Applicants Claim of Experience" each signed by a different individual familiar with the applicant's circumstances.

Failure to provide satisfactory supporting documentation when requested may result in denial of the application and/or disciplinary action initiated against the applicant and broker.

We, the undersigned, jointly certify that the named applicant has accumulated a total of _____ points as indicated in the preceding qualifying experience report. We further certify that the information given above is true to the best of our knowledge and belief. We understand that any material misstatement made may result in the revocation or suspension of the license, if issued, as well as any existing license of the applicant and/or the broker.

Applicant Signature/Date _____ Broker Signature/Date _____

Additional Affirmations if Necessary:

We, the undersigned, jointly certify that the named applicant has accumulated a total of _____ points as indicated in the preceding qualifying experience report. We further certify that the information given above is true to the best of our knowledge and belief. We understand that any material misstatement made may result in the revocation or suspension of the license, if issued, as well as any existing license of the applicant and/or the broker.

Applicant Signature/Date _____ Broker Signature/Date _____

Additional Affirmations if Necessary:

We, the undersigned, jointly certify that the named applicant has accumulated a total of _____ points as indicated in the preceding qualifying experience report. We further certify that the information given above is true to the best of our knowledge and belief. We understand that any material misstatement made may result in the revocation or suspension of the license, if issued, as well as any existing license of the applicant and/or the broker.

Applicant Signature/Date _____ Broker Signature/Date _____

The information and certifications on this page must be supplied for each broker who sponsored the applicant during the periods being reported on the experience report.

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Texas Real Estate Commission
P.O. Box 12188
Austin, Texas 78711-2188
(512) 936-3000 www.trec.texas.gov

AFFIDAVIT IN LIEU OF DOCUMENTATION AND/OR SIGNATURE

NAME OF APPLICANT

_____ _____
Last First Middle License Number

Attach additional pages, if necessary, for any of the questions below.
Condition or circumstances surrounding the missing document(s). Complete this section only if the applicant is unable to provide documents such as executed contracts, listing agreements or HUD1s to support a claim of experience.

_____

_____

_____

Explain your efforts to obtain the missing documents. _____

_____

_____

Describe the transaction and your role for which you are claiming experience. _____

_____

_____

Describe your attempts to obtain the broker's signature acknowledging your experience while sponsored by the broker.

_____

_____

_____

I certify that the facts provided in this affidavit are true, correct and complete. I further certify that I have made a good faith effort to obtain the documents and or broker's signature described above relating to the transaction(s) for which I am claiming experience. I understand that this claim for experience in lieu of documentation will be considered incomplete if not accompanied by two affidavits each signed by a person familiar with my attempts to obtain the documents and/or sponsoring broker's signature, and my contribution to the transaction(s) for which I am claiming experience points.

I understand that providing information that is not true, correct, and complete is grounds for disapproval of this application or revocation of my license. I authorize the Texas Real Estate Commission to conduct any investigations of me related to this application and claim for experience. I understand that information revealed in an investigation may be cause for denial of the application even though other requirements for a license have been met and that if an investigation is necessary, it may not be conducted until I have passed the examination.

I further understand that information submitted in conjunction with this application may become a public record. If granted a license, I will abide by the provisions of The Real Estate License Act and the Rules of the Texas Real Estate Commission.

_____ _____
Applicant's Signature Date

ACKNOWLEDGEMENT

State of Texas §

County of _____ §

Before me, a notary public, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that the statements therein contained are true and correct.

_____
Notory Public in the State of Texas

My commission expires: _____

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Texas Real Estate Commission
P.O. Box 12188
Austin, Texas 78711-2188
(512) 936-3000 www.trec.texas.gov

Application for a Real Estate Broker License

Supplement B-Qualifying Experience Report for a Broker License After an Application has Been Filed.

Applicant Name (ENTER NAME EXACTLY AS SHOWN ON APPLICATION PAGE 1)

Last First Middle License Number

Instructions for Completing Supplement B

You must accumulate at least 3600 points to qualify for a broker's license based on experience as a real estate licensee. An applicant must also be actively licensed as a real estate salesperson or broker for a minimum period of **48 months** during the **60 months preceeding** the **date the application is filed**. For calculation purposes the experience period for this form begins on the **date the application is filed**.

1. **Only experience gained during the period after the date the broker application is filed may be used for this report.**
2. **Multiply the number of transactions performed by the point value indicated to arrive at the points earned for that category per year.**
3. **Add the points earned for each category to arrive at your total points for Supplement B.**
4. **Add the points reported under Supplement A to arrive at you total points.**
5. **Enter the total figure on the Total Qualifying Points line. You should have at least 3600 final qualifying points.**
6. **You must file "Supplement A" to receive credit for experience earned before the application is filed.**
7. **If you are unable to obtain sufficient documentation and/or signatures to support your claim for experience, you must file TREC No. AFF-A, Affidavit in Lieu of Documentation and/or Signature and two TREC No. AFF-B, Affidavit in Support of Applicant's Claim of Experience each signed by a different individual familiar with your circumstances.**
8. **Examples of documentation that supports experience may include executed contracts, listing agreements, HUD1s, etc.**

You must complete the entire experience report to report your qualifying experience including broker signature(s) and verification.
Points earned for experience must be calculated below.

CATEGORY OR TRANSACTION TYPE	POINT VALUE x # OF TRANSACTIONS	=	TOTAL POINTS EARNED PER CATEGORY	=	TOTAL POINTS EARNED
Residential: *Single Family, Condo, Co-op unit, Multi family (1 to 4 unit)*					
1. CLOSED PURCHASE OR SALE - with improvements.....	300 X TRANSACTIONS PER YEAR	=	_____	=	_____
2. EXECUTED LEASE LANDLORD OR TENANT - new, renewal or extension.....	50 X TRANSACTIONS PER YEAR	=	_____	=	_____
3. PROPERTY MANAGEMENT - Rent collections per property/per year.....	25 X TRANSACTIONS PER YEAR	=	_____	=	_____
4. EXCLUSIVE LISTINGS.....	10 X TRANSACTIONS PER YEAR	=	_____	=	_____
5. BUYER REPRESENTATION AGREEMENTS.....	10 X TRANSACTIONS PER YEAR	=	_____	=	_____
	TOTAL NUMBER OF POINTS EARNED		_____		

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CATEGORY OR TRANSACTION TYPE	POINT VALUE x # OF TRANSACTIONS	=	TOTAL POINTS EARNED PER CATEGORY YEAR 1	=	TOTAL POINTS EARNED
Commercial: *Apartments (5 units or more), Office, Retail, Industrial, Mixed Use, Hotel, Parking Facility, Specialty, Other*					
6. CLOSED PURCHASE OR SALE.....	450X TRANSACTIONS PER YEAR	=		=	
7. EXECUTED LEASE LANDLORD OR TENANT - new, renewal or extension/ per year.....	50 X TRANSACTIONS PER YEAR	=		=	
8. PROPERTY MANAGEMENT - Rent collections per property/per year.....	100 X TRANSACTIONS PER YEAR	=		=	
9. LISTINGS.....	10 X TRANSACTIONS PER YEAR	=		=	
10. BUYER REPRESENTATION AGREEMENTS.....	10 X TRANSACTIONS PER YEAR	=		=	
	TOTAL NUMBER OF POINTS EARNED PER YEAR				
Farm and Ranch, Unimproved Lot: *Farm and Ranch with residence, improved, or unimproved or unimproved lot*					
11. CLOSED PURCHASE OR SALE-Unimproved Lot Contract.....	25 X TRANSACTIONS PER YEAR	=		=	
12. CLOSED PURCHASE OR SALE-Farm and Ranch Contract.....	300 X TRANSACTIONS PER YEAR	=		=	
13. EXCLUSIVE LISTINGS.....	10 X TRANSACTIONS PER YEAR	=		=	
14. BUYER REPRESENTATION AGREEMENTS.....	10 X TRANSACTIONS PER YEAR	=		=	
	TOTAL NUMBER OF POINTS EARNED PER YEAR				
Brokerage Branch Office or Team Management *(at least 1 agent supervised; written designation required)*					
15. 20 points permonth (maximum of 1200 points).....		=		=	
	TOTAL NUMBER OF POINTS EARNED FOR THIS TIME PERIOD				
	TOTAL NUMBER OF POINTS CARRIED OVER FROM SUPPLEMENT A				
	TOTAL QUALIFYING POINTS (MUST BE AT LEAST 3600 PTS)				

draft

EMPLOYMENT HISTORY

Salesperson Experience - I was actively engaged as a licensed real estate salesperson as indicated below:

Broker's Name, Address and Telephone Number	License Number	FROM MM/ YYYY	TO MM/ YYYY

Notice to Applicant: The information given on this application is subject to verification. In order to prevent any unnecessary return of your application, we request your cooperation by providing us with information that will help us contact you by telephone or email if needed.

Business Number _____ Home Number _____ Alternate Number _____ Email address _____

CERTIFICATIONS

All claimed transactions are subject to verification. In order to claim experience points, the applicant must be able to provide documentation, such as an executed contract, listing agreement, or HUD 1, which clearly demonstrates the active participation of the applicant in each transaction. If the applicant is unable to provide documentation and/or obtain the sponsoring broker's signature the applicant must attest to that using a separate verification, Affidavit in Lieu of Documentation and/or Signature, TREC Form No._____. In addition, the applicant must submit two of the TREC forms entitled "Affidavit in Support of Applicants Claim of Experience" each signed by a different individual familiar with the applicant's circumstances.

Failure to provide satisfactory supporting documentation when requested may result in denial of the application and/or disciplinary action initiated against the applicant and broker.

We, the undersigned, jointly certify that the named applicant has accumulated a total of _____ points as indicated in the preceding qualifying experience report. We further certify that the information given above is true to the best of our knowledge and belief. We understand that any material misstatement made may result in the revocation or suspension of the license, if issued, as well as any existing license of the applicant and/or the broker.

Applicant Signature/Date _____ Broker Signature/Date _____

Additional Affirmations if Necessary:

We, the undersigned, jointly certify that the named applicant has accumulated a total of _____ points as indicated in the preceding qualifying experience report. We further certify that the information given above is true to the best of our knowledge and belief. We understand that any material misstatement made may result in the revocation or suspension of the license, if issued, as well as any existing license of the applicant and/or the broker.

Applicant Signature/Date _____ Broker Signature/Date _____

Additional Affirmations if Necessary:

We, the undersigned, jointly certify that the named applicant has accumulated a total of _____ points as indicated in the preceding qualifying experience report. We further certify that the information given above is true to the best of our knowledge and belief. We understand that any material misstatement made may result in the revocation or suspension of the license, if issued, as well as any existing license of the applicant and/or the broker.

Applicant Signature/Date _____ Broker Signature/Date _____

The information and certifications on this page must be supplied for each broker who sponsored the applicant during the periods being reported on the experience report.

draft

Texas Real Estate Commission
P.O. Box 12188
Austin, Texas 78711-2188
(512) 936-3000 www.trec.texas.gov

AFFIDAVIT IN SUPPORT OF CLAIM FOR EXPERIENCE

NAME OF APPLICANT

Last First Middle License Number

NAME OF AFFIANT

Last First Middle

Address City State Zip Code Telephone Number

Attach additional pages, if necessary, for any of the questions below.

Explain your knowledge of applicant's efforts to obtain required documentation to support a claim of experience for a Texas Broker License.

Explain your knowledge of applicant's efforts to obtain the sponsoring broker`s signature acknowledging the applicant's experience while sponsored by the broker.

Describe your knowledge of the applicant's role in the transaction(s) for which the applicant is requesting experience points.

What is your relationship to the applicant? ☐ Friend ☐ Coworker ☐ Relative ☐ Other

I certify that the facts provided in this affidavit are true, correct and complete to the best of my knowledge.

Affiant's Signature Date

VERIFICATION

State of Texas §

County of _____ §

Before me, a notary public, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that the statements therein contained are true and correct.

Notory Public in the State of Texas

My commission expires: _____

draft

Agenda Item 7:

Discussion and possible action to adopt amendments to 22 TAC Chapter 535 as follows:

d. Subchapter F, §535.63 concerning Accreditation of Core Education Schools

SUMMARY:

Adopts amendments to §535.63, Accreditation of Core Education Schools without changes to the proposed text as published in the August 19, 2011, issue of the *Texas Register* (36 TexReg 5188).

The amendments implement and explain the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). In relevant part, SB 747 amends Texas Occupations Code, §1101.301 to require the commission to adopt rules setting an examination passage rate benchmark for each category of license issued under Chapter 1101 and Chapter 1102, Texas Occupations Code.

The amendment to §535.63 establishes the method in which the benchmark passage rate would be calculated for each license category and makes other conforming changes to be consistent with the amendments made by SB 747.

No comments were received on the rule as proposed.

Staff Recommendation:

Adopt rule as proposed.

Recommended Motion:

MOVED, that staff is authorized, on behalf of this Commission, to submit the amendments to §535.63, Accreditation of Core Education Schools as published in the August 19, 2011, issue of the *Texas Register*, with any non-substantive changes as staff may deem necessary or advisable for adoption.

Agenda Item 7(d)

22 TAC §535.63 Accreditation of Core Education Schools

§535.63 Accreditation of Core Education Schools

(a) (No Change.)

(b) Renewal of accreditation. No more than six months prior to the expiration of its current accreditation, a school may apply for accreditation for another four year period. Approval or disapproval of an application shall be subject to the standards for initial applications for accreditation, as well as the requirement of §1101.301 of the Act.

(1) For purposes of calculating the exam passage rate of a commission-accredited school **for a license category**, each type of licensing examination that a student takes for the first time will have a school affiliation, unless the last core course taken for the purpose of meeting the education requirements for the type of license was taken at a school that is not accredited by the commission or the course was taken more than two years before the date the student submitted the course to the commission.

(2) (No Change.)

(3) A school's passage rate **for each license category** will be calculated and published quarterly by dividing the number of students affiliated with that school, as defined in paragraph (2) of this subsection, who passed the examination on their first attempt in the four-year period ending on the last day of the previous quarter by the total number of the school's graduates who took the exam for the first time in the same period. If a school offers courses toward multiple license types, the exam results for that school will be calculated and posted by license **category** **[~~type and aggregated into the school's overall passage rate for that period~~]**. The passage rate **for each license category** that will be used to determine whether the accreditation standard has been met **for the license category** is the most current **[~~aggregate~~]** rate published by the commission as of the date the commission receives the timely application for reaccreditation or, if the accreditation expired before being renewed, the most recent rate published by the commission as of the expiration date of the school's accreditation.

(4) In determining whether a school qualifies for reaccreditation **for the license category** based on its examination passage rate, the commission may consider a variety of factors, including the **overall** **[~~separate~~]** passage **rate** **[~~rates~~]** for sales, broker, and inspector applicants and trends within the school's passage rate over the four-year accreditation period.

(5) The commission shall calculate and publish the average pass rate for each license type each quarter by dividing the total number of applicants who passed the qualifying examination the first time in the four-year period ending on the last day of the previous quarter by the total number of applicants who took the examination for the first time in the same period.

(c) No Change

Agenda Item 7:

Discussion and possible action to adopt amendments to 22 TAC Chapter 535 as follows:

e. Subchapter G, Mandatory Continuing Education as follows:

i. §535.71 concerning Approval of Providers, Courses and Instructors

ii. §535.72 concerning Presentation of Courses, Advertising and Records

SUMMARY:

Adopts amendments to §535.71, Approval of Providers, Courses and Instructors, and §535.72, Presentation of Courses, Advertising and Records without changes to the proposed text as published in the August 19, 2011, issue of the *Texas Register* (36 TexReg 5189).

The amendments implement and explain the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). In relevant part, SB 747 amends Texas Occupations Code, §1101.458 to require a broker who sponsors a salesperson and a licensee who supervise another licensee to take a 6 hour broker responsibility course to renew a license.

The amendments to §535.71 and §535.72 provide the method by which the commission will create and approve the broker responsibility course, which will be the same way it handles the 3 hour legal update and 3 hour ethics courses required under §1101.455, and provides conforming changes for consistency.

No comments were received on the rule as proposed.

Staff Recommendation:

Adopt rule as proposed.

Recommended Motion:

MOVED, that staff is authorized, on behalf of this Commission, to submit the amendments to §535.71, Approval of Providers, Courses and Instructors, and §535.72, Presentation of Courses, Advertising and Records as published in the August 19, 2011, issue of the *Texas Register*, with any non-substantive changes as staff may deem necessary or advisable for adoption.

Agenda Item 7(e)

22 TAC §535.71, §535.72

§535.71. Approval of Providers, Courses, and Instructors.

(a)-(j) (No change.)

(k) **Non-elective [~~Required legal update and ethics~~]** courses. The commission shall approve bi-annually a legal update course and a legal ethics course **required by §1101.455(e) of the Act, and a broker responsibility course required by §1101.458(a) of the Act** which shall be conducted through providers by instructors certified by the commission under this subchapter. The subject matter and course materials for the courses shall be created for and approved by the commission. The courses expire on December 31 of each odd-numbered year and shall be replaced with new courses approved by the commission. A provider may not offer a new course until an instructor of the course obtains recertification by attending a new instructor training program. Providers must acquire the commission-developed course materials and utilize such materials to conduct the **non-elective [~~required legal~~]** courses. The **non-elective [~~required legal~~]** courses must be conducted as prescribed by the rules in this subchapter and the course materials developed for the commission.

(l) Modification of the **non-elective [~~required legal~~]** courses. Providers and instructors may modify a **non-elective [~~required legal~~]** course only to provide additional information on the same or similar topics covered in the course or to create distance learning courses that are substantially similar to the live courses developed for the commission. To the extent that a **non-elective [~~required legal~~]** course is modified or integrated into a longer course for which additional elective credit is requested, the commission shall grant elective and **non-elective [~~legal~~]** credit for the combined course.

(m) Instructor certification. Only instructors certified by the commission may teach the **non-elective [~~required legal~~]** courses or develop distance learning courses for the presentation of **non-elective [~~required legal~~]** courses. An instructor must obtain prior commission approval under subsection (n) of this section prior to attending an instructor training program. The commission shall issue a written certification to an instructor to teach the applicable **non-elective [~~required legal~~]** course(s) upon the instructor's satisfactory completion of a training program to teach the **non-elective [~~required legal~~]** course(s) that is acceptable to the commission. An instructor may obtain certification to teach either one or **all non-elective [~~both required legal~~]** courses. A certified **[~~legal~~]** course instructor may teach the **non-elective [~~required legal~~]** courses for any approved provider after the instructor has attended an instructor training program. A certified **[~~legal~~]** course instructor may not independently conduct a **non-elective [~~required legal~~]** course unless the instructor has also obtained approval as a provider. An instructor must obtain written certification from the commission prior to teaching the **non-elective [~~required legal~~]** courses and prior to representing to any provider or other party that he or she is certified or may be a certified **[~~as a~~]** course

instructor. An instructor's certification to teach a **non-elective** **[~~required legal~~]** course expires on December 31 of every odd-numbered year. An instructor may obtain recertification by attending a new instructor training program.

(n) Standards for approval of instructors of **non-elective** **[~~required legal~~]** courses. Prior to attending an instructor training course, a person must obtain commission approval to be an instructor using Instructor Application - Core, Legal Update, and Ethics, approved by the commission. To be approved as an instructor of a **non-elective** **[~~required legal update or ethics~~]** course, a person must possess the following qualifications:

(1) -(3) (No change.)

(o) **Certification** **[~~Approval~~]** of instructor. If the commission determines that the applicant meets the standards for instructor **certification** **[~~approval~~]**, the commission shall **certify** **[~~approve~~]** the application and provide a written notice of the **certification** **[~~approval~~]** to the applicant. Unless surrendered or revoked for cause, the **certification** **[~~approval~~]** will be valid for a period of two years.

(p) –(q) No Change.

(r) Legal update**,** **[~~and~~]** legal ethics course **and broker responsibility course** application. A provider must submit a MCE Course Application Supplement and receive written acknowledgment from the commission prior to offering a **non-elective** **[~~required legal update or required legal ethics~~]** course.

(s) No Change.

(t) Acceptable combined courses. An elective credit course offered by a provider to satisfy all or part of the **[~~nine~~]** hours of other than legal topics required by §1101.455 of the Act may be offered with **a non-elective** **[~~the required legal update course or required legal ethics~~]** course.

(u) **Non-elective** **[~~Required legal~~]** courses for real estate related courses. **Non-elective** **[~~MCE legal update and legal ethics~~]** courses may be accepted by the commission as real estate related courses for satisfying the education requirements of §1101.356 and §1101.358, of the Act.

(v) Correspondence courses for elective credit. An MCE provider may register an MCE elective course by correspondence with the commission if the course is subject to the following conditions:

(1)-(2) (No change.)

(3) the course does not include a request for **non-elective** **[~~required legal~~]** course credit.

(w) Alternative delivery method courses for elective credit. An MCE provider may register an MCE elective course by alternative delivery method with the commission if the course is subject to the following conditions:

(1) (No change.)

(2) the course does not include a request for **non-elective** **[~~required legal~~]** course credit; and

(3) (No change.)

(x) Correspondence courses for required **non-elective** **[~~legal~~]** credit. The commission may approve a provider to offer **a non-elective** **[~~an MCE required legal ethics~~]** course by correspondence subject to the following conditions:

(1) (No change.)

(2) the content of the course must satisfy the requirements of §1101.455 **or §1101.458** of the Act and this section and must be substantially similar to the **non-elective** **[~~legal~~]** courses disseminated and updated by the Commission;

(3)-(4) (No change.)

(y) Each **non-elective** **[~~required legal~~]** course offered by correspondence must contain the following:

(1) -(8) (No change.)

(z) Alternative delivery method courses for **non-elective** **[~~required legal~~]** credit. The commission may accept **non-elective** **[~~required legal~~]** courses offered by alternative delivery method subject to the following conditions.

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

(aa) No Change.

(bb) Supervised Video Instruction for **non-elective** **[~~required legal~~]** course credit. A provider may register a course under subsection (r) of this section to be taught by supervised video instruction if the provider:

(1) -(3) (No change.)

(cc) An applicant must submit an MCE Course Application Supplement to seek approval to offer an MCE distance learning **non-elective** **[~~required legal~~]** course and receive written acknowledgment from the commission prior to offering the course.

(dd) – (ff) No Change.

§535.72. Presentation of Courses, Advertising, and Records.

(a) No Change.

(b) Partial credit.

(1) (No change.)

(3) Partial credit may not be granted for any course that contains as part of its curriculum all or part of the **nonelective** **[~~six legal~~]** hours of mandatory continuing education required by §1101.455 **and §1101.458** of the Act.

(c) - (f) No Change.

(g) Course materials. Providers must furnish students with copies, for students' permanent use, of any material which is the basis for a significant portion of the course. Providers offering any of the **non-elective** **[~~required legal~~]** courses must provide the students with the materials identified as student course materials for the **non-elective** **[~~required legal~~]** courses. The course materials provided to the students may be in printed form or electronic media such as a CD-ROM or diskette that the student may access through commonly available software such as common word-processing programs and slide presentation programs. Ample space must be provided on handouts for note taking or completion of any written exercises. If a provider charges fees for supplies, materials, or books needed in course work, the fees must be itemized in a written statement provided to each student by the provider before the student registers for the course.

(h) – (k) No Change.

(l) Course administration. Providers of MCE courses are responsible to the commission for the conduct and administration of each course presentation, the punctuality of classroom sessions, verification of student attendance, and instructor performance. Providers shall ensure that the **non-elective** **[~~required legal~~]** courses are administered by instructors in substantially the same manner as disseminated and updated by the commission. During the presentation of a course, providers may not promote the sale of goods or services.

(m) Updates. If the commission determines that it is in the public interest to update the **non-elective** **[~~required legal~~]** courses about changes in the law, the commission may require the provider to furnish each student with a copy of the information. The commission also may require the provider to ensure that the provider's instructors include the material in the presentation of the course. The commission shall furnish the provider with a copy of the information and notify the provider that the commission requires compliance with this subsection in a **non-elective** **[~~required legal~~]** course or any elective course combined with a **non-elective** **[~~legal~~]** course offered after the provider's receipt of the notice.

(n) – (p) No Change.

Agenda Item 7:

Discussion and possible action to adopt amendments to 22 TAC Chapter 535 as follows:

f. Subchapter I, Licenses as follows:

i. §535.91 concerning Renewal Notices

ii. §535.93 concerning Late Renewal Applications

iii. §535.96 concerning Mailing Address and Other Contact Information

SUMMARY:

Adopts amendments to 22 TAC §535.91 regarding Renewal Notices, §535.93 regarding Late Renewals, and §535.96 regarding Mailing Address and Other Information without changes to the proposed text as published in the August 19, 2011 issue of the *Texas Register* (36 TexReg 5191).

The amendments implement and explain the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). In part, SB 747 amends Texas Occupations Code, §1101.451 to change the maximum period of time in which a licensee can file a late renewal from one year to six months, amends §1101.458 to require that certain licensees take a six hour broker responsibility course to renew a license, and amends the requirements in §1101.552 for license holders to provide and maintain certain contact information with the commission, including an email address if available. Because the effective date of certain provisions of SB 747 is September 1, 2011, the commission simultaneously took emergency action to amend §535.93 to be consistent with SB 747.

7(f) SUMMARY cont.:

The amendments to §535.91 clarify that a broker who sponsors salespersons, a designated broker of a business entity, and a license holder who is a delegated supervisor of one or more licensees under §535.2 for six months or more during the course of the current license must take the six hour broker responsibility course to renew a license. The amendments to §535.93 change to six months any references to the one year period for filing a late renewal. The amendments to §535.96 clarify that licensees must provide and maintain contact information with the commission, including an email address if available.

No comments were received on the rule as proposed.

Staff Recommendation:

Adopt rule as proposed.

Recommended Motion:

MOVED, that staff is authorized, on behalf of this Commission, to submit the amendments to §535.91 regarding Renewal Notices, §535.93 regarding Late Renewals, and §535.96 regarding Mailing Address and Other Information as published in the August 19, 2011, issue of the *Texas Register* , with any non-substantive changes as staff may deem necessary or advisable for adoption.

Agenda Item 7(f)

22 TAC §535.91, §535.93, and §535.96

535.91. Renewal Notices.

(a) No Change.

(b) Except as authorized by §535.92 of this subchapter, for the renewal of a license on active status that is not subject to the annual education requirements of §1101.454 of the Act, the license holder must attend during the term of the current license, at least two Commission developed legal courses consisting of a three-hour legal update course and a three-hour legal ethics course to comply with the six legal hours of mandatory continuing education required by §1101.455 of the Act. **[~~The remaining nine hours required by §1101.455 of the Act may consist of elective credit courses registered with the commission under Subchapter G of this chapter (relating to Mandatory Continuing Education).~~]**

(c) A broker who sponsors a salesperson, a designated broker of a business entity, or a license holder who is a delegated supervisor of one or more license holders pursuant to §535.2 of this chapter for six months or more during the course of the current license must attend the six hour broker responsibility course required by §1101.458 of the Act.

(d) [(~~c~~)]The commission shall mail a license renewal notice three months before the expiration of the current license. Failure to receive a license renewal notice does not relieve a licensee of the obligation to renew a license.

(e) [~~(d)~~] A licensee shall provide information requested by the commission in connection with an application to renew a license within 30 days after the commission requests the information. Failure to provide information requested by the commission in connection with a renewal application within the required time is grounds for disciplinary action under §1101.656 of the Act.

(f) [~~(e)~~] If a licensee is unable to renew a license on the commission's Internet website, the licensee may renew an unexpired license by obtaining a renewal application form from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 and complying with the commission's requirements.

§535.93. Late Renewal Applications.

(a) A licensee who files a late application to renew a previous license less than **six months [~~one year~~]** after the expiration of the license must do so on a form approved by the commission for that purpose and is subject to the requirements of this section and Tex. Occ. Code §1101.451(e). The commission shall renew the license in an active status except as provided by this section. A license issued under this section is effective the day following the expiration of the previous license.

(b) - (c) No Change.

(d) If a licensee who has not completed all MCE before the expiration of the previous license files a late application to renew the license in an active status more than 60 days but less than **six months** **[~~one year~~]**from the expiration of the license, the licensee must:

(1) - (4) (No Change.)

(e) – (g) (No Change.)

§535.96 Mailing address and Other Contact Information.

(a) Each licensee shall furnish a mailing address, phone number, and email address**, if available,** 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 the mailing address, the last known mailing address provided to the commission will be deemed to be the licensee's mailing address.

(b) (No Change.)

Agenda Item 7:

Discussion and possible action to adopt amendments to 22 TAC Chapter 535 as follows:

g. Subchapter J, §535.101 concerning Fees

SUMMARY:

Adopts amendments to §535.101 regarding Fees without changes to the proposed text as published in the August 19, 2011, issue of the Texas Register (36 TexReg 5192).

The amendments increase the salesperson and broker application fees from $105 to $119, the annual renewal fees for brokers and salespersons from $34 to $39; the late renewal fee from $51 to $58.50 for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired 90 days or less; and late renewal fee from $68 to $78 for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired more than 90 days but less than six months effective November 1, 2011. The amendments also change the maximum late renewal period from six months to one year and remove a reference to an application in the fee for moral character determination.

Senate Bill 1000 makes the Texas Real Estate Commission self-directed and semi-independent. The bill removes the agency from the legislative budgeting process, and requires the commission to adopt and approve an annual budget. The bill requires that the commission collect sufficient fees to fund operations to carry out its function and to fund the budget. In relevant part, the bill also requires the agency to remit $750,000 to the general revenue fund not later than August 31 of each fiscal year, to remit a non-refundable retainer to the State Auditor of $10,000 per fiscal year, a nonrefundable retainer to the Attorney General of $75,000 per fiscal year, and a non-

7(g) SUMMARY cont.:

refundable retainer to the State Office of Administrative Hearings of $75,000 per fiscal year. TREC will be required to reimburse each agency for all costs incurred in excess of the retainers for providing services to the commission. In addition, the bill requires the agency to pay rent in a reasonable amount to be determined by the Texas Facilities Commission with aggregate rent payments to be not less than $550,000 per fiscal year for state fiscal years ending August 31, 2012 and August 31, 2013; and not less than $425,000 per fiscal year for each year ending August 31, 2014, August 31, 2015, and August 31, 2016.

No comments were received on the rule as proposed.

Staff Recommendation:

Adopt rule as proposed.

Recommended Motion:

MOVED, that staff is authorized, on behalf of this Commission, to submit the amendments to §535.101 regarding Fees as published in the August 19, 2011, issue of the *Texas Register* , with any non-substantive changes as staff may deem necessary or advisable for adoption.

Agenda Item 7(g)

22 TAC §535.101. Fees.

§535.101 Fees.

(a) (No Change.)

(b) The commission shall charge and collect the following fees:

(1) a fee of $**119** **[~~105~~]** for the filing of an original application for a real estate broker license, which includes a fee for transcript evaluation;

(2) a fee of $**39** [~~34~~] for annual renewal of a real estate broker license;

(3) a fee of $**119** **[~~105~~]** for the filing of an original application for a real estate salesperson license, which includes a fee for transcript evaluation;

(4) a fee of $**39** **[~~34~~]** for annual renewal of a real estate salesperson license;

(5) - (11) (No Change.)

(12) a fee of $25 for the filing of **[~~an application for~~]** a moral character determination;

(13) (No Change.)

(14) a fee of $**58.50** **[~~51~~]** for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired 90 days or less;

(15) a fee of $**78** **[~~68~~]** for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired more than 90 days but less than **six months** **[~~one year~~]**;

(16) -(18) (No Change.)

(c) (No Change.)

Agenda Item 7:

Discussion and possible action to adopt amendments to 22 TAC Chapter 535 as follows:

h. Subchapter L, Termination of Salesperson's Association with Sponsoring Broker as follows:

i. §535.121 concerning Inactive License

ii. §535.122 concerning Reactivation of License

SUMMARY:

Adopts amendments to 22 TAC §535.121, Inactive License, and §535.122, Reactivation of License without changes to the proposed text as published in the August 19, 2011 issue of the Texas Register (36 TexReg 5193).

The amendments make conforming changes to other rules that were adopted to implement and explain the requirements of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). In part, SB 747 amends Texas Occupations Code, Chapter §1101 regarding the treatment of business entities who engage in real estate brokerage activity.

The amendments to §535.121 makes conforming changes to be consistent with other rules that were simultaneously adopted to implement the requirements of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). The amendments to §535.122 clarify that a salesperson on inactive status may act as the broker's salesperson from the date the notice and fee are mailed or delivered to the commission as long as the salesperson otherwise meets MCE requirements.

No comments were received on the rule as proposed.

Staff Recommendation:

Adopt rule as proposed.

Recommended Motion:

MOVED, that staff is authorized, on behalf of this Commission, to submit the amendments to 22 TAC §535.121, Inactive License, and §535.122, Reactivation of License as published in the August 19, 2011, issue of the *Texas Register*, with any non-substantive changes as staff may deem necessary or advisable for adoption.

Agenda Item 7(h)

22 TAC §535.121, §535.122

§535.121 Inactive License.

(a) The license of a salesperson immediately becomes inactive upon each of the following circumstances:

(1) - (3) (No Change.)

(4) if the sponsoring broker is a corporation, limited liability company or partnership, the expiration, suspension, revocation or inactivation of the license of the [~~**person**~~**]** designated [~~**as**~~**]** broker[~~**, manager, or partner**~~ ~~**on the license certificate**~~**]** of the entity, which also places the license of the entity on inactive status; or

(5) (No Change.)

(b) –(c) No Change.

§535.122. Reactivation of License.

(a) No Change.

(b) When a salesperson whose license status is inactive enters the sponsorship of a broker and the salesperson is subject to MCE requirements, the salesperson is not returned to active status until MCE requirements are satisfied and the commission has received documentation of course completion in a form satisfactory to the commission. **If the salesperson has satisfied all MCE requirements, the salesperson may act as the broker's salesperson from the date the notice and fee are mailed or delivered to the commission.** A salesperson whose original application or renewal application was subject to educational requirements imposed by the Act, §1101.358 and §1101.454, is not subject to MCE requirements as a condition of returning to active status during the term of the license issued from the original application or renewal application.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Agenda Item 7:

Discussion and possible action to adopt amendments to 22 TAC Chapter 535 as follows:

i. Subchapter M, §535.132 concerning Eligibility for Licensure

SUMMARY:

Adopts amendments to 22 TAC §535.132 regarding Eligibility for Licensure without changes to the proposed text as published in the August 19, 2011, issue of the Texas Register (36 TexReg 5194).

The amendments implement and further explain the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). In relevant part, SB 747 amends the Texas Occupations Code Chapter 1101 to delete the exemption from licensing for partnerships in which a general partner is a broker and requires licensure as a broker for any business entity as defined in Section 1.002 of the Business Organizations Code.

The amendments to §535.132 make conforming changes to be consistent with amendments to §§535.55 and .56 regarding waiver of education or experience requirements for a salesperson or broker license, and change the references from individual business entity types to "business entity" to make conforming changes to be consistent with the statutory text amended by SB 747.

No comments were received on the rule as proposed.

Staff Recommendation:

Adopt rule as proposed.

Recommended Motion:

MOVED, that staff is authorized, on behalf of this Commission, to submit the amendments to 22 TAC §535.132 regarding Eligibility for Licensure as published in the August 19, 2011, issue of the *Texas Register* , with any non-substantive changes as staff may deem necessary or advisable for adoption.

Agenda Item 7(i)

22 TAC §535.132. Eligibility for Licensure.

§535.132. Eligibility for Licensure. (a) A person residing in another state may apply for a license under **[~~the provisions of Subchapter H of the Act and~~]** this section if the person:

(1) (No Change.)

(2) was licensed as a Texas real estate salesperson or broker no more than **two** **[~~six~~]** years prior to the filing of the application.

(3) The commission may waive **[~~examination,~~]** education and experience requirements if the applicant satisfies the conditions established by **§535.56(h)** **[~~§535.61 of this title (relating to Waiver of Examinations) and by either~~ ~~§535.62~~]** of this title (relating to Brokers: Education and Experience) or **§535.55** **[~~§535.63~~]** of this title (relating to Salespersons: Education).

(b) A **business entity** **[~~limited liability company~~]** created **or chartered** under the laws of another state **[~~or a corporation chartered in a state other than Texas~~]** may apply for a Texas real estate broker license if the entity meets one of the following requirements.

(1) (No Change.)

(2) The entity is licensed as a broker in a state in which it is permitted to engage in real estate brokerage business as a foreign **business entity** **[~~limited liability company or corporation~~]**.

(3) The entity was created or chartered in a state that does not license **business entities** **[~~limited liability companies or corporations~~]**, as the case may be, and the entity is lawfully engaged in the practice of real estate brokerage in another state and meets all other requirements for applications for a license in Texas.

(c) (No Change.)

(d) To be eligible to receive a license and maintain an active license, a **business entity** **[~~limited liability company or corporation~~]** created or chartered in another state must designate a person to act for it who meets the requirements of §1101.453 of the Act, although the designated **broker** **[~~person~~]** is not required to be a resident of Texas. Foreign **business entities** **[~~corporations and limited liability companies~~]** also must be permitted to engage in business in this state to receive a Texas real estate broker license.

Agenda Item 7:

Discussion and possible action to adopt amendments to 22 TAC Chapter 535 as follows:

j. Subchapter N, §535.141 concerning Initiation of Investigation

SUMMARY:

Adopts amendments to 22 TAC Subchapter N, §535.141 regarding Initiation of Investigation without changes to the proposed text as published in the August 19, 2011, issue of the *Texas Register* (36 TexReg 5194).

The amendments implement and further explain the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). In relevant part, SB 747 amends Texas Occupations Code, Chapter 1101 to delete the exemption from licensing for partnerships in which a general partner is a broker and requires licensure as a broker for any business entity as defined in Section 1.002 of the Business Organizations Code Because the effective date of the relevant provision in SB 747 was September 1, 2011, the commission simultaneously took emergency action to amend §535.141 to be consistent with SB 747 on that date.

The amendments to §535.141 clarify that the rule applies to all business entities that are required to have a broker license under Chapter 1101, and to make conforming changes to the rule to be consistent with other rules that were adopted on an emergency basis due to the September 1, 2011 effective date of the relevant provisions of SB 747.

No comments were received on the rule as proposed.

Staff Recommendation:

Adopt rule as proposed.

Recommended Motion:

MOVED, that staff is authorized, on behalf of this Commission, to submit the amendments to 22 TAC Subchapter N, §535.141 regarding Initiation of Investigation as published in the August 19, 2011, issue of the *Texas Register*, with any non-substantive changes as staff may deem necessary or advisable for adoption.

Agenda Item 7(j)

22 TAC §535.141

§535.141. Initiation of Investigation.

(a) –(c) No Change.

(d) The **designated** broker **[~~designated by a licensed business entity to act as its officer, manager or partner~~]** is responsible for all real estate brokerage activities performed by, on behalf of, or through **a** **[~~the~~]** business entity. A complaint which names a business entity licensed as a broker as the subject of the complaint but which does not specifically name the **designated** broker **[~~designated as the officer, manager or partner of the business entity,~~]** is a complaint against the **designated** broker **[~~acting as the designated officer, manager or partner~~]** at the time of any alleged violation for the limited purposes of determining the designated broker's involvement in any alleged violation and whether the designated broker fulfilled his or her professional responsibilities. A complaint which names a salesperson sponsored by a licensed business entity but which does not specifically name the designated broker of the business entity is a complaint against the designated broker at the time of any alleged violation by the salesperson for the limited purposes of determining the designated broker's involvement in any alleged violation and whether the designated broker fulfilled his or her professional responsibilities provided the complaint concerns the conduct of the salesperson as an agent of the business entity.

(e) – (h) No Change.

(i) A person whose license is subject to an order suspending the license must prior to the suspension taking effect:

(1) (No Change.)

(2) if the person is a broker, notify in writing any salespersons he or she sponsors, or any **business entity** **[~~corporation, limited liability company or partnership~~]** for which the person is designated **broker** **[~~as an officer, manager or partner~~]** that:

(A) (No Change.)

(B) once the suspension is effective any salesperson he or she sponsors or who is sponsored by the **business entity** **[~~corporation, limited liability company or partnership~~]** will not be authorized to engage in real estate brokerage unless the salespersons associate with another broker and file a change of sponsorship with the commission or the business entity designates a new broker and files a change of designated **broker** **[~~officer, manager or partner~~]** with the commission;

(3)-(7) (No Change.)

(j) – (k) (No Change.)

Agenda Item 7:

Discussion and possible action to adopt amendments to 22 TAC Chapter 535 as follows:

k. Subchapter R, §535.210 concerning Inspector Fees

SUMMARY:

Adopts amendments to §535.210 regarding Inspector Fees without changes to the proposed text as published in the August 19, 2011, issue of the Texas Register (36 TexReg 5195). The amendments increase the professional inspector application fee from $90 to $104, the real estate inspector application fee from $75 to $89, and the apprentice inspector application fee from $35 to $84, the annual renewal fees for professional and real estate inspectors from $27 to $32, and the annual renewal fee for an apprentice inspector from $22 to $27.

No comments were received on the rule as proposed.

Staff Recommendation:

Adopt rule as proposed.

Recommended Motion:

MOVED, that staff is authorized, on behalf of this Commission, to submit the amendments to 22 TAC Subchapter R, §535.210 regarding Inspector Fees as published in the August 19, 2011, issue of the *Texas Register*, with any non-substantive changes as staff may deem necessary or advisable for adoption.

Agenda Item 7(k)

22 TAC §535.210

§535.210 Fees.

(a) The commission shall charge and collect the following fees:

(1) a fee of $**84** **[~~35~~]** for filing an original application for a license as an apprentice inspector;

(2) a fee of $**89** **[~~75~~]** for filing an original application for a license as a real estate inspector, which includes a fee for transcript evaluation;

(3) a fee of $**104** **[~~90~~]** for filing an original application for a license as a professional inspector, which includes a fee for transcript evaluation;

(4) a fee of $**27** **[~~22~~]** for the annual renewal of the license of an apprentice inspector;

(5) a fee of $**32** **[~~27~~]** for the annual renewal of the license of a real estate inspector;

(6) a fee of $**32** **[~~27~~]** for the annual renewal of the license of a professional inspector;

(7)-(11) (No Change.)

(b) (No Change.)

Agenda Item 8:

Discussion and possible action to renew for an additional 60-day period emergency rules concerning 22 TAC:

a. Subchapter B, §535.17 concerning Appraisals
b. Subchapter C, §535.31 concerning Attorneys at Law
c. Subchapter E, Requirements for Licensure as follows:
   i. §535.50 concerning Definitions
   ii. §535.51 concerning General Requirements
   iii. §535.53 concerning Corporations and Limited Liability Companies
d. Subchapter I, §535.93 concerning Late Renewals
e. Subchapter J, §535.101 concerning Fees
f. Subchapter M, §535.132 concerning Eligibility for Licensure
g. Subchapter N, §535.141 concerning Initiation of Investigation

Summary :

Allows for the extension of the emergency adoption of Subchapter B, §535.17 concerning Appraisals; Subchapter C, §535.31 concerning Attorneys at Law; Subchapter E, Requirements for Licensure as follows: a. §535.50 concerning Definitions, §535.51 concerning General Requirements and §535.53 concerning Corporations and Limited Liability Companies; Subchapter I, §535.93 concerning Late Renewals; Subchapter J, §535.101 concerning Fees; Subchapter M, §535.132 concerning Eligibility for Licensure; and Subchapter N, §535.141 concerning Initiation of Investigation.

- The amendments to §535.17 clarify that a real estate licensee must be licensed under Texas Occupations Code, Chapter 1103 to conduct real estate appraisals. Further the rule is amended to provide that if a broker or salesperson provides a broker price opinion under Chapter 1101, the opinion must provide a written disclosure as provided in the rule.

Summary Agenda Item 8 cont.:

- The adoption of 22 TAC §535.31 regarding Attorneys at Law is necessary to comply with the effective date of the bill. In part, SB 747 amends Texas Occupations Code, §1101.005 regarding an exemption for attorneys. The amendment now exempts attorney licensed in the State of Texas; it previously applied to attorneys licensed in any state.

  The amendments to §535.31 clarify that the exemption only applies to attorneys licensed in the State of Texas provide a written disclosure as provided in the rule.

- 22 TAC Subchapter E, §535.50 regarding Definitions, §535.51 regarding General Requirements and §535.53 regarding Corporations and Limited Liability Companies on an emergency basis. The amendments are adopted on an emergency basis to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). The effective date of the relevant provisions of SB 747 is September 1, 2011. The adoption of the amendment is necessary to comply with the effective date of the bill. In relevant part, SB 747 amends Texas Occupations Code, §1101.401 to expand from six months to one year the period of time in which an applicant may satisfy an examination requirement from the date the application is filed. In addition, the application and renewal requirements for business entities were changed in §§1101.355 and 1101.453 to require that business entities applying for and renewing a broker license must provide proof that the entity maintains errors and omissions insurance with a minimum annual limit of $1 Million if the designated broker owns less than 10 percent of the entity. Finally SB 747 amends Chapter 1101 to delete the exemption from licensing for partnerships in which a general partner is a broker and requires licensure as a broker for any business entity as defined in Section 1.002 of the Business Organizations Code Emergency action is necessary to amend §535.50, §535.51, and §535.53 to be consistent with SB 747.

Summary Agenda Item 8 cont.:

The amendments to §535.50 amend the list of definitions to define a designated broker of a business entity and to clarify that the designated broker must be an officer of a corporation, a manager of a limited liability company or a general partner of a partnership. The amendments to §535.51 clarify that an applicant must meet education and experience requirements before the applicant may take a qualifying examination. The amendments to §535.53 change the title of the rule to apply to all business entities, not just corporations and limited liability companies, to add partnerships to the types of business entities that must be licensed, and to address the requirement that business entities must maintain errors and omissions insurance if the designated broker owns less than 10 percent of the entity.

- Adopts on an emergency basis amendments to 22 TAC §535.93 regarding Late Renewal Applications. The amendments are adopted on an emergency basis to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). The effective date of the relevant provisions of SB 747 is September 1, 2011. The adoption of the amendment is necessary to comply with the effective date of the bill. In relevant part, SB 747 amended Texas Occupations Code, §1101.451 to change the maximum period of time in which a licensee can file a late renewal from one year to six months.

  The amendments to §535.93 change to six months any references to the one year period for filing a late renewal.

- Adopts on an emergency basis amendments to 22 TAC §535.101 regarding Fees. The amendments are adopted on an emergency basis to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). The effective date of the relevant provisions of SB 747 is September 1, 2011. The adoption of the amendment is necessary to comply with the effective date of the bill. In relevant part, SB 747 amended Texas Occupations Code, §1101. to change the maximum period of time in which a licensee can file a late renewal from one year to six months.

  The amendments to §535.101 change to six months the reference to the one year period for filing a late renewal in subsection (b)(11).

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Summary Agenda Item 8 cont.:

- Adopts on an emergency basis amendments to 22 TAC §535.132 Eligibility for Licensure. The amendments are adopted on an emergency basis to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). The effective date of the relevant provisions of SB 747 is September 1, 2011. The adoption of the amendment is necessary to comply with the effective date of the bill. In relevant part, SB 747 amends Texas Occupations Code, Chapter 1101 to delete the exemption from licensing for partnerships in which a general partner is a broker and requires licensure as a broker for any business entity as defined in Section 1.002 of the Business Organizations Code Emergency action is necessary to amend §535.132, to be consistent with SB 747.

The amendment to §535.132 makes emergency conforming changes to be consistent with the statutory text amended by SB 747.

- Adopts on an emergency basis amendments to 22 TAC Subchapter E, §535.141 regarding Initiation of Investigation. The amendments are adopted on an emergency basis to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). The effective date of the relevant provisions of SB 747 is September 1, 2011. The adoption of the amendment is necessary to comply with the effective date of the bill. In relevant part, SB 747 amends Texas Occupations Code, Chapter 1101 to delete the exemption from licensing for partnerships in which a general partner is a broker and requires licensure as a broker for any business entity as defined in Section 1.002 of the Business Organizations Code Emergency action is necessary to amend §535.5141 to be consistent with SB 747.

The amendments to §535.141 clarify that the rule applies to all business entities that are required to have a broker license under Chapter 1101, and to make conforming changes to the rule to be consistent with other rules that have been adopted on an emergency basis due to the September 1, 2011 effective date of the relevant provisions of SB 747.

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Summary Agenda Item 8 cont.:

- Adopts on an emergency basis amendments to 22 TAC §535.132 Eligibility for Licensure. The amendments are adopted on an emergency basis to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). The effective date of the relevant provisions of SB 747 is September 1, 2011. The adoption of the amendment is necessary to comply with the effective date of the bill. In relevant part, SB 747 amends Texas Occupations Code, Chapter 1101 to delete the exemption from licensing for partnerships in which a general partner is a broker and requires licensure as a broker for any business entity as defined in Section 1.002 of the Business Organizations Code Emergency action is necessary to amend §535.132, to be consistent with SB 747.

The amendment to §535.132 makes emergency conforming changes to be consistent with the statutory text amended by SB 747.

- Adopts on an emergency basis amendments to 22 TAC Subchapter E, §535.141 regarding Initiation of Investigation. The amendments are adopted on an emergency basis to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). The effective date of the relevant provisions of SB 747 is September 1, 2011. The adoption of the amendment is necessary to comply with the effective date of the bill. In relevant part, SB 747 amends Texas Occupations Code, Chapter 1101 to delete the exemption from licensing for partnerships in which a general partner is a broker and requires licensure as a broker for any business entity as defined in Section 1.002 of the Business Organizations Code Emergency action is necessary to amend §535.5141 to be consistent with SB 747.

The amendments to §535.141 clarify that the rule applies to all business entities that are required to have a broker license under Chapter 1101, and to make conforming changes to the rule to be consistent with other rules that have been adopted on an emergency basis due to the September 1, 2011 effective date of the relevant provisions of SB 747.

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Agenda Item 9:

Discussion and possible action to propose amendments to 22 TAC Chapter 535 as follows:

a. §535.4 regarding License Required

SUMMARY:

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.4 regarding License Required. The amendments are proposed to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). In relevant part, SB 747 amends the Texas Occupations Code Chapter 1101 to define a real estate broker to include a person who controls the acceptance or collection of rent from a resident of a single-family residential unit, and to require licensure as a broker for a business entity as defined in Section 1.002 of the Business Organizations Code which receives compensation on behalf of the licensee.

The amendment to §535.4(f) replaces an existing reference to a corporation or limited liability company to "business entity" to more closely track the text of the statute. The amendment to §535.4(g) defines the meaning of "controls the acceptance or deposit of rent" and "single family residential property unit" for purposes of §1101.002(1)(A)(x) of the Act.

Staff Recommendation:

Propose rule as proposed.

Recommended Motion:

MOVED, that staff is authorized, on behalf of this Commission, to submit the amendments to 22 TAC §535.4 regarding License Required as proposed for publication in the *Texas Register*, and public comment.

Agenda Item 9(a)

22 TAC §535.4

§535.4. License Required.

(a) – (e) No Change.

(f) A **business entity** ~~**corporation or limited liability company**~~ owned by a broker or salesperson which receives compensation on behalf of the licensee must be licensed as a broker under the Act.

[~~**(g) Unless otherwise exempted by the Act, a person who manages real property or collects rentals for an owner of real property and also rents or leases the property for the owner for valuable consideration must be licensed.**~~**]**

(g) For purposes of §1101.002(1)(A)(x) of the Act:

(1) A person controls the acceptance or deposit of rent from a resident of a single-family residential real property unit and must be licensed under the Act if:

(A) the person has the authority to use the rent to pay for services related to management of the property; or

(B) the person has the authority to deposit the rent into a trust or bank account and sign checks or withdraw money from the account.

(2) A single-family residential unit includes a single family home or a unit in a condominium, co-operative, row-home or townhome. The term does not include a duplex, triplex or four-plex unless the units are owned as a condominium, cooperative, row-home or townhome.

(h) – (m) No Change.

Agenda Item 9:

Discussion and possible action to propose amendments to 22 TAC Chapter 535 as follows:

b. §535.211 regarding Professional Liability Insurance, or Any Other Insurance That Provides Coverage for Violations of Subchapter G of Texas Occupations Code, Chapter 1102

SUMMARY:

The Texas Real Estate Commission (TREC) proposes an amendment to §535.211, Professional Liability Insurance, or Any Other Insurance that Provides Coverage for Violations of Subchapter G of Texas Occupations Code, Chapter 1102. The amendment updates the reference in subsection (c) to the current certificate of insurance form, REI COI-0.

Staff Recommendation:

Propose rule as proposed.

Recommended Motion:

MOVED, that staff is authorized, on behalf of this Commission, to submit the amendments to 22 TAC §535.211, Professional Liability Insurance, or Any Other Insurance that Provides Coverage for Violations of Subchapter G of Texas Occupations Code, Chapter 1102 as proposed for publication in the *Texas Register*, and public comment.

Agenda Item 9(b)

22 TAC §535.211 Professional Liability Insurance, or Any Other Insurance that Provides Coverage for Violations of Subchapter G of Texas Occupations Code, Chapter 1102.

535.211 Professional Liability Insurance, or Any Other Insurance that Provides Coverage for Violations of Subchapter G of Texas Occupations Code, Chapter 1102

(a) – (b) (No change.)

(c) The applicant must provide proof of insurance on Certificate Insurance form REI **COI-0** **[~~8-0~~]** signed by the applicant's insurance agent.

(d) – (f) (No change.)

MAILING ADDRESS:
TEXAS REAL ESTATE COMMISSION
P.O. Box 12188
Austin, Texas 78711-2188
www.trec.texas.gov

STREET ADDRESS:
TEXAS REAL ESTATE COMMISSION
1700 N. Congress, Suite 400
Austin, Texas 78701
Telephone: (512) 936-3000

CERTIFICATE OF INSURANCE

The Inspector shall furnish the Texas Real Estate Commission a new Certificate of Insurance not later than 15 days after the expiration of this Certificate of Insurance. This Certificate of Insurance expires on the date that the below named policy expires. This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This Certificate of Insurance neither affirmatively or negatively amends, extends, or alters the coverage afforded by the policy specified herein. The aggregate limit is as specified in the policy.

1. Inspector's Name

2. Mailing Address

Business Address (Fixed Office)

Mailing Address (if different)

City State Zip Code

3. Business Phone

4. Email Address

5. TREC Inspector License #

6. Insurance Company

7. Policy Number

(Binders not accepted)

8. Name of Policy Holder (if group policy)

9. Term Dates

Effective Expired

TEXAS ADMITTED CARRIER NO. _____ **OR** TEXAS SURPLUS LINE CO. NO. _____

10. Name of Insurance Agency

11. Insurance Agency Address

Number and Street

City State Zip Code

12. Name of Agent

13. Agent Phone

14. Policy Type:

OCCURRENCE ☐

CLAIMS MADE ☐

By my signature below, as an authorized insurance agent licensed to do business in the State of Texas, I hereby certify that the above policy meets the following minimum standards:

(1) provides for professional liability insurance for those insurable acts or omissions which would constitute violations of Tex. Occ. Code, Chapter 1102, Subchapter G, namely alleged negligent acts, errors, or omissions by the above named inspector; and
(2) is in a coverage amount of not less than $100,000 per occurrence.

Signature of insurance agent licensed to do business in Texas

Printed Name Date

CERTIFICATE HOLDER
TEXAS REAL ESTATE COMMISSION
P.O. Box 12188
Austin, Texas 78711-2188
PHONE 512-936-300 FAX 512-936-3864

CANCELLATION
Should any of the above described policies be cancelled or reduced the insurance agent shall notify the Texas Real Estate Commission (Certificate Holder) not more than 30 days after non-renewal or cancellation by the insured.

Agenda Item 10:

10. 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. §537.21 concerning Standard Contract Form TREC No. 10-5
    c. §537.22 concerning Standard Contract Form TREC No. 11-6
    d. §537.23 concerning Standard Contract Form TREC No. 12-2
    e. §537.26 concerning Standard Contract Form TREC No. 15-4
    f. §537.27 concerning Standard Contract Form TREC No. 16-4
    g. §537.28 concerning Standard Contract Form TREC No. 20-10
    h. §537.30 concerning Standard Contract Form TREC No. 23-11
    i. §537.31 concerning Standard Contract Form TREC No. 24-11
    j. §537.32 concerning Standard Contract Form TREC No. 25-8
    k. §537.33 concerning Standard Contract Form TREC No. 26-4
    l. §537.35 concerning Standard Contract Form TREC No. 28-1
    m. §537.37 concerning Standard Contract Form TREC No. 30-9
    n. §537.39 concerning Standard Contract Form TREC No. 32-2
    o. §537.40 concerning Standard Contract Form TREC No. 33-1
    p. §537.41 concerning Standard Contract Form TREC No. 34-3
    q. §537.43 concerning Standard Contract Form TREC No. 36-5
    r. §537.44 concerning Standard Contract Form TREC No. 37-3
    s. §537.45 concerning Standard Contract Form TREC No. 38-3
    t. §537.46 concerning Standard Contract Form TREC No. 39-6
    u. §537.47 concerning Standard Contract Form TREC No. 40-3
    v. §537.48 concerning Standard Contract Form TREC No. 41-1
    w. §537.51 concerning Standard Contract Form TREC No. 44-0
    x. §537.52 concerning Standard Contract Form TREC No. 45-0

Agenda Item 10:

SUMMARY:

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §537.20 concerning Standard Contract Form TREC No. 9-8, Unimproved Property Contract; §537.21 concerning Standard Contract Form TREC No. 10-5; §537.22 concerning Standard Contract Form TREC No. 11-6; §537.23 concerning Standard Contract Form TREC No. 12-2; §537.26 concerning Standard Contract Form TREC No. 15-4; §537.27 concerning Standard Contract Form TREC No. 16-4; §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; §537.33 concerning Standard Contract Form TREC No. 26-4; §537.35 concerning Standard Contract Form TREC No. 28-1; §537.37 concerning Standard Contract Form TREC No. 30-9; §537.39 concerning Standard Contract Form TREC No. 32-2; §537.40 concerning Standard Contract Form TREC No. 33-1; §537.41 concerning Standard Contract Form TREC No. 34-3; §537.43 concerning Standard Contract Form TREC No. 36-5; §537.44 concerning Standard Contract Form TREC No. 37-3; §537.45 concerning Standard Contract Form TREC No. 38-3; §537.46 concerning Standard Contract Form TREC No. 39-6; §537.47 concerning Standard Contract Form TREC No. 40-3; §537.48 concerning Standard Contract Form TREC No. 41-1; §537.51 concerning Standard Contract Form TREC No. 44-0; and §537.52 concerning Standard Contract Form TREC No. 45-0 The amendments propose to adopt by reference six revised contract forms and 18 assorted addenda for use by Texas real estate licensees.

Texas real estate licensees are generally required to use forms promulgated by TREC when negotiating contacts for the sale of real property. These forms are drafted by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and a public member appointed by the governor.

10 SUMMARY cont.:

Amendments to all of the forms adopted by reference change the main telephone number and website address for TREC located in the box on the penultimate and/or last page of each of the forms. Unless specifically referenced below, such changes are the only changes made to the forms adopted by reference.

The amendments to §537.28 propose to adopt by reference Standard Contract Form TREC No. 20-11, One to Four Family Residential Contract (Resale). Paragraph 6.B. is amended to add a sentence regarding the buyer's ability to terminate the contract if the commitment and exception documents are not delivered within the time required, which was deleted from paragraph 15; paragraph 6.D. is amended to add the phrase "by Buyer" to the sentence regarding waiver of Buyer's right to object to defects, exceptions or encumbrances to title; paragraph 6.E.(2) is amended to add additional disclosures required by amendments to §207.003,

Property Code; new subparagraph 6.E.(8) adds a new statutory disclosure regarding private transfer fee obligations; paragraph 7.A. is amended to require a seller to have utilities turned on and keep them on while the contract is in effect. Paragraph 7.E. is amended to change a phrase regarding the buyer's remedies if the seller fails to complete agreed repairs and treatments prior to the closing date; the new text provides that the buyer may exercise remedies under paragraph 15 or extend the closing date up to 15 days. Paragraph 15 is amended to delete the sentence regarding seller's failure to make non-casualty repairs or deliver the commitment or survey. The sentence was moved to paragraph 6.B.

The amendment to §537.20 proposes to adopt by reference Standard Contract Form TREC No. 9-10, Unimproved Property Contract. The proposed revisions are the same as those proposed for TREC Form No. 20-9, except that the transfer fee notice is new subparagraph 6.E.(9).

The amendment to §537.30 proposes to adopt by reference Standard Contract Form TREC No. 23-12, New Home Contract (Incomplete Construction). The proposed revisions are the same as those proposed for TREC Form No. 20-9, except that there are no amendments to paragraphs 7.A. or 7.E.

10 SUMMARY cont.:

The amendment to §537.31 proposes to adopt by reference Standard Contract Form TREC No. 24-10, New Home Contract (Completed Construction). The proposed revisions are the same as those proposed for TREC Form No. 20-9.

The amendment to §537.32 proposes to adopt by reference Standard Contract Form TREC No. 25-7, Farm and Ranch Contract. The proposed revisions are the same as those proposed for TREC Form No. 20-9, except that paragraph 6.E.2 is not amended.

The amendment to §537.37 proposes to adopt by reference Standard Contract Form TREC No. 30-8, Residential Condominium Contract The proposed revisions are the same as those proposed for TREC Form No. 20-9, except that paragraph 6.E.2 is not amended and the transfer fee notice is new subparagraph 6.D.(6).

The amendment to §537.43 propose to adopt by Standard Contract Form TREC No. 36-7, Addendum for Property Subject to Mandatory Membership in a Property Owners Association. Paragraphs A.1 and A.2 are deleted, and new paragraph A.1 is substituted to acknowledge recent statutory revisions which permit a buyer to obtain a resale certificate directly from a home owner's association. Paragraph B.2 is revised to replace "resulting from" to "associated with" to track recent statutory changes to Chapter 207, Property Code.

The amendment to §537.44 propose to adopt by Standard Contract Form TREC No. 37-4, Subdivision Information, Including Resale Certificate for Property Subject to Mandatory Membership in a Property Owners' Association. Paragraphs D, H, and I are amended to more closely track recent statutory changes to Chapter 207, Property Code.

The amendment to §537.46 propose to adopt by Standard Contract Form TREC No. 39-7, Amendment to Contract. Paragraph (8) is changed to reference the correct title of the Third Party Financing Condition Addendum for Credit Approval.

Agenda Item 10:

Staff Recommendation:

Propose rule as submitted.

Recommended Motion:

MOVED, that staff is authorized, on behalf of this Commission, to submit the amendments to to 22 TAC §537.20 concerning Standard Contract Form TREC No. 9-8, Unimproved Property Contract; §537.21 concerning Standard Contract Form TREC No. 10-5; §537.22 concerning Standard Contract Form TREC No. 11-6; §537.23 concerning Standard Contract Form TREC No. 12-2; §537.26 concerning Standard Contract Form TREC No. 15-4; §537.27 concerning Standard Contract Form TREC No. 16-4; §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; §537.33 concerning Standard Contract Form TREC No. 26-4; §537.35 concerning Standard Contract Form TREC No. 28-1; §537.37 concerning Standard Contract Form TREC No. 30-9; §537.39 concerning Standard Contract Form TREC No. 32-2; §537.40 concerning Standard Contract Form TREC No. 33-1; §537.41 concerning Standard Contract Form TREC No. 34-3; §537.43 concerning Standard Contract Form TREC No. 36-5; §537.44 concerning Standard Contract Form TREC No. 37-3; §537.45 concerning Standard Contract Form TREC No. 38-3; §537.46 concerning Standard Contract Form TREC No. 39-6; §537.47 concerning Standard Contract Form TREC No. 40-3; §537.48 concerning Standard Contract Form TREC No. 41-1; §537.51 concerning Standard Contract Form TREC No. 44-0; and §537.52 concerning Standard Contract Form TREC No. 45-0 and forms adopted by reference as proposed for publication in the *Texas Register*, and public comment.

Agenda Item 10

Chapter 537 Professional Agreements and Standard Contracts

§537.20. Standard Contract Form TREC No. 9-10 [~~9-9~~]. The Texas Real Estate Commission adopts by reference standard contract form TREC No. **9-10 [~~9-9~~]** approved by the Texas Real Estate Commission in **2012 [~~2011~~]** 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.texas.gov.

§537.21. Standard Contract Form TREC No. 10-6 [~~10-5~~]. The Texas Real Estate Commission adopts by reference standard contract form TREC No. **10-6 [~~10-5~~]** approved by the Texas Real Estate Commission in **2012 [~~2007~~]** for use as an addendum concerning sale of other property by a buyer to be attached 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.texas.gov [~~www.trec.state.tx.us~~]**.

§537.22. Standard Contract Form TREC No. 11-7 [~~11-6~~]. The Texas Real Estate Commission adopts by reference standard contract form TREC No. **11-7 [~~11-6~~]** approved by the Texas Real Estate Commission in **2012 [~~2007~~]** for use as an addendum to be attached to promulgated forms of contracts which are second or "back-up" contracts. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, **www.trec.texas.gov [~~www.trec.state.tx.us~~]**.

§537.23. Standard Contract Form TREC No. 12-3 [~~12-2~~]. The Texas Real Estate Commission adopts by reference standard contract form TREC No. **12-3 [~~12-2~~]** approved by the Texas Real Estate Commission in **2012 [~~2007~~]** for use as an addendum to be attached to promulgated forms of contracts where there is a Veterans Administration release of liability or restoration entitlement. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, **www.trec.texas.gov [~~www.trec.state.tx.us~~]**.

§537.26. Standard Contract Form TREC No. 15-5 [~~15-4~~]. The Texas Real Estate Commission adopts by reference standard contract form TREC No. **15-5 [~~15-4~~]** approved by the Texas Real Estate Commission in **2012 [~~2006~~]** for use as a residential lease when a seller temporarily occupies property after closing. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711, **www.trec.texas.gov [~~www.trec.state.tx.us~~]**.

§537.27. Standard Contract Form TREC No. 16-5 [~~16-4~~]. The Texas Real Estate Commission adopts by reference standard contract form TREC No. **16-5 [~~16-4~~]** approved by the Texas Real Estate Commission in **2012 [~~2006~~]** for use as a residential lease when a buyer temporarily occupies property prior to closing. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711, **www.trec.texas.gov [~~www.trec.state.tx.us~~]**.

§537.28. Standard Contract Form TREC No. 20-11 [~~20-10~~]. The Texas Real Estate Commission adopts by reference standard contract form TREC No. **20-11 [~~20-10~~]** approved by the Texas Real Estate Commission in **2012 [~~2011~~]** 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.texas.gov.

§537.30. Standard Contract Form TREC No. 23-12 [~~23-11~~]. The Texas Real Estate Commission adopts by reference standard contract form TREC No. **23-12 [~~23-11~~]** approved by the Texas Real Estate Commission in **2012 [~~2011~~]** 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.texas.gov.

§537.31. Standard Contract Form TREC No. 24-12 [~~24-11~~]. The Texas Real Estate Commission adopts by reference standard contract form TREC No. **24-12 [~~24-11~~]** approved by the Texas Real Estate Commission in **2012 [~~2011~~]** 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.texas.gov.

§537.32. Standard Contract Form TREC No. 25-9 [~~25-8~~]. The Texas Real Estate Commission adopts by reference standard contract form TREC No. **25-9 [~~25-8~~]** approved by the Texas Real Estate Commission in **2012 [~~2011~~]** 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.texas.gov.

§537.33. Standard Contract Form TREC No. 26-6 [~~26-4~~]. The Texas Real Estate Commission adopts by reference standard contract form TREC No. **26-6 [~~26-5~~]** approved by the Texas Real Estate Commission in **2012 [~~2006~~]** for use as an addendum concerning seller financing. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, **www.trec.texas.gov [~~www.trec.state.tx.us~~]**.

§537.35. Standard Contract Form TREC No. 28-2 [~~28-1~~]. The Texas Real Estate Commission adopts by reference standard contract form TREC No. **28-2 [~~28-1~~]** approved by the Texas Real Estate Commission in **2012 [~~2007~~]** for use as an addendum to be attached to promulgated forms of contracts where reports are to be obtained relating to environmental assessments, threatened or endangered species, or wetlands. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, **www.trec.texas.gov [~~www.trec.state.tx.us~~]**.

§537.37. Standard Contract Form TREC No. 30-10 [~~30-9~~]. The Texas Real Estate Commission adopts by reference standard contract form TREC No. **30-10 [~~30-9~~]** approved by the Texas Real Estate Commission in **2012 [~~2011~~]** 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.texas.gov.

§537.39. Standard Contract Form TREC No. 32-3 [~~32-2~~]. The Texas Real Estate Commission adopts by reference standard contract form TREC No. **32-3 [~~32-2~~]** approved by the Texas Real Estate Commission in **2012 [~~2008~~]** for use as a condominium resale certificate. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, **www.trec.texas.gov [~~www.trec.state.tx.us~~]**.

§537.40. Standard Contract Form TREC No. 33-2 [~~33-1~~]. The Texas Real Estate Commission adopts by reference standard contract form TREC No. **33-2 [~~33-1~~]** approved by the Texas Real Estate Commission in **2012 [~~2007~~]** for use as an addendum to be added to promulgated forms of contracts in the sale of property adjoining and sharing a common boundary with the tidally influenced submerged lands of the state. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, **www.trec.texas.gov [~~www.trec.state.tx.us~~]**.

§537.41. Standard Contract Form TREC No. 34-4 [~~34-3~~]. The Texas Real Estate Commission adopts by reference standard contract form, TREC No. **34-4 [~~34-3~~]** approved by the Texas Real Estate Commission in **2012 [~~2008~~]** for use as an addendum to be added to promulgated forms of contracts in the sale of property located seaward of the Gulf Intracoastal Waterway. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, **www.trec.texas.gov [~~www.trec.state.tx.us~~]**.

§537.43. Standard Contract Form TREC No. 36-6 [~~36-5~~]. The Texas Real Estate Commission adopts by reference standard contract form TREC No. **36-6 [~~36-5~~]** approved

by the Texas Real Estate Commission in **2012** **[~~2008~~]** for use as an addendum to be added to promulgated forms in the sale of property subject to mandatory membership in an owners' association. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188**, www.trec.texas.gov** **[~~www.trec.state.tx.us~~]**.

§537.44. Standard Contract Form TREC No. 37-4 [~~37-3~~]. The Texas Real Estate Commission adopts by reference standard contract form TREC No. **37-4** **[~~37-3~~]** approved by the Texas Real Estate Commission in **2012** **[~~2008~~]** for use as a resale certificate when the property is subject to mandatory membership in an owners' association. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, **www.trec.texas.gov** **[~~www.trec.state.tx.us~~]**.

§537.45. Standard Contract Form TREC No. 38-4 [~~38-3~~]. The Texas Real Estate Commission adopts by reference standard contract form TREC No. **38-4** **[~~38-3~~]** approved by the Texas Real Estate Commission in **2012** **[~~2011~~]** 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.texas.gov** **[~~www.trec.state.tx.us~~]**.

§537.46. Standard Contract Form TREC No. 39-7 [~~39-6~~]. The Texas Real Estate Commission adopts by reference standard contract form TREC No. **39-7** **[~~39-6~~]** approved by the Texas Real Estate Commission in **2012** **[~~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.texas.gov** **[~~www.trec.state.tx.us~~]**.

§537.47. Standard Contract Form TREC No. 40-4 [~~40-3~~]. The Texas Real Estate Commission adopts by The Texas Real Estate Commission adopts by reference standard contract form, TREC No. **40-4** **[~~40-3~~]** approved by the Texas Real Estate Commission in **2012** **[~~2008~~]** for use as an addendum to be added to promulgated forms of contracts when there is a condition for third party financing. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, **www.trec.texas.gov** **[~~www.trec.state.tx.us~~]**.

§537.48. Standard Contract Form TREC No. 41-2 [~~41-1~~]. The Texas Real Estate Commission adopts by reference standard contract form TREC No. **41-2** **[~~41-1~~]** approved by the Texas Real Estate Commission in **2012** **[~~2007~~]** for use as an addendum to be added to promulgated forms of contracts when there is an assumption of a loan. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, **www.trec.texas.gov** **[~~www.trec.state.tx.us~~]**.

§537.51. Standard Contract Form TREC No. 44-1 [~~44-0~~]. The Texas Real Estate Commission adopts by reference standard contract form TREC No. **44-1** **[~~44-0~~]** approved by the Texas Real Estate Commission in **2012** **[~~2008~~]** for use as an addendum to be added to promulgated forms of contacts for the reservation of oil, gas, and other minerals. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, **www.trec.texas.gov** **[~~www.trec.state.tx.us~~]**.

§537.52. Standard Contract Form TREC No. 45-1 [~~45-0~~]. The Texas Real Estate Commission adopts by reference standard contract form TREC No. **45-1** **[~~45-0~~]** approved by the Texas Real Estate Commission in **2012** **[~~2008~~]** for use as an addendum to be added to promulgated forms of contracts in the short sale of property. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, **www.trec.texas.gov** **[~~www.trec.state.tx.us~~]**.

EQUAL HOUSING OPPORTUNITY

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, door keys, mailbox keys, above ground pool, swimming pool equipment and maintenance accessories, 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.

(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. If, due to factors beyond Seller's control, the Commitment and Exception Documents are not delivered within the time required, Buyer may terminate this contract and the earnest money will be refunded to Buyer.

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 by Buyer. 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) MEMBERSHIP IN 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 all dedicatory instruments governing the establishment, maintenance, or 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 instruments 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 enforcement of the association's[a] lien on and the foreclosure of the Property.

Section 207.003, Property Code, entitles an owner to receive copies of any document that governs the establishment, maintenance, or operation of a subdivision, including, but not limited to, restrictions, bylaws, rules and regulations, and a resale certificate from a property owners' association. A resale certificate contains information including, but not limited to, statements specifying the amount and frequency of regular assessments and the style and cause number of lawsuits to which the property owners' association is a party, other than lawsuits relating to unpaid ad valorem taxes of an individual member of the association. These documents must be made available to you by the property owners' association or the association's agent on your request.

If Buyer is concerned about these matters, the TREC promulgated Addendum for Property Subject to Mandatory Membership in a Property Owners Association(s) 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.

(8) TRANSFER FEES: If the Property is subject to a private transfer fee obligation, §5.205, Property Code, requires Seller to notify Buyer as follows: The private transfer fee obligation may be governed by Chapter 5, Subchapter G of the Texas Property Code.

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 immediately cause existing utilities to be turned on and shall keep the utilities on during the time this contract is in effect [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 exercise remedies under Paragraph 15 or extend the Closing Date up to 15 days [do so and receive reimbursement

from Seller at closing. The Closing Date will be extended up to 15 days,] if necessary to complete the 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 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): 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: 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, 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: _____	**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
- ❑ 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) 936-3000 (http://www.trec.texas.gov) TREC NO. 20-11[10]. This form replaces TREC NO. 20-10[8].

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

_____ Telephone (_____) _____
Address

_____ Facsimile: (_____) _____
City State Zip

PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC) 10-10-11

EQUAL HOUSING OPPORTUNITY

ADDENDUM FOR PROPERTY SUBJECT TO MANDATORY MEMBERSHIP IN A PROPERTY OWNERS ASSOCIATION

(NOT FOR USE WITH CONDOMINIUMS)

ADDENDUM TO CONTRACT CONCERNING THE PROPERTY AT

_____

(Street Address and City)

_____

(Name of Property Owners Association)

A. SUBDIVISION INFORMATION: "Subdivision Information" means: (i) the restrictions applying to the subdivision, (ii) the bylaws and rules of the Property Owners Association(s)(Association), and (iii) a resale certificate, all of which comply with Section 207.003 of the Texas Property Code.

[(Check only one box):]

❑ 1. Buyer may obtain the Subdivision Information directly from the Association. If Buyer objects to a matter in the Subdivision Information, Buyer may terminate the contract by providing notice of termination and a copy of the Subdivision Information to Seller within ___ days after the effective date of this contract. Upon termination, the earnest money will be refunded to Buyer. Seller shall reimburse Buyer at closing Buyer's cost of obtaining the Subdivision Information in an amount not to exceed $_____. [Within _____ days after the effective date of the contract, Seller shall, at Seller's expense, deliver the Subdivision Information to Buyer. If Buyer does not receive the Subdivision Information, Buyer may terminate the contract at any time prior to closing and the earnest money will be refunded to Buyer. If Seller delivers the Subdivision Information, Buyer may terminate the contract for any reason within 7 days after Buyer receives the Subdivision Information or prior to closing, whichever first occurs, and the earnest money will be refunded to Buyer.]

❑ 2. [Buyer has received and approved the Subdivision Information before signing the contract. Buyer ❑ does ❑ does not require an updated resale certificate. If Buyer requires an updated resale certificate, Seller, at Buyer's expense, shall deliver it to Buyer within 10 days after receiving payment for the updated resale certificate from Buyer. Buyer may terminate this contract and the earnest money will be refunded to Buyer if Seller fails to deliver the updated resale certificate within the time required.]

[❑ 3.]Buyer does not require delivery of the Subdivision Information.

[If Seller becomes aware of any material changes in the Subdivision Information, Seller shall promptly give notice to Buyer.]

[Buyer may terminate the contract prior to closing by giving written notice to Seller if: (i) any of the Subdivision Information provided was not true; or (ii) any material adverse change in the Subdivision Information occurs prior to closing, and the earnest money will be refunded to Buyer.]

B. FEES: Except as provided by Paragraph C, Buyer shall pay any and all Association fees or other charges associated with [resulting from] the transfer of the Property not to exceed $_____ and Seller shall pay any excess.

C. DEPOSITS FOR RESERVES: Buyer shall pay any deposits for reserves required at closing by the Association.

NOTICE TO BUYER REGARDING REPAIRS BY THE ASSOCIATION: The Association may have the sole responsibility to make certain repairs to the Property. If you are concerned about the condition of any part of the Property which the Association is required to repair, you should not sign the contract unless you are satisfied that the Association will make the desired repairs.

_____	_____
Buyer	Seller
_____	_____
Buyer	Seller

The form of this addendum has been approved by the Texas Real Estate Commission for use only with similarly approved or promulgated forms of contracts. Such approval relates to this contract 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, (512) 936-3000 (www.trec.texas.gov[459-6544 (http://www.trec.state.tx.us)] TREC No. 36-7[6]. This form replaces TREC No. 36-5.

EQUAL HOUSING OPPORTUNITY

SUBDIVISION INFORMATION, INCLUDING RESALE CERTIFICATE FOR PROPERTY SUBJECT TO MANDATORY MEMBERSHIP IN A PROPERTY OWNERS' ASSOCIATION

(Chapter 207, Texas Property Code)

Resale Certificate concerning the Property (including any common areas assigned to the Property) located at _____(Street Address), City of _____, County of _____, Texas, prepared by the property owners' association (Association).

A. The Property ❑is ❑ is not subject to a right of first refusal (other than a right of first refusal prohibited by statute) or other restraint contained in the restrictions or restrictive covenants that restricts the owner's right to transfer the owner's property.

B. The current regular assessment for the Property is $_____ per _____.

C. A special assessment for the Property due after [the date] this [the] resale certificate is [was] delivered [prepared] is $_____payable as follows_____ for the following purpose: _____.

D. The total of all amounts due and unpaid to the Association that are attributable to the Property is $ _____ .

E. The capital expenditures approved by the Association for its current fiscal year are $ _____.

F. The amount of reserves for capital expenditures is $_____.

G. Unsatisfied judgments against the Association total $_____.

H. Other than lawsuits relating to unpaid ad valorem taxes of an individual member of the association, there [There] ❑ are ❑ are not any suits pending against the Association . The style and cause number of each pending suit is: _____.

I. The Association's board ❑has actual knowledge ❑has no actual knowledge of conditions on the Property in violation of the restrictions applying to the subdivision or the bylaws or rules of the Association. Known violations are: _____.

J. The Association ❑has ❑has not received notice from any governmental authority regarding health or building code violations with respect to the Property or any common areas or common facilities owned or leased by the Association. A summary or copy of each notice is attached.

K. The amount of any administrative transfer fee charged by the Association for a change of ownership of property in the subdivision is $ _____. Describe all fees associated with the transfer of ownership (include a description of each fee, to whom each fee is payable and the amount of each fee. _____

_____

_____

[The Association fees resulting from the transfer of the Property are $_____, payable to _____.

_____]

L. The Association's managing agent is _____
(Name of Agent)

_____
(Mailing Address)

_____ _____
(Telephone Number) (Fax Number)

_____
(E-mail Address)

M. The restrictions ❑ do ❑ do not allow foreclosure of the Association's lien on the Property for failure to pay assessments.

REQUIRED ATTACHMENTS:

1. Restrictions
2. Rules
3. Bylaws
4. Current Balance Sheet
5. Current Operating Budget
6. Certificate of Insurance concerning Property and Liability Insurance for Common Areas and Facilities
7. Any Governmental Notices of Health or Housing Code Violations

NOTICE: This Subdivision Information may change at any time.

_____
Name of Association

By: _____

Print Name: _____

Title: _____

Date: _____

Mailing Address: _____

E-mail: _____

This form has been approved by the Texas Real Estate commission for use only with similarly approved or promulgated contract forms. No representation is made as to the legal validity or adequacy of any provision in any specific transaction. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, 512-936-3000 [1-800-250-8732 or (512) 459-6544] (http://www.trec.texas.gov [state.tx.us]) TREC No. 37-4[3]. This form replaces TREC No. 37-3[2].

PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC) 10-10-11

EQUAL HOUSING OPPORTUNITY

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 _____, 20_____.

❑(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: $ _____ by Seller; $ _____ by Buyer.

❑(6) Buyer has paid Seller an additional Option Fee of $ _____ for an extension of the unrestricted right to terminate the contract on or before _____ , 20_____. This additional Option Fee ❑ will ❑ will not be credited to the Sales Price.

❑(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 for Credit Approval is changed to _____, 20_____.

❑(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

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EQUAL HOUSING OPPORTUNITY

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's 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".

draft

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. If, due to factors beyond Seller's control, the Commitment and Exception Documents are not delivered within the time required, Buyer may terminate this contract and the earnest money will be refunded to Buyer.

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) MEMBERSHIP IN PROPERTY OWNERS ASSOCIATION(S): 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 all dedicatory instruments 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 instruments 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 enforcement of the association's lien on and the foreclosure of the Property.

Section 207.003, Property Code, entitles an owner to receive copies of any document that governs the establishment, maintenance, or operation of a subdivision, including, but not limited to, restrictions, bylaws, rules and regulations, and a resale certificate from a property owners' association. A resale certificate contains information including, but not limited to, statements specifying the amount and frequency of regular assessments and the style and cause number of lawsuits to which the property owners' association is a party, other than lawsuits relating to unpaid ad valorem taxes of an individual member of the association. These documents must be made available to you by the property owners' association or the association's agent on your request.

If Buyer is concerned about these matters, the TREC promulgated Addendum for

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Property Subject to Mandatory Membership in a Property Owners Association should be used.

(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.

(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.

(9) TRANSFER FEES: If the Property is subject to a private transfer fee obligation, §5.205, Property Code requires Seller to notify Buyer as follows: The private transfer fee obligation may be governed by Chapter 5, Subchapter G of the Texas Property Code.

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 immediately cause existing utilities to be turned on and shall keep the utilities on during the time this contract is in effect.

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

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prior to the Closing Date, Buyer may exercise remedies under Paragraph 15 or extend the Closing Date 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.

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(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 Seller fails to comply with this contract, 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

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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:	**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
- ❑ Seller's Temporary Residential Lease
- ❑ 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
- ❑ Addendum for Property Located Seaward of the Gulf Intracoastal Waterway
- ❑ Addendum for Sale of Other Property by Buyer
- ❑ Other (list): _____

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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) 936-3000 (http://www.trec.texas.gov) TREC NO. 9-10. This form replaces TREC NO. 9-9.

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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.

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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

_____ Telephone (_____) _____
Address

_____ Facsimile: (_____) _____
City State Zip

EQUAL HOUSING OPPORTUNITY

PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)

ADDENDUM FOR SALE OF OTHER PROPERTY BY BUYER

TO CONTRACT CONCERNING THE PROPERTY AT

_____

(Address of Property)

A. The contract is contingent upon Buyer's **receipt of the proceeds** from the sale of Buyer's property at_____ (Address) on or before _____, 20_____ (the Contingency). If the Contingency is not satisfied or waived by Buyer by the above date, the contract will terminate automatically and the earnest money will be refunded to Buyer.

NOTICE: The date inserted in this Paragraph should be no later than the Closing Date specified in Paragraph 9 of the contract.

B. If Seller accepts a written offer to sell the Property, Seller shall notify Buyer (1) of such acceptance **AND** (2) that Seller requires Buyer to waive the Contingency. Buyer must waive the Contingency on or before the _____ day after Seller's notice to Buyer; otherwise the contract will terminate automatically and the earnest money will be refunded to Buyer.

C. Buyer may waive the Contingency only by notifying Seller of the waiver and depositing $_____ with escrow agent as additional earnest money. All notices and waivers must be in writing and are effective when delivered in accordance with the contract.

D. If Buyer waives the Contingency and fails to close and fund solely due to Buyer's non-receipt of proceeds from Buyer's property described in Paragraph A above, Buyer will be in default. If such default occurs, Seller may exercise the remedies specified in Paragraph 15 of the contract.

E. For purposes of this Addendum time is of the essence; strict compliance with the times for performance stated herein is required.

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_____	_____
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 suitable for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, 512-936-3000 (http://www.trex.texas.gov) TREC No. 10-6. This form replaces TREC No. 10-5.

EQUAL HOUSING OPPORTUNITY

ADDENDUM FOR "BACK-UP" CONTRACT

TO CONTRACT CONCERNING THE PROPERTY AT

_____

(Address of Property)

A. The contract to which this Addendum is attached (the Back-Up Contract) is binding upon execution by the parties, and the earnest money and any Option Fee must be paid as provided in the Back-Up Contract. The Back-Up Contract is contingent upon the termination of a previous contract (the First Contract) dated _____, 20_____, for the sale of Property. Except as provided by this Addendum, neither party is required to perform under the Back-Up Contract while it is contingent upon the termination of the First Contract.

B. If the First Contract does not terminate on or before _____, 20_____, the Back-Up Contract terminates and the earnest money will be refunded to Buyer. Seller must notify Buyer immediately of the termination of the First Contract. For purposes of performance, the effective date of the Back-Up Contract changes to the date Buyer receives notice of termination of the First Contract (Amended Effective Date).

C. An amendment or modification of the First Contract will not terminate the First Contract.

D. If Buyer has the unrestricted right to terminate the Back-Up Contract, the time for giving notice of termination begins on the effective date of the Back-Up Contract, continues after the Amended Effective Date and ends upon the expiration of Buyer's unrestricted right to terminate the Back-Up Contract.

E. For purposes of this Addendum, time is of the essence. Strict compliance with the times for performance stated herein is required.

_____ _____

Buyer Seller

_____ _____

Buyer Seller

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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, 512-936-3000 (http://www.trec.texas.gov) TREC No. 11-7. This form replaces TREC No. 11-6.

EQUAL HOUSING OPPORTUNITY

ADDENDUM FOR RELEASE OF LIABILITY ON ASSUMED LOAN AND/OR RESTORATION OF SELLER'S VA ENTITLEMENT

TO CONTRACT CONCERNING THE PROPERTY AT

_____
(Address of Property)

❑ A. RELEASE OF SELLER'S LIABILITY ON LOAN TO BE ASSUMED:

Within _____ days after the effective date of this contract Seller and Buyer shall apply for release of Seller's liability from (a) any conventional lender, (b) VA and any lender whose loan has been guaranteed by VA, or (c) FHA and any lender whose loan has been insured by FHA. Seller and Buyer shall furnish all required information and documents. If any release of liability has not been approved by the Closing Date: (check one box only)

❑ (1) This contract will terminate and the earnest money will be refunded to Buyer.

❑ (2) Failure to obtain release approval will not delay closing.

❑ B. RESTORATION OF SELLER'S ENTITLEMENT FOR VA LOAN:

Within _____ days after the effective date of this contract Seller and Buyer shall apply for restoration of Seller's VA entitlement and shall furnish all information and documents required by VA. If restoration has not been approved by the Closing Date: (check one box only)

❑ (1) This contract will terminate and the earnest money will be refunded to Buyer.

❑ (2) Failure to obtain restoration approval will not delay closing.

NOTICE: VA will not restore Seller's VA entitlement unless Buyer: (a) is a veteran, (b) has sufficient unused VA entitlement and (c) is otherwise qualified. If Seller desires restoration of VA entitlement, paragraphs A and B should be used.

Seller shall pay the cost of securing the release and restoration.

Seller's deed will contain any loan assumption clause required by FHA, VA or any lender.

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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 suitable for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, 512-936-3000 (http://www.trec.texas.gov) TREC No. 12-3. This form replaces TREC No. 12-2.

PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC) 10-10-11

(NOTICE: For use only when SELLER occupies the property for no more than 90 days AFTER the closing)

EQUAL HOUSING OPPORTUNITY

SELLER'S TEMPORARY RESIDENTIAL LEASE

1. **PARTIES:** The parties to this Lease are _____ (Landlord) and _____ (Tenant).

2. **LEASE:** Landlord leases to Tenant the Property described in the Contract between Landlord as Buyer and Tenant as Seller known as _____ _____ (address).

3. **TERM:** The term of this Lease commences on the date the sale covered by the Contract is closed and funded and terminates _____, unless terminated earlier by reason of other provisions.

4. **RENTAL:** Tenant shall pay to Landlord as rental $_____ per day (excluding the day of closing and funding) with the full amount of rental for the term of the Lease to be paid at the time of funding of the sale. Tenant will not be entitled to a refund of rental if this Lease terminates early due to Tenant's default or voluntary surrender of the Property.

5. **DEPOSIT:** Tenant shall pay to Landlord at the time of funding of the sale $_____ as a deposit to secure performance of this Lease by Tenant. Landlord may use the deposit to satisfy Tenant's obligations under this Lease. Landlord shall refund any unused portion of the deposit to Tenant with an itemized list of all deductions from the deposit within 30 days after Tenant (a) surrenders possession of the Property and (b) provides Landlord written notice of Tenant's forwarding address.

6. **UTILITIES:** Tenant shall pay all utility charges except _____ which Landlord shall pay.

7. **USE OF PROPERTY:** Tenant may use the Property only for residential purposes. Tenant may not assign this Lease or sublet any part of the Property.

8. **PETS:** Tenant may not keep pets on the Property except _____.

9. **CONDITION OF PROPERTY:** Tenant accepts the Property in its present condition and state of repair at the commencement of the Lease. Upon termination, Tenant shall surrender the Property to Landlord in the condition required under the Contract, except normal wear and tear and any casualty loss.

10. **ALTERATIONS:** Tenant may not alter the Property or install improvements or fixtures without the prior written consent of the Landlord. Any improvements or fixtures placed on the Property during the Lease become the Property of Landlord.

11. **SPECIAL PROVISIONS:**

12. **INSPECTIONS:** Landlord may enter at reasonable times to inspect the Property. Tenant shall provide Landlord door keys and access codes to allow access to the Property during the term of Lease.

13. **LAWS:** Tenant shall comply with all applicable laws, restrictions, ordinances, rules and regulations with respect to the Property.

14. **REPAIRS AND MAINTENANCE:** Except as otherwise provided in this Lease, Tenant shall bear all expense of repairing and maintaining the Property, including but not limited to the yard, trees and shrubs, unless otherwise required by the Texas Property Code. Tenant shall promptly repair at Tenant's expense any damage to the Property caused directly or indirectly by any act or omission of the Tenant or any person other than the Landlord, Landlord's agents or invitees.

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15. INDEMNITY: Tenant indemnifies Landlord from the claims of all third parties for injury or damage to the person or property of such third party arising from the use or occupancy of the Property by Tenant. This indemnification includes attorney's fees, costs and expenses incurred by Landlord.

16. INSURANCE: Landlord and Tenant shall each maintain such insurance on the contents and Property as each party may deem appropriate during the term of this Lease. NOTE: CONSULT YOUR INSURANCE AGENT; POSSESSION OF THE PROPERTY BY SELLER AS TENANT MAY CHANGE INSURANCE POLICY COVERAGE.

17. DEFAULT: If Tenant fails to perform or observe any provision of this Lease and fails, within 24 hours after notice by Landlord, to commence and diligently pursue to remedy such failure, Tenant will be in default.

18. TERMINATION: This Lease terminates upon expiration of the term specified in Paragraph 3 or upon Tenant's default under this Lease.

19. HOLDING OVER: Tenant shall surrender possession of the Property upon termination of this Lease. Any possession by Tenant after termination creates a tenancy at sufferance and will not operate to renew or extend this Lease. Tenant shall pay $_____ per day during the period of any possession after termination as damages, in addition to any other remedies to which Landlord is entitled.

20. ATTORNEY'S FEES: The prevailing party in any legal proceeding brought under or with respect to this Lease is entitled to recover from the non-prevailing party all costs of such proceeding and reasonable attorney's fees.

21. SMOKE DETECTORS: The Texas Property Code requires Landlord to install smoke detectors in certain locations within the Property at Landlord's expense. Tenant expressly waives Landlord's duty to inspect and repair smoke detectors.

22. SECURITY DEVICES: The requirements of the Texas Property Code relating to security devices do not apply to a residential lease for a term of 90 days or less.

23. CONSULT YOUR ATTORNEY: Real estate licensees cannot give legal advice. This Lease is intended to be legally binding. READ IT CAREFULLY. If you do not understand the effect of this Lease, consult your attorney BEFORE signing.

24. 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 Landlord: _____	**To Tenant:** _____
_____	_____
_____	_____
_____	_____
Telephone: ( ) _____	Telephone: ( ) _____
Facsimile: ( ) _____	Facsimile: ( ) _____
E-mail: _____	E-mail: _____

_____	_____
Landlord	Tenant
_____	_____
Landlord	Tenant

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, 512-936-3000 (http://www.trec.texas.gov) TREC NO. 15-5. This form replaces TREC NO. 15-4.

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PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC) 10-10-11

(NOTICE: For use only when BUYER occupies the property for no more than 90 days PRIOR the closing)

EQUAL HOUSING OPPORTUNITY

BUYER'S TEMPORARY RESIDENTIAL LEASE

1. **PARTIES:** The parties to this Lease are_____ (Landlord) and _____(Tenant).

2. **LEASE:** Landlord leases to Tenant the Property described in the Contract between Landlord as Seller and Tenant as Buyer known as _____ _____(address).

3. **TERM:** The term of this Lease commences _____ and terminates as specified in Paragraph 18.

4. **RENTAL:** Rental will be $_____ per day. Upon commencement of this Lease, Tenant shall pay to Landlord the full amount of rental of $ _____ for the anticipated term of the Lease (commencement date to the Closing Date specified in Paragraph 9 of the Contract). If the actual term of this Lease differs from the anticipated term, any additional rent or reimbursement will be paid at closing. No portion of the rental will be applied to payment of any items covered by the Contract.

5. **DEPOSIT:** Tenant has paid to Landlord $_____ as a deposit to secure performance of this Lease by Tenant. If this Lease is terminated before the Closing Date, Landlord may use the deposit to satisfy Tenant's obligations under this Lease. Landlord shall refund to Tenant any unused portion of the deposit together with an itemized list of all deductions from the deposit within 30 days after Tenant (a) surrenders possession of the Property and (b) provides Landlord written notice of Tenant's forwarding address. If this Lease is terminated by the closing and funding of the sale of the Property, the deposit will be refunded to Tenant at closing and funding.
NOTICE: The deposit must be in addition to the earnest money under the Contract.

6. **UTILITIES:** Tenant shall pay all utility connections, deposits and charges except _____ _____, which Landlord shall pay.

7. **USE OF PROPERTY:** Tenant may use the Property only for residential purposes. Tenant may not assign this Lease or sublet any part of the Property.

8. **PETS:** Tenant may not keep pets on the Property except _____.

9. **CONDITION OF PROPERTY:** Tenant accepts the Property in its present condition and state of repair, but Landlord shall make all repairs and improvements required by the Contract. If this Lease is terminated prior to closing, Tenant shall surrender possession of the Property to Landlord in its present condition, as improved by Landlord, except normal wear and tear and any casualty loss.

10. **ALTERATIONS:** Tenant may not: (a) make any holes or drive nails into the woodwork, floors, walls or ceilings (b) alter, paint or decorate the Property or (c) install improvements or fixtures without the prior written consent of Landlord. Any improvements or fixtures placed on the Property during the Lease become a part of the Property.

11. **SPECIAL PROVISIONS:**

12. **INSPECTIONS:** Landlord may enter at reasonable times to inspect, replace, repair or complete the improvements. Tenant shall provide Landlord door keys and access codes to allow access to the Property during the term of the Lease.

13. **LAWS:** Tenant shall comply with all applicable laws, restrictions, ordinances, rules and regulations with respect to the Property.

14. **REPAIRS AND MAINTENANCE:** Except as otherwise provided in this Lease, Tenant shall bear all expense of repairing, replacing and maintaining the Property, including but not limited to the yard, trees, shrubs, and all equipment and appliances, unless otherwise required by the Texas Property Code. Tenant shall promptly repair at Tenant's expense any damage to the Property caused directly or indirectly by any act or omission of the Tenant or any person other than the Landlord, Landlord's agents or invitees.

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15. INDEMNITY: Tenant indemnifies Landlord from the claims of all third parties for injury or damage to the person or property of such third party arising from the use or occupancy of the Property by Tenant. This indemnification includes attorney's fees, costs and expenses incurred by Landlord.

16. INSURANCE: Landlord and Tenant shall each maintain such insurance on the contents and Property as each party may deem appropriate during the term of this Lease. NOTE: CONSULT YOUR INSURANCE AGENT; POSSESSION OF THE PROPERTY BY BUYER AS TENANT MAY CHANGE INSURANCE POLICY COVERAGE.

17. DEFAULT: If Tenant fails to perform or observe any provision of this Lease and fails, within 24 hours after notice by Landlord, to commence and diligently pursue to remedy such failure, Tenant will be in default.

18. TERMINATION: This Lease terminates upon (a) closing and funding of the sale under the Contract, (b) termination of the Contract prior to closing, (c) Tenant's default under this Lease, or (d) Tenant's default under the Contract, whichever occurs first. Upon termination other than by closing and funding of the sale, Tenant shall surrender possession of the property.

19. HOLDING OVER: Any possession by Tenant after termination creates a tenancy at sufferance and will not operate to renew or extend this Lease. Tenant shall pay $_____ per day during the period of any possession after termination as damages, in addition to any other remedies to which Landlord is entitled.

20. ATTORNEY'S FEES: The prevailing party in any legal proceeding brought under or with respect to this Lease is entitled to recover from the non-prevailing party all costs of such proceeding and reasonable attorney's fees.

21. SMOKE DETECTORS: The Texas Property Code requires Landlord to install smoke detectors in certain locations within the Property at Landlord's expense. Tenant expressly waives Landlord's duty to inspect and repair smoke detectors.

22. SECURITY DEVICES: The requirements of the Texas Property Code relating to security devices do not apply to a residential lease for a term of 90 days or less.

23. CONSULT YOUR ATTORNEY: Real estate licensees cannot give legal advice. This Lease is intended to be legally binding. READ IT CAREFULLY. If you do not understand the effect of this Lease, consult your attorney BEFORE signing.

24. 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 Landlord: _____	**To Tenant:** _____
_____	_____
_____	_____
_____	_____
Telephone: ( ) _____	Telephone: ( ) _____
Facsimile: ( ) _____	Facsimile: ( ) _____
E-mail: _____	E-mail: _____

_____	_____
Landlord	Tenant
_____	_____
Landlord	Tenant

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, 512-936-3000 (http://www.trec.texas.gov) TREC NO. 16-5. This form replaces TREC NO. 16-4.

EQUAL HOUSING OPPORTUNITY

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, door keys, mailbox keys, above ground pool, swimming pool equipment and maintenance accessories, 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.

(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.

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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. If, due to factors beyond Seller's control, the Commitment and Exception Documents are not delivered within the time required, Buyer may terminate this contract and the earnest money will be refunded to Buyer.

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 by Buyer. Provided Seller is not obligated to incur any expense, Seller shall cure the timely objections of Buyer or any third party

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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) MEMBERSHIP IN PROPERTY OWNERS ASSOCIATION(S): 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 all dedicatory instruments governing the establishment, maintenance, or 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 instruments 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 enforcement of the association's lien on and the foreclosure of the Property.

Section 207.003, Property Code, entitles an owner to receive copies of any document that governs the establishment, maintenance, or operation of a subdivision, including, but not limited to, restrictions, bylaws, rules and regulations, and a resale certificate from a property owners' association. A resale certificate contains information including, but not limited to, statements specifying the amount and frequency of regular assessments and the style and cause number of lawsuits to which the property owners' association is a party, other than lawsuits relating to unpaid ad valorem taxes of an individual member of the association. These documents must be made available to you by the property owners' association or the association's agent on your request.

If Buyer is concerned about these matters, the TREC promulgated Addendum for Property Subject to Mandatory Membership in a Property Owners Association(s) should be used.

(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

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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) TRANSFER FEES: If the Property is subject to a private transfer fee obligation, §5.205, Property Code, requires Seller to notify Buyer as follows: The private transfer fee obligation may be governed by Chapter 5, Subchapter G of the Texas Property Code.

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 immediately cause existing utilities to be turned on and shall keep the utilities on during the time this contract is in effect.

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 exercise remedies under Paragraph 15 or extend the Closing Date up to 15 days if necessary to complete the repairs and treatments.

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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 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.)

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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: 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 Seller fails to comply with this contract, 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

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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: _____	**To Seller at:** _____
_____	_____
_____	_____
_____	_____
Telephone: ( ) _____	Telephone: ( ) _____
Facsimile: ( ) _____	Facsimile: ( ) _____
E-mail: _____	E-mail: _____

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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) 936-3000 (http://www.trec.texas.gov) TREC NO. 20-11. This form replaces TREC NO. 20-10.

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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

_____ Telephone (_____) _____
Address

_____ Facsimile: (_____) _____
City State Zip

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PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC) 10-10-2011

EQUAL HOUSING OPPORTUNITY

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".

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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. If, due to factors beyond Seller's control, the Commitment and Exception Documents are not delivered within the time required, Buyer may terminate this contract and the earnest money will be refunded to Buyer.

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 by Buyer. 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) MEMBERSHIP IN PROPERTY OWNERS ASSOCIATION(S): 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 all dedicatory instruments 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 instruments 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 enforcement of the association's lien on and the foreclosure of the Property.

Section 207.003, Property Code, entitles an owner to receive copies of any document that governs the establishment, maintenance, or operation of a subdivision, including, but not limited to, restrictions, bylaws, rules and regulations, and a resale certificate from a property owners' association. A resale certificate contains information including, but not limited to, statements specifying the amount and frequency of regular assessments and the style and cause number of lawsuits to which the property owners' association is a party, other than lawsuits relating to unpaid ad valorem taxes of an individual member of the association. These documents must be made available to you by the property owners' association or the association's agent on your request.

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.

(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.

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(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.

(8) TRANSFER FEES: If the Property is subject to a private transfer fee obligation, §5.205, Property Code, requires Seller to notify Buyer as follows: The private transfer fee obligation may be governed by Chapter 5, Subchapter G of the Texas Property Code.

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.

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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.)

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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 Seller fails to comply with this contract 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

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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: _____	**To Seller at:** _____
_____	_____
_____	_____
Telephone: ( ) _____	Telephone: ( ) _____
Facsimile: ( ) _____	Facsimile: ( ) _____
E-mail: _____	E-mail: _____

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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: _____

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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

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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) 936-3000 (http://www.trec.texas.gov) TREC NO. 23-12. This form replaces TREC NO. 23-11.

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

_____ Telephone (_____) _____
Address

_____ Facsimile: (_____) _____
City State Zip

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PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC) 10-10-2011

EQUAL HOUSING OPPORTUNITY

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".

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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. If, due to factors beyond Seller's control, the Commitment and Exception Documents are not delivered within the time required, Buyer may terminate this contract and the earnest money will be refunded to Buyer.

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 by Buyer. 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) MEMBERSHIP IN PROPERTY OWNERS ASSOCIATION(S): 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 all dedicatory instruments 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 instruments 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 enforcement of the association's lien on and the foreclosure of the Property.

Section 207.003, Property Code, entitles an owner to receive copies of any document that governs the establishment, maintenance, or operation of a subdivision, including, but not limited to, restrictions, bylaws, rules and regulations, and a resale certificate from a property owners' association. A resale certificate contains information including, but not limited to, statements specifying the amount and frequency of regular assessments and the style and cause number of lawsuits to which the property owners' association is a party, other than lawsuits relating to unpaid ad valorem taxes of an individual member of the association. These documents must be made available to you by the

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property owners' association or the association's agent on your request.
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.

(1) 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.

(8) TRANSFER FEES: If the Property is subject to a private transfer fee obligation, §5.205, Property Code, requires Seller to notify Buyer as follows: The private transfer fee obligation may be governed by Chapter 5, Subchapter G of the Texas Property Code.

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 immediately cause existing utilities to be turned on and shall keep the utilities on during the time this contract is in effect.

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

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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 exercise remedies under Paragraph 15 or extend the Closing Date 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

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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.

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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 Seller fails to comply with this contract 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 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.

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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: _____

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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

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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) 936-3000 (http://www.trec.texas.gov) TREC NO. 24-12. This form replaces TREC NO. 24-11.

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.

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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

_____ Telephone (_____) _____
Address

_____ Facsimile: (_____) _____
City State Zip

EQUAL HOUSING OPPORTUNITY

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)

❑ 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).

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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 policyof 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. If, due to factors beyond Seller's control, the Commitment and Exception Documents are not delivered within the time required, Buyer may terminate this contract and the earnest money will be refunded to Buyer.

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

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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 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 by Buyer. 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:

Document	Date	Recording Reference

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 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

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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

(8) TRANSFER FEES: If the Property is subject to a private transfer fee obligation, §5.205, Property Code, requires Seller to notify Buyer as follows: The private transfer fee obligation may be governed by Chapter 5, Subchapter G of the Texas Property Code.

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 immediately cause existing utilities to be turned on and shall keep the utilities on during the time this contract is in effect .

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 exercise remedies under Paragraph 15 or extend the Closing Date 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:

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(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.**

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.)

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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 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.

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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.

To Buyer at:	**To Seller at:**
_____	_____
_____	_____
_____	_____
Telephone: ( ) _____	Telephone: ( ) _____
Facsimile: ( ) _____	Facsimile: ( ) _____
E-mail: _____	E-mail: _____

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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) 936-3000 (http://www.trec.texas.gov) TREC NO. 25-9. This form replaces TREC NO. 25-8.

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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	City State Zip
Telephone Facsimile	Telephone Facsimile
E-mail	E-mail
represents ❑ Buyer only as Buyer's agent ❑ Seller as Listing Broker's subagent	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: _____ _____ Email Address

_____ Address Telephone (_____) _____

_____ Facsimile: (_____) _____

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EQUAL HOUSING OPPORTUNITY

SELLER FINANCING ADDENDUM

TO CONTRACT CONCERNING THE PROPERTY AT

_____

(Address of Property)

A. CREDIT DOCUMENTATION. To establish Buyer's creditworthiness, Buyer shall deliver to Seller within_____days after the effective date of this contract, ❑ credit report ❑ verification of employment, including salary ❑ verification of funds on deposit in financial institutions ❑ current financial statement and ❑ _____ _____. Buyer hereby authorizes any credit reporting agency to furnish copies of Buyer's credit reports to Seller at Buyer's sole expense.

B. CREDIT APPROVAL. If the credit documentation described in Paragraph A is not delivered within the specified time, Seller may terminate this contract by notice to Buyer within 7 days after expiration of the time for delivery, and the earnest money will be paid to Seller. If the credit documentation is timely delivered, and Seller determines in Seller's sole discretion that Buyer's credit is unacceptable, Seller may terminate this contract by notice to Buyer within 7 days after expiration of the time for delivery and the earnest money will be refunded to Buyer. If Seller does not terminate this contract, Seller will be deemed to have approved Buyer's creditworthiness.

C. PROMISSORY NOTE. The promissory note (Note) described in Paragraph 4 of this contract payable by Buyer to the order of Seller will bear interest at the rate of _____% per annum and be payable at the place designated by Seller. Buyer may prepay the Note in whole or in part at any time without penalty. Any prepayments are to be applied to the payment of the installments of principal last maturing and interest will immediately cease on the prepaid principal. The Note will contain a provision for payment of a late fee of 5% of any installment not paid within 10 days of the due date. Matured unpaid amounts will bear interest at the rate of 1½% per month or at the highest lawful rate, whichever is less. The Note will be payable as follows:

❑ (1) In one payment due _____ after the date of the Note with interest payable ❑ at maturity ❑ monthly ❑ quarterly. (check one box only)

❑ (2) In monthly installments of $ _____ ❑ including interest ❑plus interest (check one box only) beginning _____ after the date of the Note and continuing monthly thereafter for_____ months when the balance of the Note will be due and payable.

❑ (3) Interest only in monthly installments for the first _____ month(s) and thereafter in installments of $_____ ❑ including interest ❑ plus interest (check one box only) beginning _____ after the date of the Note and continuing monthly thereafter for _____ months when the balance of the Note will be due and payable.

D. DEED OF TRUST. The deed of trust securing the Note will provide for the following:

(1) PROPERTY TRANSFERS: (check one box only)

❑ (a) Consent Not Required: The Property may be sold, conveyed or leased without the consent of Seller, provided any subsequent buyer assumes the Note.

❑ (b) Consent Required: If all or any part of the Property is sold, conveyed, leased for a period longer than 3 years, leased with an option to purchase, or otherwise sold (including any contract for deed), without Seller's prior written consent, which consent may be withheld in Seller's sole discretion, Seller may declare the balance of the Note to be immediately due and payable. The creation of a subordinate lien, any conveyance

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_____
(Address of Property)

under threat or order of condemnation, any deed solely between buyers, or the passage of title by reason of the death of a buyer or by operation of law will not entitle Seller to exercise the remedies provided in this paragraph.

NOTE: *Under (a) or (b), Buyer's liability to pay the Note will continue unless Buyer obtains a release of liability from Seller.*

(2) TAX AND INSURANCE ESCROW: (check one box only)

❑ (a) Escrow Not Required: Buyer shall furnish Seller, before each year's ad valorem taxes become delinquent, evidence that all ad valorem taxes on the Property have been paid. Buyer shall annually furnish Seller evidence of paid-up casualty insurance naming Seller as a mortgagee loss payee.

❑ (b) Escrow Required: With each installment Buyer shall deposit in escrow with Seller a pro rata part of the estimated annual ad valorem taxes and casualty insurance premiums for the Property. Buyer shall pay any deficiency within 30 days after notice from Seller. Buyer's failure to pay the deficiency will be a default under the deed of trust. Buyer is not required to deposit any escrow payments for taxes and insurance that are deposited with a superior lienholder. The casualty insurance must name Seller as a mortgagee loss payee.

(3) PRIOR LIENS: Any default under any lien superior to the lien securing the Note will be a default under the deed of trust securing the Note.

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Buyer	Seller
Buyer	Seller

The form of this contract has been approved by the Texas Real Estate Commission for use with similarly approved or promulgated contract forms. 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, 512-936-3000 (http://www.trec.texas.gov) TREC No. 26-6. This form replaces TREC No. 26-5.

EQUAL HOUSING OPPORTUNITY

ENVIRONMENTAL ASSESSMENT, THREATENED OR ENDANGERED SPECIES, AND WETLANDS ADDENDUM

TO CONTRACT CONCERNING THE PROPERTY AT

_____

(Address of Property)

❑ A. ENVIRONMENTAL ASSESSMENT: Buyer, at Buyer's expense, may obtain an environmental assessment report prepared by an environmental specialist.

❑ B. THREATENED OR ENDANGERED SPECIES: Buyer, at Buyer's expense, may obtain a report from a natural resources professional to determine if there are any threatened or endangered species or their habitats as defined by the Texas Parks and Wildlife Department or the U.S. Fish and Wildlife Service.

❑ C. WETLANDS: Buyer, at Buyer's expense, may obtain a report from an environmental specialist to determine if there are wetlands, as defined by federal or state law or regulation.

Within _____days after the effective date of the contract, Buyer may terminate the contract by furnishing Seller a copy of any report noted above that adversely affects the use of the Property and a notice of termination of the contract. Upon termination, the earnest money will be refunded to Buyer.

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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 suitable for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, 512-936-3000 (http://www.trec.texas.gov) TREC No. 28-2. This form replaces TREC No. 28-1.

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.

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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. If, due to factors beyond Seller's control, the Commitment and Exception Documents are not delivered within the time required, Buyer may terminate this contract and the earnest money will be refunded to Buyer.

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 by Buyer. 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

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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.

(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.

(6) TRANSFER FEES: If the Property is subject to a private transfer fee obligation, §5.205, Property Code, requires Seller to notify Buyer as follows: The private transfer fee obligation may be governed by Chapter 5, Subchapter G of the Texas Property Code.

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 immediately cause existing utilities to be turned on and shall keep the utilities on during the time this contract is in effect .

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

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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 exercise remedies under Paragraph 15 or extend the Closing Date 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.)

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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 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

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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:	**To Seller at:**
_____	_____
_____	_____
_____	_____
Telephone: ( ) _____	Telephone: ( ) _____
Facsimile: ( ) _____	Facsimile: ( ) _____
E-mail: _____	E-mail: _____

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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
- ❑ 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
- ❑ 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) 936-3000 (http://www.trec.texas.gov) TREC NO. 30-10. This form replaces TREC NO. 30-9

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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.

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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

_____ Telephone (_____) _____
Address

_____ Facsimile: (_____) _____
City State Zip

EQUAL HOUSING OPPORTUNITY

CONDOMINIUM RESALE CERTIFICATE

(Section 82.157, Texas Property Code)

Condominium Certificate concerning Condominium Unit _____, in Building _____, of _____ _____,a condominium project, located at _____ _____(Address), City of _____, County of _____, Texas, on behalf of the condominium owners' association (the Association) by the Association's governing body (the Board).

A. The Declaration ❑does ❑does not contain a right of first refusal or other restraint that restricts the right to transfer the Unit. If a right of first refusal or other restraint exists, see Section _____of the Declaration.

B. The periodic common expense assessment for the Unit is $_____ per _____.

C. There ❑ is ❑is not a common expense or special assessment due and unpaid by the Seller to the Association. The total unpaid amount is $_____ and is for _____.

D. Other amounts ❑are ❑are not payable by Seller to the Association. The total unpaid amount is $_____and is for _____.

E. Capital expenditures approved by the Association for the next 12 months are $_____.

F. Reserves for capital expenditures are $_____;of this amount $_____ has been designated for_____.

G. The current operating budget of the Association is attached.

H. The amount of unsatisfied judgments against the Association is $ _____.

I. There ❑are ❑are not any suits pending against the Association. The nature of the suits is _____.

J. The Association ❑does ❑does not provide insurance coverage for the benefit of unit owners as per the attached summary from the Association's insurance agent.

K. The Board ❑has ❑has no knowledge of alterations or improvements to the Unit or to the limited common elements assigned to the Unit or any portion of the project that violate any provision of the Declaration, by-laws or rules of the Association. Known violations are:_____ _____.

L. The Board ❑has ❑has not received notice from a governmental authority concerning violations of health or building codes with respect to the Unit, the limited common elements assigned to the Unit, or any other portion of the condominium project. Notices received are: _____ _____.

M. The remaining term of any leasehold estate that affects the condominium is _____ and the provisions governing an extension or a renewal of the lease are: _____ _____ _____.

N. The Association's managing agent is _____

(Name of Agent)

_____

(Mailing Address)

_____ _____

(Telephone Number) (Fax Number)

_____

E-mail Address

draft

_____
(Address of Property)

O. Association fees resulting from the transfer of the unit described above $ _____.

P. Required contribution, if any, to the capital reserves account $ _____.

REQUIRED ATTACHMENTS:
1. Operating Budget
2. Insurance Summary

NOTICE: The Certificate must be prepared no more than three months before the date it is delivered to Buyer.

_____
Name of Association

By: _____

Name: _____

Title: _____

Date: _____

Mailing Address: _____

E-mail: _____

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EQUAL HOUSING OPPORTUNITY

ADDENDUM FOR COASTAL AREA PROPERTY

(SECTION 33.135, TEXAS NATURAL RESOURCES CODE)

TO CONTRACT CONCERNING THE PROPERTY AT

_____

(Address of Property)

NOTICE REGARDING COASTAL AREA PROPERTY

1. The real property described in and subject to this contract adjoins and shares a common boundary with the tidally influenced submerged lands of the state. The boundary is subject to change and can be determined accurately only by a survey on the ground made by a licensed state land surveyor in accordance with the original grant from the sovereign. The owner of the property described in this contract may gain or lose portions of the tract because of changes in the boundary.

2. The seller, transferor, or grantor has no knowledge of any prior fill as it relates to the property described in and subject to this contract except:_____
_____
_____.

3. State law prohibits the use, encumbrance, construction, or placing of any structure in, on, or over state-owned submerged lands below the applicable tide line, without proper permission.

4. The purchaser or grantee is hereby advised to seek the advice of an attorney or other qualified person as to the legal nature and effect of the facts set forth in this notice on the property described in and subject to this contract. Information regarding the location of the applicable tide line as to the property described in and subject to this contract may be obtained from the surveying division of the General Land Office in Austin.

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 suitable for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, 512-936-3000 (http://www.trec.texas.gov) TREC No. 33-2 This form replaces TREC No. 33-1.

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EQUAL HOUSING OPPORTUNITY

ADDENDUM FOR PROPERTY LOCATED SEAWARD OF THE GULF INTRACOASTAL WATERWAY

(SECTION 61.025, TEXAS NATURAL RESOURCES CODE)

TO CONTRACT CONCERNING THE PROPERTY AT

_____

(Address of Property)

DISCLOSURE NOTICE CONCERNING LEGAL AND ECONOMIC RISKS OF PURCHASING COASTAL REAL PROPERTY NEAR A BEACH

WARNING: THE FOLLOWING NOTICE OF POTENTIAL RISKS OF ECONOMIC LOSS TO YOU AS THE PURCHASER OF COASTAL REAL PROPERTY IS REQUIRED BY STATE LAW.

- READ THIS NOTICE CAREFULLY. DO NOT SIGN THIS CONTRACT UNTIL YOU FULLY UNDERSTAND THE RISKS YOU ARE ASSUMING.
- BY PURCHASING THIS PROPERTY, YOU MAY BE ASSUMING ECONOMIC RISKS OVER AND ABOVE THE RISKS INVOLVED IN PURCHASING INLAND REAL PROPERTY.
- IF YOU OWN A STRUCTURE LOCATED ON COASTAL REAL PROPERTY NEAR A GULF COAST BEACH, IT MAY COME TO BE LOCATED ON THE PUBLIC BEACH BECAUSE OF COASTAL EROSION AND STORM EVENTS.
- AS THE OWNER OF A STRUCTURE LOCATED ON THE PUBLIC BEACH, YOU COULD BE SUED BY THE STATE OF TEXAS AND ORDERED TO REMOVE THE STRUCTURE.
- THE COSTS OF REMOVING A STRUCTURE FROM THE PUBLIC BEACH AND ANY OTHER ECONOMIC LOSS INCURRED BECAUSE OF A REMOVAL ORDER WOULD BE SOLELY YOUR RESPONSIBILITY.

The real property described in this contract is located seaward of the Gulf Intracoastal Waterway to its southernmost point and then seaward of the longitudinal line also known as 97 degrees, 12', 19" which runs southerly to the international boundary from the intersection of the centerline of the Gulf Intracoastal Waterway and the Brownsville Ship Channel. If the property is in close proximity to a beach fronting the Gulf of Mexico, the purchaser is hereby advised that the public has acquired a right of use or easement to or over the area of any public beach by prescription, dedication, or presumption, or has retained a right by virtue of continuous right in the public since time immemorial, as recognized in law and custom.

The extreme seaward boundary of natural vegetation that spreads continuously inland customarily marks the landward boundary of the public easement. If there is no clearly marked natural vegetation line, the landward boundary of the easement is as provided by Sections 61.016 and 61.017, Natural Resources Code.

Much of the Gulf of Mexico coastline is eroding at rates of more than five feet per year. Erosion rates for all Texas Gulf property subject to the open beaches act are available from the Texas General Land Office.

State law prohibits any obstruction, barrier, restraint, or interference with the use of the public easement, including the placement of structures seaward of the landward boundary of the easement. OWNERS OF STRUCTURES ERECTED SEAWARD OF THE VEGETATION LINE (OR OTHER APPLICABLE EASEMENT BOUNDARY) OR THAT BECOME SEAWARD OF THE VEGETATION LINE AS A RESULT OF PROCESSES SUCH AS SHORELINE EROSION ARE SUBJECT TO A LAWSUIT BY THE STATE OF TEXAS TO REMOVE THE STRUCTURES.

The purchaser is hereby notified that the purchaser should: (1) determine the rate of shoreline erosion in the vicinity of the real property; and (2) seek the advice of an attorney or other qualified person before executing this contract or instrument of conveyance as to the relevance of these statutes and facts to the value of the property the purchaser is hereby purchasing or contracting to purchase.

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 suitable for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, 512-936-3000 (http://www.trec.texas.gov) TREC No. 34-4. This form replaces TREC No. 34-3.

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EQUAL HOUSING OPPORTUNITY

ADDENDUM FOR PROPERTY SUBJECT TO MANDATORY MEMBERSHIP IN A PROPERTY OWNERS ASSOCIATION

(NOT FOR USE WITH CONDOMINIUMS)

ADDENDUM TO CONTRACT CONCERNING THE PROPERTY AT

_____

(Street Address and City)

_____

A. SUBDIVISION INFORMATION: "Subdivision Information" means: (i) the restrictions applying to the subdivision, (ii) the bylaws and rules of the Property Owners Association(s) (Association), and (iii) a resale certificate, all of which comply with Section 207.003 of the Texas Property Code.

❑ 1. Buyer may obtain the Subdivision Information directly from the Association. If Buyer objects to a matter in the Subdivision Information, Buyer may terminate the contract by providing notice of termination and a copy of the Subdivision Information to Seller within _____ days after the effective date of this contract. Upon termination, the earnest money will be refunded to Buyer. Seller shall reimburse Buyer at closing Buyer's cost of obtaining the Subdivision Information in an amount not to exceed $_____.

❑ 2. Buyer does not require delivery of the Subdivision Information.

B. FEES: Except as provided by Paragraph C, Buyer shall pay any and all Association fees or other charges associated with the transfer of the Property not to exceed $_____ and Seller shall pay any excess.

C. DEPOSITS FOR RESERVES: Buyer shall pay any deposits for reserves required at closing by the Association.

NOTICE TO BUYER REGARDING REPAIRS BY THE ASSOCIATION: The Association may have the sole responsibility to make certain repairs to the Property. If you are concerned about the condition of any part of the Property which the Association is required to repair, you should not sign the contract unless you are satisfied that the Association will make the desired repairs.

_____	_____
Buyer	Seller
_____	_____
Buyer	Seller

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EQUAL HOUSING OPPORTUNITY

SUBDIVISION INFORMATION, INCLUDING RESALE CERTIFICATE FOR PROPERTY SUBJECT TO MANDATORY MEMBERSHIP IN A PROPERTY OWNERS' ASSOCIATION

(Chapter 207, Texas Property Code)

Resale Certificate concerning the Property (including any common areas assigned to the Property) located at _____(Street Address), City of _____, County of _____, Texas, prepared by the property owners' association (Association).

A. The Property ❑is ❑is not subject to a right of first refusal (other than a right of first refusal prohibited by statute) or other restraint contained in the restrictions or restrictive covenants that restricts the owner's right to transfer the owner's property.

B. The current regular assessment for the Property is $_____ per _____.

C. A special assessment for the Property due after this resale certificate is delivered is $_____payable as follows_____ for the following purpose:_____.

D. The total of all amounts due and unpaid to the Association that are attributable to the Property is $ _____ .

E. The capital expenditures approved by the Association for its current fiscal year are $ _____.

F. The amount of reserves for capital expenditures is $_____.

G. Unsatisfied judgments against the Association total $_____.

H. Other than lawsuits relating to unpaid ad valorem taxes of an individual member of the association, there ❑are ❑are not any suits pending against the Association . The style and cause number of each pending suit is: _____
_____.

I. The Association's board ❑has actual knowledge ❑has no actual knowledge of conditions on the Property in violation of the restrictions applying to the subdivision or the bylaws or rules of the Association. Known violations are: _____
_____
_____.

J. The Association ❑has ❑has not received notice from any governmental authority regarding health or building code violations with respect to the Property or any common areas or common facilities owned or leased by the Association. A summary or copy of each notice is attached.

K. The amount of any administrative transfer fee charged by the Association for a change of ownership of property in the subdivision is $_____. Describe all fees associated with the transfer of ownership (include a description of each fee, to whom each fee is payable and the amount of each fee._____
_____.

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L. The Association's managing agent is _____
(Name of Agent)

_____
(Mailing Address)

_____ _____
(Telephone Number) (Fax Number)

_____
(E-mail Address)

M. The restrictions ❑ do ❑ do not allow foreclosure of the Association's lien on the Property for failure to pay assessments.

REQUIRED ATTACHMENTS:

1. Restrictions
2. Rules
3. Bylaws
4. Current Balance Sheet
5. Current Operating Budget
6. Certificate of Insurance concerning Property and Liability Insurance for Common Areas and Facilities
7. Any Governmental Notices of Health or Housing Code Violations

NOTICE: This Subdivision Information may change at any time.

_____
Name of Association

By: _____

Print Name: _____

Title: _____

Date: _____

Mailing Address: _____

E-mail: _____

This form has been approved by the Texas Real Estate commission for use only with similarly approved or promulgated contract forms. No representation is made as to the legal validity or adequacy of any provision in any specific transaction. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, 512-936-3000 (http://www.trec.texas.gov) TREC No. 37-4. This form replaces TREC No. 37-3.

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EQUAL HOUSING OPPORTUNITY

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 Approval in accordance with the Third Party Financing 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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PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)

10-10-11

EQUAL HOUSING OPPORTUNITY

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 _____, 20_____.

❑(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: $ _____ by Seller; $ _____ by Buyer.

❑(6) Buyer has paid Seller an additional Option Fee of $ _____ for an extension of the unrestricted right to terminate the contract on or before _____, 20_____. This additional Option Fee ❑ will ❑ will not be credited to the Sales Price.

❑(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 for Credit Approval is changed to _____, 20_____.

❑(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

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EQUAL HOUSING OPPORTUNITY

PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)

THIRD PARTY FINANCING ADDENDUM FOR CREDIT APPROVAL

TO CONTRACT CONCERNING THE PROPERTY AT

_____

(Street Address and City)

Buyer shall apply promptly for all financing described below and make every reasonable effort to obtain credit approval for the financing (Credit Approval). Buyer shall furnish all information and documents required by lender for Credit Approval. Credit Approval will be deemed to have been obtained when (1) the terms of the loan(s) described below are available and (2) lender determines that Buyer has satisfied all of lender's requirements related to Buyer's assets, income and credit history. If Buyer cannot obtain Credit Approval, Buyer may give written notice to Seller within ____ days after the effective date of this contract and this contract will terminate and the earnest money will be refunded to Buyer**. If Buyer does not give such notice within the time required, this contract will no longer be subject to Credit Approval. Time is of the essence for this paragraph and strict compliance with the time for performance is required.**

NOTE: Credit Approval does not include approval of lender's underwriting requirements for the Property, as specified in Paragraph 4.A.(1) of the contract.

Each note must be secured by vendor's and deed of trust liens.

CHECK APPLICABLE BOXES:

❑ A. CONVENTIONAL FINANCING:

❑ (1) A first mortgage loan in the principal amount of $ _____ (excluding any financed PMI premium), due in full in _____ year(s), with interest not to exceed _____% per annum for the first _____year(s) of the loan with Adjusted Origination Charges as shown on Buyer's Good Faith Estimate for the loan not to exceed _____% of the loan.

❑ (2) A second mortgage loan in the principal amount of $_____(excluding any financed PMI premium), due in full in _____year(s), with interest not to exceed _____% per annum for the first _____year(s) of the loan with Adjusted Origination Charges as shown on Buyer's Good Faith Estimate for the loan not to exceed _____ % of the loan.

❑ B. TEXAS VETERANS LOAN: A loan(s) from the Texas Veterans Land Board of $_____ for a period in the total amount of _____years at the interest rate established by the Texas Veterans Land Board.

❑ C. FHA INSURED FINANCING: A Section _____ FHA insured loan of not less than $_____ (excluding any financed MIP), amortizable monthly for not less than _____years, with interest not to exceed _____% per annum for the first _____year(s) of the loan with Adjusted Origination Charges as shown on Buyer's Good Faith Estimate for the loan not to exceed _____ % of the loan. As required by HUD-FHA, if FHA valuation is unknown, "*It is expressly agreed that, notwithstanding any other provision of this contract, the purchaser (Buyer) shall not be obligated to complete the purchase of the Property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless the purchaser (Buyer) has been given in accordance with HUD/FHA or VA requirements a written statement issued by the Federal Housing Commissioner, Department of Veterans Affairs, or a Direct Endorsement Lender setting forth the appraised value of the Property of not less than $_____. The purchaser (Buyer) shall have the privilege and option of proceeding with consummation of the contract without regard to the*

_____
(Address of Property)

amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value or the condition of the Property. The purchaser (Buyer) should satisfy himself/herself that the price and the condition of the Property are acceptable."

❑ D. VA GUARANTEED FINANCING: A VA guaranteed loan of not less than $_____ (excluding any financed Funding Fee), amortizable monthly for not less than_____years, with interest not to exceed_____% per annum for the first _____year(s) of the loan with Adjusted Origination Charges as shown on Buyer's Good Faith Estimate for the loan not to exceed _____% of the loan.

VA NOTICE TO BUYER: "*It is expressly agreed that, notwithstanding any other provisions of this contract, the Buyer shall not incur any penalty by forfeiture of earnest money or otherwise or be obligated to complete the purchase of the Property described herein, if the contract purchase price or cost exceeds the reasonable value of the Property established by the Department of Veterans Affairs. The Buyer shall, however, have the privilege and option of proceeding with the consummation of this contract without regard to the amount of the reasonable value established by the Department of Veterans Affairs."*

If Buyer elects to complete the purchase at an amount in excess of the reasonable value established by VA, Buyer shall pay such excess amount in cash from a source which Buyer agrees to disclose to the VA and which Buyer represents will not be from borrowed funds except as approved by VA. If VA reasonable value of the Property is less than the Sales Price, Seller may reduce the Sales Price to an amount equal to the VA reasonable value and the sale will be closed at the lower Sales Price with proportionate adjustments to the down payment and the loan amount.

Buyer hereby authorizes any lender to furnish to the Seller or Buyer or their representatives information relating only to the status of Credit Approval of Buyer.

_____ _____
Buyer Seller

_____ _____
Buyer Seller

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EQUAL HOUSING OPPORTUNITY

LOAN ASSUMPTION ADDENDUM
TO CONTRACT CONCERNING THE PROPERTY AT

_____
(Address of Property)

A. CREDIT DOCUMENTATION. To establish Buyer's creditworthiness, Buyer shall deliver to Seller within_____days after the effective date of this contract ❑ credit report ❑ verification of employment, including salary ❑ verification of funds on deposit in financial institutions ❑ current financial statement and ❑_____
_____.
Buyer hereby authorizes any credit reporting agency to furnish copies of Buyer's credit reports to Seller at Buyer's sole expense.

B. CREDIT APPROVAL. If the credit documentation described in Paragraph A is not delivered within the specified time, Seller may terminate this contract by notice to Buyer within 7 days after expiration of the time for delivery, and the earnest money will be paid to Seller. If the credit documentation is timely delivered, and Seller determines in Seller's sole discretion that Buyer's credit is unacceptable, Seller may terminate this contract by notice to Buyer within 7 days after expiration of the time for delivery and the earnest money will be refunded to Buyer. If Seller does not terminate this contract within the time specified, Seller will be deemed to have approved Buyer's creditworthiness.

C. ASSUMPTION. Buyer's assumption of an existing note includes all obligations imposed by the deed of trust securing the note.

❑ (1) The unpaid principal balance of a first lien promissory note payable to_____
_____which unpaid balance at closing will be $ _____.
The total current monthly payment including principal, interest and any reserve deposits is $ _____. Buyer's initial payment will be the first payment due after closing.

❑ (2) The unpaid principal balance of a second lien promissory note payable to _____
_____which unpaid balance at closing will be $ _____.
The total current monthly payment including principal, interest and any reserve deposits is $ _____. Buyer's initial payment will be the first payment due after closing.

If the unpaid principal balance of any assumed loan as of the Closing Date varies from the loan balance stated above, the ❑ cash payable at closing ❑ Sales Price will be adjusted by the amount of any variance. If the total principal balance of all assumed loans varies in an amount greater than $500 at closing, either party may terminate this contract and the earnest money will be refunded to Buyer unless the other party elects to pay the excess of the variance.

D. LOAN ASSUMPTION TERMS. Buyer may terminate this contract and the earnest money will be refunded to Buyer if the noteholder requires:
(1) payment of an assumption fee in excess of $ _____in C(1) or $ _____in C(2) and Seller declines to pay such excess, or
(2) an increase in the interest rate to more than _____% in C(1) or_____% in C(2), or
(3) any other modification of the loan documents.

E. CONSENT BY NOTEHOLDER. If the noteholder fails to consent to the assumption of the loan, either Seller or Buyer may terminate this contract by notice to the other party and the earnest money will be refunded to the Buyer.

F. SELLER'S LIENS. Unless Seller is released from liability on any assumed note, a vendor's lien and deed of trust to secure assumption will be required. The vendor's lien will automatically be released on delivery of an executed release by noteholder.

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_____
(Address of Property)

G. TAX AND INSURANCE ESCROW. If noteholder maintains an escrow account for ad valorem taxes, casualty insurance premiums or mortgage insurance premiums, Seller shall transfer the escrow account to Buyer without any deficiency. Buyer shall reimburse Seller for the amount in the transferred accounts.

NOTICE TO BUYER: If you are concerned about the possibility of future adjustments, monthly payments, interest rates or other terms, do not sign the contract without examining the notes and deeds of trust.

NOTICE TO SELLER: Your liability to pay the notes assumed by Buyer will continue unless you obtain a release of liability from the noteholders. If you are concerned about future liability, you should use the TREC Release of Liability Addendum.

Buyer	Seller
Buyer	Seller

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EQUAL HOUSING OPPORTUNITY

ADDENDUM FOR RESERVATION OF OIL, GAS, AND OTHER MINERALS

ADDENDUM TO CONTRACT CONCERNING THE PROPERTY AT

_____

(Street Address and City)

_____

NOTICE: For use only if Seller reserves all or a portion of the Mineral Estate.

A. "Mineral Estate" means all oil, gas, and other minerals in or under the Property, any royalty under any existing or future lease covering any part of the Property, surface rights (including rights of ingress and egress), production and drilling rights, lease payments, and all related benefits.

B. The Mineral Estate owned by Seller, if any, will be conveyed unless reserved as follows (check one box only):

❑ (1) Seller reserves all of the Mineral Estate owned by Seller.

❑ (2) Seller reserves an undivided _____% interest in the Mineral Estate owned by Seller. *NOTE: If Seller does not own all of the Mineral Estate, Seller reserves only this percentage of Seller's interest.*

C. Seller ❑ waives ❑ does not waive Seller's surface rights (including rights of ingress and egress). *NOTE: Any waiver of surface rights by Seller does not affect any surface rights that may be held by others.*

D. If B(2) applies, Seller shall, on or before the Closing Date, provide Buyer contact information known to Seller for any existing lessee.

If either party is concerned about the legal rights or impact of the above provisions, that party is advised to consult an attorney BEFORE signing.

TREC rules prohibit real estate licensees from giving legal advice.

Buyer	Seller
Buyer	Seller

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PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC) 10-10-11

EQUAL HOUSING OPPORTUNITY

SHORT SALE ADDENDUM

ADDENDUM TO CONTRACT CONCERNING THE PROPERTY AT

_____

(Street Address and City)

A. This contract involves a "short sale" of the Property. As used in this Addendum, "short sale" means that:

(1) Seller's net proceeds at closing will be insufficient to pay the balance of Seller's mortgage loan; and

(2) Seller requires:
(a) the consent of the lienholder to sell the Property pursuant to this contract; and
(b) the lienholder's agreement to:
(i) accept Seller's net proceeds in full satisfaction of Seller's liability under the mortgage loan; and
(ii) provide Seller an executed release of lien against the Property in a recordable format.

B. As used in this Addendum, "Seller's net proceeds" means the Sales Price less Seller's Expenses under Paragraph 12 of the contract and Seller's obligation to pay any brokerage fees.

C. The contract to which this Addendum is attached is binding upon execution by the parties and the earnest money and the Option Fee must be paid as provided in the contract. The contract is contingent on the satisfaction of Seller's requirements under Paragraph A(2) of this Addendum (Lienholder's Consent and Agreement). Seller shall apply promptly for and make every reasonable effort to obtain Lienholder's Consent and Agreement, and shall furnish all information and documents required by the lienholder. Except as provided by this Addendum, neither party is required to perform under the contract while it is contingent upon obtaining Lienholder's Consent and Agreement.

D. If Seller does not notify Buyer that Seller has obtained Lienholder's Consent and Agreement on or before _____, this contract terminates and the earnest money will be refunded to Buyer. Seller must notify Buyer immediately if Lienholder's Consent and Agreement is obtained. For purposes of performance, the effective date of the contract changes to the date Seller provides Buyer notice of the Lienholder's Consent and Agreement (Amended Effective Date).

E. This contract will terminate and the earnest money will be refunded to Buyer if the Lienholder refuses or withdraws its Consent and Agreement prior to closing and funding. Seller shall promptly notify Buyer of any lienholder's refusal to provide or withdrawal of a Lienholder's Consent and Agreement.

F. If Buyer has the unrestricted right to terminate this contract, the time for giving notice of termination begins on the effective date of the contract, continues after the Amended Effective Date and ends upon the expiration of Buyer's unrestricted right to terminate the contract under Paragraph 23.

G. For the purposes of this Addendum, time is of the essence. Strict compliance with the times for performance stated in this Addendum is required.

H. Seller authorizes any lienholder to furnish to Buyer or Buyer's representatives information relating to the status of the request for a Lienholder's Consent and Agreement.

I. If there is more than one lienholder or loan secured by the Property, this Addendum applies to each lienholder.

Buyer	Seller
Buyer	Seller

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Agenda Item 11:

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

SUMMARY:

See attached documentation.

Staff Recommendation:

Adopt proposed code of conduct as proposed.

Recommended Motion:

MOVED, that the Commission does hereby adopt the code of conduct for members of advisory committees and working groups as presented.

Agency Code of Conduct for Appointees to Advisory Committees for TREC & TALCB

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 or work group (advisory committees) 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 produce the work requested of the committee in a professional manner.

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. Sarcasm and condescension are inappropriate. 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

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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 other than impartial 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 comprises 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 non-impartial 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.

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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. Public 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.

Acknowledged and Agreed to:

_____ _____

Print Name: Date:

draft

Agenda Item 12:

Discussion and possible action to approve changes to TREC application forms to incorporate amendments to Texas Occupations Code Chapter 1101 under Senate Bill 747, 82nd Texas Legislature, Regular Session (2011)

SUMMARY:

See attached documentation.

Staff Recommendation:

Approve changes to applications as submitted.

Recommended Motion:

MOVED, that the Commission does hereby approve the changes to the application forms as presented at the meeting.

Agenda Item 12

Discussion and possible action to approve changes to TREC application forms to incorporate amendments to Texas Occupations Code Chapter 1101 under SB 747, 82nd Texas Legislature, Regular Session (2011)

Changes to the TREC Applications Forms and Versa Online Effective November 1, 2011

1. All application forms will reflect increased fees as appropriate.
2. The Business Entity Broker Application Form is revised to include partnerships, the phrase "business entity" replaces "corporations and LLCs" as necessary, and the phrase "designated broker" replaces "designated officer."
3. The Business Entity Broker Application Form, the Change of Designated Broker Form, and the all-purpose Renewal Form will include questions about whether the Designated Broker owns at least 10% of the entity. If the Designated Broker owns at least 10% of the entity, the applicant will need to provide proof of ownership, if not, the entity will need to submit a Certificate of Insurance.
4. Renewal forms will reflect that the $4.00 Advisor fee is optional.
5. The renewal forms will include a question about whether the licensee is in default of a Texas Guaranteed (TG) Student Loan. If so, the licensee will be unable to renew either online or on paper until the licensee enters into a payment agreement with TG.
6. All forms will include a TG notice.
7. The inspector forms clarify that 6 of the 32 continuing education hours must consist of the required Texas Standards of Practice/Legal/Ethics Update.

Agenda Item 13:

Executive session to discuss personnel matters regarding the TREC administrator position under Texas Government Code, §551.074

Agenda Item 14:

Discussion and possible action on items considered in executive session

Agenda Item 15:

Discussion and possible action on Broker Responsibility Working Group recommendations on experience requirements for a broker license

SUMMARY:

Staff Recommendation:

Recommended Motion:

Agenda Item 16:

Discussion and possible action to approve non-substantive revisions to TREC notices and forms approved for use by TREC licensees including OP-C, OP-H, OP-I, OP-K, OP-L and OP-M

SUMMARY: All of the TREC forms needed to be changed with new agency telephone numbers and website information.

Staff Recommendation: Approve the forms as recommended by staff.

Recommended Motion: MOVED, that the Commission does hereby approve the changes to the forms and notices as presented at the meeting.

APPROVED BY THE TEXAS REAL ESTATE COMMISSION 10-10-11

NOTICE TO PROSPECTIVE BUYER

As required by law, I advise you to have the abstract covering the property known as _____ _____ (Address) examined by an attorney of your own selection OR you should be furnished with or obtain a policy of title insurance.

If the property is situated in a Utility District, Chapter 49 of the Texas Water Code requires you to sign and acknowledge the statutory notice from the seller of the property relating to the tax rate, bonded indebtedness or standby fee of the District.

DATED: _____ , _____ .

_____
Brokerage Company Name

_____
Broker or Sales Associate

I have received a copy of this **NOTICE TO PROSPECTIVE BUYER.**

_____
Prospective Buyer

_____
Prospective Buyer

This form has been approved by the Texas Real Estate Commission (TREC) for use when a contract of sale has not been promulgated by TREC. The form should be presented before an offer to purchase is signed by the prospective buyer. Texas real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, 512-936-3000 (http://www.trec.texas.gov). TREC Notice to Prospective Buyer. OP-C replaces MA-C.

draft

APPROVED BY THE TEXAS REAL ESTATE COMMISSION (TREC)

EQUAL HOUSING OPPORTUNITY

SELLER'S DISCLOSURE OF PROPERTY CONDITION

CONCERNING THE PROPERTY AT _____
(Street Address and City)

THIS NOTICE IS A DISCLOSURE OF SELLER'S KNOWLEDGE OF THE CONDITION OF THE PROPERTY AS OF THE DATE SIGNED BY SELLER AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PURCHASER MAY WISH TO OBTAIN. IT IS NOT A WARRANTY OF ANY KIND BY SELLER OR SELLER'S AGENTS.

Seller ☐ is ☐ is not occupying the Property. If unoccupied, how long since Seller has occupied the Property? _____

1. The Property has the items checked below [Write Yes (Y), No (N), or Unknown (U)]:

____Range ____Oven ____Microwave
____Dishwasher ____Trash Compactor ____Disposal
____Washer/Dryer Hookups ____Window Screens ____Rain Gutters
____Security System ____Fire Detection Equipment ____Intercom System
____Smoke Detector
____Smoke Detector-Hearing Impaired
____Carbon Monoxide Alarm
____Emergency Escape Ladder(s)

____TV Antenna ____Cable TV Wiring ____Satellite Dish
____Ceiling Fan(s) ____Attic Fan(s) ____Exhaust Fan(s)
____Central A/C ____Central Heating ____Wall/Window Air Conditioning
____Plumbing System ____Septic System ____Public Sewer System
____Patio/Decking ____Outdoor Grill ____Fences
____Pool ____Sauna ____Spa ____Hot Tub
____Pool Equipment ____Pool Heater ____Automatic Lawn Sprinkler System
____Fireplace(s) & Chimney (Woodburning) ____Fireplace(s) & Chimney (Mock)

____Natural Gas Lines ____Gas Fixtures
____Liquid Propane Gas: ____LP Community (Captive) ____LP on Property
Garage: ____Attached ____Not Attached ____Carport
Garage Door Opener(s): ____Electronic ____Control(s)
Water Heater: ____Gas ____Electric
Water Supply: ____City ____Well ____MUD ____Co-op
Roof Type: _____ Age: _____ (approx)

Are you (Seller) aware of any of the above items that are not in working condition, that have known defects or that are in need of repair? ☐ Yes ☐ No ☐ Unknown If yes, then describe. (Attach additional sheets if necessary): _____

_____

_____

draft

2. Does the property have working smoke detectors installed in accordance with the smoke detector requirements of Chapter 766, Health and Safety Code? ☐ Yes ☐ No ☐ Unknown If the answer to this question is no or unknown, explain. (Attach additional sheets if necessary): _____

* Chapter 766 of the Health and Safety Code requires one-family or two-family dwellings to have working smoke detectors installed in accordance with the requirements of the building code in effect in the area in which the dwelling is located, including performance, location, and power source requirements. If you do not know the building code requirements in effect in your area, you may check unknown above or contact your local building official for more information. A buyer may require a seller to install smoke detectors for the hearing impaired if: (1) the buyer or a member of the buyer's family who will reside in the dwelling is hearing impaired; (2) the buyer gives the seller written evidence of the hearing impairment from a licensed physician; and (3) within 10 days after the effective date, the buyer makes a written request for the seller to install smoke detectors for the hearing impaired and specifies the locations for the installation. The parties may agree who will bear the cost of installing the smoke detectors and which brand of smoke detectors to install.

3. Are you (Seller) aware of any known defects/malfunctions in any of the following? Write Yes (Y) if you are aware, write No (N) if you are not aware.

____Interior Walls	____Ceilings	____Floors
____Exterior Walls	____Doors	____Windows
____Roof	____Foundation/Slab(s)	____Basement
____Walls/Fences	____Driveways	____Sidewalks
____Plumbing Sewers/Septics	____Electrical Systems	____Lighting Fixtures

____Other Structural Components (Describe) _____

If the answer to any of the above is yes, explain. (Attach additionalsheets if necessary): _____

4. Are you (Seller) aware of any of the following conditions? Write Yes (Y) if you are aware, write No (N) if you are not aware.

____Active Termites (includes wood destroying insects)	____Previous Structural or Roof Repair
____Termite or Wood Rot Damage Needing Repair	____Hazardous or Toxic Waste
____Previous Termite Damage	____Asbestos Components
____Previous Termite Treatment	____Urea-formaldehyde Insulation
____Previous Flooding	____Radon Gas
____Improper Drainage	____Lead Based Paint
____Water Penetration	____Aluminum Wiring
____Located in 100-Year Floodplain	____Previous Fires
____Present Flood Insurance Coverage	____Unplatted Easements

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___Landfill, Settling, Soil Movement, Fault Lines

___Subsurface Structure or Pits

___Single Blockable Main Drain in Pool/Hot Tub/Spa*

___Previous Use of Premises for Manufacture of Methamphetamine

If the answer to any of the above is yes, explain. (Attach additionalsheets if necessary): _____

*A single blockable main drain may cause a suction entrapment hazard for an individual.

5. Are you (Seller) aware of any item, equipment, or system in or on the Property that is in need of repair? ☐ Yes (if you are aware)
☐ No (if you are not aware) If yes, explain. (Attach additionalsheets if necessary): _____

6. Are you (Seller) aware of any of the following? Write Yes (Y) if you are aware, write No (N) if you are not aware.

___Room additions, structural modifications, or other alterations or repairs made without necessary permits or not in compliance with building codes in effect at that time.

___Homeowners' Association or maintenance fees or assessments.

___Any "common area" (facilities such as pools, tennis courts, walkways, or other areas) co-owned in undivided interest with others.

___Any notices of violations of deed restrictions or governmental ordinances affecting the condition or use of the Property.

___Any lawsuits directly or indirectly affecting the Property.

___Any condition on the Property which materially affects the physical health or safety of an individual.

___Any rainwater harvesting system connected to the property's public water supply that is able to be used for indoor potable purposes.

If the answer to any of the above is yes, explain. (Attach additional sheets if necessary): _____

7. If the property is located in a coastal area that is seaward of the Gulf Intracoastal Waterway or within 1,000 feet of the mean high tide bordering the Gulf of Mexico, the property may be subject to the Open Beaches Act or the Dune Protection Act (Chapter 61 or 63, Natural Resources Code, respectively) and a beachfront construction certificate or dune protection permit may be required for repairs or improvements. Contact the local government with ordinance authority over construction adjacent to public beaches for more information.

Signature of Seller Date Signature of Seller Date

The undersigned purchaser hereby acknowledges receipt of the foregoing notice.

Signature of Buyer Date Signature of Buyer Date

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APPROVED BY THE TEXAS REAL ESTATE COMMISSION (TREC)
P.O. BOX 12188, AUSTIN, TX 78711-2188

EQUAL HOUSING OPPORTUNITY

TEXAS REAL ESTATE CONSUMER NOTICE CONCERNING HAZARDS OR DEFICIENCIES

Each year, Texans sustain property damage and are injured by accidents in the home. While some accidents may not be avoidable, many other accidents, injuries, and deaths may be avoided through the identification and repair of certain hazardous conditions. Examples of such hazards include:

- improperly installed or missing ground fault circuit protection (GFCI) devices for electrical receptacles in garages, bathrooms, kitchens, and exterior areas;
- improperly installed or missing arc fault protection (AFCI) devices for electrical receptacles in family rooms, dining rooms, living rooms, parlors, libraries, dens, bedrooms, sunrooms, recreations rooms, closets, hallways, or similar rooms or areas;
- ordinary glass in locations where modern construction techniques call for safety glass;
- the lack of fire safety features such as smoke alarms, fire-rated doors in certain locations, and functional emergency escape and rescue openings in bedrooms;
- excessive spacing between balusters on stairways and porches;
- improperly installed appliances;
- improperly installed or defective safety devices; and
- lack of electrical bonding and grounding.

To ensure that consumers are informed of hazards such as these, the Texas Real Estate Commission (TREC) has adopted Standards of Practice requiring licensed inspectors to report these conditions as “Deficient” when performing an inspection for a buyer or seller, if they can be reasonably determined.

These conditions may not have violated building codes or common practices at the time of the construction of the home, or they may have been “grandfathered” because they were present prior to the adoption of codes prohibiting such conditions. While the TREC Standards of Practice do not require inspectors to perform a code compliance inspection, TREC considers the potential for injury or property loss from the hazards addressed in the Standards of Practice to be significant enough to warrant this notice.

Contract forms developed by TREC for use by its real estate licensees also inform the buyer of the right to have the home inspected and can provide an option clause permitting the buyer to terminate the contract within a specified time. Neither the Standards of Practice nor the TREC contract forms requires a seller to remedy conditions revealed by an inspection. The decision to correct a hazard or any deficiency identified in an inspection report is left to the parties to the contract for the sale or purchase of the home.

This form has been approved by the Texas Real Estate Commission for voluntary use by its licensees. Copies of TREC rules governing real estate brokers, salesperson and real estate inspectors are available from TREC. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, 512-936-3000 (http://www.trec.texas.gov)

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EQUAL HOUSING OPPORTUNITY

Approved by the Texas Real Estate Commission for Voluntary Use

Texas law requires all real estate licensees to give the following information about brokerage services to prospective buyers, tenants, sellers and landlords.

Information About Brokerage Services

Before working with a real estate broker, you should know that the duties of a broker depend on whom the broker represents. If you are a prospective seller or landlord (owner) or a prospective buyer or tenant (buyer), you should know that the broker who lists the property for sale or lease is the owner's agent. A broker who acts as a subagent represents the owner in cooperation with the listing broker. A broker who acts as a buyer's agent represents the buyer. A broker may act as an intermediary between the parties if the parties consent in writing. A broker can assist you in locating a property, preparing a contract or lease, or obtaining financing without representing you. A broker is obligated by law to treat you honestly.

IF THE BROKER REPRESENTS THE OWNER:
The broker becomes the owner's agent by entering into an agreement with the owner, usually through a written - listing agreement, or by agreeing to act as a subagent by accepting an offer of subagency from the listing broker. A subagent may work in a different real estate office. A listing broker or subagent can assist the buyer but does not represent the buyer and must place the interests of the owner first. The buyer should not tell the owner's agent anything the buyer would not want the owner to know because an owner's agent must disclose to the owner any material information known to the agent.

IF THE BROKER REPRESENTS THE BUYER:
The broker becomes the buyer's agent by entering into an agreement to represent the buyer, usually through a written buyer representation agreement. A buyer's agent can assist the owner but does not represent the owner and must place the interests of the buyer first. The owner should not tell a buyer's agent anything the owner would not want the buyer to know because a buyer's agent must disclose to the buyer any material information known to the agent.

IF THE BROKER ACTS AS AN INTERMEDIARY:
A broker may act as an intermediary between the parties if the broker complies with The Texas Real Estate License Act. The broker must obtain the written consent of each party to the transaction to act as an intermediary. The written consent must state who will pay the broker and, in conspicuous bold or underlined print, set forth the broker's obligations as an intermediary. The broker is required to treat each party honestly and fairly and to comply with The Texas Real Estate License Act. A broker who acts as an intermediary in a transaction:

(1) shall treat all parties honestly;

(2) may not disclose that the owner will accept a price less that the asking price unless authorized in writing to do so by the owner;

(3) may not disclose that the buyer will pay a price greater than the price submitted in a written offer unless authorized in writing to do so by the buyer; and

(4) may not disclose any confidential information or any information that a party specifically instructs the broker in writing not to disclose unless authorized in writing to disclose the information or required to do so by The Texas Real Estate License Act or a court order or if the information materially relates to the condition of the property.

With the parties' consent, a broker acting as an intermediary between the parties may appoint a person who is licensed under The Texas Real Estate License Act and associated with the broker to communicate with and carry out instructions of one party and another person who is licensed under that Act and associated with the broker to communicate with and carry out instructions of the other party.

If you choose to have a broker represent you, you should enter into a written agreement with the broker that clearly establishes the broker's obligations and your obligations. The agreement should state how and by whom the broker will be paid. You have the right to choose the type of representation, if any, you wish to receive. Your payment of a fee to a broker does not necessarily establish that the broker represents you. If you have any questions regarding the duties and responsibilities of the broker, you should resolve those questions before proceeding.

Real estate licensee asks that you acknowledge receipt of this information about brokerage services for the licensee's records.

Buyer, Seller, Landlord or Tenant _____ Date _____

Texas Real Estate Brokers and Salespersons are licensed and regulated by the Texas Real Estate Commission (TREC). If you have a question or complaint regarding a real estate licensee, you should contact TREC at P.O. Box 12188, Austin, Texas 78711-2188 , 512-936-3000 (http://www.trec.texas.gov)

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APPROVED BY THE TEXAS REAL ESTATE COMMISSION 10-10-11

EQUAL HOUSING OPPORTUNITY

ADDENDUM FOR SELLER'S DISCLOSURE OF INFORMATION ON LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS AS REQUIRED BY FEDERAL LAW

CONCERNING THE PROPERTY AT _____
(Street Address and City)

A. LEAD WARNING STATEMENT: "Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-paint hazards is recommended prior to purchase."

NOTICE: Inspector must be properly certified as required by federal law.

B. SELLER'S DISCLOSURE:

1. PRESENCE OF LEAD-BASED PAINT AND/OR LEAD-BASED PAINT HAZARDS (check one box only):
   - ❑ (a) Known lead-based paint and/or lead-based paint hazards are present in the Property (explain): _____ .
   - ❑ (b) Seller has no actual knowledge of lead-based paint and/or lead-based paint hazards in the Property.
2. RECORDS AND REPORTS AVAILABLE TO SELLER (check one box only):
   - ❑ (a) Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the Property (list documents): _____ .
   - ❑ (b) Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the Property.

C. BUYER'S RIGHTS (check one box only):

- ❑ 1. Buyer waives the opportunity to conduct a risk assessment or inspection of the Property for the presence of lead-based paint or lead-based paint hazards.
- ❑ 2. Within ten days after the effective date of this contract, Buyer may have the Property inspected by inspectors selected by Buyer. If lead-based paint or lead-based paint hazards are present, Buyer may terminate this contract by giving Seller written notice within 14 days after the effective date of this contract, and the earnest money will be refunded to Buyer.

D. BUYER'S ACKNOWLEDGMENT (check applicable boxes):

- ❑ 1. Buyer has received copies of all information listed above.
- ❑ 2. Buyer has received the pamphlet *Protect Your Family from Lead in Your Home*.

E. BROKERS' ACKNOWLEDGMENT: Brokers have informed Seller of Seller's obligations under 42 U.S.C. 4852d to: (a) provide Buyer with the federally approved pamphlet on lead poisoning prevention; (b) complete this addendum; (c) disclose any known lead-based paint and/or lead-based paint hazards in the Property; (d) deliver all records and reports to Buyer pertaining to lead-based paint and/or lead-based paint hazards in the Property; (e) provide Buyer a period of up to 10 days to have the Property inspected; and (f) retain a completed copy of this addendum for at least 3 years following the sale. Brokers are aware of their responsibility to ensure compliance.

F. CERTIFICATION OF ACCURACY: The following persons have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

Buyer	Date	Seller	Date
Buyer	Date	Seller	Date
Other Broker	Date	Listing Broker	Date

The form of this addendum has been approved by the Texas Real Estate Commission for use only with similarly approved or promulgated forms of contracts. Such approval relates to this contract 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, 512-936-3000 (http://www.trec.texas.gov)

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EQUAL HOUSING OPPORTUNITY

NON-REALTY ITEMS ADDENDUM

TO CONTRACT CONCERNING THE PROPERTY AT

_____
(Address of Property)

A. For an additional sum of $_____and other and good valuable consideration, Seller shall convey to Buyer at closing the following personal property (specify each item carefully, include description, model numbers, serial numbers, location, and other information):

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

B. Seller represents and warrants that Seller owns the personal property described in Paragraph A free and clear of all encumbrances.

C. Seller does not warrant or guarantee the condition or future performance of the personal property conveyed by this document.

Buyer	Seller
Buyer	Seller

This form has been approved by the Texas Real Estate Commission for voluntary use by its licensees. Copies of TREC rules governing real estate brokers, salesperson and real estate inspectors are available at nominal cost from TREC. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, 512-936-3000 (http://www.trec.texas.gov)

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Agenda Item 17:

Discussion and possible action on Education Working Group recommendations on education related matters

SUMMARY:

Staff Recommendation:

Recommended Motion:

Education Working Group Minutes for August 10, 2011

The Education Working Group met on August 10, 2011. All members were present, with two members calling in by telephone conference call. After Douglas Oldmixon explained some of the issues that the Commission would like the group to review, the group began by addressing whether to recommend that the Commission establish a permanent Education Curriculum Standards Committee. After discussion, and upon motion duly seconded, the group voted to recommend that the Commission establish by rule a standing Education Curriculum Standards Committee.

Upon motion duly seconded, the group voted to recommend that the commission adopt rules to establish the committee as follows: The committee should have 12 members appointed by the Commission. Each member serves for a six year term, except that for the initial term, four members should have a two-year term, four members a four-year term, and four members a six-year term so that the appointments are staggered with two year intervals.

The group discussed at length instructor approval requirements including whether the Commission should establish an instructor certification program either provided by the commission or by a third party. The group asked staff to survey other jurisdictions to find out what their requirements are for instructor certification. In addition, several group members offered to research the issue from various perspectives – instructor certification programs offered by professional industry associations such as TAR, programs offered by real estate teacher professional associations such as TRETA or REEA, and private third party instructor certification programs.

The group next discussed qualifications of MCE course instructors, including the broker responsibility course that sponsoring brokers and supervising licensees will be required to take to renew a license as of September 1, 2012. Current rules require a degree in "real estate" or five years of experience in contracts, agency and principles and three years of teaching or training experience. Upon motion duly seconded, the group voted to recommend that the commission adopt rules to require that instructors of the broker responsibility course should also have five years of real estate brokerage related experience as well as five years of experience in contracts, agency and principles. The group noted that the rule need not require that instructors of the broker responsibility course be licensed brokers, but merely have five years of experience in real estate brokerage.

TREC's general counsel explained that the commission has already proposed rules establishing the instructor certification requirements for instructors of the broker responsibility course. If the commission changes the requirements to include the new requirement as recommended by the group, the commission would need to re-propose the rule at the October commission meeting with possible final adoption at a December meeting, or wait until after the first round of instructors are trained to teach the course.

The group next discussed current fees for courses, instructors, schools, and providers. Mr. Oldmixon's memo provides that current fees charged to educational providers do not cover the cost of education related

operations at the Commission, and that reasonable fee schedule should be established for all elements of the education system. The memo further provides that:

> Proprietary schools pay a $400 initial application fee and then $200 per year for a 4 year approval period, but pay no fees for the review and approval of individual core courses, which also have no "expiration. Core courses should have a review fee and a reasonable required period after which they should be reviewed and updated. MCE providers pay $400 for initial approval and $100 per course approval. No fees are collected from MCE providers who wish to offer the required Legal and Ethics MCE courses. Instructors of all types pay $25 for a 2 year approval. All of these fees need to be reviewed for fairness, equity and adequacy.

Upon motion duly seconded, the group voted to recommend: (1) that the commission review its fee structure for approving courses, instructors, schools, and providers taking into consideration the cost of providing the service; (2) that the commission establish a tiered fee structure for course approval based on the number of course hours; and (3) that core courses be approved for a four-year period and MCE courses for a two-year period.

The last order of business for the day was to develop a recommendation for the mission statement of the Education Curriculum Standards Committee. Upon motion duly seconded, the group voted to recommend that the commission adopt the following: The mission of the Education Curriculum Standards Committee is to regularly review and revise curriculum standards, course content requirements and instructor certification requirements for core and MCE courses.

The group decided to meet again on September 12, at 1:00 pm at TREC offices on 17 N. Congress in Austin. At that time, the group will review the remaining items addressed in Mr. Oldmixon's memo and any other education-related items that the group wishes to recommend to the Commission.

Agenda Item 18:

Discussion and possible action to amend the Memorandum of Understanding with the Real Estate Center

SUMMARY: The Memorandum of Understanding with the Real Estate Center was updated to reflect additional duties and responsibilities of the Center and the Commission.

Staff Recommendation: Approve the MOU as presented by staff.

Recommended Motion: MOVED, that the Commission does hereby approve the changes to the Memorandum of Understanding with the Real Estate Center as presented by staff at the meeting.

Memorandum of Understanding

I. Parties. The Texas Real Estate Commission (TREC) and the Real Estate Center at Texas A&M University (the Center). *Sec IV A. 1. member: State Bar of Texas REPTL Section*

II. Background. In September 2002, TREC appointed an Education Task Force (ETF) to look at the structure of Mandatory Continuing Education (MCE) for real estate licensees in Texas, analyze its effectiveness and make any necessary recommendations for improvements. In part, the ETF proposed that TREC restructure MCE to require that all licensees attend a 3-hour real estate update course and a 3-hour ethics course. In October 2003, TREC adopted the ETF recommendations and in February 2004 TREC requested assistance from the Real Estate Center in developing these courses. In June 2011, the SB 747 added a new 6 hour Broker Responsibility course to the MCE requirements for all brokers and certain managers delegated by brokers to manage or oversee the activities of licensed sales agents.

III. Purpose. This Memorandum of Understanding sets forth the mutual understanding and agreement between TREC and the Center to enter into a partnership to develop, deliver, and maintain courses to meet certain MCE requirements of Texas Occupations Code Chapter 1101.

The 3-hour real estate legal update course will be devoted, without limitation, primarily to relevant statutes, rules, regulatory actions, recent cases, changes in contracts or other real estate forms, and secondarily to address legal issues of recurring importance such as fair housing, agency, antitrust, landlord-tenant laws, disclosures, tax issues, and other relevant legal topics.

The 3-hour ethics course will be devoted but not limited to fiduciary duties, agency relationship, interference with agency relationships, conflicts of interest, misrepresentations, drafting of offers and notices, the unauthorized practice of law, submission and presentation of offers, coordinating multiple offers, general negligence and competence, cooperation and compensation with other licensees, disclosure of property condition and other material items, duties when selling or buying the licensee's own property, advertising; and a discussion involving dispute resolution procedures generally available in Texas, including mediation and arbitration services.

The 6-hour broker responsibilities course will be devoted to requirements for written broker policies and procedures manuals and materials and compliance fundamentals, obligations for training agents, duty to oversee licensing, education and financial transactions of agents, trust account requirements, payment of commissions, agency and intermediary requirements in detail with examples, personnel practices and management, risk management and reduction, best practices discussions, and other topics applicable to the proper delivery of brokerage services to clients through the broker's sponsored agents.

All courses would include a module for "emerging issues" to address recent developments that occur after the initial courses are developed but before they are updated on a periodic basis.

Instructors registered with TREC who wish to teach each of these courses must successfully complete an instructor training course to obtain certification to teach each of the courses. Instructor certification will be for a period of up to two years for each course, valid for the duration of the particular course.

IV. Responsibilities of the Parties.

A. The Real Estate Center.

1. The Center will create the courses described above in a classroom format with input from a working group of subject matter experts appointed as follows: three members appointed by the Center's Director and three members appointed by TREC's Chair to serve at the pleasure of the appointer. Also, the General Counsel of TREC and the Chair of the Real Estate Law Division of the Texas State Bar's Real Estate Probate and Trust Law Section are standing members of the working group. The standing members may name an equivalently qualified colleague as an alternate to serve in their stead for any meeting of the working group. The Center will convene the working group as necessary to complete its work in a timely manner.

2. The Center will designate an education coordinator to assume overall responsibility for the courses.

3. The Center will update and revise each course by October 1 of each odd-numbered year, and will create a course outline and an instructor's manual for each course.

4. The Center will conduct a series of in person instructor training classes as the sole method by which instructors may achieve qualification to teach the courses to real estate license holders for MCE credit.

5. The Center may set the price for attendance at such classes in an amount sufficient to cover its costs related to offering the class. TREC Commissioners and staff may attend such classes at no charge.

6. Within 15 days after the completion of each class, the Center will provide to TREC a list of instructors who have taken the instructor training class and successfully completed the final written evaluation for each course, if any, identifying each instructor and each course which they are qualified to teach.

7. The Center will offer the qualifying classes to TREC approved instructors at least four times between October 1 and December 31 of each odd-numbered year and at least once every four months in an even-numbered year and will provide all course materials to instructors taking the class.

8. The Center will develop and provide "emerging issues" materials to TREC as relevant events occur.

B. Texas Real Estate Commission

1. TREC will approve all course materials before the classes are offered to instructors.

2. TREC will accept the Center's qualification of instructors to teach the courses for up to a 2 year period.

3. Instructor qualification to teach a course will expire when the course is effectively replaced by TREC.

4. TREC will provide full access to course materials and "emerging issues" updates on its website.

5. TREC will e-mail notice of "emerging issues" updates to approved instructors and MCE providers.

V. Period of Agreement and Modification/Termination. This memorandum of understanding is effective upon its signing by the TREC Administrator and the Director of the Real Estate Center. It may be modified from time to time with the agreement of TREC and the Center. Either agency may withdraw from this memorandum of understanding by written notice to the TREC Administrator or the Executive Director of the Real Estate Center at a date not less than six months from the date written notice is given. Except as contained herein, this memorandum of understanding may not be construed to create any additional liability or obligation for either party.

For the Parties:

Texas Real Estate Commission

_____ _____

By its Administrator Date

Douglas E. Oldmixon

and

Real Estate Center at Texas A&M University

_____ _____

By its Director Date

Gary Maler

For the Sec IV A. 1. Member

Real Estate Division of the State Bar of Texas' Real Estate, Probate and Trust Law Section

_____ _____

By its Chair Date

Robert Watson

Agenda Item 19:

Discussion and possible action to amend the Memorandum of Understanding with the Texas Appraiser Licensing and Certification Board

SUMMARY: The Memorandum of Understanding with the Texas Appraiser Licensing and Certification Board was updated to reflect additional duties and responsibilities of the Board and the Commission.

Staff Recommendation: Approve the MOU as presented by staff.

Recommended Motion: MOVED that the Commission does hereby approve the changes to the Memorandum of Understanding with the Texas Appraiser Licensing and Certification Board as presented by staff at the meeting.

Memorandum of Understanding
Texas Real Estate Commission
and
Texas Appraiser Licensing and Certification Board

I. Introduction and Background. The Texas Real Estate Commission (TREC) is an executive branch agency of the State of Texas, and the Texas Appraiser Licensing and Certification Board (TALCB) is an independent regulatory subdivision of TREC. As part of the continuation of TREC for an additional 12-year period, the 80th Texas Legislature in 2007 required that TALCB be integrated with TREC to the fullest extent possible while retaining TALCB's identity as an independent regulatory body. To implement that requirement, TREC and TALCB entered into a Memorandum of Understanding in 2007 that was amended in 2010 to more fully describe the roles and responsibilities of each party. As of September 1, 2011, the parties have achieved self-directed, semi-independent status, which removes the agency from the legislative appropriations process and modifies the manner in which the agency collects and spends funds. This Memorandum of Understanding (Agreement) replaces all prior Agreements.

II. Parties. The Texas Real Estate Commission (TREC) and the Texas Appraiser Licensing and Certification Board (TALCB) are the parties to this Agreement.

III. Purpose. The purpose of this Agreement is to delineate:

a. The roles and responsibilities of each party;
b. The administrative and support services that TREC will provide to TALCB at no cost;
c. The allocation of resources between TREC and TALCB; and
d. The costs and expenses for which TALCB is directly responsible for payment.

IV. General Agreements. Under Texas Occupations Code Section 1103.101, the TREC administrator serves as the TALCB commissioner. The commissioner is responsible for supervision of all TALCB staff and oversight of all TALCB expenditures within the parameters of a TALCB-approved budget and legislative appropriations. The commissioner reports to and performs these duties under the direction of the TALCB and is ultimately responsible to the TALCB for the operations of the agency. A portion of the administrator/commissioner's exempt salary is allocated from TALCB resources.

The Texas Real Estate Commission (TREC) and the Texas Appraiser Licensing and Certification Board (TALCB) agree to the following.

A. TREC will provide, at no cost to TALCB, administrative services and support to TALCB, including but not limited to the following.

1. Staff Services in accordance with TREC operating procedures as follows:
    a) Human Resources;
    b) Accounting;

c) Purchasing;
d) Cashier and mail room;
e) Payroll; and
f) Facilities management

2. Technology Services;
3. Telephone System;
4. Personnel training programs involving no charges to TREC;
5. Use of meeting rooms on a space available basis; and
6. Texas Register Liaison services.

B. TALCB-appropriated FTEs working in Licensing, Education, and Communications are subject to the day-to-day supervision of the TREC Director(s) and Managers who oversee those areas of activity. TALCB Enforcement staff report to the TALCB Enforcement Director who is supervised by the commissioner or his designee.

C. TALCB bears the lawfully payable or reimbursable amounts of all costs incurred by the Board other than those TREC-provided support services enumerated in Part IV.A of this Agreement, including, but not limited to:

1. All direct and indirect costs of TALCB FTEs' salary and benefits;
2. Rent and overhead expenses for space occupied by TALCB and a percentage of common area expenses
3. Services provided by the State Office of Administrative Hearings;
4. Services provided by the Office of the Attorney General;
5. Services provided by the State Auditor's Office;
6. Equipment, supplies, services, or other goods;
7. Travel, meals, and lodging;
8. Training; and
9. Dues and subscriptions.

D. Portions of staff salaries are allocable and payable as further described in Exhibit A to this Agreement and may be redistributed or reallocated as necessary by the commissioner to ensure the efficient provision of administrative and support services to TALCB.

E. TALCB is allocated its *pro rata* portion of the contribution to General Revenue required by SB 1000, 82nd Legislative Session.

F. The administrator/commissioner, at his discretion, may determinate that TREC will provide additional administrative support services as necessary to ensure the smooth operation of the entire agency.

G. The administrator/commissioner may direct the transfer of funds between the parties as necessary to maintain the financial soundness of each, informing the Chairs of both governing bodies as soon as reasonably practicable and proposing a plan for repayment.

V. Term of Agreement. This Agreement become effective on the date signed and remains in effect for fiscal years 2012 and 2013 unless amended by mutual written agreement of the parties. This Agreement terminates and supersedes any other memorandum of understanding or agreement entered into between the parties before the effective date of this Agreement. Either party may withdraw from this Agreement by written notice to the Chair of the other governing body of the other party with 365 days prior notice.

The execution and performance of this Agreement has been authorized by each respective governing body.

This Memorandum of Understanding shall not be construed to create any additional liability or obligation for either party.

_____	_____
Avis Wukasch Chair Texas Real Estate Commission	Luis De la Garza Chair Texas Appraiser Licensing & Certification Board
_____	_____
Date	Date

Exhibit A

1. Effective September 1, 2011, portions of the following TREC salaries are allocable to and payable by TALCB:

A. TREC Administrator/TALCB Commissioner – 20%
B. TREC Deputy General Counsel/TALCB General Counsel – 50%

2. Effective March 1, 2012, the following amounts of TREC salaries are allocable to and payable by TALCB:

A. $6,000.00 of salary increases related to AMC work by TREC staff.

Agenda Item 20:

Discussion and possible action to approve the Required Legal Update and Ethics MCE course materials

SUMMARY: See draft materials as attached.

Staff Recommendation: Approve the Required Legal Update and Ethics MCE course materials

Recommended Motion: MOVED, that the Commission does hereby approve the Required Legal Update and Ethics MCE course materials with any non-substantive changes as staff may deem necessary or advisable for adoption.

Agenda Item 21:

Discussion and possible action to authorize the administrator to request an opinion from the Office of the Attorney General regarding insurance requirements for real estate inspectors in Texas

SUMMARY: See attached draft letter

Staff Recommendation:

Recommended Motion: MOVED, that the Commission does hereby authorize the administrator to request an opinion from the Office of the Attorney General regarding insurance requirements for real estate inspectors in Texas

Douglas Oldmixon
Adminstrator
(512) 936-3088
douglas.oldmixon@trec.texas.gov

October 11, 2011

The Honorable Greg Abbott
Attorney General of Texas
Post Office Box 12548
Austin, Texas 78711-12548

Attention: Opinion Committee

Dear General Abbott:

At its meeting on October 10, 2011, the Texas Real Estate Commission ("Commission," or "TREC") authorized me to request an opinion regarding the insurance requirement for real estate inspectors in Texas.

Since September 1, 2007, real estate inspectors have been required by Chapter 1102 of the Texas Occupations Code to carry insurance as follows:

Sec. 1102.114. ISSUANCE OF LICENSE. The commission shall issue the appropriate license to an applicant who:
(1) meets the required qualifications;
(2) pays the fee required by Section 1102.352(a); and
(3) offers proof that the applicant carries liability insurance with a minimum limit of $100,000 per occurrence to protect the public against a violation of Subchapter G.

Section 1102.203(a) A person may renew an unexpired license by paying the required renewal fee to the commission before the expiration date of the license and providing proof of liability insurance as required by Section 1102.114(3).

Subchapter G, referenced in Section 1102.114, is entitled "Prohibited Acts" and includes negligence, incompetence, and violations of the chapter and Commission Rules. Based on this language, and pursuant to a previous ruling from the Office of the Attorney General (Tex. Att'y Gen. Op. No. GA-0581 (2007)), the Commission has interpreted these provisions as requiring professional liability insurance or any other insurance that protects the public against a violation of Subchapter G (commonly referred to as "error and omissions" insurance).

Although there appear to be sufficient providers of such policies in Texas today, a concern exists that there may not be access to such coverage in the future. Given the uncertainty of insurance markets and the necessity that inspectors obtain insurance policies as described above in order to receive or renew a license from the Texas Real Estate Commission, we ask the following questions:

1. Would the insurance described above still be required if every insurance provider left the Texas market and no policy was available to satisfy the requirements of Sections 1102.114 and 1102.203(a), Texas Occupations Code?

2. Does the Commission have the discretion to waive this requirement if no such insurance coverage is available in Texas?

Thank you for your attention to this matter. Please do not hesitate to contact me if I may be of further assistance.

Sincerely,

Douglas Oldmixon

Agenda Item 22:

Discussion and possible action to accept the Texas Comptroller of Public Accounts' post payment audit report of certain TREC payroll, purchase, refund, and travel transactions

SUMMARY: See attached report.

Staff Recommendation: Approve the report.

Recommended Motion: MOVED that the Commission does hereby accept the Texas Comptroller of Public Accounts' post payment audit report of certain TREC payroll, purchase, refund, and travel transactions.

Texas Real Estate Commission

We audited a stratified random sample of the Texas Real Estate Commission's (Commission) purchase, travel, and payroll transactions that processed through USAS and USPS during the period beginning Dec. 1, 2009, through Nov. 30, 2010. We also reviewed a limited sample of the payroll deductions, per diem salary, and refund of revenue transactions. We reviewed each transaction to determine compliance with applicable state laws.

We audited payroll transactions for compliance with the GAA, the Payroll Guide, and other pertinent statutes. We identified issues with missing verification of prior state service and leave without pay not entered.

We audited purchase transactions for compliance with eXpendit, the GAA, Procurement Manual, and other pertinent statutes. We identified instances of improper payment of taxes/fees, purchase order created after the vendor's invoice was received, and insufficient documentation.

We audited travel transactions for compliance with the GAA, Textravel, and other pertinent statutes. We did not identify errors in our review of travel transactions.

Our audit included a limited review of the Commission's transactions relating to refunds of revenue. This review consisted of verifying that the documentation provided reconciled with the payment amount in our sample. We did not identify any payment or documentation errors in these transactions.

We also reviewed the Commission's internal control structure. Our review was limited to obtaining an understanding of the Commission's controls sufficient to plan our audit and did not include tests of control policies and procedures. We noted certain areas of risk involving the internal control structure and its operation. The Commission designated three employees with security to perform multiple tasks without oversight.

We selected a limited number of fixed assets acquired by expenditures during our audit period to test for accurate reporting in SPA and to verify existence of the assets. We were able to locate all assets and verify accurate tracking in SPA.

We issued a prior post-payment audit of the Commission's purchase, travel, and payroll transactions on Nov. 26, 2007. The only recurring finding from the previous audit included: control weakness over expenditure processing.

DRAFT

Agenda Item 23:

Discussion and possible action to establish policies related to self-directed semi-independent status, including:

a. Cash flow management reserves

b. Technology replacement reserves

c. A target reserve balance in excess of which the agency may reduce fees

SUMMARY: See attached memo.

Staff Recommendation: Establish the recommended policies.

Recommended Motion: MOVED, that the Commission does hereby establish policies related to self-directed semi-independent status, including cash flow management reserves, technology replacement reserves, and a target reserve balance in excess of which the agency may reduce fees

TEXAS

REAL ESTATE COMMISSION

APPRAISER LICENSING & CERTIFICATION BOARD

MEMORANDUM

TO: Commissioners

FROM: Douglas E. Oldmixon, Administrator

RE: Recommended Policies regarding Reserves, Expenses and Fee Reductions

DATE: **1 Oct 2011**

DISCUSSION

As an SDSI agency for FY 2012 and going forward, it is important that the agency establish sufficient financial reserves to deal with anticipated revenue fluctuations based on calendar (odd-even) years, seasonal license renewal volumes and economic trends, as well as unexpected contingencies. For the first two years, we will have access to annual appropriations of approximately $3.4 Million to manage any contingencies, although these funds must be repaid to the General Fund at the end of each fiscal year, along with the agency's required $720,000 annual statutory general revenue contribution. Further, technology has a fairly predictable life cycle and needs scheduled replacement that can and should be reserved for or integrated into operating budget assumptions. Lastly, based on potential cost savings, efficiencies and potential license number increases, it would be prudent to establish an overall target for "excess" reserves, that if reached, would require the staff to bring to the Commission a proposed rule adjusting the application and renewal or other fee rates to provide a reduction sufficient to reduce the excess to nil. This also potentially avoids the criticism that would surely follow from legislators and other leadership if the agency accumulated reserves in excess of that reasonably needed for contingencies.

RECOMMENDATIONS

a. Cashflow Management/Operating (CM/O) Reserve - An amount approximately equal to a sum sufficient to cover average operating expenses for a 3 month period, (600,000 x 3 = $1,800,000) but not less than the highest cumulative operating shortfall based on reasonable cashflow projections.

b. Technology Replacement Expense - An amount sufficient to update and/or replace most technology every 4 years should be included in the Operating Budget proposed each year; 25% each year.

c. Reserve for Fee Reduction - An amount sufficient to provide an initial reduction of not less than $4.00 in each initial or renewal fee for all license and registration types administered by the agency, based on the actual volume of license and registrations renewed in the prior 8 fiscal quarters. For example, if the total number of license renewed in the past 8 quarters totals 144,000, then when the CM/O reserve accumulates an excess of $576,000 above its target, the staff would propose eliminating the E-Newsletter fee. After the initial reduction, if the CM/O reserve accumulated $288,000 above its target, the staff would propose a $2.00 fee reduction. This will be reviewed each year when the next annual budget is submitted for consideration.

The prior discussion of these proposals has allowed Commissioners to provide desired guidance to the staff for full consideration. Approval of these policies is recommended at this time.

Agenda Item 24:

Consideration and possible action regarding:

a. Proposal for Decision from State Office of Administrative Hearings in the matter of Luis Acosta, SOAH Docket No. 329-11-4255.REC

SUMMARY:

To be presented at the meeting.

Staff Recommendation:

Recommended Motion:

TEXAS REAL ESTATE COMMISSION

DOUGLAS E. OLDMIXON, ADMINISTRATOR

Standards & Enforcement Services
Direct Line: (512) 936-3005
Facsimile: (512) 936-3809

MEMORANDUM

To: THE COMMISSION MEMBERS

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

Date: SEPTEMBER 28, 2011

Subject: PROPOSAL FOR DECISION
IN THE MATTER OF
LUIS ACOSTA

The enclosed Proposal for Decision has been filed in SOAH Docket No. 329-11-4255.REC. The Proposal for Decision will be considered for Final Order at the meeting of the Commission scheduled for October 10, 2011, at 9:00 a.m. in Conference Room 170, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78701.

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

August 5, 2011

Douglas E. Oldmixon
Administrator
Texas Real Estate Commission
1700 N. Congress Avenue, Suite 400
Austin, TX 78701

INTER-AGENCY

RE: Docket No. 329-11-4255.REC; Luis Acosta V. Texas Real Estate Commission

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,

SUZANNE FORMBY MARSHALL
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

SFM:cm
Enclosure
xc: Beverly S. Rabenberg, Staff Attorney, 1700 N. Congress Avenue, Suite 400, Austin, TX 78701 – **VIA INTER-AGENCY**
Luis Acosta, 141 Danube, Suite 103, San Antonio, TX 78213 - **VIA REGULAR MAIL**
Ralph C. Gonzalez, 141 Danube, Suite 103, San Antonio, TX 78213 – **VIA REGULAR MAIL**
Kerri Galvin, Director of Standards & Enforcement Services, 1700 N. Congress Ave., Suite 400, Austin, TX 78701 (with 1 CD) – **VIA INTER-AGENCY**

SOAH DOCKET NO. 329-11-4255.REC

TEXAS REAL ESTATE COMMISSION,	§	**BEFORE THE STATE OFFICE**
Petitioner	§	
	§	
v.	§	**OF**
	§	
LUIS ACOSTA,	§	
TEXAS REAL ESTATE SALESPERSON	§	**ADMINISTRATIVE HEARINGS**
LICENSE NUMBER 510811	§	
Respondent	§	

PROPOSAL FOR DECISION

Staff of the Texas Real Estate Commission (TREC) brought disciplinary action against Luis Acosta (Respondent) based on an allegation that he violated the Texas Real Estate License Act[1] (Act) by picking up a commission check from the sale of property and depositing it into his own bank account. For the alleged violation, Staff seeks a formal reprimand against Respondent's real estate salesperson license and an administrative penalty of $2,500. After reviewing the law and the evidence presented, the Administrative Law Judge (ALJ) has determined that Staff proved the violation by Respondent. However, she recommends that the Commission assess a formal reprimand against him, but no administrative penalty, for the reasons set forth below.

I. JURISDICTION AND NOTICE

The hearing convened on June 7, 2011, before ALJ Suzanne Formby Marshall at the State Office of Administrative Hearings (SOAH), 300 West 15th Street, Austin, Texas. Beverly Rabenberg, TREC assistant director of enforcement, represented the Staff, and Respondent appeared on his own behalf. The record closed at the conclusion of the hearing that day.

No one raised issues regarding jurisdiction and the sufficiency of notice. Therefore, the ALJ sets out those matters in the Findings of Fact and Conclusions of Law.

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[1] TEX. OCC. CODE § 1101.001 *et seq.* (Code).

II. DISCUSSION

A. Evidence

Staff asserts that Respondent negotiated the sale of a new home between FieldStone Homes of Texas, LLC (FieldStone), and Larry and Ruth Slush, while he worked under the sponsorship of George Limon Alejos, a licensed real estate broker. After the conclusion of the sale, Chicago Title Company issued a commission check for $4,489.98. As alleged by Staff, Respondent picked up the commission check from the title company and deposited it into his own bank account without the permission of Mr. Alejos, in violation of TEX. OCC. CODE (Code) §1101.651(b).[2] In support of its contention, Staff introduced six exhibits into evidence and offered the testimony of George Alejos and Bruce Wooley, chief investigator of TREC's Enforcement division.

1. Testimony of George Alejos

Mr. Alejos testified that he is a licensed real estate broker who works in San Antonio.[3] According to Mr. Alejos, Respondent was in the process of trying to obtain the franchise for Realty World Executive, a realty company. At the time, Reuben Bravo was the recorded broker for that franchise. However, in 2007, Respondent approached him to become his sponsoring broker for Realty World Executive.[4] Mr. Alejos agreed and told Respondent to "do it right" by recording the franchise with TREC and opening an account.[5]

In November 2007, Respondent and Mr. Alejos filed an assumed name certificate with the Bexar County clerk, indicating that they were involved in a partnership of Realty World

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[2] Section 1101.651(b) prohibits a salesperson from accepting compensation for a real estate transaction from someone other than the broker with whom the salesperson is associated.

[3] He was licensed by the Commission in 2000.

[4] The evidence does not establish why or how the sponsorship between Respondent and Mr. Bravo ended.

[5] Presumably, "account" meant a bank account for the business. The evidence is unclear as to whether Respondent attempted to get franchise approval for Realty World **Executive** while sponsored by Mr. Alejos or whether he only attempted to get franchise approval for Realty World **San Antonio** while sponsored by Mr. Alejos (emphasis added). Nonetheless, this lack of clarity does not affect the outcome of this case.

San Antonio.[6] However, during the process of trying to get the franchise approved under Mr. Alejos' name as broker, they ran into unspecified "difficulties." Mr. Alejos testified that he told Respondent they were not going to continue working under Realty World, but would operate through his brokerage, George Alejos Realty. According to Mr. Alejos, at that time, all business for Realty World ceased.

Mr. Alejos testified that he and Respondent had an agreement to split commissions on Respondent's sales so that Respondent received 90% and he received 10% of the commission. In describing how a commission check is distributed, Mr. Alejos said that when transactions were closed, the title company would issue a check payable to the brokerage. He said that the commission check would either be mailed to him or picked up personally by him. He would then deposit the check into the account of George Alejos Realty and pay Respondent his share of the commission.

With respect to the transaction between FieldStone and the Slushes, Mr. Alejos said that Respondent had negotiated the sale of the new home. One day, Respondent asked Mr. Alejos to go to the site with him to discuss the transaction. There, Mr. Alejos visited with the FieldStone sales person, told him that he was the broker of record, and requested that the commission check be made payable to George Alejos Realty and mailed to him or that it would be picked up by him. Mr. Alejos also said that he told the title company the same thing.

When asked to look at Staff Exhibit 5, a realtor commission agreement for the transaction, Mr. Alejos acknowledged that he had seen the agreement before. He could not explain why Realty World United was listed as the real estate company for the transaction instead of George Alejos Realty. He also could not recall any transactions that were closed by Respondent under the Realty World company name.[7] The commission agreement for the transaction, claimed Mr. Alejos, was to

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[6] Staff Ex. 4.

[7] Mr. Alejos did not testify about any transactions involving Respondent that closed under the George Alejos Realty company, either. On cross-examination, Mr. Alejos agreed that he did not have anything in writing to show that he terminated his relationship with Realty World.

split the commission between Respondent and Mr. Alejos on a 90-10% basis. Mr. Alejos testified that he never told Respondent he could have the entire commission.

The home was completed toward the end of October 2008. After a phone call to Mr. Garza, a representative of FieldStone to inquire about the status of the closing for the home, Mr. Alejos learned that it was scheduled for October 31st. He said that he told Mr. Garza to make sure that the commission check was issued and remitted to Mr. Alejos. A few days before October 31st, Mr. Alejos contacted FieldStone and Chicago Title to tell them to mail the check to him or that he would personally pick it up. He said he did not tell Respondent to pick up the commission check, cash the check or deposit it into Respondent's own bank account.

When Mr. Alejos realized a few days later that the commission check was not deposited into his realty account, he called Chicago Title and learned that Respondent had picked up the check without his knowledge. Chicago Title provided a copy of the check to Mr. Alejos showing that $4,489.98 was paid to the order of Realty World United.[8] After he spoke to a branch manager with Chicago Title, the title company agreed to give another check to Mr. Alejos. Mr. Alejos reported to the police that the original check was stolen and he filed a complaint with the San Antonio district attorney's office. When Respondent later contacted him to inquire about the situation, Mr. Alejos said he told him that he had reported the check as stolen and told him to "let the legal process kick in."

2. Testimony of Bruce Wooley

Bruce Wooley testified that he investigated the complaint filed against Respondent by Mr. Alejos. In the course of his investigation, he interviewed Respondent in October 2009. During the interview, Respondent acknowledged that Mr. Alejos was his sponsoring broker during the transaction between FieldStone and the Slushes. Respondent said he negotiated the sale and expected compensation from it. He verified the realtor agreement commission (Staff Ex. 5). He also

[8] Staff Ex. 6.

said that when the transaction closed, he picked up the commission check and deposited it into his business account. When asked why Realty World United was listed as the real estate company, Respondent told Mr. Wooley that he had worked with the client before when he was working under Realty World. Mr. Wooley testified that the real estate licensing act requires that a salesperson is to be paid through the broker, unless the broker has agreed for the salesperson to be paid directly.

3. Testimony of Luis Acosta

Mr. Acosta testified Mr. Alejos agreed to serve as his sponsoring broker in 2007 in a verbal agreement. As part of the discussion about sponsoring him, Respondent said that Mr. Alejos asked Respondent to loan him $ 2,000 to pay some taxes owed. In return, Mr. Alejos told him that he would sponsor him and would not charge Respondent any part of the commission on future sales. Respondent said that there was no written agreement between him and Mr. Alejos with respect to a split of commission and fees for sales.

When they were setting up the franchise of Realty World, Respondent said that he asked Mr. Alejos how to handle it. He said that Mr. Alejos told him to register the company and open a joint account. He did so and opened the account through Wells Fargo. When the FieldStone/Slush sale was completed, Respondent said he deposited the check into the Realty World account at Wells Fargo, claiming that Mr. Alejos told him to do so. However, Mr. Alejos filed a complaint and claimed that Respondent deposited the check into a personal account.

Respondent testified that he was never paid for the sale and hoped that he could receive his share of the commission so that he could pay the fine sought by Staff in this case. Mr. Acosta conceded that he deposited the commission check into a Wells Fargo account, although he claimed the account was a joint account of Realty World and that he was told to deposit the check into that account by Mr. Alejos.

Respondent testified that he learned at a later date that Mr. Alejos had "cancelled his license."[9] Respondent said he did not know that he was required to be paid only by the broker and said that his ignorance of the law had cost him money. He testified that since this incident, he has filed for bankruptcy and does not have the money to pay an administrative penalty.

B. Legal Authority

The Real Estate License Act prohibits a salesperson from accepting compensation for a real estate transaction from a person other than the broker with whom the salesperson is associated or was associated when the salesperson earned the compensation.[10] The Commission may take disciplinary action against a license holder, including suspension or revocation of a license, if the license holder violates the Act.[11] The Commission may also assess administrative penalties against a person who violates the Act.[12] An administrative penalty may not exceed $5,000 for each violation.[13]

In determining the amount of an administrative penalty, the Commission shall consider such factors as: (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited acts; (2) the history of previous violations; (3) the amount necessary to deter a future violation; (4) efforts to correct the violation; and (5) any other matter that justice may require.[14] TREC has adopted a schedule of administrative penalties that provides for a penalty range of $100 to $ 5,000 per violation per day for various violations of the Act. However, the penalty schedule does not specifically list a penalty for a violation of Code § 1101.651(b).[15]

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[9] The testimony was not clear on this point, but presumably, Mr. Alejos no longer wished to serve as a sponsoring broker to Respondent.

[10] Code § 1101.651(b).

[11] Code § 1101.656(a)(10).

[12] Code § 1101.701.

[13] Code § 1101.702.

[14] *Id.*

[15] 22 TEX. ADMIN. CODE § 535.191.

C. Analysis

Mr. Alejos served as the sponsoring broker for Respondent during the sale of a home to the Slushes. The evidence clearly establishes that Respondent picked up the commission check from Chicago Title at the conclusion of the sale and deposited it into an account at Wells Fargo Bank. Respondent claims he acted at the direction of Mr. Alejos, his broker. Mr. Alejos testified that he made clear that he wanted the check either mailed to him or personally picked up by him, and that the check would be deposited into the account for George Alejos Realty.

Respondent and Mr. Alejos offered conflicting evidence on whether they operated through the Realty World company or through the George Alejos company.[16] Respondent's conduct during and after the transaction supports his assertion that Realty World was the relevant company and account. Ultimately, the testimony of Respondent that the transaction occurred under the Realty World company is more credible than Mr. Alejos' testimony that the transaction occurred under the George Alejos Realty company for several reasons. First, the partnership agreement was filed under the name of Realty World San Antonio. There was no evidence that the Realty World partnership ceased operations, except for the testimony of Mr. Alejos. No official act was taken to dissolve the partnership agreement or to abandon the Realty World company. Second, the actual realtor commission agreement listed Realty World United as the real estate company, and Mr. Alejos conceded that he was aware of the agreement.[17] Mr. Alejos took no action to change the commission agreement so that it reflected the George Alejos Realty company. Instead, he said that he only verbally told the FieldStone salesperson and the title company that the check should be made payable to George Alejos Realty. Further, the Chicago Title Company issued the commission check payable to "Realty World United," evidencing their understanding that this was the correct party to whom the

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[16] There was testimony about Realty World **Executive**, Realty World **San Antonio** and Realty World **United** throughout the case (emphasis added). There was no evidence or argument about whether operating under one or more of these names was a problem. As discussed earlier, this conflict did not affect the overall outcome of the case, but contributed to confusion in understanding the details of the transaction. Further, the lack of precision with respect to which realty company was the correct realty company, by both Respondent and Mr. Alejos, diminished their overall credibility as professionals in the real estate business.

[17] Neither party explained why the name "Realty World United" was used on the commission agreement or commission check.

check should be made, casting doubt on Mr. Alejos' testimony that he told them to make the check payable to George Alejos Realty.

However, Respondent's testimony that he was authorized to pick up the commission check and deposit it into the Realty World joint account is not credible. The check itself is made payable to "Realty World United." However, the endorsement stamp on the back of the check, indicates that it is to be considered "for deposit only," and lists Respondent's name as the account holder, not the name of Realty World or George Alejos. Admittedly, the copy of the endorsement stamp is difficult to read, but Respondent's vague testimony that it should have been endorsed for deposit to Realty World is not convincing in light of the fact that the name "Acosta" can be clearly read on the endorsement. Respondent did not offer any evidence showing that the check was actually deposited into a jointly-held Realty World account at Wells Fargo. Because Mr. Alejos called Chicago Title and the district attorney to complain that he had not received the commission check, it seems clear that Mr. Alejos did not receive the original commission check. If the check had been deposited into a joint account, Mr. Alejos would have been aware of its deposit.

Further, it is likely that Respondent believed that he was entitled to the full commission, based on his testimony that the original commission agreement between he and Mr. Alejos was that Respondent could keep all commissions from future transactions because he had loaned Mr. Alejos $2,000. In that scenario, his action in depositing the check into his own account makes sense, especially when considering his testimony that he was unaware that he was legally authorized to accept a commission check from someone other than his broker.

It is difficult to ascertain whether Respondent tried to take advantage of Mr. Alejos in this transaction or whether Mr. Alejos got an advantage over Respondent. However, one thing is clear: Respondent accepted a commission check from someone other than the broker with whom he was associated at the time he earned the compensation. As such, he violated the Act. Staff proved the allegations against Respondent by a preponderance of the evidence.

However, Staff did not present any evidence in support of its requested relief: a $2,500 administrative penalty. The TREC administrative penalty schedule provides for penalties in a range of $100 to $5,000, depending on the specific violation. The violation in this case is not specifically listed in TREC's administrative penalty schedule. Mr. Wooley did not offer any testimony describing why the violation was one for which a penalty could be assessed, or why the requested penalty amount was appropriate. There also was no evidence indicating a consideration of the required mitigating and aggravating factors in assessing a penalty amount. In this case, Respondent did not financially benefit from his violation. In fact, he did not receive any part of the commission -- not even the 90% he was entitled to according to Mr. Alejos' own testimony relating to a commission split agreement. Respondent testified that he has had to declare bankruptcy and is unable to pay a penalty unless he is reimbursed his share of the commission. Given that Respondent did not benefit financially from this transaction and actually suffered a financial loss in the transaction because he has not been given any part of the commission by Mr. Alejos, imposition of an administrative penalty will have an unduly harsh impact on Respondent and there is no indication that such a harsh penalty will otherwise accomplish a fair and just result in this case.

The ALJ notes that Staff's pleadings also cite to Code § 1101.656(a) as a basis for relief. That section authorizes the Commission to suspend or revoke a license, place on probation a person whose license has been suspended, or reprimand a license holder if the license holder violates the Act or Commission rule. In addition to the administrative penalty, Staff requested that a formal reprimand be issued against Respondent's salesperson license. It was clear from Respondent's testimony that he was unaware of the prohibition against a salesperson accepting a commission check from someone other than his broker. It is equally clear that he has now been put on actual notice of this prohibition so that further similar action should not be expected. Therefore, the reprimand will serve a deterrent effect on Respondent and help to ensure future compliance with the Act.

III. RECOMMENDATION

The ALJ concludes that based upon the record in this case, Staff has met its burden of proof that Respondent violated Code § 1101.651(b). Therefore, the ALJ recommends that Respondent receive a reprimand for this violation and that no administrative penalty be assessed against him.

IV. PROPOSED FINDINGS OF FACT

1. Luis Acosta (Respondent) holds real estate salesperson license number 510811 issued by the Texas Real Estate Commission (TREC).

2. George Alejos was licensed as a real estate broker by TREC in 2000.

3. In 2007, Mr. Alejos became the sponsoring real estate broker for Respondent.

4. In 2008, Respondent negotiated the sale of a new home between FieldStone Homes of Texas, LLC and Larry and Ruth Slush (Slush transaction).

5. The realtor commission agreement for the Slush transaction listed Realty World United as the real estate company and George Alejos as the broker to receive a commission upon the closing of the transaction.

6. In October 2008, the Slush transaction closed. Respondent picked up the commission check issued by Chicago Title Insurance Company and made payable to "Realty World United."

7. Respondent deposited the check into a Wells Fargo bank account.

8. Respondent did not have permission from his sponsoring broker, Mr. Alejos, to pick up the commission check.

9. The commission check was endorsed with a stamp reading "Pay to the Order of Wells Fargo Bank . . . For Deposit Only . . . Acosta . . . ."

10. The commission check was deposited into Respondent's personal bank account.

11. George Alejos contacted Chicago Title Insurance Company and they issued another commission check to him. He also reported the original check as stolen to the local police, and he filed a complaint against Respondent with the Bexar county district attorney's office.

12. Respondent never received compensation from the Slush transaction.

13. Respondent was unaware that he could not accept a commission check from someone other than his sponsoring broker.

14. On December 23, 2010, Staff sent Respondent a Notice of Alleged Violation and Original Petition to Respondent at his address of record, notifying him that he had violated the Real Estate License Act and that an administrative penalty was sought against him. The notice advised Respondent that he could request a hearing to contest the determination.

15. On January 10, 2011, Respondent timely requested a hearing.

16. After receiving Respondent's hearing request, Staff issued its Notice of Administrative Hearing on March 31, 2011, informing Respondent that his requested hearing was scheduled for June 7, 2011.

17. The Notice of Administrative 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; and reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.

18. On June 7, 2011, the Administrative Law Judge convened the hearing on the merits at the State Office of Administrative Hearings in Austin, Texas. Staff participated through Beverly Rabenberg, Assistant Director of Enforcement. Respondent appeared and participated in person.

V. PROPOSED CONCLUSIONS OF LAW

1. The Texas Real Estate Commission (TREC) has jurisdiction over the licenses of real estate brokers, salespersons, and inspectors, pursuant to the TEX. OCC. CODE. Chapter 1101.

2. SOAH has jurisdiction over all matters related to conducting a contested case hearing in this matter, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ch. 2003.

3. Respondent received proper and timely notice of hearing as required by TEX. GOV'T CODE §§ 2001.051 AND 2001.052.

4. A real estate salesperson is only authorized to accept compensation through his sponsoring broker. TEX. OCC. CODE § 1101.651(b).

5. Based on the above Findings of Fact and Conclusions of Law, Respondent violated the Act. Code § 1101.652(a)(10).

6. TREC has authority to discipline a license holder for a violation of the Texas Real Estate License Act (Act). TEX. OCC. CODE § 1101.656(a), 1101.701 and 22 TEX. ADMIN. CODE § 535.191.

SIGNED August 5, 2011.

SUZANNE FORMBY MARSHALL
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

Agenda Item 24:

Consideration and possible action regarding:

b. Proposal for Decision from State Office of Administrative Hearings in the matter of Ericka Kristin Rawles, SOAH Docket No. 329-11-5991.REC

SUMMARY:

To be presented at the meeting.

Staff Recommendation:

Recommended Motion:

TEXAS REAL ESTATE COMMISSION

DOUGLAS E. OLDMIXON, ADMINISTRATOR

Standards & Enforcement Services
Direct Line: (512) 936-3005
Facsimile: (512) 936-3809

MEMORANDUM

To: THE COMMISSION MEMBERS

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

Date: SEPTEMBER 28, 2011

Subject: PROPOSAL FOR DECISION
IN THE MATTER OF
ERICKA KRISTIN RAWLES

The enclosed Proposal for Decision has been filed in SOAH Docket No. 329-11-5991.REC. The Proposal for Decision will be considered for Final Order at the meeting of the Commission scheduled for October 10, 2011, at 9:00 a.m. in Conference Room 170, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78701.

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

September 7, 2011

Douglas E. Oldmixon
Administrator
Texas Real Estate Commission
1700 N. Congress Avenue, Suite 400
Austin, TX 78701

INTER-AGENCY

RE: Docket No. 329-11-5991.REC, Texas Real Estate Commission v. Ericka Kristin Rawles

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,

Hunter Burkhalter
Administrative Law Judge/Mediator

HB/slc
Enclosure
xc: Kyle Smith, 1700 N. Congress Avenue, Suite 400, Austin, TX 78701 – **VIA INTER-AGENCY**
Ericka Kristin Rawles, 6238-A Scotch Pine Drive, Fort Drum, NY 13603 - **VIA REGULAR MAIL**
Kerri Galvin, Director of Standards & Enforcement Services, 1700 N. Congress Ave., Suite 400, Austin, TX 78701 (Certified Evidentiary Record) – **VIA INTER-AGENCY**

300 W. 15th Street, Suite 502, Austin, Texas 78701/ P.O. Box 13025, Austin, Texas 78711-3025
512.475.4993 (Main) 512.475.3445 (Docketing) 512.322.2061 (Fax)
www.soah.state.tx.us

SOAH DOCKET NO. 329-11-5991.REC

TEXAS REAL ESTATE COMMISSION,	§	**BEFORE THE STATE OFFICE**
Petitioner	§	
	§	
V.	§	
	§	**OF**
ERICKA KRISTIN RAWLES	§	
TEXAS REAL ESTATE SALESPERSON	§	
LICENSE NO. 493768,	§	
Respondent	§	**ADMINISTRATIVE HEARINGS**

PROPOSAL FOR DECISION

The staff of the Texas Real Estate Commission (Staff/Commission) brought this action against Ericka Kristin Rawles seeking to seeking to impose administrative penalties against her totaling $13,000. The Administrative Law Judge (ALJ) agrees with Staff and recommends that Ms. Rawles be assessed $13,000 in administrative penalties.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The hearing on the merits convened at 9:00 a.m. on August 3, 2011, before ALJ Hunter Burkhalter, and the record closed the same day. Staff appeared at the hearing and was represented by Kyle E. Smith and Sharon Harris, Staff Attorneys. Respondent appeared telephonically and *pro se*.

Because there are no contested issues of notice or jurisdiction in this case, those matters will be addressed only in the findings of fact and conclusions of law.

II. REASONS FOR DECISION

A. Applicable Law

Pursuant to the Real Estate License Act, TEX. OCC. CODE Ch. 1101, the Commission is

empowered to establish and enforce standards of conduct and ethics for persons licensed by the Commission.[1] The Commission may, among other enforcement options, assess administrative penalties against a person who engages in prohibited conduct, including:

- a license holder who, "while acting as a . . . salesperson . . . acts negligently or incompetently;"[2]
- a license holder who, "while acting as a . . . salesperson . . . engages in conduct that is dishonest or in bad faith or that demonstrates untrustworthiness;"[3] and
- a license holder who, "while acting as a . . . salesperson . . . fails within a reasonable time to properly account for or remit money that is received by the license holder and that belongs to another person."[4]

Staff contends that Ms. Rawles' actions at issue in this case violated all of the above-cited provisions. Administrative penalties imposed by the Commission cannot exceed $5,000 per violation, must be calculated by considering a variety of factors, and must be consistent with a schedule of penalties adopted by Commission rule.[5] In this case, Staff seeks the assessment of administrative penalties totaling $13,000.

B. Evidence

Staff called two witnesses, Richard Vasey and Ms. Rawles. Staff Exhibits C1 though C15 were admitted as evidence. Ms. Rawles offered no evidence other than her own testimony.

At all times relevant to this case, Ms. Rawles held a Commission-issued Texas real estate salesperson license, number 493768 (the license). The license was first issued to Ms. Rawles

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[1] TEX. OCC. CODE § 1101.151(b)(2).
[2] TEX. OCC. CODE § 1101.652(b)(1).
[3] TEX. OCC. CODE § 1101.652(b)(2).
[4] TEX. OCC. CODE § 1101.652(b)(9).
[5] TEX. OCC. CODE §§ 1101.701, 1101.702.

effective May 19, 1997. On January 22, 2009, the license was converted to "inactive" status. On or about November 1, 2009, the license expired. It has not been renewed by Ms. Rawles.[6]

From February 26, 2008, through January 22, 2009, Ms. Rawles worked as a real estate salesperson at Aarant Realty Company, a Texas real estate broker whose designated officer is James Dave Aarant.

Richard Vasey lives in Sunnyvale, California. He testified that he first met Ms. Rawles when he became interested in purchasing a home at 7440 Bogart Drive in North Richland Hills, Texas (the Bogart house) as an investment. His plan was to purchase the Bogart house, renovate it, and re-sell it. When he purchased the house in April 2006, it was in a run-down condition. Ms. Rawles' was not Mr. Vasey's real estate agent when he bought the Bogart house.

After he bought the house, Mr. Vasey experienced difficulty selling it. So, he hired a property management company, unaffiliated with Ms. Rawles, to rent it out. In May 2008, the renters of the house, who were delinquent on their rent payments, vandalized the house and fled.

After the vandalism, Mr. Vasey became frustrated with the management company's lack of diligence in getting the house repaired and re-rented. So, he fired that company and hired the company where Ms. Rawles worked as a real estate salesperson. Specifically, on July 22, 2008, Mr. Vasey entered into two agreements with Aarant Realty and Ms. Rawles. First, the parties executed a "Residential Leasing and Property Management Agreement" (the Management Agreement).[7] The Management Agreement was signed by Mr. Vasey and by Ms. Rawles, who was identified as the Broker's Associate. Pursuant to the Management Agreement, Ms. Rawles was given the authority to, among other things:

- market the Bogart house for lease,

[6] Ex. C-13.
[7] Ex. C-11.

- "hire contractors to repair, maintain, redecorate, or alter the Property provided that Broker does not expend more than $250.00 for any single repair, maintenance item, redecoration, or alteration without Owner's consent" and
- "hire contractors to make emergency repairs to the Property without regard to the expense limitation . . . that Broker determines are necessary to protect the Property of the health and safety of an ordinary tenant."[8]

As compensation under the Management Agreement, Ms. Rawles was to receive a percentage of any rents collected from tenants.[9]

Second, Mr. Vasey and Aarant Realty and Ms. Rawles entered into a "Residential Real Estate Listing Agreement Exclusive Right to Sell" (the Listing Agreement).[10] The Listing Agreement was signed by Mr. Vasey and by Ms. Rawles, who was again identified as the Broker's Associate. As compensation under the Listing Agreement, Ms. Rawles was to receive a percentage of the sales price of the house.[11]

Mr. Vasey testified that he hired Ms. Rawles because she had marketed herself to Mr. Vasey as being able to get the house repaired and sold or rented for him. He also stated that, throughout his dealings with Ms. Rawles, he knew she was a real estate salesperson at Aarant Realty and believed he was dealing with her as a real estate salesperson.

Mr. Vasey testified that, in total, he paid Ms. Rawles almost $7,000 for repairs to be made to the property. Staff's exhibits corroborate Mr. Vasey's testimony on this point. Included in Staff's exhibits were the following series of records reflecting invoices sent by Ms. Rawles to Mr. Vasey and payments made by Mr. Vasey to Ms. Rawles:

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[8] Ex. C-11, pp. 54-55.
[9] Ex. C-11, pp. 58-59.
[10] Ex. C-12.

- On June 9, 2008, Ms. Rawles sent, via PayPal, a $4,120 invoice. The invoice was from "Kristin Rawles" for "Bogart rehab" broken down as follows: $4,000 for "initial invoice on Bogart;" and $120 for "credit card charge."[12]

  - On June 11, 2008, PayPal sent Mr. Vasey a receipt acknowledging his payment of the $4,120 invoice.[13]

- On August 29, 2008, Ms. Rawles sent, via PayPal, a $230 invoice. The invoice was from "Kristin Rawles" for "unexpected repairs on Bogart" broken down as follows: $60 for "electrician service call;" $45 for "thermostat replacement;" and $125 for "wall repair."[14]

  - On September 3, 2008, PayPal sent Mr. Vasey a receipt acknowledging his payment of the $230 invoice.[15]

- On September 3, 2008, Ms. Rawles sent, via PayPal, a $700 invoice. The invoice is from "Kristin Rawles" for "supplies and labor" needed for "guest room completion."[16]

  - On September 4, 2008, PayPal sent Mr. Vasey a receipt acknowledging his payment of the $700 invoice.[17]

Also included in the exhibits is a copy of a cashier's check in the amount of $1,913.60 made payable to "Kristin Rawles." The word "Bogart" is handwritten on the face of the cashier's check.[18]

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[11] Ex. C-12, p. 67.
[12] Ex. C-9, p. 40.
[13] Ex. C-9, p. 41.
[14] Ex. C-9, p. 38.
[15] Ex. C-9, p. 39.
[16] Ex. C-9, p. 36.
[17] Ex. C-9, p. 37.

Mr. Vasey explained that Ms. Rawles generally asked that payments be made to her via PayPal. The one payment via cashier's check was made at Mr. Vasey's suggestion so as to ensure that the money would be available to Ms. Rawles more quickly and so that credit card charges could be avoided.

Ms. Rawles arranged to have S&H Distributing, a carpet company, install new carpet in the Bogart house. At Ms. Rawles' direction, Mr. Vasey paid Ms. Rawles roughly $2,000 for the carpet installation.[19] Several weeks later, however, Mr. Vasey was contacted directly by S&H Distributing, complaining that it had never received payment for the carpet installation. The company demanded payment from Mr. Vasey, and threatened to place a mechanic's lien on the Bogart house if he did not pay them. Although Mr. Vasey never paid S&H Distributing, no lien was ever placed on the property. It is Mr. Vasey's belief that Ms. Rawles never paid S&H Distributing.

Mr. Vasey testified that, for several months during the latter part of 2008, Ms. Rawles was almost impossible to contact. Her voice mailbox was almost always full, making it impossible for him to leave her a message. When he was able to leave her voice messages, his calls were not returned. Likewise, his text messages and emails to her were rarely, if ever, returned. As far as Mr. Vasey knew, Ms. Rawles was doing nothing to sell the Bogart house. Likewise, he learned that the repairs Ms. Rawles was supposed to have overseen at the house had, in fact, not been done.

Eventually, Mr. Vasey contacted James Aarant, the real estate broker at Aarant Realty and Ms. Rawles' boss, to complain about Ms. Rawles. Mr. Aarant told Mr. Vasey that he was also unable to contact Ms. Rawles. Mr. Aarant agreed to cancel his company's listing agreement for the Bogart house. In January 2009, Mr. Vasey fired Ms. Rawles as his real estate salesperson and hired a new salesperson. Ultimately, because the damage to the Bogart house was never repaired, Mr. Vasey sold the house in a "short-sale."[20]

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[18] Ex. C-9, p. 42. This is no corresponding invoice in the record.
[19] The ALJ assumes that the $1,913.60 cashier's check was for the carpet.
[20] Mr. Vasey explained that a "short sale" is one in which the house is sold for an amount that is less than

In March 2009, Mr. Vasey filed a complaint with the Commission against Ms. Rawles and Mr. Aarant. The substance of the complaint generally agrees Mr. Vasey's testimony. In the complaint, Mr. Vasey said he entered into the Listing Agreement and the Management Agreement with Ms. Rawles because she "claimed that she could market the home for us[21] both in a sales and in a property management capacity, and also in that capacity to effect all the necessary repairs to make it ready for market." Mr. Vasey further explained that, other than the carpet, none of the repairs he paid Ms. Rawles to execute were actually done.[22]

On May 26, 2009, Mr. Aarant wrote a letter to the Commission responding to Mr. Vasey's complaint. In the letter, Mr. Aarant contended that Ms. Rawles' actions were outside the scope of her job at his brokerage. He acknowledged that he and Ms. Rawles entered into an "Independent Contractor's Agreement" on February 19, 2008, when she joined his brokerage. According to Mr. Aarant, Ms. Rawles first listed the Bogart house for sale on July 15, 2008. In December 2008, Mr. Aarant began getting numerous phone calls from potential buyers interested in the house. He was unable to locate Ms. Rawles to pass along the messages regarding those calls or to obtain the key for the house so that it could be shown to buyers. Like Mr. Vasey, Mr. Aarant stated that Ms. Rawles' voice mailbox was full and she was unresponsive to his texts messages and emails. Because he was unable to communicate with Ms. Rawles, Mr. Aarant ultimately returned her real estate salesperson license to the Commission on January 21, 2009, and cancelled the Listing Agreement.[23] Mr. Aarant acknowledged that none of the payments by Mr. Vasey to Ms. Rawles was ever forwarded by Ms. Rawles to Aarant Realty or placed in Aarant Realty's escrow account.[24] Ultimately, the Commission and Mr. Aarant entered into an Agreed Order in which sanctions were assessed against him for the matters at issue in this case.[25]

In her defense at the hearing, Ms. Rawles pointed out that the Listing Agreement entered into

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what is owed on the seller's mortgage.

[21] Mr. Vasey had apparently bought the house in partnership with a woman named Joyce S. Yee.

[22] Ex. C-8.

[23] Presumably, he also cancelled the Management Agreement.

[24] Ex. C-14.

between Mr. Vasey and Aarant Realty and Ms. Rawles included the following clause:

> **12. SELLER'S REPRESENTATIONS**: . . . Seller represents that:
>
> . . .
>
> H. the name of any employer, relocation company, or other entity that provides benefits to Seller when selling the Property is: Rawles Realty.

Ms. Rawles described Rawles Realty as "my personal dba that I bid my construction business under."

Ms. Rawles conceded that she directed Mr. Vasey to pay $6,963.60 to her for repairs to the Bogart house that were necessitated by the vandalism. She also conceded that Mr. Vasey made those payments, but contended that the payments were made to Rawles Realty, not to her personally. She contended that those monies were paid for "repair services" she rendered, not for "real estate services." Ms. Rawles acknowledged that she never forwarded any of the money received from Mr. Vasey to her broker, Mr. Aarant, or to Aarant Realty, nor did she place those funds in an escrow account.

Ms. Rawles acknowledged that she contracted with S&H Distributing to install carpeting at the Bogart house, but contended that she did so not as a real estate salesperson, but as Rawles Realty. She admitted that S&H Distributing installed the carpet, but she never paid for it. She further admitted that Mr. Vasey paid her for the carpet.

Ms. Rawles disputed Mr. Vasey's claim that she was hard to contact and never returned his calls. She acknowledged, however, that her voice mailbox was frequently full.

Ms. Rawles conceded that she had "represented" Mr. Vasey and that he was a "client." She argued, however, that she had met all of her obligations toward Mr. Vasey in her capacity as a real

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[25] Ex. C-14.

estate salesperson. In other words, she contended that her actions, and inactions, with respect to making the repairs to the Bogart house and handling the funds associated with those repairs, were done in her capacity as a representative of her "construction business" (Rawles Realty), and not in her capacity as a real estate salesperson. Ms. Rawles admitted that she has never formally organized Rawles Realty by, for example, incorporating the company or filing an assumed name certificate. She also admitted that there was no written agreement between Rawles Realty and Mr. Vasey or otherwise specifying that repair payments made by Mr. Vasey were being made to Ms. Rawles in her capacity as a representative of Rawles Realty. Rather, she claimed that Mr. Vasey entered into an oral agreement with Rawles Realty for the construction work.

Ms. Rawles claimed that, when the Listing Agreement was signed, she explained to Mr. Vasey "if repairs [to the Bogart house] were done in a property management capacity, that checks and money orders would have to be made to the attention of Aarant Realty to be held in escrow." However, at the hearing, she contended that no repairs were ever done "in a property management capacity," so this requirement did not have to be complied with.

Finally, Ms. Rawles claimed that she was diligent in her attempts to sell the Bogart house, and that she continued to show the house to prospective buyers until the time when her real estate salesperson license was returned by Mr. Aarant to the Commission.

C. ALJ's Analysis and Recommendation

In this case, Staff proved the violations alleged. Pursuant to TEX. OCC. CODE § 1101.652(b)(1), an administrative penalty may be assessed against a license holder who, while working as a salesperson, "acts negligently or incompetently." The evidence in this case clearly demonstrates that, in a number of ways, Ms. Rawles acted negligently and incompetently with respect to the Bogart house:

- She entered into a Management Agreement to manage the property so that it could be

leased. Pursuant to that agreement, she was empowered to hire contractors to get the house repaired so that it would be marketable. She obtained almost $7,000 from Mr. Vasey for such repairs. However, other than carpet replacement, none of the repairs, for which Mr. Vasey paid, were done. Ultimately, Mr. Vasey lost money on the sale of the house because the repairs were not done.

- She entered into a Listing Agreement whereby she had the exclusive right to sell the Bogart house, yet she was repeatedly unavailable when Mr. Aarant tried to contact her so that numerous potential buyers could be shown the house. Likewise, she was repeatedly unavailable when Mr. Vasey attempted to contact her with questions about the house.

Pursuant to TEX. OCC. CODE § 1101.652(b)(2), an administrative penalty may be assessed against a license holder who, while working as a salesperson, "engages in conduct that is dishonest or in bad faith or that demonstrates untrustworthiness." The evidence in this case demonstrates that Ms. Rawles acted dishonestly and in bad faith, and is untrustworthy. On multiple occasions, she requested payments from Mr. Vasey for repairs to the Bogart house, but then failed to use the money obtained from Mr. Vasey for the repairs, apparently keeping the money for her own use. She arranged to have carpet installed in the house, but then kept Mr. Vasey's payment for the carpet and left the installer unpaid. Ms. Rawles' assertion that the repairs were overseen by her in her capacity as a construction contractor rather than in her capacity as a real estate salesperson simply heightens the ALJ's concern that she is untrustworthy and willing to avoid her responsibilities as a real estate salesperson by attempting to create a subterfuge of running a separate "construction business."

Pursuant to TEX. OCC. CODE § 1101.652(b)(9), an administrative penalty may be assessed against a license holder who, while working as a salesperson, "fails within a reasonable time to properly account for or remit money that is received by the license holder and that belongs to another person." The evidence in this case demonstrates that Ms. Rawles violated this provision. On multiple occasions, she requested payments from Mr. Vasey for repairs to the Bogart house, but then

failed to use the money obtained from Mr. Vasey for the repairs, keeping the money for her own use. She arranged to have carpet installed in the house, but then kept Mr. Vasey's payment for the carpet and left the installer unpaid.

Ms. Rawles' contention that her misbehavior occurred only when she was acting as a construction contractor, and not when she was acting as a real estate salesperson, is not credible. Mr. Vasey knew that Ms. Rawles was a real estate salesperson working at Aarant Realty when he hired her. She specifically marketed herself to Mr. Vasey as a real estate salesperson who could handle everything, including repairs, necessary to get the Bogart house sold or leased. The Management Agreement specifically authorized her to hire contractors to make repairs to the property for the purpose of getting the property leased. Thus, her various instructions directing Mr. Vasey to forward payments to her for house maintenance and repairs were the types of actions that were explicitly contemplated by and within the scope of the Management Agreement that she signed as a real estate salesperson.[26]

Ms. Rawles claimed to operate a "construction business," but she has never taken any steps for formally create such a business. Likewise, there was no written contract between Mr. Vasey and Rawles Realty. Even the name of her supposed construction business – "Rawles *Realty*" – is misleading because it sounds like a business associated with real estate sales rather than construction. At the hearing, Ms. Rawles pointed out clause 12.H. in the Listing Agreement – which identified "Rawles Realty" as an "entity that provides benefits to Seller when selling" the house. She did not clearly explain how this clause is helpful to her, and the ALJ finds that it is not helpful to her. Rawles Realty is not mentioned in the Management Agreement, which is the document that empowered Ms. Rawles to arrange repairs to the property.

[26] One of the repair invoices was sent by Ms. Rawles on June 9, 2008 and paid by Mr. Vasey on June 11, 2008. This was prior to July 22, 2008, the date that the Management Agreement and Listing Agreement were executed. Based upon the preponderance of the evidence, the ALJ concludes that the July 22, 2008 agreements simply memorialized terms that had previously been orally agreed to by the parties. In other words, the ALJ concludes that all of Mr. Vasey's payments were made to Ms. Rawles in her capacity as a real estate salesperson.

Accordingly, the ALJ concludes the preponderance of evidence demonstrates that Ms. Rawles committed violations of TEX. OCC. CODE § 1101.652(b)(1), (b)(2), and (b)(9). For those violations, Staff seeks the assessment of administrative penalties totaling $13,000. Staff arrived at this figure by assessing the maximum possible authorized penalty for each alleged violation. Pursuant to TEX. OCC. CODE § 1101.701, the Commission is empowered to impose administrative penalties against one who violates any provision of Chapter 1101. Pursuant to TEX. OCC. CODE § 1101.702(a), the amount of the penalty may not exceed $5,000 per violation. Pursuant to TEX. OCC. CODE § 1101.702(b), when assessing the penalty amount, the Commission must consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited acts;
(2) the history of previous violations;
(3) the amount necessary to deter a future violation;
(4) efforts to correct the violation; and
(5) any other matter that justice may require.

Pursuant to TEX. OCC. CODE § 1101.702(c), the Commission is obligated to adopt a schedule of administrative penalties based on the Section 1101.702(b) factors listed above to ensure that the amount of a penalty imposed is appropriate to the violation. The Commission has done so by adopting the schedule of penalties found at 22 TEX. ADMIN. CODE § 535.191. In this case, the ALJ has found violations of TEX. OCC. CODE §§ 1101.652(b)(1), (b)(2), and (b)(9). Pursuant to 22 TEX. ADMIN. CODE § 535.191(d) and (e), the administrative penalty range for a violation of § 1101.652(b)(1) is $500 to $3,000, while the penalty range for violations of §§ 1101.652(b)(2) and (b)(9) is $1,000 to $5,000 per violation. Thus, the maximum penalty amount that could be assessed against Respondent is $13,000 ($3,000 + (2 x $5,000)).

Before penalties may be assessed, however, consideration must first be given to the factors listed in Section 1101.702(b), quoted above. The Commission's administrative penalty rule -- Section 535.191 -- asserts: "the administrative penalties set forth in this section take into consideration all of the criteria listed in § 1101.702(b) of the Texas Occupations Code." This assertion cannot, however, obviate the need to consider the Section 1101.702(b) factors on a case-by-case basis. For example, the schedule of penalties cannot take into account Section 1101.702(b)

factors such as an individual violator's history of previous violations or his efforts to correct the violation. Moreover, the Commission's schedule of penalties merely identifies a potential range of penalties to be assessed. The actual penalty in any individual case can only be identified after review of the Section 1101.702(b) factors.

1. The Section 1101.702(b) Factors

a. The seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited acts

To a large extent, the Commission has already determined the seriousness of the violations when it adopted its schedule of penalties. For example, the Commission made a decision that a violation of § 1101.652(b)(1), with a penalty range between $500 and $3,000, is less serious than a violation of § 1101.652(b)(2), with a penalty range of $1,000 to $5,000. Nevertheless, the evidence demonstrates extremely serious violations by Ms. Rawles, in that it demonstrates her willingness to use the privileges gained from her status as a licensed real estate salesperson to exploit an out-of-state client and at least one contractor.

b. The history of previous violations

Because no evidence was provided on this factor, the ALJ assumes that Mr. Rawles has no previous violations.

c. The amount necessary to deter a future violation

No evidence was provided on this factor. However, logic suggests that the need for deterrence is not great in this case. Because Ms. Rawles no longer holds a license, it is less likely that she will work as a real estate salesperson in the future.

d. Efforts to correct the violation

The evidence indicates that, rather than working to correct the violations, Ms. Rawles engaged in lengthy efforts to continue and conceal her violations. At the hearing, she admitted that

she was "not proud" of her actions, that she felt bad that S&H Distributing had never been paid, and that she was willing to pay the company. Yet her self-serving claim of contrition was belied by the fact that she made no effort to pay S&H Distributing or reimburse Mr. Vasey prior to the hearing.

e. Any other matter that justice may require

Ms. Rawles' efforts to create a subterfuge of running a separate construction business is troubling.

2. Summary

Having considered the Commission's schedule of penalties and the Section 1101.702(b) factors, the ALJ recommends that a total of $13,000 in administrative penalties be assessed against Respondent, broken down as follows:

- $3,000 for the violation of Section 1101.652(b)(1);
- $5,000 for the violation of Section 1101.652(b)(2); and
- $5,000 for the violation of Section 1101.652(b)(9).

III. RECOMMENDATION

Based upon the record in this case, the ALJ recommends that Ms. Rawles be assessed administrative penalties totaling $13,000.

IV. FINDINGS OF FACT

1. At all times relevant to this case, Ericka Kristen Rawles held real estate salesperson license number 493768 (the license) issued by the Texas Real Estate Commission (Commission).

2. The license expired on or about November 1, 2009, and has not been renewed.

3. In 2008, Ms. Rawles was employed as a real estate salesperson at Aarant Realty, a Texas real

estate brokerage whose designated officer is James Aarant.

4. In 2006, Richard Vasey, a California resident, purchased a house located at 7440 Bogart Drive in North Richland Hills, Texas (the Bogart house), for investment purposes.

5. Using a property management company, Mr. Vasey leased the Bogart house to renters.

6. In May 2008, the renters of the Bogart house, who were delinquent on their rent payments, vandalized the house and fled.

7. Soon thereafter, because he had become frustrated with the management company's lack of diligence in getting the house repaired and re-rented, Mr. Vasey fired the management company and hired Ms. Rawles to act as the real estate salesperson responsible for managing the Bogart house for purposes of renting or selling the house.

8. Mr. Vasey knew that Ms. Rawles was a real estate salesperson working at Aarant Realty at the time he hired her.

9. Prior to being hired by Mr. Vasey, Ms. Rawles had represented herself to Mr. Vasey as a real estate salesperson who could handle all details, including repairs, necessary to get the Bogart house sold or leased.

10. Throughout his dealings with Ms. Rawles, Mr. Vasey believed he was dealing with her as a real estate salesperson.

11. In the summer of 2008, Mr. Vasey and Ms. Rawles (as the authorized salesperson/agent for Aarant Realty) entered into two written agreements with respect to the Bogart house:

    a. A Residential Leasing and Property Management Agreement (the Management Agreement); and

    b. A Residential Real Estate Listing Agreement Exclusive Right to Sell (the Listing Agreement).

12. Pursuant to the Management Agreement, Ms. Rawles was empowered to, among other things, hire contractors to repair and maintain the Bogart house as necessary to make it marketable to renters.

13. As compensation under the Management Agreement, Ms. Rawles was to have received a percentage of any rents collected from tenants.

14. As compensation under the Listing Agreement, Ms. Rawles was to have received a percentage of the sales price of the house.

15. During the time period from June through September 2008, Ms. Rawles, in her capacity as a real estate salesperson managing the Bogart house for the purpose of making the house marketable to renters, sent multiple invoices for various repairs to the house that were necessitated by vandalism done by prior renters (the invoices).

16. The invoices sent by Ms. Rawles to Mr. Vasey totaled $6,963.60 for repairs that Ms. Rawles stated she was arranging at the Bogart house. The invoices directed Mr. Vasey to make payment to "Kristen Rawles."

17. Mr. Vasey timely paid all of the invoices to Ms. Rawles.

18. In her capacity as a real estate salesperson managing the Bogart house for the purpose of making the house marketable to renters, Ms. Rawles arranged to have S&H Distributing, a carpet company, install new carpet in the Bogart house.

19. At Ms. Rawles' instruction, Mr. Vasey wrote a check to Ms. Rawles for the cost of the carpet installation.

20. Ms. Rawles never paid S&H Distributing for the carpet and never refunded Mr. Vasey's carpet payment.

21. Other than the carpet, none of the repairs for which Ms. Rawles invoiced Mr. Vasey and accepted payment from him were actually carried out.

22. For several months during the latter part of 2008, it was consistently impossible for Mr. Vasey or Mr. Aarant to contact Ms. Rawles. Her telephone voice mailbox was full, preventing them from leaving her a message, and she failed to return multiple email and text messages from them.

23. During the time that she was failing or refusing to return messages, Mr. Aarant was unable to show the Bogart house to numerous prospective buyers because he could not obtain the key to the house from Ms. Rawles.

24. In January 2009, Mr. Vasey terminated his relationship with Aarant Realty and Ms. Rawles and hired a new real estate salesperson to help with the sale of the Bogart house.

25. Because the vandalism damage to the Bogart house had not been repaired by Ms. Rawles, Mr. Vasey ultimately had to sell the Bogart house for a loss.

26. On May 27, 2011, the staff of the Commission (Staff) mailed a Notice of Administrative Hearing (NOH) to Ms. Rawles.

27. The NOH 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.

28. The hearing on the merits was held on August 3, 2011, before Administrative Law Judge (ALJ) Hunter Burkhalter in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Staff appeared and was represented by Staff attorneys Kyle Smith and Sharon Harris. Ms. Rawles appeared, *pro se*.

V. CONCLUSIONS OF LAW

1. 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 ch. 2003.

2. Ms. Rawles received proper and timely notice of hearing as required by TEX. GOV'T CODE §§ 2001.051 and 2001.052.

3. Pursuant to TEX. OCC. CODE § 1101.652(b)(1), the Commission may assess a penalty against a real estate salesperson who, while acting as a salesperson, "acts negligently or incompetently."

4. Respondent's actions, as described in the above Findings of Fact, violated TEX. OCC. CODE § 1101.652(b)(1).

5. Pursuant to TEX. OCC. CODE § 1101.652(b)(2), the Commission may assess a penalty against a real estate salesperson who, while acting as a salesperson, "engages in conduct that is dishonest or in bad faith or that demonstrates untrustworthiness."

6. Respondent's actions, as described in the above Findings of Fact, violated TEX. OCC. CODE § 1101.652(b)(2).

7. Pursuant to TEX. OCC. CODE § 1101.652(b)(9), the Commission may assess a penalty against a real estate salesperson who, while acting as a salesperson, "fails within a reasonable time to properly account for or remit money that is received by the license holder and that belongs to another person."

8. Respondent's actions, as described in the above Findings of Fact, violated TEX. OCC. CODE § 1101.652(b)(9).

9. The Commission may assess administrative penalties against a license holder who violates

any provision of TEX. OCC. CODE ch. 1101. TEX. OCC. CODE § 1101.701.

10. The amount of any administrative penalty imposed may not exceed $5,000 per violation and shall be based on consideration of specified factors. TEX. OCC. CODE § 1101.702.

11. Pursuant to 22 TEX. ADMIN. CODE § 535.191(d) and (e), the administrative penalty range for a violation of TEX. OCC. CODE § 1101.652(b)(1) is $500 to $3,000 per violation, while the penalty range for violations of TEX. OCC. CODE §§ 1101.652(b)(2) and (b)(9) is $1,000 to $5,000 per violation.

12. Based upon consideration of the factors set forth in TEX. OCC. CODE § 1101.702, and the schedule of penalties set forth in 22 TEX. ADMIN. CODE § 535.191, it would be appropriate for the Commission to assess administrative penalties against Ms. Rawles totaling $13,000, broken down as follows:

- $3,000 for the violation of TEX. OCC. CODE §§ 1101.652(b)(1);
- $5,000 for the violation of TEX. OCC. CODE § 1101.652(b)(2); and
- $5,000 for the violation of TEX. OCC. CODE §1101.652(b)(9).

SIGNED September 7, 2011.

HUNTER BURKHALTER
ADMINISTRATIVE LAW JUDGE/MEDIATOR
STATE OFFICE OF ADMINISTRATIVE HEARINGS

Agenda Item 24:

Consideration and possible action regarding:

c. Proposal for Decision from State Office of Administrative Hearings in the matter of Martina S. Perez, SOAH Docket No. 329-11-4372.REC

SUMMARY:

To be presented at the meeting.

Staff Recommendation:

Recommended Motion:

TEXAS REAL ESTATE COMMISSION

DOUGLAS E. OLDMIXON, ADMINISTRATOR

Standards & Enforcement Services
Direct Line: (512) 936-3005
Facsimile: (512) 936-3809

MEMORANDUM

To: THE COMMISSION MEMBERS

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

Date: SEPTEMBER 28, 2011

Subject: PROPOSAL FOR DECISION
IN THE MATTER OF
MARTINA S. PEREZ

The enclosed Proposal for Decision has been filed in SOAH Docket No. 329-11-4372.REC. The Proposal for Decision will be considered for Final Order at the meeting of the Commission scheduled for October 10, at 9:00 a.m. in conference room 170, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78701.

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

RECEIVED
TEXAS REAL ESTATE COMMISSION
SEP 15 2011
CASHIER'S SECTION
OPERATOR 13

Cathleen Parsley
Chief Administrative Law Judge

September 14, 2011

Douglas E. Oldmixon
Administrator
Texas Real Estate Commission
1700 N. Congress Avenue, Suite 400
Austin, TX 78701

INTER-AGENCY

RE: Docket No. 329-11-4372.REC; Texas Real Estate Commission v. Martina S. Perez

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,

Rebecca S. Smith

Rebecca S. Smith
Administrative Law Judge

RSS/Ls
Enclosure
xc: Mary Winston, Staff Attonrey, 1101 Camino La Costa, Austin, TX 78751 – **VIA INTER-AGENCY**
Martina S. Perez, 7613 Lake Baykal, Corpus Christi, TX 78413 - **VIA REGULAR MAIL**
Kerri Galvin, Director of Standards & Enforcement Services, 1700 N. Congress Ave., Suite 400, Austin, TX 78701 (with 1 CD; Certified Evidentiary Record) – **VIA INTER-AGENCY**

SOAH DOCKET NO. 329-11-4372.REC

TEXAS REAL ESTATE COMMISSION, **Petitioner**	§	**BEFORE THE STATE OFFICE**
	§	
	§	
v.	§	**OF**
	§	
MARTINA S. PEREZ, **Respondent**	§	
	§	**ADMINISTRATIVE HEARINGS**

PROPOSAL FOR DECISION

Staff of the Texas Real Estate Commission (Staff/Commission) brought this action against Martina S. Perez (Respondent) for alleged violations of the Real Estate License Act.[1] The Administrative Law Judge (ALJ) recommends that the Commission place Ms. Perez's real estate broker license on a two-year suspension that is fully probated so that she may keep working, order her to attend a 30-hour class, and assess an $8,000 administrative penalty.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this matter convened before ALJ Rebecca S. Smith on June 21, 2011. Staff was represented by attorney Mary Winston. Ms. Perez represented herself. At the close of the hearing, the record was held open for Ms. Perez to submit an additional exhibit and for the parties to submit written closing arguments. Ms. Perez submitted additional documents on June 29, 2011.[2] Staff filed its closing argument on July 6, 2011, and Ms. Perez filed her closing argument on July 18, 2011, at which time the record closed.

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.

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[1] TEX. OCC. CODE ch. 1101.

[2] These documents are admitted as Respondent's Ex. 1.

II. ALLEGED VIOLATIONS

Staff alleges that Ms. Perez violated the Act in two unrelated transactions. In the first transaction, Ms. Perez represented both the seller and the buyer of a house on Blundell Drive in Corpus Christi, Texas. The second transaction involved Ms. Perez's representation of a buyer who was a party to a contract for the purchase of a house on Megal Street, also in Corpus Christi.

A. 4842 Blundell Drive

1. Evidence

In 2008, Ms. Lilia Acevedo hired Ms. Perez, who holds a Commission-issued real estate broker license, to sell her house at 4842 Blundell Drive (Blundell House). A signed listing agreement, based on a standard Commission form, was introduced into evidence.[3] The listing agreement provides that Ms. Perez's commission would be earned once Ms. Acevedo agreed to sell the property and payable once the sale closed and funded.[4]

After one deal with a buyer who could not qualify for a mortgage fell through, Ms. Perez was contacted by Maria Monreal, who saw the sign on Blundell. Ms. Monreal wanted to find a house for herself and her three-year-old daughter, D.[5] It appears that Ms. Monreal also could not qualify for a mortgage. After Ms. Monreal contacted her, Ms. Perez had Ms. Monreal, D., and Ms. Acevedo sign an intermediary agreement.

Ms. Acevedo and Ms. Monreal entered into a lease to purchase agreement (Agreement).[6] The Agreement provided a one-year option period, beginning September

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[3] Ex. C-12 at 121-28.

[4] Ex. C-12 at 123.

[5] For privacy reasons, Ms. Monreal's daughter will be referred to by her initial.

[6] Ex. C-11 at 96-7.

1, 2008. The stated purchase price was $70,000. The Agreement also required Ms. Monreal to pay a $5,000 non-refundable fee, which would be credited to the purchase price. Notably, it stated that "[no] real estate commissions or any other commissions shall be paid in connection with this transaction." Perhaps the most distinctive aspect of the Agreement is that it is also signed by three-year-old D as a party, and in fact, appeared to make D. also responsible for Ms. Monreal's obligations.

At the hearing, Ms. Perez testified that she did not know anything about the Agreement: she did not prepare it and did not know who had. Other evidence contradicts her statement that she knew nothing about the Agreement. For example, in her initial response to Ms. Acevedo's complaint with the Commission, Ms. Perez provided a copy of the Agreement and referred to its terms.[7] Commission investigator Bruce Wooley's investigation report states that Ms. Perez told him that she drafted the Agreement from a form she found on the internet and that she would not do it again. What is more, throughout her testimony, Ms. Perez refers to $5,000 as the established down payment for the transaction; this number does not seem to exist anywhere outside of the Agreement.

Ms. Acevedo's daughter, Alda Acevedo, also testified about events surrounding the Agreement. She testified that Ms. Perez left the Agreement on Ms. Acevedo's doorstep around August 9, 2008, and then left a voicemail saying it was under the doormat. Ms. Perez stopped by the next morning to pick up the signed Agreement, and brought with her $4,300 in cash from Ms. Monreal. She gave Ms. Acevedo $3,000 and said she was keeping $1,300 for her commission. According to Alda Acevedo, Ms. Perez said she would collect the remaining $700 from Ms. Monreal. Staff alleges that Ms. Perez received and kept that additional $700 from Ms. Monreal, and points to a receipt to support that allegation.[8]

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[7] Specifically, Ms. Perez stated, "[T]hey had both agreed and both signed a Lease to Purchase Agreement I have enclosed. On [sic] the agreement Ms. Monreal has a year to pay the remaining $2000. At that time my understanding was that Ms. Acevedo would have an attorney draw the Warranty Deed with Vendor's Lien and have it recorded in court." (Ex. C-11 at 82.)

[8] Ex. C-12 at 145.

Ms. Perez agreed that she received $2,000, but testified that she received the entire $2,000 in payment on August 10, 2008, when Ms. Acevedo handed her $2,000 from Ms. Monreal's $4,300 partial down payment. She testified that this was the only way she could get paid and close the deal.

After the Agreement was signed, the relationship between Ms. Perez and Ms. Acevedo broke down, and the deal appeared to stall. On August 26, 2008, Ms. Perez and Alda Acevedo exchanged email.[9] First, Alda Acevedo's email expressed concern about the lack of progress:

> Are you fixing the papers to close the deal between my mother and Ms. Monreal? We have not heard from you or the buyer, and Sept. 1 is around the corner. Can you please let me know via email or phone call what the situation is. Last time you and I spoke you said you were not finishing the paper work. We told the buyer of your response and she was concerned and was going to call you. But since that time we have not heard anything. Are you going to finish the business transaction you have already been paid for?

Ms. Perez responded:

> I was paid for bringing your mother a buyer[.] You and your mom said you wanted an attorney to look at papers and I told you an attorney can basically draw [the] same papers. I will draw them up if you wish, but I will charge your mother $250. And you can take to an attorney or title company to review.

Ms. Perez testified that in this email, she was referring to a warranty deed of trust and that she meant she would charge $250 to go to the title company to have its attorney draw it up. She also testified that $250 reflects the lawyer's fee. Ms. Perez insisted that Ms. Acevedo was not happy with the standard earnest money contract, and that was what had created the problem.

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[9] Ex. C-11 at 105.

The deal went forward. On September 4, 2008, Ms. Monreal and D. signed a promissory note, which mirrored the terms of the Agreement.[10] The promissory note was recorded in Nueces County.[11] It is not clear when Ms. Perez's involvement ended.

Shortly after the promissory note was signed and recorded, Ms. Acevedo hired a lawyer to draft a warranty deed. That lawyer wrote Ms. Monreal a letter about her obligations in November 2008. Ms. Acevedo replaced her first lawyer with lawyer Bradley Smith, who sent a letter to both Ms. Perez and Ms. Monreal. Mr. Smith's letter noted several problems with the Agreement and other documents:

> [i]t appears the documents [Ms. Perez provided] were not prepared by an attorney, as they are poorly and unprofessionally drafted. Among other things, they do not properly convey title to the buyers, nor do they properly describe the transaction. However, they do create the appearance of an interest being transferred to Buyers, including one who, apparently, is only four years old.[12]

Mr. Smith drafted a deed of trust and a warranty deed with vendor's lien. The deed of trust was executed by Ms. Monreal on December 22, 2009. Ms. Acevedo signed the warranty deed with vendor's lien on February 9, 2010. Both documents were recorded in Nueces County on February 18, 2010.[13] Ms. Perez asserts, without any documentary support, that Ms. Monreal hired a lawyer who filed some papers in 2009.

2. Analysis

Staff alleges that Ms. Perez committed the following violations related to the transaction for the Blundell House:

- failing to properly establish the intermediary relationship, in violation of TEX. OCC. CODE § 1101.559;

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[10] Ex. C-11 at 109.

[11] Ex. C-11 at 110.

[12] Ex. C-11 at 115.

[13] Respondent's Ex. 1.

- engaging in the unauthorized practice of law, in violation of TEX. OCC. CODE § 1101.654(a)(1);
- acting negligently or incompetently, in violation of TEX. OCC. CODE § 1101.652(b)(1); and
- engaging in conduct that is dishonest or in bad faith or that demonstrates untrustworthiness, in violation of TEX. OCC. CODE § 1101.652(b)(2);

The conduct underlying the negligence and dishonest conduct allegations is the same as that alleged for the other two allegations. In other words, Staff alleges that by failing to properly establish the intermediary relationship and by engaging in the unauthorized practice of law, Ms. Perez acted negligently or incompetently and engaged in conduct that is dishonest, in bad faith, or that demonstrates untrustworthiness.

a. Intermediary Relationship

A real estate broker may act as an intermediary between two parties to a real estate transaction if the broker obtains written consent from each party for the broker to do so.[14] This written consent must state the source of any expected compensation to the broker. This does not have to be a separate agreement; a written listing agreement or a buyer's representation agreement authorizing a broker to act as an intermediary can constitute written consent if it specifies in conspicuous bold or underlined print that certain broker conduct is prohibited.[15]

Ms. Acevedo, Ms. Monreal, and D. signed an Intermediary Relationship Notice form.[16] Ms. Perez also presented them a form sheet about brokerage services, which included information about a broker acting as an intermediary. Nowhere, however, does

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[14] TEX. OCC. CODE § 1101.559(a).

[15] TEX. OCC. CODE § 1101.559(b).

[16] Ex. C-12 at 142-43.

the Intermediary Relationship Notice form state how the broker is to be paid.[17] Therefore, it does not satisfy the notice requirements.

Alternatively, Ms. Perez could satisfy the requirements through listing and representation agreements. The listing agreement with Ms. Acevedo indicated that Ms. Perez could act as an intermediary and listed the prohibited conduct in bold, which would satisfy the requirements for Ms. Acevedo.[18] Nevertheless, Ms. Perez had no buyer's representation agreement with Ms. Monreal, so she cannot satisfy the requirements in that way. Staff has established a violation of the statute regarding the establishment of an intermediary relationship.

b. Unauthorized Practice of Law

Staff also alleges that Ms. Perez engaged in the unauthorized practice of law by drafting the Agreement. TEX. OCC. CODE §1101.654(a)(1) requires the Commission to suspend or revoke the license of a broker who "drafts an instrument . . . that transfers or otherwise affects an interest in real property."[19] The Agreement, which provides for the purchase of the house on Blundell, meets the requirements for an instrument.

Although Ms. Perez denies drafting the Agreement, the ALJ believes that Staff established she did. Ms. Perez's testimony about the Agreement — that not only did she not draft it, but that she knew nothing about it — is not credible. Ms. Perez herself provided the Agreement to the Commission when responding to Ms. Acevedo's complaint, and her response refers to the Agreement's terms. Moreover, according to Commission investigator Bruce Wooley, she admitted to drafting it from a form she got off the internet. Finally, it is highly unusual for a legal document to include a three-year-old girl as a party to it. Yet the Agreement lists D. as a Buyer/Tenant and contains her

[17] The form, which is from the Texas Association of Realtors, states that the broker has a written listing agreement and a written buyer's representation agreement. Presumably these agreements set out payment. However, as previously stated, Ms. Perez did not have a written buyer's agreement.

[18] Ex. C-12 at 124-25.

[19] This is subject to exceptions that do not apply.

signature. This appears to be a hallmark of Ms. Perez. The Intermediary Relationship Notice, which undisputedly was completed by Ms. Perez, also lists D. as a prospect and contains her signature. It seems unlikely that anyone else would have included D. as a party and sought her signature.

Ms. Perez also argued that because Ms. Acevedo and Ms. Monreal later hired lawyers to draft the final documents, she could not have engaged in the unauthorized practice of law. This argument is irrelevant, however. No one contends that she drafted the warranty deed. She drafted the Agreement, and by doing that, engaged in the unauthorized practice of law.

c. Negligence or Incompetence

Staff established that by failing to properly establish an intermediary relationship and by drafting the problematic Agreement, Ms. Perez acted negligently or incompetently. This is in violation of the Act.

d. Conduct that is Dishonest or in Bad Faith or that Demonstrates Untrustworthiness

On the other hand, the ALJ does not believe Staff established that Ms. Perez engaged in conduct that is dishonest or in bad faith or that demonstrates untrustworthiness. Although Ms. Perez's conduct was negligent, Staff presented insufficient evidence that it was dishonest or in bad faith, or that it demonstrated untrustworthiness. There was no indication that Ms. Perez acted with an intent to deceive anyone when she drafted the Agreement; nor did she gain any unwarranted benefit from doing so.

B. 4702 Megal

1. Evidence

In early 2010, Ms. Perez represented clients, Juan and Nelda Quintanilla, who were interested in buying a house. She showed them the house at 4702 Megal, in Corpus Christi, Texas (Megal House). This house was owned by Jeffrey Dilbert, who was represented by real estate agent Joanna Mason. Both Mr. Dilbert and Ms. Mason testified at the hearing, as did Ms. Perez.

Ms. Perez submitted a written offer on the Megal House on behalf of the Quintanillas. The offer was in the form of a contract signed by Mr. Quintanilla. Mr. Quintanilla did not date his signature. Under the contract, closing was to occur on February 26, 2010. The contract provided that "[u]pon execution of this contract by all parties, Buyer shall deposit $500.00 as earnest money" with the title company.[20] It also provided for a $50.00 option fee. Ms. Mason testified that she scanned and emailed the signed offer to Mr. Dilbert the day she received it. Mr. Dilbert testified that he signed the offer the same day he received it, February 1, 2010.

Ms. Mason testified that she called Ms. Perez to tell her that they had a contract and that she needed the checks or that Ms. Perez could escrow them. She did not hear from Ms. Perez for around two weeks. Finally, Ms. Perez told her that her clients had changed their minds and that she did not have the checks. According to Ms. Mason, Ms. Perez told her that they did not have a contract because it did not go to the title company. Ms. Mason testified that this behavior was not typical in a real estate transaction. Normally, a termination form would be used to terminate a contract.

Ms. Perez testified that she did not get any calls and implied she did not know the offer had been accepted. However, in her written closing argument, she wrote that "After

[20] Ex. C-17 at 167.

I learned of the seller's acceptance, I tried to reach the Buyer, but the buyer would not return my calls. . . The buyer disappeared on me."

On February 24, 2010, Mr. Dilbert made a complaint to the Commission.[21] Mr. Wooley investigated this complaint as well. After originally stating that she did not have any records, Ms. Perez later informed Mr. Wooley that she found a voided check for $500 from the Quintanillas for earnest money for the Megal House. This check was dated February 29, 2010, after the sale was supposed to have closed.

2. Analysis

Staff alleges that Ms. Perez committed the following violations related to the transaction for the Megal House:

- acting negligently or incompetently, in violation of TEX. OCC. CODE § 1101.652(b)(1); and
- engaging in conduct that is dishonest or in bad faith or that demonstrates untrustworthiness, in violation of TEX. OCC. CODE § 1101.652(b)(2).

At hearing, Ms. Perez emphasized that the contract had never been taken to the title company. She appeared to believe that a contract does not exist until it is handed to the title company. After the hearing, she introduced some email in which a title company employee indicated that if a contract escrowed without earnest money, the buyer would be in default. The ALJ is not certain how this helps her case. The contract required the buyer to provide earnest money once it was executed, in other words, signed by the seller. Ms. Perez did not collect that money at that time.

In her closing, Ms. Perez appears to agree that she should have behaved differently and should have let the other agent know what was going on.

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[21] Ex. C-18.

The ALJ believes that Staff established that Ms. Perez acted negligently or incompetently by not staying in contact with Ms. Mason and by not collecting the earnest money or the option fee. As with the previous allegation, however, the ALJ does not believe that Staff established that she engaged in conduct that was dishonest or in bad faith or that demonstrates untrustworthiness. The most questionable aspect of Ms. Perez's conduct related to the Megal House is the late-appearing earnest money check. However, Staff's second amended petition does not mention this check, and the ALJ will not make it the basis of a dishonesty or bad faith finding.

III. PENALTY

Staff seeks a fully-probated two-year suspension of Ms. Perez's license, along with a $10,000 administrative penalty. Staff also seeks to require Ms. Perez to attend a pre-approved 30-hour agency class.

The Commission may take disciplinary action, including revocation of a license, against a license holder who violates the Act.[22] The Commission may also probate any suspension and may require anyone whose license suspension has been probated to "renew professional education until the license holder attains a degree of skill satisfactory to the commission in the area that is the basis of the probation."[23] Additionally, the Commission may assess an administrative penalty not to exceed $5,000 for each violation against a person who violates the Act.[24] In this case, Staff seeks a fully-probated two-year suspension of Ms. Perez's license, along with a $10,000 administrative penalty. Staff also seeks to require Ms. Perez to attend a pre-approved 30-hour agency class.

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[22] TEX. OCC. CODE § 1101.656(a).

[23] TEX. OCC. CODE § 1101.656 (b) & (c)(3).

[24] TEX. OCC. CODE §§ 1101.701, 1101.702.

A. Probated Suspension and Continued Education

The Commission may suspend Ms. Perez's license for negligence or incompetence or for failing to properly establish the intermediary relationship.[25] The Commission must, however, suspend or revoke Ms. Perez's license for unauthorized practice of law.[26] As mentioned above, the Commission is authorized to probate that suspension so that Ms. Perez may keep working so long as she complies with certain requirements. In this case, Staff requests that Ms. Perez take a pre-approved 30-hour agency class. Both the probated suspension and the class requirement are justified by the facts of this case.

B. Administrative Penalty

In determining the amount of an administrative penalty, the Commission considers the following factors: (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited acts; (2) the history of previous violations; (3) the amount necessary to deter a future violation; (4) efforts to correct the violation; and (5) any other matter that justice may require.[27] The Commission has adopted a schedule of administrative penalties that provides a penalty range of $100 to $5,000 per violation per day for various violations of the Act.[28] The negligence or incompetence violations have a penalty range of between $500 and $3,000 per violation, per day. The failure to properly establish the intermediary relationship violation and the unauthorized practice of law violation each have a penalty range of between $1,000 and $5,000 per violation, per day.

Staff's requested $10,000 penalty is on the higher end of the penalty range. The maximum penalty for the 3 violations relating to the Blundell House and the one relating

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[25] TEX. OCC. CODE § 1101.652(b)(1)&(33).

[26] TEX. OCC. CODE § 1101.654(a).

[27] TEX. OCC. CODE § 1101.702.

[28] 22 TEX. ADMIN. CODE § 535.191.

to the Megal House would be $16,000. Here, the violations were fairly serious, and Ms. Perez did not attempt to correct them. However, the violations, with the exception of the unauthorized practice of law, do not rise to the level of extreme seriousness that would justify assessing the maximum penalty amount. There was no evidence of any history of previous violations. Although $10,000 should deter future violations, a lesser amount, such as $8,000, should as well. Although $10,000 appears a little high in light of the factors, an $8,000 administrative penalty is justified by the evidence in this case.

IV. FINDINGS OF FACT

1. Martina S. Perez (Respondent) holds real estate broker license number 413926 issued by the Texas Real Estate Commission (Commission).

2. In June 2008, Respondent was hired by Lilia Acevedo to sell her house at 4842 Blundell Drive, Corpus Christi, Texas (Blundell House).

3. Ms. Acevedo and Respondent entered into an exclusive listing agreement for the sale of the Blundell House.

4. Maria Isabel Monreal contacted Respondent about purchasing the Blundell House for her and her then three-year-old daughter D. to live in.

5. Respondent did not enter into a buyer's representation agreement with Ms. Monreal.

6. Both Ms. Acevedo and Ms. Monreal signed an Intermediary Relationship Notice form, which did not state how Respondent would be paid.

7. Respondent drafted a Lease to Purchase Option Agreement (Agreement) that allowed Ms. Monreal to lease the property for a year. The Agreement then provided that Ms. Monreal would purchase the Blundell House for $70,000. The Agreement also required Ms. Monreal to pay a non-refundable option fee of $5,000.00 and stated that no real estate commission would be paid in connection with the transaction. Both Ms. Monreal and D. signed the Agreement as buyers.

8. Ms. Perez is not a licensed attorney.

9. Ms. Perez drafted the Agreement for her own anticipated pecuniary benefit.

10. Around August 9, 2008, Respondent presented Ms. Acevedo with the Agreement by leaving it under her doormat.

11. On or about August 10, 2008, Ms. Monreal gave Respondent $4,300 as a down payment for the option fee. Respondent took that money to Ms. Acevedo but retained $1,300 as commission.

12. Respondent later collected $700 from Ms. Monreal as the final commission payment.

13. Because of issues with the Agreement, as well as with a promissory note signed in early September 2008, Ms. Acevedo had to hire lawyers to redo paperwork. She also hired a lawyer to draft a warranty deed with vendor's lien.

14. On or about February 4, 2009, Ms. Acevedo filed a complaint with the Commission alleging that Respondent acted negligently or in bad faith while performing real estate brokerage services during this real estate transaction.

15. On or about February 1, 2010, Respondent submitted an offer on behalf of Juan Quintanilla to purchase property owned by Jeffery Steven Dilbert, located at 4702 Megal, Corpus Christi, Texas. The offer was in the form of a contract signed by Mr. Quintanilla. Under the contract, the sale was to close on February 26, 2010.

16. On or about February 1, 2010, Mr. Dilbert accepted the offer and signed the contract.

17. The sales contract required Mr. Quintanilla, upon execution, to deposit earnest money in the amount of $500 with Security Title Company.

18. No earnest money was deposited.

19. The contract also called for a $50 option fee that was never paid to Mr. Dilbert.

20. Despite repeated attempts, Mr. Dilbert's agent, Joanna Mason, did not hear from Respondent for approximately two weeks after the contract was executed, when Respondent told her that she was unable to contact Mr. Quintanilla.

21. Respondent did not submit any formal termination, nor did she provide Mr. Dilbert or his agent with the $50 option fee.

22. Respondent did not collect the $500 earnest money, nor did she provide earnest money to Mr. Dilbert or his agent.

23. Respondent's violations were relatively serious.

24. Respondent has not attempted to correct any of her violations.

25. Respondent has no history of previous violations.

26. An administrative penalty of $8,000 should sufficiently deter Respondent from future violations.

27. On March 8, 2011, Staff sent a Notice of Alleged Violation and Original Petition to Respondent at her address of record, notifying her that she had violated the Real Estate License Act and that Staff was seeking an administrative penalty and revocation of Respondent's license. The notice advised Respondent that she could request a hearing to contest the determination.

28. On March 25, 2011, Respondent timely requested a hearing.

29. After receiving Respondent's hearing request, Staff issued its Notice of Administrative Hearing on April 6, 2011, informing Respondent that her requested hearing was scheduled for June 21, 2011.

30. The Notice of Administrative 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.

31. Staff filed a Second Amended Petition on June 9, 2011.

32. The hearing in this matter convened before ALJ Rebecca S. Smith on June 21, 2011. Staff was represented by attorney Mary Winston. Respondent represented herself. At the close of the hearing, the record was held open for Staff and Respondent to submit closing arguments and for Respondent to submit additional exhibits. Respondent submitted her additional documents on June 29, 2011. Staff filed its closing argument on July 6, 2011. Respondent filed her closing argument on July 18, 2011, at which time the record closed.

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the licenses of real estate brokers, pursuant to 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 ch. 2003.

3. Respondent received proper and timely notice of hearing as required by TEX GOV'T CODE §§ 2001.051 and 2001.052.

4. By drafting the Agreement, Ms. Perez engaged in the unauthorized practice of

law, which is prohibited by TEX. OCC. CODE § 1101.654(a).

5. By acting as an intermediary but failing to obtain from Ms. Monreal written consent that stated the source of any expected compensation to the broker, Respondent violated TEX. OCC. CODE § 1101.559(a).

6. In drafting the Agreement and in representing both Ms. Acevedo and Ms. Monreal, Respondent acted negligently or incompetently, which violates TEX. OCC. CODE § 1101.652(b)(1).

7. By failing to collect and deposit the earnest money and to collect the option fee from Mr. Quintanilla and by failing to stay in contact with Ms. Mason, Respondent acted negligently or incompetently, which violates TEX. OCC. CODE § 1101.652(b)(1).

8. Pursuant to TEX. OCC. CODE § 1101.656(a), the Commission may suspend a real estate broker's license for the above violations.

9. Pursuant to TEX. OCC. CODE § 1101.654(a), the Commission must suspend a real estate broker's license if the broker engages in the unauthorized practice of law.

10. The Commission may probate the suspension of a license and may order the licensee to pursue continuing professional education under TEX. OCC. CODE § 1101.656(b)&(c)(3).

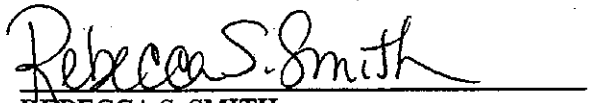
11. Based on the above Findings of Fact and Conclusions of Law, Respondent's license should be suspended for two years, but that suspension should be fully probated.

12. Based on the above Findings of Fact and Conclusions of Law, Respondent also should be ordered to complete a preapproved 30-hour agency class.

13. Pursuant to TEX. OCC. CODE §§ 1101.701 and 1101.702, the Commission may assess an administrative penalty not to exceed $5,000 for each violation against a person who violates the Act.

14. Based on the above Findings of Fact and Conclusions of Law, the imposition of an $8,000 administrative penalty is justified.

SIGNED September 14, 2011.



REBECCA S. SMITH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

Agenda Item 25:

Recovery fund matters:

a. Executive session to discuss pending litigation pursuant to Texas Government Code §551.071

b. Discussion and possible action to approve payment of claims from the Real Estate Recovery Trust Account:

   i. RF 11-031, Fasoro v. Cade

   ii. RF 11-032, Kennedy v. Joraf Group, LLC and Jordan

   iii. RF 11-041, Gioia v. Pruett

   iv. RF 11-042, Owens v. Cade

   v. RF 12-002, Becca Properties, LLC v. Emmons

   vi. RF 12-003, Feely v. Hoover

SUMMARY:

Staff Recommendation:

Recommended Motion:

Agenda Item 26:

Discussion and possible action to schedule future meetings

SUMMARY:

Staff Recommendation:

Recommended Motion:

Agenda Item 27:

Adjourn

Texas Real Estate Commission

October 10, 2011

November 11

S	M	T	W	T	F	S
		1	2	3	4	5
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December 11

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January 12

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February 12

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March 12

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April 12

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November

1 Election Day

11 Veterans Day

24 Thanksgiving

December

5 ***Commission Meeting***

25 Christmas Holidays

31 New Year's Eve

January

1 New Year's Day

16 Martin Luther King, Jr.

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

May

17 Ascension Day

19 Armed Forces Day

27 Pentecost

28 Memorial Day (Observed)

June

7 Corpus Christi

14 Flag Day

17 Father's Day

July

4 Independence Day

September

3 Labor Day

October

8 Columbus Day (Observed)

28 Daylight Savings--set back 1 hour

31 Halloween

May 12

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June 12

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July 12

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August 12

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September 12

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October 12

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