



**AGENDA FOR TEXAS REAL ESTATE BROKER-LAWYER COMMITTEE MEETING**  
**Stephen F. Austin Building**  
**1700 N. Congress, Room 400a, Austin, TX 78701**  
**Friday, October 13, 2023, at 9:00 a.m.**

To participate by providing public comment, contact general counsel, at [general.counsel@trec.texas.gov](mailto:general.counsel@trec.texas.gov) before 5:00 p.m. Thursday, October 12, 2023, along with the item number on which you wish to speak.

In accordance with normal Commission practice, meeting materials will be available on the TREC website prior to the meeting at the following URL: <https://www.trec.texas.gov/apps/meetings/>

1. Call to order
2. Public comment on non-agenda items
3. Reports from BLC working groups
4. Discussion and possible action regarding deferred comments and recommendations from committee members concerning possible changes to contract forms, including review of draft new forms requested by the committee
5. Discussion and possible action regarding comments received on contract forms since the last meeting
6. Discussion and possible action regarding recent court cases
7. Discussion and possible action regarding future agenda items and meeting dates  
Next meeting: January 12, 2024  
Proposed future meeting: April 12, 2024
8. Discussion and possible action to approve the October 13, 2023, meeting minutes
9. Adjourn

*Pursuant to the Americans with Disabilities Act, any requests for reasonable accommodation needed by persons wishing to attend this meeting should call Amber Hinton at 512-936-3000.*

*Pursuant to Section [30.06](#), Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter [411](#), Government Code (handgun licensing law), may not enter this property with a concealed handgun.*

*Pursuant to Section [30.07](#), Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter [411](#), Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly.*

Broker/Lawyer Committee Meeting  
Minutes  
June 9, 2023

- (1) SJ Swanson called the meeting to order at 9:00 a.m. on June 9, 2023.

Members Present:	Ron Walker	SJ Swanson	Leigh York
	Dianne McCoy	Darlene Fairchild	Charlie Still
	Tony Malley	Greg Glenn	Bo Blackburn

John George and Mary Miner participated by on-line means.

Others Present:

- Scott Kesner, TREC Chairman
- Robin Harris, Texas REALTORS
- Kelsey Vanderbilt, Texas REALTORS
- Vanessa Burgess, TREC General Counsel
- Abby Lee, TREC Deputy General Counsel
- Sylvia Busk, CSRE
- Jesse Cantu, Broker
- Ann Still, Salesperson
- Jim Wiedemer, Attorney and Broker
- Renee Harvey Lowe, TREC Commissioner (on-line)
- Jason Hargraves, TREC Commissioner (on-line)
- Other guests participated on-line

- (1) SJ Swanson called the meeting to order at 9:04 a.m. and made a few announcements. She thanked Bo Blackburn, Charles Still, and Greg Glenn for their service on the Broker/Lawyer Committee. She recognized the guests at the meeting.
- (2) The committee reviewed and approved the minutes from its February 24, 2023. SJ Swanson noted that the October 24, 2022 minutes were approved at the meeting on February 24, 2023.
- (3) No public comments were presented on non-agenda items.
- (4) Vanessa Burgess presented a summary of bills from the 2023 legislative session. She referred to the written legislative report in the meeting materials.
- (a) Staff had presented changes to the Seller's Disclosure Notice published by TREC. The committee recommended that the Commission adopt the changes to the Seller's Disclosure Notice as recommended by staff with a small formatting change on Page 1 of the form.
  - (b) The committee recommended that staff prepare a form to comply with HB 2816, related to statutory district disclosure notices, for its next meeting and to engage in a communication effort to educate license holders about HB 2816.
  - (c) The committee also recommended a working group to review forms stemming from recent legislation (John George, Ron Walker, SJ Swanson, Mary Miner).
  - (d) The committee decided to add "geothermal" in Paragraph 4C of the contract after "mineral."
- (5) The committee discuss deferred comments from prior meeting.
- (a) The committee decided to change Paragraph 6E(12) of the contract by striking the warning notice and substitute "Seller's failure to provide applicable statutory notices may provide Buyer with remedies or rights to terminate the contract."

- (b) The committee decided to change Paragraph 2A (first box) of the Financing Addendum by inserting a period after “determination” and adding “If Buyer terminates the contract under this provision.”.
  - (c) The committee decided to change Paragraph 2B of the contract by striking “3 days before the Closing Date, or earlier,” and substitute “on or before the 3rd day before the Closing Date...”
  - (d) The committee asked staff to provide a draft of a potential addendum for 1031 exchanges for the committee to consider at its next meeting.
  - (e) The committee decided to change Paragraph 20 of the Farm and Ranch Contract by adding subparagraph A and B. Subparagraph will contain the existing language in Paragraph 20 and subparagraph B will read: “The Agriculture Foreign Investment Disclosure Act (AFIDA) of 1978 requires that a foreign person who acquires, disposes of, or holds an interest in United States agricultural land must disclose such transactions and holdings to the Secretary of Agriculture. Foreign persons must file an FSA-153 in the Farm Service Agency (FSA) Service Center where the land is physically located within 90 days of the date of the transaction. Failure to report is subject to civil penalty up to 25 percent of the fair market value of the land on the date the penalty is assessed. Consult an attorney or tax professional.”
- (6) The committee reviewed comments received since its last meeting.
- (a) The committee decided to add a box that no survey is required in all contract forms and buyer waives any right to object to matters disclosed in any survey in Paragraph 6D.
  - (b) The committee decided to add to Paragraph 3 of the Unimproved Property Contract a clause for a proportionate adjustment to the sales price based on square footage or acreage, using similar language as used in Paragraph 3 of the Farm and Ranch Contract.
  - (c) The committee deferred a discussion about provisions related to mobile homes.
  - (d) The committee decided to remove the proposed addition regarding the mold remediation certificate in the Unimproved Property Contract form.
  - (e) The committee decided to change the parenthetical in Paragraph 6E of the contract to read: “(for example, utility, water, drainage, and public improvement districts)”.
- (7) The committee discussed recent court cases applicable to the forms. SJ Swanson gave a report about a pending case.
- (8) The committee approved the minutes of this meeting.
- (9) The committee next meets on October 13, 2023, January 12, 2024, and April 12, 2024. Dianne McCoy suggested adding a discussion item to receive a report from the working group related to the Back-Up Addendum.
- (10) The committee adjourned its meeting at 1:15 p.m.



**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 (Property).

RESERVATIONS: Any reservation for oil, gas, or other minerals, water, timber, or other interests is made in accordance with an attached addendum.

**3. SALES PRICE:**

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

The term "Cash portion of the Sales Price" does not include proceeds from borrowing of any kind or selling other real property except as disclosed in this contract.

B. Sum of all financing described in the attached:  Third Party Financing Addendum,  Loan Assumption Addendum,  Seller Financing Addendum .....\$ \_\_\_\_\_

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 adjusted based on the difference between \_\_\_\_\_ acres and the acreage set forth in the survey required by Paragraph 6C. The difference in acreage (either increased or decreased) shall be multiplied by the sum of \_\_\_\_\_ per acre and either added to or subtracted from the Sales Price stated in Paragraph 3C. 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. LEASES:**

A. Except as disclosed in this contract, Seller is not aware of any leases affecting the Property. After the Effective Date, Seller may not, without Buyer's written consent, create a new lease, amend any existing lease, or convey any interest in the Property.

B. NATURAL RESOURCE LEASES: "Natural Resource Lease" means an existing oil and gas, mineral, geothermal, water, wind, or other natural resource lease affecting the Property to which Seller is a party. Seller  is  is not a party to a Natural Resource Lease. If Seller is a party to a Natural Resource Lease, check one of the following:

- (1) Seller has delivered to Buyer a copy of all the Natural Resource Leases.
- (2) Seller has not delivered to Buyer a copy of all the Natural Resource Leases. Seller shall provide to Buyer a copy of all the Natural Resource Leases within 3 days after the Effective Date. Buyer may terminate the contract within \_\_\_\_\_ days after the date the Buyer receives all the Natural Resource Leases and the earnest money shall be refunded to Buyer.

**5. EARNEST MONEY AND TERMINATION OPTION:**

A. DELIVERY OF EARNEST MONEY AND OPTION FEE: Within 3 days after the Effective Date, Buyer must deliver to \_\_\_\_\_ (Escrow Agent) at \_\_\_\_\_ (address): \$ \_\_\_\_\_

as earnest money and \$ \_\_\_\_\_ as the Option Fee. The earnest money and Option Fee shall be made payable to Escrow Agent and may be paid separately or combined in a single payment.

- (1) Buyer shall deliver additional earnest money of \$ \_\_\_\_\_ to Escrow Agent within \_\_\_\_\_ days after the Effective Date of this contract.
- (2) If the last day to deliver the earnest money, Option Fee, or the additional earnest money falls on a Saturday, Sunday, or legal holiday, the time to deliver the earnest money, Option Fee, or the additional earnest money, as applicable, is extended until the end of the next day that is not a Saturday, Sunday, or legal holiday.
- (3) The amount(s) Escrow Agent receives under this paragraph shall be applied first to the Option Fee, then to the earnest money, and then to the additional earnest money.
- (4) Buyer authorizes Escrow Agent to release and deliver the Option Fee to Seller at any time without further notice to or consent from Buyer, and releases Escrow Agent from liability for delivery of the Option Fee to Seller. The Option Fee will be credited to the Sales Price at closing.

[11-07-2022]

(Address of Property) \_\_\_\_\_

- B. **TERMINATION OPTION:** For nominal consideration, the receipt of which Seller acknowledges, and Buyer's agreement to pay the Option Fee within the time required, 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). Notices under this paragraph must be given by 5:00 p.m. (local time where the Property is located) by the date specified. If Buyer gives notice of termination within the time prescribed: (i) the Option Fee will not be refunded and Escrow Agent shall release any Option Fee remaining with Escrow Agent to Seller; and (ii) any earnest money will be refunded to Buyer.
- C. **FAILURE TO TIMELY DELIVER EARNEST MONEY:** If Buyer fails to deliver the earnest money within the time required, Seller may terminate this contract or exercise Seller's remedies under Paragraph 15, or both, by providing notice to Buyer before Buyer delivers the earnest money.
- D. **FAILURE TO TIMELY DELIVER OPTION FEE:** If no dollar amount is stated as the Option Fee or if Buyer fails to deliver the Option Fee within the time required, Buyer shall not have the unrestricted right to terminate this contract under this Paragraph 5.
- E. **TIME: Time is of the essence for this paragraph and strict compliance with the time for performance is required.**

## 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 3.
  - (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:
    - (i) will not be amended or deleted from the title policy; or
    - (ii) will be amended to read, "shortages in area" at the expense of  Buyer  Seller.
  - (9) The exception or exclusion regarding minerals approved by the Texas Department of Insurance.
- 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 3 days before the Closing Date, whichever is earlier. If 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.
- (4) No survey is required and Buyer waives any right to object to matters disclosed in any survey in Paragraph 6D.
- 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 (9) 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 any timely objections of Buyer or any third party lender within 15 days after Seller receives the objections (Cure Period) and the Closing Date will be extended as necessary. If objections are not cured within the Cure Period, Buyer may, by delivering notice to Seller within 5 days after the end of the Cure Period: (i) terminate this contract and the earnest money will be refunded to Buyer; or (ii) waive the objections. If Buyer does not terminate within the time required, Buyer shall be deemed to have waived the objections. If the Commitment or survey is revised or any new Exception Document(s) is delivered, Buyer may object to any new matter revealed in the revised Commitment or survey or new Exception Document(s) within the same time stated in this paragraph to make objections beginning when the revised Commitment, survey, or Exception Document(s) is delivered to Buyer.

## 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 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, Seller must give Buyer written notice as required by §5.014, Property Code. An addendum containing the required notice shall be attached to this contract.
- (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.
- (10) PROPANE GAS SYSTEM SERVICE AREA: If the Property is located in a propane gas system service area owned by a distribution system retailer, Seller must give Buyer written notice as required by §141.010, Texas Utilities Code. An addendum containing the notice approved by TREC or required by the parties should be used.
- (11) NOTICE OF WATER LEVEL FLUCTUATIONS: If the Property adjoins an impoundment of water, including a reservoir or lake, constructed and maintained under Chapter 11, Water Code, that has a storage capacity of at least 5,000 acre-feet at the impoundment's normal operating level, Seller hereby notifies Buyer: "The water level of the impoundment of water adjoining the Property fluctuates for various reasons, including as a result of: (1) an entity lawfully exercising its right to use the water stored in the impoundment; or (2) drought or flood conditions."
- (12) REQUIRED NOTICES: The following notices have been given or are attached to this contract (for example, utility, water, drainage, and public improvement districts [~~MUD, WCID, PID notices~~]): \_\_\_\_\_  
Seller's failure to provide applicable statutory notices may provide Buyer with remedies or rights to terminate the contract.

**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: "As Is" means the present condition of the Property with any and all defects and without warranty except for the warranties of title and the warranties in this contract. Buyer's agreement to accept the Property As Is 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.

- (Check one box only)
- (1) Buyer accepts the Property As Is.
- (2) Buyer accepts the Property As Is 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 and treatments.)

C. COMPLETION OF REPAIRS AND TREATMENTS: Unless otherwise agreed in writing, Seller shall complete all agreed repairs and treatments prior to the Closing Date and obtain any required permits. The repairs and treatments must be performed by persons who are licensed to provide such repairs or treatments or, if no license is required by law, are commercially engaged in the trade of providing such repairs or treatments. Seller shall: (i) provide Buyer with copies of documentation from the repair person(s) showing the scope of work and payment for the work completed; and (ii) at Seller's expense, arrange for the transfer of any transferable warranties with respect to the repairs and treatments to Buyer at closing. 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 5 days, if necessary, for Seller to complete repairs and treatments.

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 DISCLOSURE:**

- (1) Seller  is  is not aware of any flooding of the Property which has had a material adverse effect on the use of the Property.
- (2) Seller  is  is not aware of any pending or threatened litigation, condemnation, or special assessment affecting the Property.
- (3) Seller  is  is not aware of any environmental hazards that materially and adversely affect the Property.
- (4) Seller  is  is not aware of any dumpsite, landfill, or underground tanks or containers

- now or previously located on the Property.
- (5) Seller  is  is not aware of any wetlands, as defined by federal or state law or regulation, affecting the Property.
  - (6) Seller  is  is not aware of any threatened or endangered species or their habitat affecting the Property.
  - (7) Seller  is  is not aware that the Property is located  wholly  partly in a floodplain.
  - (8) Seller  is  is not aware that a tree or trees located on the Property has oak wilt.
- If Seller is aware of any of the items above, explain (attach additional sheets if necessary): \_\_\_\_\_

**8. BROKERS AND SALES AGENTS:**

- A. **BROKER OR SALES AGENT DISCLOSURE:** Texas law requires a real estate broker or sales agent who is a party to a transaction or acting on behalf of a spouse, parent, child, business entity in which the broker or sales agent owns more than 10%, or a trust for which the broker or sales agent acts as a trustee or of which the broker or sales agent or the broker or sales agent's spouse, parent or child is a beneficiary, to notify the other party in writing before entering into a contract of sale. Disclose if applicable: \_\_\_\_\_
- B. **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, transfer of any warranties, 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) Private transfer fees (as defined by Chapter 5, Subchapter G of the Texas Property Code) will be the obligation of Seller unless provided otherwise in this contract. Transfer fees assessed by a property owners' association are governed by the Addendum for Property Subject to Mandatory Membership in a Property Owners Association.

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

**11. SPECIAL PROVISIONS:** (This paragraph is intended to be used only for additional informational items. An informational item is a statement that completes a blank in a contract form, discloses factual information, or provides instructions. Real estate brokers and sales agents are prohibited from practicing law and shall not add to, delete, or modify any provision of this contract unless drafted by a party to this contract or a party's attorney.) \_\_\_\_\_

**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; 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



~~11-07-2022~~

(Address of Property)

Veterans Land Board or other governmental loan program regulations.

**13. PRORATIONS AND ROLLBACK TAXES:**

- A. PRORATIONS: Taxes for the current year, interest, rents, and regular periodic maintenance fees, assessments, and dues (including prepaid items) 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 Assessments are imposed because of Seller's use or change in use of the Property 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, if permitted by Seller's insurance carrier, 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 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. Escrow Agent may require any disbursement made in connection with this contract to be conditioned on Escrow Agent's collection of good funds acceptable to 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 before releasing any earnest money; and (ii) require payment of unpaid expenses incurred on behalf of a party. Escrow Agent may deduct authorized expenses from the earnest money payable to a party. "Authorized expenses" means expenses incurred by Escrow Agent on behalf of the party entitled to the earnest money that were authorized by this contract or that party.
- C. DEMAND: Upon termination of this contract, either party or the Escrow Agent may send a release of earnest money to each party and the parties shall execute counterparts of the release and deliver same to the Escrow Agent. If either party fails to execute the release, either party may make a written demand to the Escrow Agent for the earnest money. If only one party makes written demand for the earnest money, Escrow Agent shall promptly provide a copy of the demand to the other party. If Escrow Agent does not receive written objection to the demand from the other party within 15 days, Escrow Agent may disburse the earnest money to the party making demand reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and Escrow Agent may pay the same to the creditors. If Escrow Agent complies with the provisions of this paragraph, each party hereby releases Escrow Agent from all adverse claims related to the disbursement of the earnest money.
- D. DAMAGES: Any party who wrongfully fails or refuses to sign a release acceptable to the Escrow Agent within 7 days of receipt of the request will be liable to the other party for (i) damages; (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 Internal Revenue Code and its regulations, or if Seller fails to deliver an affidavit or a certificate of non-foreign status 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 fax or electronic transmission as follows:

**To Buyer at:** \_\_\_\_\_

**To Seller at:** \_\_\_\_\_

Phone: ( ) \_\_\_\_\_

Phone: ( ) \_\_\_\_\_

E-mail/Fax: \_\_\_\_\_

E-mail/Fax: \_\_\_\_\_

E-mail/Fax: \_\_\_\_\_

E-mail/Fax: \_\_\_\_\_

With a copy to Buyer's agent at: \_\_\_\_\_

With a copy to Seller's agent at: \_\_\_\_\_

**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
- 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 Concerning Right to Terminate Due to Lender's Appraisal
- Addendum containing Notice of Obligation to Pay Improvement District Assessment
- 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
- Addendum for Property in a Propane Gas System Service Area
- Other (list): \_\_\_\_\_

**23. CONSULT AN ATTORNEY BEFORE SIGNING:** TREC rules prohibit real estate brokers and sales agents from giving legal advice. READ THIS CONTRACT CAREFULLY.

Buyer's Attorney is: \_\_\_\_\_

Seller's Attorney is: \_\_\_\_\_

Phone: ( ) \_\_\_\_\_

Phone: ( ) \_\_\_\_\_

Fax: ( ) \_\_\_\_\_

Fax: ( ) \_\_\_\_\_

E-mail: \_\_\_\_\_

E-mail: \_\_\_\_\_

Contract Concerning \_\_\_\_\_ Page 8 of 10 [02-12-2024](#)  
~~11-07-2022~~ (Address of Property)

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

DRAFT

\_\_\_\_\_  
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 license holders. 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-~~17~~~~16~~. This form replaces TREC NO. 9-~~16~~~~15~~.



**OPTION FEE RECEIPT**

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

Escrow Agent \_\_\_\_\_ Date \_\_\_\_\_

**EARNEST MONEY RECEIPT**

Receipt of \$ \_\_\_\_\_ Earnest Money in the form of \_\_\_\_\_  
is acknowledged.

Escrow Agent \_\_\_\_\_ Received by \_\_\_\_\_ Email Address \_\_\_\_\_ Date/Time \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Fax \_\_\_\_\_

**CONTRACT RECEIPT**

Receipt of the Contract is acknowledged.

Escrow Agent \_\_\_\_\_ Received by \_\_\_\_\_ Email Address \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Fax \_\_\_\_\_

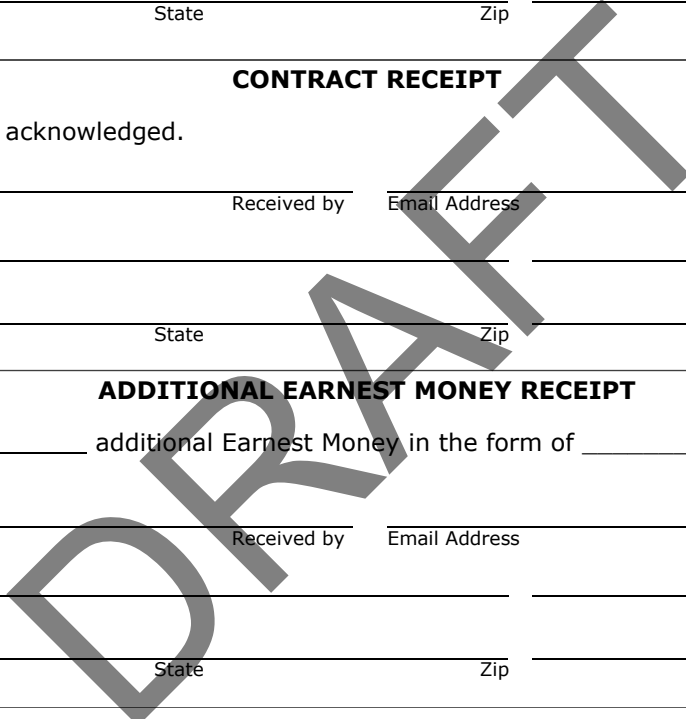
**ADDITIONAL EARNEST MONEY RECEIPT**

Receipt of \$ \_\_\_\_\_ additional Earnest Money in the form of \_\_\_\_\_  
is acknowledged.

Escrow Agent \_\_\_\_\_ Received by \_\_\_\_\_ Email Address \_\_\_\_\_ Date/Time \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Fax \_\_\_\_\_





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:** The land, improvements and accessories are collectively referred to as the Property (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, 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 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, security systems that are not fixtures, and controls for: (i) garage doors, (ii) entry gates, and (iii) other improvements and accessories. "Controls" includes Seller's transferable rights to the (i) software and applications used to access and control improvements or accessories, and (ii) hardware used solely to control improvements or accessories.
- D. EXCLUSIONS: The following improvements and accessories will be retained by Seller and must be removed prior to delivery of possession: \_\_\_\_\_.
- E. RESERVATIONS: Any reservation for oil, gas, or other minerals, water, timber, or other interests is made in accordance with an attached addendum.

**3. SALES PRICE:**

- A. Cash portion of Sales Price payable by Buyer at closing.....\$\_\_\_\_\_ The term "Cash portion of the Sales Price" does not include proceeds from borrowing of any kind or selling other real property except as disclosed in this contract.
- B. Sum of all financing described in the attached:  Third Party Financing Addendum,  Loan Assumption Addendum,  Seller Financing Addendum .....\$\_\_\_\_\_
- C. Sales Price (Sum of A and B) .....\$\_\_\_\_\_

**4. LEASES:** Except as disclosed in this contract, Seller is not aware of any leases affecting the Property. After the Effective Date, Seller may not, without Buyer's written consent, create a new lease, amend any existing lease, or convey any interest in the Property. (Check all applicable boxes)

- A. RESIDENTIAL LEASES: The Property is subject to one or more residential leases and the Addendum Regarding Residential Leases is attached to this contract.
- B. FIXTURE LEASES: Fixtures on the Property are subject to one or more fixture leases (for example, solar panels, propane tanks, water softener, security system) and the Addendum Regarding Fixture Leases is attached to this contract.
- C. NATURAL RESOURCE LEASES: "Natural Resource Lease" means an existing oil and gas, mineral, geothermal, water, wind, or other natural resource lease affecting the Property to which Seller is a party.
  - (1) Seller has delivered to Buyer a copy of all the Natural Resource Leases.
  - (2) Seller has not delivered to Buyer a copy of all the Natural Resource Leases. Seller shall provide to Buyer a copy of all the Natural Resource Leases within 3 days after the Effective Date. Buyer may terminate the contract within \_\_\_\_\_ days after the date the Buyer receives all the Natural Resource Leases and the earnest money shall be refunded to Buyer.

**5. EARNEST MONEY AND TERMINATION OPTION:**

- A. DELIVERY OF EARNEST MONEY AND OPTION FEE: Within 3 days after the Effective Date, Buyer must deliver to \_\_\_\_\_ (Escrow Agent) at \_\_\_\_\_ (address): \$ \_\_\_\_\_ as earnest money and \$ \_\_\_\_\_ as the Option Fee. The earnest money and Option Fee shall be made payable to Escrow Agent and may be paid separately or combined in a single payment.
- (1) Buyer shall deliver additional earnest money of \$ \_\_\_\_\_ to Escrow Agent within \_\_\_\_\_ days after the Effective Date of this contract.
  - (2) If the last day to deliver the earnest money, Option Fee, or the additional earnest money falls on a Saturday, Sunday, or legal holiday, the time to deliver the earnest money, Option Fee, or the additional earnest money, as applicable, is extended until the end of the next day that is not a Saturday, Sunday, or legal holiday.
  - (3) The amount(s) Escrow Agent receives under this paragraph shall be applied first to the Option Fee, then to the earnest money, and then to the additional earnest money.
  - (4) Buyer authorizes Escrow Agent to release and deliver the Option Fee to Seller at any time without further notice to or consent from Buyer, and releases Escrow Agent from liability for delivery of the Option Fee to Seller. The Option Fee will be credited to the Sales Price at closing.
- B. TERMINATION OPTION: For nominal consideration, the receipt of which Seller acknowledges, and Buyer's agreement to pay the Option Fee within the time required, 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). Notices under this paragraph must be given by 5:00 p.m. (local time where the Property is located) by the date specified. If Buyer gives notice of termination within the time prescribed: (i) the Option Fee will not be refunded and Escrow Agent shall release any Option Fee remaining with Escrow Agent to Seller; and (ii) any earnest money will be refunded to Buyer.
- C. FAILURE TO TIMELY DELIVER EARNEST MONEY: If Buyer fails to deliver the earnest money within the time required, Seller may terminate this contract or exercise Seller's remedies under Paragraph 15, or both, by providing notice to Buyer before Buyer delivers the earnest money.
- D. FAILURE TO TIMELY DELIVER OPTION FEE: If no dollar amount is stated as the Option Fee or if Buyer fails to deliver the Option Fee within the time required, Buyer shall not have the unrestricted right to terminate this contract under this paragraph 5.
- E. TIME: **Time is of the essence for this paragraph and strict compliance with the time for performance is required.**

**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 3.
  - (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:
    - (i) will not be amended or deleted from the title policy; or
    - (ii) will be amended to read, "shortages in area" at the expense of  Buyer  Seller.
  - (9) The exception or exclusion regarding minerals approved by the Texas Department of Insurance.
- 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 3 days before the Closing Date, whichever is earlier. If 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.
- (4) No survey is required and Buyer waives any right to object to matters disclosed in any survey in Paragraph 6D.

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 (9) 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 any timely objections of Buyer or any third party lender within 15 days after Seller receives the objections (Cure Period) and the Closing Date will be extended as necessary. If objections are not cured within the Cure Period, Buyer may, by delivering notice to Seller within 5 days after the end of the Cure Period: (i) terminate this contract and the earnest money will be refunded to Buyer; or (ii) waive the objections. If Buyer does not terminate within the time required, Buyer shall be deemed to have waived the objections. If the Commitment or survey is revised or any new Exception Document(s) is delivered, Buyer may object to any new matter revealed in the revised Commitment or survey or new Exception Document(s) within the same time stated in this paragraph to make objections beginning when the revised Commitment, survey, or Exception Document(s) is delivered to Buyer.

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 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, Seller must give Buyer written notice as required by §5.014, Property Code. An addendum containing the required notice shall be attached to this contract.
- (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.
- (9) PROPANE GAS SYSTEM SERVICE AREA: If the Property is located in a propane gas system service area owned by a distribution system retailer, Seller must give Buyer written notice as required by §141.010, Texas Utilities Code. An addendum containing the notice approved by TREC or required by the parties should be used.
- (10) NOTICE OF WATER LEVEL FLUCTUATIONS: If the Property adjoins an impoundment of water, including a reservoir or lake, constructed and maintained under Chapter 11, Water Code, that has a storage capacity of at least 5,000 acre-feet at the impoundment's normal operating level, Seller hereby notifies Buyer: "The water level of the impoundment of water adjoining the Property fluctuates for various reasons, including as a result of: (1) an entity lawfully exercising its right to use the water stored in the impoundment; or (2) drought or flood conditions."
- (11) CERTIFICATE OF MOLD REMEDIATION: If the Property has been remediated for mold, Seller must provide to Buyer each certificate of mold damage remediation issued under §1958.154, Occupations Code, during the five (5) years preceding the sale of the Property.
- (12) ~~(11)~~ REQUIRED NOTICES: The following notices have been given or are attached to this contract (for example, utility, water, drainage, and public improvement districts [MUD, WCID, PID notices]): Seller's failure to provide applicable statutory notices may provide Buyer with remedies or rights to terminate the contract.

**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. Any hydrostatic testing must be separately authorized by Seller in writing. 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: "As Is" means the present condition of the Property with any and all defects and without warranty except for the warranties of title and the

[11-07-2022] (Address of Property)

warranties in this contract. Buyer's agreement to accept the Property As Is 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.

(Check one box only)

- (1) Buyer accepts the Property As Is.
- (2) Buyer accepts the Property As Is 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 and treatments.)

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 and obtain any required permits. The repairs and treatments must be performed by persons who are licensed to provide such repairs or treatments or, if no license is required by law, are commercially engaged in the trade of providing such repairs or treatments. Seller shall: (i) provide Buyer with copies of documentation from the repair person(s) showing the scope of work and payment for the work completed; and (ii) at Seller's expense, arrange for the transfer of any transferable warranties with respect to the repairs and treatments to Buyer at closing. 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 5 days if necessary for Seller 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 provider or administrator licensed by the Texas Department of Licensing and Regulation. 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 AND SALES AGENTS:**

A. BROKER OR SALES AGENT DISCLOSURE: Texas law requires a real estate broker or sales agent who is a party to a transaction or acting on behalf of a spouse, parent, child, business entity in which the broker or sales agent owns more than 10%, or a trust for which the broker or sales agent acts as a trustee or of which the broker or sales agent or the broker or sales agent's spouse, parent or child is a beneficiary, to notify the other party in writing before entering into a contract of sale. Disclose if applicable: \_\_\_\_\_

B. 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, transfer of any warranties, 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) Private transfer fees (as defined by Chapter 5, Subchapter G of the Texas Property Code)

will be the obligation of Seller unless provided otherwise in this contract. Transfer fees assessed by a property owners' association are governed by the Addendum for Property Subject to Mandatory Membership in a Property Owners Association.

**10. POSSESSION:**

- A. BUYER'S 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.**
- B. SMART DEVICES: "Smart Device" means a device that connects to the internet to enable remote use, monitoring, and management of: (i) the Property; (ii) items identified in any Non-Realty Items Addendum; or (iii) items in a Fixture Lease assigned to Buyer. At the time Seller delivers possession of the Property to Buyer, Seller shall:
  - (1) deliver to Buyer written information containing all access codes, usernames, passwords, and applications Buyer will need to access, operate, manage, and control the Smart Devices; and
  - (2) terminate and remove all access and connections to the improvements and accessories from any of Seller's personal devices including but not limited to phones and computers.

**11. SPECIAL PROVISIONS:** (This paragraph is intended to be used only for additional informational items. An informational item is a statement that completes a blank in a contract form, discloses factual information, or provides instructions. Real estate brokers and sales agents are prohibited from practicing law and shall not add to, delete, or modify any provision of this contract unless drafted by a party to this contract or a party's attorney.) \_\_\_\_\_

**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; 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, rents, and regular periodic maintenance fees, assessments, and dues (including prepaid items) 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, if permitted by Seller's insurance carrier, 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 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. Escrow Agent may require any disbursement made in connection with this contract to be conditioned on Escrow Agent's collection of good funds acceptable to 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 before releasing any earnest money; and (ii) require payment of unpaid expenses incurred on behalf of a party. Escrow Agent may deduct authorized expenses from the earnest money payable to a party. "Authorized expenses" means expenses incurred by Escrow Agent on behalf of the party entitled to the earnest money that were authorized by this contract or that party.
  - C. DEMAND: Upon termination of this contract, either party or the Escrow Agent may send a release of earnest money to each party and the parties shall execute counterparts of the release and deliver same to the Escrow Agent. If either party fails to execute the release, either party may make a written demand to the Escrow Agent for the earnest money. If only one party makes written demand for the earnest money, Escrow Agent shall promptly provide a copy of the demand to the other party. If Escrow Agent does not receive written objection to the demand from the other party within 15 days, Escrow Agent may disburse the earnest money to the party making demand reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and Escrow Agent may pay the same to the creditors. If Escrow Agent complies with the provisions of this paragraph, each party hereby releases Escrow Agent from all adverse claims related to the disbursement of the earnest money.
  - D. DAMAGES: Any party who wrongfully fails or refuses to sign a release acceptable to the Escrow Agent within 7 days of receipt of the request will be liable to the other party for (i) damages; (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 Internal Revenue Code and its regulations, or if Seller fails to deliver an affidavit or a certificate of non-foreign status 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 fax or electronic transmission as follows:

**To Buyer at:** \_\_\_\_\_

**To Seller at:** \_\_\_\_\_

Phone: ( ) \_\_\_\_\_

Phone: ( ) \_\_\_\_\_

E-mail/Fax: \_\_\_\_\_

E-mail/Fax: \_\_\_\_\_

E-mail/Fax: \_\_\_\_\_

E-mail/Fax: \_\_\_\_\_

With a copy to Buyer's agent at: \_\_\_\_\_

With a copy to Seller's agent at: \_\_\_\_\_

**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
- 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
- Addendum for Authorizing Hydrostatic Testing
- Addendum Concerning Right to Terminate Due to Lender's Appraisal
- 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
- Addendum for Property in a Propane Gas System Service Area
- Addendum Regarding Residential Leases
- Addendum Regarding Fixture Leases
- Addendum containing Notice of Obligation to Pay Improvement District Assessment
- Other (list): \_\_\_\_\_

**23. CONSULT AN ATTORNEY BEFORE SIGNING:** TREC rules prohibit real estate brokers and sales agents from giving legal advice. READ THIS CONTRACT CAREFULLY.

Buyer's Attorney is: \_\_\_\_\_

Seller's Attorney is: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone: ( ) \_\_\_\_\_

Phone: ( ) \_\_\_\_\_

Fax: ( ) \_\_\_\_\_

Fax: ( ) \_\_\_\_\_

E-mail: \_\_\_\_\_

E-mail: \_\_\_\_\_

**EXECUTED the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (Effective Date).  
(BROKER: FILL IN THE DATE OF FINAL ACCEPTANCE.)**

DRAFT

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 license holders. 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-~~18~~~~[17]~~. This form replaces TREC NO. 20-~~17~~~~[16]~~.

**BROKER INFORMATION**  
 (Print name(s) only. Do not sign)

Other Broker Firm \_\_\_\_\_ License No. \_\_\_\_\_

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

Listing Broker Firm \_\_\_\_\_ License No. \_\_\_\_\_

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

Associate's Name \_\_\_\_\_ License No. \_\_\_\_\_

Listing Associate's Name \_\_\_\_\_ License No. \_\_\_\_\_

Team Name \_\_\_\_\_

Team Name \_\_\_\_\_

Associate's Email Address \_\_\_\_\_ Phone \_\_\_\_\_

Listing Associate's Email Address \_\_\_\_\_ Phone \_\_\_\_\_

Licensed Supervisor of Associate \_\_\_\_\_ License No. \_\_\_\_\_

Licensed Supervisor of Listing Associate \_\_\_\_\_ License No. \_\_\_\_\_

Other Broker's Address \_\_\_\_\_ Phone \_\_\_\_\_

Listing Broker's Office Address \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Selling Associate's Name \_\_\_\_\_ License No. \_\_\_\_\_

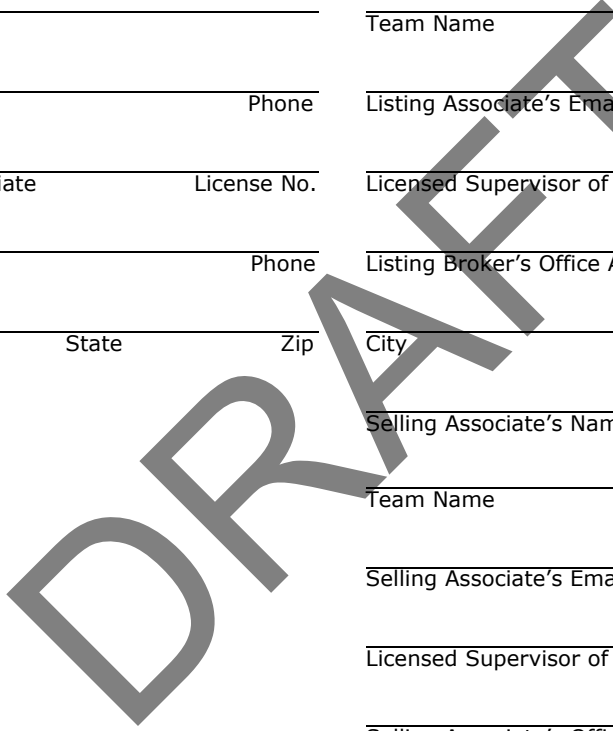
Team Name \_\_\_\_\_

Selling Associate's Email Address \_\_\_\_\_ Phone \_\_\_\_\_

Licensed Supervisor of Selling Associate \_\_\_\_\_ License No. \_\_\_\_\_

Selling Associate's Office Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_



Disclosure: Pursuant to a previous, separate agreement (such as a MLS offer of compensation or other agreement between brokers), Listing Broker has agreed to pay Other Broker a fee (\_\_\_\_\_). This disclosure is for informational purposes and does not change the previous agreement between brokers to pay or share a commission.

**OPTION FEE RECEIPT**

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

Escrow Agent \_\_\_\_\_ Date \_\_\_\_\_

**EARNEST MONEY RECEIPT**

Receipt of \$ \_\_\_\_\_ Earnest Money in the form of \_\_\_\_\_  
is acknowledged.

Escrow Agent \_\_\_\_\_ Received by \_\_\_\_\_ Email Address \_\_\_\_\_ Date/Time \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Fax \_\_\_\_\_

**CONTRACT RECEIPT**

Receipt of the Contract is acknowledged.

Escrow Agent \_\_\_\_\_ Received by \_\_\_\_\_ Email Address \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Fax \_\_\_\_\_

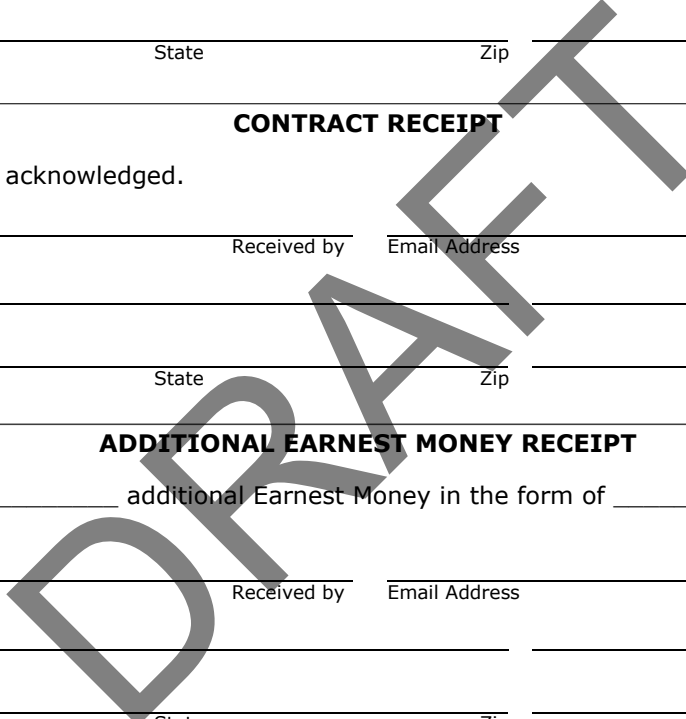
**ADDITIONAL EARNEST MONEY RECEIPT**

Receipt of \$ \_\_\_\_\_ additional Earnest Money in the form of \_\_\_\_\_  
is acknowledged.

Escrow Agent \_\_\_\_\_ Received by \_\_\_\_\_ Email Address \_\_\_\_\_ Date/Time \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Fax \_\_\_\_\_







PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)

02-12-2024 [11]

**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 \_\_\_\_\_, 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. All property sold by this contract is called the Property (Property).

RESERVATIONS: Any reservation for oil, gas, or other minerals, water, timber, or other interests is made in accordance with an attached addendum.

**3. SALES PRICE:**

A. Cash portion of Sales Price payable by Buyer at closing ..... \$ \_\_\_\_\_  
The term "Cash portion of the Sales Price" does not include proceeds from borrowing of any kind or selling other real property except as disclosed in this contract.

B. Sum of all financing described in the attached:  Third Party Financing Addendum,  Loan Assumption Addendum,  Seller Financing Addendum ..... \$ \_\_\_\_\_

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

**4. LEASES:**

A. Except as disclosed in this contract, Seller is not aware of any leases affecting the Property. After the Effective Date, Seller may not, without Buyer's written consent, create a new lease, amend any existing lease, or convey any interest in the Property.

B. NATURAL RESOURCE LEASES: "Natural Resource Lease" means an existing oil and gas, mineral, geothermal, water, wind, or other natural resource lease affecting the Property to which Seller is a party. Seller  is  is not a party to a Natural Resource Lease. If Seller is a party to a Natural Resource Lease, check one of the following:

(1) Seller has delivered to Buyer a copy of all the Natural Resource Leases.

(2) Seller has not delivered to Buyer a copy of all the Natural Resource Leases. Seller shall provide to Buyer a copy of all the Natural Resource Leases within 3 days after the Effective Date. Buyer may terminate the contract within \_\_\_\_\_ days after the date the Buyer receives all the Natural Resource Leases and the earnest money shall be refunded to Buyer.

**5. EARNEST MONEY AND TERMINATION OPTION:**

A. DELIVERY OF EARNEST MONEY AND OPTION FEE: Within 3 days after the Effective Date, Buyer must deliver to \_\_\_\_\_ (Escrow Agent) at \_\_\_\_\_ (address): \$ \_\_\_\_\_ as earnest money and \$ \_\_\_\_\_ as the Option Fee. The earnest money and Option Fee shall be made payable to Escrow Agent and may be paid separately or combined in a single payment.

(1) Buyer shall deliver additional earnest money of \$ \_\_\_\_\_ to Escrow Agent within \_\_\_\_\_ days after the Effective Date of this contract.

(2) If the last day to deliver the earnest money, Option Fee, or the additional earnest money falls on a Saturday, Sunday, or legal holiday, the time to deliver the earnest money, Option Fee, or the additional earnest money, as applicable, is extended until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(3) The amount(s) Escrow Agent receives under this paragraph shall be applied first to the Option Fee, then to the earnest money, and then to the additional earnest money.

(4) Buyer authorizes Escrow Agent to release and deliver the Option Fee to Seller at any time without further notice to or consent from Buyer, and releases Escrow Agent from liability for delivery of the Option Fee to Seller. The Option Fee will be credited to the Sales Price at closing.

B. TERMINATION OPTION: For nominal consideration, the receipt of which Seller acknowledges, and Buyer's agreement to pay the Option Fee within the time required, 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). Notices under this paragraph must be given by 5:00 p.m. (local time where the Property is located) by the date specified. If Buyer gives notice of termination within the time prescribed: (i) the Option Fee will not be refunded and Escrow Agent shall release any Option Fee remaining with Escrow Agent to Seller; and (ii) any earnest money will be refunded to Buyer.

C. FAILURE TO TIMELY DELIVER EARNEST MONEY: If Buyer fails to deliver the earnest money within the time required, Seller may terminate this contract or exercise Seller's remedies under Paragraph 15, or both, by providing notice to Buyer before Buyer delivers the earnest money.

D. FAILURE TO TIMELY DELIVER OPTION FEE: If no dollar amount is stated as the Option Fee or if Buyer fails to deliver the Option Fee within the time required, Buyer shall not have the unrestricted right to terminate this contract under this Paragraph 5.

E. TIME: **Time is of the essence for this paragraph and strict compliance with the time for performance is required.**

**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 3.
  - (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:
    - (i) will not be amended or deleted from the title policy; or
    - (ii) will be amended to read, "shortages in area" at the expense of  Buyer  Seller.
  - (9) The exception or exclusion regarding minerals approved by the Texas Department of Insurance.

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 3 days before the Closing Date, whichever is earlier. If 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.
  - (3) No survey is required and Buyer waives any right to object to matters disclosed in any survey in Paragraph 6D.

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 (9) 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 any timely objections of Buyer or any third party lender within 15 days after Seller receives the objections (Cure Period) and the Closing Date will be extended as necessary. If objections are not cured within the Cure Period, Buyer may, by delivering notice to Seller within 5 days after the end of the Cure Period: (i) terminate this contract and the earnest money will be refunded to Buyer; or (ii) waive the objections. If Buyer does not terminate within the time required, Buyer shall be deemed to have waived the objections. If the Commitment or survey is revised or any new Exception Document(s) is delivered, Buyer may object to any new matter revealed in the revised Commitment or survey or new Exception Document(s) within the same time stated in this paragraph to make objections beginning when the revised Commitment, survey, or Exception Document(s) is delivered to Buyer.

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.
- (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, Seller must give Buyer written notice as required by §5.014, Property Code. An addendum containing the required notice shall be attached to this contract.
- (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.
- (9) PROPANE GAS SYSTEM SERVICE AREA: If the Property is located in a propane gas system service area owned by a distribution system retailer, Seller must give Buyer written notice as required by §141.010, Texas Utilities Code. An addendum containing the notice approved by TREC or required by the parties should be used.
- (10) NOTICE OF WATER LEVEL FLUCTUATIONS: If the Property adjoins an impoundment of water, including a reservoir or lake, constructed and maintained under Chapter 11, Water Code, that has a storage capacity of at least 5,000 acre-feet at the impoundment's normal operating level, Seller hereby notifies Buyer: "The water level of the impoundment of water adjoining the Property fluctuates for various reasons, including as a result of: (1) an entity lawfully exercising its right to use the water stored in the impoundment; or (2) drought or flood conditions."

**(11) CERTIFICATE OF MOLD REMEDIATION: If the Property has been remediated for mold, Seller must provide to Buyer each certificate of mold damage remediation issued under §1958.154, Occupations Code, during the five (5) years preceding the sale of the Property.**

(12)[(11)]REQUIRED NOTICES: The following notices have been given or are attached to this contract (for example, utility, water, drainage, and public improvement districts [MUD, WCID, PID notices]): \_\_\_\_\_  
Seller's failure to provide applicable statutory notices may provide Buyer with remedies or rights to terminate the contract.

**7.PROPERTY CONDITION:**

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

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

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

- (1) as shown in the attached specifications.
- (2) as follows:
  - (a) Exterior walls of improved living areas: insulated with \_\_\_\_\_ insulation to a thickness of \_\_\_\_\_ inches which yields an R-Value of \_\_\_\_\_.
  - (b) Walls in other areas of the home: insulated with \_\_\_\_\_ insulation to a thickness of \_\_\_\_\_ inches which yields an R-Value of \_\_\_\_\_.
  - (c) Ceilings in improved living areas: insulated with \_\_\_\_\_ insulation to a thickness of \_\_\_\_\_ inches which yields an R-Value of \_\_\_\_\_.
  - (d) Floors of improved living areas not applied to a slab foundation: insulated with \_\_\_\_\_ insulation to a thickness of \_\_\_\_\_ inches which yields an R-Value of \_\_\_\_\_.
  - (e) Other insulated areas: insulated with \_\_\_\_\_ insulation to a thickness of \_\_\_\_\_ inches which yields an R-Value of \_\_\_\_\_.

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

- H. ENVIRONMENTAL MATTERS: Buyer is advised that the presence of wetlands, toxic substances, including asbestos and wastes or other environmental hazards, or the presence of a threatened or endangered species or its habitat may affect Buyer's intended use of the Property. If Buyer is concerned about these matters, an addendum promulgated by TREC or required by the parties should be used.
- I. SELLER'S DISCLOSURE:
  - (1) Seller  is  is not aware of any flooding of the Property which has had a material adverse effect on the use of the Property.
  - (2) Seller  is  is not aware of any pending or threatened litigation, condemnation, or special assessment affecting the Property.
  - (3) Seller  is  is not aware of any environmental hazards that materially and adversely affect the Property.
  - (4) Seller  is  is not aware of any dumpsite, landfill, or underground tanks or containers now or previously located on the Property.

- (5) Seller  is  is not aware of any wetlands, as defined by federal or state law or regulation, affecting the Property.
  - (6) Seller  is  is not aware of any threatened or endangered species or their habitat affecting the Property.
  - (7) Seller  is  is not aware that the Property is located  wholly  partly in a floodplain.
  - (8) Seller  is  is not aware that a tree or trees located on the Property has oak wilt.
- If Seller is aware of any of the items above, explain (attach additional sheets if necessary): \_\_\_\_\_

J. RESIDENTIAL SERVICE CONTRACTS: Buyer may purchase a residential service contract from a provider or administrator licensed by the Texas Department of Licensing and Regulation. 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 AND SALES AGENTS:**

A. BROKER OR SALES AGENT DISCLOSURE: Texas law requires a real estate broker or sales agent who is a party to a transaction or acting on behalf of a spouse, parent, child, business entity in which the broker or sales agent owns more than 10%, or a trust for which the broker or sales agent acts as a trustee or of which the broker or sales agent or the broker or sales agent's spouse, parent or child is a beneficiary, to notify the other party in writing before entering into a contract of sale. Disclose if applicable: \_\_\_\_\_

B. 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, transfer of any warranties, 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.
- (5) Private transfer fees (as defined by Chapter 5, Subchapter G of the Texas Property Code) will be the obligation of Seller unless provided otherwise in this contract. Transfer fees assessed by a property owners' association are governed by the Addendum for Property Subject to Mandatory Membership in a Property Owners Association.

**10. POSSESSION:**

A. BUYER'S 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.**

B. SMART DEVICES: "Smart Device" means a device that connects to the internet to enable remote use, monitoring, and management of: (i) the Property; (ii) items identified in any Non-Realty Items Addendum; or (iii) items in a fixture lease assigned to Buyer. At the time Seller delivers possession of the Property to Buyer, Seller shall:

- (1) deliver to Buyer written information containing all access codes, usernames, passwords, and applications Buyer will need to access, operate, manage, and control the Smart Devices; and
- (2) terminate and remove all access and connections to the improvements and accessories from any of Seller's personal devices including but not limited to phones and computers.

**11. SPECIAL PROVISIONS:**

(This paragraph is intended to be used only for additional informational items. An informational item is a statement that completes a blank in a contract form, discloses factual information, or provides instructions. Real estate brokers and sales agents are prohibited from practicing law and shall not add to, delete, or modify any provision of this contract unless drafted by a party to this contract or a party's attorney.) \_\_\_\_\_

**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; 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, rents, and regular periodic maintenance fees, assessments, and dues (including prepaid items) 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 additional taxes, penalties, or interest (Assessments) are imposed because of Seller's use or change in use of the Property 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, if permitted by Seller's insurance carrier, 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 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. Escrow Agent may require any disbursement made in connection with this contract to be conditioned on Escrow Agent's collection of good funds acceptable to 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 before releasing any earnest money; and (ii) require payment of unpaid expenses incurred on behalf of a party. Escrow Agent may deduct authorized expenses from the earnest money payable to a party. "Authorized expenses" means expenses incurred by Escrow Agent on behalf of the party entitled to the earnest money that were authorized by this contract or that party.

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

the demand from the other party within 15 days, Escrow Agent may disburse the earnest money to the party making demand reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and Escrow Agent may pay the same to the creditors. If Escrow Agent complies with the provisions of this paragraph, each party hereby releases Escrow Agent from all adverse claims related to the disbursement of the earnest money.

D. DAMAGES: Any party who wrongfully fails or refuses to sign a release acceptable to the Escrow Agent within 7 days of receipt of the request will be liable to the other party for (i) damages (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 Internal Revenue Code and its regulations, or if Seller fails to deliver an affidavit or a certificate of non-foreign status 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 fax or electronic transmission as follows:

To Buyer at: \_\_\_\_\_

To Seller at: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone: ( ) \_\_\_\_\_

Phone: ( ) \_\_\_\_\_

E-mail/Fax: \_\_\_\_\_

E-mail/Fax: \_\_\_\_\_

E-mail/Fax: \_\_\_\_\_

E-mail/Fax: \_\_\_\_\_

With a copy to Buyer's agent at: \_\_\_\_\_

With a copy to Seller's agent at: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**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
- 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 Concerning Right to Terminate Due to Lender's Appraisal

- 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 Property in a Propane Gas System Service Area
- Addendum containing Notice of Obligation to Pay Improvement District Assessment
- Other (list): \_\_\_\_\_

**23. CONSULT AN ATTORNEY BEFORE SIGNING:** TREC rules prohibit real estate brokers and sales agents from giving legal advice. READ THIS CONTRACT CAREFULLY.

Buyer's  
Attorney is: \_\_\_\_\_

Seller's  
Attorney is: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone: ( ) \_\_\_\_\_

Phone: ( ) \_\_\_\_\_

Fax: ( ) \_\_\_\_\_

Fax: ( ) \_\_\_\_\_

E-mail: \_\_\_\_\_

E-mail: \_\_\_\_\_

**EXECUTED the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ (Effective Date).  
(BROKER: FILL IN THE DATE OF FINAL ACCEPTANCE.)**

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

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Seller

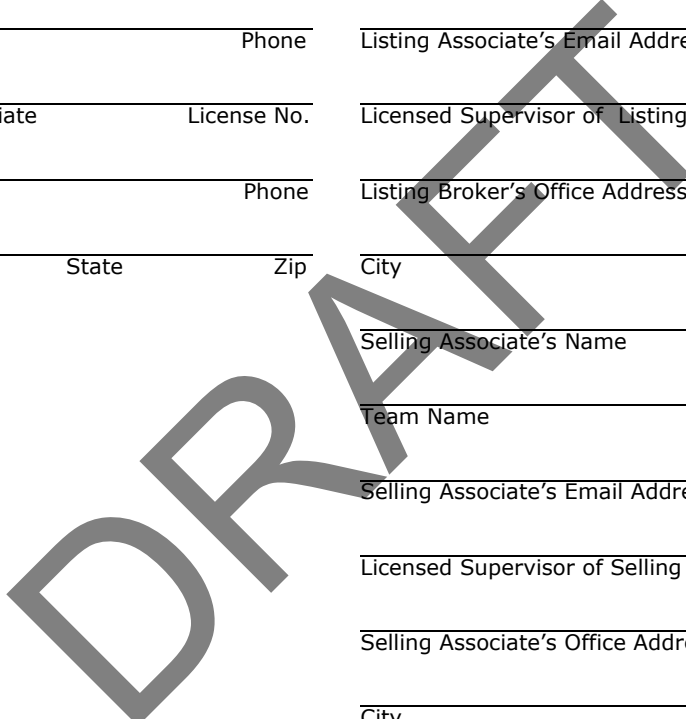


The form of this contract has been approved by the Texas Real Estate Commission. TREC forms are intended for use only by trained real estate license holders. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, (512) 936-3000 (<http://www.trec.texas.gov>) TREC NO. 23-19[18]. This form replaces TREC NO. 23-18[17].



**BROKER INFORMATION**  
 (Print name(s) only. Do not sign)

Other Broker Firm _____ License No. _____ represents <input type="checkbox"/> Buyer only as Buyer's agent <input type="checkbox"/> Seller as Listing Broker's subagent	Listing Broker Firm _____ License No. _____ represents <input type="checkbox"/> Seller and Buyer as an intermediary <input type="checkbox"/> Seller only as Seller's agent
Associate's Name _____ License No. _____ _____ Team Name _____ _____ Associate's Email Address _____ Phone _____ _____ Licensed Supervisor of Associate _____ License No. _____ _____ Other Broker's Address _____ Phone _____ _____ City _____ State _____ Zip _____	Listing Associate's Name _____ License No. _____ _____ Team Name _____ _____ Listing Associate's Email Address _____ Phone _____ _____ Licensed Supervisor of Listing Associate _____ License No. _____ _____ Listing Broker's Office Address _____ Phone _____ _____ City _____ State _____ Zip _____ _____ Selling Associate's Name _____ License No. _____ _____ Team Name _____ _____ Selling Associate's Email Address _____ Phone _____ _____ Licensed Supervisor of Selling Associate _____ License No. _____ _____ Selling Associate's Office Address _____ _____ City _____ State _____ Zip _____



Disclosure: Pursuant to a previous, separate agreement (such as a MLS offer of compensation or other agreement between brokers), Listing Broker has agreed to pay Other Broker a fee (\_\_\_\_\_). This disclosure is for informational purposes and does not change the previous agreement between brokers to pay or share a commission.

**OPTION FEE RECEIPT**

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

Escrow Agent \_\_\_\_\_ Date \_\_\_\_\_

**EARNEST MONEY RECEIPT**

Receipt of \$ \_\_\_\_\_ Earnest Money in the form of \_\_\_\_\_  
is acknowledged.

Escrow Agent \_\_\_\_\_ Received by \_\_\_\_\_ Email Address \_\_\_\_\_ Date/Time \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Fax \_\_\_\_\_

**CONTRACT RECEIPT**

Receipt of the Contract is acknowledged.

Escrow Agent \_\_\_\_\_ Received by \_\_\_\_\_ Email Address \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Fax \_\_\_\_\_

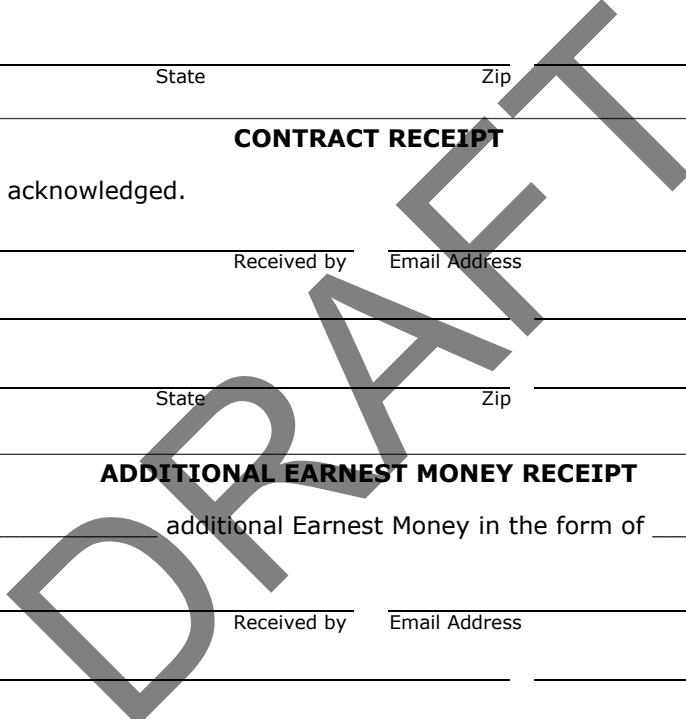
**ADDITIONAL EARNEST MONEY RECEIPT**

Receipt of \$ \_\_\_\_\_ additional Earnest Money in the form of \_\_\_\_\_  
is acknowledged.

Escrow Agent \_\_\_\_\_ Received by \_\_\_\_\_ Email Address \_\_\_\_\_ Date/Time \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Fax \_\_\_\_\_





PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)

02-12-2024

**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. All property sold by this contract is called the Property (Property).

RESERVATIONS: Any reservation for oil, gas, or other minerals, water, timber, or other interests is made in accordance with an attached addendum.

**3. SALES PRICE:**

- A. Cash portion of Sales Price payable by Buyer at closing ..... \$ \_\_\_\_\_  
The term "Cash portion of the Sales Price" does not include proceeds from borrowing of any kind or selling other real property except as disclosed in this contract.
- B. Sum of all financing described in the attached:  Third Party Financing Addendum,  Loan Assumption Addendum,  Seller Financing Addendum ..... \$ \_\_\_\_\_
- C. Sales Price (Sum of A and B)..... \$ \_\_\_\_\_

**4. LEASES:** Except as disclosed in this contract, Seller is not aware of any leases affecting the Property. After the Effective Date, Seller may not, without Buyer's written consent, create a new lease, amend any existing lease, or convey any interest in the Property. (Check all applicable boxes)

- A. RESIDENTIAL LEASES: The Property is subject to one or more residential leases and the Addendum Regarding Residential Leases is attached to this contract.
- B. FIXTURE LEASES: Fixtures on the Property are subject to one or more fixture leases (for example, solar panels, propane tanks, water softener, security system) and the Addendum Regarding Fixture Leases is attached to this contract.
- C. NATURAL RESOURCE LEASES: "Natural Resource Lease" means an existing oil and gas, mineral, geothermal, water, wind, or other natural resource lease affecting the Property to which Seller is a party.
  - (1) Seller has delivered to Buyer a copy of all the Natural Resource Leases.
  - (2) Seller has not delivered to Buyer a copy of all the Natural Resource Leases. Seller shall provide to Buyer a copy of all the Natural Resource Leases within 3 days after the Effective Date. Buyer may terminate the contract within \_\_\_\_\_ days after the date the Buyer receives all the Natural Resource Leases and the earnest money shall be refunded to Buyer.

**5. EARNEST MONEY AND TERMINATION OPTION:**

- A. DELIVERY OF EARNEST MONEY AND OPTION FEE: Within 3 days after the Effective Date, Buyer must deliver to \_\_\_\_\_ (Escrow Agent) at \_\_\_\_\_ (address): \$ \_\_\_\_\_ as earnest money and \$ \_\_\_\_\_ as the Option Fee. The earnest money and Option Fee shall be made payable to Escrow Agent and may be paid separately or combined in a single payment.
  - (1) Buyer shall deliver additional earnest money of \$ \_\_\_\_\_ to Escrow Agent within \_\_\_\_\_ days after the Effective Date of this contract.
  - (2) If the last day to deliver the earnest money, Option Fee, or the additional earnest money falls on a Saturday, Sunday, or legal holiday, the time to deliver the earnest money, Option Fee, or the additional earnest money, as applicable, is extended until the end of the next day that is not a Saturday, Sunday, or legal holiday.
  - (3) The amount(s) Escrow Agent receives under this paragraph shall be applied first to the Option Fee, then to the earnest money, and then to the additional earnest money.
  - (4) Buyer authorizes Escrow Agent to release and deliver the Option Fee to Seller at any time without further notice to or consent from Buyer, and releases Escrow Agent from liability for delivery of the Option Fee to Seller. The Option Fee will be credited to the Sales Price at closing.
- B. TERMINATION OPTION: For nominal consideration, the receipt of which Seller acknowledges, and Buyer's agreement to pay the Option Fee within the time required, 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). Notices under this paragraph must be given by 5:00 p.m. (local time where the Property is located) by the date

specified. If Buyer gives notice of termination within the time prescribed: (i) the Option Fee will not be refunded and Escrow Agent shall release any Option Fee remaining with Escrow Agent to Seller; and (ii) any earnest money will be refunded to Buyer.

- C. FAILURE TO TIMELY DELIVER EARNEST MONEY: If Buyer fails to deliver the earnest money within the time required, Seller may terminate this contract or exercise Seller's remedies under Paragraph 15, or both, by providing notice to Buyer before Buyer delivers the earnest money.
- D. FAILURE TO TIMELY DELIVER OPTION FEE: If no dollar amount is stated as the Option Fee or if Buyer fails to deliver the Option Fee within the time required, Buyer shall not have the unrestricted right to terminate this contract under this Paragraph 5.
- E. TIME: **Time is of the essence for this paragraph and strict compliance with the time for performance is required.**

**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 3.
  - (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 improvement:
    - (i) will not be amended or deleted from the title policy; or
    - (ii) will be amended to read, "shortages in area" at the expense of  Buyer  Seller.
  - (9) The exception or exclusion regarding minerals approved by the Texas Department of Insurance.
- 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 3 days before the Closing Date, whichever is earlier. If 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.
  - (3) No survey is required and Buyer waives any right to object to matters disclosed in any survey in Paragraph 6D.
- 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 (9) 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

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not obligated to incur any expense, Seller shall cure any timely objections of Buyer or any third party lender within 15 days after Seller receives the objections (Cure Period) and the Closing Date will be extended as necessary. If objections are not cured within the Cure Period, Buyer may, by delivering notice to Seller within 5 days after the end of the Cure Period: (i) terminate this contract and the earnest money will be refunded to Buyer; or (ii) waive the objections. If Buyer does not terminate within the time required, Buyer shall be deemed to have waived the objections. If the Commitment or survey is revised or any new Exception Document(s) is delivered, Buyer may object to any new matter revealed in the revised Commitment or survey or new Exception Document(s) within the same time stated in this paragraph to make objections beginning when the revised Commitment, survey, or Exception Document(s) is delivered to Buyer.

## 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.

(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, Seller must give Buyer written notice as required by §5.014, Property Code. An addendum containing the required notice shall be attached to this contract.
- (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.
- (9) PROPANE GAS SYSTEM SERVICE AREA: If the Property is located in a propane gas system service area owned by a distribution system retailer, Seller must give Buyer written notice as required by §141.010, Texas Utilities Code. An addendum containing the notice approved by TREC or required by the parties should be used.
- (10) NOTICE OF WATER LEVEL FLUCTUATIONS: If the Property adjoins an impoundment of water, including a reservoir or lake, constructed and maintained under Chapter 11, Water Code, that has a storage capacity of at least 5,000 acre-feet at the impoundment's normal operating level, Seller hereby notifies Buyer: "The water level of the impoundment of water adjoining the Property fluctuates for various reasons, including as a result of: (1) an entity lawfully exercising its right to use the water stored in the impoundment; or (2) drought or flood conditions."
- (11) CERTIFICATE OF MOLD REMEDIATION: If the Property has been remediated for mold, Seller must provide to Buyer each certificate of mold damage remediation issued under §1958.154, Occupations Code, during the five (5) years preceding the sale of the Property.

~~(12)~~ ~~(11)~~ REQUIRED NOTICES: The following notices have been given or are attached to this contract (for example, utility, water, drainage, and public improvement districts ~~[MUD, WCID, PID notices]~~): \_\_\_\_\_  
Seller's failure to provide applicable statutory notices may provide Buyer with remedies or rights to terminate the contract.

**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: "As Is" means the present condition of the Property with any and all defects and without warranty except for the warranties of title and the warranties in this contract. Buyer's agreement to accept the Property As Is 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.  
 (Check one box only)  
 (1) Buyer accepts the Property As Is.  
 (2) Buyer accepts the Property As Is 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 and treatments.)

- C. WARRANTIES: Except as expressly set forth in this contract, a separate writing, or provided by law, Seller makes no other express warranties. Seller shall assign to Buyer at closing all assignable manufacturer warranties.
- D. INSULATION: As required by Federal Trade Commission Regulations, the information relating to the insulation installed or to be installed in the Improvements at the Property is: (check only one box below)  
 (1) as shown in the attached specifications.  
 (2) as follows:  
 (a) Exterior walls of improved living areas: insulated with \_\_\_\_\_ insulation to a thickness of \_\_\_\_\_ inches which yields an R-Value of \_\_\_\_\_.  
 (b) Walls in other areas of the home: insulated with \_\_\_\_\_ insulation to a thickness of \_\_\_\_\_ inches which yields an R-Value of \_\_\_\_\_.  
 (c) Ceilings in improved living areas: insulated with \_\_\_\_\_ insulation to a thickness of \_\_\_\_\_ inches which yields an R-Value of \_\_\_\_\_.  
 (d) Floors of improved living areas not applied to a slab foundation: insulated with \_\_\_\_\_ insulation to a thickness of \_\_\_\_\_ inches which yields an R-Value of \_\_\_\_\_.  
 (e) Other insulated areas: insulated with \_\_\_\_\_ insulation to a thickness of \_\_\_\_\_ inches which yields an R-Value of \_\_\_\_\_.

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

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

cost of lender required repairs and treatments exceeds 5% of the Sales Price, Buyer may terminate this contract and the earnest money will be refunded to Buyer.

F. COMPLETION OF REPAIRS, TREATMENTS, AND IMPROVEMENTS: Unless otherwise agreed in writing, Seller shall complete all agreed repairs, treatments, and improvements (Work) prior to the Closing Date and obtain any required permits. The Work must be performed by persons who are licensed to provide such Work or, if no license is required by law, are commercially engaged in the trade of providing such Work. Seller shall: (i) provide Buyer with copies of documentation from the repair person(s) showing the scope of work and payment for the work completed; and (ii) at Seller's expense, arrange for the transfer of any transferable warranties with respect to the Work to Buyer at closing. 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 5 days if necessary for Seller 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:

- (1) Seller  is  is not aware of any flooding of the Property which has had a material adverse effect on the use of the Property.
  - (2) Seller  is  is not aware of any pending or threatened litigation, condemnation, or special assessment affecting the Property.
  - (3) Seller  is  is not aware of any environmental hazards that materially and adversely affect the Property.
  - (4) Seller  is  is not aware of any dumpsite, landfill, or underground tanks or containers now or previously located on the Property.
  - (5) Seller  is  is not aware of any wetlands, as defined by federal or state law or regulation, affecting the Property.
  - (6) Seller  is  is not aware of any threatened or endangered species or their habitat affecting the Property.
  - (7) Seller  is  is not aware that the Property is located  wholly  partly in a floodplain.
  - (8) Seller  is  is not aware that a tree or trees located on the Property has oak wilt.
- If Seller is aware of any of the items above, explain (attach additional sheets if necessary): \_\_\_\_\_

I. RESIDENTIAL SERVICE CONTRACTS: Buyer may purchase a residential service contract from a provider or administrator licensed by the Texas Department of Licensing and Regulation. 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 AND SALES AGENTS:

A. BROKER OR SALES AGENT DISCLOSURE: Texas law requires a real estate broker or sales agent who is a party to a transaction or acting on behalf of a spouse, parent, child, business entity in which the broker or sales agent owns more than 10%, or a trust for which the broker or sales agent acts as a trustee or of which the broker or sales agent or the broker or sales agent's spouse, parent or child is a beneficiary, to notify the other party in writing before entering into a contract of sale. Disclose if applicable: \_\_\_\_\_

B. 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, transfer of any warranties, 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) Private transfer fees (as defined by Chapter 5, Subchapter G of the Texas Property Code) will be the obligation of Seller unless provided otherwise in this contract. Transfer fees

assessed by a property owners' association are governed by the Addendum for Property Subject to Mandatory Membership in a Property Owners Association.

**10. POSSESSION:**

A. BUYER'S 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.**

B. SMART DEVICES: "Smart Device" means a device that connects to the internet to enable remote use, monitoring, and management of: (i) the Property; (ii) items identified in any Non-Realty Items Addendum; or (iii) items in a Fixture Lease assigned to Buyer. At the time Seller delivers possession of the Property to Buyer, Seller shall:

(1) deliver to Buyer written information containing all access codes, usernames, passwords, and applications Buyer will need to access, operate, manage, and control the Smart Devices; and

(2) terminate and remove all access and connections to the improvements and accessories from any of Seller's personal devices including but not limited to phones and computers.

**11. SPECIAL PROVISIONS:** (This paragraph is intended to be used only for additional informational items. An informational item is a statement that completes a blank in a contract form, discloses factual information, or provides instructions. Real estate brokers and sales agents are prohibited from practicing law and shall not add to, delete, or modify any provision of this contract unless drafted by a party to this contract or a party's attorney.) \_\_\_\_\_

**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; 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, rents, and regular periodic maintenance fees, assessments, and dues (including prepaid items) 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 additional taxes, penalties, or interest (Assessments) are imposed because of Seller's use or change in use of the Property 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, if permitted by Seller's insurance carrier, 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.



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- 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 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. Escrow Agent may require any disbursement made in connection with this contract to be conditioned on Escrow Agent's collection of good funds acceptable to 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 before releasing any earnest money; and (ii) require payment of unpaid expenses incurred on behalf of a party. Escrow Agent may deduct authorized expenses from the earnest money payable to a party. "Authorized expenses" means expenses incurred by Escrow Agent on behalf of the party entitled to the earnest money that were authorized by this contract or that party.
  - C. DEMAND: Upon termination of this contract, either party or the Escrow Agent may send a release of earnest money to each party and the parties shall execute counterparts of the release and deliver same to the Escrow Agent. If either party fails to execute the release, either party may make a written demand to the Escrow Agent for the earnest money. If only one party makes written demand for the earnest money, Escrow Agent shall promptly provide a copy of the demand to the other party. If Escrow Agent does not receive written objection to the demand from the other party within 15 days, Escrow Agent may disburse the earnest money to the party making demand reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and Escrow Agent may pay the same to the creditors. If Escrow Agent complies with the provisions of this paragraph, each party hereby releases Escrow Agent from all adverse claims related to the disbursement of the earnest money.
  - D. DAMAGES: Any party who wrongfully fails or refuses to sign a release acceptable to the Escrow Agent within 7 days of receipt of the request will be liable to the other party for (i) damages; (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 Internal Revenue Code and its regulations, or if Seller fails to deliver an affidavit or a certificate of non-foreign status 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 fax or electronic transmission as follows:

To Buyer at: \_\_\_\_\_

To Seller at: \_\_\_\_\_

Phone: ( ) \_\_\_\_\_

Phone: ( ) \_\_\_\_\_

E-mail/Fax: \_\_\_\_\_

E-mail/Fax: \_\_\_\_\_

E-mail/Fax: \_\_\_\_\_

E-mail/Fax: \_\_\_\_\_

With a copy to Buyer's agent at: \_\_\_\_\_

With a copy to Seller's agent at: \_\_\_\_\_

**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
- 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 Concerning Right to Terminate Due to Lender's Appraisal
- Addendum Regarding Residential Leases
- Addendum Regarding Fixture Leases
- 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 Property in a Propane Gas System Service Area
- Addendum containing Notice of Obligation to Pay Improvement District Assessment
- Other (list): \_\_\_\_\_

**23. CONSULT AN ATTORNEY BEFORE SIGNING:** TREC rules prohibit real estate license brokers and sales agents from giving legal advice. READ THIS CONTRACT CAREFULLY.

Buyer's Attorney is: \_\_\_\_\_

Seller's Attorney is: \_\_\_\_\_

Phone: ( ) \_\_\_\_\_

Phone: ( ) \_\_\_\_\_

Fax: ( ) \_\_\_\_\_

Fax: ( ) \_\_\_\_\_

E-mail: \_\_\_\_\_

E-mail: \_\_\_\_\_

Contract Concerning \_\_\_\_\_  
[11-07-2022]

(Address of Property)

Page 9 of 11 02-12-2024

**EXECUTED the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (Effective Date).  
(BROKER: FILL IN THE DATE OF FINAL ACCEPTANCE.)**

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

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Seller



The form of this contract has been approved by the Texas Real Estate Commission. TREC forms are intended for use only by trained real estate license holders. 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. 24-19[18]. This form replaces TREC NO. 24-18[17].

**BROKER INFORMATION**  
 (Print name(s) only. Do not sign)

_____ Other Broker Firm License No.	_____ Listing Broker Firm License No.
represents <input type="checkbox"/> Buyer only as Buyer's agent <input type="checkbox"/> Seller as Listing Broker's subagent	represents <input type="checkbox"/> Seller and Buyer as an intermediary <input type="checkbox"/> Seller only as Seller's agent
_____ Associate's Name License No.	_____ Associate's Name License No.
_____ Team Name	_____ Team Name
_____ Associate's Email Address Phone	_____ Listing Associate's Email Address Phone
_____ Licensed Supervisor of Associate License No.	_____ Licensed Supervisor of Listing Associate License No.
_____ Other Broker's Address Phone	_____ Listing Broker's Office Address Phone
_____ City State Zip	_____ City State Zip
	_____ Selling Associate's Name License No.
	_____ Team Name
	_____ Selling Associate's Email Address Phone
	_____ Licensed Supervisor of Selling Associate License No.
	_____ Selling Associate's Office Address
	_____ City State Zip

DRAFT

Disclosure: Pursuant to a previous, separate agreement (such as a MLS offer of compensation or other agreement between brokers), Listing Broker has agreed to pay Other Broker a fee ( \_\_\_\_\_ ). This disclosure is for informational purposes and does not change the previous agreement between brokers to pay or share a commission.

**OPTION FEE RECEIPT**

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

Escrow Agent \_\_\_\_\_ Date \_\_\_\_\_

**EARNEST MONEY RECEIPT**

Receipt of \$ \_\_\_\_\_ Earnest Money in the form of \_\_\_\_\_  
is acknowledged.

Escrow Agent \_\_\_\_\_ Received by \_\_\_\_\_ Email Address \_\_\_\_\_ Date/Time \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Fax \_\_\_\_\_

**CONTRACT RECEIPT**

Receipt of the Contract is acknowledged.

Escrow Agent \_\_\_\_\_ Received by \_\_\_\_\_ Email Address \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Fax \_\_\_\_\_

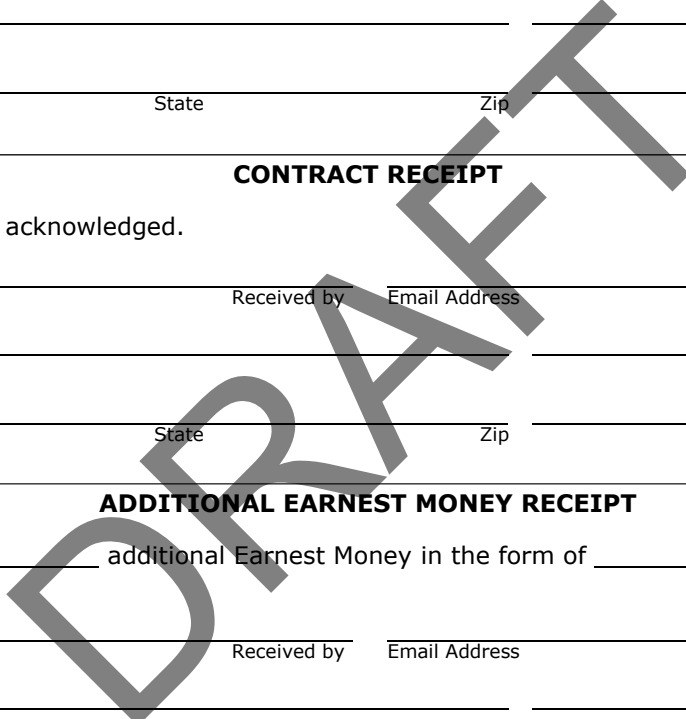
**ADDITIONAL EARNEST MONEY RECEIPT**

Receipt of \$ \_\_\_\_\_ additional Earnest Money in the form of \_\_\_\_\_  
is acknowledged.

Escrow Agent \_\_\_\_\_ Received by \_\_\_\_\_ Email Address \_\_\_\_\_ Date/Time \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Fax \_\_\_\_\_





FARM AND RANCH CONTRACT

NOTICE: Designed For Use In Sales Of Existing Farms Or Ranches Of Any Size. Not For Use In Complex 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: The land, improvements, accessories and crops except for the exclusions and reservations, are collectively referred to as the Property (Property).

A. LAND: The land situated in the County (or Counties) 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.

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: Any houses, garages, 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, 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 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, security systems that are not fixtures, and controls for: (i) garage doors, (ii) entry gates, and (iii) other improvements and accessories. "Controls" includes Seller's transferable rights to the (i) software and applications used to access and control improvements or accessories, and (ii) hardware used solely to control improvements or 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, water, timber, or other interests is made in accordance with an attached addendum.

3. SALES PRICE:

A. Cash portion of Sales Price payable by Buyer at closing ..... \$ \_\_\_\_\_ The term "Cash portion of the Sales Price" does not include proceeds from borrowing of any kind or selling other real property except as disclosed in this contract.

B. Sum of all financing described in the attached: [ ] Third Party Financing Addendum, [ ] Loan Assumption Addendum, [ ] Seller Financing Addendum .. \$ \_\_\_\_\_

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 adjusted based on the difference between \_\_\_\_\_ acres and the acreage set forth in the survey required by Paragraph 6C. The difference in acreage (either increased or decreased) shall be multiplied by the sum of \_\_\_\_\_ per acre and either added to or subtracted from the Sales Price stated in Paragraph 3C. 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. LEASES: Except as disclosed in this contract, Seller is not aware of any leases affecting the Property. After the Effective Date, Seller may not, without Buyer's written consent, create a new lease, amend any existing lease, or convey any interest in the Property. (Check all applicable boxes)

[ ] A. RESIDENTIAL LEASES: The Property is subject to one or more residential leases and the Addendum Regarding Residential Leases is attached to this contract.

- B. FIXTURE LEASES: Fixtures on the Property are subject to one or more fixture leases (for example, solar panels, propane tanks, water softener, security system) and the Addendum Regarding Fixture Leases is attached to this contract.
- C. NATURAL RESOURCE LEASES: "Natural Resource Lease" means an existing oil and gas, mineral, geothermal, water, or other natural resource lease affecting the Property to which Seller is a party.
  - (1) Seller has delivered to Buyer a copy of all the Natural Resource Leases.
  - (2) Seller has not delivered to Buyer a copy of all the Natural Resource Leases. Seller shall provide to Buyer a copy of all the Natural Resource Leases within 3 days after the Effective Date. Buyer may terminate the contract within \_\_\_\_\_ days after the date the Buyer receives all the Natural Resource Leases and the earnest money shall be refunded to Buyer.
- D. SURFACE LEASES: "Surface Lease" means an existing lease for the surface only of the Property (for example, grazing leases, hunting leases, agricultural leases, recreational leases, wind leases, solar leases, timber or forestry leases). (Check all applicable boxes)
  - (1) Seller has delivered to Buyer a copy of all written Surface Leases.
  - (2) Seller provides Buyer with notice of the following oral Surface Lease(s), identifying the type of lease, name of the tenant(s), rental amount, and term: \_\_\_\_\_.
  - (3) Seller has not delivered to Buyer all Surface Leases (whether written or oral). Seller shall provide to Buyer a copy of all the written Surface Leases and notice of all oral Surface Leases, identifying the type of lease, the name of the tenant(s), rental amount, and term, within 3 days after the Effective Date. Buyer may terminate the contract within \_\_\_\_\_ days after the date the Buyer receives all the Surface Leases and the earnest money shall be refunded to Buyer.

**5. EARNEST MONEY AND TERMINATION OPTION:**

- A. DELIVERY OF EARNEST MONEY AND OPTION FEE: Within 3 days after the Effective Date, Buyer must deliver to \_\_\_\_\_ (Escrow Agent) at \_\_\_\_\_ (address): \$ \_\_\_\_\_ as earnest money and \$ \_\_\_\_\_ as the Option Fee. The earnest money and Option Fee shall be made payable to escrow agent and may be paid separately or combined in a single payment.
  - (1) Buyer shall deliver additional earnest money of \$ \_\_\_\_\_ to Escrow Agent within \_\_\_\_\_ days after the Effective Date of this contract.
  - (2) If the last day to deliver the earnest money, Option Fee, or the additional earnest money falls on a Saturday, Sunday, or legal holiday, the time to deliver the earnest money, Option Fee, or the additional earnest money, as applicable, is extended until the end of the next day that is not a Saturday, Sunday, or legal holiday.
  - (3) The amount(s) Escrow Agent receives under this paragraph shall be applied first to the Option Fee, then to the earnest money, and then to the additional earnest money.
  - (4) Buyer authorizes Escrow Agent to release and deliver the Option Fee to Seller at any time without further notice to or consent from Buyer, and releases Escrow Agent from liability for delivery of the Option Fee to Seller. The Option Fee will be credited to the Sales Price at closing.
- B. TERMINATION OPTION: For nominal consideration, the receipt of which Seller acknowledges, and Buyer's agreement to pay the Option Fee within the time required, 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). Notices under this paragraph must be given by 5:00 p.m. (local time where the Property is located) by the date specified. If Buyer gives notice of termination within the time prescribed: (i) the Option Fee will not be refunded and Escrow Agent shall release any Option Fee remaining with Escrow Agent to Seller; and (ii) any earnest money will be refunded to Buyer.
- C. FAILURE TO TIMELY DELIVER EARNEST MONEY: If Buyer fails to deliver the earnest money within the time required, Seller may terminate this contract or exercise Seller's remedies under Paragraph 15, or both, by providing notice to Buyer before Buyer delivers the earnest money.
- D. FAILURE TO TIMELY DELIVER OPTION FEE: If no dollar amount is stated as the Option Fee or if Buyer fails to deliver the Option Fee within the time required, Buyer shall not have the unrestricted right to terminate this contract under this Paragraph 5.
- E. TIME: **Time is of the essence for this paragraph and strict compliance with the time for performance is required.**

**6. TITLE POLICY AND SURVEY:**

- A. TITLE POLICY: Seller shall furnish to Buyer at  Seller's  Buyer's expense an owner policy of title insurance (Title Policy) issued by: \_\_\_\_\_ (Title Company) in the amount of the Sales Price, dated at or after closing, insuring Buyer against loss under the provisions of the Title Policy, subject to the promulgated exclusions (including existing building and zoning ordinances) and the following exceptions:
  - (1) The standard printed exception for standby fees, taxes and assessments.
  - (2) Liens created as part of the financing described in Paragraph 3.
  - (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:
  - (i) will not be amended or deleted from the title policy; or
  - (ii) will be amended to read, "shortages in area" at the expense of  Buyer  Seller.
- (7) The exception or exclusion regarding minerals approved by the Texas Department of Insurance.

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 3 days before the Closing Date, whichever is earlier. If 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 survey or 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 [and Buyer waives any right to object to matters disclosed in any survey in Paragraph 6D.](#)

D. OBJECTIONS: Buyer may object in writing to (i) defects, exceptions, or encumbrances to title disclosed on the survey other than items 6A(1) through (5) above; or disclosed in the Commitment other than items 6A(1) through (7) 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 any timely objections of Buyer or any third party lender within 15 days after Seller receives the objections (Cure Period) and the Closing Date will be extended as necessary. If objections are not cured within the Cure Period, Buyer may, by delivering notice to Seller within 5 days after the end of the Cure Period: (i) terminate this contract and the earnest money will be refunded to Buyer; or (ii) waive the objections. If Buyer does not terminate within the time required, Buyer shall be deemed to have waived the objections. If the Commitment or survey is revised, or any new Exception Document(s) is delivered, Buyer may object to any new matter revealed in the revised Commitment or survey or new Exception Document(s) within the same time stated in this paragraph to make objections beginning when the revised Commitment, survey, or Exception Document(s) is delivered to Buyer.

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

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

F. SURFACE LEASES: The following Surface 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 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, Seller must give Buyer written notice as required by §5.014, Property Code. An addendum containing the required notice shall be attached to this contract.
- (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.
- (9) PROPANE GAS SYSTEM SERVICE AREA: If the Property is located in a propane gas system service area owned by a distribution system retailer, Seller must give Buyer written notice as required by §141.010, Texas Utilities Code. An addendum containing the notice approved by TREC or required by the parties should be used.
- (10) NOTICE OF WATER LEVEL FLUCTUATIONS: If the Property adjoins an impoundment of water, including a reservoir or lake, constructed and maintained under Chapter 11, Water Code, that has a storage capacity of at least 5,000 acre-feet at the impoundment's normal operating level, Seller hereby notifies Buyer: "The water level of the impoundment of water adjoining the Property fluctuates for various reasons, including as a result of: (1) an entity lawfully exercising its right to use the water stored in the impoundment; or (2) drought or flood conditions."
- (11) CERTIFICATE OF MOLD REMEDIATION: If the Property has been remediated for mold, Seller must provide to Buyer each certificate of mold damage remediation issued under §1958.154, Occupations Code, during the five (5) years preceding the sale of the Property.
- (12) [11] REQUIRED NOTICES: The following notices have been given or are attached to this contract (for example, utility, water, drainage, and public improvement districts [MUD, WCID, PID notices]): \_\_\_\_\_.  
Seller's failure to provide applicable statutory notices may provide Buyer with remedies or rights to terminate the contract.

**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. Any hydrostatic testing must be separately authorized by Seller in writing. 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.

[11-07-2022] (Address of Property)

- (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: "As Is" means the present condition of the Property with any and all defects and without warranty except for the warranties of title and the warranties in this contract. Buyer's agreement to accept the Property As Is 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.  
(Check one box only)
- (1) Buyer accepts the Property As Is.
- (2) Buyer accepts the Property As Is 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 and treatments.)

- E. COMPLETION OF REPAIRS AND TREATMENTS: Unless otherwise agreed in writing, Seller shall complete all agreed repairs and treatments prior to the Closing Date and obtain any required permits. The repairs and treatments must be performed by persons who are licensed to provide such repairs or treatments or, if no license is required by law, are commercially engaged in the trade of providing such repairs or treatments. Seller shall: (i) provide Buyer with copies of documentation from the repair person(s) showing the scope of work and payment for the work completed; and (ii) at Seller's expense, arrange for the transfer of any transferable warranties with respect to the repairs to Buyer at closing. 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 5 days if necessary for Seller 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 DISCLOSURE:
  - (1) Seller  is  is not aware of any flooding of the Property which has had a material adverse effect on the use of the Property.
  - (2) Seller  is  is not aware of any pending or threatened litigation, condemnation, or special assessment affecting the Property.
  - (3) Seller  is  is not aware of any environmental hazards that materially and adversely affect the Property.
  - (4) Seller  is  is not aware of any dumpsite, landfill, or underground tanks or containers now or previously located on the Property.
  - (5) Seller  is  is not aware of any wetlands, as defined by federal or state law or regulation, affecting the Property.
  - (6) Seller  is  is not aware of any threatened or endangered species or their habitat affecting the Property.
  - (7) Seller  is  is not aware that the Property is located  wholly  partly in a floodplain.
  - (8) Seller  is  is not aware that a tree or trees located on the Property has oak wilt.
 If Seller is aware of any of the items above, explain (attach additional sheets if necessary): \_\_\_\_\_

I. RESIDENTIAL SERVICE CONTRACTS: Buyer may purchase a residential service contract from a provider or administrator licensed by the Texas Department of Licensing and Regulation. 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 AND SALES AGENTS:**

A. BROKER OR SALES AGENT DISCLOSURE: Texas law requires a real estate broker or sales agent who is a party to a transaction or acting on behalf of a spouse, parent, child, business entity in which the broker or sales agent owns more than 10%, or a trust for which the broker or sales agent acts as a trustee or of which the broker or sales agent or the broker or sales agent's spouse, parent or child is a beneficiary, to notify the other party in writing before entering into a contract of sale. Disclose if applicable:\_\_\_\_\_

B. 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, transfer of any warranties, 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) Private transfer fees (as defined by Chapter 5, Subchapter G of the Texas Property Code) will be the obligation of Seller unless provided otherwise in this contract. Transfer fees assessed by a property owners' association are governed by the Addendum for Property Subject to Mandatory Membership in a Property Owners Association.

**10. POSSESSION:**

- A. BUYER'S 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.**
- B. SMART DEVICES: "Smart Device" means a device that connects to the internet to enable remote use, monitoring, and management of: (i) the Property; (ii) items identified in any Non-Realty Items Addendum; or (iii) items in a Fixture Lease assigned to Buyer. At the time Seller delivers possession of the Property to Buyer, Seller shall:
- (1) deliver to Buyer written information containing all access codes, usernames, passwords, and applications Buyer will need to access, operate, manage, and control the Smart Devices; and
  - (2) terminate and remove all access and connections to the improvements and accessories from any of Seller's personal devices including but not limited to phones and computers.

- 11. SPECIAL PROVISIONS:** (This paragraph is intended to be used only for additional informational items. An informational item is a statement that completes a blank in a contract form, discloses factual information, or provides instructions. Real estate brokers and sales agents are prohibited from practicing law and shall not add to, delete, or modify any provision of this contract unless drafted by a party to this contract or a party's attorney.) \_\_\_\_\_

**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; 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, rents, and regular periodic maintenance fees, assessments, and dues (including prepaid items) 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 Assessments are imposed because of Seller's use or change in use of the Property 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, if permitted by Seller's insurance carrier, 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 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. Escrow Agent may require any disbursement made in connection with this contract to be conditioned on Escrow Agent's collection of good funds acceptable to 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 before releasing any earnest money; and (ii) require payment of unpaid expenses incurred on behalf of a party. Escrow Agent may deduct authorized expenses from the earnest money payable to a party. "Authorized expenses" means expenses incurred by Escrow Agent on behalf of the party entitled to the earnest money that were authorized by this contract or that party.
- 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 (i) damages; (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:**

A. If Seller is a "foreign person," as defined by Internal Revenue Code and its regulations, or if Seller fails to deliver an affidavit or a certificate of non-foreign status 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.

B. The Agriculture Foreign Investment Disclosure Act (AFIDA) of 1978 requires that a foreign person who acquires, disposes of, or holds an interest in United States agricultural land must disclose such transactions and holdings to the Secretary of Agriculture. Foreign persons must file an FSA-153 in the Farm Service Agency (FSA) Service Center where the land is physically located within 90 days of the date of the transaction. Failure to report is subject to civil penalty up to 25 percent of the fair market value of the land on the date the penalty is assessed. Consult an attorney or tax professional.

**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 fax or electronic transmission as follows:

<b>To Buyer at:</b> _____	<b>To Seller at:</b> _____
_____	_____
Phone: ( ) _____	Phone: ( ) _____
E-mail/Fax: _____	E-mail/Fax: _____
E-mail/Fax: _____	E-mail/Fax: _____
With a copy to Buyer's agent at: _____	With a copy to Seller's agent at: _____

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

- |   |  |
|---|--|
| <input type="checkbox"/> Third Party Financing Addendum   | <input type="checkbox"/> Environmental Assessment, Threatened or Endangered Species and Wetlands Addendum  |
| <input type="checkbox"/> Seller Financing Addendum  | <input type="checkbox"/> Seller's Temporary Residential Lease  |
| <input type="checkbox"/> Addendum for Property Subject to Mandatory Membership in a Property Owners Association | <input type="checkbox"/> Short Sale Addendum   |
| <input type="checkbox"/> Buyer's Temporary Residential Lease  | <input type="checkbox"/> Addendum for Property Located Seaward of the Gulf Intracoastal Waterway   |
| <input type="checkbox"/> Loan Assumption Addendum   | <input type="checkbox"/> Addendum for Seller's Disclosure of Information on Lead-based Paint and Lead-based Paint Hazards as Required by Federal Law |
| <input type="checkbox"/> Addendum for Sale of Other Property by Buyer   | <input type="checkbox"/> Addendum for Property in a Propane Gas System Service Area  |
| <input type="checkbox"/> Addendum for "Back-Up" Contract  | <input type="checkbox"/> Addendum Regarding Residential Leases   |
| <input type="checkbox"/> Addendum for Coastal Area Property   | <input type="checkbox"/> Addendum Regarding Fixture Leases   |
| <input type="checkbox"/> Addendum for Authorizing Hydrostatic Testing   | <input type="checkbox"/> Other (list): _____   |
| <input type="checkbox"/> Addendum Concerning Right to Terminate Due to Lender's Appraisal                       | _____  |
| <input type="checkbox"/> Addendum for Reservation of Oil, Gas and Other Minerals                                |  |
| <input type="checkbox"/> Addendum containing Notice of Obligation to Pay Improvement District Assessment        |  |

**23. CONSULT AN ATTORNEY BEFORE SIGNING:** TREC rules prohibit real estate brokers and sales agents from giving legal advice. READ THIS CONTRACT CAREFULLY.

Buyer's  
Attorney is: \_\_\_\_\_  
Phone: ( ) \_\_\_\_\_  
Fax: ( ) \_\_\_\_\_  
E-mail: \_\_\_\_\_

Seller's  
Attorney is: \_\_\_\_\_  
Phone: ( ) \_\_\_\_\_  
Fax: ( ) \_\_\_\_\_  
E-mail: \_\_\_\_\_

**EXECUTED the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ (Effective Date).  
(BROKER: FILL IN THE DATE OF FINAL ACCEPTANCE.)**

DRAFT

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 license holders. 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. 25-16[15]. This form replaces TREC NO. 25-15[14].

**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.

Associate's Name License No. Listing Associate's Name License No.

Team Name Team Name

Associate's Email Address Phone Listing Associate's Email Address Phone

Licensed Supervisor of Associate License No. Licensed Supervisor of Listing Associate License No.

Other Broker's Office Address Phone Listing Broker's Office Address Phone

City State Zip City State Zip

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

Selling Associate License No.

Team Name

Selling Associate's Email Address Phone

Licensed Supervisor of Selling Associate License No.

Selling Associate's Office Address

City State Zip

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.

**DO NOT SIGN IF THERE IS A SEPARATE AGREEMENT FOR PAYMENT OF BROKERS' FEES. 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 \_\_\_\_\_

**OPTION FEE RECEIPT**

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

Escrow Agent \_\_\_\_\_ Date \_\_\_\_\_

**EARNEST MONEY RECEIPT**

Receipt of \$ \_\_\_\_\_ Earnest Money in the form of \_\_\_\_\_  
is acknowledged.

Escrow Agent \_\_\_\_\_ Received by \_\_\_\_\_ Email Address \_\_\_\_\_ Date/Time \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Fax \_\_\_\_\_

**CONTRACT RECEIPT**

Receipt of the Contract is acknowledged.

Escrow Agent \_\_\_\_\_ Received by \_\_\_\_\_ Email Address \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Fax \_\_\_\_\_

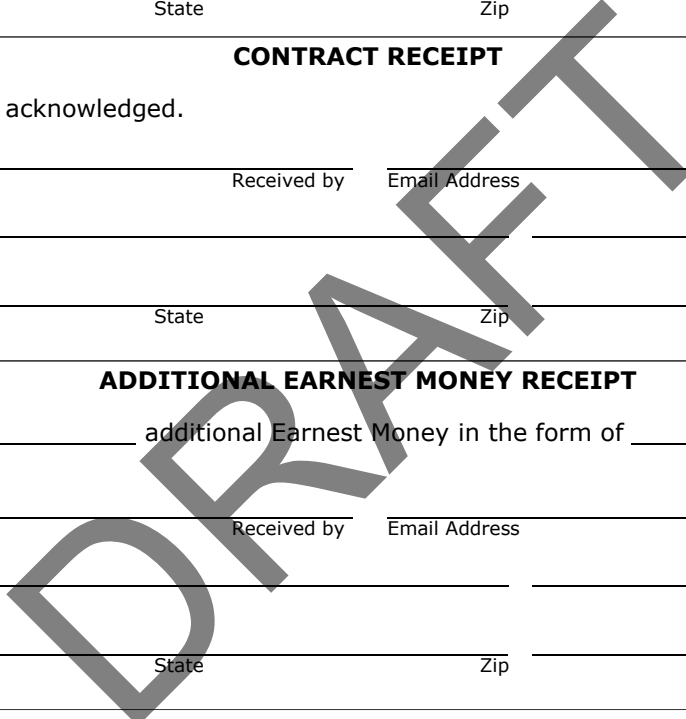
**ADDITIONAL EARNEST MONEY RECEIPT**

Receipt of \$ \_\_\_\_\_ additional Earnest Money in the form of \_\_\_\_\_  
is acknowledged.

Escrow Agent \_\_\_\_\_ Received by \_\_\_\_\_ Email Address \_\_\_\_\_ Date/Time \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Fax \_\_\_\_\_







PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)

**RESIDENTIAL CONDOMINIUM CONTRACT (RESALE)**

NOTICE: Not For Use Where Seller Owns Fee Simple Title To Land Beneath Unit

02-12-2024



**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 (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, 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 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, security systems that are not fixtures, and controls for: (i) garage doors, (ii) entry gates, and (iii) other improvements and accessories. "Controls" includes Seller's transferable rights to the (i) software and applications used to access and control improvements or accessories, and (ii) hardware used solely to control improvements or 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, at Seller's expense, shall deliver the Documents to Buyer within \_\_\_\_\_ days after the Effective Date of the contract. Buyer may terminate the contract within 7 days after Buyer receives the Documents by giving written notice of termination to Seller. If Buyer terminates the contract pursuant to this paragraph, the earnest money will be refunded to Buyer. Buyer retains rights to terminate under Section 82.156, Texas Property Code.

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, at Seller's expense, 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 terminate the contract within 7 days after the date Buyer receives the Certificate by giving written notice of termination to Seller. If Buyer terminates the contract pursuant to this paragraph, the earnest money will be refunded to Buyer. Buyer retains rights to terminate under Section 82.156, Texas Property Code.

(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.

D. If the Documents reveal that the Property is subject to a right of refusal under which the Association or a member of the Association may purchase the Property, the Effective Date shall be amended to the date that Buyer receives a copy of the Association's certification that: (i) Seller has complied with the requirements under the right of refusal; and (ii) all persons who may exercise the right of refusal have not exercised or have waived the right to buy the Property. If Buyer does not receive the Association's certification within \_\_\_\_\_ days after the Effective Date or if the right of refusal is exercised, this contract shall terminate and the earnest money shall be refunded to Buyer.

**3. SALES PRICE:**

- A. Cash portion of Sales Price payable by Buyer at closing..... \$ \_\_\_\_\_  
 The term "Cash portion of the Sales Price" does not include proceeds from borrowing of any kind or selling other real property except as disclosed in this contract.
- B. Sum of all financing described in the attached:  Third Party Financing Addendum,  Loan Assumption Addendum,  Seller Financing Addendum ... \$ \_\_\_\_\_
- C. Sales Price (Sum of A and B)..... \$ \_\_\_\_\_

**4. LEASES:** Except as disclosed in this contract, Seller is not aware of any leases affecting the Property. After the Effective Date, Seller may not, without Buyer's written consent, create a new lease, amend any existing lease, or convey any interest in the Property. (Check all applicable boxes)

- A. RESIDENTIAL LEASES: The Property is subject to one or more residential leases and the Addendum Regarding Residential Leases is attached to this contract.
- B. FIXTURE LEASES: Fixtures on the Property are subject to one or more fixture leases (for example, solar panels, propane tanks, water softener, security system) and the Addendum Regarding Fixture Leases is attached to this contract.

**5. EARNEST MONEY AND TERMINATION OPTION.**

- A. DELIVERY OF EARNEST MONEY AND OPTION FEE: Within 3 days after the Effective Date, Buyer must deliver to \_\_\_\_\_ (Escrow Agent) at \_\_\_\_\_ (address): \$ \_\_\_\_\_ as earnest money and \$ \_\_\_\_\_ as the Option Fee. The earnest money and Option Fee shall be made payable to Escrow Agent and may be paid separately or combined in a single payment.
  - (1) Buyer shall deliver additional earnest money of \$ \_\_\_\_\_ to Escrow Agent within \_\_\_\_\_ days after the Effective Date of this contract.
  - (2) If the last day to deliver the earnest money, Option Fee, or the additional earnest money falls on a Saturday, Sunday, or legal holiday, the time to deliver the earnest money, Option Fee, or the additional earnest money, as applicable, is extended until the end of the next day that is not a Saturday, Sunday, or legal holiday.
  - (3) The amount(s) Escrow Agent receives under this paragraph shall be applied first to the Option Fee, then to the earnest money, and then to the additional earnest money.
  - (4) Buyer authorizes Escrow Agent to release and deliver the Option Fee to Seller at any time without further notice to or consent from Buyer, and releases Escrow Agent from liability for delivery of the Option Fee to Seller. The Option Fee will be credited to the Sales Price at closing.
- B. TERMINATION OPTION: For nominal consideration, the receipt of which Seller acknowledges, and Buyer's agreement to pay the Option Fee within the time required, 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). Notices under this paragraph must be given by 5:00 p.m. (local time where the Property is located) by the date specified. If Buyer gives notice of termination within the time prescribed: (i) the Option Fee will not be refunded and Escrow Agent shall release any Option Fee remaining with Escrow Agent to Seller; and (ii) any earnest money will be refunded to Buyer.
- C. FAILURE TO TIMELY DELIVER EARNEST MONEY: If Buyer fails to deliver the earnest money within the time required, Seller may terminate this contract or exercise Seller's remedies under Paragraph 15, or both, by providing notice to Buyer before Buyer delivers the earnest money.
- D. FAILURE TO TIMELY DELIVER OPTION FEE: If no dollar amount is stated as the Option Fee or if Buyer fails to deliver the Option Fee within the time required, Buyer shall not have the unrestricted right to terminate this contract under this Paragraph 5.
- E. TIME: **Time is of the essence for this paragraph and strict compliance with the time for performance is required.**

**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 3.
  - (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.
  - (9) The exception or exclusion regarding minerals approved by the Texas Department of Insurance.



(9) NOTICE OF WATER LEVEL FLUCTUATIONS: If the Property adjoins an impoundment of water, including a reservoir or lake, constructed and maintained under Chapter 11, Water Code, that has a storage capacity of at least 5,000 acre-feet at the impoundment's normal operating level, Seller hereby notifies Buyer: "The water level of the impoundment of water adjoining the Property fluctuates for various reasons, including as a result of: (1) an entity lawfully exercising its right to use the water stored in the impoundment; or (2) drought or flood conditions."

(10) CERTIFICATE OF MOLD REMEDIATION: If the Property has been remediated for mold, Seller must provide to Buyer each certificate of mold damage remediation issued under §1958.154, Occupations Code, during the five (5) years preceding the sale of the Property.

(11)~~(10)~~ REQUIRED NOTICES: The following notices have been given or are attached to this contract (for example, utility, water, drainage, and public improvement districts [MUD, WCID, PID notices]): \_\_\_\_\_  
Seller's failure to provide applicable statutory notices may provide Buyer with remedies or rights to terminate the contract.

**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. Any hydrostatic testing must be separately authorized by Seller in writing. 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: "As Is" means the present condition of the Property with any and all defects and without warranty except for the warranties of title and the warranties in this contract. Buyer's agreement to accept the Property As Is 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.

(Check one box only)

- (1) Buyer accepts the Property As Is.
- (2) Buyer accepts the Property As Is 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 and treatments.)

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 and obtain any required permits. The repairs and treatments must be performed by persons who are licensed to provide such repairs or treatments or, if no license is required by law, are commercially engaged in the trade of providing such repairs or treatments. Seller shall: (i) provide Buyer with copies of documentation from the repair person(s) showing the scope of work and payment for the work completed; and (ii) at Seller's expense, arrange for the transfer of any transferable warranties received with respect to the repairs and treatments to Buyer at closing. 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 5 days if necessary for Seller 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 provider or administrator licensed by the Texas Department of Licensing and Regulation. 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 AND SALES AGENTS:

- A. BROKER OR SALES AGENT DISCLOSURE: Texas law requires a real estate broker or sales agent who is a party to a transaction or acting on behalf of a spouse, parent, child, business entity in which the broker or sales agent owns more than 10%, or a trust for which the broker or sales agent acts as a trustee or of which the broker or sales agent or the broker or sales agent's spouse, parent or child is a beneficiary, to notify the other party in writing before entering into a contract of sale. Disclose if applicable: \_\_\_\_\_.
- B. 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, transfer of any warranties, 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) Private transfer fees (as defined by Chapter 5, Subchapter G of the Texas Property Code) will be the obligation of Seller unless provided otherwise in this contract. This paragraph does not apply to fees assessed by the Association.

### 10. POSSESSION:

- A. BUYER'S 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.**
- B. SMART DEVICES: "Smart Device" means a device that connects to the internet to enable remote use, monitoring, and management of: (i) the Property; (ii) items identified in any Non-Realty Items Addendum; or (iii) items in a Fixture Lease assigned to Buyer. At the time Seller delivers possession of the Property to Buyer, Seller shall:
- (1) deliver to Buyer written information containing all access codes, usernames, passwords, and applications Buyer will need to access, operate, manage, and control the Smart Devices; and
  - (2) terminate and remove all access and connections to the improvements and accessories from any of Seller's personal devices including but not limited to phones and computers.

- 11. SPECIAL PROVISIONS:** (This paragraph is intended to be used only for additional informational items. An informational item is a statement that completes a blank in a contract form, discloses factual information, or provides instructions. Real estate brokers and sales agents are prohibited from practicing law and shall not add to, delete, or modify any provision of this contract unless drafted by a party to this contract or a party's attorney.) \_\_\_\_\_

### 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; 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

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(Address of Property)

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) Buyer shall pay any and all Association fees, deposits, reserves and other charges resulting from the transfer of the Property not to exceed \$\_\_\_\_\_ and Seller shall pay any excess. This paragraph does not apply to: (i) regular periodic maintenance fees, assessments, or dues (including prepaid items) that are prorated by Paragraph 13, and (ii) costs and fees provided by Paragraph 2.

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, rents, and regular periodic maintenance fees, assessments, and dues (including prepaid items) 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, if permitted by Seller's insurance carrier, 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 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. Escrow Agent may require any disbursement made in connection with this contract to be conditioned on Escrow Agent's collection of good funds acceptable to 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 before releasing any earnest money; and (ii) require payment of unpaid expenses incurred on behalf of a party. Escrow Agent may deduct authorized expenses from the earnest money payable to a party. "Authorized expenses" means expenses incurred by Escrow Agent on behalf of the party entitled to the earnest money that were authorized by this contract or that party.
- 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 (i) damages; (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 Internal Revenue Code and its regulations, or if Seller fails to deliver an affidavit or a certificate of non-foreign status 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 fax or electronic transmission as follows:

To Buyer at: \_\_\_\_\_

To Seller at: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone: ( ) \_\_\_\_\_

Phone: ( ) \_\_\_\_\_

E-mail/Fax: \_\_\_\_\_

E-mail/Fax: \_\_\_\_\_

E-mail/Fax: \_\_\_\_\_

E-mail/Fax: \_\_\_\_\_

With a copy to Buyer's agent at: \_\_\_\_\_

With a copy to Seller's agent at: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

- |  |  |
|--|--|
| <input type="checkbox"/> Third Party Financing Addendum  | <input type="checkbox"/> Environmental Assessment, Threatened or Endangered Species and Wetlands Addendum  |
| <input type="checkbox"/> Loan Assumption Addendum  | <input type="checkbox"/> Addendum for Property Located Seaward of the Gulf Intracoastal Waterway   |
| <input type="checkbox"/> Buyer's Temporary Residential Lease   | <input type="checkbox"/> Addendum for Release of Liability on Assumption of FHA, VA, or Conventional Loan Restoration of Seller's Entitlement for VA Guaranteed Loan |
| <input type="checkbox"/> Seller's Temporary Residential Lease  | <input type="checkbox"/> Addendum for Property in a Propane Gas System Service Area  |
| <input type="checkbox"/> Addendum for Sale of Other Property by Buyer  | <input type="checkbox"/> Addendum Regarding Residential Leases   |
| <input type="checkbox"/> Addendum for "Back-Up" Contract   | <input type="checkbox"/> Addendum Regarding Fixture Leases   |
| <input type="checkbox"/> Seller Financing Addendum   | <input type="checkbox"/> Addendum containing Notice of Obligation to Pay Improvement District Assessment   |
| <input type="checkbox"/> Addendum for Coastal Area Property  | <input type="checkbox"/> Other (list): _____   |
| <input type="checkbox"/> Short Sale Addendum   | _____  |
| <input type="checkbox"/> Addendum for Seller's Disclosure of Information on Lead-based Paint and Lead-based Paint Hazards as Required by Federal Law |  |
| <input type="checkbox"/> Addendum for Authorizing Hydrostatic Testing  |  |
| <input type="checkbox"/> Addendum Concerning Right to Terminate Due to Lender's Appraisal  |  |

Contract Concerning \_\_\_\_\_  
[11-07-2022]

(Address of Property)

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02-12-2024

**23. CONSULT AN ATTORNEY BEFORE SIGNING:** TREC rules prohibit real estate brokers and sales agents from giving legal advice. READ THIS CONTRACT CAREFULLY.

Buyer's Attorney is: \_\_\_\_\_

Seller's Attorney is: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone: ( ) \_\_\_\_\_

Phone: ( ) \_\_\_\_\_

Fax: ( ) \_\_\_\_\_

Fax: ( ) \_\_\_\_\_

E-mail: \_\_\_\_\_

E-mail: \_\_\_\_\_

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

DRAFT

\_\_\_\_\_  
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 license holders. 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. 30-17[16]. This form replaces TREC NO. 30-16[15].



**BROKER INFORMATION**  
 (Print name(s) only. Do not sign)

Other Broker Firm \_\_\_\_\_ License No. \_\_\_\_\_

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

Associate's Name \_\_\_\_\_ License No. \_\_\_\_\_

Team Name \_\_\_\_\_

Associate's Email Address \_\_\_\_\_ Phone \_\_\_\_\_

Licensed Supervisor of Associate \_\_\_\_\_ License No. \_\_\_\_\_

Other Broker's Address \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Listing Broker Firm \_\_\_\_\_ License No. \_\_\_\_\_

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

Listing Associate's Name \_\_\_\_\_ License No. \_\_\_\_\_

Team Name \_\_\_\_\_

Listing Associate's Email Address \_\_\_\_\_ Phone \_\_\_\_\_

Licensed Supervisor of Listing Associate \_\_\_\_\_ License No. \_\_\_\_\_

Listing Broker's Office Address \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Selling Associate's Name \_\_\_\_\_ License No. \_\_\_\_\_

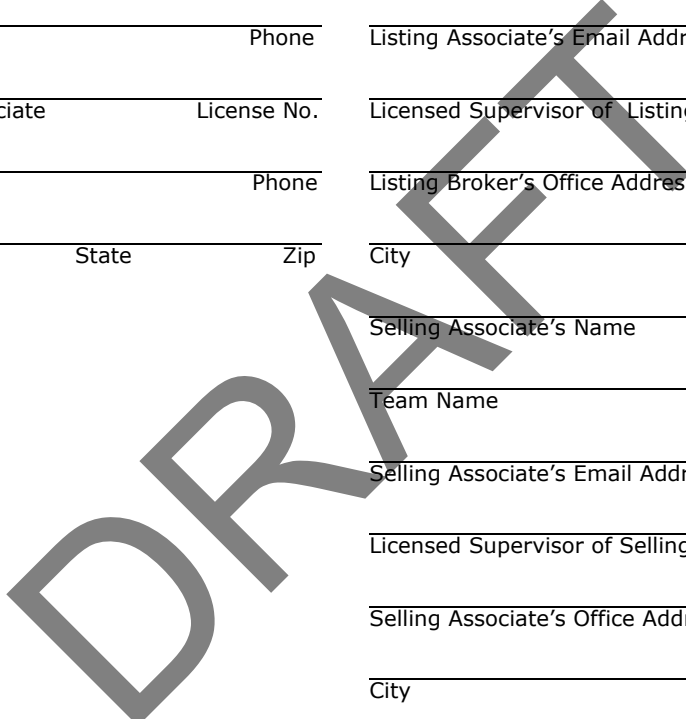
Team Name \_\_\_\_\_

Selling Associate's Email Address \_\_\_\_\_ Phone \_\_\_\_\_

Licensed Supervisor of Selling Associate \_\_\_\_\_ License No. \_\_\_\_\_

Selling Associate's Office Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_



Disclosure: Pursuant to a previous, separate agreement (such as a MLS offer of compensation or other agreement between brokers), Listing Broker has agreed to pay Other Broker a fee (\_\_\_\_\_). This disclosure is for informational purposes and does not change the previous agreement between brokers to pay or share a commission.

**OPTION FEE RECEIPT**

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

Escrow Agent \_\_\_\_\_ Date \_\_\_\_\_

**EARNEST MONEY RECEIPT**

Receipt of \$ \_\_\_\_\_ Earnest Money in the form of \_\_\_\_\_  
 is acknowledged.

Escrow Agent \_\_\_\_\_ Received by \_\_\_\_\_ Email Address \_\_\_\_\_ Date/Time \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Fax \_\_\_\_\_

**CONTRACT RECEIPT**

Receipt of the Contract is acknowledged.

Escrow Agent \_\_\_\_\_ Received by \_\_\_\_\_ Email Address \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Fax \_\_\_\_\_

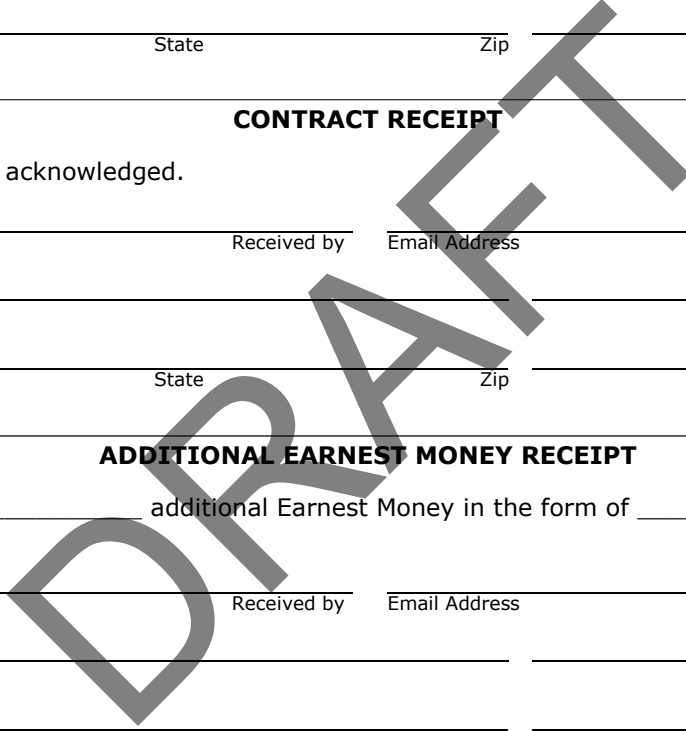
**ADDITIONAL EARNEST MONEY RECEIPT**

Receipt of \$ \_\_\_\_\_ additional Earnest Money in the form of \_\_\_\_\_  
 is acknowledged.

Escrow Agent \_\_\_\_\_ Received by \_\_\_\_\_ Email Address \_\_\_\_\_ Date/Time \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Fax \_\_\_\_\_





PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)



## THIRD PARTY FINANCING ADDENDUM

TO CONTRACT CONCERNING THE PROPERTY AT

(Street Address and City)

**1. TYPE OF FINANCING AND DUTY TO APPLY AND OBTAIN APPROVAL:** Buyer shall apply promptly for all financing described below and make every reasonable effort to obtain approval for the financing, including but not limited to furnishing all information and documents required by Buyer's lender. (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 Origination Charges as shown on Buyer's Loan 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 Origination Charges as shown on Buyer's Loan 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 Origination Charges as shown on Buyer's Loan Estimate for the loan not to exceed \_\_\_\_\_% of the loan.

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 Origination Charges as shown on Buyer's Loan Estimate for the loan not to exceed \_\_\_\_\_% of the loan.

E. USDA GUARANTEED FINANCING: A USDA-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 Origination Charges as shown on Buyer's Loan Estimate for the loan not to exceed \_\_\_\_\_% of the loan.

F. REVERSE MORTGAGE FINANCING: A reverse mortgage loan (also known as a Home Equity Conversion Mortgage loan) in the original principal amount of \$\_\_\_\_\_ (excluding any financed PMI premium or other costs), with interest not to exceed \_\_\_\_\_% per annum for the first \_\_\_\_\_ year(s) of the loan with Origination Charges as shown on Buyer's Loan Estimate for the loan not to exceed \_\_\_\_\_% of the loan. The reverse mortgage loan  will  will not be an FHA insured loan.

G. OTHER FINANCING: A loan not of a type described above from \_\_\_\_\_ (name of lender) in the principal amount of \$\_\_\_\_\_ due in \_\_\_\_\_ year(s), with interest not to exceed \_\_\_\_\_% per annum for the first \_\_\_\_\_ year(s) of the loan with Origination Charges not to exceed \_\_\_\_\_% of the loan. Buyer  does  does not waive all rights to terminate the contract under Paragraph 2B of this addendum for the loan described in this paragraph.

**2. APPROVAL OF FINANCING:** Approval for the financing described above will be deemed to have been obtained when Buyer Approval and Property Approval are obtained. **Time is of the essence for this paragraph and strict compliance with the time for performance is required.**

(Address of Property)

A. BUYER APPROVAL (Check one box only):

- This contract is subject to Buyer obtaining Buyer Approval. If Buyer cannot obtain Buyer Approval, Buyer may terminate this contract [give written notice to Seller] within \_\_\_\_\_ days after the Effective Date [effective date] of the [this] contract by giving Seller: (i) notice of termination; and (ii) a copy of a written statement from the lender setting forth the reason(s) for lender's determination. If Buyer terminates the contract under this provision, [and] this contract will terminate and the earnest money will be refunded to Buyer. If Buyer does not terminate the contract under this provision, the contract shall no longer be subject to the Buyer obtaining Buyer Approval. Buyer Approval will be deemed to have been obtained when (i) the terms of the loan(s) described above are available and (ii) lender determines that Buyer has satisfied all of lender's requirements related to Buyer's assets, income and credit history.
- This contract is not subject to Buyer obtaining Buyer Approval.

B. PROPERTY APPROVAL: If Buyer's lender determines that the Property does not satisfy lender's underwriting requirements for the loan (including but not limited to appraisal, insurability, and lender required repairs) Buyer<sup>[7]</sup> may [not] terminate this contract [later than 3 days] on or before the 3rd day before the Closing Date [may terminate this contract] by giving Seller: (i) notice of termination; and (ii) a copy of a written statement from the lender setting forth the reason(s) for lender's determination. If Buyer terminates under this paragraph, the earnest money will be refunded to Buyer. If Buyer does not terminate under this paragraph, Property Approval is deemed to have been obtained.

3. SECURITY: If required by Buyer's lender, each note for the financing described above must be secured by vendor's and deed of trust liens.

4. FHA/VA REQUIRED PROVISION: If the financing described above involves FHA insured or VA financing, 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: (i) unless the 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 \$ \_\_\_\_\_ or (ii) if the contract purchase price or cost exceeds the reasonable value of the Property established by the Department of Veterans Affairs. The 3-day notice of termination requirements in 2.B. does not apply to this Paragraph 4.

- A. The Buyer shall have the privilege and option of proceeding with consummation of the contract without regard to the amount of the appraised valuation or the reasonable value established by the Department of Veterans Affairs.
- B. If FHA financing is involved, 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 Buyer should satisfy himself/herself that the price and the condition of the Property are acceptable.
- C. If VA financing is involved and if Buyer elects to complete the purchase at an amount in excess of the reasonable value established by the 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 Prices, 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.

5. AUTHORIZATION TO RELEASE INFORMATION:

- A. Buyer authorizes Buyer's lender to furnish to Seller or Buyer or their representatives information relating to the status of the approval for the financing.
- B. Seller and Buyer authorize Buyer's lender, title company, and Escrow Agent to disclose and furnish a copy of the closing disclosures and settlement statements to the parties' respective brokers and sales agents provided under Broker Information.

\_\_\_\_\_  
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 license holders. 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. 40-11[+0]. This form replaces TREC No. 40-10[9].



**ADDENDUM FOR SECTION 1031 EXCHANGE**



**CONCERNING THE PROPERTY AT:** \_\_\_\_\_  
(Street Address and City)

- A.  Seller  Buyer intends to use this Property to accomplish an exchange of like-kind properties under Section 1031 of the Internal Revenue Code, as amended.
- B. The parties agree to cooperate with one another and take all reasonable actions necessary to accomplish the exchange, including signing or completing any relevant documents.
- C. The non-exchanging party shall bear no additional expense or liability with respect to the exchange.

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Seller

DRAFT



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 license holders. 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) TREC No. 58-0.



PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)

# NOTICE TO PURCHASER OF SPECIAL TAXING OR ASSESSMENT DISTRICT



**CONCERNING THE PROPERTY AT:** \_\_\_\_\_  
(Street Address and City)

- 1. NAME OF SPECIAL DISTRICT:** The real property that you are about to purchase is located in the \_\_\_\_\_ and may be subject to district taxes or assessments.  
(insert name of district)
- 2. TAX RATE:** The district may, subject to voter approval, impose taxes and issue bonds. The district may impose an unlimited rate of tax in payment of such bonds. (Check only one box)

The current rate of the district property tax is \_\_\_\_\_ on each \$100 of assessed valuation.  
(insert current property tax rate)

The district has not yet imposed taxes. The projected rate of the district property tax is \_\_\_\_\_ on each \$100 of assessed valuation.  
(insert projected property tax rate)
- 3. ASSESSMENTS:** The district may impose assessments and issue bonds and impose an assessment in payment of such bonds. (Check only one box)

The rate of the district assessment is \_\_\_\_\_ on each \$100 of assessed valuation.  
(insert current assessment amount)

The amount of the district assessment on the real property that you are about to purchase is \_\_\_\_\_.  
(insert current assessment amount)

The district has not yet imposed an assessment, but the projected  rate  amount of the assessment is \_\_\_\_\_.  
(insert projected assessment rate or amount)
- 4. BONDS:**

A. The total amounts of bonds payable wholly or partly from  property taxes  assessments ( excluding refunding bonds that are separately approved by the voters  excluding any bonds or any portions of bonds issued that are payable solely from revenues received or expected to be received under a contract with a governmental entity) approved by the voters are:

(1) \$ \_\_\_\_\_ for water, sewer, and drainage facilities;  
(insert amount)

(2) \$ \_\_\_\_\_ for road facilities;  
(insert amount)

(3) \$ \_\_\_\_\_ for parks and recreational facilities; and  
(insert amount)

(4) \$ \_\_\_\_\_ for \_\_\_\_\_  
(insert amount) (insert description of additional facilities, as applicable)

B. The aggregate initial principal amounts of all such bonds issued are:

(1) \$ \_\_\_\_\_ for water, sewer, and drainage facilities;  
(insert amount)

(2) \$ \_\_\_\_\_ for road facilities;  
(insert amount)

(3) \$ \_\_\_\_\_ for parks and recreational facilities; and  
(insert amount)

(4) \$ \_\_\_\_\_ for \_\_\_\_\_  
(insert amount) (insert description of additional facilities, as applicable)
- 5. STANDBY FEES:** The district sought and obtained approval of the Texas Commission on Environmental Quality to adopt and impose a standby fee. The amount of the standby fee is \$ \_\_\_\_\_.  
(insert amount of standby fee)

An unpaid standby fee is a personal obligation of the person that owned the property at the time of imposition and is secured by a lien on the property. Any person may request a certificate from the district stating the amount, if any, of unpaid standby fees on a tract of property in the district.

Notice to Purchaser of Special Taxing or Assessment District Concerning

(Address of Property)

6. LOCATION: (Check only one box, if applicable)

- The district is located wholly or partly in the extraterritorial jurisdiction of the City of \_\_\_\_\_ (insert name of municipality). Texas law governs the ability of a municipality to annex property in the municipality's extraterritorial jurisdiction and whether a district that is annexed by the municipality is dissolved.
- The district is located wholly or partly within the corporate boundaries of the City of \_\_\_\_\_ (insert name of municipality). The municipality and the district overlap, but may not provide duplicate services or improvements. Property located in the municipality and the district is subject to taxation by the municipality and the district.

7. STRATEGIC PARTNERSHIP AGREEMENT: The district has entered into a strategic partnership agreement with the City of \_\_\_\_\_ (insert name of municipality). This agreement may address the timeframe, process, and procedures for the municipal annexation of the area of the district located in the municipality's extraterritorial jurisdiction.

8. PURPOSE: The purpose of the district is to provide the following facilities or services: (Check applicable boxes)  water  sewer  drainage  flood control  firefighting  road  parks and recreational  \_\_\_\_\_ (insert other types of facilities or services, as applicable). The cost of district facilities is not included in the purchase price of your property.

PURCHASER IS ADVISED THAT THE INFORMATION SHOWN ON THIS FORM IS SUBJECT TO CHANGE BY THE DISTRICT AT ANY TIME. THE DISTRICT ANNUALLY ESTABLISHES TAX RATES. PURCHASER IS ADVISED TO CONTACT THE DISTRICT TO DETERMINE THE STATUS OF ANY CURRENT OR PROPOSED CHANGES TO THE INFORMATION SHOWN ON THE FORM.

DRAFT

Signature of Seller

Date

Signature of Seller

Date

The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property or at closing of purchase of the real property.

Signature of Buyer

Date

Signature of Buyer

Date



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 license holders. 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. 56-0.

Form	From	Comment
1-4 Family	Richard Bobo	<p>In Paragraph 5.A.(4) of the ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE), it states the following.            (4) Buyer authorizes escrow agent to release and deliver the Option Fee to Seller at any time without further notice to or consent from Buyer, and releases escrow agent from liability for delivery of the Option Fee to Seller. The Option Fee will be credited to the Sales Price at closing.</p> <p>The last sentence can be interpreted to imply that there is a relationship between the Option Fee and the Sales Price, when the two are fully independent.</p> <p>Someone can easily interpret this to mean that the Option Fee is credited for the buyer toward the sales price in the event that the sale goes to closing. If it said something like the Option Fee will be credited to the Seller at closing then there would be no doubt regarding to whom the option fee is credited.</p> <p>This matter similarly pertains to the following contracts:            RESIDENTIAL CONDOMINIUM CONTRACT (RESALE)            NEW HOME CONTRACT            NEW HOME CONTRACT (Incomplete Construction)            FARM AND RANCH CONTRACT            UNIMPROVED PROPERTY CONTRACT</p> <p>Thank you for your consideration on this matter.</p>
1-4 Family	Ben Holloway	<p>Good afternoon, My name is Ben Holloway, and I have been licensed in Texas since 2016. I want to provide feedback and make a few suggestions to the commission. I believe the TREC promulgated forms could easily be made more clear and transparent, which could reduce disputes between the parties to a contract.</p> <p>With one of my active transactions, my Buyer needed to extend the Option Period by one extra day. We drafted an amendment to extend the Option Period, in exchange for \$10 consideration paid from the Buyer to the Seller.</p> <p>When my Buyer asked the title company how to remit the \$10, the title company told us it needs to be paid directly to the Seller. To me, this didn't sound correct. If the original Option Fee and Earnest Money needs to be deposited with the title company, I assumed any further exchange of monies would be the same under the terms of the TREC promulgated contract. However as instructed, my Buyer sent the \$10 directly to the Seller using Zelle.</p> <p>I am writing you today for several reasons:</p> <ol style="list-style-type: none"> <li>1) Is it correct that any monies contractually required by either party, excluding the initial Option Fee and Earnest Money deposit and required thereafter, should be paid directly to the other party and not deposited with the title company, regardless of the amount?</li> <li>2) If the answer to my first question is, 'yes,' may I please make a suggestion to amend Section 5 of the promulgated contract forms? Section 5 could be renamed from 'Earnest Money and Termination Option' to 'Exchange of Monies by The Parties.' Section 5 A (1-4) would remain the same, but Section 5 A (5) could be added to state that, 'Any monies deposited or exchanged by the parties in connection with this contract must be deposited to and disbursed by the title company of record. Prior to closing, funds may not be directly exchanged between the parties of this contract.'</li> <li>3) The TREC promulgated amendment does not specify how or when the additional money must be provided for an extension of the Option Period, or for any other instance where additional consideration is being provided. It would be helpful if a required timeframe was identified on the amendment, or if the agent could fill in a custom deadline date.</li> </ol> <p>I feel that as it currently stands, allowing parties to exchange money, especially without a specified deadline, is opening the door for potential problems or disagreements to arise. Concerning my ongoing transaction, \$10 is a small amount of money exchanged, but in some transactions, the amount exchanged might be significantly more. How long does a party have to provide the consideration? Can it be cash? When is it due? Can the other party spend it, or does it need to stay in the transaction until closing? How are the funds receipted or tracked by the title company? What if a Buyer forgets they gave money to the Seller, and the title company forgets to account for it at closing because they weren't involved in collecting it? What if no receipt was given and the recipient claims they never received the money? What triggers a default of contract? How can the Buyer's lender be sure they provided the money as the lender accounts for the down payment? There are not clear answers to these questions with the promulgated contract forms as currently written.</p> <p>So to summarize, I want to provide feedback to the commission regarding the TREC promulgated Amendment and 1-4 Family Residential Resale contract, as it relates to how additional monies are handled in the contract. The current forms do not provide clear guidance on this process. Minor changes to the contract forms could prevent potential disputes by making the process and deadline more transparent as additional funds are entangled with a transaction. I understand that for most transactions in most situations, disputes won't arise when using the promulgated forms as currently written. But inevitably, for someone somewhere, a dispute will arise. Making a few minor changes could prevent an issue from developing and provide clarity to agents, buyers, and sellers in Texas.</p>
1-4 Family	Samantha Connaway	<p>I believe paragraph 12 could be improved by giving buyers the option to contribute toward seller's costs. I can think of a few reasons why it would be preferable for a buyer to cover a seller's costs as opposed to just raising the sales price. Possibly by adding verbiage and a blank in 12. A. (2).</p> <p>This change could allow buyers the opportunity to be more competitive if/when necessary, and could help eliminate one instance of agents incorrectly writing in special provisions.</p>



Unimproved Property	Romona Brogan	<p>The new TREC form 9-16 includes questions that a seller has to answer – Section 7.E. This is a terrible design as now, with it as part of the contract, the Buyer submits the offer, the seller has to answer those questions, then it has to come back to the Buyer to approve or not, before the contract can be executed. This section needs to be a stand-alone form (like the seller's disclosure for homes) that the seller's agent can get completed when they LIST the property. That way the Buyer can see it, sign, etc. and submit with their offer, thereby eliminating the need for it to come back to the Buyer to approve the additions as it currently stands.</p> <p>Please consider removing this section from TREC for 9-16 and creating a Seller's Disclosure for land.</p>
Third Party Financing	Robin Harris	<p>As discussed during Broker Lawyer Committee meeting, I noticed Third Party Financing Addendum Paragraph 2A states "If Buyer does not terminate the contract under this provision, ..." and Paragraph 2B states "If Buyer does not terminate the contract under this paragraph, ...". Since changes are being made it is a good opportunity to use one or the other for consistency.</p> <p>A. BUYER APPROVAL (Check one box only):</p> <p><input type="checkbox"/> This contract is subject to Buyer obtaining Buyer Approval. If Buyer cannot obtain Buyer Approval, Buyer <del>may terminate this contract (give written notice to Seller)</del> within _____ days after the <del>Effective Date</del> (effective date) of the (this) contract by giving Seller: (i) notice of termination; and (ii) a copy of a written statement from the lender setting forth the reason(s) for lender's determination and this contract will terminate and the earnest money will be refunded to Buyer. If Buyer does not terminate the contract under this provision, the contract shall no longer be subject to the Buyer obtaining Buyer Approval. Buyer Approval will be deemed to have been obtained when (i) the terms of the loan(s) described above are available and (ii) lender determines that Buyer has satisfied all of lender's requirements related to Buyer's assets, income and credit history.</p> <p><input type="checkbox"/> This contract is not subject to Buyer obtaining Buyer Approval.</p> <p>B. PROPERTY APPROVAL: If Buyer's lender determines that the Property does not satisfy lender's underwriting requirements for the loan (including but not limited to appraisal, insurability, and lender required repairs) Buyer <del>may</del> <del>not</del> terminate this contract (later than) 3 days before the Closing Date <del>or earlier</del>. (may terminate this contract) By giving Seller: (i) notice of termination; and (ii) a copy of a written statement from the lender setting forth the reason(s) for lender's determination. If Buyer terminates under this paragraph, the earnest money will be refunded to Buyer. If Buyer does not terminate under this paragraph, Property Approval is deemed to have been obtained.</p>
Condo and POA Addendum	Cathy Faulkner	<p>The Forms &amp; Contracts Committee of the MetroTex Association of REALTORS® would like to suggest the following: The committee is recommending that the Form Residential Condominium Contract (Resale) Paragraph B.2. (TREC Form 30-16) and Addendum for Property Subject to Mandatory Membership in a Property Owners Association, (Paragraphs 1 and 2) (TREC Form 36-10) be updated where the days to respond in these paragraphs is changed to a blank. The blank would give both the buyer and seller the ability to negotiate the time to respond. The recommended changes will create consistency between the forms plus allow the buyer the time they may need for legal review or personal review of the Documents in question. The example of the requested changes to these forms is shown below:</p> <p>From the Residential Condominium Contract (Resale) Paragraph B.2. (TREC Form 30-16)</p> <p>"(2) Buyer has not received a copy of the Documents. Seller, at Seller's expense, shall deliver the Documents to Buyer within days after the Effective Date of the contract. Buyer may terminate the contract within 7 days _____ days after Buyer receives the Documents by giving written notice of termination to Seller. If Buyer terminates the contract pursuant to this paragraph, the earnest money will be refunded to Buyer. Buyer retains rights to terminate under Section 82.156, Texas Property Code."</p> <p>From the Addendum for Property Subject to Mandatory Membership in a Property Owners Association, (Paragraphs 1 and 2) (TREC Form 36-10)</p> <p>1. Within _____ days after the effective date of the contract, Seller shall obtain, pay for, and deliver the Subdivision Information to the Buyer. If Seller delivers the Subdivision Information, Buyer may terminate the contract within 3 days after _____ days after Buyer receives the Subdivision Information or prior to closing, whichever occurs first, and the earnest money will be refunded to Buyer. If Buyer does not receive the Subdivision Information, Buyer, as Buyer's sole remedy, may terminate the contract at any time prior to closing and the earnest money will be refunded to Buyer.</p> <p>2. Within _____ days after the effective date of the contract, Buyer shall obtain, pay for, and deliver a copy of the Subdivision Information to the Seller. If Buyer obtains the Subdivision Information within the time required, Buyer may terminate the contract 3 days after _____ days after Buyer receives the Subdivision Information or prior to closing, whichever occurs first, and the earnest money will be refunded to Buyer. If Buyer, due to factors beyond Buyer's control, is not able to obtain the Subdivision Information within the time required, Buyer may, as Buyer's sole remedy, terminate the contract within 3 days after the time required or prior to closing, whichever occurs first, and the earnest money will be refunded to Buyer."</p> <p>We appreciate the consideration of the Broker/Lawyer Committee. If you need any additional information, please let us know.</p>

Buyer's Termination of Contract	Cathy Faulkner	<p>The Forms &amp; Contracts Committee of the MetroTex Association of REALTORS® would like to suggest the following:                  The committee is also recommending a change to the Notice of Buyer's Termination of Contract (TREC Form 38-7) that item number eight (8) be changed to allow termination for failure to deliver the required HOA/POA documents and renumber the current Paragraph 8 to Paragraph 9 to cover "other".</p> <p>Who do I need to contact about a possible change needed to a form.                  It is TREC Form # 12-3 of TXR 1920. Addendum for release of liability on assumed loan...This document has caused much confusion and squabble simply due to the wording highlighted on attached form.</p> <p>The sellers of course want to check box 1 and the buyers want to check box 2.                  It is up to the VA if the entitlement will be restored and the word "approved" has caused some alarm for my particular scenario. The seller feels it should be approved and restored by closing according to the document. We have explained that it can be approved, but not restored until after closing when the loan is paid off.                  Is there some way to rework the verbage so that is more clear? VA assumptions are challenging anyways due to the fact that everything is in the hands of the loan servicer, so making this form understandable to buyers and sellers would be helpful.</p>
Release for Assumption VA Loan Addendum	Kellie Kellner	<p>(Address of Property) <b>UNIMPROVED LOTS</b> TX</p> <p><input type="checkbox"/> <b>A. RELEASE OF SELLER'S LIABILITY ON LOAN TO BE ASSUMED:</b>                  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)  <input type="checkbox"/> (1) This contract will terminate and the earnest money will be refunded to Buyer.  <input type="checkbox"/> (2) Failure to obtain release approval will not delay closing.</p> <p><input type="checkbox"/> <b>B. RESTORATION OF SELLER'S ENTITLEMENT FOR VA LOAN:</b>                  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)  <input type="checkbox"/> (1) This contract will terminate and the earnest money will be refunded to Buyer.  <input type="checkbox"/> (2) Failure to obtain restoration approval will not delay closing.</p> <p><b>NOTICE:</b> 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.</p> <p>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.</p>
New Forms	Shannon Potts	<p>I would like to see the new Sellers Disclosure lines removed from the New Constructions, Unimproved and the Farm and Ranch contracts and a new (extra) SD form for these land type properties. There is way too much confusion among agents on the proper procedure on how this needs to be filled out. Way too may buyers agents are filling this area in for the sellers when submitting offers or listing agents executing without this area filled in by the sellers.</p> <p>Far too may brokers and even title companies are teaching that its ok for a buyers agent or a listing agent to fill this area in- when it falls under the Sellers Disclosure rule of Seller ONLY fills this in— not the agents.</p> <p>This is a huge liability to all involved.</p> <p>It would be best to have its own separate SD that the seller can fill out that is related to the land or land items that can be attached to the SD for the home.</p> <p>Please consider for the protection of all.</p>
New Forms	Jessica Waggoner	<p>Please forward to appropriate recipients. I believe that we need to have an Unimproved Land Listing Agreement. There are times when land is not zoned in any particular way to fit the current options of Residential 1-4, Commercial options offered by TAR, or Farm and Ranch Listing Agreement. TREC does offer the unimproved land contract, yet does not offer an unimproved land listing agreement. I'd like this suggestion to be considered.</p>
Seller's Disclosure	Barbara Giberson	<p>hello, will you please forward this to the Broker Lawyer committee. Thank you</p> <p>I have been a licensed TREC agent since 1985 and purpose to uphold my duties to my clients regarding FULL Disclosure of condition of properties. By doing so I aid my sellers in selling their homes for the highest value and I aid my buyers in obtaining a home with FULL knowledge of the condition, including all applicable warranties.</p> <p>Lately, I'm finding that agents and independent brokers "hide" the details of their properties. they intentionally do not post documents into the MLS, but require the agents to ask for them.</p> <p>they do not obtain PAID repair invoices from sellers, yet make claims that items have been repaired or replaced. This becomes Heresay and can potentially leave a buyer with a lien on their new home.</p> <p>Agents are using the TAR seller disclosure because it doesn't require the seller to list PREVIOUS Inspections. It is a useless form that does not give any dates for repairs ore replacements, including roofs which lenders always ask for.</p> <p>It's so frustrating trying to help a buyer make an educated buying decision when the agents don't cooperate with the TREC regulations. This is not just one agent, I've experienced this countless times over the past few years and more so recently.</p> <p>Agents are turning Texas into a BUYER BEWARE state not a FULL DISCLOSURE STATE Buyers from other states and countries don't know their rights and are being subjected to irresponsible agents and independent brokers. This can only lead to more lawsuits, great for the attorneys, but a black mark for homeownership.</p> <p>Can we PLEASE do something about this? I am very Happy to help. Sign me up!!</p>

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**Lavelle BROWN, Appellant/Cross-Appellee**

v.

**Krista GILMORE, Appellee/Cross-Appellant**

**No. 04-22-00369-CV**

**Court of Appeals of Texas, Fourth District, San Antonio**

**August 16, 2023**

From the County Court at Law No. 10, Bexar County, Texas Trial Court No. 2021CV00936A Honorable David J. Rodriguez, Judge Presiding

Sitting: Patricia O. Alvarez, Justice Liza A. Rodriguez, Justice Lori I. Valenzuela, Justice

**MEMORANDUM OPINION**

LORI I. VALENZUELA, JUSTICE

Appellant Lavelle Brown, as Seller, and appellee Krista Gilmore, as Buyer, entered a contract for the sale of a residential home. Prior to closing, Gilmore sought termination of the contract and a refund of her earnest money deposit. Asserting Gilmore failed to properly invoke her termination option, Brown refused to authorize release of the earnest money. The trial court granted summary judgment in favor of Gilmore. In five issues, that we consolidate and address as three, Brown asserts on appeal the trial court erred in (1) admitting certain summary judgment

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evidence; (2) granting summary judgment in favor of Gilmore and denying summary judgment in favor of Brown; and (3) failing to award Brown attorney's fees. We affirm.

**Background**

On January 16, 2016, Brown and Gilmore executed a Texas Real Estate Commission One to Four Family Residential Contract (Resale) (the "Contract") for the sale of residential property located in San Antonio, Texas. Both parties were represented by realtors: Kathia Viquez acted as Brown's agent, and Laura Yznaga acted as Gilmore's agent.

The Contract required Gilmore to deliver \$2,400 in earnest money to the title company, First American Title, within three days after January 16, 2016. The Contract also contained a termination option, which provides in relevant part:

**TERMINATION OPTION:**

For nominal consideration, the receipt of which is hereby acknowledged by Seller, and Buyer's agreement to pay Seller \$70.00 (Option Fee) within 3 days after the Effective Date of this contract [January 16, 2016], Seller grants Buyer the unrestricted right to terminate this contract by giving notice of termination to Seller within 7 days after the Effective Date of this contract (Option Period). . . . [I]f Buyer fails to pay the Option Fee to Seller within the time prescribed, this paragraph will not be 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.

On the day that Gilmore executed the Contract, she mailed a check for \$2,470 to the title company. It is undisputed this amount

reflects the total sum of the earnest money deposit (\$2,400) and the termination option fee (\$70). The root of the parties' dispute is whether Gilmore effectively invoked the termination option by paying the termination option fee to the *title company* rather than to Brown.

On January 21, 2021, Gilmore executed a Notice of Buyer's Termination of Contract. The following day, Gilmore executed a Release of Earnest Money from Escrow. Asserting Gilmore

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failed to pay the option fee in accordance with the terms of the Contract, Brown refused to agree to release the escrow money to Gilmore.

#### *Procedural History*

On March 12, 2021, Gilmore filed suit seeking a return of the earnest money. Brown answered and later counterclaimed. The parties subsequently filed cross-motions for summary judgment as well as several related motions. Relevant to this appeal, Brown filed a motion to strike certain evidence as untimely and as inadmissible parol evidence.

Arguing that she paid the option fee pursuant to the terms of the Contract, Gilmore asserts the Contract is silent on how the payment is to be paid to Brown. Gilmore correctly points out the Contract does not identify a physical address for Brown; instead, it contains only a phone number and e-mail address for Brown. Nevertheless, Brown asserts the Contract specifically required payment of the option fee to *her*- "to seller"-not to the title company.

In response, Gilmore argues she paid the option fee to the title company at the direction of Brown's realtor, Viquez. As summary judgment evidence, Gilmore introduced a declaration in which she attested, "On January 16, 2021, I asked my

realtor where to send the check for the earnest money and the termination option fee as dictated in the Contract. My agent received instructions from Viquez, which she shared directly with me, that I should submit the termination option fee payment to the escrow agent at First American Title along with the earnest money." The declaration authenticated text messages sent by Viquez to Yznaga (and later forwarded to Gilmore) regarding payment of the option fee to the title company.

After Brown filed a cross-motion for summary judgment, Gilmore filed a response attaching Exhibit M-Yznaga's affidavit stating, "We were instructed, via call and text, by the listing agent Kathia Viquez to send or wire the option money to the Title Co. with the earnest money for the transaction. For reference, the texts from the listing agent are attached. They are

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true and accurate copies of the texts." The text messages between Viquez and Yznaga were attached as Exhibit M-1. Brown moved to strike these exhibits as untimely filed, which the trial court denied.<sup>4</sup> The trial court rendered judgment in favor of Gilmore. This appeal follows.

#### **Timeliness of Summary Judgment Evidence**

In her first issue, Brown asserts the trial court erred in denying her motion to strike evidence on the basis that the evidence was untimely filed. The complained-over exhibits were filed on November 18, 2021 as part of Gilmore's response to Brown's cross-motion for summary judgment and reply in support of Gilmore's summary judgment-one day before the original hearing setting but sixteen days before the summary judgment hearing resetting.

Although the evidence was filed more than seven days before the hearing, Brown asserts the evidence supports Gilmore's motion (and was untimely as filed less than twenty-one days before the hearing) and not her response (which would only need to be filed seven days before the hearing). *See* Tex. R. Civ. P. 166a(c) ("Except on leave of court, with notice to opposing counsel, the motion and any supporting affidavits shall be filed and served at least twenty-one days before the time specified for hearing. Except on leave of court, the adverse party, not later than seven days prior to the day of hearing may file and serve opposing affidavits or other written response."). But we need not decide whether the evidence was timely filed because, assuming without deciding it was not, the trial court granted Gilmore's requested leave.

#### *Standard of Review*

Trial courts may grant parties leave to file late summary judgment evidence. *See id.* We review a trial court's ruling on a motion for leave to file late summary judgment evidence for an abuse of discretion. *See Carpenter v. Cimarron Hydrocarbons Corp.*, 98 S.W.3d 682, 686 (Tex.

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2002). A trial court abuses its discretion when it acts without reference to any guiding rules or principles. *Id.* at 687. In the context of late-filed summary judgment evidence, a motion for leave "should be granted when a litigant establishes good cause for failing to timely respond by showing that (1) the failure to respond was not intentional or the result of conscious indifference, but the result of accident or mistake, and (2) allowing the late response will occasion no undue delay or otherwise injure the party seeking summary judgment." *Id.* at 688.

#### *Application*

Gilmore's motion for leave explains her response was filed one day before the original hearing setting "[d]ue to an inadvertent calendaring error." Thus, her failure to file the response was not intentional or the result of conscious indifference, but the result of accident or mistake. Moreover, to the extent Brown believed Gilmore's late response unduly prejudiced her, she could have taken up the trial court's invitation for a continuance:

THE COURT: The motion for leave is granted. The Court will give additional time in a continuance to Mr. Froman [Brown's attorney] if necessary if it's - if it's requested by him. Are you seeking additional time, Mr. Froman?

MR. FROMAN: No, sir.

Under these facts and assuming without deciding that the evidence was untimely filed, we hold the trial court did not abuse its discretion in granting leave. We therefore overrule Brown's first issue.

#### **Cross-Motions for Summary Judgment**

In her second issue, Brown asserts the trial court erroneously granted Gilmore's traditional motion for summary judgment instead of Brown's traditional motion for summary judgment.

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#### *Standard of Review*

Under the traditional standard for summary judgment, the movant has the burden to show that no genuine issue of material fact exists, and the movant is entitled to judgment as a matter of law. Tex.R.Civ.P. 166a(c); *KPMG Peat Marwick v. Harrison Cnty. Hous. Fin. Corp.*, 988 S.W.2d 746, 748

(Tex. 1999). When, as in this case, both sides move for summary judgment, and the trial court grants one motion and denies the other, we review *de novo* all questions presented and all summary-judgment evidence presented by both sides. *Aery v. Hoskins, Inc.*, 493 S.W.3d 684, 690-91 (Tex. App.-San Antonio 2016, pet. denied).

### *Application*

The essence of the dispute between the parties is whether Gilmore satisfied the requirements to invoke the termination option when she paid the option fee to the title company. According to Brown, Gilmore's payment of the option fee to the title company did not satisfy the requirements of the termination option provision because the provision required Gilmore to pay the fee to "Seller," and "Seller" is defined in the Contract as Brown-not the title company.

In response, Gilmore asserts the Contract is silent as to how Brown is to be paid and that she paid Brown the only way she could have: by requesting payment instructions from Brown's agent. Reviewing the Contract *de novo*, we agree with Gilmore. The Contract nowhere states *how* Brown is to be paid and contains no address or account by which Brown could be paid the option fee. Because the Contract is silent on how to pay Brown, Gilmore, through her agent, requested instructions from Brown's agent, Viquez, on how to pay the option fee. *See* Tex. Occ. Code § 1101.557(a) ("A broker who represents a party in a real estate transaction or who lists real estate for sale under an exclusive agreement for a party is that party's agent."); *Nahm v. J. R. Fleming & Co.*, 116 S.W.2d 1174, 1176 (Tex. App.-Eastland 1938, no writ) ("What a principal does through an agent he does himself."). The summary judgment evidence-in the form of Gilmore's

declaration, Yznaga's affidavit, text messages, and Brown's admissions<sup>[2]</sup>-conclusively demonstrates that Viquez instructed Gilmore to pay the option fee to the title company and that Brown in fact received the option fee. Under these facts, we hold Gilmore timely paid Brown the option fee, invoking a right to terminate the Contract as provided by the termination option provision. Moreover, the summary judgment evidence conclusively demonstrates Gilmore timely exercised her termination option. Therefore, Gilmore was entitled to a return of her escrow money. We accordingly overrule Brown's second issue. Because Brown's third issue-entitlement to attorney's fees-is contingent upon her prevailing on her second issue, we likewise overrule her third issue.

### **Conclusion**

Having overruled each of Brown's issues on appeal, we affirm the judgment of the trial court.

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#### Notes:

<sup>[1]</sup> Brown also sought to strike as untimely Exhibits L and L-1-an affidavit by Gilmore's attorney and attorney's fees invoices evidencing Gilmore's attorney's fees.

<sup>[2]</sup> In written discovery, Brown admitted the following requests for admission: (1) Kathia Viquez instructed Krista Gilmore to send the earnest money check and termination option period fee directly to First American Title; (2) First American Title Company received \$2,470 from Krista Gilmore on January 19, 2021; and (3) [Brown] received the \$70.00 termination option period fee.

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**Apache Corporation, Petitioner,**  
**v.**  
**Apollo Exploration, LLC; Cogent**  
**Exploration, Ltd., Co.; and SellmoCo,**  
**LLC, Respondents**

**No. 21-0587**

**Supreme Court of Texas**

**April 28, 2023**

Argued October 27, 2022

On Petition for Review from the Court of Appeals for the Eleventh District of Texas

**OPINION**

Evan A. Young Justice

Contracts regularly address time: when a contractual relationship begins or ends; by when a party must perform; after when it has become too late to do so. Such vital matters illustrate that contractual clarity is often every bit as important when talking about time as about anything else. Clarity comes from sound drafting, but sound drafting relies on confidence in the courts' ability and willingness to consistently interpret similar provisions. Since this Court's earliest days, we have confronted

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contracts that use the words "from" or "after" a specified date to measure a length of time. To enhance clarity, provide certainty, and prevent future disputes, our cases have long followed a default common-law rule in that circumstance, under which we must treat the time period as excluding the specified date (which we can call the "measuring date" for calculations). A period measured in years "from" or "after" a measuring date, therefore, ends on the anniversary of the measuring date, not on the day before the anniversary.



*See Home Ins. Co., N.Y. v. Rose*, 255 S.W.2d 861, 862 (Tex. 1953). A year "from" or "after" June 30 ends on June 30 of the following year, not June 29.

This default rule is just a default. It does not even apply if time periods are not measured "from" or "after" a given date. Even when the rule does apply, parties may freely depart from it by demonstrating a clear contrary intent within their agreement, such as by expressly providing a different method for calculating time. They also can simply state the exact date on which a period ends. Texas courts will enforce any lawful agreement about how to measure or compute time.

In this case, however, the parties' agreement implicates the default rule without displacing it. We must therefore apply the default rule to the parties' dispute. Because the court of appeals did not do so—and because we also conclude that it incorrectly construed other contractual provisions at issue—we reverse its judgment on the issues presented for our review and remand the case to that court for further proceedings.

**I**

The facts and procedural history are complex, but at its core this case concerns whether petitioner, Apache Corporation, breached its

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purchase-and-sale agreements, or "PSAs," with respondents (whom we collectively call the "Sellers").<sup>[1]</sup> In those PSAs, Sellers sold 75% of their working interests in 109 oil-and-gas leases to Apache. The parties ask us to resolve key questions of contract construction.

**A**

In 2007, respondent Cogent Exploration entered into an oil-and-gas lease for the Bivins Ranch in the Texas Panhandle. Respondents Apollo Exploration and SellmoCo also owned an interest in the lease, and so did Gunn Oil Company. Collectively, Sellers and Gunn owned 98% of the working interest in the Bivins Ranch lease and a number of other leases within what Apache, Gunn, and Sellers called the "Bivins Area," with Gunn having the largest interest at 50.17%.<sup>[2]</sup> The Bivins Ranch lease originally included 101,287.35 acres, but in 2008 it was amended to add another 14,731.72 acres.

The Bivins Ranch lease stated that its effective date was January 1, 2007, "from which date the anniversary dates of this Lease shall be computed." (Emphasis added.) The lease also provided that it would "be in force for a Primary Term of three years from the effective date of this Lease." (Emphasis added.)

The parties simultaneously executed and recorded a memorandum of lease. Parties often execute a memorandum of lease to provide record

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notice of the lease while keeping the lease details confidential. *See, e.g.*, 2 Eugene Kuntz, *A Treatise on the Law of Oil and Gas* § 19.16 (Supp. 2022); 5 Nancy Saint-Paul, *Summers Oil and Gas* § 56.2 (rev. 3d ed. 2018). For example, in this case, the lease stated that the memorandum was executed "to give record notice of this Lease" and barred the parties from recording the lease itself without the lessors' consent.

The memorandum summarized the lease: it named the parties, described the land, listed some of the lease's provisions, and stated that "Lessors do hereby demise, lease, and let unto Lessee the lands described above upon the terms and conditions of the Lease." However, the memorandum also made clear

that the lease, not the memorandum, governed the parties' relationship. The memorandum stated that the lease was "upon the terms, for the consideration, and subject to the conditions in the Lease specified." Notably, the memorandum listed December 31, 2009, as the primary term's expiration date.

The end of the primary term did not necessarily mean the end of the lease. The Bivins Ranch lease allowed the lease to continue after the expiration of the primary term under certain conditions. Relevant here is the lease's continuous-drilling provision. To continue the lease under this provision, the lease required a producing well<sup>[3]</sup> to be located on the land before the primary term expired. If this prerequisite was met, the lessee then had to create three equally sized blocks and to "conduct[] continuous drilling operations on each designated block" by drilling 20,000 feet in each block each year.

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Sellers and Gunn therefore could extend the lease. Before the primary term expired, they drilled a well and divided the lease into the required three blocks. (One of them—the North Block—turned out to be especially significant for this case.) That division did not initially play an important role because annual lease amendments for 2010 to 2014 permitted treating the three blocks as one. Specifically, the lease could—and for each of those years did—continue by drilling 60,000 feet in the aggregate.

During that period, in March 2011, Sellers and Gunn sold 75% of their working interest in the Bivins Area leases to Apache. This gave Apache a 73.5% working interest in those leases.<sup>[4]</sup> The four companies each executed substantively identical purchase-and-sale agreements with Apache, and two PSA provisions are particularly significant here.



First, § 2.5 allowed each Seller to "back in" for up to one-third of the interests it conveyed to Apache if the leases reached "Two Hundred Percent (200%) of Project Payout."

Second, § 4.1 required Apache to provide Sellers by November 1 of each year a "written budgeted drilling commitment" for the "upcoming calendar year." If this commitment contemplated or would result in the loss or release of any of the leases in the next year, Apache was required to offer "all of [its] interest in the affected Leases (or parts thereof) to Seller at no cost to Seller." If the seller company accepted, Apache was required to "transfer and assign the affected Leases (or parts thereof) to

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Seller." Apache had to make a good-faith effort to follow the commitment, but Apache was not liable if it was unable to fulfill the commitment's objectives despite those efforts.

Also significant is the PSAs' incorporation of a joint operating agreement (JOA) between Apache as operator and the four seller companies (Sellers and Gunn) as nonoperators for the Bivins Area leases.<sup>[5]</sup> In 2014, Apache bought out Gunn's interest in the leases, as well as Gunn's PSA rights.

## B

This brings us to 2015. Until then, the annual amendments had allowed drilling 60,000 feet in the aggregate to extend the lease. But the Bivins family declined to again amend the lease, so the original 20,000-foot-per-block requirement went into effect for 2015. That requirement was not met for the North Block for that year. Apache and Sellers agree that the North Block expired. But in what is the central question in this case—they disagree on the precise *date* it expired.

In Sellers' view, the North Block expired or was released on December 31, 2015 (or at some other unspecified time in 2015 when Apache ceased to comply with the continuous-drilling provision). Apache contends that the North Block expired one day later: January 1, 2016.

The unusual features of this case mean that this single-day discrepancy could entail a full-year consequence. As noted above, § 4.1 required Apache to offer back leases that its annual written budgeted drilling commitment anticipated losing or releasing in the next *calendar*

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year. For each calendar year, the deadline for submitting the written commitment was November 1 of the year before. Therefore, written commitments submitted November 1, 2014, covered leases anticipated to be lost or released between January 1, 2015, and December 31, 2015. Written commitments submitted November 1, 2015, covered leases anticipated to be lost or released between January 1, 2016, and December 31, 2016.

Sellers therefore argue that, if their expiration date of December 31, 2015, is correct, then § 4.1 of the PSAs required Apache to have offered the North Block back to Sellers on November 1, 2014—the deadline for Apache's 2015 written commitment. Apache argues that if its expiration date of January 1, 2016, is correct, then § 4.1 required Apache to have offered back the North Block on November 1, 2015—the deadline for Apache's 2016 written commitment.<sup>[6]</sup>

What difference does all this really make? Oil prices and land values plunged between 2014 and 2015, so the single-day dispute over the expiration turns out to matter a great deal. According to Apache, approximately \$180 million of potential damages rides on the answer to whether the

North Block portion of the lease expired on New Year's Eve or New Year's Day.

C

It is not as though the relationship among the parties was smooth

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sailing up until they suddenly discovered that the North Block had expired. To the contrary, Apollo and Cogent first sued Apache in April 2014 (about matters primarily related to § 2.5). SellmoCo joined them ten months later. Over time, Sellers added additional claims. Eventually, and most relevant here, Sellers alleged that Apache failed to comply with its PSA obligations (1) related to the § 2.5 back-in trigger<sup>[2]</sup> and also (2) under § 4.1.<sup>[8]</sup>

As for § 4.1, Sellers alleged that Apache failed to provide the required annual written budget commitments, failed to offer its interests in expiring leases back to Sellers, and allowed over a hundred leases to terminate—including the North Block—without offering them back to Sellers. According to Sellers, Apache reacquired some of these leases on its own, "washing out" Sellers' interest.<sup>[9]</sup>

Apache filed four partial summary-judgment motions regarding the issues presented to this Court pertaining to the construction of the PSAs and the Bivins Ranch lease:

(1) **Back-in trigger.** Apache asked the trial court to hold that "Two Hundred Percent (200%) of Project Payout" in § 2.5 of the PSAs meant that Apache had to reach a 2:1 return on

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investment before Sellers could exercise the back-in trigger;

that, if a 2:1 return on investment was not required, the back-in trigger was too indefinite to enforce; that the back-in trigger must be based on costs and revenues attributable to the entire interest Apache received from each Seller, not just one-third of that interest; and that "Project Payout" includes all of Apache's actual costs. The trial court granted this motion "in all of its particulars."

(2) **Construction of and Apache's compliance with § 4.1 of each PSA.** Apache asked the trial court to hold that Apache was not liable for any of the terminated leases. Specifically, Apache argued that it provided the required annual commitments; that it had no obligation to offer back any leases until November 1, 2015, and that it complied with that obligation once it arose; and that it was not otherwise liable for any other terminated leases because of § 4.1's exculpatory clause. Alternatively, Apache asked for a holding that (1) "Leases" in § 4.1 meant only the 109 leases listed in Schedule 1.2(a) of each PSA and (2) "affected Leases" meant only the leases that would be lost or released because of each annual commitment. The trial court granted this motion as to the meaning of "affected Leases."

(3) **North Block expiration date.** In a traditional and no-evidence summary-judgment motion, Apache asked the trial court to hold that the North Block of the Bivins Ranch lease



expired on January 1, 2016, and that any damages must

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therefore be calculated as of November 1, 2015 (the deadline for Apache's 2016 commitment); that there was no evidence that Apache's 2015 commitment (due November 1, 2014) contemplated or would result in the North Block's release during 2015; and that there was no evidence of damages for Sellers' § 4.1 claims if the trial court excluded certain expert testimony. The trial court granted the motion.

**(4) Former Gunn interest.** Apache asked the trial court to hold that "all of Purchaser's interest" in § 4.1 of each PSA referred only to the respective interest Apache had acquired from each individual Seller-*i.e.*, that § 4.1 contemplated offering back to a given Seller only what that Seller had sold, rather than offering each Seller *all* the interests in the same lease that Apache had purchased from *all* other sellers. Specifically, Apache argued that it was not required to offer back the former Gunn interest to Sellers. The trial court granted the motion.

Apache also filed two motions approximately a year apart to exclude the testimony of Peter Huddleston, one of Sellers' expert witnesses on damages.<sup>[10]</sup> The trial court granted the first to the extent Huddleston's testimony was based on a December 31, 2015 expiration date for the North Block. The trial court granted the second in full.



Finally, Apache brought a no-evidence motion for partial summary judgment on Sellers' claims for breach of contract, negligence, gross negligence, common-law fraud, promissory fraud, fraud by nondisclosure,

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statutory fraud, and conversion. Apache argued that Sellers had no evidence of damages and could not prevail on their claims. The trial court granted the motion. It also rendered final judgment for Apache.

The court of appeals reversed in part and affirmed in part. 631 S.W.3d 502 (Tex. App.-Eastland 2021). Relevant here, the court of appeals held that:

(1) a fact issue exists as to the date the North Block expired or was released, *id.* at 531;

(2) § 4.1 of the PSAs required Apache to offer back all its interest in any affected lease, including the former Gunn interest, to Sellers, *id.* at 519-22;

(3) Apache failed to demonstrate that it was entitled to its requested declarations on § 2.5 of the PSAs, *id.* at 524-26;

(4) the trial court should have allowed Huddleston's testimony, *id.* at 541; and

(5) except for Sellers' conversion claim,<sup>[11]</sup> the trial court should not have granted Apache's no-evidence summary-judgment motion on damages, *id.* at 545.

**D**

This appeal requires us to answer three key questions. First, as

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a matter of law, did the North Block expire on December 31, 2015, or January 1, 2016?<sup>[12]</sup> Second, does § 4.1 of the PSAs require Apache to offer the former Gunn interest to Sellers? Third, what does "200% of Project Payout" mean under § 2.5 of the PSAs? We must also determine whether the trial court properly excluded Huddleston's testimony and properly granted Apache's no-evidence summary-judgment motion on Sellers' remaining claims. We address each issue in turn.

## II

We first turn to the North Block's expiration date. During the relevant time period, the primary term had expired and Apache was operating under the continuous-drilling provision. Under the lease language then in effect, continuing the lease rested on satisfying certain requirements "each year after the expiration of the Primary Term." The North Block's expiration date under the continuous-drilling provision, therefore, turns on the primary term's end date. Based on our precedent and the language the parties used, we hold that the primary term expired on January 1, 2010, and that the North Block therefore expired on January 1, 2016.

### A

Computing time periods has long been a source of confusion in a variety of contexts. A difficult case in the first volume of the Texas

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Reports struggled with this question. See *O'Connor v. Towns*, 1 Tex. 107, 109-17 (1846). Each subsequent century has brought a host of new cases. See, e.g., *Hazlewood v. Rogan*, 67 S.W. 80, 83-84 (Tex. 1902); *Nesbit v. State*, 227 S.W.3d 64, 67-69 (Tex. Crim. App. 2007). The particular context of today's case-

calculating a time period "from" or "after" a particular date-has been especially recurring.

As we describe in some detail below, this Court has recognized a common-law rule that operates to alleviate the apparent confusion and to provide predictability to parties who choose to measure dates by using language of that kind. The rule provides that the measuring date-the date "from" or "after" a period is to be measured-is excluded in calculating time periods. For periods of years, therefore, the period ends on the anniversary of the measuring date, not the day before the anniversary. See *Home Ins.*, 255 S.W.2d at 862. Thus, under this principle, a period measured in years "from" or "after" June 30 (the measuring date) will end on a future June 30, not a future June 29.

Adopting this frequently used formulation, as the parties did in this lease, must be taken as signaling their intent to embrace the common-law rule. Significant benefits attend this choice because using language for which the courts have recognized a definite meaning bestows certainty regarding how courts will interpret and enforce that language in the event of a dispute. But like other common-law rules that provide for the construction of contractual text, this well-settled default rule in no way prevents parties from choosing their own terms. See, e.g., *Perthuis v. Baylor Miraca Genetics Lab'ys, LLC*, 645 S.W.3d 228, 234 (Tex. 2022).

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Parties can displace the default rule by adopting text that requires some other result. If they do, our courts will enforce any lawful agreement regarding the calculation of time without requiring any particular formulation or magic language. For example, the parties here could have said in the lease, as they did in the memorandum, that the primary term ended on a date certain. Parties can choose from a myriad of other ways to clearly

measure time; they may devise their own bespoke methods, too.

The law has no real interest in *which* method parties select to measure time periods. But it is of exceptional importance that the law provide maximum interpretive clarity to those who enter into agreements, to third parties who may later enter into a contractual relationship governed by an existing contract, and to those who may make important decisions in reliance on such a contract's meaning. The clearer the law is to parties when they draft legal instruments, the more likely it is that their agreed text will reflect, and the courts in turn will enforce, their actual intent. *See id.* at 236. Reliable rules of construction achieve this result by eliminating-or at least greatly reducing-ambiguity. In the aggregate, the clarity of legal rules like this one provides substantial hidden savings by preventing wasteful and costly litigation.

The rule applicable to this case is a stable one that we have articulated since the earliest years of Texas statehood. For example, in addressing a statute imposing a deadline for perfecting an appeal to this Court, we put it this way:

It is a well-settled rule respecting the computation of time that where it is to be computed from or after a certain day from an act done, the day on which the act is done is to be

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excluded in the computation unless it appear[s] that a different computation was intended.

*Burr v. Lewis*, 6 Tex. 76, 81 (1851). In other words, by 1851, it was already clear that *both* parts of the rule—the default presumption *and*

the parties' freedom to displace it—were "well-settled."

We have since repeatedly observed that the "weight of authority" is that "in construing a lease" or other legal text with a time period "which is to run 'from' a day for a certain number of days, months, or years, ordinarily the day from which it is to run is to be excluded." *Hazlewood*, 67 S.W. at 83. We have applied this principle in multiple contexts, including determining a promissory note's maturity date, *Young v. Van Benthuysen*, 30 Tex. 762, 768 (1868); calculating time from the rendition of a judgment, *Lubbock v. Cook*, 49 Tex. 96, 100-01 (1878); establishing the time frame for filing suit after the rejection of a claim against an estate, *Hunter v. Lanius*, 18 S.W. 201, 202-03 (Tex. 1892); and in calculating a grace period for payment of a life insurance policy, *Aetna Life Ins. Co. v. Wimberly*, 112 S.W. 1038, 1039 (Tex. 1908).<sup>[13]</sup>

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We reiterated and added further clarity to the default rule in *Home Insurance*. That case concerned a crop-insurance policy that took effect to various degrees depending on the length of time "after the crop was up and showed a stand." 255 S.W.2d at 862. Echoing our decision in *Burr* from almost exactly a century earlier, we noted that "when time is to be computed *from or after* a certain day or date, the designated day is to be excluded and the last day of the period is to be included *unless a contrary intent is clearly manifested by the contract.*" *Id.* (emphasis added). Nothing in the policy "manifest[ed] an intention to include the first day in the computation of the period," *id.* at 863, so the default rule had not been displaced.

Since *Home Insurance*, Texas courts have continued to apply this rule even in contexts that extend well beyond ordinary contracts.<sup>[14]</sup> Indeed, the principle is sufficiently well embedded in our law that,



even without explicitly referencing the default rule, we have treated oil-and-gas leases that measure their primary terms (or other time periods) in terms of years "from" a certain date as expiring on their anniversary

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date. Such cases are both old and recent.<sup>[15]</sup> And the underlying principle is not merely part of the common law but has been adopted in at least some statutes.<sup>[16]</sup>

## B

The Bivins Ranch lease used the word "from" to calculate the expiration date of the primary term, so the common-law rule applies. An *ending* date of January 1 may initially generate some cognitive dissonance. January 1 is New Year's Day—the first day of the year and rarely the last day of *anything*. But there is no special rule for New Year's Day. The selection of other dates—as in our June 30 example, or in many of the cases cited above—do not seem particularly startling. The rule is objective and easily applied, and if it applies here, the conclusion is inescapable: the primary term of the lease ended on January 1, 2010. The only question remaining—at least as to the construction of the lease itself—is whether the Bivins Ranch lease clearly manifests any intent to depart from that rule. We conclude that it does not.

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Because it is so important, we again emphasize that the lease *could* have manifested such an intent. Departing from the default rule "requires no magic language." *Perthuis*, 645 S.W.3d at 237. But the lease's text must include *something* that either expressly describes how the date will be calculated or that, at minimum, is clearly incompatible with the default rule, amounting to displacement by necessary implication.<sup>[17]</sup> See *Home Ins.*, 255 S.W.2d at 862-63. Requiring such clarity "precludes *post hoc*

efforts to rewrite contracts . . . under the guise of ambiguity." *Perthuis*, 645 S.W.3d at 235.

This principle follows from our duty to determine a contract's meaning by looking to the parties' intent as expressed within the text. *Endeavor Energy Res., L.P. v. Discovery Operating, Inc.*, 554 S.W.3d 586, 595 (Tex. 2018). "A contract's plain language controls, not what one side or the other alleges they intended to say but did not." *Great Am. Ins. Co. v. Primo*, 512 S.W.3d 890, 893 (Tex. 2017) (internal quotations omitted). Otherwise, meaning could never be confidently predicted and litigation could never be avoided, destroying all the benefits that flow from having interpretive principles that apply neutrally and equally. We start with the two lease provisions directly relevant to the expiration of the primary term. The lease's introduction states:

THIS AGREEMENT, effective the 1<sup>st</sup> day of January, 2007 (the "Effective Date"), from which date the anniversary dates of this Lease shall be computed . . .

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(Emphasis added.) The lease's primary term provision, in turn, states:

Subject to the other provisions hereof, this Lease, which is a "Paid-up" Lease requiring no rentals, shall be in force for a Primary Term of three years from the effective date of this Lease.

(Emphasis added.)

Nothing in these provisions clearly entails a departure from the default rule. If anything, the reference to "anniversary dates" in the introduction to the lease indicates that

the parties intended to use the default rule. We see no other role or purpose for the "anniversary dates" language in the lease,<sup>[18]</sup> and neither Sellers nor Apache has suggested one. Regardless, at minimum, this language means there is no clear intent to displace the rule, which is reason enough to reject Sellers' position. Accordingly, the lease unambiguously imposes a January 1 expiration date for the primary term.

Sellers advance several forceful arguments for reading the Bivins Ranch lease as departing from the default rule. The possibilities include: (1) the effective date; (2) the 2010-2014 amendments; and (3) the memorandum of lease. At minimum, Sellers argue that these features

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generate sufficient ambiguity as to leave a fact question about the parties' intent, thus foreclosing summary judgment on this point. We cannot agree, however, because we are not prepared to undermine the stability that comes from over 170 years of our case law. None of Sellers' arguments-either individually or collectively-demonstrate the requisite textual intent to depart from the default rule. We address each of them in turn.

1

Sellers argue that the lease's effective date indicates that the parties to the lease intended a December 31 expiration date. According to Sellers, because the lease was effective January 1, 2007, concluding that the primary term expired on January 1, 2010, would result in a primary term of three years and a day, not three years. For the proposition that the use of an effective date negates the default common-law rule, they point to *Home Insurance* and cases from other courts. We think that this argument would subvert rather than apply the rule.

Sellers note that *Home Insurance* distinguished a court of appeals case-*Acme Life Insurance Co. v. White*-that involved a two-year clause limiting coverage for suicide in a life-insurance policy. In *Acme*, the policy's effective date was January 17, 1933, but the policyholder committed suicide on January 17, 1935. 99 S.W.2d 1059, 1060-61 (Tex. App.-Eastland 1936, writ dismiss'd). The *Acme* court held that this two-year period ended on January 16, 1935, not January 17, 1935, and therefore did not protect the insurance company. See *id.* at 1061. *Acme*, however, is not a precedent of this Court, and it involved a confluence of factors unique to the context of suicide-liability limitations that are

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absent here.<sup>[19]</sup> *Home Insurance* certainly did not endorse a broad exception that would swallow the very rule that it was confirming. We cannot do so either.<sup>[20]</sup>

Though perhaps technically accurate to say that ending the period on the anniversary date creates a primary term of "three years and a day," we fail to see why that matters. Parties are not confined to round numbers. Their contractual relationships generally can endure however long-and for precisely as long-as the parties wish. If the parties so desired, they easily could have drafted the lease using language that clearly included the effective date in the calculation. They could have said that the primary term was to last for three years and no longer. They also, of course, could have expressly included a December

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31 end date. But the construction "from" an effective date, without more, does not clearly communicate any such intent,<sup>[21]</sup> especially since parties *do* sometimes create time periods that both contain one extra day and end on the day *after* the anniversary.<sup>[22]</sup> Time



periods add "and a day" in all sorts of circumstances, legal and nonlegal. The old common-law rule was that if a victim died more than a year and a day after the alleged crime, it could not be homicide.<sup>[23]</sup> "A year and a day" criminal sentences remain common; in some systems, including under federal law, punishments of a year as opposed to "a year and a day" demarcate the line between a felony and a misdemeanor. *See* 18 U.S.C. § 3559(a); *United States v. Graham*, 169 F.3d 787, 792 (3d Cir. 1999). Shahrazad

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spent not one thousand nights telling her stories but, as the eponymous title of Burton's translation recounts, a "thousand nights and a night."

All of this is to say that the courts typically have no interest in the parties' choice of a term's length. Add a day, subtract a day—the parties may do what they like. But courts *do* value having a predictable rule that will provide certainty to contracting parties and treat all of them the same. *See Smith v. Dickey*, 11 S.W. 1049, 1050 (Tex. 1889) (noting, in the context of calculating time, the benefit of precedential "uniformity" and of "establish[ing] a certain rule, by which parties may in future be guided").

Sellers, however, also point to a Court of Criminal Appeals case holding that a ten-year probation term that started on April 29, 1994, ended on April 28, 2004, not April 29, 2004. *See Nesbit v. State*, 227 S.W.3d 64, 65 (Tex. Crim. App. 2007). That case distinguished time periods during which "one must perform some act" from time periods during which "one may exercise a particular right (or must suffer a particular penalty)." *Id.* at 67. Sellers argue that the Bivins Ranch lease falls into the latter category and the effective date must therefore be included in the calculation. Whatever the merit of the *Nesbit* categories in the criminal context, such a fine distinction is bound to generate wasteful litigation in this

context.<sup>[24]</sup> That likelihood is heightened for contracts like the Bivins Ranch lease, in which the primary term functioned *both* as a period during which the lessee could exercise a

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particular right (leasing the property) *and* during which the lessee had to perform some act (meeting the requirements to perpetuate the lease).

In short, we reaffirm that the mere use of an effective date within a contract is not enough to depart from the default rule.

2

Sellers also allude to the 2010-2014 amendments. To the extent that Sellers read these amendments to inform the analysis,<sup>[25]</sup> we conclude that the amendments would support reading the lease to adhere to the default rule.

As described earlier, the amendments allowed the lease to continue under the continuous-drilling provision if 60,000 feet in the aggregate were drilled each year as opposed to 20,000 feet on each block. More important for our purposes, however, is *how* the amendments addressed timing. Start with the following language from the original lease:

By "continuous drilling operations on each designated block" is meant the commencement of a well on each block and the actual drilling by Lessee of 20,000 feet in one or more wells on each block *each year after the expiration of the Primary Term.*

(Emphasis added.) Each amendment replaced the italicized language in two important ways:





(1) the amendments used "during" instead of "after" and (2) the amendments either referred to the "calendar year" or to a defined time period with a December 31 end date (although two were later extended to April 1).

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The amendments' use of markedly different durational language ("during" instead of "after" or "from") and imposition of specific dates not necessarily connected to the start and end dates of the primary term show a textually demonstrable intent to *differ* from the primary term in the method of measuring time. And, moreover, they show that the parties were perfectly capable of using ordinary language to depart from the default rule when they wished to do so. Indeed, the amendments confirm the point we have made—that it is easy to accomplish such a departure.

The 2010 amendment—"executed to be effective as of January 1, 2010"—stated that "the Lease is *currently* in full force and effect beyond its Primary Term." (Emphasis added.) Arguably, this indicates an understanding that the primary term had *already* expired as of January 1, 2010. Regardless of whether the lease and this statement should be construed together, however,<sup>[26]</sup> this statement does not amend the primary-term provision (although the parties certainly *could* have done so) or otherwise provide the clarity necessary to displace the default rule.

3

Having determined that the lease's date provisions and the 2010- 2014 amendments do not clearly indicate a departure from the default rule, we next address the memorandum of lease. The court of appeals held that a fact issue existed regarding the primary term's expiration date largely because of its conclusion that the memorandum should be construed together with the lease, not treated as extrinsic

evidence. *See* 631 S.W.3d at 530-31. We must again respectfully disagree with the

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court of appeals' conclusion.

The memorandum states that the primary term expires on December 31, 2009:

Subject to other provisions of the Lease, the Primary Term thereof expires on the 31<sup>st</sup> day of December, 2009. The Lease contains other provisions with respect to lease continuation, operations, royalties, notice by Lessee to Lessors, assignments, and provisions relating to the protection of the surface owners' rights and estates.

And as noted above, the memorandum also stated that the transaction was "upon the terms, for the consideration, and subject to the conditions in the Lease specified."

At least for argument's sake, we can agree that this memorandum indicates the parties' actual intent that the primary term would end on December 31, 2009. If such an explicit end date had been included in the lease itself, of course, that would have sufficed to depart from the default rule. The statement's placement in the memorandum, however, presents two potential issues. First, should the memorandum be construed together with the lease? And second, regardless of the answer to that first question, does the memorandum's important caveat (*i.e.*, that it is "subject to the conditions in the Lease specified") mean that the lease's date provision prevails over the memorandum's December 31 date?

We need not resolve the first question. Again, at least for argument's sake, we can accept Sellers' contention that we should read the memorandum along with the lease.

Indeed, we commonly read "multiple separate contracts, documents, and agreements" together as "part of a single, unified instrument." *Rieder v. Woods*, 603 S.W.3d 86, 94 (Tex. 2020) (internal quotations omitted); see also *Burlington Res. Oil &*

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*Gas Co. LP v. Tex. Crude Energy, LLC*, 573 S.W.3d 198, 208 (Tex. 2019). Whether those principles apply here is immaterial, however, because the second question-concerning the memorandum's caveat-is dispositive.

The memorandum expressly subjugates itself to the lease, so it does not matter whether we treat the memorandum as extrinsic evidence or as a document to be read with the lease. Both routes lead to the January 1, 2010 end date. If the memorandum is extrinsic evidence, it may only be considered if the lease is ambiguous, but it cannot be used to create ambiguity. See *TRO-X, L.P. v. Anadarko Petroleum Corp.*, 548 S.W.3d 458, 466 (Tex. 2018). And if the two documents are construed together, as we assume they should be, we must stop when the memorandum's own text prioritizes the lease's terms, proclaiming that the lease controls whenever the two are in conflict. See Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 126 (2012) ("Subordinating language (signaled by *subject to*) . . . merely shows which provision prevails in the event of a clash[.]").

As we have concluded above, the lease unambiguously imposes a January 1 expiration date. The memorandum itself requires the lease's January 1 expiration date to prevail over the memorandum's own December 31 date.<sup>[27]</sup>

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Sellers also argue that, because the memorandum was *recorded*, its December 31 end date binds Apache. They cite our

statement that "[i]t is well settled that a purchaser is bound by *every* recital, reference and reservation contained in or fairly disclosed by any instrument which forms an essential link in the chain of title under which he claims." *Westland Oil Dev. Corp. v. Gulf Oil Corp.*, 637 S.W.2d 903, 908 (Tex. 1982) (internal quotations omitted). *Westland Oil*, however, undermines Sellers' contention. In that case, we noted that purchasers are generally responsible for following the paper trail of documents referenced in recorded instruments. See *id.* at 907-08. The *recorded* memorandum in this case took pains to make manifest that the terms of the *unrecorded* full-length lease control over the memorandum, thus putting interested parties on notice of the need to consult the lease before acting in reliance on the memorandum. Apache therefore correctly relies on the lease itself.

C

Finally, Sellers argue that the North Block actually terminated on December 31, 2015, or at some point during 2015 when Apache ceased to comply with the continuous-drilling provision. In Sellers' view, the time Apache ceased to comply (and the lease automatically terminated), based on when Apache stopped continuous-drilling operations, is a fact issue that Apache had to conclusively prove to be

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entitled to summary judgment.

We disagree. The lease states that the continuous-drilling requirements must be met "*each year after* the expiration of the Primary Term." (Emphasis added.) Therefore, we agree with Apache that, under the text of the lease, the lessees only ceased to comply after each January 1 passed without having satisfied the necessary drilling obligations. In this case, it is undisputed that, as of January



1, 2016, the continuous-drilling requirements had not been fulfilled for the North Block.

However, Sellers also point to a release Apache executed for the North Block. The release was dated March 2016 and signed by Apache in August 2016, but it stated that it was effective as of December 31, 2015. Sellers correctly note that the release is extrinsic evidence that we may not use to determine the lease's meaning. *See TRO-X*, 548 S.W.3d at 466. However, Sellers argue that the release constitutes evidence of when Apache ceased to comply with the continuous-drilling provision.

Since we have concluded that the primary term expired January 1, 2010-and therefore that the North Block expired January 1, 2016-the question becomes whether Apache retroactively released the North Block early. The continuous-drilling provision requires the lessee to release the applicable block once the lessee ceases to comply with the requirements to maintain the lease. The lease also contemplates early releases.

To determine whether a *signed release* could retroactively change the *termination date*, we examine the lease's terms. *Cf. Tittizer v. Union Gas Corp.*, 171 S.W.3d 857, 861 (Tex. 2005) (addressing whether the oil-and-gas lease at issue authorized units to be pooled with a retroactive effective date). Even assuming that the lease authorized retroactive

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releases, however, the release itself does not purport to retroactively *change* the date of a termination that had *already occurred*. Whatever the release may have said, it did not change what matters here: the historical fact that the North Block terminated on January 1, 2016.

To summarize: We conclude that the Bivins Ranch lease does not depart from the

default rule. The lease therefore unambiguously creates a January 1 expiration date. *See Pathfinder Oil & Gas, Inc. v. Great W. Drilling, Ltd.*, 574 S.W.3d 882, 889 (Tex. 2019) ("A written instrument that can be given a certain or definite legal meaning or interpretation is not ambiguous and will therefore be construed as [a] matter of law."). Apache and Sellers agree that the requirements to continue the North Block during the pertinent time period were not satisfied, and we have concluded that Apache did not retroactively change the date the North Block expired. No question of material fact regarding the North Block's expiration date remains. The North Block expired on January 1, 2016.

The duty of the courts is to accurately discern the intent expressed in the lease. *See, e.g., Matagorda Cnty. Hosp. Dist. v. Burwell*, 189 S.W.3d 738, 740 (Tex. 2006). The duty of contracting parties is to ensure that their *actual* intent is reflected in the legal documents they use to memorialize their agreements. "[I]t is not the actual intent of the parties that governs, but the actual intent of the parties *as expressed in the instrument as a whole*[" *Luckel v. White*, 819 S.W.2d 459, 462 (Tex. 1991). Holding fast to legal principles is especially important in contexts-like the computation of time-that are naturally susceptible to confusion. The parties to the Bivins Ranch lease could have easily

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departed from the default rule. They simply needed to say so clearly within the four corners of the lease. *Cf. Gilbert Tex. Constr., L.P. v. Underwriters at Lloyd's London*, 327 S.W.3d 118, 127 (Tex. 2010) ("[H]ad [the exclusion] been intended to be so narrow . . . it would have been simple to have said so."). They did not do so here.

III



We next address two arguments that arise under the PSAs.

**A**

Sellers argue that § 4.1 of each PSA required Apache to offer back to each Seller *all* of Apache's interest in the North Block. They contend that this includes the interests Apache purchased from *other* sellers, and specifically the former Gunn interest, not merely the respective interest that Apache purchased from each individual Seller. Section 4.1 states in relevant part:

Purchaser hereby covenants to make a good faith effort to follow the Commitment in order to perpetuate the Leases, but if any Commitment contemplates or will result in the loss or release of one or more of the Leases (or parts thereof), then Purchaser shall concurrently offer *all of Purchaser's interest in the affected Leases (or parts thereof)* to Seller at no cost to Seller and upon Seller's acceptance of such Leases, Purchaser shall transfer and assign the affected Leases (or parts thereof) to Seller.

(Emphasis added.) Sellers make three main points in support of their position. We will sketch those points and then address them together. First, Sellers note that § 4.1's text refers to "all" of Apache's interest in the leases at issue. In Sellers' view, "all" means just that-*all*-and therefore encompasses the former Gunn interest.

Second, Sellers argue that § 4.1 should be read in light of § 2.5,

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which-unlike § 4.1-specifically limits the "interest" involved to the interest that each

Seller conveyed to Apache. For example, § 2.5 states that "Seller shall have the right, but not the obligation . . . to back-in for up to one-third (1/3rd) of the *interests conveyed to Purchaser in and to the Assets hereunder at Closing[.]*" (Emphasis added.) Section 2.5 repeatedly distinguishes between the interest purchased from *that particular Seller* and interests purchased from others.

Third, Sellers point to § 4.1's purpose statement. If § 4.1 were to be triggered, no Seller had any obligation to accept the affected Leases, but § 4.1 also explains that

[t]he purpose and intent of, and Purchaser's agreement pursuant to, this provision is to provide Seller the option and ability to perpetuate all the Leases so offered to Purchaser through a drilling program with one drilling rig, and this provision shall be interpreted to afford Seller that option and ability.

In Sellers' view, unless offered interests purchased from other Sellers, a minority Seller-such as SellmoCo, with only a 1% working interest in the Bivins Area leases prior to the PSAs-would have difficulty perpetuating the lease on its own, contravening that purpose clause.

Sellers argue that these textual indicators compel their reading of § 4.1. But they cannot overcome one glaring problem. As Apache notes, § 4.1 expressly refers to the singular "Seller," not the plural "Sellers." And each Seller had its own PSA. Therefore, if Apache was required under one PSA to offer back to *each individual Seller* the interests it purchased from *all others*, it would owe the *same* interests to each other individual Seller. The obvious difficulty is that if Sellers' interpretation is correct, then multiple parties would each simultaneously

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have the right to the exact same interests.

Two parties can own *part* of the same interest, but two parties cannot each separately own 100% of it. Would the first party to accept get everything? Would Apache have the right to prioritize the order in which it approached each Seller, or to allocate the interests as it saw fit, or to serve its own interests? Must the new allocation be tethered to the old allocation? Could a consortium of the Sellers develop a new entity to accept the interests jointly? What if some of them chose not to participate? Would Apache be liable if it chose one of these methods and some or all of the Sellers challenged it? Would Apache be liable if the Sellers later fought over who was entitled to what share?

If § 4.1 expected Apache to make the offer that Sellers claim, it is clear that the parties' agreements would have explained how the process of distributing these interests would work. Though § 4.1 provides no such direction, both the Bivins Area and Tascosa Dome JOAs provide guidance as to how to distribute interests in *different* situations. For example, under the JOAs, when one party wants to surrender a lease, that party is required to give notice to "all parties." If "all parties" do not consent, the surrendering party "shall assign . . . all of its interest in such Lease, or portion thereof, . . . to the parties not consenting to such surrender." "If the assignment or lease is in favor of more than one party, the interest shall be shared by such parties in the proportions that the interest of each bears to the total interest of all such parties."

A similar but not identical mechanism applies when a party abandons an already-producing well. The JOAs also establish a proportionate-allocation system when a party renews or replaces a lease

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subject to the JOAs. In addition, the area-of-mutual-interest (AMI) provision requires any party who acquires an interest in lands within the AMI to offer each other party "the opportunity to acquire its proportionate share of the AMI Acquired Interest[.]"

Particularly given the detailed distribution mechanisms in other provisions, the lack of one in § 4.1 indicates that Apache only had to offer each Seller the interest acquired from that particular Seller.<sup>[28]</sup> If the parties intended some other procedure to apply, it was their responsibility to include it in the text.<sup>[29]</sup>

If any doubts remained, they would be dispelled by our obligation to preserve rather than remake a contract's text. Imposing the duty on Apache that Sellers demand would amount to drafting language-like the language in other provisions that described procedures for reallocating interests-and adding it to § 4.1. Our interpretation, by contrast, is consistent with the language as written; it requires us to neither add

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nor subtract text in describing what Apache must do. Indeed, the word "all" in § 4.1 is equally understandable if read in juxtaposition to § 2.5's back-in trigger: in contrast to § 2.5, in which each Seller receives only *one-third* of the interest it sold to Apache, under § 4.1, each Seller receives *all* the interest that *it* sold to Apache. Sellers argue that § 4.1's purpose provision supports their argument, but they have not explained why its purpose could not be achieved through some other means, such as any interested Sellers buying out the remaining interests. They could achieve that goal together by each agreeing to accept its *own* interest and then transferring or selling it to others at whatever rate was desirable. Placing that burden on Apache, though, is impermissible absent a textual warrant to do so.

Sellers contend that it *was* possible for Apache to perform under the contract. They cite an October 29, 2015 letter from Apache as evidence. This joint letter to Sellers included Apache's 2016 commitment and offered Sellers collectively all of Apache's interest in leases that the commitment anticipated losing or releasing. The letter requested that Sellers inform Apache "whether each Seller accepts this offer, and, if so, the interest in the affected Leases that each Seller accepts." Apache counters that (1) the letter clarifies that it is not intended to waive any arguments for litigation and (2) the letter does not actually satisfy § 4.1 because it offered Apache's interest to Sellers *collectively* instead of *individually*.

We agree that this letter, though perhaps a workable and sensible solution, does not actually conform to § 4.1's text. Apache's one-time willingness to try only underscores that there was no way for Apache or

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any party to really *know* how to do it. The parties may well have intended a proportionate-allocation system similar to those in the JOAs. Or perhaps they intended for Apache to take the approach in its letter. But they did not say either, much less which, and we decline to import such a mechanism into the text. We therefore conclude that Apache was not required to offer the former Gunn interest back under § 4.1.<sup>[30]</sup>

## B

We next turn to § 2.5 of each PSA, which provides "the right, but not the obligation," to "back-in for up to one-third (1/3rd) of the interests conveyed to Purchaser in and to the Assets hereunder at Closing." This right is "exercisable at Two Hundred Percent (200%) of Project Payout (the '**Back-In Trigger**')." In turn, "Project Payout" is defined as follows:

**"Project Payout"** means the first day of the next calendar month following that point in time when the sum of the cumulative Production Income and/or Other Revenues, equals the sum of the Preliminary Purchase Price . . . , the Drilling Credit, the actual costs borne by Purchaser to explore, drill and complete all the wells (whether productive or dry hole) on the Leases (to the extent such costs are attributable to interests which Purchaser acquired in and to the Leases hereunder, but excluding any and all costs associated with other interests which Purchaser may acquire in the Leases), and the actual Operating Costs borne by Purchaser for operation of the Leases and all wells located thereon.

Section 2.5 also defines "Production Income," "Other Revenues," and "Operating Costs."

Apache argues that "Two Hundred Percent (200%) of Project

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Payout" refers to the point when the specified revenues *double* specified expenses. While Sellers' argument is a bit unclear, Sellers seem to argue that it refers to when specified revenues *equal* specified expenses.

We agree with Apache that § 2.5 requires a 2:1 ratio for specified revenues versus specified expenses. True, Apache's reading results in a rather awkward linguistic construction in which the "Back-In Trigger" would be literally read (if the definition is ported into the text) as "200% of the first day of the next calendar month following that point in time when" specified revenues equal

specified expenses. Only Apache's reading, however, explains the presence of the 200% language.<sup>[31]</sup>

The court of appeals also held that there is a fact issue as to whether Apache's costs should all be included in the Project Payout calculation. *See* 631 S.W.3d at 525. Sellers assert that the court of appeals properly decided this issue, and Apache argues that it is irrelevant. We therefore do not address it here.

**IV**

We next consider whether the trial court properly excluded the testimony of Peter Huddleston, one of Sellers' expert witnesses. Huddleston opined on the fair market value of the leases at issue.

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Apache filed two motions to exclude his testimony. The first, filed in February 2018, was based both on his methodology and the fact that his damages calculations for the North Block rested on a December 31, 2015 expiration date. The trial court granted this motion in part, excluding Huddleston's testimony to the extent it was based on an expiration date for the North Block other than January 1, 2016.

Just over a year later, Apache filed a second motion to exclude Huddleston's testimony, this time because Huddleston had not updated his calculations to account for the trial court's rulings regarding the North Block's expiration date and the former Gunn interest. The trial court granted the motion in full.

Because the court of appeals reversed the trial court's summary-judgment orders regarding the expiration date of the North Block and how to account for the former Gunn interest, it also reversed the trial court's exclusion of Huddleston. *See id.* at 541.

However, as discussed above, we conclude that the North Block expired on January 1, 2016, and that Apache was not required to offer Sellers the former Gunn interest. The trial court therefore properly excluded Huddleston's testimony.<sup>[32]</sup>

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**V**

Finally-finally-Apache argues that, if the trial court properly excluded Huddleston's testimony, we should affirm the trial court's order granting Apache's no-evidence summary-judgment motion on the remaining claims. Without Huddleston's testimony, Apache argues, Sellers have no evidence of damages, a necessary element of each of their claims.

The court of appeals reversed the no-evidence summary-judgment order on the basis that Huddleston's opinions should have been admitted. *See id.* at 544. This basis for reversing the order was improper because of our holding that at least parts of Huddleston's testimony were properly excluded. However, given its disposition, the court of appeals had no need to address whether Sellers otherwise produced evidence sufficient to demonstrate damages for the claims still at issue. We think it prudent to remand to the court of appeals to address this issue in the first instance and then to render judgment or remand to the trial court as appropriate.

**VI**

We reverse the judgment of the court of appeals as to those issues that the parties presented for our review. We remand to that court for further proceedings.

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Notes:

[1] Respondents are Apollo Exploration, LLC;



Cogent Exploration, Ltd., Co.; and SellmoCo, LLC.

[2] Gunn was followed by Cogent (31.17%), Apollo (15.67%), and SellmoCo (1%). Other companies not involved in the transactions between Apache and Sellers (and not in this lawsuit) owned the other 2%.

[3] A shut-in gas well or a "well for which drilling operations have commenced" also satisfied this requirement.

[4] Gunn and Cogent also sold Apache 75% of their working interest in certain leases in an area called the "Tascosa Dome," giving Apache a 60.6% interest in those leases. Together, the Bivins Area and Tascosa Dome leases constitute the 109 leases at issue in this case.

[5] The PSAs also incorporated a separate JOA for the Tascosa Dome area.

[6] Apache does not necessarily agree that Sellers' theory of calculating damages is correct—it simply points out that *if* it is correct, then the one-day difference in expiration dates would have a one-year difference regarding when the relevant calculation would be made.

[7] Sellers alleged that Apache failed to provide required written payout statements (required by § 4.2 of each PSA) for 2012 and 2013 showing the progress toward Project Payout and the back-in trigger; overcalculated buyout balances (the amount for each Seller to pay the difference necessary to exercise the back-in trigger) once it did provide a payout statement; and failed to respond in a timely manner to Sellers' audit exceptions.

[8] Claims regarding the North Block were added in March 2016.

[9] Sellers also alleged that Apache failed to provide them the opportunity to acquire their proportionate share of after-acquired acreage as required by the JOAs.

[10] Sellers had also designated two other expert witnesses on damages, but the trial court excluded both.

[11] As presented to us, Sellers' remaining claims are for breach of contract, negligence and gross negligence, common-law fraud, promissory fraud, fraud by nondisclosure, and statutory fraud. Sellers nonsuited their claims for an accounting, declaratory judgment, and trespass to try title. The court of appeals affirmed the summary-judgment orders on Sellers' claims for breach of express trust, breach of fiduciary duty, misapplication of fiduciary property, and conversion. *See* 631 S.W.3d at 533, 544-45. Sellers do not ask us to review these issues.

[12] Under this case's procedural posture, the parties have not asked us to resolve whether Apache breached § 4.1 by not offering the North Block back to Sellers. We accordingly take no position on that question. Instead, we address only the date the North Block expired, which is relevant to determining damages to the extent Apache did breach § 4.1.

[13] It is usually clear when parties depart from the default rule, but we have also had occasion to elaborate on the kind of circumstances that constitute sufficient indicia of objective intent to do so. For example, *McGee v. Corbin*, 70 S.W. 79 (Tex. 1902), concerned the state's distribution of land parcels to raise money for the common-school fund. The commissioner of the general land office had executed the two leases at issue "for a term of two years from the 26th day of August, 1899." *Id.* The leases had to have expired before new applications for those properties could be effective. *Id.* at 80. The parties disputed whether the leases expired at midnight on August 25 or 26, 1901. We repeated the default rule, *id.*, but held that the leases departed from the rule in that unique context. The commissioner had treated at least one of the leases as expiring on August 25, and we applied a presumption



that the land commissioner, a government official, had acted properly and treated all parties alike. *See id.* We further presumed that this was the customary practice of the land commissioner that he applied uniformly to all such leases, therefore resulting in an established meaning in that singular context. *See id.* at 80-81. The fact that the exact same form was used for all affected leases, and the need to ensure the stability of a vast number of land titles in the area (and perhaps beyond), combined with the unusual governmental context, led us to deem the default rule adequately displaced as a matter of law in this narrow and almost *sui generis* context. *See id.*

[14] *See, e.g., Hinojosa v. Longoria*, 381 S.W.2d 140, 140-41 (Tex. Civ. App.-San Antonio 1964, writ dismissed) (per curiam) (time period for contesting election); *Villarreal v. Brooks County*, 470 S.W.2d 60, 61-62 (Tex. Civ. App.-San Antonio 1971, no writ) (county commissioners' court redistricting orders); *In re Neutral Posture, Inc.*, 135 S.W.3d 725, 729 (Tex. App.-Houston [1st Dist.] 2003, no pet.) (expiration of arbitration clause in a settlement agreement). We express no opinion about the correctness of any of these decisions but note them only for illustration.

[15] *See Freeman v. Magnolia Petroleum Co.*, 171 S.W.2d 339, 340-42 (Tex. 1943) (primary term in oil-and-gas lease dated April 7, 1930, and which stated that it would "remain in force for a term of ten years from this date" ended April 7, 1940); *Gulf Oil Corp. v. Southland Royalty Co.*, 496 S.W.2d 547, 548, 552 (Tex. 1973) (oil-and-gas lease executed on July 14, 1925, terminated on July 14, 1975, when it stated that it "shall not remain in force longer than fifty (50) years from this date"); *cf. ConocoPhillips Co. v. Koopmann*, 547 S.W.3d 858, 863, 865-66 (Tex. 2018) (non-participating royalty interest that was "reserved for the limited term of 15 years from the date of" a December 27, 1996 deed had a default end date of December 27, 2011).

[16] Notably, the legislature has adopted this principle for statutory computations of days and months. *See* Tex. Gov't Code § 311.014(a), (c).

[17] For example, we have noted that such clear intent is present when necessary to ensure stability for land titles in unique governmental contexts, *see supra* note 13 (discussing *McGee*, 70 S.W. at 80-81), or to "preserve rights, prevent forfeitures and favor parties, where penal consequences are sought to be enforced," *O'Connor*, 1 Tex. at 116.

[18] In oil-and-gas leases, "anniversary date" language is often used to denote "[t]he date on which payment of delay rental or shut-in gas well royalty must be made in order to keep a lease effective" under a lease's delay-rental clause or shut-in gas well clause. 8 Patrick H. Martin & Bruce M. Kramer, *Williams & Meyers, Oil and Gas Law* 51 (LexisNexis Matthew Bender 2022). But the Bivins Ranch lease is a paid-up lease, which is a lease "under which all delay rentals bargained for are paid in advance, and this single payment maintains the lease during the primary term." *ConocoPhillips*, 547 S.W.3d at 874. Delay-rental payments due on the lease's anniversary date were therefore unnecessary. And the lease's shut-in royalty clause measures time based on the anniversary of the date the well is shut in, not the anniversary date of the lease itself.

[19] Sellers also cite another lower-court case as an example of reading a period of years to end the day before the anniversary date. *See Home Benefit Ass'n v. Robbins*, 34 S.W.2d 329, 331 (Tex. Civ. App.-Waco 1930, no writ). We express no view about *Robbins* beyond observing that nothing in that case is inconsistent with our conclusion today. The disability-benefits certificate at issue had to have been "in force for a period of one (1) year prior to sustaining said accident," *id.* at 330 (emphasis added), not "in force for a period of one year from the effective date."

[20] The proposition that an effective date should be included when calculating a time period is far from a consensus principle of law. Compare, e.g., *Ratcliff v. La. Indus. Life Ins. Co.*, 169 So. 572, 573 (La. 1936) (including the first day a life insurance policy was in force to compute time when the relevant policy language was "if death occur one year thereafter" the relevant date), with, e.g., *Winn v. Nilsen*, 670 P.2d 588, 589-91 (Okla. 1983) (holding that a five-year primary term expired on its anniversary date and noting that, though a lease (unless it states otherwise) takes effect on the day it is executed, "[w]hen . . . the time is used in the context to effect a simple identification of a particular time period, an anniversary-to-anniversary period is indicated," *id.* at 590), and *E. Oil Co. v. Coulehan*, 64 S.E. 836, 838-39 (W.Va. 1909) (holding that a five-year term in an oil-and-gas lease ended on the anniversary date notwithstanding the effective date).

[21] There is no indication of any settled meaning requiring an effective date in the primary term of an oil-and-gas lease to be included in the calculation of time. Compare *Hardin-Simmons Univ. v. Hunt Cimmaron Ltd. P'ship*, No. 07-15-00303-CV, 2017 WL 3197920, at \*7 (Tex. App.-Amarillo 2017, pet. denied) (noting that the parties did not dispute that a lease with a five-year primary term starting August 1, 2006, had a default end date of July 31, 2011), with *Clayton Williams Energy, Inc. v. BMT O & G TX, L.P.*, 473 S.W.3d 341, 344-46 (Tex. App.-El Paso 2015, pet. denied) (noting that "[t]he Bass Lease's primary term began June 1, 2008 and was slated to end three years later on June 1, 2011 per the habendum clause," *id.* at 346, when the lease stated that it would "remain in force for three (3) years from the Effective Date hereof," *id.* at 344). At least in practice, in other words, simply having an effective date does not clearly communicate an intent to depart from the default rule.

[22] See, e.g., *Silo Rest. Inc. v. Allied Prop. & Cas. Ins. Co.*, 420 F.Supp.3d 562, 573, 577-80 (W.D. Tex. 2019) (applying Texas law to hold that an insurance policy's limitations period of "within 2 years and one day from the date the cause of action first accrues" ended the day after the anniversary).

[23] Parliament did not abrogate that common-law rule until 1996. See Law Reform (Year and a Day Rule) Act 1996, c. 19. The Tennessee Supreme Court abolished that doctrine using its common-law authority, leading to a U.S. Supreme Court case about the consequences of that abolition. See *Rogers v. Tennessee*, 532 U.S. 451 (2001).

[24] Notably, the conclusion in *Nesbit* is consistent with our observation in *O'Connor v. Towns* that time should be computed to "favor parties, where penal consequences are sought to be enforced." 1 Tex. at 116 (emphasis added); see also *Smith*, 11 S.W. at 1050. That thumb on the scale, of course, does not exist with respect to freely and mutually agreed contracts among equals.

[25] Sellers emphasize the amendments' express December 31 end dates in their briefing's *description* of the record—that is, in their statement of facts—rather than in their formal argument section regarding the end date of the primary term. We address the amendments in the interest of completeness.

[26] This statement was within the parties' agreement to amend the lease but was not added to the text of the lease itself.

[27] Scalia and Garner soundly advise drafters that "[s]ubject to should never introduce a provision that completely contradicts the provision that the *subject to* phrase modifies." Scalia & Garner, *supra*, at 126. If a text insisted on pointlessly doing so, of course, the superior authority would still prevail over the subordinate one. A statute that "completely contradicts" a constitutional provision, after all, would unquestionably remain "subject to," and must yield to, whatever the

Constitution said. But, though we do read the lease to institute a January 1 expiration date, we also do not read the memorandum to violate this sound drafting principle. In any event, the "subject to" phrase does not directly repudiate the lease, which does not bluntly say "January 1." At the same time, the lease can unambiguously compel that result despite not expressly stating it—that is the whole point of the default rule discussed in Part II.A, *supra*. The memorandum may well have expected December 31 to be the final date, but its language clearly (and we must assume purposefully) leaves the ultimate determination to the lease itself.

[28] Sellers argue that after-acquired title provisions in the JOAs—specifically the AMI provision—required Apache to offer Sellers a proportionate share of applicable lease interests, such as the former Gunn interest, that Apache acquired after executing the PSAs. Sellers contend that we should read § 4.1 in light of this requirement. However, as noted above, the fact that the AMI provision—in contrast to § 4.1—includes a proportionate-distribution mechanism undermines rather than helps Sellers' argument. And even if Sellers are correct that the AMI provision required Apache to offer Sellers a proportionate share of the former Gunn interest—a question on which we take no position—that speaks only to whether Apache violated the AMI provision, not whether it violated § 4.1. The two are separate questions.

[29] The parties used a model-form agreement for the JOAs. They went line-by-line through the model form, crossing out provisions that they decided not to apply, including certain provisions related to maintaining uniformity of interests in the contract area. The parties' use of the model form confirms that they carefully addressed circumstances in which reallocation might be necessary.

[30] Because we conclude that § 4.1 did not require Apache to offer back interests Apache purchased from other parties, we do not

address whether such a requirement would amount to a forfeiture or violate the rule against perpetuities.

[31] The court of appeals reversed the trial court's judgment on this issue because the court of appeals read Apache's § 2.5 summary-judgment motion to use the term "investment" to replace the contractually defined term "Project Payout." See 631 S.W.3d at 524. We agree with Apache, however, that its use of "return on investment" was a shorthand way of referring to the more detailed "Project Payout" definition. Nothing in our interpretation alters "Project Payout" as a defined term. Because we conclude that the back-in trigger is reached when the specified revenues double the specified expenses, we need not reach Apache's alternative argument that § 2.5 would otherwise be too indefinite to enforce.

[32] Sellers also argue that the trial court abused its discretion in excluding Huddleston's testimony because, according to Sellers, no rule requires an expert to change or modify his opinion after the trial court grants partial summary judgments. It can hardly be an abuse of discretion to exclude expert testimony that is based on legal conclusions already rejected by the trial court. However, Sellers further contend that the trial court erred by excluding Huddleston's opinions in full because his opinions also contained information not based on the North Block's expiration date or on how to account for the former Gunn interest. Apache, in contrast, argues that Sellers waived this issue. We express no view on the merits of this dispute or whether it was preserved for the court of appeals' review; that court may address these matters in the first instance on remand.

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**EX PARTE LUCAS VIEIRA, Appellant****No. PD-0690-22****Court of Criminal Appeals of Texas****September 27, 2023**

ON APPELLANT'S PETITION FOR DISCRETIONARY REVIEW FROM THE FIRST COURT OF APPEALS HARRIS COUNTY

KELLER, P.J., delivered the opinion of the Court in which HERVEY, RICHARDSON, YEARY, NEWELL, WALKER, SLAUGHTER and MCCLURE, JJ., joined. KEEL, J., concurred.

**OPINION**

Was an indictment returned on July 9, 2021, for an aggravated assault committed on July 7, 2019, brought within the applicable two-year statute of limitations? We find that it was not and reverse the judgments of the courts below.

**I. BACKGROUND****A. Trial Court**

On July 9, 2021, Appellant was indicted for aggravated assault by threat while acting as a

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public servant.<sup>[1]</sup> The indictment alleged that the offense occurred on or about July 7, 2019.

Appellant filed a pretrial application for writ of habeas corpus, claiming the indictment is time-barred because it was filed more than two years after the date of the offense. The trial court denied Appellant's habeas application, and Appellant timely appealed.

**B. Court of Appeals**

Appellant argued on direct appeal that under Code of Criminal Procedure Article 12.04, the last day of the two-year limitations period for an offense occurring on July 7, 2019, is July 7, 2021, and that an indictment filed on July 9, 2021, is two days late.<sup>[2]</sup> The court of appeals disagreed:

Here, the alleged offense occurred on July 7, 2019. Pursuant to article 12.04, July 7, 2019 is excluded from the computation of the limitations period, and the first day of the period was July 8, 2019. *See* Tex. Code Crim. Proc. Ann. art. 12.04 ("The day on which the offense was committed . . . shall be excluded from the computation of time."). Applying the plain language of the statute, the two-year limitations period for aggravated assault ended on July 8, 2021. *See* Tex. Code Crim. Proc. Ann. art. 12.02(a), 12.03. However, as appellant acknowledges, taking into account the language of article 12.04, we must not "count[ ] the day of the indictment," and therefore, an indictment dated July 9, 2021 would be "filed on the last day." *See* Tex. Code Crim. Proc. Ann. art. 12.04 (" . . . the day on which the indictment or information is presented shall be excluded from the computation of time."). Accordingly, we conclude that the indictment, dated July 9, 2021, was returned within the limitations period. *See* Tex. Code Crim. Proc. Ann. art. 12.02(a), 12.04.<sup>[3]</sup>

Justice Goodman dissented from the denial of *en banc* reconsideration.<sup>[4]</sup> He would have held that

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the statute of limitations was violated.<sup>[5]</sup>

We granted Appellant's petition for discretionary review to determine whether the court of appeals's analysis correctly applied Article 12.04 to the two-year statute of limitations.

## II. ANALYSIS

### A. Cognizability

Before we address the merits of Appellant's claim, we must decide whether it is cognizable in a pretrial habeas writ. Pretrial habeas, followed by an interlocutory appeal, is an extraordinary remedy.<sup>[6]</sup> Neither the parties nor the court of appeals addressed cognizability, but it must be addressed.<sup>[7]</sup>

Generally, a pretrial writ of habeas corpus is not available to test the sufficiency of an indictment.<sup>[8]</sup> One historical exception to the rule is when the face of the indictment "shows that the offense charged is barred by limitations."<sup>[9]</sup> In *Ex parte Edwards*, we clarified that this exception does not apply if the record suggests the indictment can be amended to cure the defect or if a statute provides that the applicable limitations period may turn on a question of fact.<sup>[10]</sup>

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Here, Appellant was charged with a first degree felony.<sup>[11]</sup> The statute of limitations for the offense is, however, the same as that for "the primary crime."<sup>[12]</sup> The primary crime here is misdemeanor assault by threat,<sup>[13]</sup> which has a two-year statute of limitations.<sup>[14]</sup> The parties agree that the statute of limitations for aggravated assault by threat

while acting as a public servant is also two years.<sup>[15]</sup>

Nothing in the relevant statutes suggests that the applicable statute of limitations might turn on a fact issue.<sup>[16]</sup> Neither the indictment nor the record include any facts that would otherwise toll or extend the limitations period, and the State does not claim that they do. Appellant's claim is cognizable because there is nothing to consider beyond the face of the indictment, and resolution in his favor would render the indictment irreparable.<sup>[17]</sup>

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### B. Merits

#### 1. Rules of Construction

We review questions regarding the interpretation of statutes *de novo*.<sup>[18]</sup> When interpreting statutory language, we focus first on the literal text of the statute because it provides the best means to determine the "fair, objective meaning of that text at the time of its enactment."<sup>[19]</sup> When interpreting a statute, we presume that every word and sentence should be given effect.<sup>[20]</sup> We construe words and phrases according to the rules of grammar and common usage.<sup>[21]</sup> And we consider other relevant statutory provisions to harmonize and avoid conflicts.<sup>[22]</sup>

We may consider extra-textual factors, such as the object sought by the Legislature and the consequences of a particular construction,<sup>[23]</sup> only if the statutory language is ambiguous or the plain meaning would lead to absurd results that the Legislature could not possibly have intended.<sup>[24]</sup> A statute is ambiguous when "it may be understood by reasonably well-informed persons in two or

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more different senses."<sup>[25]</sup>

As previously noted, the statute of limitations for aggravated assault by threat while acting as a public servant is two years.<sup>[26]</sup> The parties agree that the alleged offense took place on July 7, 2019, and that the indictment was returned on July 9, 2021. At issue in this case are two provisions used to compute periods of time: Article 12.04 of the Code of Criminal Procedure and Section 311.014(c) of the Government Code. The State seeks to use both together to arrive at the conclusion that the indictment was filed on time. As we shall see later, if either of these statutes is used alone, the indictment was untimely. The State's claim of timeliness depends on these two provisions working in tandem in a certain way. To understand why the State's claim fails, we look at how each provision would work alone, why each provision works the way it does, and why the provisions cannot work in tandem in the way the State suggests.

## 2. Article 12.04 Alone

Article 12.04 says, "The day on which the offense was committed and the day on which the indictment or information is presented shall be excluded from the computation of time."<sup>[27]</sup> Applying the plain language of the statute, we eliminate July 7, 2019, and July 9, 2021. This leaves us with a period that starts on and includes July 8, 2019, and that ends on and includes July 8, 2021. The court of appeals reached this same result, but found that this period is within the two-year statute of limitations. We disagree. As we shall explain, this period of time exceeds two years under any accepted definition of "year."

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A calendar year has 365 days, unless the year is a leap year, in which case there are 366 days. Texas Government Code § 311.005(12) defines a "Year" as "12 consecutive months."<sup>[28]</sup> Twelve consecutive calendar months have 365 days unless they encompass the month of February in a leap year, in which

case there are 366 days. Two regular years is 730 days. 2020 was a leap year, so the calculation is a little more complicated, but not significantly so. Because 2020 was a leap year, there was an extra day in the two-year period in this case, meaning the two-year period was 731 days instead of the usual 730.

From and including July 8, 2019, to and including July 8, 2021, is 732 days, which exceeds the two-year period by one day. For a period that does not include a leap year, two years would end 730 days after the date of the offense. But regardless of whether there is a leap year, when the limitation period is two years, Article 12.04's plain language dictates that the last day on which an indictment may be filed for an offense committed on July 7<sup>th</sup> is July 8<sup>th</sup> two years later. Under this scheme of computation, the indictment returned on July 9, 2021 was one day too late.

## 3. Texas Government Code Alone

The State argues that calculating the end date this way—under Article 12.04 alone—runs afoul of the Code Construction Act (Chapter 311 of the Government Code).<sup>[29]</sup> As explained earlier, Texas Government Code § 311.005(12) defines a "Year" as "12 consecutive months."<sup>[30]</sup> So, the argument goes, a two-year limitations period is twenty-four consecutive months. The State then

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refers us to the Texas Government Code provision that computes time for "months"—§ 311.014(c)—which says:

If a number of months is to be computed by counting the months from a particular day, the period ends on the same numerical day in the concluding month as the day of the month from which the computation is begun, unless there are not that many days in the concluding

month, in which case the period ends on the last day of that month.<sup>[31]</sup>

If we rely solely on the plain language of the Government Code provisions, the State's indictment is untimely. Texas Code of Criminal Procedure Article 12.02(b) says that an indictment "may be presented within two years *from the date of the commission of the offense*, and not afterward."<sup>[32]</sup> Section 311.014(c) says that, when calculating a period of months "*from a particular day*," we end on the same day of the month "*from which the computation is begun*."<sup>[33]</sup> Here, the "particular day" from which the calculation begins is the date of the offense—July 7, 2019. And because the computation begins on July 7, 2019, under Section 311.014(c), the computation must end on the same day of the month—July 7, 2021. The indictment filed on July 9, 2021, falls outside this time period.

#### 4. Combining the Statutes Does Not Work

The State argues that Article 12.04 and Section 311.014(c) work in tandem to, essentially, give the State an additional day beyond the two-year limitations period. The State claims that Article 12.04 excludes July 7, 2019—the date of the offense—from the time period. The State then

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contends that the time period runs under Section 311.014(c) from July 8, 2019 to July 8, 2021. The State finally contends that Article 12.04 then excludes the next day—July 9, 2021—from the calculations, allowing the indictment to be returned on July 9, 2021. We disagree for several reasons.

First, the State's construction ignores the plain language of Section 311.014(c) and Code of Criminal Procedure Article 12.02. As we explained earlier, Section 311.014(c) says that,

when calculating a period of months "*from a particular day*," we end on the same day of the month "*from which the computation is begun*."<sup>[34]</sup> And we have explained that Article 12.02(b) says that an indictment "may be presented within two years *from* the date of the commission of the offense."<sup>[35]</sup> Under a plain reading of these statutes, all of these instances of the word "from" are referring to the same date. The day the offense was committed, the day from which the period of months is calculated, and the day from which the computation begins are all the *same date*. That means, under Section 311.014(c), if July 7<sup>th</sup> is the date of the offense, then that same July 7<sup>th</sup> *must* be the date from which the monthly computation begins, and consequently, a later July 7<sup>th</sup> must be the date on which the monthly computation ends.

Article 12.04 does not change that. That statute says that "[t]he day on which the offense was committed . . . shall be excluded from the computation of time."<sup>[36]</sup> That does not mean, though, that the next day becomes the day from which the computation *begins*. Article 12.04 does not say that. In fact, the day from which a computation begins is typically also excluded from the computation.

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For example, Government Code Section 311.014(a) says, "In computing a period of days, the first day is excluded and the last day is included."<sup>[37]</sup> The "first day" is the day from which the computation begins but it is also excluded from the computed period. So Article 12.04 does not enable Section 311.014(c) to work from the day after the day of the offense. By its plain language, the time period in Section 311.014(c) can run only from the day the computation period begins—even though that day is excluded—and the day the computation begins for limitations purposes is, under the plain language of Article 12.02, the day of the offense. So if the offense is committed on a July 7<sup>th</sup>, the monthly computation period under Section

311.014(c), when applied to a two-year period, *must* end on a July 7<sup>th</sup>.

A second problem with the State's argument is that it is unclear whether Section 311.014(c) even applies. Code of Criminal Procedure Article 101.002 says that the Code Construction Act applies "except as otherwise expressly provided by this title."<sup>[38]</sup> Section 311.014(c)'s "months" provision is a computational scheme, and notably, it appears in a statute setting forth a comprehensive computational scheme. As we explained earlier, Section 311.014 also includes subsection (a), which directs how a period of "days" will be computed.<sup>[39]</sup> Subsection (a) calls for excluding the first day and including the last day.<sup>[40]</sup> As we shall explain later, Subsection (c) also excludes the first day and includes the last day when measuring a period by months. Article 12.04 also sets forth a computational scheme, saying what days are excluded from the computation, and

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it is at least arguable that it overrides the more general scheme in the Government Code.

Even if that were not so, there is a third problem with the State's argument: It conflicts with the obvious purposes of both Article 12.04 and Section 311.014(c), as can be ascertained by looking at their texts. On its face, it seems unlikely the Legislature intended to combine Article 12.04 and Section 311.014(c) to reach a result that would not be possible under the plain language of either provision individually-and which clearly exceeds two years. More importantly, an examination of the clear purposes of these computational directives reveals the State's position to be simply untenable.

In *Nesbit v. State*, we acknowledged that Section 311.014(c) rests on the rule now codified in Section 311.014(a), that "when

time is to be computed from or after a designated day, the designated day will be excluded while the last day of the period is to be included."<sup>[41]</sup> In other words, the "months" rule in Subsection (c) is simply an application of Subsection (a)'s "day" rule to months. In running the time period from one numerical day of the starting month to the same numerical day of the concluding the month, the computation is necessarily excluding that first numerical day while including the last numerical day. If one looks at a calendar, a month consists of the first day through the last day of the month. That is because all the days of the month are included in determining the calendar month. If the first day of the month were excluded, then the logical day "a month from now" would be the first day of the next month-which would be the same numerical day. In other

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words, the legislative scheme involves no double counting of the first and last days.<sup>[42]</sup> Otherwise, the period would always be a month and a day, or in this case, twenty-four months and a day.<sup>[43]</sup>

The Legislature decided to go a step further with Article 12.04. It is unlikely that an offense occurs at the very beginning of a calendar day, and an indictment cannot be returned at the very end of a calendar day. These two days are necessarily partial days. The Government Code scheme is based on the notion that, if we exclude the first day and include the last day, then the time essentially balances out. But Article 12.04 goes a step further by excluding all partial days to ensure the State always has the benefit of the full limitations period-i.e., when the limitations period is two years, the State gets a period of full days that equals two years. But the State's construction would give the State an additional full day, which, in every instance, would violate Article 12.02(b)'s requirement that an indictment be returned "within two



years from the date of the commission of the offense, *and not afterward*."<sup>[44]</sup>

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When we compare Article 12.04 and Section 311.014(c), we can see that both provisions exclude the first day. Article 12.04 does it by excluding the day of the offense. Section 311.014(c) does it by excluding the day in that first month that the period is computed from, which, in a criminal case, is the day of the offense. Those first-day exclusions are concurrent exclusions—both statutes exclude the *same* first day. The State does not get to exclude the first day under Article 12.04, designate the next day as the new first day, and exclude that new first day under Section 311.014(c). Doing what the State wants would violate the clear meaning of the text of all the statutes we have discussed.

### III. CONCLUSION

We hold that the indictment filed on July 9, 2021, for an assault committed on July 7, 2019, is time-barred because it was not brought within the two-year statute of limitations. We reverse the judgments of the courts below and dismiss the indictment.

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Notes:

<sup>[1]</sup> TEX. PENAL CODE § 22.02(A)(2) ("A person commits an offense if the person commits assault as defined in § 22.01 and the person: . . . (2) uses or exhibits a deadly weapon during the commission of the assault."), (b)(2)(A) (" . . . the offense is committed . . . by a public servant acting under color of the servant's office or employment").

<sup>[2]</sup> *Ex parte Vieira*, No. 01-21-00464-CR, 2022 WL 3363935, at \*4 (Tex. App.--Houston [1st Dist.] Aug. 16, 2020).

<sup>[3]</sup> *Id.* at \*5 (alteration in original).

<sup>[4]</sup> *Id.* at \*6 (Goodman, J., dissenting to denial of *en banc* reconsideration).

<sup>[5]</sup> *Id.*

<sup>[6]</sup> *Ex parte Ingram*, 533 S.W.3d 887, 891 (Tex. Crim. App. 2017).

<sup>[7]</sup> *Ex parte Ellis*, 309 S.W.3d 71, 79 (Tex. Crim. App. 2010).

<sup>[8]</sup> *Ex parte Doster*, 303 S.W.3d 720, 724 (Tex. Crim. App. 2010).

<sup>[9]</sup> *Ex parte Weise*, 55 S.W.3d 617, 620 (Tex. Crim. App. 2001).

<sup>[10]</sup> *See Ex parte Edwards*, 663 S.W.3d 614, 617-18 (Tex. Crim. App. 2022) (discussing tolling and factually-based statutes of limitation).

<sup>[11]</sup> *Id.* § 22.02(b)(2)(A) ("An offense under this section...is a felony of the first degree if...the offense is committed: (A) by a public servant acting under color of the servant's office or employment[.]").

<sup>[12]</sup> TEX. CODE CRIM. PROC. ART. 12.03(D) ("Except as otherwise provided by this chapter, any offense that bears the title 'aggravated' shall carry the same limitation period as the primary crime.").

<sup>[13]</sup> TEX. PENAL CODE § 22.01(A)(2) ("A person commits an offense if the person: . . . (2) intentionally or knowingly threatens another with imminent bodily injury...[.]"); *id.* § 22.01(c) ("An offense under Subsection (a)(2) or (3) is a Class C misdemeanor[.]").

<sup>[14]</sup> TEX. CODE CRIM. PROC. ART. 12.02(B) ("A complaint or information for any Class C misdemeanor may be presented within two years from the date of the commission of the offense, and not afterward.").

<sup>[15]</sup> *See State v. Schunior*, 506 S.W.3d 29, 37 (Tex. Crim. App. 2016) ("Article 12.03(d)

yields a two-year limitation period if the primary crime is misdemeanor assault.").

[16] See Tex. Code Crim. Proc. art 12.02(b).

[17] See *Edwards*, 663 S.W.3d at 617-18. See, e.g., *Ex parte Tamez*, 38 S.W.3d 159, 161 (Tex. Crim. App. 2001) (affirming court of appeals's jurisdiction to resolve statute of limitations claim where the only question was whether the indictment was issued within two years of the date of the offense as alleged in the indictment).

[18] See *Martinez v. State*, 348 S.W.3d 919, 923 (Tex. Crim. App. 2011) (pure questions of law are reviewed *de novo*).

[19] *Clinton v. State*, 354 S.W.3d 795, 800 (Tex. Crim. App. 2011) (quoting *Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991)).

[20] *Watkins v. State*, 619 S.W.3d 265, 272 (Tex. Crim. App. 2021).

[21] *Lopez v. State*, 253 S.W.3d 680, 685 (Tex. Crim. App. 2008).

[22] *Watkins*, 619 S.W.3d at 272.

[23] See *id.* (listing extra-textual factors).

[24] *Boykin*, 818 S.W.2d at 785.

[25] *Bryant v. State*, 391 S.W.3d 86, 92 (Tex. Crim. App. 2012).

[26] See *supra* at nn. 12-15 and accompanying text.

[27] TEX. CODE CRIM. PROC. art 12.04.

[28] TEX. GOV'T CODE § 311.005(12).

[29] See TEX. GOV'T CODE § 311.001 ("This chapter may be cited as the Code Construction Act.").

[30] TEX. GOV'T CODE § 311.005(12).

[31] *Id.* § 311.014(c).

[32] *Id.* art. 12.02(b) (emphasis added).

[33] TEX. GOV'T CODE § 311.014(c) (emphasis added).

[34] See *supra* at n.33 and accompanying text (emphasis added).

[35] See *supra* at n.32 and accompanying text (emphasis added).

[36] See *supra* at n.27 and accompanying text.

[37] TEX. GOV'T CODE § 311.014(a).

[38] TEX. CODE CRIM. PROC. art. 101.002 (emphasis added).

[39] See *supra* at n.37 and accompanying text.

[40] *Id.*

[41] *Nesbit v. State*, 227 S.W.3d 64, 68 (Tex. Crim. App. 2007) (quoting *McGaughy v. City of Richardson*, 599 S.W.2d 113, 115 (Tex. App.-Dallas 1980, writ ref'd n.r.e.)); see also Tex. Gov't Code § 311.014(a) ("In computing a period of days, the first day is excluded and the last day is included.").

[42] *Nesbit, supra*.

[43] See *id.*

[44] See TEX. CODE CRIM PROC. art. 12.02(b) (emphasis added). The State contends that Appellant has not preserved his arguments regarding the Code Construction Act because he claimed at trial that limitations was governed solely by Articles 12.02 and 12.04. The State contends that Appellant is making a new argument by claiming that the Code Construction Act rendered Article 12.04 redundant by excluding the offense date. The State concedes, however, that Appellant has consistently argued that the indictment is barred by limitations. And Appellant's position from trial, to direct appeal, to discretionary review has consistently been that the indictment is barred by limitations

under the language of Articles 12.02 and 12.04-a position with which we agree. It is the State that has been relying upon the Code Construction Act to amend how Article 12.04 works in order to support a contrary conclusion. The trial court had all the relevant statutory provisions before it and was in a position to determine, as we have done, that the State's reliance on the Code Construction Act was misplaced. Moreover, Appellant has consistently claimed that the State's reliance on the Code Construction Act is misplaced, saying at trial, "You do not add the two [provisions] together." Given Appellant's express raising of the issue of limitations and his correct reliance on Articles 12.02 and 12.04, we find that Appellant preserved his claim.

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