

CAUSE NO. D-1-GN-18-007069

TURNQUIST PARTNERS REALTORS,	§	THE DISTRICT COURT OF
INC. D/B/A ENGEL & VÖLKERS	§	
AUSTIN,	§	
<i>Plaintiff,</i>	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
ROBERT TURNER, ITCOA, L.L.C. D/B/A	§	
INDEPENDENCE TITLE COMPANY, and	§	
SECURED LAND TRANSFERS, LLC d/b/a	§	
INDEPENDENCE TITLE,	§	419th JUDICIAL DISTRICT
<i>Defendants.</i>		

**DEFENDANTS ITCOA, LLC AND SECURED LAND TRANSFERS, LLC'S
AMENDED MOTION FOR SUMMARY JUDGMENT**

Defendants ITCOA, LLC and Secured Land Transfers, LLC (collectively, “**Independence**”) file their Amended Motion for Summary Judgment and respectfully show the Court as follows:

**I.
INTRODUCTION AND SUMMARY OF MOTION**

“Courts do not create fiduciary relationships lightly.” *Flagstar Bank, FSB v. Walker*, 451 S.W.3d 490, 503-04 (Tex. App.—Dallas 2014, no pet.).

Escrow agents—like Independence—owe duties only to parties to the contract creating the escrow agreement. In the transactions at issue in this case, Independence was appointed as the escrow agent in two real estate sales contracts between Robert and Leslie Turner, as the sellers, and Lauree Moffett, as the buyer. Those individuals were the only parties to those contracts, and therefore, under Texas law, the only parties to whom Independence owed any duties in connection with those transactions.

Plaintiff Turnquist Partners Realtors, Inc., doing business as Engel & Volkers Austin (“**Engel & Volkers**”), acted as the listing broker representing the Turners in those real estate

sales. It sued Robert Tuner alleging that the commissions he paid to Engel & Volkers upon the closing of the property sales were lower than the parties had agreed.

Engel & Volkers also sued Independence for breach of fiduciary duty, complaining that when Independence disbursed the sales proceeds owed to the Turners under the real estate contracts, it should have withheld in escrow the disputed portions of Engel & Volkers' commissions—over the Turners' objection—until the Turners and Engel & Volkers had resolved their dispute. However, Engel & Volkers was not a party to the real estate sales contracts appointing Independence as escrow agent for these transactions. And, nothing in those contracts provided Independence with any instruction regarding escrowing of funds constituting disputed commissions. Therefore, under clear Texas law, Independence owed Engel & Volkers no fiduciary duties.

Plaintiffs' newly-pled causes of action against Independence for negligence and promissory estoppel fare no better. Under Texas law, the duty analysis for breach of fiduciary duty and negligence are the same—because Engel & Volkers was not a party to the real estate transactions appointing Independence as escrow agent, Independence did not owe it a duty in negligence. And, regarding its promissory estoppel claim, there is no evidence that Engel & Volkers relied on any sufficiently definite and specific promise of future action by Independence in these transactions that supports such a claim.

Accordingly, for the reasons discussed more fully below, the Court should grant a summary judgment dismissing Engel & Volkers' claims against Independence.

II. SUMMARY JUDGMENT GROUNDS

A. Traditional summary judgment.

Independence moves for a traditional summary judgment under Rule 166a(c) of the Texas Rules of Civil Procedure on the following grounds:

- 1. As a matter of law, Independence owed no fiduciary duty to Engel & Volkers.**
- 2. As a matter of law, Independence owed no duty to Engel & Volkers to support a negligence claim.**

B. No-evidence summary judgment.

Additionally, Independence moves for a no-evidence summary judgment under Rule 166a(i) of the Texas Rules of Civil Procedure on the following grounds:

- 1. There is no evidence that Independence owed any fiduciary duty to Engel & Volkers.**
- 2. There is no evidence that Independence breached any fiduciary duty owed to Engel & Volkers.**
- 3. There is no evidence that Independence owed any duty to Engel & Volkers to support a negligence claim.**
- 4. There is no evidence that Independence breached any duty owed to Engel & Volkers to support a negligence claim.**
- 5. There is no evidence that Independence made a sufficiently specific and definite promise of future action to Engel & Volkers that supports a promissory estoppel claim.**
- 6. There is no evidence that Engel & Volkers substantially relied on any promise by Independence to its detriment.**

III. STATEMENT OF UNDISPUTED FACTS

The following facts of this case are undisputed:

On October 6, 2017, Engel & Volkers and Robert Turner entered into two separate listing agreements for Engel & Volkers' exclusive right to market and sell the Turners' properties located at 5201 and 5203 Tortuga Trail in Austin, Texas.¹ Independence was not a party to either of those listing agreements or mentioned in them in any way.

On July 18, 2018, Robert and Lesli Turner entered into two separate contracts to sell the Tortuga Trail properties to Lauree Moffett.² Both contracts designated "Independence Title – Carol Bellomy" as escrow agent to facilitate the closing of the property sales.³ The contracts also identified Engel & Volkers as the listing broker for the Turners, and Kathryn Scarborough as the listing associate for Engel & Volkers.⁴ However, the contracts made it clear that the only parties were Robert and Lesli Turner and Lauree Moffett, stating⁵—

1. PARTIES: The parties to this contract are Robert Turner, Lesli Turner
(Seller) and Lauree Z Moffett (Buyer).
Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller the Property defined below.

In addition, nothing in either of those contracts provided any instructions to Independence regarding the disbursement of closing funds for commissions. Instead, each contract acknowledged the following⁶—

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

¹ Exhibit A-1, Residential Real Estate Listing Agreement, Exclusive Right to Sell for 5201 Tortuga Trail; Exhibit A-2, Residential Real Estate Listing Agreement, Exclusive Right to Sell for 5203 Tortuga Trail.

² Exhibit A-3, One to Four Family Residential Contract (Resale) for 5201 Tortuga Trail ("5201 Tortuga Contract"); Exhibit A-4, Unimproved Property Contract for 5203 Tortuga Trail ("5203 Tortuga Contract").

³ Exhibit A-3, 5201 Tortuga Contract at ¶ 5; Exhibit A-4, 5203 Tortuga Contract at ¶ 5.

⁴ Exhibit A-3, 5201 Tortuga Contract at page 8; Exhibit A-4, 5203 Tortuga Contract at page 9.

⁵ Exhibit A-3, 5201 Tortuga Contract at ¶ 1; Exhibit A-4, 5203 Tortuga Contract at ¶ 1.

⁶ Exhibit A-3, 5201 Tortuga Contract at ¶ 8; Exhibit A-4, 5203 Tortuga Contract at ¶ 8.

The “separate written agreements” are the Listing Agreements, and as mentioned above, Independence was not a party to those agreements, or any other agreement that addressed the disbursement or escrow of funds that constituted broker commissions.

The Turners’ sale of the properties to Ms. Moffett closed on August 15, 2018.⁷ Shortly before closing, a dispute arose between the Turners and Engel & Volkers over the amount of commission owed to Engel & Volkers. The Turners claimed that a 2% commission was owed upon the sale of the two properties, and Engel & Volkers claimed that a 5% commission was owed, and demanded that Independence pay it the undisputed amount of the commission and withhold in escrow the remaining disputed portion pending resolution of the parties’ dispute.⁸ The Turners did not agree to allow Independence to keep in escrow any portion of their sales proceeds that were the subject of the disputed commission.⁹

At closing, Independence disbursed from the Turners’ sales proceeds the total amount of \$224,000 to Engel & Volkers—constituting 2% of the total sales prices for the two properties—as directed by the Turners.¹⁰ It did not escrow any portion of the closing proceeds as Engel & Volkers had demanded, because there was no written agreement between the Turners and Engel & Volkers for such an escrow arrangement.¹¹

⁷ Exhibit A-8, Settlement Statement for 5201 Tortuga Trail; Exhibit A-9, Settlement Statement for 5203 Tortuga Trail.

⁸ Exhibit A-5, August 14, 2018 letter from Rex J. Zgarba; Exhibit A-6, August 14, 2018 letter from Terrence L. Irion; Exhibit A-7, August 15, 2018 e-mail from Rex Zgarba.

⁹ Exhibit H, August 14, 2018 letter from Terrence L. Irion.

¹⁰ Exhibit A-8, Settlement Statement for 5201 Tortuga Lane at Line 700; Exhibit A-9, Settlement Statement for 5203 Tortuga Lane at Line 700.

¹¹ Exhibit A, Affidavit of Carol Bellomy (“**Bellomy Aff.**”) at ¶ 13; Exhibit B-1, Deposition of Kathryn Scarborough (“**Scarborough Dep.**”) at 186.

IV. ARGUMENT & AUTHORITY

A. Independence Owed No Duties To Engel & Volkers Because Engel & Volkers Was Not A Party To The Contracts Creating The Escrow Agreement.

Engel & Volkers asserts a claim against Independence for breach of fiduciary duty, alleging that Independence, as escrow agent, owed fiduciary duties to Engel & Volkers and breached those duties by failing to pay it the full commission owed and by paying the disputed portion of the commission to the Turners instead of holding those funds in escrow until the parties resolved their dispute.¹² It uses the same allegations as the basis for a negligence claim against Independence.¹³ As discussed below, Texas law forecloses Engel & Volkers' breach of fiduciary duty and negligence claims because Engel & Volkers was not a party to the contracts creating the escrow agreement with Independence.

1. Under Texas law, an escrow agent's limited duties do not extend to persons who are not parties to the escrow agreement.

To prevail on its breach of fiduciary duty claim, Engel & Volkers must prove: (1) the existence of a fiduciary relationship between it and Independence; (2) a breach of that duty by Independence; and (3) the breach caused damage to Engel & Volkers or an improper benefit to Independence. *Pante Tech. Corp. v. Austin Concrete Solutions, Inc.*, No. 03-10-0059-CV, 2010 WL 3927598 at *8 (Tex. App.—Austin Oct. 7, 2010, no pet.) (mem. op.). Engel & Volkers must also prove that Independence owed it a duty and breached that duty in order to support its negligence claim. *Bustamante v. Ponte*, 529 S.W.3d 447, 457 (Tex. 2017).

Where the underlying facts are undisputed, as in this case, the existence of a fiduciary duty is a question of law for the court. *Meyer v. Cathey*, 167 S.W.3d 327, 330 (Tex. 2005).

¹² Plaintiff's Second Amended Petition at ¶ 34.

¹³ *Id.* at ¶ 39.

Whether a duty exists to support a negligence claim is also a question of law for the court. *Magee v. G & H Towing, Co.*, 388 S.W.3d 711, 717 (Tex. App.—Houston [1st Dist.] 2012, no pet.). In addition, the existence of a duty is not for an expert to determine, and expert testimony is insufficient to create a duty where none exists at law. *Park v. Exxon Mobil Co.*, 429 S.W.3d 142, 150 (Tex. App.—Dallas 2014, pet. denied); *Nat’l Convenience Stores Inc. v. Matherne*, 987 S.W.2d 145, 149 (Tex. App.—Houston [14th Dist.] 1999, no pet.). *See, e.g., Greenburg Traurig of New York, P.C. v. Moody*, 161 S.W.3d 56, 94 (Tex. App. —Houston [14th Dist.] 2004, no pet.) (holding trial court committed reversible error by admitting expert testimony on fiduciary duties owed by a lawyer to a client).

“An escrow agent for a real estate transaction owes a fiduciary duty to both parties to an escrow agreement: the buyers and the sellers of the property.” *Muller v. Stewart Title Guar. Co.*, 525 S.W.3d 859, 872 (Tex. App.—Houston [14th Dist.] 2017, no pet.). Those duties consist of (1) the duty of loyalty, (2) the duty to make full disclosure, and (3) the duty to exercise a high degree of care to conserve the money and pay only those entitled to receive it. *Flagstar Bank, FSB v. Walker*, 451 S.W.3d 490, 499 (Tex. App.—Dallas 2014, no pet.).

Courts also recognize that “[a]n escrow agent must be appointed through a specific legal document that imparts a specific legal obligation . . . [a]nd an escrow agent’s duties are strictly limited to those set forth in the escrow agreement.” *Id.* *See also Garcia v. Bank of America Corp.*, 375 S.W.3d 322, 333 (Tex. App.—Houston [14th Dist.] 2012, no pet.) (“Regardless of whether an escrow agent owes a fiduciary duty, the duties of the agent are defined and limited by the escrow agreement itself.”).

In recognizing an escrow agent’s limited duties, Texas courts have held that an escrow agent does not owe any duties to persons who are not parties to the escrow agreement, including

creditors of the parties. For example, in *Muller* an investor contributed funds to a limited liability company which the company deposited into escrow for its development of a golf resort. 525 S.W.2d at 863-64. The investor later sued the title company after it released escrowed funds back to the limited liability company, instead of the investor, following cancellation of the escrow agreement. *Id.* at 864. In affirming a summary judgment dismissing the investor's claims against the title company, the court of appeals held that the title company owed no fiduciary duty to the investor because he was not a party to the escrow agreement between the title company and the limited liability company, and was not a party to the underlying real estate transaction for which the title company served as escrow agent. *Id.* at 872.

Similarly, in *Gary E. Patterson & Assoc., P.C. v. Holub*, the court affirmed a summary judgment dismissing a creditor's claims against a title company arising out of the title company's disbursement of escrowed funds in closing the sale of a home, because the creditor was not a party to the escrow agreement. 264 S.W.3d 180, 203 (Tex. App.—Houston [1st Dist.] 2008, pet. denied). There, the seller of the home owed money to the creditor under a settlement agreement resolving the seller's debt to the creditor, which the creditor attempted to enforce through a judgment lien. *Id.* at 186-187. The title company closed the sale of the home without disbursing any of the sales proceeds to the creditor. *Id.* at 187. In holding that the trial court's dismissal of the creditor's claims against the title company was proper, the court of appeals noted that "[a]n escrow agent and closer like [the title company] does not owe a duty—**and thus has no negligence liability**—to the non-party creditor of a party to the escrow agreement." *Id.* at 203.

Finally, in a case remarkably similar to this one, the court in *Donahue v. First American Title Company* held that a title company acting as escrow agent for the sale of a condominium unit did not owe a fiduciary duty to the seller's real estate agent. No. 13-13-00039-CV, 2013

WL 9556044, at *2 (Tex. App.—Corpus Christi Aug. 1, 2013, no pet.) (mem. op.). There, the seller disputed the real estate agent’s claim to a commission owed upon the sale, instructed the title company to not pay a commission to the agent, and the title company followed the seller’s instruction. *Id.* at *1. In affirming the trial court’s summary judgment dismissing the agent’s fiduciary duty claim against the title company, the court of appeals held that the evidence conclusively showed that the agent was not a party to the sales contract between the seller and buyer for which the title company acted as escrow agent, and therefore the title company did not owe the agent a fiduciary duty. *Id.* at *2.

As discussed below, for the reasons supporting the summary judgments in favor of the escrow agents in *Muller*, *Holub*, and *Donahue*, Independence owed no duty to Engel & Volkers because Engel & Volkers was not a party to the escrow agreements with Independence.

2. Engel & Volkers was not a party to the 5201 Tortuga Contract and the 5203 Tortuga Contract which created the escrow agreements with Independence, so Independence owed no duties to Engel & Volkers.

The 5201 Tortuga Contract and the 5203 Tortuga Contract created the escrow agreements under which Independence acted as escrow agent. Engel & Volkers were not parties to those contracts. To argue otherwise ignores the clear language of Paragraph 1 of those contracts, specifically titled “Parties,” which states¹⁴—

1. PARTIES: The parties to this contract are Robert Turner , Lesli Turner
(Seller) and Lauree Z Moffett (Buyer).
Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller the Property defined below.

In addressing a real estate sales contract with similar language, the court in *Lesieur v. Fryar* held that a listing broker was not a party to a real estate sales contract. 325 S.W.3d 242,

¹⁴ Exhibit A-3, 5201 Tortuga Contract at ¶ 1; Exhibit A-4, 5203 Tortuga Contract at ¶ 1.

252 (Tex. App.—San Antonio 2010, pet. denied). There, the first paragraph on the first page of the contract provided—

1. PARTIES: Timothy Fryar and Sandra Fryar (Seller) agrees to sell and convey to George Lesieur and Diana Lesieur (Buyer) and Buyer agrees to buy from Seller the Property described below.

Id.

As the court held—

We interpret this provision of the contract as a definitional rather than merely a descriptive provision. Accordingly, the contract defines the parties as including only the Fryars as sellers and the Lesieus as buyers. There is nothing else in the contract discussing or defining the parties.

Id.

The listing broker in *Lesieur* pointed out that it signed the real estate sales contract, but the court held that was not evidence it was a party to the contract, explaining—

Morales Realty points out that Gonzalez signed the contract. However, she did so only as the listing broker in a very specific portion of the contract. She did not sign the page where the buyer and the seller signed, nor did she initial any specific provision or page in the contract; rather, Gonzalez, as the listing broker, signed only that provision regarding the ratification of the broker's fee, thereby obligating her to pay Lesieur's broker three percent of the total sales price at closing.

Id.

In this case, Engel & Volkers never even signed the 5201 Tortuga Contract and the 5203 Tortuga Contract, and it was merely named as the listing broker in a section titled “Broker Information” located after the parties’ signatures.¹⁵ Moreover, Paragraph 8 in each of the contracts recognizes that “[a]ll obligations of the parties for payment of brokers’ fees are contained in separate written agreements.”¹⁶ Those “separate written agreements” are the listing

¹⁵ Exhibit A-3, 5201 Tortuga Contract at page 8; Exhibit A-4, 5203 Tortuga Contract at page 9. And, in fact, the Broker Information section in those contracts has the specific instruction, “Print name(s) only. Do not sign.”

¹⁶ Exhibit A-3, 5201 Tortuga Contract at ¶ 8; Exhibit A-4, 5203 Tortuga Contract at ¶ 8.

agreements between Engel & Volkers and Robert Turner, and Independence is not a party to those agreements. And, it's worth noting that Engel & Volkers asserts a claim for breach of contract against Turner, but not against Independence, implicitly recognizing that Engel & Volkers had no contract with Independence regarding those transactions.¹⁷

Like the plaintiffs in *Muller*, *Holub*, and *Donahue*, Engel & Volkers is a creditor of the Turners who claims it's owned money under a contract separate and apart from the escrow agreements with Independence. Engel & Volkers is not a party to those escrow agreements. Independence, therefore, owed Engel & Volkers no duty, whether a fiduciary duty or one to support a negligence claim.

3. There is no written agreement imposing on Independence a duty to withhold in escrow the Turners' sales proceeds that are the subject of a claim to a broker commission.

Additionally, nothing in the contracts creating the escrow agreements provides Independence with any instruction or duty with respect to commissions. Even Kathryn Scarborough, a real estate agent with 18 years of experience who represented the Turners in the sales transactions, recognized—¹⁸

Just to be clear, you're not aware of anything in the TREC form contracts that were entered into for 5201 and 5203 Tortuga Trail that authorized Independence Title to withhold any portion of the seller's proceeds that were the subject of a commission dispute?

A. No.

¹⁷ Plaintiff's First Amended Petition at ¶¶ 21-32.

¹⁸ Exhibit A, Bellomy Aff. at ¶ 13; Exhibit B-2, Scarborough Dep. at 8, 186.

Q. And outside of that, those TREC form contracts, are you aware of any written agreement to which Independence Title was a party to this transaction that authorized that title company to withhold any portion of the seller's proceeds that was the subject of the commission dispute?

A. No.

As noted above, “an escrow agent’s duties are strictly limited to those set forth in the escrow agreement.” *Flagstar Bank*, 451 S.W.3d at 499. Indeed, “‘a carefully drawn list of instructions’ is the most important element of an escrow.” *Id.* at 501 (quoting *Lacy v. Ticor Title Ins. Co.*, 794 S.W.2d 781, 786 (Tex. App.—Dallas 1990, writ denied)). In the absence of (1) any contract between Independence and Engel & Volkers, and (2) any instructions in the sales contracts requiring Independence to withhold a portion of seller’s proceeds that are the subject of a disputed commission, Engel & Volkers cannot manufacture a duty where none exists.

The summary judgment evidence, therefore, conclusively establishes that Independence owed no duty to Engel & Volkers as a matter of law. Accordingly, the Court should grant a traditional summary judgment dismissing Engel & Volkers’ breach of fiduciary duty and negligence claims against Independence.

In the alternative, there is no evidence Independence owed any duties to Engel & Volkers that would support a breach of fiduciary duty or negligence claim. As a result, the Court should grant a no-evidence summary judgment dismissing Engel & Volkers’ breach of fiduciary duty and negligence claims against Independence.

B. There Is No Evidence That Independence Breached Any Duty Owed to Engel & Volkers.

Notwithstanding the absence of any duty that Independence owed to Engel & Volkers, there is no evidence that Independence breached any duty owed to Engel & Volkers, whether a fiduciary duty or a duty to support a negligence claim. For that additional reason, the Court should grant a summary judgment dismissing Engel & Volkers' breach of fiduciary duty and negligence claims against Independence.

C. There Is No Evidence That Engel & Volkers Relied On A Sufficiently Specific And Definite Promise by Independence.

Engel & Volkers also asserts a promissory estoppel claim against Independence.¹⁹ The elements of that claim are (1) a promise, (2) foreseeability of reliance thereon by the promisor, and (3) substantial reliance by the promisee to its detriment. *Ogle v. Hector*, No. 03-16-00716-CV, 2017 WL 3379107, at *2 (Tex. App.—Austin 2007, Aug. 2, 2017, pet. denied) (mem. op.). In proving the element of a promise, Engel & Volkers must show “‘an actual promise’ ‘that is sufficiently specific and definite such so that it would be reasonable and justified for the promisee to rely on it as a commitment to future action.’” *Id.* (citations omitted).

Here, there is no evidence that Independence made any promise and no evidence that Engel & Volkers substantially relied on any promise by Independence to its detriment. Accordingly, the Court should grant a summary judgment dismissing Engel & Volkers' promissory estoppel claim.

¹⁹ Plaintiff's Second Amended Petition at ¶¶ 42-43.

V.
SUMMARY JUDGMENT EVIDENCE

This motion is supported by the following evidence, which is attached to the motion and incorporated by reference herein:

Exhibit A	Affidavit of Carol Bellomy
Exhibit A-1	Residential Real Estate Listing Agreement Exclusive Right to Sell (5201 Tortuga Trail)
Exhibit A-2	Residential Real Estate Listing Agreement Exclusive Right to Sell (5203 Tortuga Trail)
Exhibit A-3	One to Four Family Residential Contract (Resale) (5201 Tortuga Trail)
Exhibit A-4	One to Four Family Residential Contract (Resale) (5203 Tortuga Trail)
Exhibit A-5	August 14, 2018 letter from Rex J. Zgarba
Exhibit A-6	August 14, 2018 letter from Terrence L. Irion
Exhibit A-7	August 15, 2018 e-mail from Rex J. Zgarba
Exhibit A-8	Settlement Statement (5201 Tortuga Trail)
Exhibit A-9	Settlement Statement (5203 Tortuga Trail)
Exhibit B	Affidavit of Jeff Hobbs
Exhibit B-1	Excerpts from Deposition of Kathryn Scarborough

PRAYER

Based on the foregoing, Independence respectfully requests that the Court grants its Amended Motion for Summary Judgment and enter an order dismissing Engel & Volkers' claims against Independence and awarding Independence any further relief to which it is entitled in law or in equity.

Respectfully submitted,

/s/ Jeffrey J. Hobbs

JEFFREY J. HOBBS

State Bar No. 24012837

AMBRUST & BROWN, PLLC

100 Congress Avenue, Suite 1300

Austin, Texas 78701

Telephone (512) 435-2300

Facsimile (512) 435-2360

jhobbs@abaustin.com

**ATTORNEYS FOR DEFENDANTS
ITCOA, LLC and SECURED LAND
TRANSFERS, LLC**

NOTICE OF HEARING

A one-hour hearing on Defendants ITCOA, LLC and Secured Land Transfers, LLC's Amended Motion for Summary Judgment is set for **January 21, 2019 at 9:00 a.m.**

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing instrument to be delivered via electronic service and e-mail to the following on December 30, 2019:

Rex J. Zgarba
rzgarba@coatsrose.com
Racy L. Haddad
rhaddad@coatsrose.com
COATS ROSE P.C.
Terrace 2
2700 Via Fortuna, Suite 350
Austin, Texas 78746

Jeffrey G. Henry
jeff.henry@sprouselaw.com
SPOUSE SHRADER SMITH PLLC
805 Las Cimas Parkway.
Las Cimas III, Suite 350
Austin, Texas 78746

/s/ Jeffrey J. Hobbs

Jeff Hobbs

Exhibit A

CAUSE NO. D-1-GN-18-007069

TURNQUIST PARTNERS REALTORS,
INC. D/B/A ENGEL & VÖLKERS

AUSTIN,
Plaintiff,

v.

ROBERT TURNER, ITCOA, L.L.C. D/B/A
INDEPENDENCE TITLE COMPANY, and
SECURED LAND TRANSFERS, LLC d/b/a
INDEPENDENCE TITLE,

Defendants.

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THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

419th JUDICIAL DISTRICT

AFFIDAVIT OF CAROL BELLOMY

STATE OF TEXAS

§
§
§

COUNTY OF TRAVIS

Before me, the undersigned notary, on this day, personally appeared Carol Bellomy, a person whose identity is known to me. After I administered an oath to her, upon her oath, she said:

1. My name is Carol Bellomy. I am over 18 years of age, have never been convicted of a felony, and am capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

2. I am a licensed escrow officer and a Branch Manager for Independence Title Company ("Independence"). I am also a custodian of records for Independence and am familiar with the manner in which its records are created and maintained by virtue of my duties and responsibilities.

3. On August 15, 2018, acting as escrow officer for Independence I facilitated the closing of the sale of two properties in Austin, Texas, one located at 5201 Tortuga Trail and the other located at 5203 Tortuga Trail. The properties were sold by Robert and Lesli Turner, as Seller, to Lauree Moffett, as Buyer.

4. Attached to this affidavit as **Exhibit A-1** is a true and correct copy of a Residential Real Estate Listing Agreement Exclusive Right to Sell for the property located at 5201 Tortuga Trail in Austin, Texas that was provided to me by Engel & Volkers Austin.

5. Attached to this affidavit as **Exhibit A-2** is a true and correct copy of a Residential Real Estate Listing Agreement Exclusive Right to Sell for the property located at 5203 Tortuga Trail in Austin, Texas that was provided to me by Engel & Volkers Austin.

6. Attached to this affidavit as **Exhibit A-3** is a true and correct copy of a One to Four Family Residential Contract (Resale) between Robert Turner and Lesli Turner, as Seller, and Lauree Moffett, as Buyer, for the property located at 5201 Tortuga Trail in Austin, and that contract was receipted by Independence on July 18, 2018.

7. Attached to this affidavit as **Exhibit A-4** is a true and correct copy of a Unimproved Property Contract between Robert Turner and Lesli Turner, as Seller, and Lauree Moffett, as Buyer, for the property located at 5203 Tortuga Trail in Austin, and that contract was receipted by Independence on July 18, 2018.

8. Attached to this affidavit as **Exhibit A-5** is a true and correct copy of a letter dated August 14, 2018 that I received from Rex Zgarba regarding the sale of 5201 and 5203 Tortuga Trail in Austin, Texas.

9. Attached to this affidavit as **Exhibit A-6** is a true and correct copy of a letter dated August 14, 2018 that I received from Terrence Irion regarding the sale of 5201 and 5203 Tortuga Trail in Austin, Texas.


10. Attached to this affidavit as **Exhibit A-7** is a true and correct copy of an e-mail dated August 15, 2018 that I received from Rex Zgarba regarding the sale of 5201 and 5203 Tortuga Trail in Austin, Texas.

11. Attached to this affidavit as **Exhibit A-8** is a true and correct copy of Settlement Statement dated August 15, 2018 for the closing of the sale of the property located at 5201 Tortuga Trail. Lines 700 and 703 on page 2 of this Settlement Statement reflects the disbursement of a 2% commission out of the sales proceeds to Engel & Volkers Austin.

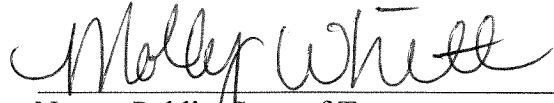
12. Attached to this affidavit as **Exhibit A-9** is a true and correct copy of Settlement Statement dated August 15, 2018 for the closing of the sale of the property located at 5203 Tortuga Trail. Lines 700 and 703 on page 2 of this Settlement Statement reflects the disbursement of a 2% commission out of the sales proceeds to Engel & Volkers Austin.

13. In connection with the August 15, 2018 sale of the properties located at 5201 Tortuga Trail and 5203 Tortuga Trail, Independence did not withhold in escrow any portion of sales proceeds owed to Seller that were the subject of Engel & Volkers Austin's disputed claim to a broker commission because Independence did not have a written agreement agreed to by Robert and Lesli Turner and Engel & Volkers Austin for such an escrow arrangement.

14. As part of my duties for Independence, I am also a custodian of records. I am familiar with the documents attached as Exhibits A-1 through A-8, which are part of the records that Independence has maintained for the sales transactions for 5201 Tortuga Trail and 5203 Tortuga Trail. It is the regular practice of Independence to make these types of records at or near the time of each act, event, condition, or opinion set forth in the record, and it is the regular practice of Independence for these types of records to be made by, or from information transmitted by, persons with knowledge of the matters set forth in them. It is the regular practice of Independence to keep these types of records in the course of regularly conducted business activity and it is the regular practice of the business activity to make, or to receive and maintain, the records.


Carol Bellomy

Signed under oath before me on November 12, 2019.


Notary Public, State of Texas

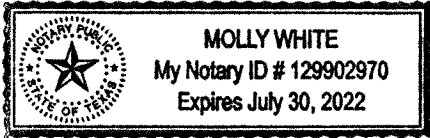


Exhibit A-1

Residential Listing concerning 5201 Tortuga Trail, Austin, TX 78731.

D. Exclusions: The following improvements and accessories will be retained by Seller and must be removed prior to delivery of possession:

E. Owners' Association: The property ☐ is ☒ is not subject to mandatory membership in a property owners' association.

3. LISTING PRICE: Seller instructs Broker to market the Property at the following price: \$9,995,000 (Listing Price). Seller agrees to sell the Property for the Listing Price or any other price acceptable to Seller. Seller will pay all typical closing costs charged to sellers of residential real estate in Texas (seller's typical closing costs are those set forth in the residential contract forms promulgated by the Texas Real Estate Commission).

4. TERM:

A. This Listing begins on 09/26/2017 and ends at 11:59 p.m. on 07/01/2018.

B. If Seller enters into a binding written contract to sell the Property before the date this Listing begins and the contract is binding on the date this Listing begins, this Listing will not commence and will be void.

5. BROKER COMPENSATION:

A. When earned and payable, Seller will pay Broker:

☒ (1) 5 % of the sales price.

☒ (2) 4.5% if Kathryn Scarborough & Michele Turnquist acts as Intermediary between both buyer and seller.

B. Earned: Broker's compensation is earned when any one of the following occurs during this Listing:

- (1) Seller sells, exchanges, options, agrees to sell, agrees to exchange, or agrees to option the Property to anyone at any price on any terms;
- (2) Broker individually or in cooperation with another broker procures a buyer ready, willing, and able to buy the Property at the Listing Price or at any other price acceptable to Seller; or
- (3) Seller breaches this Listing.

C. Payable: Once earned, Broker's compensation is payable either during this Listing or after it ends at the earlier of:

- (1) the closing and funding of any sale or exchange of all or part of the Property;
- (2) Seller's refusal to sell the Property after Broker's compensation has been earned;
- (3) Seller's breach of this Listing; or
- (4) at such time as otherwise set forth in this Listing.

Broker's compensation is not payable if a sale of the Property does not close or fund as a result of: (i) Seller's failure, without fault of Seller, to deliver to a buyer a deed or a title policy as required by the contract to sell; (ii) loss of ownership due to foreclosure or other legal proceeding; or (iii) Seller's failure to restore the Property, as a result of a casualty loss, to its previous condition by the closing date set forth in a contract for the sale of the Property.

D. Other Compensation:

(1) Breach by Buyer Under a Contract: If Seller collects earnest money, the sales price, or damages by suit, compromise, settlement, or otherwise from a buyer who breaches a contract for the sale of the Property entered into during this Listing, Seller will pay Broker, after deducting attorney's fees

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Initialed for Identification by Broker/Associate

and Seller

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Engel & Volkers

3700 Bee Cave Rd #102 Austin, TX 78746 512-328-3939

Kathryn Scarborough

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Residential Listing concerning 5201 Tortuga Trail, Austin, TX 78731

and collection expenses, an amount equal to the lesser of one-half of the amount collected after deductions or the amount of the Broker's Compensation stated in Paragraph 5A. Any amount paid under this Paragraph 5D(1) is in addition to any amount that Broker may be entitled to receive for subsequently selling the Property.

(2) Service Providers: If Broker refers Seller or a prospective buyer to a service provider (for example, mover, cable company, telecommunications provider, utility, or contractor) Broker may receive a fee from the service provider for the referral. Any referral fee Broker receives under this Paragraph 5D(2) is in addition to any other compensation Broker may receive under this Listing.

(3) Other Fees and/or Reimbursable Expenses: _____

E. Protection Period:

(1) "Protection period" means that time starting the day after this Listing ends and continuing for 90 days. "Sell" means any transfer of any fee simple interest in the Property whether by oral or written agreement or option.

(2) Not later than 10 days after this Listing ends, Broker may send Seller written notice specifying the names of persons whose attention was called to the Property during this Listing. If Seller agrees to sell the Property during the protection period to a person named in the notice or to a relative of a person named in the notice, Seller will pay Broker, upon the closing of the sale, the amount Broker would have been entitled to receive if this Listing were still in effect.

(3) This Paragraph 5E survives termination of this Listing. This Paragraph 5E will not apply if:
(a) Seller agrees to sell the Property during the protection period;
(b) the Property is exclusively listed with another broker who is a member of the Texas Association of REALTORS® at the time the sale is negotiated; and
(c) Seller is obligated to pay the other broker a fee for the sale.

F. County: All amounts payable to Broker are to be paid in cash in _____
Travis County, Texas.

G. Escrow Authorization: Seller authorizes, and Broker may so instruct, any escrow or closing agent authorized to close a transaction for the purchase or acquisition of the Property to collect and disburse to Broker all amounts payable to Broker under this Listing.

6. LISTING SERVICES:

☐ A. Broker will file this Listing with one or more Multiple Listing Services (MLS) by the earlier of the time required by MLS rules or 5 days after the date this Listing begins. Seller authorizes Broker to submit information about this Listing and the sale of the Property to the MLS.

Notice: MLS rules require Broker to accurately and timely submit all information the MLS requires for participation including sold data. MLS rules may require that the information be submitted to the MLS throughout the time the Listing is in effect. Subscribers to the MLS may use the information for market evaluation or appraisal purposes. Subscribers are other brokers and other real estate professionals such as appraisers and may include the appraisal district. Any information filed with the MLS becomes the property of the MLS for all purposes. Submission of information to MLS ensures that persons who use and benefit from the MLS also contribute information.

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3700 Bee Cave Rd #102 Austin, TX 78746 512-328-3939

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Kathryn Scarborough

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Residential Listing concerning 5201 Tortuga Trail, Austin, TX 78731

- ☒ B. Seller instructs Broker not to file this Listing with one or more Multiple Listing Service (MLS) until _____ days after the date this Listing begins for the following purpose(s): Upon completion of construction, photography, and marketing.
(NOTE: Do not check if prohibited by Multiple Listing Service(s).)

- ☐ C. Broker will not file this Listing with a Multiple Listing Service (MLS) or any other listing service.

Notice: Seller acknowledges and understands that if this option is checked: (1) Seller's Property will not be included in the MLS database available to real estate agents and brokers from other real estate offices who subscribe to and participate in the MLS, and their buyer clients may not be aware that Seller's Property is offered for sale; (2) Seller's Property will not be included in the MLS's download to various real estate Internet sites that are used by the public to search for property listings; and (3) real estate agents, brokers, and members of the public may be unaware of the terms and conditions under which Seller is marketing the Property.

7. ACCESS TO THE PROPERTY:

- A. **Authorizing Access:** Authorizing access to the Property means giving permission to another person to enter the Property, disclosing to the other person any security codes necessary to enter the Property, and lending a key to the other person to enter the Property, directly or through a keybox. To facilitate the showing and sale of the Property, Seller instructs Broker to:
- (1) access the Property at reasonable times;
 - (2) authorize other brokers, their associates, inspectors, appraisers, and contractors to access the Property at reasonable times; and
 - (3) duplicate keys to facilitate convenient and efficient showings of the Property.

- B. **Scheduling Companies:** Broker may engage the following companies to schedule appointments and to authorize others to access the Property: _____

- C. **Keybox:** A keybox is a locked container placed on the Property that holds a key to the Property. A keybox makes it more convenient for brokers, their associates, inspectors, appraisers, and contractors to show, inspect, or repair the Property. The keybox is opened by a special combination, key, or programmed device so that authorized persons may enter the Property, even in Seller's absence. Using a keybox will probably increase the number of showings, but involves risks (for example, unauthorized entry, theft, property damage, or personal injury). Neither the Association of REALTORS® nor MLS requires the use of a keybox.

- (1) Broker ☐ is ☒ is not authorized to place a keybox on the Property.

- (2) If a tenant occupies the Property at any time during this Listing, Seller will furnish Broker a written statement (for example, TAR No. 1411), signed by all tenants, authorizing the use of a keybox or Broker may remove the keybox from the Property.

- D. **Liability and Indemnification:** When authorizing access to the Property, Broker, other brokers, their associates, any keybox provider, or any scheduling company are not responsible for personal injury or property loss to Seller or any other person. Seller assumes all risk of any loss, damage, or injury. Except for a loss caused by Broker, Seller will indemnify and hold Broker harmless from any claim for personal injury, property damage, or other loss.

8. **COOPERATION WITH OTHER BROKERS:** Broker will allow other brokers to show the Property to prospective buyers. Broker will offer to pay the other broker a fee as described below if the other broker procures a buyer that purchases the Property.

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Engel & Volkers 3700 Bee Cave Rd #102 Austin, TX 78746 512-328-3939 Kathryn Scarborough

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Residential Listing concerning 5201 Tortuga Trail, Austin, TX 78731

A. MLS Participants: If the other broker is a participant in the MLS in which this Listing is filed, Broker will offer to pay the other broker:

- (1) if the other broker represents the buyer: 2.5 % of the sales price or \$ _____; and
(2) if the other broker is a subagent: 0 % of the sales price or \$ _____

B. Non-MLS Brokers: If the other broker is not a participant in the MLS in which this Listing is filed, Broker will offer to pay the other broker:

- (1) if the other broker represents the buyer: 2 % of the sales price or \$ _____; and
(2) if the other broker is a subagent: 0 % of the sales price or \$ _____

9. **INTERMEDIARY:** (Check A or B only.)

☒ A. Intermediary Status: Broker may show the Property to interested prospective buyers who Broker represents. If a prospective buyer who Broker represents offers to buy the Property, Seller authorizes Broker to act as an intermediary and Broker will notify Seller that Broker will service the parties in accordance with one of the following alternatives.

(1) If a prospective buyer who Broker represents is serviced by an associate other than the associate servicing Seller under this Listing, Broker may notify Seller that Broker will: (a) appoint the associate then servicing Seller to communicate with, carry out instructions of, and provide opinions and advice during negotiations to Seller; and (b) appoint the associate then servicing the prospective buyer to the prospective buyer for the same purpose.

(2) If a prospective buyer who Broker represents is serviced by the same associate who is servicing Seller, Broker may notify Seller that Broker will: (a) appoint another associate to communicate with, carry out instructions of, and provide opinions and advice during negotiations to the prospective buyer; and (b) appoint the associate servicing the Seller under this Listing to the Seller for the same purpose.

(3) Broker may notify Seller that Broker will make no appointments as described under this Paragraph 9A and, in such an event, the associate servicing the parties will act solely as Broker's intermediary representative, who may facilitate the transaction but will not render opinions or advice during negotiations to either party.

☐ B. No Intermediary Status: Seller agrees that Broker will not show the Property to prospective buyers who Broker represents.

Notice: If Broker acts as an intermediary under Paragraph 9A, Broker and Broker's associates:

- may not disclose to the prospective buyer that Seller will accept a price less than the asking price unless otherwise instructed in a separate writing by Seller;
- may not disclose to Seller that the prospective buyer will pay a price greater than the price submitted in a written offer to Seller unless otherwise instructed in a separate writing by the prospective buyer;
- may not disclose any confidential information or any information Seller or the prospective buyer specifically instructs Broker in writing not to disclose unless otherwise instructed in a separate writing by the respective party or required to disclose the information by the Real Estate License Act or a court order or if the information materially relates to the condition of the property;
- may not treat a party to the transaction dishonestly; and
- may not violate the Real Estate License Act.

Residential Listing concerning S201 Tortuga Trail, Austin, TX 78733

10. CONFIDENTIAL INFORMATION: During this Listing or after it ends, Broker may not knowingly disclose information obtained in confidence from Seller except as authorized by Seller or required by law. Broker may not disclose to Seller any confidential information regarding any other person Broker represents or previously represented except as required by law.

11. BROKER'S AUTHORITY:

A. Broker will use reasonable efforts and act diligently to market the Property for sale, procure a buyer, and negotiate the sale of the Property.

B. Broker is authorized to display this Listing on the Internet without limitation unless one of the following is checked:

- ☐ (1) Seller does not want this Listing to be displayed on the Internet.
☐ (2) Seller does not want the address of the Property to be displayed on the Internet.

Notice: Seller understands and acknowledges that, if box 11B(1) is selected, consumers who conduct searches for listings on the Internet will not see information about this Listing in response to their search.

C. Broker is authorized to market the Property with the following financing options:

- | | |
|--|--|
| <input checked="" type="checkbox"/> (1) Conventional | <input type="checkbox"/> (5) Texas Veterans Land Program |
| <input type="checkbox"/> (2) VA | <input type="checkbox"/> (6) Owner Financing |
| <input type="checkbox"/> (3) FHA | <input type="checkbox"/> (7) Other |
| <input checked="" type="checkbox"/> (4) Cash | |

D. In addition to other authority granted by this Listing, Broker may:

- (1) advertise the Property by means and methods as Broker determines, including but not limited to creating and placing advertisements with interior and exterior photographic and audio-visual images of the Property and related information in any media and the Internet;
- (2) place a "For Sale" sign on the Property and remove all other signs offering the Property for sale or lease;
- (3) furnish comparative marketing and sales information about other properties to prospective buyers;
- (4) disseminate information about the Property to other brokers and to prospective buyers, including applicable disclosures or notices that Seller is required to make under law or a contract;
- (5) obtain information from any holder of a note secured by a lien on the Property;
- (6) accept and deposit earnest money in trust in accordance with a contract for the sale of the Property;
- (7) disclose the sales price and terms of sale to other brokers, appraisers, or other real estate professionals;
- (8) in response to inquiries from prospective buyers and other brokers, disclose whether the Seller is considering more than one offer (Broker will not disclose the terms of any competing offer unless specifically instructed by Seller);
- (9) advertise, during or after this Listing ends, that Broker "sold" the Property; and
- (10) place information about this Listing, the Property, and a transaction for the Property on an electronic transaction platform (typically an Internet-based system where professionals related to the transaction such as title companies, lenders, and others may receive, view, and input information).

E. Broker is not authorized to execute any document in the name of or on behalf of Seller concerning the Property.

12. SELLER'S REPRESENTATIONS: Except as provided by Paragraph 15, Seller represents that:

- A. Seller has fee simple title to and peaceable possession of the Property and all its improvements and fixtures, unless rented, and the legal capacity to convey the Property;
- B. Seller is not bound by a listing agreement with another broker for the sale, exchange, or lease of the Property that is or will be in effect during this Listing;
- C. any pool or spa and any required enclosures, fences, gates, and latches comply with all applicable laws and ordinances;
- D. no person or entity has any right to purchase, lease, or acquire the Property by an option, right of refusal, or other agreement;
- E. Seller is current and not delinquent on all loans and all other financial obligations related to the Property, including but not limited to mortgages, home equity loans, home improvement loans, homeowner association fees, and taxes, except _____;
- F. Seller is not aware of any liens or other encumbrances against the Property, except _____;
- G. the Property is not subject to the jurisdiction of any court;
- H. all information relating to the Property Seller provides to Broker is true and correct to the best of Seller's knowledge; and
- I. the name of any employer, relocation company, or other entity that provides benefits to Seller when selling the Property is: _____

13. SELLER'S ADDITIONAL PROMISES: Seller agrees to:

- A. cooperate with Broker to facilitate the showing, marketing, and sale of the Property;
- B. not rent or lease the Property during this Listing without Broker's prior written approval;
- C. not negotiate with any prospective buyer who may contact Seller directly, but refer all prospective buyers to Broker;
- D. not enter into a listing agreement with another broker for the sale, exchange, lease, or management of the Property to become effective during this Listing without Broker's prior written approval;
- E. maintain any pool and all required enclosures in compliance with all applicable laws and ordinances;
- F. provide Broker with copies of any leases or rental agreements pertaining to the Property and advise Broker of tenants moving in or out of the Property;
- G. complete any disclosures or notices required by law or a contract to sell the Property; and
- H. amend any applicable notices and disclosures if any material change occurs during this Listing.

14. LIMITATION OF LIABILITY:

- A. If the Property is or becomes vacant during this Listing, Seller must notify Seller's casualty insurance company and request a "vacancy clause" to cover the Property. Broker is not responsible for the security of the Property nor for inspecting the Property on any periodic basis.
- B. Broker is not responsible or liable in any manner for personal injury to any person or for loss or damage to any person's real or personal property resulting from any act or omission not caused by Broker's negligence, including but not limited to injuries or damages caused by:
 - (1) other brokers, their associates, inspectors, appraisers, and contractors who are authorized to access the Property;
 - (2) other brokers or their associates who may have information about the Property on their websites;
 - (3) acts of third parties (for example, vandalism or theft);
 - (4) freezing water pipes;
 - (5) a dangerous condition on the Property;
 - (6) the Property's non-compliance with any law or ordinance; or
 - (7) Seller, negligently or otherwise.

Residential Listing concerning 5201 Tortuga Trail, Austin, TX 78731

- C. Seller agrees to protect, defend, indemnify, and hold Broker harmless from any damage, costs, attorney's fees, and expenses that:
- (1) are caused by Seller, negligently or otherwise;
 - (2) arise from Seller's failure to disclose any material or relevant information about the Property; or
 - (3) are caused by Seller giving incorrect information to any person.

15. SPECIAL PROVISIONS:

Property to remain a pocket listing until instructed by seller to list on active MLS market.

Seller to pay for replacement of signs.

Upon early termination, Engel & Volkers/Kathryn Scarborough/Michele Farnquist will be reimbursed for all advertising and marketing expenses.

16. DEFAULT: If Seller breaches this Listing, Seller is in default and will be liable to Broker for the amount of the Broker's compensation specified in Paragraph 5A and any other compensation Broker is entitled to receive under this Listing. If a sales price is not determinable in the event of an exchange or breach of this Listing, the Listing Price will be the sales price for purposes of computing compensation. If Broker breaches this Listing, Broker is in default and Seller may exercise any remedy at law.

17. MEDIATION: The parties agree to negotiate in good faith in an effort to resolve any dispute related to this Listing that may arise between the parties. If the dispute cannot be resolved by negotiation, the dispute will be submitted to mediation. The parties to the dispute will choose a mutually acceptable mediator and will share the cost of mediation equally.

18. ATTORNEY'S FEES: If Seller or Broker is a prevailing party in any legal proceeding brought as a result of a dispute under this Listing or any transaction related to or contemplated by this Listing, such party will be entitled to recover from the non-prevailing party all costs of such proceeding and reasonable attorney's fees.

19. ADDENDA AND OTHER DOCUMENTS: Addenda that are part of this Listing and other documents that Seller may need to provide are:

- ☒ A. Information About Brokerage Services;
- ☒ B. Seller Disclosure Notice (§5.008, Texas Property Code);
- ☐ C. Addendum for Seller's Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards (required if Property was built before 1978);
- ☒ D. Residential Real Property Affidavit (T-47 Affidavit; related to existing survey);
- ☐ E. MUD, Water District, or Statutory Tax District Disclosure Notice (Chapter 49, Texas Water Code);
- ☐ F. Request for Information from an Owners' Association;
- ☐ G. Request for Mortgage Information;
- ☐ H. Information about Mineral Clauses in Contract Forms;
- ☐ I. Information about On-Site Sewer Facility;
- ☐ J. Information about Property Insurance for a Buyer or Seller;
- ☐ K. Information about Special Flood Hazard Areas;
- ☐ L. Condominium Addendum to Listing;
- ☐ M. Keybox Authorization by Tenant;
- ☐ N. Seller's Authorization to Release and Advertise Certain Information; and
- ☐ O.

(TAR-1101) 01-01-14

Initialed for Identification by Broker/Associate MT and Seller R.T.

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Engel & Volkers

3700 Bee Cave Rd #102 Austin, TX 78746 512-328-3939

Kathryn Scarborough

ITC000108

20. AGREEMENT OF PARTIES:

- A. Entire Agreement: This Listing is the entire agreement of the parties and may not be changed except by written agreement.
- B. Assignability: Neither party may assign this Listing without the written consent of the other party.
- C. Binding Effect: Seller's obligation to pay Broker earned compensation is binding upon Seller and Seller's heirs, administrators, executors, successors, and permitted assignees.
- D. Joint and Several: All Sellers executing this Listing are jointly and severally liable for the performance of all its terms.
- E. Governing Law: Texas law governs the interpretation, validity, performance, and enforcement of this Listing.
- F. Severability: If a court finds any clause in this Listing invalid or unenforceable, the remainder of this Listing will not be affected and all other provisions of this Listing will remain valid and enforceable.
- G. Notices: Notices between the parties must be in writing and are effective when sent to the receiving party's address, fax, or e-mail address specified in Paragraph 1.

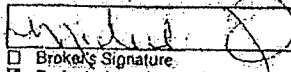
21. ADDITIONAL NOTICES:

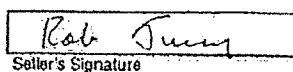
- A. Broker's compensation or the sharing of compensation between brokers is not fixed, controlled, recommended, suggested, or maintained by the Association of REALTORS®, MLS, or any listing service.
- B. In accordance with fair housing laws and the National Association of REALTORS® Code of Ethics, Broker's services must be provided and the Property must be shown and made available to all persons without regard to race, color, religion, national origin, sex, disability, familial status, sexual orientation, or gender identity. Local ordinances may provide for additional protected classes (for example, creed, status as a student, marital status, or age).
- C. Broker advises Seller to contact any mortgage lender or other lien holder to obtain information regarding payoff amounts for any existing mortgages or liens on the Property.
- D. Broker advises Seller to review the information Broker submits to an MLS or other listing service.
- E. Broker advises Seller to remove or secure jewelry, prescription drugs, other valuables, firearms and any other weapons.
- F. Statutes or ordinances may regulate certain items on the Property (for example, swimming pools and septic systems). Non-compliance with the statutes or ordinances may delay a transaction and may result in fines, penalties, and liability to Seller.
- G. If the Property was built before 1978, Federal law requires the Seller to: (1) provide the buyer with the federally approved pamphlet on lead poisoning prevention; (2) disclose the presence of any known lead-based paint or lead-based paint hazards in the Property; (3) deliver all records and reports to the buyer related to such paint or hazards; and (4) provide the buyer a period up to 10 days to have the Property inspected for such paint or hazards.

H. Broker cannot give legal advice. READ THIS LISTING CAREFULLY. If you do not understand the effect of this Listing, consult an attorney BEFORE signing.

Engel & Volkers 440298
Broker's Printed Name License No.

Rob Turner Rob. Turner
Seller's Printed Name

 10/6/17
☐ Broker's Signature Date
☒ Broker's Associate's Signature, as an authorized agent of Broker

 10/6/17
Seller's Signature Date

Kathryn Scarborough
Broker's Associate's Printed Name, if applicable

Seller's Printed Name


Seller's Signature Date



TEXAS ASSOCIATION OF REALTORS
AMENDMENT TO LISTING

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS IS NOT AUTHORIZED.
© TEXAS ASSOCIATION OF REALTORS, INC. 2004

AMENDMENT TO LISTING AGREEMENT BETWEEN THE UNDERSIGNED PARTIES
CONCERNING THE PROPERTY AT

5201 Tortuga Trail, Austin, TX 78731

"Owner" means the seller or landlord of the above-referenced Property.

Effective 05/24/2018, Owner and Broker amend the above-referenced Listing as follows:

- ☐ A. The Listing Price in Paragraph 3 of the Listing is changed to: \$ _____.
- ☒ B. The date the Listing ends in Paragraph 4 of the Listing is changed to: 09/30/2018.
- ☐ C. Owner instructs Broker to cease marketing the Property on _____ and to resume marketing the Property on: ☐ (1) receipt of further instructions from Owner; or ☐ (2) _____.

The Listing is not terminated and remains in effect for all other purposes.

- ☐ D. Paragraph(s) _____ are changed as follows:

Engel & Volkers

Broker's (Company's) Printed Name

License No.

By [Signature]

6/5/18
Date

(TAR-1404) 1-7-04

Engel & Volkers - Austin

3700 Bee Cave Rd #102 Austin, TX 78746

[Signature] 6/5/18
Seller or Landlord Date

Seller or Landlord

Date

Page 1 of 1

Michele Turnquist

ITC000111

Exhibit A-2



TEXAS ASSOCIATION OF REALTORS®

RESIDENTIAL REAL ESTATE LISTING AGREEMENT EXCLUSIVE RIGHT TO SELL

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS® IS NOT AUTHORIZED.
©Texas Association of REALTORS®, Inc. 2014

1. PARTIES: The parties to this agreement (this Listing) are:

Seller: Rob Turner

Address: 5203 Tortuga Trail

City, State, Zip: Austin, TX 78731

Phone: 512-573-8762

Fax: _____

E-Mail: turnerhomes@gmail.com

Broker: Engel & Volkers Austin

Address: 3700 Bee Cave Road, Suite 102

City, State, Zip: Austin, TX 78746

Phone: 512.970.1355

Fax: _____

E-Mail: kathryn.scarborough@evusa.com

Seller appoints Broker as Seller's sole and exclusive real estate agent and grants to Broker the exclusive right to sell the Property.

2. PROPERTY: "Property" means the land, improvements, and accessories described below, except for any described exclusions.

A. Land: Lot _____, Block _____, ABS 7 CHAMBERS T J ACR 0.8040
Addition, City of Austin
in Travis County, Texas known as _____
5203 Tortuga Trail 78731 (address/zip code),
or as described on attached exhibit. (If Property is a condominium, attach Condominium Addendum.)

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

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

(TAR-1101) 01-01-14

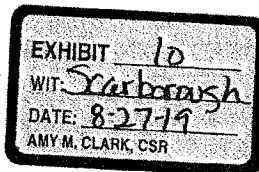
Initialed for Identification by Broker/Associate _____ and Seller _____

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Engel & Volkers

3700 Bee Cave Rd #102 Austin, TX 78746 512-328-3939

Kathryn Scarborough



ITC000112

Residential Listing concerning 5203 Tortuga Trail, Austin, TX 78731

D. Exclusions: The following improvements and accessories will be retained by Seller and must be removed prior to delivery of possession:

E. Owners' Association: The property ☐ is ☒ is not subject to mandatory membership in a property owners' association.

3. LISTING PRICE: Seller instructs Broker to market the Property at the following price: \$2,995,000 (Listing Price). Seller agrees to sell the Property for the Listing Price or any other price acceptable to Seller. Seller will pay all typical closing costs charged to sellers of residential real estate in Texas (seller's typical closing costs are those set forth in the residential contract forms promulgated by the Texas Real Estate Commission).

4. TERM:

A. This Listing begins on 10/04/2017 and ends at 11:59 p.m. on 07/31/2018

B. If Seller enters into a binding written contract to sell the Property before the date this Listing begins and the contract is binding on the date this Listing begins, this Listing will not commence and will be void.

5. BROKER COMPENSATION:

A. When earned and payable, Seller will pay Broker:

☒ (1) 5% on lot % of the sales price.

☒ (2) If Michele Turnquist & Kathryn Scarborough brings a buyer, seller has agreed to pay a flat fee of \$240,000 for to be built.

B. Earned: Broker's compensation is earned when any one of the following occurs during this Listing:

- (1) Seller sells, exchanges, options, agrees to sell, agrees to exchange, or agrees to option the Property to anyone at any price on any terms;
- (2) Broker individually or in cooperation with another broker procures a buyer ready, willing, and able to buy the Property at the Listing Price or at any other price acceptable to Seller; or
- (3) Seller breaches this Listing.

C. Payable: Once earned, Broker's compensation is payable either during this Listing or after it ends at the earlier of:

- (1) the closing and funding of any sale or exchange of all or part of the Property;
- (2) Seller's refusal to sell the Property after Broker's compensation has been earned;
- (3) Seller's breach of this Listing; or
- (4) at such time as otherwise set forth in this Listing.

Broker's compensation is not payable if a sale of the Property does not close or fund as a result of: (i) Seller's failure, without fault of Seller, to deliver to a buyer a deed or a title policy as required by the contract to sell; (ii) loss of ownership due to foreclosure or other legal proceeding; or (iii) Seller's failure to restore the Property, as a result of a casualty loss, to its previous condition by the closing date set forth in a contract for the sale of the Property.

D. Other Compensation:

(1) Breach by Buyer Under a Contract: If Seller collects earnest money, the sales price, or damages by suit, compromise, settlement, or otherwise from a buyer who breaches a contract for the sale of the Property entered into during this Listing, Seller will pay Broker, after deducting attorney's fees

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Initiated for Identification by Broker/Associate [initials] and Seller [initials]

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Engel & Volkers

3700 Bee Cave Rd #102 Austin, TX 78746 512-328-3939

Kathryn Scarborough

ITC000113

and collection expenses, an amount equal to the lesser of one-half of the amount collected after deductions or the amount of the Broker's Compensation stated in Paragraph 5A. Any amount paid under this Paragraph 5D(1) is in addition to any amount that Broker may be entitled to receive for subsequently selling the Property.

- (2) Service Providers: If Broker refers Seller or a prospective buyer to a service provider (for example, mover, cable company, telecommunications provider, utility, or contractor) Broker may receive a fee from the service provider for the referral. Any referral fee Broker receives under this Paragraph 5D(2) is in addition to any other compensation Broker may receive under this Listing.

- (3) Other Fees and/or Reimbursable Expenses: _____

E. Protection Period:

- (1) "Protection period" means that time starting the day after this Listing ends and continuing for 90 days. "Sell" means any transfer of any fee simple interest in the Property whether by oral or written agreement or option.
- (2) Not later than 10 days after this Listing ends, Broker may send Seller written notice specifying the names of persons whose attention was called to the Property during this Listing. If Seller agrees to sell the Property during the protection period to a person named in the notice or to a relative of a person named in the notice, Seller will pay Broker, upon the closing of the sale, the amount Broker would have been entitled to receive if this Listing were still in effect.
- (3) This Paragraph 5E survives termination of this Listing. This Paragraph 5E will not apply if:
- (a) Seller agrees to sell the Property during the protection period;
 - (b) the Property is exclusively listed with another broker who is a member of the Texas Association of REALTORS® at the time the sale is negotiated; and
 - (c) Seller is obligated to pay the other broker a fee for the sale.

- F. County:** All amounts payable to Broker are to be paid in cash in Travis County, Texas.

- G. Escrow Authorization:** Seller authorizes, and Broker may so instruct, any escrow or closing agent authorized to close a transaction for the purchase or acquisition of the Property to collect and disburse to Broker all amounts payable to Broker under this Listing.

6. LISTING SERVICES:

- ☐ A. Broker will file this Listing with one or more Multiple Listing Services (MLS) by the earlier of the time required by MLS rules or 5 days after the date this Listing begins. Seller authorizes Broker to submit information about this Listing and the sale of the Property to the MLS.

Notice: MLS rules require Broker to accurately and timely submit all information the MLS requires for participation including sold data. MLS rules may require that the information be submitted to the MLS throughout the time the Listing is in effect. Subscribers to the MLS may use the information for market evaluation or appraisal purposes. Subscribers are other brokers and other real estate professionals such as appraisers and may include the appraisal district. Any information filed with the MLS becomes the property of the MLS for all purposes. **Submission of information to MLS ensures that persons who use and benefit from the MLS also contribute information.**

- ☒ B. Seller instructs Broker not to file this Listing with one or more Multiple Listing Service (MLS) until _____ days after the date this Listing begins for the following purpose(s): _____
Until completion of photography and marketing.
(NOTE: Do not check if prohibited by Multiple Listing Service(s).)

- ☐ C. Broker will not file this Listing with a Multiple Listing Service (MLS) or any other listing service.

Notice: Seller acknowledges and understands that if this option is checked: (1) Seller's Property will not be included in the MLS database available to real estate agents and brokers from other real estate offices who subscribe to and participate in the MLS, and their buyer clients may not be aware that Seller's Property is offered for sale; (2) Seller's Property will not be included in the MLS's download to various real estate Internet sites that are used by the public to search for property listings; and (3) real estate agents, brokers, and members of the public may be unaware of the terms and conditions under which Seller is marketing the Property.

7. ACCESS TO THE PROPERTY:

- A. **Authorizing Access:** Authorizing access to the Property means giving permission to another person to enter the Property, disclosing to the other person any security codes necessary to enter the Property, and lending a key to the other person to enter the Property, directly or through a keybox. To facilitate the showing and sale of the Property, Seller instructs Broker to:

- (1) access the Property at reasonable times;
- (2) authorize other brokers, their associates, inspectors, appraisers, and contractors to access the Property at reasonable times; and
- (3) duplicate keys to facilitate convenient and efficient showings of the Property.

- B. **Scheduling Companies:** Broker may engage the following companies to schedule appointments and to authorize others to access the Property: _____

- C. **Keybox:** A keybox is a locked container placed on the Property that holds a key to the Property. A keybox makes it more convenient for brokers, their associates, inspectors, appraisers, and contractors to show, inspect, or repair the Property. The keybox is opened by a special combination, key, or programmed device so that authorized persons may enter the Property, even in Seller's absence. Using a keybox will probably increase the number of showings, but involves risks (for example, unauthorized entry, theft, property damage, or personal injury). Neither the Association of REALTORS® nor MLS requires the use of a keybox.

- (1) Broker ☐ is ☒ is not authorized to place a keybox on the Property.

- (2) If a tenant occupies the Property at any time during this Listing, Seller will furnish Broker a written statement (for example, TAR No. 1411), signed by all tenants, authorizing the use of a keybox or Broker may remove the keybox from the Property.

- D. **Liability and Indemnification:** When authorizing access to the Property, Broker, other brokers, their associates, any keybox provider, or any scheduling company are not responsible for personal injury or property loss to Seller or any other person. Seller assumes all risk of any loss, damage, or injury. Except for a loss caused by Broker, Seller will indemnify and hold Broker harmless from any claim for personal injury, property damage, or other loss.

- B. **COOPERATION WITH OTHER BROKERS:** Broker will allow other brokers to show the Property to prospective buyers. Broker will offer to pay the other broker a fee as described below if the other broker procures a buyer that purchases the Property.

- A. MLS Participants: If the other broker is a participant in the MLS in which this Listing is filed, Broker will offer to pay the other broker:
- (1) if the other broker represents the buyer: 3 % of the sales price or \$ _____; and
- (2) if the other broker is a subagent: 0 % of the sales price or \$ _____.
- B. Non-MLS Brokers: If the other broker is not a participant in the MLS in which this Listing is filed, Broker will offer to pay the other broker:
- (1) if the other broker represents the buyer: 2 % of the sales price or \$ _____; and
- (2) if the other broker is a subagent: 0 % of the sales price or \$ _____.

9. **INTERMEDIARY:** (Check A or B only.)

- ☒ A. Intermediary Status: Broker may show the Property to interested prospective buyers who Broker represents. If a prospective buyer who Broker represents offers to buy the Property, Seller authorizes Broker to act as an intermediary and Broker will notify Seller that Broker will service the parties in accordance with one of the following alternatives,
- (1) If a prospective buyer who Broker represents is serviced by an associate other than the associate servicing Seller under this Listing, Broker may notify Seller that Broker will: (a) appoint the associate then servicing Seller to communicate with, carry out instructions of, and provide opinions and advice during negotiations to Seller; and (b) appoint the associate then servicing the prospective buyer to the prospective buyer for the same purpose.
- (2) If a prospective buyer who Broker represents is serviced by the same associate who is servicing Seller, Broker may notify Seller that Broker will: (a) appoint another associate to communicate with, carry out instructions of, and provide opinions and advice during negotiations to the prospective buyer; and (b) appoint the associate servicing the Seller under this Listing to the Seller for the same purpose.
- (3) Broker may notify Seller that Broker will make no appointments as described under this Paragraph 9A and, in such an event, the associate servicing the parties will act solely as Broker's intermediary representative, who may facilitate the transaction but will not render opinions or advice during negotiations to either party.
- ☐ B. No Intermediary Status: Seller agrees that Broker will not show the Property to prospective buyers who Broker represents.

- Notice:** If Broker acts as an intermediary under Paragraph 9A, Broker and Broker's associates:
- may not disclose to the prospective buyer that Seller will accept a price less than the asking price unless otherwise instructed in a separate writing by Seller;
 - may not disclose to Seller that the prospective buyer will pay a price greater than the price submitted in a written offer to Seller unless otherwise instructed in a separate writing by the prospective buyer;
 - may not disclose any confidential information or any information Seller or the prospective buyer specifically instructs Broker in writing not to disclose unless otherwise instructed in a separate writing by the respective party or required to disclose the information by the Real Estate License Act or a court order or if the information materially relates to the condition of the property;
 - may not treat a party to the transaction dishonestly; and
 - may not violate the Real Estate License Act.

Residential Listing concerning 5203 Tortuga Trail, Austin, TX 78731

10. CONFIDENTIAL INFORMATION: During this Listing or after it ends, Broker may not knowingly disclose information obtained in confidence from Seller except as authorized by Seller or required by law. Broker may not disclose to Seller any confidential information regarding any other person Broker represents or previously represented except as required by law.

11. BROKER'S AUTHORITY:

- A. Broker will use reasonable efforts and act diligently to market the Property for sale, procure a buyer, and negotiate the sale of the Property.
- B. Broker is authorized to display this Listing on the Internet without limitation unless one of the following is checked:
- ☐ (1) Seller does not want this Listing to be displayed on the Internet.
 - ☐ (2) Seller does not want the address of the Property to be displayed on the Internet.

Notice: Seller understands and acknowledges that, if box 11B(1) is selected, consumers who conduct searches for listings on the Internet will not see information about this Listing in response to their search.

C. Broker is authorized to market the Property with the following financing options:

- | | |
|--|--|
| <input checked="" type="checkbox"/> (1) Conventional | <input type="checkbox"/> (5) Texas Veterans Land Program |
| <input type="checkbox"/> (2) VA | <input type="checkbox"/> (6) Owner Financing |
| <input type="checkbox"/> (3) FHA | <input type="checkbox"/> (7) Other |
| <input checked="" type="checkbox"/> (4) Cash | |

D. In addition to other authority granted by this Listing, Broker may:

- (1) advertise the Property by means and methods as Broker determines, including but not limited to creating and placing advertisements with interior and exterior photographic and audio-visual images of the Property and related information in any media and the Internet;
- (2) place a "For Sale" sign on the Property and remove all other signs offering the Property for sale or lease;
- (3) furnish comparative marketing and sales information about other properties to prospective buyers;
- (4) disseminate information about the Property to other brokers and to prospective buyers, including applicable disclosures or notices that Seller is required to make under law or a contract;
- (5) obtain information from any holder of a note secured by a lien on the Property;
- (6) accept and deposit earnest money in trust in accordance with a contract for the sale of the Property;
- (7) disclose the sales price and terms of sale to other brokers, appraisers, or other real estate professionals;
- (8) in response to inquiries from prospective buyers and other brokers, disclose whether the Seller is considering more than one offer (Broker will not disclose the terms of any competing offer unless specifically instructed by Seller);
- (9) advertise, during or after this Listing ends, that Broker "sold" the Property; and
- (10) place information about this Listing, the Property, and a transaction for the Property on an electronic transaction platform (typically an Internet-based system where professionals related to the transaction such as title companies, lenders, and others may receive, view, and input information).

E. Broker is not authorized to execute any document in the name of or on behalf of Seller concerning the Property.

(TAR-1101) 01-01-14

Initialed for Identification by Broker/Associate WMT and Seller YLV

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Engel & Volkers

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Kathryn Scarborough

ITC000117

12. SELLER'S REPRESENTATIONS: Except as provided by Paragraph 15, Seller represents that:

- A. Seller has fee simple title to and peaceable possession of the Property and all its improvements and fixtures, unless rented, and the legal capacity to convey the Property;
- B. Seller is not bound by a listing agreement with another broker for the sale, exchange, or lease of the Property that is or will be in effect during this Listing;
- C. any pool or spa and any required enclosures, fences, gates, and latches comply with all applicable laws and ordinances;
- D. no person or entity has any right to purchase, lease, or acquire the Property by an option, right of refusal, or other agreement;
- E. Seller is current and not delinquent on all loans and all other financial obligations related to the Property, including but not limited to mortgages, home equity loans, home improvement loans, homeowner association fees, and taxes, except
- F. Seller is not aware of any liens or other encumbrances against the Property, except
- G. the Property is not subject to the jurisdiction of any court;
- H. all information relating to the Property Seller provides to Broker is true and correct to the best of Seller's knowledge; and
- I. the name of any employer, relocation company, or other entity that provides benefits to Seller when selling the Property is:

13. SELLER'S ADDITIONAL PROMISES: Seller agrees to:

- A. cooperate with Broker to facilitate the showing, marketing, and sale of the Property;
- B. not rent or lease the Property during this Listing without Broker's prior written approval;
- C. not negotiate with any prospective buyer who may contact Seller directly, but refer all prospective buyers to Broker;
- D. not enter into a listing agreement with another broker for the sale, exchange, lease, or management of the Property to become effective during this Listing without Broker's prior written approval;
- E. maintain any pool and all required enclosures in compliance with all applicable laws and ordinances;
- F. provide Broker with copies of any leases or rental agreements pertaining to the Property and advise Broker of tenants moving in or out of the Property;
- G. complete any disclosures or notices required by law or a contract to sell the Property; and
- H. amend any applicable notices and disclosures if any material change occurs during this Listing.

14. LIMITATION OF LIABILITY:

- A. If the Property is or becomes vacant during this Listing, Seller must notify Seller's casualty insurance company and request a "vacancy clause" to cover the Property. Broker is not responsible for the security of the Property nor for inspecting the Property on any periodic basis.
- B. Broker is not responsible or liable in any manner for personal injury to any person or for loss or damage to any person's real or personal property resulting from any act or omission not caused by Broker's negligence, including but not limited to injuries or damages caused by:
 - (1) other brokers, their associates, inspectors, appraisers, and contractors who are authorized to access the Property;
 - (2) other brokers or their associates who may have information about the Property on their websites;
 - (3) acts of third parties (for example, vandalism or theft);
 - (4) freezing water pipes;
 - (5) a dangerous condition on the Property;
 - (6) the Property's non-compliance with any law or ordinance; or
 - (7) Seller, negligently or otherwise.

- C. Seller agrees to protect, defend, indemnify, and hold Broker harmless from any damage, costs, attorney's fees, and expenses that:
- (1) are caused by Seller, negligently or otherwise;
 - (2) arise from Seller's failure to disclose any material or relevant information about the Property; or
 - (3) are caused by Seller giving incorrect information to any person.

15. SPECIAL PROVISIONS:

Property to remain a pocket listing until instructed by seller to list on active MLS market.
Seller to pay for replacement of signs. — hot — seller/agent split costs of sign.
Upon early termination, Engel & Volkers/Kathryn Scarborough/Michele Turnquist will be reimbursed for all advertising and marketing expenses.
Home will also be listed as to be built for \$6,995,000, but buyers agent to only be paid only on land value at \$3,250,000. 63,995,000

16. **DEFAULT:** If Seller breaches this Listing, Seller is in default and will be liable to Broker for the amount of the Broker's compensation specified in Paragraph 5A and any other compensation Broker is entitled to receive under this Listing. If a sales price is not determinable in the event of an exchange or breach of this Listing, the Listing Price will be the sales price for purposes of computing compensation. If Broker breaches this Listing, Broker is in default and Seller may exercise any remedy at law.
17. **MEDIATION:** The parties agree to negotiate in good faith in an effort to resolve any dispute related to this Listing that may arise between the parties. If the dispute cannot be resolved by negotiation, the dispute will be submitted to mediation. The parties to the dispute will choose a mutually acceptable mediator and will share the cost of mediation equally.
18. **ATTORNEY'S FEES:** If Seller or Broker is a prevailing party in any legal proceeding brought as a result of a dispute under this Listing or any transaction related to or contemplated by this Listing, such party will be entitled to recover from the non-prevailing party all costs of such proceeding and reasonable attorney's fees.
19. **ADDENDA AND OTHER DOCUMENTS:** Addenda that are part of this Listing and other documents that Seller may need to provide are:
- ☒ A. Information About Brokerage Services;
 - ☒ B. Seller Disclosure Notice (\$5,000, Texas Property Code);
 - ☐ C. Addendum for Seller's Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards (required if Property was built before 1978);
 - ☒ D. Residential Real Property Affidavit (T-47 Affidavit; related to existing survey);
 - ☐ E. MUD, Water District, or Statutory Tax District Disclosure Notice (Chapter 49, Texas Water Code);
 - ☐ F. Request for Information from an Owners' Association;
 - ☐ G. Request for Mortgage Information;
 - ☐ H. Information about Mineral Clauses in Contract Forms;
 - ☐ I. Information about On-Site Sewer Facility;
 - ☐ J. Information about Property Insurance for a Buyer or Seller;
 - ☒ K. Information about Special Flood Hazard Areas;
 - ☐ L. Condominium Addendum to Listing;
 - ☐ M. Keybox Authorization by Tenant;
 - ☐ N. Seller's Authorization to Release and Advertise Certain Information; and
 - ☐ O.

20. AGREEMENT OF PARTIES:


- A. Entire Agreement: This Listing is the entire agreement of the parties and may not be changed except by written agreement.
- B. Assignability: Neither party may assign this Listing without the written consent of the other party.
- C. Binding Effect: Seller's obligation to pay Broker earned compensation is binding upon Seller and Seller's heirs, administrators, executors, successors, and permitted assignees.
- D. Joint and Several: All Sellers executing this Listing are jointly and severally liable for the performance of all its terms.
- E. Governing Law: Texas law governs the interpretation, validity, performance, and enforcement of this Listing.
- F. Severability: If a court finds any clause in this Listing invalid or unenforceable, the remainder of this Listing will not be affected and all other provisions of this Listing will remain valid and enforceable.
- G. Notices: Notices between the parties must be in writing and are effective when sent to the receiving party's address, fax, or e-mail address specified in Paragraph 1.

21. ADDITIONAL NOTICES:

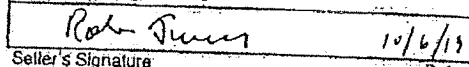
- A. Broker's compensation or the sharing of compensation between brokers is not fixed, controlled, recommended, suggested, or maintained by the Association of REALTORS®, MLS, or any listing service.
- B. In accordance with fair housing laws and the National Association of REALTORS® Code of Ethics, Broker's services must be provided and the Property must be shown and made available to all persons without regard to race, color, religion, national origin, sex, disability, familial status, sexual orientation, or gender identity. Local ordinances may provide for additional protected classes (for example, creed, status as a student, marital status, or age).
- C. Broker advises Seller to contact any mortgage lender or other lien holder to obtain information regarding payoff amounts for any existing mortgages or liens on the Property.
- D. Broker advises Seller to review the information Broker submits to an MLS or other listing service.
- E. Broker advises Seller to remove or secure jewelry, prescription drugs, other valuables, firearms and any other weapons.
- F. Statutes or ordinances may regulate certain items on the Property (for example, swimming pools and septic systems). Non-compliance with the statutes or ordinances may delay a transaction and may result in fines, penalties, and liability to Seller.
- G. If the Property was built before 1978, Federal law requires the Seller to: (1) provide the buyer with the federally approved pamphlet on lead poisoning prevention; (2) disclose the presence of any known lead-based paint or lead-based paint hazards in the Property; (3) deliver all records and reports to the buyer related to such paint or hazards; and (4) provide the buyer a period up to 10 days to have the Property inspected for such paint or hazards.

H. Broker cannot give legal advice. READ THIS LISTING CAREFULLY. If you do not understand the effect of this Listing, consult an attorney BEFORE signing.

Engel & Volkers
Broker's Printed Name
440298
License No.


☐ Broker's Signature
☒ Broker's Associate's Signature, as an authorized agent of Broker
Date: 10/11/17

Rob Turner
Seller's Printed Name


Seller's Signature
Date: 10/6/17

Kathryn Scarborough
Broker's Associate's Printed Name, if applicable

Seller's Printed Name



Seller's Signature
Date

Exhibit A-3



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

NOTICE: Not For Use For Condominium Transactions

2-12-18



1. **PARTIES:** The parties to this contract are Robert Turner, Lesli Turner (Seller) and Lauree Z Moffett (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".
 - A. **LAND:** Lot _____ Block _____, ABS 7 CHAMBERS T J ACR 0.8510
 Addition, City of Austin, County of Travis,
 Texas, known as 5201 Tortuga Trail, 78731
 (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 owned by Seller and attached to the above described real property.
 - C. **ACCESSORIES:** The following described related accessories, if any: window air conditioning units, stove, fireplace screens, curtains and rods, blinds, window shades, draperies and rods, door keys, mailbox keys, above ground pool, swimming pool equipment and maintenance accessories, artificial fireplace logs, and controls for: (i) garage doors, (ii) entry gates, and (iii) other improvements and accessories.
 - D. **EXCLUSIONS:** The following improvements and accessories will be retained by Seller and must be removed prior to delivery of possession: _____
 - 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 \$8,150,000.00
 - B. Sum of all financing described in the attached: ☐ Third Party Financing Addendum, ☐ Loan Assumption Addendum, ☐ Seller Financing Addendum \$8,150,000.00
 - C. Sales Price (Sum of A and B) \$8,150,000.00
4. **LICENSE HOLDER DISCLOSURE:** Texas law requires a real estate license holder who is a party to a transaction or acting on behalf of a spouse, parent, child, business entity in which the license holder owns more than 10%, or a trust for which the license holder acts as a trustee or of which the license holder or the license holder'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: _____
5. **EARNEST MONEY:** Within 3 days after the Effective Date, Buyer must deliver \$ 150,000.00 as earnest money to Independence Title-Carol Ballomy, as escrow agent, at 5503 Balcones Drive, 78731 (address). Buyer shall deliver additional earnest money of \$ _____ to escrow agent within _____ days after the Effective Date of this contract. 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. If the last day to deliver the earnest money falls on a Saturday, Sunday, or legal holiday, the time to deliver the earnest money is extended until the end of the next day that is not a Saturday, Sunday, or legal holiday. Time is of the essence for this paragraph.
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 Independence Title (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.

RT LT
 \$8,150,000.00 LM
 LM
 RT LT

Initiated for Identification by Buyer LM and Seller RT LT

TREC NO. 20-14

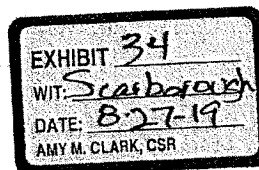
Enpt & V Mktg, 3790 Bee Cove Rd, Suite 102 Austin TX 78746
 Katelyn Scarborough

Produced with zipForms by zipLogic 10070 Fifteen Mile Road, Fraser, Michigan 48026 www.ziplogic.com

Phone: 512.974.1355

Fax: -

Rob Turner



ITC000008

- (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 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 3 days after the Effective Date of this contract, Seller shall furnish to Buyer and Title Company Seller's existing survey of the Property and a Residential Real Property Affidavit promulgated by the Texas Department of Insurance (T-47 Affidavit). If Seller fails to furnish the existing survey or affidavit within the time prescribed, Buyer shall obtain a new survey at Seller's expense no later than 3 days prior to Closing Date. If the existing survey or affidavit is not acceptable to Title Company or Buyer's lender(s), Buyer shall obtain a new survey at ☐ Seller's ☒ Buyer's expense no later than 3 days prior to Closing Date.
☐ (2) Within days after the Effective Date of this contract, Buyer shall obtain a new survey at Buyer's expense. Buyer is deemed to receive the survey on the date of actual receipt or the date specified in this paragraph, whichever is earlier.
☐ (3) Within days after the Effective Date of this contract, Seller, at Seller's expense shall furnish a new survey to Buyer.
- D. OBJECTIONS: Buyer may object in writing to defects, exceptions, or encumbrances to title: disclosed on the survey other than Items 6A(1) through (7) above; disclosed in the Commitment other than Items 6A(1) through (9) above; or which prohibit the following use or activity: restoration, rebuild and/or use of the residence on the property in the event of damage or destruction. Buyer must object the earlier of (i) the Closing Date or (ii) 10 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 instrument may be obtained from the county clerk. You are obligated to pay assessments to the property owners association(s). The amount of the assessments is subject to change. Your failure to pay the assessments could result in 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, §5.014, Property Code, requires Seller to notify Buyer as follows: As a purchaser of this parcel of real property you are obligated to pay an assessment to a municipality or county for an improvement project undertaken by a public improvement district under Chapter 372, Local Government Code. The assessment may be due annually or in periodic installments. More information concerning the amount of the assessment and the due dates of that assessment may be obtained from the municipality or county levying the assessment. The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of your property.
- (8) **TRANSFER FEES:** If the Property is subject to a private transfer fee obligation, §5.205, Property Code, requires Seller to notify Buyer as follows: The private transfer fee

- obligation may be governed by Chapter 5, Subchapter G of the Texas Property Code.
- (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."

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 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 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: (i) Seller shall complete all agreed repairs and treatments prior to the Closing Date; and (ii) all required permits must be obtained, and 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. At Buyer's election, any transferable warranties received by Seller with respect to the repairs and treatments will be transferred to Buyer at Buyer's expense. If Seller fails to complete any agreed repairs and treatments prior to the Closing Date, Buyer may exercise remedies under Paragraph 15 or extend the Closing Date up to 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 residential service company licensed by TREC. If Buyer purchases a residential service contract, Seller shall reimburse Buyer at closing for the cost of the residential service contract in an amount not exceeding \$. Buyer should review any residential service contract for the scope of coverage, exclusions and limitations. The purchase of a residential service contract is optional. Similar coverage may be purchased from various companies authorized to do business in Texas.

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

9. CLOSING:

A. The closing of the sale will be on or before August 15, 2018, or within 7 days after objections made under Paragraph 6D have been cured or waived, whichever date is later (Closing Date). If either party fails to close the sale by the Closing Date, the non-defaulting party may exercise the remedies contained in Paragraph 15.

B. At closing:

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

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. Leases:

- (1) After the Effective Date, Seller may not execute any lease (including but not limited to mineral leases) or convey any interest in the Property without Buyer's written consent.
- (2) If the Property is subject to any lease to which Seller is a party, Seller shall deliver to Buyer copies of the lease(s) and any move-in condition form signed by the tenant within 7 days after the Effective Date of the contract.

11. SPECIAL PROVISIONS: (Insert only factual statements and business details applicable to the sale. TREC rules prohibit license holder from adding factual statements or business details for which a contract addendum, lease or other form has been promulgated by TREC for mandatory use.) 1. As a condition to closing, Buyer must have a binding commitment for insurance coverage for the replacement and rebuild of the structures on the property in the event of damage or loss. 2. Seller shall complete all remaining construction on the property including final punch list. 3. All builder warranties to convey at closing. 4. Builder to provide all building specifications to buyer prior to closing.

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.

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RT LT
AM
excluding
but not
but

- (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, maintenance fees, assessments, dues and rents will be prorated through the Closing Date. The tax proration may be calculated taking into consideration any change in exemptions that will affect the current year's taxes. If taxes for the current year vary from the amount prorated at closing, the parties shall adjust the prorations when tax statements for the current year are available. If taxes are not paid at or prior to closing, Buyer shall pay taxes for the current year.
14. **CASUALTY LOSS:** If any part of the Property is damaged or destroyed by fire or other casualty after the Effective Date of this contract, ~~Seller shall restore the Property to its previous condition as soon as reasonably possible, but in any event by the Closing Date. If Seller fails to do so due to factors beyond Seller's control, Buyer may (a) terminate this contract and the earnest money will be refunded to Buyer, (b) extend the time for performance up to 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. 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.
- B. **EXPENSES:** At closing, the earnest money must be applied first to any cash down payment, then to Buyer's Expenses and any excess refunded to Buyer. If no closing occurs, escrow agent may: (i) require a written release of liability of the escrow agent from all parties, (ii) require payment of unpaid expenses incurred on behalf of a party, and (iii) only deduct from the earnest money the amount of unpaid expenses incurred on behalf of the party receiving the earnest money.
- C. **DEMAND:** Upon termination of this contract, either party or the escrow agent may send a release of earnest money to each party and the parties shall execute counterparts of the release and deliver same to the escrow agent. If either party fails to execute the release, either party may make a written demand to the escrow agent for the earnest money. If only one party makes written demand for the earnest money, escrow agent shall promptly

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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:

Phone:

Fax:

E-mail:

tim@kxntvwna.com

To Seller

at:

Phone:

Fax:

E-mail:

rturnerhomes@gmail.com

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

☒ Other (list): Seller's Disclosure Notice & Building Permit & related Addendums

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23. **TERMINATION OPTION:** For nominal consideration, the receipt of which is hereby acknowledged by Seller, and Buyer's agreement to pay Seller \$ 10,000.00 (Option Fee) within 3 days after the Effective Date of this contract, Seller grants Buyer the unrestricted right to terminate this contract by giving notice of termination to Seller within 12 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 no dollar amount is stated as the Option Fee or if Buyer fails to pay the Option Fee to Seller within the time prescribed, this paragraph will not be a part of this contract and Buyer shall not have the unrestricted right to terminate this contract. If Buyer gives notice of termination within the time prescribed, the Option Fee will not be refunded; however, any earnest money will be refunded to Buyer. The Option Fee ☒ will ☐ will not be credited to the Sales Price at closing. Time is of the essence for this paragraph and strict compliance with the time for performance is required.

24. **CONSULT AN ATTORNEY BEFORE SIGNING:** TREC rules prohibit real estate license holders from giving legal advice. READ THIS CONTRACT CAREFULLY.

Buyer's
Attorney Is: c/o Timothy E. Young
2901 Via Fortuna, Ste 450, Austin, 78746

Seller's
Attorney Is: Terry Irion

Phone: (512)275-7894

Phone: _____

Fax: _____

Fax: _____

E-mail: tjm@karthynne.com

E-mail: terry.irion@sprousefaw.com

EXECUTED the day of 07/18/2018, _____ (Effective Date).
(BROKER: FILL IN THE DATE OF FINAL ACCEPTANCE.)

Lauree Z. Moffett
Buyer Lauree Z Moffett

Robert Turner
Seller Robert Turner

Buyer

Lesli Turner
Seller Lesli Turner



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. 20-14. This form replaces TREC NO. 20-13.

TREC NO. 20-14

BROKER INFORMATION (Print name(s) only. Do not sign)			
Other Broker Firm		License No.	
represents <input type="checkbox"/> Buyer only as Buyer's agent		represents <input type="checkbox"/> Seller and Buyer as an intermediary	
<input type="checkbox"/> Seller as Listing Broker's subagent		<input checked="" type="checkbox"/> Seller only as Seller's agent	
Associate's Name		License No.	
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 <input type="checkbox"/> Seller and Buyer as an intermediary		<input checked="" type="checkbox"/> Seller only as Seller's agent	
Listing Associate's Name		License No.	
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.	
Selling Associate's Email Address		Phone	
Licensed Supervisor of Selling Associate		License No.	
Selling Associate's Office Address			
City	State	Zip	
Listing Broker has agreed to pay Other Broker _____ of the total sales price when the Listing Broker's fee is received. Escrow agent is authorized and directed to pay Other Broker from Listing Broker's fee at closing.			

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ITC000016

Contract Concerning 5201 Tortuga Trail, 78731 Page 10 of 10 2-12-18
Austin,
(Address of Property)

OPTION FEE RECEIPT	
Receipt of \$ <u>10,000.00</u> (Option Fee) in the form of <u>check # 160736</u>	
Is acknowledged.	
<u>Samuel Johnson</u>	<u>7/20/2018</u>
Seller or Listing Broker	Date

EARNEST MONEY RECEIPT	
Receipt of \$ <u>150,000.00</u> Earnest Money in the form of <u>CC # 553934</u> <u>7/19/18 @ 2:01 PM</u>	
is acknowledged.	
<u>Independence Title by me</u>	<u>HFarmer@IndependenceTitle.com</u>
Escrow Agent	Received by Email Address Date/Time
Independence Title Company	
<u>512.814.2038</u>	
Address <u>503 Balcones Drive</u> Phone	
<u>Austin, TX 78731</u>	
<u>512.767.6340</u>	Fax
City State Zip	

CONTRACT RECEIPT	
Receipt of the Contract is acknowledged.	
<u>7/19/18</u>	
<u>Independence Title by me</u>	<u>HFarmer@IndependenceTitle.com</u>
Escrow Agent	Received by Email Address Date
Independence Title Company	
<u>512.814.2038</u>	
Address <u>503 Balcones Drive</u> Phone	
<u>Austin, TX 78731</u>	
<u>512.767.6340</u>	Fax
City State Zip	

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 _____

TREC NO. 20-14

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Rob Turner

ITC000017

Exhibit A-4



PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)

2-12-18

UNIMPROVED PROPERTY CONTRACT
NOTICE: Not For Use For Condominium Transactions



1. **PARTIES:** The parties to this contract are Robert Turner, Lesli Turner (Seller) and Lauree Z Moffett (Buyer). Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller the Property defined below.
2. **PROPERTY:** Lot ABS 7 CHAMBERS T J ACR 0.8040, Block , Addition .
City of Austin, County of Travis, Texas, known as 5203 Tortuga Trail, 78731.
(address/zip code), or as described on attached exhibit together with all rights, privileges and appurtenances pertaining thereto, including but not limited to: water rights, claims, permits, strips and gores, easements, and cooperative or association memberships (the Property).
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, \$ 3,050,000.00
 - 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) \$ 3,050,000.00
4. **LICENSE HOLDER DISCLOSURE:** Texas law requires a real estate license holder who is a party to a transaction or acting on behalf of a spouse, parent, child, business entity in which the license holder owns more than 10%, or a trust for which the license holder acts as a trustee or of which the license holder or the license holder'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:
5. **EARNEST MONEY:** Within 3 days after the Effective Date, Buyer must deliver \$ 30,000.00 as earnest money to Independence Title-Carol Bellomy, as escrow agent, at (address).
Buyer shall deposit additional earnest money of \$ to escrow agent within days after the effective date of this contract. 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. If the last day to deliver the earnest money falls on a Saturday, Sunday, or legal holiday, the time to deliver the earnest money is extended until the end of the next day that is not a Saturday, Sunday, or legal holiday. Time is of the essence for this paragraph.
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 Independence Title (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

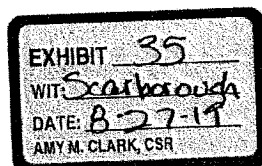
Initialed for Identification by Buyer RM and Seller RT LT
Engel & Vickers, LLC, 3706 Bee Cave Rd, Suite 102 Austin, TX 78746
Kathryn Scarborough Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48226 www.ziplogix.com

Phone: 512.976.1235

Fax:

TREC NO. 9-13

5103 Tortuga Trail



ITC000138

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

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

Buyer must object the earlier of (i) the Closing Date or (ii) 10 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.

Initialed for identification by Buyer AM and Seller RT LT
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3161 Tortuga

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- (3) **STATUTORY TAX DISTRICTS:** If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this contract.
- (4) **TIDE WATERS:** If the Property abuts the tidally influenced waters of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included in the contract. An addendum containing the notice promulgated by TREC or required by the parties must be used.
- (5) **ANNEXATION:** If the Property is located outside the limits of a municipality, Seller notifies Buyer under §5.011, Texas Property Code, that the Property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Property for further information.
- (6) **PROPERTY LOCATED IN A CERTIFICATED SERVICE AREA OF A UTILITY SERVICE PROVIDER:** Notice required by §13.257, Water Code. The real property, described in Paragraph 2, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned Buyer hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in Paragraph 2 or at closing of purchase of the real property.
- (7) **PUBLIC IMPROVEMENT DISTRICTS:** If the Property is in a public improvement district, §5.014, Property Code, requires Seller to notify Buyer as follows: As a purchaser of this parcel of real property you are obligated to pay an assessment to a municipality or county for an improvement project undertaken by a public improvement district under Chapter 372, Local Government Code. The assessment may be due annually or in periodic installments. More information concerning the amount of the assessment and the due dates of that assessment may be obtained from the municipality or county levying the assessment. The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of your property.
- (8) **TEXAS AGRICULTURAL DEVELOPMENT DISTRICT:** The Property ☐ is ☒ is not located in a Texas Agricultural Development District. For additional information, contact the Texas Department of Agriculture.
- (9) **TRANSFER FEES:** If the Property is subject to a private transfer fee obligation, §5.205, Property Code requires Seller to notify Buyer as follows: The private transfer fee obligation may be governed by Chapter 5, Subchapter G of the Texas Property Code.
- (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."

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.

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5203 Tortuga

ITC000140

(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:** Unless otherwise agreed in writing: (i) Seller shall complete all agreed repairs and treatments prior to the Closing Date; and (ii) all required permits must be obtained, and 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. At Buyer's election, any transferable warranties received by Seller with respect to the repairs and treatments will be transferred to Buyer at Buyer's expense. If Seller fails to complete any agreed repairs and treatments prior to the Closing Date, Buyer may exercise remedies under Paragraph 15 or extend the Closing Date up to 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 DISCLOSURES:** Except as otherwise disclosed in this contract, Seller has no knowledge of the following:
- (1) any flooding of the Property which has had a material adverse effect on the use of the Property;
 - (2) any pending or threatened litigation, condemnation, or special assessment affecting the Property;
 - (3) any environmental hazards that materially and adversely affect the Property;
 - (4) any dumpsite, landfill, or underground tanks or containers now or previously located on the Property;
 - (5) any wetlands, as defined by federal or state law or regulation, affecting the Property; or
 - (6) any threatened or endangered species or their habitat affecting the Property.
8. **BROKERS' FEES:** All obligations of the parties for payment of brokers' fees are contained in separate written agreements.
9. **CLOSING:**
- A. The closing of the sale will be on or before August 15, 2018, or within 7 days after objections made under Paragraph 6D have been cured or waived, whichever date is later (Closing Date). If either party fails to close the sale by the Closing Date, the non-defaulting party may exercise the remedies contained in Paragraph 15.
- B. At closing:
- (1) Seller shall execute and deliver a general warranty deed conveying title to the Property to Buyer and showing no additional exceptions to those permitted in Paragraph 6 and furnish tax statements or certificates showing no delinquent taxes on the Property.
 - (2) Buyer shall pay the Sales Price in good funds acceptable to the escrow agent.
 - (3) Seller and Buyer shall execute and deliver any notices, statements, certificates, affidavits, releases, loan documents and other documents reasonably required for the closing of the sale and the issuance of the Title Policy.
 - (4) There will be no liens, assessments, or security interests against the Property which will not be satisfied out of the sales proceeds unless securing the payment of any loans assumed by Buyer and assumed loans will not be in default.
10. **POSSESSION:**
- A. **Buyer's Possession:** Seller shall deliver to Buyer possession of the Property in its present or required condition upon closing and funding.
- B. **Leases:**
- (1) After the Effective Date, Seller may not execute any lease (including but not limited to mineral leases) or convey any interest in the Property without Buyer's written consent.
 - (2) If the Property is subject to any lease to which Seller is a party, Seller shall deliver to Buyer copies of the lease(s) and any move-in condition form signed by the tenant within 7 days after the Effective Date of the contract.
11. **SPECIAL PROVISIONS:** (Insert only factual statements and business details applicable to the sale. TREC rules prohibit license holders from adding factual statements or business details for which a contract addendum or other form has been promulgated by TREC for mandatory use.)
Purchase of 5203 Tortuga Trail is contingent on the purchase of 5201 Tortuga Trail. Properties are being sold together.

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and Seller

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2142 Tortuga

ITC000141

(Address of Property)

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

B. **ROLLBACK TAXES:** If this sale or Buyer's use of the Property after closing results in the assessment of additional taxes, penalties or interest (Assessments) for periods prior to closing, the Assessments will be the obligation of Buyer. If 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.

B. **EXPENSES:** At closing, the earnest money must be applied first to any cash down payment, then to Buyer's Expenses and any excess refunded to Buyer. If no closing occurs, escrow

agent may: (i) require a written release of liability of the escrow agent from all parties, (ii) require payment of unpaid expenses incurred on behalf of a party, and (iii) only deduct from the earnest money the amount of unpaid expenses incurred on behalf of the party receiving the earnest money.

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

D. **DAMAGES:** Any party who wrongfully fails or refuses to sign a release acceptable to the escrow agent within 7 days of receipt of the request will be liable to the other party for (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: _____

Phone: _____

Fax: _____

E-mail: tim@kardwynne.com

To Seller

at: _____

Phone: _____

Fax: _____

E-mail: rturnerhomes@gmail.com

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 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. TERMINATION OPTION: For nominal consideration, the receipt of which is hereby acknowledged by Seller, and Buyer's agreement to pay Seller \$ 100.00 (Option Fee) within 3 days after the Effective Date of this contract, Seller grants Buyer the unrestricted right to terminate this contract by giving notice of termination to Seller within 12 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 no dollar amount is stated as the Option Fee or if Buyer fails to pay the Option Fee to Seller within the time prescribed, this paragraph will not be a part of this contract and Buyer shall not have the unrestricted right to terminate this contract. If Buyer gives notice of termination within the time prescribed, the Option Fee will not be refunded; however, any earnest money will be refunded to Buyer. The Option Fee ☒ will ☐ will not be credited to the Sales Price at closing. Time is of the essence for this paragraph and strict compliance with the time for performance is required.

24. CONSULT AN ATTORNEY BEFORE SIGNING: TREC rules prohibit real estate license holders from giving legal advice. READ THIS CONTRACT CAREFULLY.

Buyer's
Attorney is: c/o Timothy E. Young
2901 Via Fortuna, Ste 450, Austin, 78746

Seller's
Attorney is: Terry Irion

Phone: (512)275-7894

Phone: _____

Fax: _____

Fax: _____

E-mail: tim@tkardwynne.com

E-mail: terry.irion@sprousejlaw.com

EXECUTED the _____ day of _____, 07/18/2018 (Effective Date).
(BROKER: FILL IN THE DATE OF FINAL ACCEPTANCE.)

Lauree Z. Moffett
Buyer
Lauree Z Moffett

Robert Turner
Seller
Robert Turner

Buyer

Lesli Turner
Seller
Lesli Turner



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) 838-3000 (<http://www.trec.texas.gov>) TREC NO. 9-13. This form replaces TREC NO. 9-12.

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

Other Broker Firm	License No.	Engel & Volkers Austin	440298
represents <input type="checkbox"/> Buyer only as Buyer's agent		Listing Broker Firm	License No.
<input type="checkbox"/> Seller as Listing Broker's subagent		represents <input type="checkbox"/> Seller and Buyer as an intermediary	
		<input checked="" type="checkbox"/> Seller only as Seller's agent	
Associate's Name	License No.	Kathryn Scarborough	483433
Associate's Email Address	Phone	Listing Associate's Name	License No.
		kathryn.scarborough@evusa.com	(512)970-1355
Licensed Supervisor of Associate	License No.	Listing Associate's Email Address	Phone
		Steve Turnquist	440298
Other Broker's Address	Phone	Licensed Supervisor of Listing Associate	License No.
City	State	Zip	
		3708 Bee Caver Rd Ste 102	(512)328-3939
		Listing Broker's Office Address	Phone
		Austin	TX
		City	State
			78746
			Zip

Selling Associate's Name License No.

Selling Associate's Email Address Phone

Licensed Supervisor of Selling Associate License No.

Selling Associate's Office Address

City State Zip

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

OPTION FEE RECEIPT	
Receipt of \$ <u>100⁰⁰</u> (Option Fee) in the form of <u>check #160737</u> is acknowledged.	
<u>Sandra Phanson</u> Seller or Listing Broker	<u>7/20/2018</u> Date

EARNEST MONEY RECEIPT			
Receipt of \$ <u>30,000.00</u> Earnest Money in the form of <u>CC#553935 7/19/18 @ 2:03 PM</u> is acknowledged.			
<u>Independence Title by MSW</u> Escrow Agent	<u>HFarmer@IndependenceTitle.com</u> Received by	<u>512-814-2038</u> Email Address	<u>7/19/18 @ 2:03 PM</u> Date/Time
<u>Independence Title Company</u> Address <u>5503 Balcones Drive</u> City <u>Austin, TX 78731</u> State _____ Zip _____	<u>512-767-6346</u> Phone	<u>512-767-6346</u> Fax	

CONTRACT RECEIPT			
Receipt of the Contract is acknowledged.			
<u>Independence Title by MSW</u> Escrow Agent	<u>HFarmer@IndependenceTitle.com</u> Received by	<u>512-814-2038</u> Email Address	<u>7/19/18</u> Date
<u>Independence Title Company</u> Address <u>5503 Balcones Drive</u> City <u>Austin, TX 78731</u> State _____ Zip _____	<u>512-767-6346</u> Phone	<u>512-767-6346</u> 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

Exhibit A-5

COATS | ROSE

A PROFESSIONAL CORPORATION

RICK J. ZGARBA
ATTORNEY

R/ZGARBA@COATSRSE.COM
DIRECT: (512) 684-3848
FAX: (512) 469-9408

August 14, 2018

Ms. Carol Bellomy
Branch Manager/Escrow Officer
INDEPENDENCE TITLE
5503 Balcones Drive
Austin, Texas 78731

*Via Email: cbellomy@independencetitle.com
and Via Fax to: 512-814-2041*

Re: Properties: 5201 and 5203 Tortuga Trail, Austin, Travis County, Texas
Seller: Robert Turner and Lesli Turner
Buyer: Lauree Z. Moffett

Dear Ms. Bellomy:

I represent Engel & Völkers Austin and its principal, Michele Turnquist. Engel & Völkers serves as Seller's sole and exclusive real estate agent for both of the above-referenced properties pursuant to separate Residential Real Estate Listing Agreements, one respective to each property (the "Listing Agreements"). I have enclosed copies of the Listing Agreements for your reference.

As you are aware, the Properties currently are under contract to Buyer Lauree Z. Moffett pursuant to separate real estate sales contracts (the "Contracts"). Each of the Contracts designates you and Independence Title as escrow agent for the transaction. (I have also enclosed copies of the Contracts for your convenience.) I understand the closing of this transaction is scheduled for tomorrow, Wednesday, August 15th.

The purpose of this letter is to advise Independence Title that a dispute between Seller and my client has arisen related to the amount of broker compensation that has been earned and is now payable to my client under the Listing Agreements and Contracts. Discussions between Seller's attorney, Terry Irion, and me have so far not resolved the issue. In order to avoid Independence Title becoming embroiled in this dispute and potential future litigation, I request that at tomorrow's closing my client be paid the undisputed amounts with the remaining, disputed amounts held in escrow by Independence Title—all as outlined below.

As the only agent designated in the Contracts for either Buyer or Seller and based on the written agreements between Seller and my client, the appropriate method for calculating broker

BARTON OAKS PLAZA, 901 S. MOPAC EXPWY, BLDG 1, STE 500, AUSTIN, TEXAS 78746
PHONE: (512) 469-7987 FAX: (512) 469-9408
WEB: www.coatsrose.com

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compensation is found in Section 5.A.(1) of the Listing Agreements. Accordingly, my client's fee is \$560,000.00—five-percent (5%) of the Contracts' collective sales price of \$11,200,000.

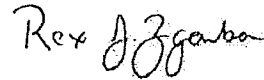
With no written agreement from my client altering the broker compensation formulas in the Listing Agreements, I understand Seller previously authorized you to pay a fee equal to 2.5% of the total transaction, for a reduced broker compensation of only \$280,000.

My client vigorously disputes any basis for a reduction in the compensation earned and payable under the Listing Agreements. Therefore, demand is hereby made that a payment in the amount of \$280,000 be tendered tomorrow out of closing directly to Engel & Völkers Austin with the remaining \$280,000 placed in escrow by Independence Title until a written agreement can be reached between the parties or until a court order is obtained directing release of the escrow funds.

If you or the title company's attorney would like to discuss this matter, I am available the remainder of today and all day tomorrow and can be reached directly at 512-684-3848; otherwise, I request written confirmation from you that Independence Title will honor the request for payment and escrow of funds.

By copy of this letter to Terry Irion and Tim Young, Seller's and Buyer's attorneys respectively, I make them aware of this request and confirm the conversations I had with each of them earlier in the day.

Sincerely,



Rex J. Zgarba

Enclosures

Cc:

Mr. Jay Southworth
Chairman
INDEPENDENCE TITLE
5900 Shepherd Mountain Cove
Bldg. II, Suite 200
Austin, Texas 78730

*Via Email: jsouthworth@independencetitle.com
and Via Fax to: 512-454-4559*

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Ms. Jennifer Goodrum
Commercial Operations/
Business Development Manager
INDEPENDENCE TITLE
5900 Shepherd Mountain Cove
Bldg. II, Suite 200
Austin, Texas 78730

*Via Email: jgoodrum@independencetitle.com
and Via Fax to: 512-767-6375*

Terri L. Irion
SPOUSE SHRADER SMITH, PLLC
1250 S. Capital of Texas Highway
3 Cielo Center, Suite 601
Austin, Texas 78746

*Via Email: terry.irion@sprouselaw.com
and Via Fax to: 512-328-1558*

Tim Young
IKARD WYNNE, LLP
2901 Via Fortuna
Bldg 6, Suite 450
Austin, Texas 78746

*Via Email: tim@ikardwynne.com
and Via Fax to: 512-275-7333*

Client:

Via Email only

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ITC000100



TEXAS ASSOCIATION OF REALTORS®
RESIDENTIAL REAL ESTATE LISTING AGREEMENT
EXCLUSIVE RIGHT TO SELL

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS® IS NOT AUTHORIZED.
 © Texas Association of REALTORS®, Inc. 2014

1. PARTIES: The parties to this agreement (this Listing) are:

Seller: Rob Turner

Address: 5201 Tortuga Trail

City, State, Zip: Austin, TX 78731

Phone: 512-573-8762

Fax: _____

E-Mail: rturnerhomes@gmail.com

Broker: Engel & Volkers Austin

Address: 3700 Bee Cave Road, Suite 102

City, State, Zip: Austin, TX 78746

Phone: 512-970-1355

Fax: _____

E-Mail: kathryn.scarborough@evusa.com

Seller appoints Broker as Seller's sole and exclusive real estate agent and grants to Broker the exclusive right to sell the Property.

2. PROPERTY: "Property" means the land, improvements, and accessories described below, except for any described exclusions.

A. Land: Lot _____, Block _____, ABS 7 CHAMBERS T J ACR 8510

In Travis County, Addition, City of Austin

County, Texas known as _____

5201 Tortuga Trail

78731

(address/zip code)

or as described on attached exhibit. (If Property is a condominium, attach Condominium Addendum.)

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

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

(TAR-1101) 01-01-14

Initiated for Identification by Broker/Associate

Engel & Volkers

and Seller

Kathryn Scarborough

3700 Bee Cave Rd #102 Austin, TX 78746 512-328-3939

Kathryn Scarborough

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Residential Listing concerning 5201 Tortuga Trail, Austin, TX 78731.

D. Exclusions: The following improvements and accessories will be retained by Seller and must be removed prior to delivery of possession:

E. Owners' Association: The property ☐ is ☒ is not subject to mandatory membership in a property owners' association.

3. **LISTING PRICE**: Seller instructs Broker to market the Property at the following price: \$9,995,000 (Listing Price). Seller agrees to sell the Property for the Listing Price or any other price acceptable to Seller. Seller will pay all typical closing costs charged to sellers of residential real estate in Texas (seller's typical closing costs are those set forth in the residential contract forms promulgated by the Texas Real Estate Commission).

4. **TERM**:

A. This Listing begins on 09/26/2017 and ends at 11:59 p.m. on 07/01/2018.

B. If Seller enters into a binding written contract to sell the Property before the date this Listing begins and the contract is binding on the date this Listing begins, this Listing will not commence and will be void.

5. **BROKER COMPENSATION**:

A. When earned and payable, Seller will pay Broker:

☒ (1) 5 % of the sales price.

☒ (2) 4.5% if Kathryn Scarborough & Michele Turnquist acts as intermediary between both buyer and seller.

B. Earned: Broker's compensation is earned when any one of the following occurs during this Listing:

- (1) Seller sells, exchanges, options, agrees to sell, agrees to exchange, or agrees to option the Property to anyone at any price on any terms;
- (2) Broker individually or in cooperation with another broker procures a buyer ready, willing, and able to buy the Property at the Listing Price or at any other price acceptable to Seller; or
- (3) Seller breaches this Listing.

C. Payable: Once earned, Broker's compensation is payable either during this Listing or after it ends at the earlier of:

- (1) the closing and funding of any sale or exchange of all or part of the Property;
- (2) Seller's refusal to sell the Property after Broker's compensation has been earned;
- (3) Seller's breach of this Listing; or
- (4) at such time as otherwise set forth in this Listing.

Broker's compensation is not payable if a sale of the Property does not close or fund as a result of: (i) Seller's failure, without fault of Seller, to deliver to a buyer a deed or a title policy as required by the contract to sell; (ii) loss of ownership due to foreclosure or other legal proceeding; or (iii) Seller's failure to restore the Property, as a result of a casualty loss, to its previous condition by the closing date set forth in a contract for the sale of the Property.

D. Other Compensation:

(1) Breach by Buyer Under a Contract: If Seller collects earnest money, the sales price, or damages by suit, compromise, settlement, or otherwise from a buyer who breaches a contract for the sale of the Property entered into during this Listing, Seller will pay Broker, after deducting attorney's fees

(TAR-1101) 01-01-14

Initialed for identification by Broker/Associate

[Signature] and Seller [Signature]

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Engel & Volkers

3700 Bee Cave Rd #102 Austin, TX 78746 512-328-3939

Kathryn Scarborough

ITC000102

Residential Listing concerning 5201 Tortuga Trail, Austin, TX 78731

and collection expenses, an amount equal to the lesser of one-half of the amount collected after deductions or the amount of the Broker's Compensation stated in Paragraph 5A. Any amount paid under this Paragraph 5D(1) is in addition to any amount that Broker may be entitled to receive for subsequently selling the Property.

(2) Service Providers: If Broker refers Seller or a prospective buyer to a service provider (for example, mover, cable company, telecommunications provider, utility, or contractor) Broker may receive a fee from the service provider for the referral. Any referral fee Broker receives under this Paragraph 5D(2) is in addition to any other compensation Broker may receive under this Listing.

(3) Other Fees and/or Reimbursable Expenses: _____

E. Protection Period:

(1) "Protection period" means that time starting the day after this Listing ends and continuing for 90 days. "Sell" means any transfer of any fee simple interest in the Property whether by oral or written agreement or option.

(2) Not later than 10 days after this Listing ends, Broker may send Seller written notice specifying the names of persons whose attention was called to the Property during this Listing. If Seller agrees to sell the Property during the protection period to a person named in the notice or to a relative of a person named in the notice, Seller will pay Broker, upon the closing of the sale, the amount Broker would have been entitled to receive if this Listing were still in effect.

(3) This Paragraph 5E survives termination of this Listing. This Paragraph 5E will not apply if:
(a) Seller agrees to sell the Property during the protection period;
(b) the Property is exclusively listed with another broker who is a member of the Texas Association of REALTORS® at the time the sale is negotiated; and
(c) Seller is obligated to pay the other broker a fee for the sale.

F. County: All amounts payable to Broker are to be paid in cash in _____
Travis County, Texas.

G. Escrow Authorization: Seller authorizes, and Broker may so instruct, any escrow or closing agent authorized to close a transaction for the purchase or acquisition of the Property to collect and disburse to Broker all amounts payable to Broker under this Listing.

6. LISTING SERVICES:

☐ A. Broker will file this Listing with one or more Multiple Listing Services (MLS) by the earlier of the time required by MLS rules or 5 days after the date this Listing begins. Seller authorizes Broker to submit information about this Listing and the sale of the Property to the MLS.

Notice: MLS rules require Broker to accurately and timely submit all information the MLS requires for participation including sold data. MLS rules may require that the information be submitted to the MLS throughout the time the Listing is in effect. Subscribers to the MLS may use the information for market evaluation or appraisal purposes. Subscribers are other brokers and other real estate professionals such as appraisers and may include the appraisal district. Any information filed with the MLS becomes the property of the MLS for all purposes. Submission of information to MLS ensures that persons who use and benefit from the MLS also contribute information.

(TAR-1101) 01-01-14

Initialed for Identification by Broker/Associate [initials] and Seller [initials]

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Engel & Volkers

3700 Bee Cave Rd #102 Austin, TX 78746 512-328-3939

Kathryn Scarborough

ITC000103

Residential Listing concerning 5201 Tortuga Trail, Austin, TX 78731

- ☒ B. Seller instructs Broker not to file this Listing with one or more Multiple Listing Service (MLS) until _____ days after the date this Listing begins for the following purpose(s): Upon completion of construction, photography, and marketing.
(NOTE: Do not check if prohibited by Multiple Listing Service(s).)

- ☐ C. Broker will not file this Listing with a Multiple Listing Service (MLS) or any other listing service.

Notice: Seller acknowledges and understands that if this option is checked: (1) Seller's Property will not be included in the MLS database available to real estate agents and brokers from other real estate offices who subscribe to and participate in the MLS, and their buyer clients may not be aware that Seller's Property is offered for sale; (2) Seller's Property will not be included in the MLS's download to various real estate Internet sites that are used by the public to search for property listings; and (3) real estate agents, brokers, and members of the public may be unaware of the terms and conditions under which Seller is marketing the Property.

7. ACCESS TO THE PROPERTY:

- A. **Authorizing Access:** Authorizing access to the Property means giving permission to another person to enter the Property, disclosing to the other person any security codes necessary to enter the Property, and lending a key to the other person to enter the Property, directly or through a keybox. To facilitate the showing and sale of the Property, Seller instructs Broker to:
- (1) access the Property at reasonable times;
 - (2) authorize other brokers, their associates, inspectors, appraisers, and contractors to access the Property at reasonable times; and
 - (3) duplicate keys to facilitate convenient and efficient showings of the Property.

- B. **Scheduling Companies:** Broker may engage the following companies to schedule appointments and to authorize others to access the Property: _____

- C. **Keybox:** A keybox is a locked container placed on the Property that holds a key to the Property. A keybox makes it more convenient for brokers, their associates, inspectors, appraisers, and contractors to show, inspect, or repair the Property. The keybox is opened by a special combination, key, or programmed device so that authorized persons may enter the Property, even in Seller's absence. Using a keybox will probably increase the number of showings, but involves risks (for example, unauthorized entry, theft, property damage, or personal injury). Neither the Association of REALTORS® nor MLS requires the use of a keybox.

- (1) Broker ☐ is ☒ is not authorized to place a keybox on the Property.

- (2) If a tenant occupies the Property at any time during this Listing, Seller will furnish Broker a written statement (for example, TAR No. 1411), signed by all tenants, authorizing the use of a keybox or Broker may remove the keybox from the Property.

- D. **Liability and Indemnification:** When authorizing access to the Property, Broker, other brokers, their associates, any keybox provider, or any scheduling company are not responsible for personal injury or property loss to Seller or any other person. Seller assumes all risk of any loss, damage, or injury. Except for a loss caused by Broker, Seller will indemnify and hold Broker harmless from any claim for personal injury, property damage, or other loss.

8. **COOPERATION WITH OTHER BROKERS:** Broker will allow other brokers to show the Property to prospective buyers. Broker will offer to pay the other broker a fee as described below if the other broker procures a buyer that purchases the Property.

(TAR-1101) 01-01-14

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Engel & Volkers

3700 Bee Cave Rd #102 Austin, TX 78746 512-328-3939

Kathryn Scarborough

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ITC000104

A. MLS Participants: If the other broker is a participant in the MLS in which this Listing is filed, Broker will offer to pay the other broker:

- (1) if the other broker represents the buyer: 2.5 % of the sales price or \$ _____; and
(2) if the other broker is a subagent: 0 % of the sales price or \$ _____.

B. Non-MLS Brokers: If the other broker is not a participant in the MLS in which this Listing is filed, Broker will offer to pay the other broker:

- (1) if the other broker represents the buyer: 2 % of the sales price or \$ _____; and
(2) if the other broker is a subagent: 0 % of the sales price or \$ _____.

9. **INTERMEDIARY: (Check A or B only.)**

☒ A. Intermediary Status: Broker may show the Property to interested prospective buyers who Broker represents. If a prospective buyer who Broker represents offers to buy the Property, Seller authorizes Broker to act as an intermediary and Broker will notify Seller that Broker will service the parties in accordance with one of the following alternatives.

(1) If a prospective buyer who Broker represents is serviced by an associate other than the associate servicing Seller under this Listing, Broker may notify Seller that Broker will: (a) appoint the associate then servicing Seller to communicate with, carry out instructions of, and provide opinions and advice during negotiations to Seller; and (b) appoint the associate then servicing the prospective buyer to the prospective buyer for the same purpose.

(2) If a prospective buyer who Broker represents is serviced by the same associate who is servicing Seller, Broker may notify Seller that Broker will: (a) appoint another associate to communicate with, carry out instructions of, and provide opinions and advice during negotiations to the prospective buyer; and (b) appoint the associate servicing the Seller under this Listing to the Seller for the same purpose.

(3) Broker may notify Seller that Broker will make no appointments as described under this Paragraph 9A and, in such an event, the associate servicing the parties will act solely as Broker's intermediary representative, who may facilitate the transaction but will not render opinions or advice during negotiations to either party.

☐ B. No Intermediary Status: Seller agrees that Broker will not show the Property to prospective buyers who Broker represents.

- Notice:** If Broker acts as an intermediary under Paragraph 9A, Broker and Broker's associates:
- may not disclose to the prospective buyer that Seller will accept a price less than the asking price unless otherwise instructed in a separate writing by Seller;
 - may not disclose to Seller that the prospective buyer will pay a price greater than the price submitted in a written offer to Seller unless otherwise instructed in a separate writing by the prospective buyer;
 - may not disclose any confidential information or any information Seller or the prospective buyer specifically instructs Broker in writing not to disclose unless otherwise instructed in a separate writing by the respective party or required to disclose the information by the Real Estate License Act or a court order or if the information materially relates to the condition of the property;
 - may not treat a party to the transaction dishonestly; and
 - may not violate the Real Estate License Act.

Residential Listing concerning 5201 Tortuga Trail, Austin, TX 78731

10. CONFIDENTIAL INFORMATION: During this Listing or after it ends, Broker may not knowingly disclose information obtained in confidence from Seller except as authorized by Seller or required by law. Broker may not disclose to Seller any confidential information regarding any other person Broker represents or previously represented except as required by law.

11. BROKER'S AUTHORITY:

- A. Broker will use reasonable efforts and act diligently to market the Property for sale, procure a buyer, and negotiate the sale of the Property.
- B. Broker is authorized to display this Listing on the Internet without limitation unless one of the following is checked:
- ☐ (1) Seller does not want this Listing to be displayed on the Internet.
 - ☐ (2) Seller does not want the address of the Property to be displayed on the Internet.

Notice: Seller understands and acknowledges that, if box 11B(1) is selected, consumers who conduct searches for listings on the Internet will not see information about this Listing in response to their search.

C. Broker is authorized to market the Property with the following financing options:

- | | |
|--|--|
| <input checked="" type="checkbox"/> (1) Conventional | <input type="checkbox"/> (5) Texas Veterans Land Program |
| <input type="checkbox"/> (2) VA | <input type="checkbox"/> (6) Owner Financing |
| <input type="checkbox"/> (3) FHA | <input type="checkbox"/> (7) Other |
| <input checked="" type="checkbox"/> (4) Cash | |

D. In addition to other authority granted by this Listing, Broker may:

- (1) advertise the Property by means and methods as Broker determines, including but not limited to creating and placing advertisements with interior and exterior photographic and audio-visual images of the Property and related information in any media and the Internet;
- (2) place a "For Sale" sign on the Property and remove all other signs offering the Property for sale or lease;
- (3) furnish comparative marketing and sales information about other properties to prospective buyers;
- (4) disseminate information about the Property to other brokers and to prospective buyers, including applicable disclosures or notices that Seller is required to make under law or a contract;
- (5) obtain information from any holder of a note secured by a lien on the Property;
- (6) accept and deposit earnest money in trust in accordance with a contract for the sale of the Property;
- (7) disclose the sales price and terms of sale to other brokers, appraisers, or other real estate professionals;
- (8) in response to inquiries from prospective buyers and other brokers, disclose whether the Seller is considering more than one offer (Broker will not disclose the terms of any competing offer unless specifically instructed by Seller);
- (9) advertise, during or after this Listing ends, that Broker "sold" the Property; and
- (10) place information about this Listing, the Property, and a transaction for the Property on an electronic transaction platform (typically an Internet-based system where professionals related to the transaction such as title companies, lenders, and others may receive, view, and input information).

E. Broker is not authorized to execute any document in the name of or on behalf of Seller concerning the Property.

(TAR-1101) 01-01-14 Initiated for Identification by Broker/Associate MT and Seller RT Page 6 of 10
Engel & Volkers 3700 Bee Cave Rd #102 Austin, TX 78746 512-328-3939 Kathryn Scarborough

ITC000106

12. SELLER'S REPRESENTATIONS: Except as provided by Paragraph 15, Seller represents that:

- A. Seller has fee simple title to and peaceable possession of the Property and all its improvements and fixtures, unless rented, and the legal capacity to convey the Property;
- B. Seller is not bound by a listing agreement with another broker for the sale, exchange, or lease of the Property that is or will be in effect during this Listing;
- C. any pool or spa and any required enclosures, fences, gates, and latches comply with all applicable laws and ordinances;
- D. no person or entity has any right to purchase, lease, or acquire the Property by an option, right of refusal, or other agreement;
- E. Seller is current and not delinquent on all loans and all other financial obligations related to the Property, including but not limited to mortgages, home equity loans, home improvement loans, homeowner association fees, and taxes, except
- F. Seller is not aware of any liens or other encumbrances against the Property, except
- G. the Property is not subject to the jurisdiction of any court;
- H. all information relating to the Property Seller provides to Broker is true and correct to the best of Seller's knowledge; and
- I. the name of any employer, relocation company, or other entity that provides benefits to Seller when selling the Property is:

13. SELLER'S ADDITIONAL PROMISES: Seller agrees to:

- A. cooperate with Broker to facilitate the showing, marketing, and sale of the Property;
- B. not rent or lease the Property during this Listing without Broker's prior written approval;
- C. not negotiate with any prospective buyer who may contact Seller directly, but refer all prospective buyers to Broker;
- D. not enter into a listing agreement with another broker for the sale, exchange, lease, or management of the Property to become effective during this Listing without Broker's prior written approval;
- E. maintain any pool and all required enclosures in compliance with all applicable laws and ordinances;
- F. provide Broker with copies of any leases or rental agreements pertaining to the Property and advise Broker of tenants moving in or out of the Property;
- G. complete any disclosures or notices required by law or a contract to sell the Property; and
- H. amend any applicable notices and disclosures if any material change occurs during this Listing.

14. LIMITATION OF LIABILITY:

- A. If the Property is or becomes vacant during this Listing, Seller must notify Seller's casualty insurance company and request a "vacancy clause" to cover the Property. Broker is not responsible for the security of the Property nor for inspecting the Property on any periodic basis.
- B. Broker is not responsible or liable in any manner for personal injury to any person or for loss or damage to any person's real or personal property resulting from any act or omission not caused by Broker's negligence, including but not limited to injuries or damages caused by:
 - (1) other brokers, their associates, inspectors, appraisers, and contractors who are authorized to access the Property;
 - (2) other brokers or their associates who may have information about the Property on their websites;
 - (3) acts of third parties (for example, vandalism or theft);
 - (4) freezing water pipes;
 - (5) a dangerous condition on the Property;
 - (6) the Property's non-compliance with any law or ordinance; or
 - (7) Seller, negligently or otherwise.

Residential Listing concerning 5201 Tortuga Trail, Austin, TX 78731

- C. Seller agrees to protect, defend, indemnify, and hold Broker harmless from any damage, costs, attorney's fees, and expenses that:
- (1) are caused by Seller, negligently or otherwise;
 - (2) arise from Seller's failure to disclose any material or relevant information about the Property; or
 - (3) are caused by Seller giving incorrect information to any person.

15. SPECIAL PROVISIONS:

Property to remain a pocket listing until instructed by seller to list on active MLS market. RT.
Seller to pay for replacement of signs. RT.
Upon early termination, Engel & Volkers/Kathryn Scarborough/Michele Turnquist will be reimbursed for all advertising and marketing expenses. RT.

16. DEFAULT: If Seller breaches this Listing, Seller is in default and will be liable to Broker for the amount of the Broker's compensation specified in Paragraph 5A and any other compensation Broker is entitled to receive under this Listing. If a sales price is not determinable in the event of an exchange or breach of this Listing, the Listing Price will be the sales price for purposes of computing compensation. If Broker breaches this Listing, Broker is in default and Seller may exercise any remedy at law.

17. MEDIATION: The parties agree to negotiate in good faith in an effort to resolve any dispute related to this Listing that may arise between the parties. If the dispute cannot be resolved by negotiation, the dispute will be submitted to mediation. The parties to the dispute will choose a mutually acceptable mediator and will share the cost of mediation equally.

18. ATTORNEY'S FEES: If Seller or Broker is a prevailing party in any legal proceeding brought as a result of a dispute under this Listing or any transaction related to or contemplated by this Listing, such party will be entitled to recover from the non-prevailing party all costs of such proceeding and reasonable attorney's fees.

19. ADDENDA AND OTHER DOCUMENTS: Addenda that are part of this Listing and other documents that Seller may need to provide are:

- ☒ A. Information About Brokerage Services;
- ☒ B. Seller Disclosure Notice (§5.008, Texas Property Code);
- ☐ C. Addendum for Seller's Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards (required if Property was built before 1978);
- ☒ D. Residential Real Property Affidavit (T-47 Affidavit; related to existing survey);
- ☐ E. MUD, Water District, or Statutory Tax District Disclosure Notice (Chapter 49, Texas Water Code);
- ☐ F. Request for Information from an Owners' Association;
- ☐ G. Request for Mortgage Information;
- ☐ H. Information about Mineral Clauses in Contract Forms;
- ☐ I. Information about On-Site Sewer Facility;
- ☐ J. Information about Property Insurance for a Buyer or Seller;
- ☒ K. Information about Special Flood Hazard Areas;
- ☐ L. Condominium Addendum to Listing;
- ☐ M. Keybox Authorization by Tenant;
- ☐ N. Seller's Authorization to Release and Advertise Certain Information; and
- ☐ O.

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Initialed for Identification by Broker/Associate MT and Seller RT

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Engel & Volkers

3700 Bee Cave Rd #102 Austin, TX 78746 512-328-3939

Kathryn Scarborough

ITC000108

20. AGREEMENT OF PARTIES:

- A. Entire Agreement: This Listing is the entire agreement of the parties and may not be changed except by written agreement.
- B. Assignability: Neither party may assign this Listing without the written consent of the other party.
- C. Binding Effect: Seller's obligation to pay Broker earned compensation is binding upon Seller and Seller's heirs, administrators, executors, successors, and permitted assignees.
- D. Joint and Several: All Sellers executing this Listing are jointly and severally liable for the performance of all its terms.
- E. Governing Law: Texas law governs the interpretation, validity, performance, and enforcement of this Listing.
- F. Severability: If a court finds any clause in this Listing invalid or unenforceable, the remainder of this Listing will not be affected and all other provisions of this Listing will remain valid and enforceable.
- G. Notices: Notices between the parties must be in writing and are effective when sent to the receiving party's address, fax, or e-mail address specified in Paragraph 1.

21. ADDITIONAL NOTICES:

- A. Broker's compensation or the sharing of compensation between brokers is not fixed, controlled, recommended, suggested, or maintained by the Association of REALTORS®, MLS, or any listing service.
- B. In accordance with fair housing laws and the National Association of REALTORS® Code of Ethics, Broker's services must be provided and the Property must be shown and made available to all persons without regard to race, color, religion, national origin, sex, disability, familial status, sexual orientation, or gender identity. Local ordinances may provide for additional protected classes (for example, creed, status as a student, marital status, or age).
- C. Broker advises Seller to contact any mortgage lender or other lien holder to obtain information regarding payoff amounts for any existing mortgages or liens on the Property.
- D. Broker advises Seller to review the information Broker submits to an MLS or other listing service.
- E. Broker advises Seller to remove or secure jewelry, prescription drugs, other valuables, firearms and any other weapons.
- F. Statutes or ordinances may regulate certain items on the Property (for example, swimming pools and septic systems). Non-compliance with the statutes or ordinances may delay a transaction and may result in fines, penalties, and liability to Seller.
- G. If the Property was built before 1978, Federal law requires the Seller to: (1) provide the buyer with the federally approved pamphlet on lead poisoning prevention; (2) disclose the presence of any known lead-based paint or lead-based paint hazards in the Property; (3) deliver all records and reports to the buyer related to such paint or hazards; and (4) provide the buyer a period up to 10 days to have the Property inspected for such paint or hazards.

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Engel & Volkers

3700 Bee Cave Rd #102 Austin, TX 78746 512-328-3939

Kathryn Scarborough

H. Broker cannot give legal advice. READ THIS LISTING CAREFULLY. If you do not understand the effect of this Listing, consult an attorney BEFORE signing.


Engel & Volkers
Broker's Printed Name

440298


License No.

Rob Turner

Seller's Printed Name

 10/6/17
Date

☐ Broker's Signature
☒ Broker's Associate's Signature, as an authorized agent of Broker


 10/6/17
Date

Seller's Signature

Date

Kathryn Scarborough
Broker's Associate's Printed Name, if applicable

Seller's Printed Name


Date

Seller's Signature

Date



TEXAS ASSOCIATION OF REALTORS[®]
AMENDMENT TO LISTING

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS IS NOT AUTHORIZED.
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**AMENDMENT TO LISTING AGREEMENT BETWEEN THE UNDERSIGNED PARTIES
CONCERNING THE PROPERTY AT**
5201 Tortuga Trail, Austin, TX 78731

"Owner" means the seller or landlord of the above-referenced Property.

Effective 05/24/2018, Owner and Broker amend the above-referenced Listing as follows:

- ☐ A. The Listing Price in Paragraph 3 of the Listing is changed to: \$ _____.
- ☒ B. The date the Listing ends in Paragraph 4 of the Listing is changed to: 09/30/2018.
- ☐ C. Owner instructs Broker to cease marketing the Property on _____ and to
resume marketing the Property on: ☐ (1) receipt of further instructions from Owner, or ☐ (2) _____.
- The Listing is not terminated and remains in effect for all other purposes.
- ☐ D. Paragraph(s) _____ are changed as follows:

Engel & Volkers

Broker's (Company's) Printed Name

License No.

By

Broker's Associate's Signature

6/5/18
Date

(TAR-1404) 1-7-04

Engel & Volkers - Austin

3700 Bee Cave Rd #102 Austin, TX 78746

Rachel P. Turner 6/5/18
Seller or Landlord Date
Seller or Landlord Date

Page 1 of 1

Michele Turnquist

ITC000111



TEXAS ASSOCIATION OF REALTORS[®]
RESIDENTIAL REAL ESTATE LISTING AGREEMENT
EXCLUSIVE RIGHT TO SELL

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1. PARTIES: The parties to this agreement (this Listing) are:

Seller: Rob Turner

Address: 5203 Tortuga Trail

City, State, Zip: Austin, TX 78731

Phone: 512-573-8762

Fax:

E-Mail: turnerhomes@gmail.com

Broker: Engel & Volkers Austin

Address: 3700 Bee Cave Road, Suite 102

City, State, Zip: Austin, TX 78746

Phone: 512.970.1355

Fax:

E-Mail: kathryn.scarborough@evusa.com

Seller appoints Broker as Seller's sole and exclusive real estate agent and grants to Broker the exclusive right to sell the Property.

2. PROPERTY: "Property" means the land, improvements, and accessories described below, except for any described exclusions.

A. Land: Lot _____, Block _____, ABS 7 CHAMBERS T J ACR 0.8040
 Addition, City of Austin
 in Travis County _____ County, Texas known as _____
 5203 Tortuga Trail 78731 (address/zip code),
 or as described on attached exhibit. (If Property is a condominium, attach Condominium Addendum.)

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

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

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[Signature]

and Seller

[Signature]

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Kathryn Scarborough

ITC000112

Residential Listing concerning 5203 Tortuga Trail, Austin, TX 78731

D. Exclusions: The following improvements and accessories will be retained by Seller and must be removed prior to delivery of possession:

E. Owners' Association: The property ☐ is ☒ is not subject to mandatory membership in a property owners' association, R.T.

3. **LISTING PRICE**: Seller instructs Broker to market the Property at the following price: \$2,995,000
(Listing Price). Seller agrees to sell the Property for the Listing Price or any other price acceptable to Seller. Seller will pay all typical closing costs charged to sellers of residential real estate in Texas (seller's typical closing costs are those set forth in the residential contract forms promulgated by the Texas Real Estate Commission).

4. **TERM**:

A. This Listing begins on 10/04/2017 and ends at 11:59 p.m. on 5/31/17 R.T.

B. If Seller enters into a binding written contract to sell the Property before the date this Listing begins and the contract is binding on the date this Listing begins, this Listing will not commence and will be void.

5. **BROKER COMPENSATION**:

R.T. A. When earned and payable, Seller will pay Broker:

☒ (1) 5% on lot % of the sales price.

R.T. ☒ (2) If Michele Turnquist & Kathryn Scarborough brings a buyer, seller has agreed to pay a flat fee of \$240,000 for to be built.

B. Earned: Broker's compensation is earned when any one of the following occurs during this Listing: Lacey Goosen
Jack Fluor
Chris Baeve
(1) Seller sells, exchanges, options, agrees to sell, agrees to exchange, or agrees to option the Property to anyone at any price on any terms;
(2) Broker individually or in cooperation with another broker procures a buyer ready, willing, and able to buy the Property at the Listing Price or at any other price acceptable to Seller; or
(3) Seller breaches this Listing. Seller

C. Payable: Once earned, Broker's compensation is payable either during this Listing or after it ends at the earlier of:

- (1) the closing and funding of any sale or exchange of all or part of the Property;
- (2) Seller's refusal to sell the Property after Broker's compensation has been earned;
- (3) Seller's breach of this Listing; or
- (4) at such time as otherwise set forth in this Listing.

Broker's compensation is not payable if a sale of the Property does not close or fund as a result of: (i) Seller's failure, without fault of Seller, to deliver to a buyer a deed or a title policy as required by the contract to sell; (ii) loss of ownership due to foreclosure or other legal proceeding; or (iii) Seller's failure to restore the Property, as a result of a casualty loss, to its previous condition by the closing date set forth in a contract for the sale of the Property.

D. Other Compensation:

(1) Breach by Buyer Under a Contract: If Seller collects earnest money, the sales price, or damages by suit, compromise, settlement, or otherwise from a buyer who breaches a contract for the sale of the Property entered into during this Listing, Seller will pay Broker, after deducting attorney's fees

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Engel & Volkers

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Kathryn Scarborough

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Residential Listing concerning 5203 Tortuga Trail, Austin, TX 78731

and collection expenses, an amount equal to the lesser of one-half of the amount collected after deductions or the amount of the Broker's Compensation stated in Paragraph 5A. Any amount paid under this Paragraph 5D(1) is in addition to any amount that Broker may be entitled to receive for subsequently selling the Property.

- (2) Service Providers: If Broker refers Seller or a prospective buyer to a service provider (for example, mover, cable company, telecommunications provider, utility, or contractor) Broker may receive a fee from the service provider for the referral. Any referral fee Broker receives under this Paragraph 5D(2) is in addition to any other compensation Broker may receive under this Listing.

- (3) Other Fees and/or Reimbursable Expenses: _____

E. Protection Period:

- (1) "Protection period" means that time starting the day after this Listing ends and continuing for 90 days. "Sell" means any transfer of any fee simple interest in the Property whether by oral or written agreement or option.
- (2) Not later than 10 days after this Listing ends, Broker may send Seller written notice specifying the names of persons whose attention was called to the Property during this Listing. If Seller agrees to sell the Property during the protection period to a person named in the notice or to a relative of a person named in the notice, Seller will pay Broker, upon the closing of the sale, the amount Broker would have been entitled to receive if this Listing were still in effect.
- (3) This Paragraph 5E survives termination of this Listing. This Paragraph 5E will not apply if:
- (a) Seller agrees to sell the Property during the protection period;
 - (b) the Property is exclusively listed with another broker who is a member of the Texas Association of REALTORS® at the time the sale is negotiated; and
 - (c) Seller is obligated to pay the other broker a fee for the sale.

- F. County: All amounts payable to Broker are to be paid in cash in _____
Travis County, Texas.

- G. Escrow Authorization: Seller authorizes, and Broker may so instruct, any escrow or closing agent authorized to close a transaction for the purchase or acquisition of the Property to collect and disburse to Broker all amounts payable to Broker under this Listing.

6. LISTING SERVICES:

- ☐ A. Broker will file this Listing with one or more Multiple Listing Services (MLS) by the earlier of the time required by MLS rules or 5 days after the date this Listing begins. Seller authorizes Broker to submit information about this Listing and the sale of the Property to the MLS.

Notice: MLS rules require Broker to accurately and timely submit all information the MLS requires for participation including sold data. MLS rules may require that the information be submitted to the MLS throughout the time the Listing is in effect. Subscribers to the MLS may use the information for market evaluation or appraisal purposes. Subscribers are other brokers and other real estate professionals such as appraisers and may include the appraisal district. Any information filed with the MLS becomes the property of the MLS for all purposes. **Submission of information to MLS ensures that persons who use and benefit from the MLS also contribute information.**

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Initiated for Identification by Broker/Associate

MT

and Seller

RT

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Engel & Volkers

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Kathryn Scarborough

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Residential Listing concerning 5203 Tortuga Trail, Austin, TX 78731

- ☒ B. Seller instructs Broker not to file this Listing with one or more Multiple Listing Service (MLS) until _____ days after the date this Listing begins for the following purpose(s): _____
Until completion of photography and marketing.
(NOTE: Do not check if prohibited by Multiple Listing Service(s).)
- ☐ C. Broker will not file this Listing with a Multiple Listing Service (MLS) or any other listing service.

Notice: Seller acknowledges and understands that if this option is checked: (1) Seller's Property will not be included in the MLS database available to real estate agents and brokers from other real estate offices who subscribe to and participate in the MLS, and their buyer clients may not be aware that Seller's Property is offered for sale; (2) Seller's Property will not be included in the MLS's download to various real estate Internet sites that are used by the public to search for property listings; and (3) real estate agents, brokers, and members of the public may be unaware of the terms and conditions under which Seller is marketing the Property.

7. ACCESS TO THE PROPERTY:

- A. Authorizing Access: Authorizing access to the Property means giving permission to another person to enter the Property, disclosing to the other person any security codes necessary to enter the Property, and lending a key to the other person to enter the Property, directly or through a keybox. To facilitate the showing and sale of the Property, Seller instructs Broker to:
- (1) access the Property at reasonable times;
 - (2) authorize other brokers, their associates, inspectors, appraisers, and contractors to access the Property at reasonable times; and
 - (3) duplicate keys to facilitate convenient and efficient showings of the Property.
- B. Scheduling Companies: Broker may engage the following companies to schedule appointments and to authorize others to access the Property: _____
- C. Keybox: A keybox is a locked container placed on the Property that holds a key to the Property. A keybox makes it more convenient for brokers, their associates, inspectors, appraisers, and contractors to show, inspect, or repair the Property. The keybox is opened by a special combination, key, or programmed device so that authorized persons may enter the Property, even in Seller's absence. Using a keybox will probably increase the number of showings, but involves risks (for example, unauthorized entry, theft, property damage, or personal injury). Neither the Association of REALTORS® nor MLS requires the use of a keybox.
- (1) Broker ☐ is ☒ is not authorized to place a keybox on the Property.
 - (2) If a tenant occupies the Property at any time during this Listing, Seller will furnish Broker a written statement (for example, TAR No. 1411), signed by all tenants, authorizing the use of a keybox or Broker may remove the keybox from the Property.
- D. Liability and Indemnification: When authorizing access to the Property, Broker, other brokers, their associates, any keybox provider, or any scheduling company are not responsible for personal injury or property loss to Seller or any other person. Seller assumes all risk of any loss, damage, or injury. **Except for a loss caused by Broker, Seller will indemnify and hold Broker harmless from any claim for personal injury, property damage, or other loss.**
8. **COOPERATION WITH OTHER BROKERS:** Broker will allow other brokers to show the Property to prospective buyers. Broker will offer to pay the other broker a fee as described below if the other broker procures a buyer that purchases the Property.

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Engel & Volkers

3700 Bee Cave Rd #102 Austin, TX 78746 512-328-3939

Kathryn Scarborough

ITC000115

A. MLS Participants: If the other broker is a participant in the MLS in which this Listing is filed, Broker will offer to pay the other broker:

- (1) if the other broker represents the buyer: 3 % of the sales price or \$ _____; and
(2) if the other broker is a subagent: 0 % of the sales price or \$ _____.

B. Non-MLS Brokers: If the other broker is not a participant in the MLS in which this Listing is filed, Broker will offer to pay the other broker:

- (1) if the other broker represents the buyer: 2 % of the sales price or \$ _____; and
(2) if the other broker is a subagent: 0 % of the sales price or \$ _____.

9. **INTERMEDIARY:** (Check A or B only.)

☒ A. Intermediary Status: Broker may show the Property to interested prospective buyers who Broker represents. If a prospective buyer who Broker represents offers to buy the Property, Seller authorizes Broker to act as an intermediary and Broker will notify Seller that Broker will service the parties in accordance with one of the following alternatives,

(1) If a prospective buyer who Broker represents is serviced by an associate other than the associate servicing Seller under this Listing, Broker may notify Seller that Broker will: (a) appoint the associate then servicing Seller to communicate with, carry out instructions of, and provide opinions and advice during negotiations to Seller; and (b) appoint the associate then servicing the prospective buyer to the prospective buyer for the same purpose.

(2) If a prospective buyer who Broker represents is serviced by the same associate who is servicing Seller, Broker may notify Seller that Broker will: (a) appoint another associate to communicate with, carry out instructions of, and provide opinions and advice during negotiations to the prospective buyer; and (b) appoint the associate servicing the Seller under this Listing to the Seller for the same purpose.

(3) Broker may notify Seller that Broker will make no appointments as described under this Paragraph 9A and, in such an event, the associate servicing the parties will act solely as Broker's intermediary representative, who may facilitate the transaction but will not render opinions or advice during negotiations to either party.

☐ B. No Intermediary Status: Seller agrees that Broker will not show the Property to prospective buyers who Broker represents.

Notice: If Broker acts as an intermediary under Paragraph 9A, Broker and Broker's associates:

- may not disclose to the prospective buyer that Seller will accept a price less than the asking price unless otherwise instructed in a separate writing by Seller;
- may not disclose to Seller that the prospective buyer will pay a price greater than the price submitted in a written offer to Seller unless otherwise instructed in a separate writing by the prospective buyer;
- may not disclose any confidential information or any information Seller or the prospective buyer specifically instructs Broker in writing not to disclose unless otherwise instructed in a separate writing by the respective party or required to disclose the information by the Real Estate License Act or a court order or if the information materially relates to the condition of the property;
- may not treat a party to the transaction dishonestly; and
- may not violate the Real Estate License Act.

Residential Listing concerning 5203 Tortuga Trail, Austin, TX 78731

10. CONFIDENTIAL INFORMATION: During this Listing or after it ends, Broker may not knowingly disclose information obtained in confidence from Seller except as authorized by Seller or required by law. Broker may not disclose to Seller any confidential information regarding any other person Broker represents or previously represented except as required by law.

11. BROKER'S AUTHORITY:

- A. Broker will use reasonable efforts and act diligently to market the Property for sale, procure a buyer, and negotiate the sale of the Property.
- B. Broker is authorized to display this Listing on the Internet without limitation unless one of the following is checked:
- ☐ (1) Seller does not want this Listing to be displayed on the Internet.
 - ☐ (2) Seller does not want the address of the Property to be displayed on the Internet.

Notice: Seller understands and acknowledges that, if box 11B(1) is selected, consumers who conduct searches for listings on the Internet will not see information about this Listing in response to their search.

C. Broker is authorized to market the Property with the following financing options:

- | | |
|--|--|
| <input checked="" type="checkbox"/> (1) Conventional | <input type="checkbox"/> (5) Texas Veterans Land Program |
| <input type="checkbox"/> (2) VA | <input type="checkbox"/> (6) Owner Financing |
| <input type="checkbox"/> (3) FHA | <input type="checkbox"/> (7) Other |
| <input checked="" type="checkbox"/> (4) Cash | |

D. In addition to other authority granted by this Listing, Broker may:

- (1) advertise the Property by means and methods as Broker determines, including but not limited to creating and placing advertisements with interior and exterior photographic and audio-visual images of the Property and related information in any media and the Internet;
- (2) place a "For Sale" sign on the Property and remove all other signs offering the Property for sale or lease;
- (3) furnish comparative marketing and sales information about other properties to prospective buyers;
- (4) disseminate information about the Property to other brokers and to prospective buyers, including applicable disclosures or notices that Seller is required to make under law or a contract;
- (5) obtain information from any holder of a note secured by a lien on the Property;
- (6) accept and deposit earnest money in trust in accordance with a contract for the sale of the Property;
- (7) disclose the sales price and terms of sale to other brokers, appraisers, or other real estate professionals;
- (8) in response to inquiries from prospective buyers and other brokers, disclose whether the Seller is considering more than one offer (Broker will not disclose the terms of any competing offer unless specifically instructed by Seller);
- (9) advertise, during or after this Listing ends, that Broker "sold" the Property; and
- (10) place information about this Listing, the Property, and a transaction for the Property on an electronic transaction platform (typically an Internet-based system where professionals related to the transaction such as title companies, lenders, and others may receive, view, and input information).

E. Broker is not authorized to execute any document in the name of or on behalf of Seller concerning the Property.

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Engel & Volkers

3700 Bee Cave Rd #102 Austin, TX 78746 512-328-3939

Kathryn Scarborough

ITC000117

12. SELLER'S REPRESENTATIONS: Except as provided by Paragraph 15, Seller represents that:

- A. Seller has fee simple title to and peaceable possession of the Property and all its improvements and fixtures, unless rented, and the legal capacity to convey the Property;
- B. Seller is not bound by a listing agreement with another broker for the sale, exchange, or lease of the Property that is or will be in effect during this Listing;
- C. any pool or spa and any required enclosures, fences, gates, and latches comply with all applicable laws and ordinances;
- D. no person or entity has any right to purchase, lease, or acquire the Property by an option, right of refusal, or other agreement;
- E. Seller is current and not delinquent on all loans and all other financial obligations related to the Property, including but not limited to mortgages, home equity loans, home improvement loans, homeowner association fees, and taxes, except _____;
- F. Seller is not aware of any liens or other encumbrances against the Property, except _____;
- G. the Property is not subject to the jurisdiction of any court;
- H. all information relating to the Property Seller provides to Broker is true and correct to the best of Seller's knowledge; and
- I. the name of any employer, relocation company, or other entity that provides benefits to Seller when selling the Property is: _____;

13. SELLER'S ADDITIONAL PROMISES: Seller agrees to:

- A. cooperate with Broker to facilitate the showing, marketing, and sale of the Property;
- B. not rent or lease the Property during this Listing without Broker's prior written approval;
- C. not negotiate with any prospective buyer who may contact Seller directly, but refer all prospective buyers to Broker;
- D. not enter into a listing agreement with another broker for the sale, exchange, lease, or management of the Property to become effective during this Listing without Broker's prior written approval;
- E. maintain any pool and all required enclosures in compliance with all applicable laws and ordinances;
- F. provide Broker with copies of any leases or rental agreements pertaining to the Property and advise Broker of tenants moving in or out of the Property;
- G. complete any disclosures or notices required by law or a contract to sell the Property; and
- H. amend any applicable notices and disclosures if any material change occurs during this Listing.

14. LIMITATION OF LIABILITY:

- A. If the Property is or becomes vacant during this Listing, Seller must notify Seller's casualty insurance company and request a "vacancy clause" to cover the Property. Broker is not responsible for the security of the Property nor for inspecting the Property on any periodic basis.
- B. Broker is not responsible or liable in any manner for personal injury to any person or for loss or damage to any person's real or personal property resulting from any act or omission not caused by Broker's negligence, including but not limited to injuries or damages caused by:
 - (1) other brokers, their associates, inspectors, appraisers, and contractors who are authorized to access the Property;
 - (2) other brokers or their associates who may have information about the Property on their websites;
 - (3) acts of third parties (for example, vandalism or theft);
 - (4) freezing water pipes;
 - (5) a dangerous condition on the Property;
 - (6) the Property's non-compliance with any law or ordinance; or
 - (7) Seller, negligently or otherwise.

Residential Listing concerning 5203 Tortuga Trail, Austin, TX 78731

- C. Seller agrees to protect, defend, indemnify, and hold Broker harmless from any damage, costs, attorney's fees, and expenses that:
- (1) are caused by Seller, negligently or otherwise;
 - (2) arise from Seller's failure to disclose any material or relevant information about the Property; or
 - (3) are caused by Seller giving incorrect information to any person.

15. SPECIAL PROVISIONS:

Property to remain a pocket listing until instructed by seller to list on active MLS market.
Seller to pay for replacement of signs. — but — seller/agent split costs of sign.
Upon early termination, Engel & Volkers/Kathryn Scarborough/Michele Turnquist will be reimbursed for all advertising and marketing expenses.
Home will also be listed as to be built for \$6,995,000, but buyers agent to only be paid only on land value at \$3,250,000. \$3,945,000

- 16. DEFAULT:** If Seller breaches this Listing, Seller is in default and will be liable to Broker for the amount of the Broker's compensation specified in Paragraph 5A and any other compensation Broker is entitled to receive under this Listing. If a sales price is not determinable in the event of an exchange or breach of this Listing, the Listing Price will be the sales price for purposes of computing compensation. If Broker breaches this Listing, Broker is in default and Seller may exercise any remedy at law.

- 17. MEDIATION:** The parties agree to negotiate in good faith in an effort to resolve any dispute related to this Listing that may arise between the parties. If the dispute cannot be resolved by negotiation, the dispute will be submitted to mediation. The parties to the dispute will choose a mutually acceptable mediator and will share the cost of mediation equally.

- 18. ATTORNEY'S FEES:** If Seller or Broker is a prevailing party in any legal proceeding brought as a result of a dispute under this Listing or any transaction related to or contemplated by this Listing, such party will be entitled to recover from the non-prevailing party all costs of such proceeding and reasonable attorney's fees.

19. ADDENDA AND OTHER DOCUMENTS: Addenda that are part of this Listing and other documents that Seller may need to provide are:

- ☒ A. Information About Brokerage Services;
- ☒ B. Seller Disclosure Notice (\$5.008, Texas Property Code);
- ☐ C. Addendum for Seller's Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards (required if Property was built before 1978);
- ☒ D. Residential Real Property Affidavit (T-47 Affidavit; related to existing survey);
- ☐ E. MUD, Water District, or Statutory Tax District Disclosure Notice (Chapter 49, Texas Water Code);
- ☐ F. Request for Information from an Owners' Association;
- ☐ G. Request for Mortgage Information;
- ☐ H. Information about Mineral Clauses in Contract Forms;
- ☐ I. Information about On-Site Sewer Facility;
- ☐ J. Information about Property Insurance for a Buyer or Seller;
- ☒ K. Information about Special Flood Hazard Areas;
- ☐ L. Condominium Addendum to Listing;
- ☐ M. Keybox Authorization by Tenant;
- ☐ N. Seller's Authorization to Release and Advertise Certain Information; and
- ☐ O.

(TAR-1101) 01-01-14

Initialed for Identification by Broker/Associate LAAT and Seller RT

Page 8 of 10

Engel & Volkers

3700 Bee Cave Rd #102 Austin, TX 78746 512-328-3939

Kathryn Scarborough

ITC000119

20. AGREEMENT OF PARTIES:

- A. Entire Agreement: This Listing is the entire agreement of the parties and may not be changed except by written agreement.
- B. Assignability: Neither party may assign this Listing without the written consent of the other party.
- C. Binding Effect: Seller's obligation to pay Broker earned compensation is binding upon Seller and Seller's heirs, administrators, executors, successors, and permitted assignees.
- D. Joint and Several: All Sellers executing this Listing are jointly and severally liable for the performance of all its terms.
- E. Governing Law: Texas law governs the interpretation, validity, performance, and enforcement of this Listing.
- F. Severability: If a court finds any clause in this Listing invalid or unenforceable, the remainder of this Listing will not be affected and all other provisions of this Listing will remain valid and enforceable.
- G. Notices: Notices between the parties must be in writing and are effective when sent to the receiving party's address, fax, or e-mail address specified in Paragraph 1.

21. ADDITIONAL NOTICES:

- A. Broker's compensation or the sharing of compensation between brokers is not fixed, controlled, recommended, suggested, or maintained by the Association of REALTORS®, MLS, or any listing service.
- B. In accordance with fair housing laws and the National Association of REALTORS® Code of Ethics, Broker's services must be provided and the Property must be shown and made available to all persons without regard to race, color, religion, national origin, sex, disability, familial status, sexual orientation, or gender identity. Local ordinances may provide for additional protected classes (for example, creed, status as a student, marital status, or age).
- C. Broker advises Seller to contact any mortgage lender or other lien holder to obtain information regarding payoff amounts for any existing mortgages or liens on the Property.
- D. Broker advises Seller to review the information Broker submits to an MLS or other listing service.
- E. Broker advises Seller to remove or secure jewelry, prescription drugs, other valuables, firearms and any other weapons.
- F. Statutes or ordinances may regulate certain items on the Property (for example, swimming pools and septic systems). Non-compliance with the statutes or ordinances may delay a transaction and may result in fines, penalties, and liability to Seller.
- G. If the Property was built before 1978, Federal law requires the Seller to: (1) provide the buyer with the federally approved pamphlet on lead poisoning prevention; (2) disclose the presence of any known lead-based paint or lead-based paint hazards in the Property; (3) deliver all records and reports to the buyer related to such paint or hazards; and (4) provide the buyer a period up to 10 days to have the Property inspected for such paint or hazards.

(TAR-1101) 01-01-14

Initialed for Identification by Broker/Associate



and Seller



Page 9 of 10

Engel & Volkers

3700 Bee Cave Rd #102 Austin, TX 78746 512-328-3939


Kathryn Scarborough

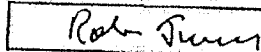
ITC000120

H. Broker cannot give legal advice. READ THIS LISTING CAREFULLY. If you do not understand the effect of this Listing, consult an attorney BEFORE signing.

Engel & Volkers
Broker's Printed Name: _____ License No. 440298

Rob Turner
Seller's Printed Name: Rob Turner

 10/11/17
☐ Broker's Signature
☒ Broker's Associate's Signature, as an authorized agent of Broker Date

 10/6/13
Seller's Signature Date

Kathryn Scarborough
Broker's Associate's Printed Name, if applicable: _____

Seller's Printed Name: _____

Seller's Signature Date

Exhibit A-6



SPROUSE SHRADER SMITH PLLC
ATTORNEYS AT LAW

TERRENCE L. IRION, ATTORNEY
terry.irion@sprouselaw.com
(512) 615-6653

August 14, 2018

Carol Bellomy
Branch Manager/Escrow Officer
Independence Title Company
5503 Balcones Drive
Austin, TX 78731

via email: cbellomy@independencetitle.com

Re: 5201-5203 Tortuga GF No. 1830300-BAL & GF No. 1830313-BAL

Dear Carol,

Attached please find the two warranty deeds which have been sent to Tim Young for his review and approval. Also enclosed are our Firm's legal fees which have been approved by Seller to be paid out of Closing. Please put our Invoice on the 5201 Tortuga Closing Statement.

With regards to the 5203 Tortuga Closing Statement, Rob and Lana Turner (Sellers) have authorized a fee to be paid to the Law Offices of Terrence L. Irion for services rendered prior to my joining the Sprouse Law Firm in 2016. Please leave a blank place on this Statement as I will provide you with the exact approval number early tomorrow morning.

Finally, as of this moment Seller and Broker have not agreed on the commission to be paid out of Seller proceeds. If there is not an agreement by tomorrow morning at 10:00 a.m., you are instructed to not include any commission on the Closing Statement. Seller will pay the commission owed to Engel & Volkers outside of Closing.

I understand that Engel & Volkers' attorney, Rex Zgarba, has sent a Demand to you insisting that a payment in the amount of \$280,000.00 be tendered at Closing directly to Engel & Volkers and that an additional \$280,000.00 is placed by Independence Title Company in escrow pending written agreement or court order regarding release from escrow. Purportedly this is to prevent your company from becoming "embroiled in this dispute and potential future litigation". It would appear to me this Demand is the one way Independence Title can ensure that it will be embroiled in this dispute going forward.

Paragraph 8 of the two TREC contracts state that "all obligations of the parties for payment of brokers' fees are contained in separate written agreements."

1250 S. Capital of Texas Hwy.
3 Cielo Center, Suite 601
Austin, TX 78746
Ph. (512) 615-6651
Alt. (512) 347-9977

ITC000096

August 14, 2018
Carol Bellomy
Page Two

Independence Title is not an arbiter of what is or is not the applicable listing agreement provisions, as amended between Seller and Broker. Paragraph 8 of the two TREC contracts put the agreements outside of the scope of the duties of Escrow Agent to determine. Nor has the Title Company or escrow agent assumed any duties to Broker pursuant to the Contract, in particular Paragraph 8 and Paragraph 18 regarding escrow duties.

Accordingly, Seller instructs Title Company to not make any disbursement to Engel & Volkers nor escrow any money pursuant to the listing agreement that is outside the scope of these two TREC contracts, and to take no act which could interfere with the Closing of this transaction.

Sincerely,



Terrence L. Irion

TLI/kc

Encl.


cc: Rob Turner
Jay Southworth
Jennifer Goodrum
Tim Young

via email: rturnerhomes@gmail.com
via email: jsouthworth@independencetitle.com
via email: jgoodrum@independencetitle.com
via email: tim@ikardwynne.com

ITC000097

Exhibit A-7

From: Rex J. Zgarba
Sent: Wednesday, August 15, 2018 4:44:11 PM
To: Jay Fitzgerald; Terry Irion
Cc: Carol Bellomy; Jay Southworth; tim@ikardwynne.com; Michaela Z. Powell
Subject: RE: 5201 & 5203 Tortuga Trail, Austin, Travis County, Texas -- Protest and Demand for Payment
Importance: High
Sensitivity: Normal
Attachments:
2_Fee Authorization - 5201 Tortuga.pdf;2_Fee Authorization - 5203 Tortuga.pdf;5_Fee Authorization - 5201 Tortuga.pdf
;5_Fee Authorization - 5203 Tortuga.pdf;

Original mail: 5201 & 5203 Tortuga Trail, Austin, Travis County, Texas -- Protest and Demand for Payment.msg 

Gentlemen:

This is in response to Mr. Fitzgerald's email, below, and follows my subsequent conversations with both Mr. Fitzgerald and Mr. Irion throughout the day today in an attempt to resolve this matter.

As I have made you both aware, Engle & Volkers objects to the payment of only a 2% commission from these transactions as that amount is insufficient and a clear breach of the written listing agreements between the Seller and Engle & Volkers. I now understand that this breach has been fully consummated by the closing of these transactions, with Seller and Buyer having approved settlement statements containing the insufficient commission payments.

Following this breach and under protest, my client accepts the 2% commission but only in so far as it is a partial payment and an off-set of what it is rightfully owed. Engle & Volkers' acceptance of this portion of undisputed commission does not constitute a waiver of claims it may have against the Seller or any other party as a result of this breach—claims my client fully intends to pursue in a court of competent jurisdiction.

Attached are 2% fee authorizations forms required by the title company for disbursement of the undisputed amounts. Please remit those payments directly to Engle & Volkers at the first opportunity.

By way of providing further notice of protest and damages, I have also attached 5% fee authorizations forms. As you are aware from my letter of yesterday, 5% represents the full and correct amount of fee earned and payable to my client under the listing agreements. The 3% difference between the totals in the forms is the amount of damages my client suffered as a result of Seller's breach. We intend to pursue these damages along with all reimbursable costs of court. Demand is hereby tendered to Seller for payment of this difference. If payment is not tendered within 30 days, you are advised that pursuant to Chapter 38 of the Texas Civil Remedies and Practices Code and Section 18 of the parties' listing agreements, Seller may also be liable for all reasonable attorney's fees

Regards,
Rex

Coats | Rose
a professional corporation

Rex J. Zgarba
Attorney-at-Law

RT_001125

Barton Oaks Plaza
901 South MoPac Expressway
Building 1, Suite 500
Austin, Texas 78746
Direct: 512.684.3848 | Fax: 512.469.9408
rzgarba@coatsrose.com
www.coatsrose.com

From: Jay Fitzgerald [mailto:jfitzgerald@independencetitle.com]
Sent: Wednesday, August 15, 2018 8:43 AM
To: Terry Irion <terry.irion@sprouselaw.com>; Rex J. Zgarba <rzgarba@coatsrose.com>
Cc: Carol Bellomy <cbellomy@independencetitle.com>; Jay Southworth <jsouthworth@independencetitle.com>
Subject: 5201 & 5203 Tortuga Trail, Austin, Travis County, Texas

Gentlemen:

Independence has received instructions from each of you regarding the broker compensation to be paid from the sale of the referenced properties. As you are aware, the instructions offered are contrary to one another. Following extensive deliberation, Independence intends to pay Engel & Volkers the commissions as set out in Mr. Irion's e-mail transmitted late yesterday, that being payment of a 2% commission in the amount of \$163,000 from our Guaranty File 1830300-BAL and a 2% commission in the amount of \$61,000 from our Guaranty File 1830313-BAL. We would propose to pay the remaining claimed commission to a mediator mutually appointed by yourselves and your clients, should the 2% commission amounts be deemed insufficient by Mr. Zgarba and his clients, and stand ready to do so upon your mutual instruction.

Please do not hesitate to contact me for further discussion and/or instruction regarding this matter.

Jay Fitzgerald
General Counsel



Independence Title
5900 Shepherd Mountain Cove
Bldg. II, Suite 200
Austin, Texas 78730
Office: (512) 454-4500
IndependenceTitle.com



I am a TLTA Associate Member.

****Please do not forward this e-mail without express permission from the author****

BE CAUTIOUS IF YOU CHOOSE TO WIRE FUNDS

Wiring funds creates a risk of loss by fraud. If you elect to wire funds, please call your Independence Title team to obtain wiring instructions, using a phone number from our website.

CONFIDENTIALITY NOTICE

This email transmission is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510 et seq., and the information contained in this message and documents accompanying same are legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this message is strictly prohibited. If you received this message in error, please immediately notify us by telephone and purge all copies of this message from your system. Thank you.

This Message sent via Proofpoint.

RT_001126

This e-mail and/or attachment is for the sole use of the intended recipient(s) and may contain confidential and/or legally privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

Exhibit A-8

A. Settlement Statement

U.S. Department of Housing
and Urban Development

OMB No. 2502-0265

B. Type of Loan			
1. <input type="checkbox"/> FHA	2. <input type="checkbox"/> FmHA	3. <input type="checkbox"/> Conv Unins	6. File Number
4. <input type="checkbox"/> VA	5. <input type="checkbox"/> Conv Ins.	6. <input type="checkbox"/> Seller Finance	1830300-BAL
7. <input checked="" type="checkbox"/> CASH SALE		7. Loan Number	8. Mortgage Ins Case Number
C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.			
D. Name & Address of Borrower Lauree Z Moffett		E. Name & Address of Seller Robert P. Turner and Lesli A. Turner 202 Billings Lane Austin, TX 78733	
F. Name & Address of Lender		H. Settlement Agent Name Independence Title 5900 Shepherd Mountain Cove, Bldg 2, Ste. 200 Austin, TX 78730 Tax ID: 74-1909700 Underwritten By: Title Resources Guaranty Company	
G. Property Location ABS 7 Chambers TJ ACR.8510, Travis County, TX 5201 Tortuga Trail Austin, TX 78731		I. Settlement Date 8/15/2018 Fund: 8/15/2018	
J. Summary of Borrower's Transaction		K. Summary of Seller's Transaction	
100. Gross Amount Due from Borrower		400. Gross Amount Due to Seller	
101. Contract Sales Price	\$8,150,000.00	401. Contract Sales Price	\$8,150,000.00
102. Personal Property		402. Personal Property	
103. Settlement Charges to borrower	\$334.00	403.	
104.		404.	
105.		405.	
Adjustments for items paid by seller in advance		Adjustments for items paid by seller in advance	
106. Property taxes		406. Property taxes	
107. City property taxes		407. City property taxes	
108. County property taxes		408. County property taxes	
109. School property taxes		409. School property taxes	
110. HOA Dues		410. HOA Dues	
111. MUD Taxes		411. MUD Taxes	
112.		412.	
113.		413.	
114.		414.	
115.		415.	
116.		416.	
120. Gross Amount Due From Borrower	\$8,150,334.00	420. Gross Amount Due to Seller	\$8,150,000.00
200. Amounts Paid By Or in Behalf Of Borrower		500. Reductions in Amount Due to Seller	
201. Deposit or earnest money	\$150,000.00	501. Excess Deposit	
202. Principal amount of new loan(s)		502. Settlement Charges to Seller (line 1400)	\$207,050.80
203. Existing loan(s) taken subject to		503. Existing Loan(s) Taken Subject to	
204. Loan Amount 2nd Lien		504. Payoff to	
205.		505. Payoff to	
206. Option Fee	\$10,000.00	506. Option Fee	\$10,000.00
207.		507.	
208.		508.	
209.		509. Payoff - American Bank of Commerce	\$2,463,811.66
Adjustments for items unpaid by seller		Adjustments for items unpaid by seller	
210. Property taxes 01/01/18 thru 08/15/18	\$57,717.93	510. Property taxes 01/01/18 thru 08/15/18	\$57,717.93
211. City property taxes		511. City property taxes	
212. County property taxes		512. County property taxes	
213. School property taxes		513. School property taxes	
214. HOA Dues		514. HOA Dues	
215. MUD Taxes		515. MUD Taxes	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. Total Paid By/For Borrower	\$217,717.93	520. Total Reduction Amount Due Seller	\$2,738,580.39
300. Cash At Settlement From/To Borrower		600. Cash At Settlement To/From Seller	
301. Gross Amount due from borrower (line 120)	\$8,150,334.00	601. Gross Amount due to seller (line 420)	\$8,150,000.00
302. Less amounts paid by/for borrower (line 220)	\$217,717.93	602. Less reductions in amt. due seller (line 520)	\$2,738,580.39
303. Cash From Borrower	\$7,932,616.07	603. Cash To Seller	\$5,411,419.61
Section 5 of the Real Estate Settlement Procedures Act (RESPA) requires the following: • HUD must develop a Special Information Booklet to help persons borrowing money to finance the purchase of residential real estate to better understand the nature and costs of real estate settlement services; • Each lender must provide the booklet to all applicants from whom it receives or for whom it prepares a written application to borrow money to finance the purchase of residential real estate; • Lenders must prepare and distribute with the Booklet a Good Faith Estimate of the settlement costs that the borrower is likely to incur in connection with the settlement. These disclosures are mandatory.		Section 4(a) of RESPA mandates that HUD develop and prescribe this standard form to be used at the time of loan settlement to provide full disclosure of all charges imposed upon the borrower and seller. These are third party disclosures that are designed to provide the borrower with pertinent information during the settlement process in order to be a better shopper. The Public Reporting Burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. The information requested does not lend itself to confidentiality.	

ITC000001

L. Settlement Charges				Paid From	Paid From
700. Total Sales/Broker's Commission based on price				Borrower's	Seller's
				Funds at	Funds at
Division of Commission (line 700) as follows:				Settlement	Settlement
701. \$163,000.00	to	Engel & Volkers Austin			
702.	to				
703. Commission Paid at Settlement				\$0.00	\$163,000.00
704. The following persons, firms or	to				
705. corporations received a portion	to				
706. of the real estate commission amount	to				
707. shown above:	to	Michele Turnquist, Scarborough Holdings, LLC			
800. Items Payable in Connection with Loan					
801. Loan Origination Fee %	to				
802. Loan Discount %	to				
803. Appraisal Fee	to				
804. Credit Report	to				
805. Lender's Inspection Fee	to				
806. Mortgage Insurance Application	to				
807. Underwriting Fee	to				
808. Flood Cert Fee	to				
809. Processing Fee	to				
810. Tax Services	to				
900. Items Required by Lender To Be Paid in Advance					
901. Interest from 8/15/2018 to 9/1/2018 @ \$0/day					
902. Mortgage Insurance Premium for months	to				
903. Hazard Insurance Premium for years	to				
904. 2nd Lien Interest	to				
1000. Reserves Deposited With Lender					
1001. Hazard insurance	months @	per month			
1002. Mortgage insurance	months @	per month			
1003. Property taxes	months @	per month			
1004. City property taxes	months @	per month			
1005. County property taxes	months @	per month			
1006. School property taxes	months @	per month			
1007. MUD Taxes	months @	per month			
1008. HOA Dues	months @	per month			
1011. Aggregate Adjustment					
1100. Title Charges					
1101. Settlement or closing fee	to				
1102. Abstract or title search	to				
1103. Title examination	to				
1104. Attorney Fee	to				
1105. Attorney Fee	to	Sprouse Shrader Smith PLLC			\$5,880.00
1106. Notary fees	to				
1107. Attorney's fees for Release of Lien	to	Fitzgerald & Fitzgerald Law Office			\$50.00
(includes above items numbers:)			
1108. Title insurance	to	Independence Title Co.			\$35,945.00
(includes above items numbers:)			
1109. Lender's coverage		\$0.00/\$0.00			
1110. Owner's coverage		\$8,150,000.00/\$35,945.00			
1111. Escrow fee	to	Independence Title Co.	\$250.00	\$250.00	
1112. Guaranty Assessment Recoupment Charge	to	Texas Title Insurance Guaranty Association	\$0.00	\$4.50	
1113. Courier/Overnight Fees	to	Independence Title Co.	\$35.00	\$35.00	
1114. e-Recording	to	Independence Title Co.	\$3.00	\$3.00	
1200. Government Recording and Transfer Charges					
1201. Recording Fees	Deed \$46.00 ; Mortgage ; Rel \$30.00	to Independence Title Co.	\$46.00	\$30.00	
1202. City/county tax/stamps	Deed ; Mortgage	to			
1203. State tax/stamps	Deed ; Mortgage	to			
1204.	to				
1300. Additional Settlement Charges					
1301. Survey - update	to	McMinn Surveying		\$1,135.00	
1302. Elevation Certificate	to	McMinn Surveying		\$675.00	
1303. HOA Transfer Fee	to				
1304. Home Warranty	to				
1305. Property Taxes	to				
1306. Tax Certificate	to	Texas Real Tax Services, Ltd.		\$43.30	
1307. MUD Certificate	to	Texas Real Tax, Inc.			
1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)			\$334.00	\$207,050.80	

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a completed copy of pages 1, 2 and 3 of this HUD-1 Settlement Statement.

Laurie Z Moffett
Laurie Z Moffett

Robert P. Turner
Robert P. Turner

SETTLEMENT AGENT CERTIFICATION

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused the funds to be disbursed in accordance with this statement.

Lesli A. Turner
Lesli A. Turner

Lesli A. Turner 8-15-2018
Settlement Agent Date

Warning: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

Previous Editions are Obsolete

Page 3

form HUD-1 (3/86)
Handbook 4305.2

Exhibit A-9

A. Settlement Statement

U.S. Department of Housing
and Urban Development

OMB No. 2502-0265

B. Type of Loan				6. File Number	7. Loan Number	8. Mortgage Ins Case Number
1. <input type="checkbox"/> FHA 2. <input type="checkbox"/> FmHA 3. <input type="checkbox"/> Conv Unins 4. <input type="checkbox"/> VA 5. <input type="checkbox"/> Conv Ins. 6. <input type="checkbox"/> Seller Finance 7. <input checked="" type="checkbox"/> CASH SALE				1830313-BAL		
C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.						
D. Name & Address of Borrower		E. Name & Address of Seller		F. Name & Address of Lender		
Lauree Z Moffett		Robert P. Turner and Leslie A. Turner 202 Billings Lane Austin, TX 78733				
G. Property Location				H. Settlement Agent Name		
ABS 7 Chambers TJ ACR 0.8040, Travis County, TX 5203 Tortuga Trail Austin, TX 78731				Independence Title 5900 Shepherd Mountain Cove, Bldg 2, Ste. 200 Austin, TX 78730 Tax ID: 74-1909700 Underwritten By: Title Resources Guaranty Company		
				Place of Settlement		I. Settlement Date
				Independence Title		8/15/2018
				5503 Balcones Drive		Fund: 8/15/2018
				Austin, TX 78731		
J. Summary of Borrower's Transaction				K. Summary of Seller's Transaction		
100. Gross Amount Due from Borrower				400. Gross Amount Due to Seller		
101. Contract Sales Price \$3,050,000.00				401. Contract Sales Price \$3,050,000.00		
102. Personal Property				402. Personal Property		
103. Settlement Charges to borrower \$299.00				403.		
104.				404.		
105.				405.		
Adjustments for items paid by seller in advance				Adjustments for items paid by seller in advance		
106. Property taxes				406. Property taxes		
107. City property taxes				407. City property taxes		
108. County property taxes				408. County property taxes		
109. School property taxes				409. School property taxes		
110. MUD Taxes				410. MUD Taxes		
111. HOA Dues				411. HOA Dues		
112.				412.		
113.				413.		
114.				414.		
115.				415.		
116.				416.		
120. Gross Amount Due From Borrower \$3,050,299.00				420. Gross Amount Due to Seller \$3,050,000.00		
200. Amounts Paid By Or in Behalf Of Borrower				500. Reductions in Amount Due to Seller		
201. Deposit or earnest money \$30,000.00				501. Excess Deposit		
202. Principal amount of new loan(s)				502. Settlement Charges to Seller (line 1400) \$173,016.80		
203. Existing loan(s) taken subject to				503. Existing Loan(s) Taken Subject to		
204. Loan Amount 2nd Lien				504. Payoff to		
205.				505. Payoff to		
206. Option Fee \$100.00				506. Option Fee \$100.00		
207.				507.		
208.				508.		
209.				509.		
Adjustments for items unpaid by seller				Adjustments for items unpaid by seller		
210. Property taxes 01/01/18 thru 08/15/18 \$12,003.53				510. Property taxes 01/01/18 thru 08/15/18 \$12,003.53		
211. City property taxes				511. City property taxes		
212. County property taxes				512. County property taxes		
213. School property taxes				513. School property taxes		
214. MUD Taxes				514. MUD Taxes		
215. HOA Dues				515. HOA Dues		
216.				516.		
217.				517.		
218.				518.		
219.				519.		
220. Total Paid By/For Borrower \$42,103.53				520. Total Reduction Amount Due Seller \$185,120.33		
300. Cash At Settlement From/To Borrower				600. Cash At Settlement To/From Seller		
301. Gross Amount due from borrower (line 120) \$3,050,299.00				601. Gross Amount due to seller (line 420) \$3,050,000.00		
302. Less amounts paid by/for borrower (line 220) \$42,103.53				602. Less reductions in amt. due seller (line 520) \$185,120.33		
303. Cash From Borrower \$3,008,195.47				603. Cash To Seller \$2,864,879.67		

Section 5 of the Real Estate Settlement Procedures Act (RESPA) requires the following:

- HUD must develop a Special Information Booklet to help persons borrowing money to finance the purchase of residential real estate to better understand the nature and costs of real estate settlement services;
- Each lender must provide the booklet to all applicants from whom it receives or for whom it prepares a written application to borrow money to finance the purchase of residential real estate;
- Lenders must prepare and distribute with the Booklet a Good Faith Estimate of the settlement costs that the borrower is likely to incur in connection with the settlement. These disclosures are mandatory.

Section 4(a) of RESPA mandates that HUD develop and prescribe this standard form to be used at the time of loan settlement to provide full disclosure of all charges imposed upon the borrower and seller. These are third party disclosures that are designed to provide the borrower with pertinent information during the settlement process in order to be a better shopper.

The Public Reporting Burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

The information requested does not lend itself to confidentiality.

I. Settlement Charges				Paid From	Paid From
				Borrower's	Seller's
				Funds at	Funds at
				Settlement	Settlement
700. Total Sales/Broker's Commission based on price	\$3,050,000.00	@2 % = \$61,000.00			
Division of Commission (line 700) as follows:					
701. \$61,000.00	to	Engel & Volkers Austin			
702.	to				
703. Commission Paid at Settlement				\$0.00	\$61,000.00
704. The following persons, firms or	to				
705. corporations received a portion	to				
706. of the real estate commission amount	to				
707. shown above:	to	Michele Turnquist, Scarborough Holdings, LLC			
800. Items Payable in Connection with Loan					
801. Loan Origination Fee %	to				
802. Loan Discount %	to				
803. Appraisal Fee	to				
804. Credit Report	to				
805. Lender's Inspection Fee	to				
806. Mortgage Insurance Application	to				
807. Underwriting Fee	to				
808. Flood Cert Fee	to				
809. Processing Fee	to				
810. Tax Services	to				
900. Items Required by Lender To Be Paid in Advance					
901. Interest from 8/15/2018 to 9/1/2018 @ \$0/day					
902. Mortgage Insurance Premium for months	to				
903. Hazard Insurance Premium for years	to				
904. 2nd Lien Interest	to				
1000. Reserves Deposited With Lender					
1001. Hazard insurance	months @	per month			
1002. Mortgage insurance	months @	per month			
1003. Property taxes	months @	per month			
1004. City property taxes	months @	per month			
1005. County property taxes	months @	per month			
1006. School property taxes	months @	per month			
1007. MUD Taxes	months @	per month			
1008. HOA Dues	months @	per month			
1011. Aggregate Adjustment					
1100. Title Charges					
1101. Settlement or closing fee	to				
1102. Abstract or title search	to				
1103. Title examination	to				
1104. Title insurance binder	to				
1105. Document preparation	to				
1106. Attorney fees	to				
1107. Attorney fees	to	Law Offices of Terrence L. Irion			\$95,920.00
(includes above items numbers:)					
1108. Title insurance	to	Independence Title Co.			\$15,209.00
(includes above items numbers:)					
1109. Lender's coverage	\$0.00/\$0.00				
1110. Owner's coverage	\$3,050,000.00/\$15,209.00				
1111. Escrow fee	to	Independence Title Co.		\$250.00	\$250.00
1112. Guaranty Assessment Recoupment Charge	to	Texas Title Insurance Guaranty Association		\$0.00	\$4.50
1113. Courier/Overnight Fees	to	Independence Title Co.			
1114. e-Recording	to	Independence Title Co.		\$3.00	
1200. Government Recording and Transfer Charges					
1201. Recording Fees	Deed \$46.00 ; Mortgage ; Rel	to Independence Title Co.		\$46.00	
1202. City/county tax/stamps	Deed ; Mortgage	to			
1203. State tax/stamps	Deed ; Mortgage	to			
1204.	to				
1300. Additional Settlement Charges					
1301. Survey - Update	to	McMinn Land Surveying			\$590.00
1302. Pest Inspection	to				
1303. HOA Transfer Fee	to				
1304. Home Warranty	to				
1305. Property Taxes	to				
1306. Tax Certificate	to	Texas Real Tax Services, Ltd.			\$43.30
1307. MUD Certificate	to	Texas Real Tax, Inc.			
1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)				\$299.00	\$173,016.80

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a completed copy of pages 1, 2 and 3 of this HUD-1 Settlement Statement.

Laurie Z. Moffett
Laurie Z. Moffett

Robert P. Turner
Robert P. Turner

Lesli A. Turner
Lesli A. Turner

SETTLEMENT AGENT CERTIFICATION

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused the funds to be disbursed in accordance with this statement.

Michael J. Kelly 8/15/2018
Settlement Agent Date

Warning: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

Previous Editions are Obsolete

Page 3

form HUD-1 (3/86)
Handbook 4305.2

Exhibit B

CAUSE NO. D-1-GN-18-007069

TURNQUIST PARTNERS REALTORS,
INC. D/B/A ENGEL & VÖLKERS

AUSTIN,
Plaintiff,

v.

ROBERT TURNER, ITCOA, L.L.C. D/B/A
INDEPENDENCE TITLE COMPANY, and
SECURED LAND TRANSFERS, LLC d/b/a
INDEPENDENCE TITLE,

Defendants.

§
§
§
§
§
§
§
§
§
§

THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

419th JUDICIAL DISTRICT

AFFIDAVIT OF JEFF HOBBS

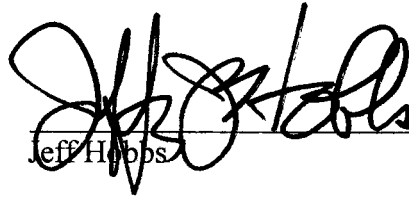
STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Before me, the undersigned notary, on this day, personally appeared Jeff Hobbs, a person whose identity is known to me. After I administered an oath to him, upon his oath, he said:

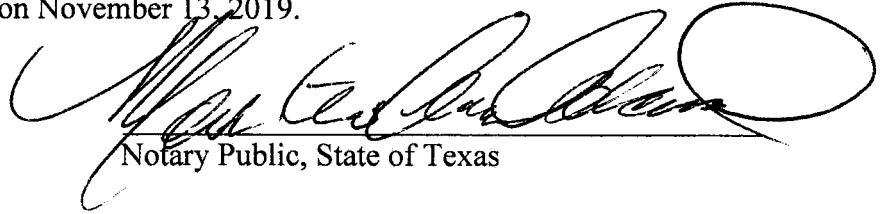
1. My name is Jeff Hobbs. I am over 18 years of age, have never been convicted of a felony, and am capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

2. I am the attorney of record for ITCOA, LLC and Secured Land Transfers, LLC, defendants in the above-styled case. As the attorney for those defendants, I am familiar with the pleadings, discovery, and other materials generated in this litigation.

3. Attached to this affidavit as **Exhibit B-1** are true and correct copies of excerpts from the Deposition of Kathryn Scarborough taken on August 27, 2019 in this case, including the cover page, list of attorney appearances, and reporter's certification.


Jeff Hobbs

Signed under oath before me on November 13, 2019.


Notary Public, State of Texas

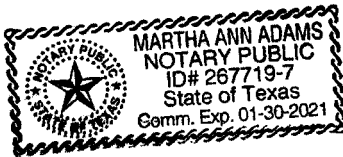


Exhibit B-1

1	CAUSE NO. D-1-GN-18-007069	
2	TURNQUIST PARTNERS)	IN THE DISTRICT COURT
3	REALTORS, INC., d/b/a)	
4	ENGEL & VÖLKERS AUSTIN,)	
5	Plaintiff,)	
6	vs.)	
7	ROBERT TURNER, ITOCA,)	
8	LLC, d/b/a INDEPENDENCE)	
9	TITLE COMPANY, and SECURED)	
10	LAND TRANSFER, LLC, d/b/a)	
11	INDEPENDENCE TITLE,)	
12	Defendants.)	
13	-----)	TRAVIS COUNTY, TEXAS
14	ROBERT TURNER,)	
15	Counter-Plaintiff,)	
16	vs.)	
17	TURNQUIST PARTNERS)	
18	REALTORS, INC., d/b/a)	
19	ENGEL & VÖLKERS AUSTIN,)	
20	Counter-Defendant.)	419TH JUDICIAL DISTRICT
21		
22		
23		
24		
25		

ORAL DEPOSITION OF
KATHRYN SCARBOROUGH
August 27, 2019

ORAL DEPOSITION OF KATHRYN SCARBOROUGH, produced as
a witness at the instance of the Defendant and
Counter-Plaintiff Robert Turner and duly sworn, was
taken in the above-styled and numbered cause on
August 27, 2019, from 9:21 a.m. to 3:29 p.m., before
Amy M. Clark, Certified Shorthand Reporter in and for
the State of Texas, reported by computerized stenotype
machine at the offices of Coats Rose, P.C., Barton Oaks
Plaza, 901 S. MoPac Expressway, Building 1, Suite 500,
Austin, Texas 78746, pursuant to the Texas Rules of
Civil Procedure and the provisions stated on the record
or attached hereto.

1 APPEARANCES

2 FOR PLAINTIFF AND COUNTER-DEFENDANT TURNQUIST PARTNERS
3 REALTORS D/B/A ENGLE & VÖLKERS AUSTIN:

4 Mr. Rex J. Zgarba
5 Coats Rose, P.C.
6 Barton Oaks Plaza
7 901 S. Mopac Expressway
8 Building 1, Suite 500
Austin, Texas 78746
Telephone: (512)684-3848
Fax: (512)469-9408
Email: rzgarba@coatsrose.com

9 FOR DEFENDANT AND COUNTER-PLAINTIFF ROBERT TURNER:

10 Mr. Jeffrey G. Henry
11 Sprouse Shrader Smith, PLLC
12 805 Las Cimas Parkway
Suite 350
13 Austin, Texas 78746
Telephone: (512)615-6650
Fax: (512)382-6644
Email: jeff.henry@sprouselaw.com

14 FOR DEFENDANTS ITCOA, LLC AND
15 SECURED LAND TRANSFERS, LLC:

16 Mr. Jeffrey J. Hobbs
17 Armbrust & Brown, PLLC
18 100 Congress Avenue
Suite 1300
19 Austin, Texas 78701
Telephone: (512)435-2371
Fax: (512)435-2360
Email: jhobbs@abaustin.com

20 ALSO PRESENT:

21 Ms. Michele Turnquist,
22 Plaintiff and Counter-Defendant
23 Ms. Linsey Groos, Sr. Associate General Counsel,
Independence Title
24
25

1 KATHRYN SCARBOROUGH,
2 having been first duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. HENRY

5 Q. Will you tell us your name, please.

6 A. Kathryn Scarborough.

7 Q. Ms. Scarborough, have you ever given a
8 deposition before?

9 A. No, I have not.

10 Q. I assume Mr. Zgarba has explained to you the
11 process that I ask the questions. And, if you will,
12 answer verbally, out loud, rather than a shake or nod of
13 the head because our court reporter has to be able to
14 write down verbal responses. Okay?

15 A. Okay. Yeah.

16 Q. If you will, please allow me to finish my
17 question before you answer, and I'll extend to you the
18 same courtesy so that, again, the court reporter can get
19 a clean record. She can't type down two of us talking
20 at one time. You're gonna slip up, and I will too, and
21 she'll correct us when we do.

22 A. Okay.

23 Q. And you understand your deposition testimony is
24 under oath? Do you understand that?

25 A. I do.

1 Q. All right. And it can be read or shown to a
2 judge or jury in the case.

3 A. Uh-huh.

4 Q. Okay?

5 A. Yes.

6 Q. Okay. If at any time you need to take a break,
7 let us know. If at any time you don't hear or
8 understand a question of mine, if you will ask me to
9 either repeat it or restate it or reword it, that would
10 be wonderful.

11 But if you answer, may we have an
12 agreement that you have understood the question that
13 I've asked?

14 A. Yes.

15 Q. All right. Now, you are a licensed Texas real
16 estate sales agent, are you not?

17 A. Yes, I am.

18 Q. And who is your licensing authority?

19 A. TREC.

20 Q. Which is the acronym?

21 A. Texas Real Estate.

22 Q. Texas Real Estate Commission?

23 A. Uh-huh.

24 Q. Okay. How long have you been a licensed agent?

25 A. Eighteen years.

1 Q. Are you a broker?

2 A. I am not.

3 Q. Now, you represented my client, Rob Turner, in
4 connection with the sale of his properties at 5201 and
5 5203 Tortuga Trail to Lauree Moffett; did you not?

6 A. Yes, I did.

7 Q. And would you agree that you represented Lauree
8 Moffett in her purchase of Mr. Turner's properties on
9 Tortuga Trail?

10 A. No, I did not.

11 Q. Okay. Do you deny that you acted as an
12 intermediary in that transaction?

13 A. I was not an intermediary.

14 Q. All right. Have you ever told Mr. Turner that
15 you were a intermediary?

16 A. No, I have not.

17 Q. Have you ever told anyone that you acted as an
18 intermediary?

19 A. In an email between my mother and I, there was
20 some conversation regarding the duties that I did
21 perform under the instruction of my client, Mr. Turner.

22 Q. And has your mother ever indicated to you or to
23 anyone, to your knowledge, that she acted as an
24 intermediary?

25 A. Can you rephrase that.

1 Q. So then if you look at Paragraph 9 -- well, no
2 let's just go --

3 (Exhibit 9 marked.)

4 Q. (By Mr. Henry) Hand you what we've marked as
5 Exhibit 9 to your deposition.

6 Ask if you can identify this document for
7 us?

8 A. Yes.

9 Q. What is that document?

10 A. The listing agreement that states that
11 Mr. Turner will pay us 5 percent.

12 Q. I'm gonna hand you Exhibit No. 10 to your
13 deposition.

14 (Exhibit 10 marked.)

15 Q. (By Mr. Henry) You recognize this document?

16 A. Yes. This is on the lot. This is not on the
17 house.

18 Q. Okay. And just so that we're clear for the
19 future. There are two properties.

20 The addresses are 5201 Tortuga Trail and
21 5203 Tortuga Trail, correct?

22 A. Yes.

23 Q. And 5201 Tortuga Trail is the address for the
24 house, right?

25 A. Yes.

1 Q. And 5203 Tortuga Trail is the lot, correct?

2 A. Yes.

3 Q. I may have duplicated these.

4 A. There was also another one that's missing as
5 well that showed the to-be-built for 6.2.

6 MR. HENRY: Exhibit 9.

7 Q. (By Mr. Henry) Okay. Let's look at Exhibit 9.

8 And this is for 5201 Tortuga Trail, which
9 is the house, right?

10 A. Yes.

11 Q. Is that correct?

12 A. 5201, yes.

13 Q. And do you see at the bottom of -- I'm assuming
14 it's all of the pages.

15 It looks like it goes through Page 9 of
16 10, there are boxes at the bottom for initials; do you
17 see that?

18 A. I do.

19 Q. And do you see that the -- the -- one of the
20 boxes appears to have initial M.T.?

21 A. Yes.

22 Q. Is that Michele Turnquist's initials?

23 A. It is. Appears to be.

24 Q. And are you familiar with her handwriting and
25 her initials?

1 Q. Okay.

2 A. And per the contract, you're not part of the
3 contract either.

4 Q. Independence is not?

5 A. Correct.

6 Q. Just going back to my question, because I think
7 you might have muddled the waters with the reference to
8 18A of the TREC contract.

9 Just to be clear, you're not aware of
10 anything in the TREC form contracts that were entered
11 into for 5201 and 5203 Tortuga Trail that authorized
12 Independence Title to withhold any portion of the
13 seller's proceeds that were the subject of a commission
14 dispute?

15 A. No.

16 Q. And outside of that, those TREC form contracts,
17 are you aware of any written agreement to which
18 Independence Title was a party to this transaction that
19 authorized that title company to withhold any portion of
20 the seller's proceeds that was the subject of the
21 commission dispute?

22 A. No.

23 MR. HOBBS: I'll pass the witness.

24 MR. HENRY: Nothing further.

25 MR. ZGARBA: I'm reserving till trial.

1 CAUSE NO. D-1-GN-18-007069

2 TURNQUIST PARTNERS) IN THE DISTRICT COURT
 3 REALTORS, INC., d/b/a)
 4 ENGEL & VÖLKERS AUSTIN,)
 5)
 6 Plaintiff,)
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 8 vs.)
 9)
 10 ROBERT TURNER, ITOCA,)
 11 LLC, d/b/a INDEPENDENCE)
 12 TITLE COMPANY, and SECURED)
 13 LAND TRANSFER, LLC, d/b/a)
 14 INDEPENDENCE TITLE,)
 15)
 16 Defendants.)
 17)
 18 -----) TRAVIS COUNTY, TEXAS
 19)
 20 ROBERT TURNER,)
 21)
 22 Counter-Plaintiff,)
 23)
 24 vs.)
 25)
 26 TURNQUIST PARTNERS)
 27 REALTORS, INC., d/b/a)
 28 ENGEL & VÖLKERS AUSTIN,)
 29)
 30 Counter-Defendant.) 419TH JUDICIAL DISTRICT

17

18 REPORTER'S CERTIFICATE

19 ORAL DEPOSITION OF KATHRYN SCARBOROUGH

20 August 27, 2019

21

22 I, Amy M. Clark, Certified Shorthand Reporter in and

23 for the State of Texas, hereby certify to the following:

24 That the witness, KATHRYN SCARBOROUGH, was duly

25 sworn and that the transcript of the deposition is a

1 true record of the testimony given by the witness;

2 That the deposition transcript was duly submitted on
3 _____ to the witness or to the attorney for
4 the witness for examination, signature, and return to me
5 by _____.

6 That pursuant to information given to the deposition
7 officer at the time said testimony was taken, the
8 following includes all parties of record and the amount
9 of time used by each party at the time of the
10 deposition:

11 Mr. Jeffrey G. Henry (3h53m)
Attorney for Defendant Robert Turner
12 Mr. Jeffrey J. Hobbs (0h04m)
Attorney for Defendants ITCOA, LLC and Secured
13 Land Transfers, LLC
Mr. Rex J. Zgarba (0h0m)
14 Attorney for Plaintiff
15

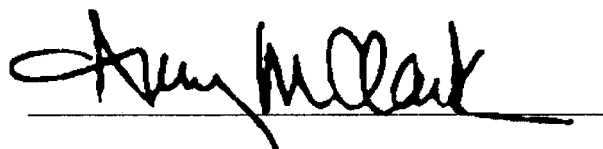
16 That a copy of this certificate was served on all
17 parties shown herein on _____ and filed
18 with the Clerk.

19 I further certify that I am neither counsel for,
20 related to, nor employed by any of the parties in the
21 action in which this proceeding was taken, and further
22 that I am not financially or otherwise interested in the
23 outcome of this action.

24 Further certification requirements pursuant to
25 Rule 203 of the Texas Code of Civil Procedure will be

1 complied with after they have occurred.

2 Certified to by me on this 11th day of September,
3 2019.

4 

5
6 Amy M. Clark, CSR
7 Texas CSR 8753
8 Expiration: 10/31/2021
9 Ken Owen & Associates, L.P.
10 Firm No. 115
11 801 West Avenue
12 Austin, Texas 78701
13 (512) 472-0880
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