Velva L. Price District Clerk Travis County D-1-GN-18-007069

**Kyla Crumley** 

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

TURNQUIST PARTNERS REALTORS,	§	THE DISTRICT COURT OF
INC. D/B/A ENGEL & VÖLKERS	§	
AUSTIN,	§	
Plaintiff,	§	
	§	TRAVIS COUNTY, TEXAS
v.	§	1111112 00011111, 121212
ROBERT TURNER, ITCOA, L.L.C. D/B/A	§	
INDEPENDENCE TITLE COMPANY, and	§	
SECURED LAND TRANSFERS, LLC d/b/a	§	
INDEPENDENCE TITLE,	<b>§</b>	419th JUDICIAL DISTRICT
Defendants.		

# 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

Defendants ITCOA, LLC and Secured Land Transfers, LLC's Amended Motion for Summary Judgment Page 1 of 15

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 UNDIPSUTED 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.<sup>1</sup> 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.<sup>2</sup> Both contracts designated "Independence Title – Carol Bellomy" as escrow agent to facilitate the closing of the property sales.<sup>3</sup> The contracts also identified Engel & Volkers as the listing broker for the Turners, and Kathryn Scarborough as the listing associate for Engel & Volkers.<sup>4</sup> However, the contracts made it clear that the only parties were Robert and Lesli Turner and Lauree Moffett, stating<sup>5</sup>—

1.	PART	ES: The	a pa	arlies	to th	is contra	ct i	are			Robe	rt '	Turne	r . Le	sli Tun	ner		
	(Seller)		****								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 following<sup>6</sup>—

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

Defendants ITCOA, LLC and Secured Land Transfers, LLC's Amended Motion for Summary Judgment Page 4 of 15

<sup>&</sup>lt;sup>1</sup> 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.

<sup>&</sup>lt;sup>2</sup> Exhibit A-3, One to Four Family Residential Contract (Resale) for 5201 Tortuga Trail ("**5201 Tortuga Contract**"); A-4, Unimproved Property Contract for 5203 Tortuga Trail ("**5203 Tortuga Contract**").

<sup>&</sup>lt;sup>3</sup> Exhibit A-3, 5201 Tortuga Contract at ¶ 5; Exhibit A-4, 5203 Tortuga Contract at ¶ 5.

<sup>&</sup>lt;sup>4</sup> Exhibit A-3, 5201 Tortuga Contract at page 8; Exhibit A-4, 5203 Tortuga Contract at page 9.

<sup>&</sup>lt;sup>5</sup> Exhibit A-3, 5201 Tortuga Contract at ¶ 1; Exhibit A-4, 5203 Tortuga Contract at ¶ 1.

<sup>&</sup>lt;sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

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. 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.

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<sup>&</sup>lt;sup>7</sup> <u>Exhibit A-8</u>, Settlement Statement for 5201 Tortuga Trail; <u>Exhibit A-9</u>, Settlement Statement for 5203 Tortuga Trail.

<sup>&</sup>lt;sup>8</sup> 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.

<sup>&</sup>lt;sup>9</sup> Exhibit H, August 14, 2018 letter from Terrence L. Irion.

<sup>&</sup>lt;sup>10</sup> Exhibit A-8, Settlement Statement for 5201 Tortuga Lane at Line 700; Exhibit A-9, Settlement Statement for 5203 Tortuga Lane at Line 700.

<sup>&</sup>lt;sup>11</sup> 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. It uses the same allegations as the basis for a negligence claim against Independence. 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).

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<sup>&</sup>lt;sup>12</sup> Plaintiff's Second Amended Petition at ¶ 34.

<sup>&</sup>lt;sup>13</sup> *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 contact 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 states 14—

1.	PARTIES: The	pa	rlies	to th	is contra	ct i	are			Robe	rt '	Turne	r . Le	sli Tun	ner		
	(Seller) and									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,

 $<sup>^{14}</sup>$  Exhibit A-3, 5201 Tortuga Contract at  $\P$  1; Exhibit A-4, 5203 Tortuga Contract at  $\P$  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 Lesieurs 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. <sup>15</sup> 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." <sup>16</sup> Those "separate written agreements" are the listing

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

<sup>&</sup>lt;sup>15</sup> 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."

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.<sup>17</sup>

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—<sup>18</sup>

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.

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<sup>&</sup>lt;sup>17</sup> Plaintiff's First Amended Petition at ¶¶ 21-32.

<sup>&</sup>lt;sup>18</sup> 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.<sup>19</sup> 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.

<sup>&</sup>lt;sup>19</sup> 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 Kathyrn 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 ARMBRUST & 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
<a href="mailto:jeff.henry@sprouselaw.com">jeff.henry@sprouselaw.com</a>
SPROUSE 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,	§	THE DISTRICT COURT OF
INC. D/B/A ENGEL & VÖLKERS	§	
AUSTIN,	§	
Plaintiff,	§	TRAVIS COUNTY, TEXAS
<b>v.</b>	§	
ROBERT TURNER, ITCOA, L.L.C. D/B/A	§	
INDEPENDENCE TITLE COMPANY, and	§	
SECURED LAND TRANSFERS, LLC d/b/a	§	419th JUDICIAL DISTRICT
INDEPENDENCE TITLE,	§	
Defendants.	§	

#### 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.

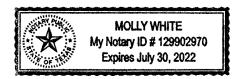
- 4. Attached to this affidavit as **Exhibit A-1** is a true and correct copy of a Residential Real Estate Listing Agreement Exclusive Right to Sell for the property located at 5201 Tortuga Trail in Austin, Texas that was provided to me by Engel & Volkers Austin.
- 5. Attached to this affidavit as **Exhibit 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 \_\_\_\_\_\_, 2019.

Notary Public State of Texas



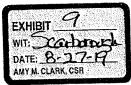
# Exhibit A-1



### TEXAS ASSOCIATION OF REALTORS'

# RESIDENTIAL REAL ESTATE LISTING AGREEMENT EXCLUSIVE RIGHT TO SELL

	Turner	
Addres	S:5201 Tortuga Trail	
City, S	tate, Zip: Austin, TX 78731	
rnone:	S12-573-8762	Fax
E-wisin;	rturnerhomes@gmall.com	
Broker: Fne	el & Volkers Austin	
Addres	S: 1700 Bee Cave Road, Suite 102.	
City, St	ete, Zip: Austiri, TX 78746	
rnones	12,970 1966	
E-Mail:k	athryn.scarborough@evusa.com	Fax:
		and exclusive real estate agent and grants to Broker the exclusion
described ex		t, improvements, and accessories described below, except for a
v. Tsuo. rc	Я	Block ARS TOWN
in Trevis C		Addition, City of Austin
5201 Tortu	Dunty	County, Texas known as
280 28 10	Cipod on ottoch - 2	78731 (address/zip code I Property Is a condominium, attach Condominium Addandum.)
carpeling, equipment security ar system, kit cooking ec property.  Accessorie freplace sc keys, show	any: all equipment and a mitrors, celling fans, attic fan, mounts and brackets for it fire detection equipment, ucher equipment, garage door julpment, and all other properties. The following described reviews, curtains and rods, but	and all other fixtures and improvements attached to the above tout limitation, the following permanently installed and built-installed and speakers, heating and air-conditioning units wiring, plumbing and lightling fixtures, chandellers, water softeneous openers, cleaning equipment, shrubbary, landscaping, outdoor early owned by Seller and attached to the above-described real related accessories, if any; window air conditioning units, stove, window shades, draperies and rods, door keys; mailbox pool equipment and maintenance accessories, artificial fireplace in systems. (III) garage doors (III) carege doors.
improvemen	controls for: (i) sateline dish its and accessories.	pol equipment and maintenance accessories, artificial fireplace h. systems, (ii) garage doors, (iii) entry gates, and (iv) other heart-specials (iii) and Sette (R.)



Residentia	l Listing concerning 5201 Torruga Trail, Austin, 1X 78731
D. <u>#</u>	xclusions: The following improvements and accessories will be retained by Seller and must be emoved prior to delivery of possession:
E. C	whers' Association: The property D is Ø is not subject to mandatory membership in a property
Seller	NG PRICE: Seller instructs Broker to market the Property at the following price: \$9.995,000 g Price). Seller agrees to sell the Property for the Listing Price or any other price acceptable to seller will pay all typical closing costs charged to sellers of residential real estate in Texas (sellers of costs are those set forth in the residential contract forms promulgated by the Texas Real Commission).
4. TERM	:
	is Listing begins on 09/26/2017 and ends at 11:59 p.m. on 07/01/2018
B. If S the	seller enters into a binding written contract to sell the Property before the date this Listing begins and contract is binding on the date this Listing begins, this Listing will not commence and will be void.
	ER COMPENSATION:
A. Wh	en earned and payable, Seller will pay Broker:
	% of the sales price.
	1.5% if Kathryn Scurborough & Michele Turnquist acts as Intermediary between both buyer and seller.
B. <u>Ear</u> (1). (2)	ned: Broker's compensation is earned when any one of the following occurs during this Listing: Seller sells, exchanges, options, agrees to sell, agrees to exchange, or agrees to option the property to anyone at any price on any terms; aroker individually or in cooperation with another broker procures a buyer ready, willing, and able to the Property at the Listing Price or at any other price acceptable to Seller; or Seller breaches this Listing.
C. Paya	ble: Once earned, Broker's compensation is payable either during this Listing or after it ends at the
(1) ti (2) S (3) S	te closing and funding of any sale or exchange of all or part of the Property; eller's refusal to sell the Property after Broker's compensation has been earned; eller's breach of this Listing; or such time as otherwise set forth in this Listing.
Broke Seller contra to res	or's compensation is not payable if a sale of the Property does not close or fund as a result of: (i) is failure, without fault of Seller, to deliver to a buyer a deed or a title policy as required by the local by the closing date set in a contract for the sale of the Property.
D. Other	Compensation:
(1) <u>Bri</u> by the	each by Buyer Under a Contract: If Seller collects earnest money, the sales price, or damages suit, compromise, settlement, or otherwise from a buyer who breaches a contract for the sale of Property entered into during this Listing, Seller Will pay Broker, after deducting attorney's fees
(TAR-1101) 01-0	1-14 Initialed for Identification by Broker/Associate and Sellen 17 1
Engel & Volkers	3700 Bee Cave Rd #102 Austin, TX 78746512-328-3939 Kathryn Scerborough

Residential Listing concerning 5201 Torruga	Trail, Austin, TX 78731	
and collection expenses, deductions or the amoun under this Paragraph 5D subsequently selling the I	an amount equal to the lesser of one-half of the am nt of the Broker's Compensation stated in Paragraph 5. I(1) is in addition to any amount that Broker may be er Property.	nount collected after A. Any amount paid milled to receive to
from the service provider	ker refers Selier or a prospective buyer to a service pro- elecommunications provider, utility, or contractor) Broke r for the referral. Any referral lee Broker receives un other compensation Broker may receive under this List	r may receive a fee
(3) Other Fees and/or Relmbo	ursable Expenses:	3. <b>4</b> 0
E. Protection Period:		on a second of the second
(1) "Protection period" means : days. "Self" means any tra agreemant or option.	that time starting the day after this Listing ends and cor hister of any fee simple interest in the Property whethe	ntinuing for 30 r by oral or written
self the Property during the	or this Usting ends, Broker may send Seller written not tternflon was called to the Property during this Listing. protection period to a person named in the notice or Seller will pay Broker, upon the closing of the sale, it receive if this Usting were still in effect.	Il Seller agrees in
(b) the Property is exclusive of REALTORS at the fi	fermination of this Listing. This Paragraph 5E will not Property during the protection period; all listed with another broker who is a member of the Time the sale is negotiated; and the other broker a fee for the sale.	apply if: exas Association
F. County: All amounts payable to	Broker are to be paid in cash in	_ 2 - 20
• • • • • • • • • • • • • • • • • • • •	County, Texas	
authorized to plose a transaction to Broker all amounts payable to	uthorizes, and Broker may so instruct, any escrow of the purchase or acquisition of the Property to colle Broker under this Listing.	or closing agent ect and disburse
6. LISTING SERVICES:		
information about this Listing and	one or more Multiple Listing Services (MLS) by the ea after the date this Listing begins. Seller authorizes E the sale of the Property to the MLS.	roker to submit
MLS throughout the time, the for market evaluation or appra- professionals such as appraish the MLS becomes the property	oker to accurately and timely submit all information the data, MLS rules may require that the information be a Listing is in effect. Subscribers to the MLS may use alsal purposes. Subscribers are other brokers and others and may include the appraisal district. Any inform by of the MLS for all purposes. Submission of information benefit from the MLS also contribute information benefit from the MLS also contribute information.	the information the information ther real estate action filed with
(TAR-1101) 01-01-14 Inhialed for Identification	by Broker/Associate man and Seller	Sman & state
Engel & Volkers 3700 Bee Cave Rd	#102 Austin, TX 78746512-328-3939 Kathryn Scarbe	Page 3 of 10

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) unt days after the date this Listing begins for the following purpose(s): Upon completion of construction, (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 Propert not be included in the MLS database available to real estate agents and brokers from other estate offices who subscribe to and participate in the MLS, and their buyer clients may not be at that Seller's Property is offered for sale; (2) Seller's Property will not be included in the M download to various real estate internet siles that are used by the public to search for property 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 and sending a key 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 facility access the Property at reasonable times:  (1) access the Property at reasonable times:
(2) authorize other brokers, their associates, inspectors, appraisers, and contractors to access Property at reasonable times; and outlies and duplicate keys to facilitate convenient and efficient showings of the Property.
B. Scheduling Companies: Broker may engage the following companies to schedule appointments and authorize others to access the Property:
C. Keybox: A keybox is a locked container placed on the Property that holds a key to the Propert A keybox makes it more convenient for brokers, their associates, inspectors, appraisers, at combination, key, or programmed device so that authorized persons may enter the Propert even in Seller's absence. Using a keybox will probably increase the number of showings, by involves risks (for example, unauthorized entry, theft, property damage, or personal injury Neither the Association of REALTORISE 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 writte statement (for example, TAR No. 1411), signed by all tenants, authorizing the use of a keybox committee 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 of 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 indemnity 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 a fee as described below if the other broker.
(TAR-1101) 01-01-14 Initiated for Identification by Broker/Associate value and Selker (R.T. Page 4 of 10 Engel & Volkers 1700 Bee Cave Rd +102 Austin, TX 78746512-328-3939 Kathryn Scarborough

1030-Final Listing concerning 201 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 offer to pay the other broker represents the buyer: 2.2.5 % of the sales price or \$
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 authorize Broker to act as an intermediary and Broker will notify Seller that Broker will service the parties accordance with one of the following afternatives.
(1) It 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) It 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.
D B. <u>No Intermediary Status</u> : Seller agrees that Broker will not show the Property to prospective buyers who Broker represents.
Notice: If Broker acts as an intermediary under Peragraph 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 prospective.
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.
TAD LERO BY BY
TAR-1101) 01-01-14 Initialed for Identification by Broker/Associate 7 and Seller (27) Page 5 of 10
Direct & Volkers 3700 Bee Cave Rd #102 Austin, TX 78746 512-328-3939 Kathryn Scarborough

Residential Listing concerning 5201 Tortuga Traff, Austin, TX.78731
10. CONFIDENTIAL INFORMATION: During this Listing or after it ends, Broker may not knowingly disclosinformation obtained in confidence from Seller except as authorized by Seller or tequired by law. Broker may not disclose to Seller any confidential information regarding any other person Broker represents of previously represented except as required by taw.
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:
<ul> <li>(1) Seller does not want this Listing to be displayed on the Internet.</li> <li>(2) Seller does not want the address of the Property to be displayed on the Internet.</li> </ul>
Notice: Seller understands and acknowledges that, if box 118(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:
☑ (1) Conventional ☐ (5) Texas Veterans Land Program ☐ (2) VA ☐ (6) Owner Financing ☐ (3) FHA ☐ (7) Other ☑ (4) Cash
<ul> <li>D. In addition to other authority granted by this Listing, Broker may:</li> <li>(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;</li> <li>(2) place a "For Sale" sign on the Property and remove all other signs offering the Property for sale or lease;</li> <li>(3) furnish comparative marketing and sales information about other properties to prospective buyers, including applicable disclosures or notices that Seller is required to make under law or a contract;</li> <li>(5) obtain information from any holder of a note secured by a lien on the Property;</li> <li>(6) accept and deposit earnest money in trust in accordance with a contract for the sale of the Property;</li> <li>(7) disclose the sales price and terms of sale to other brokers, appraisers, or other real estate professionals;</li> <li>(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);</li> <li>(9) advertise, during or after this listing ends, that Broker sold the Property; and</li> <li>(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).</li> </ul>
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 Type and Sollier (T.) Page 6 of 10
Engel & Volkers 3700 Bee Cave Rd #102 Austin, TX 78746512-328-3939 Kathryn Scarborough

Residential Listing concerning 5201 Tertuga Trail, Austin, TX 78731	
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 Seller's knowledge; and	all its improvements an acchange, or lease of the omply with all applicable by by an option, right of oligations related to the improvement loans gainst the Property
<ol> <li>the name of any employer, relocation company, or other entity that provides selling the Property is:</li> </ol>	benefits to Seller when
13. SELLER'S ADDITIONAL PROMISES: Seller agrees to:  A. cooperate with Broker to facilitate the showing, marketing, and sale of the Proper B. not rent or lease the Property during this Listing without Broker's prior written application in negotiate with any prospective buyer who may contact Seller directly, by buyers to Broker.  D. not enter into a listing agreement with another broker for the sale, exchange, let the Property to become effective during this Listing without Broker's prior written maintain any pool and all required enclosures in compliance with all applicable let provide Broker with copies of any leases or rental agreements pertaining to the 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. A. If the Property is or becomes vacant during this Listing, Seller must notify Seller company and request a "vacancy clause" to cover the Property. Broker is necessary of the Property of the Prope	proval;  of refer all prospective  ase, or management of approval;  ass and ordinances; as Property and advise  erty; and ing this Listing.
B. Broker is not responsible or liable in any manner for personal injury to any damage to any person's real or personal property resulting from any act or on the property is not responsible or liable in any manner for personal injury to any damage to any person's real or personal property resulting from any act or one of the property in the property; (2) other brokers, their associates, inspectors, appraisers, and contractors to access the Property; (2) other brokers or their associates who may have information about the websites; (3) acts of third parties (for example, vandalism or theit); (4) freezing water pipes; (5) a dangerous condition on the Property; (6) the Property's non-compliance with any law or ordinance; or (7) Selter, negligently or otherwise.	person or for loss or omission not caused sed by: who are authorized
(TAR-1101) 01-01-14 Initialed for Identification by Broker/Associate 77.7 and Settler 77.1	Page 7 of 10 Scarborough

Residential Listing concerning 5201 Tortoga Trail, Austin, TX 78731
C. Seller agrees to protect, defend, indemnify, and hold Broker harmless from any damage, co attorney's fees, and expenses that:  (1) are caused by Seller, negligently or otherwise;  (2) arise from Seller's faiture to disclose any material or relevant information about Property; or  (3) are caused by Selter giving incorrect information to any person.
15-SPECIAL PROVISIONS:
M Property to remain a porker listing until instructed by seller to list on action to a worker
Ak., Senet-10 but toe tob picometric et flast ((),
Upon certy termination, Engel & Volkers/Kathryn Scarborough/Michele Furnquist will be reimbureed for advertising and marketing expenses.
16. DEFAULT: If Seller breaches this Listing, Seller is in default and will be liable to Broker for the amount the Broker's compensation specified in Paragraph 5A and any other compensation Broker is entitled receive under this Listing. If a sales price is not determinable in the event of an exchange or breach of the Listing. Price will be the sales price for purposes of computing compensation. If Brotherence 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 ellon to resolve any dispute related to it. Listing that may arise between the parties. If the dispute cannot be resolved by negotiation, the dispute will choose a mutually acceptable mediator and with share the cost of mediation equally.
18. ATTORNEY'S FEES: If Seller of Broker is a prevailing party in any legal proceeding brought as a result a dispute under this Listing or any transaction related to or contemptated by this Listing, such party will be entitled to recover from the non-prevailing party all costs of such proceeding and reasonable attorney
19. ADDENDA AND OTHER DOCUMENTS: Addenda that are part of this Listing and other documents the 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 Hazard (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. Hequest 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;  I. Information about Special Flood Hazard Aireas;  Condominium Addendum to Listing;  M. Keybox Authorization by Tenant;  N. Seller's Authorization to Release and Advertise Certain Information; and
(TAR-1101) 01-01-14 Initiated for Identification by Broker/Associate/VNT and Selled (CT)  Page 8 of 10  Page 8 of 10
Engel & Volkers 3700 Bee Cave Rd #102 Austin, TX 78746512-328-3939 Kathryn Scarborough

Residential Listing concerning5201-Tortuga Trail. Austin, TX 78731
20. AGREEMENT OF PARTIES:
A. <u>Entire Agreement</u> : 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. <u>Binding Effect</u> : 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

- E. Governing Law: Texas law governs the interpretation, validity, performance, and enforcement of this
- F. <u>Severability</u>: 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 parity's address, lax, or e-mail address specified in Paragraph 1.

#### 21. ADDITIONAL NOTICES:

of all its terms.

- A. Broker's compensation or the sharing of compensation between brokers is not fixed, controlled, recommended, suggested, or maintained by the Association of REALTORSS, MLS, or any
- B. In accordance with fair housing laws and the National Association of REALTORS® Code of Ethica, 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 prientation, 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 ilens on the Property.
- D. Broker advises Seller to review the information Broker submits to an MLS or other listing
- 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 times, penalties, and flability 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	Initiated for Identification by Broker/Associate m and Setter ?	Page 9 of 10
Engel & Volkers	3700 Bee Cave Rd #102 Austin, TX 78746 512-328-3939	Kathryn Starborough

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 Kok. T Soller's Printed Name	h-uer-
Broker's Associate's Signature agent of Broker	O CO Date	Rob Juny Seller's Signature	10/1/17- Date
Kethryn Scerbörough Broker's Associate's Printed Name, il	applicable	Seller's Printed Name	
		Seller's Signature	Date

TAR-1101/01-01-14		Page 10 of 10
ngel & Volkers	3700 Bee Cave Rd #102 Austin, TX 78746 512-328-3939	Kathryn Scarborough



USE OF THIS FORMBY PERSONS WHO ARE NOT ANSWERS OF THE TEXAS ASSOCIATION OF REALTORS OF INOT AUTHORIZED.

BY NEW AUTHORIZED IN TOTALS, INC. 1944

## AMENDMENT TO LISTING AGREEMENT BETWEEN THE UNDERSIGNED PARTIES CONCERNING THE PROPERTY AT 5201 Torruge 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: D 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 resume marketing the Property on: ☐ (1) receipt of further instructions from Owner, or ☐ (2) and to The Listing is not terminated and remains in effect for all other purposes. D D. Paragraph(s) are changed as follows: Seller or Landlord (TAR-1404) 1-7-04 Engel & Volkers - Austin 3700 Bee Cave Rd #102 Austin, TX 78746 Michele Turnquist

# Exhibit A-2



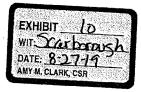
#### TEXAS ASSOCIATION OF REALTORS

# 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.

AUTHORIZED AND CULTORS B. No. 2014

Seller: Rob T	urner		W	
Address	5203 Tortuga Trail			
City, Stat	e, Zip:Austin, TX 78731		<del>,</del>	
Phone si:	2-573-8762		ax:	
E-Mail:ru	merhomes@gmail.com		ax.	
Broker: Engel (	& Volkers Austin			
Address::	3700 Bee Cave Road,, Suite 102	<del></del>		
City, State	9. Zio Austin TX 78746			
Phone:s12	2.970.1355	F	ax:	The same of the sa
E-Mail:kat	hryn.scarborough@evusa.com	· · · · · · · · · · · · · · · · · · ·	ω <u>ν</u> .	<del> </del>
uita ao sen an	"Property" means the land			
A. Land: Lot		, Block	, ABS 7 CHAMBERS	T J ACR 0.8040
In Travis Con	white	Addition	City of Austin	
5203 Tortuga		County, Texa		<del></del>
	ribed on attached exhibit, (If	רצוי Property is a condomi	nium, attach Condomi	(address/zip code) nlum Addendum.)
items, if a carpeting, a carpeting, a carpeting, a carpeting and a carpeting a carpeting and a	ents: The house; garage a real property, including with any: all equipment and a mirrors, ceiling fans, attic far , mounts and brackets for d fire detection equipment, y chen equipment, garage doo juipment, and all other prop	out limitation, the follo appliances, valances, is, mall boxes, televisions televisions and spea wiring, plumbing and limit openers, cleaning and to populars, cleaning and	wing permanently in screens, shutters, a on antennas and sate ikers, heating and al ghting fixtures, change	stalled and built-in wnings, wall-to-wal lite dish system and r-conditioning units, liers, water softener
keys, above logs, and o	s: The following described recens, curtains and rode, be-ground pool, swimming pocontrols for: (i) satellite distributions and accessories.	Nings, Window shades	, draperies and rods,	door keys, mailbox
R-1101) 01-01-14	Initialed for Identification by Bro	oker/Associate 'a', Tar	d Selled [[] []	Page 1 of 10



Resi	iden	ntial Listing co	ncerning5203	Tortuga Trail, Au	stin, TX 78731				
l	D.	Exclusions removed p	: The foll	lowing improve ery of possess	ments and a	ccessories	will be re	tained by Se	ller and must be
į	E.	Owners' A	ssociation: sociation,	The property	Dis ⊠is≀	not subjec	t to manda		thip in a property
( 5	(LIS Sell ypi	iting Price). Ier. Seller v	Seller ag ill pay all t costs are t	vdical closing o	e Property to costs charged	r the Listin	g Price or	ing price: \$33; any other pri	ce acceptable to in Texas (seller's the Texas Real
4. T	ΓER	RM:							Ril
A	١	This Listing	begins on	10/04/2017	and	ends at 11	:59 p.m. on	5/31/1 07/31/2016	1
B	3. l	If Seller ent the contract	ers into a b	oinding written on the date this	contract to sel s Listing begin	Il the Prope is, this Listi	rty before t ng will not t	he date this L commence an	Isting begins and d will be void.
5. B	RC	OKER CON	IPENSATIO	ON:					(22222)
d: A	ı. <b>\</b>	When earne	ed and paya	able, Seller will	pay Broker:			Tuch	Goosen) Fluor Buse
Ø	3 (	(1) 5% on lot	% of the	sales price.				Chris	Buse
В	· <u>E</u>	arned: Bro 1) Seller s Property 2) Broker in	oker's compells, exchain to anyone individually of Property at	inges, options, at any price or or in cooperation the Listing Price	med when an agrees to s any terms; on with another	y one of the sell, agrees ar broker or	following to excharacter a bi	occurs during nge, or agree	the trace to the this Listing: Received the trace to option the ling, and able to
C.	. <u>P</u>	avable: On	ce earned,	Broker's comp	ensation is pa	ayable eithe	er during th	is Listing or at	ter it ends at the
	(2)	1) the dosi 2) Seller's r 3) Seller's t	elusal to se preach of th	ding of any sale all the Property als Listing; or arwise set forth	after Broker's	s compensa	rt of the Protion has be	operty; een earned;	
-100 - 12 0.0 E-100.	S	eller's fallu ontract to s o restore th	re, without ell; (ii) loss e Property,	fault of Seller,	to deliver to due to foreclo a casualty lo	a buyer a sure or other	deed or a er legal pro	title policy as ceeding: or fil	as a result of: (i) required by the i) Seller's fallure closing date set
D.	0	ther Comp	ensation:						
	(1	by suit, c	ompromise	settlement, o	r otherwise tr	om a buver	who brear	ches a contrac	ce, or damages of for the sale of attorney's fees
AR-11	101)	01-01-14	Initialed for	Identification by 8					Page 2 of 10
				Bee Cave Rd #102				ليسيبسيا ليشا	g

Residential List	ing concerning \$203 Tortuga Trail, Austin, TX 78731
ar de ur	nd collection expenses, an amount equal to the lesser of one-half of the amount collected after eductions or the amount of the Broker's Compensation stated in Paragraph 5A. Any amount paid noter this Paragraph 5D(1) is in addition to any amount that Broker may be entitled to receive for obsequently selling the Property.
m fro	ervice Providers: If Broker refers Seller or a prospective buyer to a service provider (for example, over, cable company, telecommunications provider, utility, or contractor) Broker may receive a fee om the service provider for the referral. Any referral fee Broker receives under this Paragraph O(2) is in addition to any other compensation Broker may receive under this Listing.
(3) <u>O</u> f	ther Fees and/or Reimbursable Expenses:
**************************************	
E. Protec	ation Period:
(1) *P da	rotection period means that time starting the day after this Listing ends and continuing for 90 lys. "Sell" means any transfer of any fee simple inferest in the Property whether by oral or written reement or option.
na se pe	of later than 10 days after this Listing ends, Broker may send Seller written notice specifying the times of persons whose attention was called to the Property during this Listing. If Seller agrees to the Property during the protection period to a person named in the notice or to a relative of a reson named in the notice, Seller will pay Broker, upon the closing of the sale, the amount Broker and have been entitled to receive if this Listing were still in effect.
(a) (b)	is Paragraph 5E survives termination of this Listing. This Paragraph 5E will not apply if:  Seller agrees to sell the Property during the protection period;  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  Seller is obligated to pay the other broker a fee for the sale.
F. County Travis	y: All amounts payable to Broker are to be paid in cash in
author	v. <u>Authorization</u> : Seller authorizes, and Broker may so instruct, any escrow or closing agent ized to close a transaction for the purchase or acquisition of the Property to collect and disburse ser all amounts payable to Broker under this Listing.
6. LISTING S	SERVICES:
require	will file this Listing with one or more Multiple Listing Services (MLS) by the earlier of the time and by MLS rules or 5 days after the date this Listing begins. Seller authorizes Broker to submit ation about this Listing and the sale of the Property to the MLS.
for ML for pro the	tice: MLS rules require Broker to accurately and timely submit all information the MLS requires participation including sold data. MLS rules may require that the information be submitted to the S throughout the time the Listing is in effect. Subscribers to the MLS may use the information market evaluation or appraisal purposes. Subscribers are other brokers and other real estate fessionals such as appraisers and may include the appraisal district. Any information filed with MLS becomes the property of the MLS for all purposes. Submission of information to MLS sures that persons who use and benefit from the MLS also contribute information.
(TAR-1101) 01-01	I-14 Initialed for Identification by Broker/Associate w and Seller R. Page 3 of 10

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. <u>Authorizing Access</u> : 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;
Property at reasonable times; and  (3) duplicate keys to facilitate convenient and efficient showings of the Property.
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 Initiated for Identification by Broker/Associate Vin and Setter (1). Page 4 of 10  Engel & Volkers 3700 Bee Cave Rd #102 April of TX 78746 513, 238, 2000
Engel & Volkers 3700 Bee Cave Rd #102 Austin, TX 78746 512-328-3939 Kathryn Scarborough

Residential Listing concerningS203 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: 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.
TAR-1101) 01-01-14 Initialed for Identification by Broker/Associate and Seller (2). Page 5 of 10
Page 5 of 10 Engel & Volkers 3700 Bee Cave Rd #102 Austin, TX 78746 512-328-3939 Kathryn Scarborough

g 2003 totalga trau, Austin, 17/0/31
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:
<ul> <li>(1) Seller does not want this Listing to be displayed on the Internet.</li> <li>(2) Seller does not want the address of the Property to be displayed on the Internet.</li> </ul>
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:
☐ (1) Conventional ☐ (5) Texas Veterans Land Program ☐ (2) VA ☐ (6) Owner Financing ☐ (3) FHA ☐ (7) Other ☐ (4) Cash
<ul> <li>D. In addition to other authority granted by this Listing, Broker may: <ol> <li>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;</li> <li>place a "For Sale" sign on the Property and remove all other signs offering the Property for sale or lease;</li> <li>furnish comparative marketing and sales information about other properties to prospective buyers; including applicable disclosures or notices that Seller is required to make under law or a contract;</li> <li>obtain information from any holder of a note secured by a lien on the Property;</li> <li>accept and deposit earnest money in trust in accordance with a contract for the sale of the Property;</li> <li>disclose the sales price and terms of sale to other brokers, appraisers, or other real estate professionals;</li> <li>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);</li> <li>advertise, during or after this Listing ends, that Broker "sold" the Property; and</li> <li>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).</li> </ol> </li> </ul>
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 7 and Seller 7.1. Page 6 of 10
Engel & Volkers 3700 Bee Cave Rd #102 Austin, TX 78746 512-328-3939 Kathryn Scarborough

Residential Listing con	ceming5203 Tortuga Trail, Austin, TX 78731
A. Seller has fixtures, un B. Seller is no Properly th C. any pool o laws and or D. no person refusal, or C. Seller is con Properly, in homeowner F. Seller is except.  G. the Properl H. all informat Seller's kno I. the name of	PRESENTATIONS: Except as provided by Paragraph 15, Seller represents that: fee simple title to and peaceable possession of the Property and all its improvements and less rented, and the legal capacity to convey the Property; of bound by a listing agreement with another broker for the sale, exchange, or lease of the at is or will be in effect during this Listing; or spa and any required enclosures, fences, gates, and latches comply with all applicable refinances; or entity has any right to purchase, lease, or acquire the Property by an option, right of other agreement; urrent and not delinquent on all loans and all other financial obligations related to the including but not limited to mortgages, home equity loans, home improvement loans, association fees, and taxes, except not aware of any liens or other encumbrances against the Property, as not subject to the jurisdiction of any court; ion relating to the Property Seller provides to Broker is true and correct to the best of wiedge; and if any employer, relocation company, or other entity that provides benefits to Seller when Property is:
A. cooperate w B. not rent or k C. not negotial buyers to Br D. not enter int the Property E. maintain am F. provide Bro Broker of tel G. complete am	to a listing agreement with another broker for the sale, exchange, lease, or management of the become effective during this Listing without Broker's prior written approval; y pool and all required enclosures in compliance with all applicable laws and ordinances; ker with copies of any leases or rental agreements pertaining to the Property and advise mants moving in or out of the Property; and disclosures or notices required by law or a contract to sell the Property; and applicable notices and disclosures if any material change occurs during this Listing.
company an	rty is or becomes vacant during this Listing, Seller must notify Seller's casualty insurance of request a "vacancy clause" to cover the Property. Broker is not responsible for the Property nor for inspecting the Property on any periodic basis.
damage to a by Broker's (1) other bn to acces (2) other br websites (3) acts of ti (4) freezing (5) a danger (6) the Prop	It responsible or liable in any manner for personal injury to any person or for loss or my person's real or personal property resulting from any act or omission not caused negligence, including but not limited to injuries or damages caused by: okers, their associates, inspectors, appraisers, and contractors who are authorized is the Property; okers or their associates who may have information about the Property on their bird parties (for example, vandalism or theft); water pipes; ous condition on the Property; erty's non-compliance with any law or ordinance; or egligently or otherwise.
TAR-1101) 01-01-14	Initiated for Identification by Broker/Associate and Seller 2.1. Page 7 of 10
ngel & Volkers	3700 Bee Cave Rd #102 Austin, TX 78746512-328-3939 Kathryn Scarborough

Residential Listing concerning5203 Tortuga Trail, Austin, TX 78731
<ul> <li>C. Seller agrees to protect, defend, indemnify, and hold Broker harmless from any damage, costs, attorney's fees, and expenses that:</li> <li>(1) are caused by Seller, negligently or otherwise;</li> <li>(2) arise from Seller's failure to disclose any material or relevant information about the Property; or</li> <li>(3) are caused by Seller giving incorrect information to any person.</li> </ul>
15. SPECIAL PROVISIONS:
Property to remain a pocket listing until instructed by seller to list on active MLS market.
Sellerto partor replacemental signs - bot - seller agent spit costs of sign
Upon early termination, Engel & Volkers/Kathryn Scarborough/Michele Turnquist will be reimbursed for all navertising 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, \$2,995,000
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 (\$5.008, 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 Property Insurance for a Buyer or Seller;  J. Information about Property Insurance for a Buyer or Seller;  K. Information about Special Food Hazard Areas;  L. Condominium Addendum to Listing;  M. Keybox Authorization to Release and Advertise Certain Information; and

(TAR-1101) 01-01-14 Initialed for Identification by Broket/Associate AT and Seller RT.

3700 Bee Cave Rd #102 Austin, TX 78746512-328-3939

Engel & Volkers

#### 20. AGREEMENT OF PARTIES:

- A. <u>Entire Agreement</u>: 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. <u>Binding Effect</u>: 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. <u>Governing Law:</u> Texas law governs the interpretation, validity, performance, and enforcement of this Listing.
- F. <u>Severability</u>: 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 lines, 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 440298 Broker's Printed Name Lice	ense No. Seller's Printed Name	ev
Broker' Signature  Broker's Associate's Signature, as an authorize agent of Broker	Date Seller's Signature	10/6/13 Date
Kathryn Scarborough Broker's Associate's Printed Name, if applicable	Seller's Printed Name	-
	Seller's Signature	Date

(TAR-1101) 01-01-14

Engel & Volkers

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

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Kathryn Scarborough

# Exhibit A-3

### TREC

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

NOTICE: Not For Use For Condominium Transactions



1. PARTIES: The parties to this contract are Robert Turner , Lesli Turner (Selfer) and Lauree Z Moffett (Buyer).			
	(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	,	
	Addition, City of Austin County of Travis		
	Texas, known as 5201 Tortuge Trail, 78731		
	(and case the condition of all all action of all all actions)		
	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-lo-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, drapenes and rods, door keys,		
	mailbox keys, above ground pool, swimming pool equipment and maintenance accessories.		
	artificial fireplace loge, 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:		
	- Control of postalying		
	E. RESERVATIONS: Any reservation for oil, gas, or other minerals, water, timber, or other interests is	RTIT	
	made in accordance with an attached addendum.	" LI	
3,	SALES PRICE: \$8,150,000.	DD In	
	A. Cash portion of Sales Price payable by Buyer at closing		
	B. Sum of all financing described in the attached: Third Party Financing Addendum,  Loan Assumption Addendum, Seller Financing Addendum  S. 4.150,000-10  C. Sales Price (Sum of A and B)		
	Loan Assumption Addendum,   Seller Financing Addendum   \$ 4.9 150, 000-8	dom	
A	LICENSE HOLDER DISCLOSURE: Texas law requires a real estate license holder who is a		
٠,	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	KT 1-	
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 Bellomy as ascrow agent, at		
\$ 150,000.00 as earnest money to Independence Title- Carol Bellomy, as a scrow agent, at  5503 Balcones Drive, 78731 (address). Buyer shall deliver additional earnest money of \$\frac{1}{2}\$ to accrow agent within days after the Effective Date of this contract. If Buyer falls to deliver the earnest money within the time required. Seller may terminate			
	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		
6	paragraph, TITLE POLICY AND SURVEY:		
u.	A. TITLE POLICY: Seller shall furnish to Buyer at X 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.	ļ	
Initi	aled for Identification by Buyer M and Seller RT LT TREC NO. 20-14	1	
	ated for identification by Buyer A and Seller K LT TREC NO. 20-14		

44 Phone: \$12.978,1355 form® by ziplogbs 18070 Filieen Mile Road, Freser, Michigen 40026 <u>scorecziol.opiz.com</u>

EXHIBIT 34
WIT Scalbarary
DATE: 8:27-19
ANY M. CLARK, CSR

7.44 F

		<del>,</del>
Contract Concerning	5201 Tortuga Trall, 78731 Austin, (Address of Property)	Page 2 of 10 2-12-18
		j.
(3) Liens created as pa	nt of the financing described in Peragraph 3.	\$
	created by the dedication deed or plat of the	e subdivision in which the
Property is located.		
(b) Reservations of e	exceptions otherwise permitted by this contract	or as may be approved
by Buyer in writing.		1
(6) The standard printer	d exception as to marital rights.	
	nted exception as to waters, tidelands, beac	hat streams and ralated
	the exception as to assert asserting accept	
matters.		
(8) The standard pr	inted exception as to discrepancies, conflict	s, shortages in area or [
boundary lines, enc	pachments or protrusions, or overlapping improvemen	nts:
	or deleted from the title policy; or	1
	read, "shortages in area" at the expense of Buyer	Coller
	r exclusion regarding minerals approved by	the rayer bebeighedt of
insurance.		1
B. COMMITMENT: Within	20 days after the Title Company receives	a copy of this contract.
	Buyer a commitment for title insurance (Co	
	es of restrictive covenants and documents ev	
	on Documents) other than the standard	
authorizes the Title (	Company to deliver the Commitment and Exce	option Documents to Buyer
at Buyer's address st	nown in Paragraph 21. If the Commitment and	Exception Documents are
	er within the specified time, the time for de	
	days or 3 days before the Closing Date, v	
	Exception Documents are not delivered within	n the time required. Buyer
may terminate this contri	act and the earnest money will be refunded to Buyer.	1
C. SURVEY: The survey	must be made by a registered professional I	and surveyor acceptable to
	luyer's lender(s). (Check one box only)	
		lice chall fuminh to Dinne
M (1) MINNI 3 ORAS	after the Effective Date of this contract, Se	mer Brien ichiksti to buyer
and Title Compan	y Sellar's existing survey of the Property and	a Residential Real Property
Affidavit promulgal	ed 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
n wen e night	survey at Seller's expense no later than	3 days prior to Glosing
Date. If the e	xisting survey or affidavit is not acceptab	le to Title Company or
Date, N Gie e	tissing stayey of amount is not accepted	Elements of the Company of
	Buyer shall obtain a new survey at Seller's	XI makeus expense no later
than 3 days prior to		1
(2) Within days	after the Effective Date of this contract,	Buyer shall obtain a new
	expense. Buyer is deemed to receive the su	
	pecified in this paragraph, whichever is earlier.	
	after the Effective Date of this contract,	Saller at Saller's evenens
		Delies, at Costal & expense
shall furnish a new		
D. OBJECTIONS: Buyer	may object in writing to defects, exceptions,	or encumplances to title:
disclosed on the a	urvey other than kems 6A(1) through (7)	above; disclosed in the
Commitment other th	an items 6A(1) through (9) above; or which	prohibit the following use
or activity: restoration re	build and/or use of the residence on the property in the eve	nt of damage or destruction
		days after Buyer receives
ine Commitment, Exc	eption Documents, and the survey. Buyer's	resinte to oplect Althru gue
time allowed will con	stillute a waiver of Buyer's right to object; e	xcept that the requirements
In Schedule C of the	Commitment are not waived by Buyer. Provide	ed Seller is not obligated to
	Seller shall cure any timely objections of Buye	
	Seller receives the objections (Cure Period) ar	
	ry. If objections are not cured within the Ci	
delivering notice to S	Seller within 5 days, after the end of the Cu	re Period: (i) terminate this
contract and the ear	nest money will be refunded to Buyer; or	(li) walve the objections. If
	nate within the time required, Buyer shall be	
objections If the Co	ommitment or Survey is revised or any new	Excention Doctoment(e)
denvered, puyer ma	y object to any new matter revealed in t	IIG IGAISER COULUITHURDE OF
Survey or new Excel	stion 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
	OTT E DOLICY, Embre addess Bures to tare	an obstrood of tills
	ITTLE POLICY: Broker advises Buyer to have	
the Property exa	mined 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
promotiv reviewed	by an attorney of Buyer's choice due	to the time limitations on
Buyer's right to obte		
	PROPERTY OWNERS ASSOCIATION(S): The	Property Ils XIs not
(5) HEMBERSHIP IN	THOUSELL CHARTS WOODSHIPMON IN	Holland Cla Kitz uof
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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

saxoclation(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.

Saction 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 fimited to, restrictions, bytaws, rules and regulations, and a resale certificate property owners' association. A resale certificate contains information including, but not imited 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 promutgated 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 statutority 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.

TIDE WATERS: If the Property sbuts 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.

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 are maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Property for further information.

extratentional jurisdiction, contact all municipalities located in the general proximity of the Property for further information.

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 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.

dusing contract for the purchase of the real property described in Paragraph 2 or at dusing of purchase of the real property.

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 Charles 1323. County for an improvement project uncertaken 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.

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

TREC NO. 20-14

Commercial Contract of States of the Contract of the Contract

		A
Contrac	ct Concerning	Page 4 of 10 2-12-18
	obligation may be governed by Chapter 5, Subchapter G of the Texas Pro  (9) PROPANE GAS SYSTEM SERVICE AREA: If the Property is system service area owned by a distribution system retailer, written notice as required by §141,010, Texas Utilities Code, the notice approved by TREC or required by the parties should be used.  (10) NOTICE OF WATER LEVEL FLUCTUATIONS: If the Property of water, including a reservoir or lake, constructed and maintained Code, that has a storage capacity of at least 5,000 acre- normal operating level, Selter hereby notifies Buyer.	located in a propose gas, Seller must give Buyer An addendum containing adjoins an impoundment of under Chapter 11, Water feet at the impoundment's
	impoundment of water adjoining the Property fluctuates for var a result of: (1) an entity tawfully exercising its right to use impoundment; or (2) drought or flood conditions."	ious reasons, including as
	OPERTY CONDITION:  ACCESS, INSPECTIONS AND UTILITIES: Seller shall permit Buyer to the Property at reasonable times. Buyer may have the Proper selected by Buyer and licensed by TREC or otherwise permitted by Any hydrostelic testing must be separately authorized by Seller in expense shall immediately cause existing utilities to be turned on	ty inspected by inspectors y law to make inspections. writing. Seller at Seller's
	on during the time this contract is in effect.  SELLER'S DISCLOSURE NOTICE PURSUANT TO \$5.008, TEXAS PROPER (Check one box only)	TY CODE (Notice):
ð	contract, Seller shall deliver the Notice to Buyer if Buyer do Buyer may terminate this contract at any time prior to the clos will be refunded to Buyer. If Seller delivers the Notice, Buyer for any reason within 7 days after Buyer receives the Notice	ing and the earnest money may terminate this contract
<u>c</u> .	whichever first occure, and the earniest money will be refunded to Buyer.  (3) The Seller is not required to furnish the notice under the Texas Property C SELLER'S DISCLOSURE OF LEAD-BASED PAINT AND LEAD-BA required by Federal law for a residential dwelling constructed prior to 1978.	
D.	ACCEPTANCE OF PROPERTY CONDITION: "As is" means the prese with any and all defects and without warranty except for the warranties in this contract. Buyer's agreement to accept the Proper 7D(1) or (2) does not preclude Buyer from inspecting the Property negotiating repairs or treatments in a subsequent amendment, contract during the Option Period, if any.  (Check one box only)	warranties of title and the rty As is under Peragraph under Paragraph 7A, from
B	Buyer accepts the Property As is.     Buyer accepts the Property As is provided Seller, at Seller's the following specific repairs and treatments:	expense, shall complete the
E.	(Do not insert general phrases, such as "subject to inspect specific repairs and treatments.)  LENDER REQUIRED REPAIRS AND TREATMENTS: Unless otherwise party is obligated to pay for lender required repairs, which in	e agreed in writing, neither
F.	destroying insects. If the perties do not agree to pay for the treatments, this contract will terminate and the earnest money will the cost of lender required repairs and treatments exceeds 5% of terminate this contract and the earnest money will be refunded to Buyer. COMPLETION OF REPAIRS AND TREATMENTS: Unless otherwise shall complete all agreed repairs and treatments prior to the Closing permits must be obtained, and repairs and treatments must be per licensed to provide such repairs or treatments or, if no license	tender required repairs or be refunded to Buyer. If the Sales Price, Buyer may agreed in writing: (i) Seller g Date; and (ii) all required formed by persons who are is required by taw, are
G.	commercially engaged in the trade of providing such repairs election, any transferable warranties received by Seller with re treatments will be transferred to Buyer at Buyer's expense. If S agreed repairs and treatments prior to the Closing Date, Buyer m Paragraph 15 or extend the Closing Date up to 5 days if necessar repairs and treatments. ENVIRONMENTAL MATTERS: Buyer is advised that the presence of including asbestos and wastes or other environmental hazards, threatened or endangered spacies or its habitat may affect Bu Property. If Buyer is concerned about these matters, an addendure	or treatments. At Buyer's spect to the repairs and eller falls to complete any ay exercise remedies under by for Seller to complete the wetlands, toxic substances, or the presence of a yer's intended use of the
Initialed	required by the parties should be used.  If or identification by Buyer and Seller K/ IT  Produced with promotely parties of 1907 Finance May Read, Finance, Michigan 48078 *** *** *** *** *** *** *** *** *** *	TREC NO. 20-14

٠.	5201 Tortuga Trail, 78731
	Contract Concerning Austin, Page 5 of 10 2-12-18
	(Address of Property)
	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 relimbures Buyer at closing for the cost of the residential
	service contract in an amount not exceeding \$
	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 parities for payment of brokers' fees are contained
	in separate written agreements.
	6. 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 Islamica of the Title Policy.
	(4) There will be no liens, assessments, or security interests against the Property which will
	(4) THERE WAS DE NO BOTTS, ESPENSABILITY, OF SECURITY MICHES SQUING THE PROPERTY WHICH WIS
	not be satisfied out of the sales proceeds unless securing the payment of any loans
	essumed 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: XJ 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 Setter after
	closing which is not authorized by a written lease will establish a tenancy at sufference
	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 K7
	Buyer copies of the lease(s) and any move-in condition form signed by the tenant L1
	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 crient of damage or loss. 2: Seller shall complete all remaining construction on the property in the crient of punch list. 3. All builder warranties to convey at closing. 4. Builder to provide all building specifications
	applicable to the sale. TREC rules prohibit license holder from adding factual statements or
	business details for which a contract addandum, 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 well-
	insurance coverage for the replacement and rebuild of the structures on the property in the creat 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 Setter's loan liability; tax statements or certificates; preparation of dead;
	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 Velerans Land Board or other governmental loan programs, and then to other
	Buyer's Expenses as allowed by the lender.
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(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; onehalf 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 peid 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 Lend Board or other governmental loan program regulations.

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 rectors the Property to its provious. castally are and in the provided of the control of the control of the provided of the control of condition with an assignment of lasurance proceeds, if permitted by Seller's Incurance carrier, and receive cradit from Galler of closing in the amount of the deductible under the instrument policy. Sellars abligations under this paragraph are independent of any alter abligations. under this contract.

15. DEFAULT: If Buyer falls to comply with this contract, Buyer will be in default, and Seller may (a) onlared specific performance, seek such other relief as may to provided by tow, on both, or (b) terminate this contract and receive the earnest money as liquidated damages, thereby releasing both parties from this contract. If Seller falls 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. ESCRÓW:

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.

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 tiability of the escrow egent from all parties, (ii) require payment of unpaid expenses incurred on behalf of a party, and ((ii)) only deduct from the earnest money the amount of unpaid expenses incurred on behalf of the party recalling the earnest money.

C. DEMAND: Upon termination of this contract, either party or the escrow egent 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 falls 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

Initialed for identification by Buyer

and Seller K7 LT

TREC NO. 20-14

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Contract Concerning 5291 Tortuga Tra Contract Concerning Austin, (Address of	Page 7 of 10 2-12-18		
provide a copy of the demand to the other party. If escrow agent does not receive written objection to the demand from the other party within 15 days, escrow agent may disburse the earnest money to the party making demand reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and escrow agent may pay the same to the creditors. If escrow agent complies with the provisions of this paragraph, each party hereby releases escrow agent from all adverse claims related to the disbursal of the earnest money.  D. DAMAGES: Any party who wrongfully falls 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 maney; (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 Setter in this contract is untrue on the Closing Dete, Setter will be in default. Unless expressly prohibited by written agreement, Setter 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 falls 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 arrount 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 when mailed to, hand-delivered at, or transmitted by far	x or electronic transmission as follows:		
To Buyer	To Sellor at:		
Phone:	Phone:		
Fax:	Fax:		
E-mail: tim@ikardwynna.com	E-mail: rturnerhomes@pmail.com		
<ol> <li>AGREEMENT OF PARTIES: This contract and cannot be changed except by their writte contract are (Check all applicable boxes);</li> </ol>	contains the entire agreement of the parties on agreement. Addenda which are a part of this		
Third Party Financing Addendum Seller Financing Addendum	Environmental Assessment, Threatened or Endangered Species and Wetlands		
Addendum for Property Subject to	Addendum		
Mandatory Mambership in a Property Owners Association	Seller's Temporary Residential Lease  Short Sale Addendum		
Buyer's Temporary Residential Lease	Addendum for Property Located Seeward		
Loan Assumption Addendum	of the Gulf Intracoestal Waterway		
Addendum for Sale of Other Property by Buyer	Addendum for Seller's Disclosure of Information on Lead-based Paint and Lead-		
Addendum for Reservation of Oll, Gas and Other Minerals	based Paint Hazards as Required by Federal Law		
Addendum for "Back-Up" Contract	Addendum for Property in a Propens Gas		
Addendum for Coastal Area Property	System Service Area		
Addendum for Authorizing Hydrostatic Testing	X Other (list): Seller's Disclosure Notice & Building Permit & related Addendums		
Addendum Concerning Right to Terminate Due to Lender's Appraisal			
Initialed for Identification by Buyer A M and Sell	ler RT. IT. TRECNO 20-14		

Contract Concer		Ril., 78731 Page 8 of 10 2-12-18
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acknowledge within 3 de to terminate Effective D 5:00 p.m. stated as prescribed, unrestricted prescribed, Buyer The	ed by Seller, and Buyer's agreement to ays after the Effective Date of this this contract by giving notice of terminati ate of this contract (Option Period), (local time where the Property is loc the Option Fee or if Buyer falls this paragraph will not be a part right to terminate this contract. If the Option Fee will not be refunded Option Fee Will Dwill not be cre-	contract, Seller grants Buyer the unrestricted right
	AN ATTORNEY BEFORE SIGN	
	E/o Timothy E. Young atuna, Ste 450, austin, 78746	Seller's Altomey is: <u>Terry Irion</u>
Phone:	(512)275-7894	Phone:
Fax:		Fex:
E-mail:	tim@ikardwynna.com	E-mell: terry.trion@sprousetzw.com
EXECUTE (BROKER	D the day of 07/18/20 : FILL IN THE DATE OF FINAL ACC	
Jaune Buyer Laur	ee Z Moffett / Offett	Robert Turner Sellar Robert Turner
Buyer		Lesli Turner Emman 194154 Seller Lesli Turner
TREC "	ended for use only by trained real estate	d by the Texas Real Estate Commission, TREC forms are Reanse holders. No representation is made as to the legal any specific transactions. It is not intended for complex n. P.O. Box 12188, Austin, TX 78711-2188, (512) 935This form replaces TREC NO. 20-13.
<u> </u>		

ſ	5201 Tortuga Trail, 78731		
Contract Concerning	Austin,	Page 9 of 10	2-12-18
	(Address of Property)		

		(Print name(s)	, -	•	
n n		Clarate Mr.	Engel & Volk		440298
Other Broker F	-lm	License No.	Listing Broker	rum	License No.
represents	Buyer only as B	uyer's agent	represents Seller and Buyer as an		as an intermediary
	Seller as Listing	Broker's subagent		Seller only as Sel	ller's agent
			Kathryn Sca	rborough	483433
Associate's Na	ime	License No.	Listing Associate's Name		License No.
			kathryn.scar	borough@evusa.com	(512)970-1355
Associate's En	nail Address	Phone		iate's Email Address	Phone
			Steve Turng	uist	440298
icensed Supe	ervisor of Associate	License No.	Licensed Sup	ervisor of Listing Assoc	late License No
			3700 Bee Ca	yes Rd Ste 102	(512)328-3939
Other Broker's	Address	Phone		's Office Address	Phone
			Austin		TX 78746
City		State Zip	City	s	tate Zip
			Selling Assoc	data's Name	License No
		•	Selling Assoc	iale's Email Address	Phone
			Licensed Sup	pervisor of Selling Association	ciale License No.
			Selling Assoc	date's Office Address	

TREC NO. 20-14

Produced with zipForm® by zipLogiz 18070 Fitteen Wile Road, Freenr, Wichigen 48026 <u>years tol. roja com</u>

Red Turner

Contract Concerning	5201 Tortuga Trai Austin, (Address of i	-	Page 10 of 10	2-12-18
	OPTION FEE	RECEIPT		
Receipt of \$_10_000 ** Is acknowledged.  COLOR BY THE SO Seller or Listing Broker		form of	7/20/2015	Date
	EARNEST MON	EY RECEI	PT /	i
Receipt of \$ 50,000.00 is acknowledged INDUPCINALITY THE Escrow Agent	Earnest Money in the		mar andependen	2/18 @2:01P CLTIHE COM
Independence Title Compa	ny		512.814.2038	
Address 603 Balcones Drive			512.767.6346	Phone
Austin, TX 78731	State	Zip	512 707.0510	Fax
	CONTRACT	RECEIPT		
Receipt of the Contract is acknowle	edged.		, 4/19/18	
Independence Tit	12 by Man	Emel Ac	max drolpender	Ce Title Con
Independence Title Comp	any		512.814.2078	
Address 503 Balcones Drive			5/2.767.634	/ Phone
Austin, TX 78731 City	State	Zlp	<u>v)12   W 1.001</u>	Fax
	ADDITIONAL EARNES	T MONEY	RECEIPT	
Receipt of \$_ ls scknowledged.	additional Earnest M	loney in th	e form of	
Escrew Agent	Received by	Email A	idress.	Date/Time
Address				Phone
City	State	ΖΊφ		Fax

TREC NO. 20-14

Produced with 20 Form by 25% and 2 18070 Fitteen Mile Road, Fresen, Michigan 48028. How 200 ton't control

Rob Turner

# Exhibit A-4



#### PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)

2-12-18

#### UNIMPROVED PROPERTY CONTRACT



PARTIES: The parties to this contract are Robert Turner Lest 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, PROPERTY: Lot , Block , Block ABS 7 CHAMBERS T J ACR 9.8049 Addition, City of Austin Country of Travis  Texas, known as 5203 Tortuga Trail; 78731 (address/zip code), or as described on attached exhibit together with all rights, privileges and
to set and convey to Buyer and Buyer agrees to buy from Seller the Property defined below, PROPERTY: Lot  ABS 7 CHAMBERS T J ACR 0.8040  Addition, City of Austin County of Travis  Texes, known as 5203 Tortuga Trail, 78731 .  [address/zip code), or as described on attached exhibit together with all rights privilence and
Texes, known as 5203 Tortuga Trail, 78731 (address/zip code), or as described on attached exhibit together with all rights, privilenes and
Texas, known as 5203 Tortuga Trail, 78731 (address/zip code), or as described on attached exhibit together with all rights privilenes and
Texas, known as 5203 Tortuga Trail, 78731 (address/zip code), or as described on attached exhibit together with all rights privilenes and
(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, essements, 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. SALES PRICE:
A. Cash portion of Sales Price payable by Buyer at closing
B. Sum of all financing described in the attached: Third Party Financing Addendum,
I non Assumption Addendum   Saller Financian Addendum   S
C. Sales Price (Sum of A and B)
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:
EARNEST MONEY: Within 3 days after the Effective Date, Buyer must deliver
\$ 30.000.00 as exmest money to Independence Title-Carol Relicency
agont, at
\$ 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 giver the effective date of this contract if buyer less 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 part day that is not a Saturday
Sunday, or legal holiday. Time is of the essence for this paragraph.
TITLE POLICY AND SURVEY:
A. TITLE POLICY: Seller shall furnish to Buyer at X 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;  [3] (i) will not be amended or deleted from the title policy; or
(ii) will be amended to read, "shortages in grea" at the expense of Buyer Seller.
(9) The exception or exclusion regarding minerals approved by the Texas Department of Insurance.
8. 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. Sellar authorizes the Title
Company to deliver the Commitment and Exception Documents to Buyer at Buyer's address
and the second s

EXHIBIT 35 WITS CAT borough DATE: 8 27-11 AMY M. CLARK, CSR TREC NO. 9-13

Contract	1 Concerning 5203 Tortuga Trail, 78731 Austin Page 2 of 9 2-12-18
	(Address of Property)  Shows in Paragraph 21 If the Commitment and Everenties Documents are not delivered to Dever
	shown in Paragraph 21. If the Commitment and Exception Documents are not delivered to Buyer within the specified time the line for delivery will be submitted to a specified time.
	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.	
٠.	Title Company and Buyer's lender(s). (Check one box only)
X	(1) Within 1 stone after the Efforther Date of this explanet College shall female to December 1
1533	Title Company Seller's existing survey of the Property and a Residential Real Property Affidavit
	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
	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 kender's). Buyer shall obtain a
	new survey at Seller's X Buyer's expense no later than 3 days prior to Closing Date.
П	(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.
П	
u	
_	furnish a new survey to Buyer.
Ð,	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: (6) 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 deamed 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
E.	the revised Commitment, Survey, or Exception Document(c) 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 [X] is not subject to
	mandatory membership in a property owners association(s). If the Property is subject to it
	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
	of the property owners association(s). Restrictive covenants governing the use and
	OCCUPANCY Of the Property and all dedicatory instruments governing the establishment is
	maintenance, and operation of this residential community have been or will be recorded to
	the Real Property Records of the county in which the Property is located. Cooles of the
	restrictive covenants and dedicatory instruments may be obtained from the county clark. 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
	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 cooles of any document that
	governs the establishment, maintenance, or operation of a subdivision including but not
	image to, restrictions, bytaws, rules and requisions, and a resale certificate from a nometry i
	stalements specifying the amount and frequency of regular assessments and the style and
	cause number of lawauits to which the property owners association is a next other than
	cause number of lewsuits to which the property owners' association is a party, other than lewsuits relating to unpaid ad velorem 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
	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.
alad for i	
Stou tot h	dentication by Buyer X 11 and Seller K/ LT TREC NO. 9-1

(3) STATUTORY TAX DISTRICTS: If the Property is situated in a utility or other statutority 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, Taxas 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.

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 extratemiontal 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 extratemional jurisdiction. To determine if the Property is located within a municipality's extratentional jurisdiction or is likely to be located within a municipality's extratentional jurisdiction, contact all municipalities located in the general proximity of the

Property for further information.

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 erea, if your property is located in a cartificated 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

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 if the property is in a certificated area and contact the utility service provider to determine if the property is in a certificated 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 assessment may be due annually or in periodic installments. More information concerning the assessment of 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.

result in a lien on and the foreclosure of your property.

(8) TEXAS AGRICULTURAL DEVELOPMENT DISTRICT: The Property Dis X is not located in a Texas Agricultural Development District. For additional information, contact the Texas

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 addandum 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.

OPERTY CONDITION:

7. PROPERTY CONDITION:

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 Ilcensed 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 lime this contract is in effect.

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

TREC NO. 9-13

Con	lract	Concerning 5203 Tortuga Trail, 78731 Austin, Page 4 of 9 2-12-18
		(Check one box only)
	X	(1) Buyer accepts the Property As Is.
	A	(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: Unlass 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 scense is required by law, are commercially engaged in the trade of providing such repairs or treatments. At Buyer's election, any
		transferable warrantles received by Sellier with respect to the repairs and treatments will be
		transferred to Buyer at Buyer's expense. If Seller falls to complete any egreed 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 waltands, 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.	RR	OKERS' FEES: All obligations of the parties for payment of brokers' fees are contained in
٠.		arate written agreements.
9.	CL	DSING:
	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 walved, whichever date is taler (Closing Date). If either party falls to close the sale by the Closing Date, the non-defaulting
		party may exercise the remedies contained in Paragraph 15.
	8.	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 fumish
		tax statements or certificates showing no delinquent taxes on the Property.
		(2) Buyer shall pay the Sates Price in good funds acceptable to the escrow agent. (3) Safler 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
40	PΩ	Buyer and assumed loans will not be in default. SSESSION:
10.		Buyer's Possession: Seller shall deliver to Buyer possession of the Property in its present or
		required condition upon closing and funding.
	В.	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.		ECIAL PROVISIONS: (Insert only fectual statements and business details applicable
		the sale. TREC rules prohibit license holders from adding factual statements or business details
		which a contract addendum or other form has been promulgated by TREC for mandatory use.)
		rchase of 5203 Tortuga Trail is contingent on the purchase of 5201 Tortuga Trail. Properties are being of logether.
	50	u regount.
111111	for	dentification by Buyer A M and Seller RT LT TREC NO. 9-1:
inerie ()	1011	Produced with sight symbols to the produced with sy

Contract Concerning 5203 Tortugs Traff, 75731 Austin, Page 5 of 9 2-12-18  [Address of Property]	
12. SETTLEMENT AND OTHER EXPENSES:	
the contract of the contract o	
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 Seliens 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; emortization schedules; one-half	
of escrow fee; all prepaid flems, 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 Insurence 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	
Valerans 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 proreled through the Closing Date. The tax proretion may be calculated taking	
into consideration any change in exemptions that will affect the current years 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,	
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 falls to do so due to factors beyond Seller's control, Buyer may (a) terminate this contract and the	
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 t	
policy. Seller's obligations under this paragraph are independent of any other obligations of Seller	
under this contract.	
15. DEFAULT: If Buyer falls to comply with this contract, Buyer will be in default, and Seller	· (/)
may fall efforce specific performance, seek such other railed as may be provided by low or both	M
may (s) enforce specific performance, seek such other ratio as may be provided by law, or both or (b) terminate this contract and receive the samest money as liquidated damages, thereby	سينن
releasing both perties 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	DT
provided by law, or both, or (b) terminate this contract and receive the earnest money, thereby	101
releasing both parties from this contract.	
16. MEDIATION: It is the policy of the State of Texas to encourage resolution of disputes	
through elternative dispute resolution procedures such as mediation. Any dispute between Satier	
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 is	
shall beer 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 pravalls in any legal proceeding related to this contract is entitled to recover reasonable	
pravails 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 ESCONMI The permu apput to not in a notice to this contend and does not have the time. In-	l
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	
the performance or nonperformance of any party to this contract, (ii) liable for interest on the	
the performance or nonperformance of any party to this contract, (ii) liable for interest on the	
the performance or nonperformance of any party to this contract. (ii) liable for interest on the samest money and (iii) liable for the loss of any samest money caused by the failure of any financial institution in which the earnest money has been deposited unless the financial institution is acting as escrew agent.	
the performance or nonperformance of any party to this contract. (ii) liable for interest on the samest money and (iii) liable for the loss of any samest money caused by the failure of any financial institution in which the earnest money has been deposited unless the financial institution is acting as accrow agent.	
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 samest money caused by the failure of any financial institution in which the earnest money has been deposited unless the financial	

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COINT	act Cor	ncerning 5203 Tortuga Trail, 78731	s of Property)	Austin,	Page 6 of 9 2-12-18
c	the the the creation of the cr	quire payment of unpaid expenses e earnest money the amount of use earnest money.  EMAND: Upon termination of this lease of earnest money to each lease and deliver same to the escribity may make a written demand for the property of the demand to the other pase of demand from the other party oney to the party making demand that of the party receiving the earnedthost if escrow agent complies a leases escrow agent from all adverse classes escrow agent from all adverse classes. Any party who wrongfully if the earnest money; (iii) reasonable atto DTICES: Escrow agent's notices will	incurred on inpald experimental experimental expension of the escential experimental experimenta	behalf of the service	on a release acceptable to the escrow the to the other party for (I) damages; costs of sult. sent in compliance with Paragraph 21.
s	REPRE urvive		rapresenta Seller in	tions a this cont	
20. F	EDER Cevent oreign ales ( niema agulati he trar	ue Code and its regulations, or if status to Buyer that Selfer is no proceeds an amount sufficient to coll Revenue Service logather without reports if insection.	Seller is a Seller fails of a "loreign mply with appropriation currency is seller to the seller is seller in the seller is seller in the seller is seller in the seller in	to delive to delive n person, applicable tate tax in excess	n person," as defined by internal r an affidavit or a cartificate of non- " then Buyer shall withhold from the tax law and deliver the same to the forms, internal Revenue Service of specified amounts is received in
11. N		ES: All notices from one party		ther mu	st be in writing and are effective
	rhen n	nalled to, hand-delivered at, or transmitte	sd by fax or e		
		Buyer	٦	lectronic t To Seller	ransmission as follows:
		liner	٦	lectronic t To Seller	
w		Buyer et:		lectronic t To Seller	ransmission as follows:
W P	To B	Buyer et:		lectronic to To Seller at: one:	ransmission as follows:
W P	To E	Buyer et:	Ph	lectronic to  Fo Seiler  at:  one:	ransmission as follows:
P F E 2. A 8 C	To E	Buyer at:  tim@lkardwynne.com  EMENT OF PARTIES: This cor annot be changed except by their are (check all applicable boxes): old Party Financing Addendum	Ph Fa E-I	ro Seller at: one:  x: nail: alins the greement.	rturnerhomes@gmail.com  entire agreement of the parties Addenda which are a part of this
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Contract Concerning 5203 Tortuga Trail, 78731 (Address o	Austin, Page 7 of 9 2-12-18
to terminate this contract by giving notice of terminate flective. Date of this contract (Option Pe 5:00 p.m. (local time where the Property is stated as the Option Fee or if Buyer prescribed, this paragraph will not be a unrestricted right to terminate this contract prescribed, the Option Fee will not be reful Buyer. The Option Fee X will Will not be	this contract, Selier grants Buyer the unrestricted right
from giving legal advice, READ THIS CONTRACT	
Buyer's Attorney is: <u>c/o Timothy E. Young</u> 2901 Via Fortuna, Ste 450, austin, 78746	Seller's Attorney is: <u>Terry Irion</u>
Phone: (512)275-7894	Phone:
Fax:	Fax:
E-mail; <u>tim@ikardwynne.com</u>	E-mail: terry.irlon@sprouselaw.com
EXECUTED the day of UTILE (BROKER: FILL IN THE DATE OF FINAL ACCEPTA  Lauree Z. Maffett  Lauree Z. Montett	R/2018 (Effective Date).  Robert Turner Sefer Robert Turner
	Lesli Turner
Buyer	Lesli Turner Seler Lesli Turner
- Carrier	N. Millerson, v
	epproved by the Texas Real Estate Commission, TREC forms are a stories ficance holders. No representation is made as to the local
TREC validity or adequacy of any provisitions. Texas Real Estate Com-	or busine received notices. No representation is made as to the legal tool in any specific transactions, it is not intended for complex nullsion, P.O. Box 12188, Austin, TX 78711-2188, (512) 836-3000 9-13. This form replaces TREC NO. 9-12.

TREC NO. 9-13 5363 Tertoga

Contract Concerning	5203 Tortuga Traft, 78731	Auslin,	Page 8 of 9	2-12-18
	(Address of I	Property)	_	

			Engel & Volk		440298
ther Broker F	itm	License No.	Listing Broker	r Firm	License No.
epresents	Buyer only as Buy	/er's agent	represents Seller and Buyer as an		an intermediary
Soller as Listing Broker's subagent		lroker's subagent		X Seller only as Seller's a	
·			Kathryn Scar		483433
Associate's Name License No.		Listing Assoc	late's Name	License No	
				borough@evusa.com	(512)970-1355
Associate's Email Address Phone			Listing Assoc	late's Email Address	Phone
			Steve Turngt		440298
censed Supe	rvisor of Associate	License No.	Licensed Sup	ervisor of Listing Associate	License No
			3709 Bee Ca	yer Rd Ste 102 (51	12]328-3939
ther Broker's	Address	Phone	Listing Broker	's Office Address	Phone
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tty	St	ate Zip	City	State	a Zip
		•	Selling Assoc	lato's Name	License No
			Selling Assoc	lale's Email Address	Phone
			Licensed Sup	ervisor of Selling Associate	s License No
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ada - Dadas	has agreed to pay	Other Broker		of the t	otal sales prid

TREC NO. 9-13

10.0

Ζ'n

477

City

TREC NO. 9-13

## Exhibit A-5



A PROFESSIONAL CORPORATION

REX J. ZGARBA

RXGARBA@COATSROSE,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 15<sup>th</sup>.

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, STR 500, AUSTIN, TEXAS 78746
PHONE (512) 469-7987 FAX: (512) 469-9408
WIEB: <u>www.gurberg.com</u>

HOUSTON | AUSTIN | DALLAS | SAN ANTONIO | NEW ORLEANS | CINCINNATI 4821-3119-6528.v1

August 14, 2018 Page 2

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,

Day 1 7 ..........

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 August 14, 2018 Page 3

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
SPROUSE 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



### TEXAS ASSOCIATION OF REALTORS

## RESIDENTIAL REAL ESTATE LISTING AGREEMENT EXCLUSIVE RIGHT TO SELL

USE OF THIS FORM BY PERSONS WHO ARE NOT HEIGHBERT OF THE YEXAS ASSOCIATION OF REALTONING IS NOT AUTHORIZED.

Seller: Ro	b Turner	
Addre	SS: 5201 Tortuga Trail	
Chy, S	tate, Zip: Austin, TX 78731	
rnone	512-573-8762	Fax
E-Mail	rtumerhomes@gmail.com	
Broker: Eng	el & Volkers Austin	
Addres	S.3780 Bee Cave Pond Cuite 102	
City, 51	AIC. LID: Austin TY 7974C	
Phone:	512,970,1355	
E-Mail:	kathryn.scarborough@evusa.com	Fax:
		d exclusive real estate agent and grants to Broker the exclusion mprovements, and accessories described below, except for
		discussions described below, except for a
A. Land: L	ot	Block ABS 7 CHAMBERS T J ACR 8510
in Travis		AGGIUON, City of Averting
5201 Tortu	Durty	County, Texas known as
05 95 45	iga irail	78731 (address/zip cod- Property is a condominium, attach Condominium Addendum.)
Items, if carpeling equipmer security a system k	any: all equipment and and and interest colling fans, attle fans it, mounts and brackets for the detection equipment, will then equipment.	d all other fixtures and improvements attached to the above the limitation, the following permanently installed and built-pliances, valances, screens, shutters, awnings, wall-to-we, mall boxes, television antennas and satellite dish system an elevisions and speakers, heating and air-conditioning untiming, plumbing and lightling fixtures, chandellers, water softene openers, cleaning equipment, shrubbery, landscaping, outdoor ty owned by Seller and attached to the above-described res
Items, if carpeling equipmer security a system, is cooking e property.  C. Accessori fireplace : keys, aboologs, and	any: all equipment and ap mirrors, ceiling fans, attle fans the mounts and brackets for the nut fire detection equipment, will litchen equipment, garage door quipment, and all other proper ses: The following described re- screens, curtains and rods, bill	pliances, valances, screens, shutters, awnings, wall-to-we, mall boxes, television antennas and satellite dish system an elevisions and speakers, healing and air-conditioning unking, plumbing and lighting fixtures, chandeliers, water softens

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 D is D is not subject to mandatory membership in a property
The state of the s
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 09/25/2017 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.
<ul> <li>B. <u>Earned</u>: Broker's compensation is earned when any one of the following occurs during this Listing: <ol> <li>Seller sells, exchanges, options, agrees to sell, agrees to exchange, or agrees to option the Property to anyone at any price on any terms;</li> <li>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</li> </ol> </li> <li>Seller breaches this Listing.</li> </ul>
C. <u>Payable</u> : Once earned, Broker's compensation is payable either during this Listing or after it ends at the earlier of:
<ul> <li>(1) the closing and funding of any sale or exchange of all or part of the Property;</li> <li>(2) Seller's refusal to sell the Property after Broker's compensation has been earned;</li> <li>(3) Seller's breach of this Listing; or</li> </ul>
(4) at such time as otherwise set forth in this Listing.
Broker's compensation is <u>not</u> 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(V) and Seller (1.7.1)
Engel & Volkers 3700 Bee Cave Rd #102 Austin, TX 78746512-328-3939 Kathryn Scarborough

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 Compagnation stated in December 1
deductions or the amount of the Broker's Compensation stated in Paragraph 5A. Any amount pai under this Paragraph 5D(1) is in addition to any amount that Broker may be entitled to receive to
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.
Other Fees and/or Reimbursable Expenses:
election Period
"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
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.
This Paragraph 5E survives termination of this Listing. This Paragraph 5E will not apply it:  a) Seiler 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.
nty: All amounts payable to Broker are to be paid in cash in County, Texas.
hw Authorization: Seller authorizes, and Broker may so instruct, any escrow or closing agent rized to close a transaction for the purchase or acquisition of the Property to collect and disburse sker all amounts payable to Broker under this Listing.
SERVICES:
r will file this Listing with one or more Multiple Listing Services (MLS) by the earlier of the time and by MLS rules or 5 days after the date this Listing begins. Seller authorizes Broker to submit about this Listing and the sale of the Property to the MLS.
participation including sold data. MLS rules may require that the information the MLS requires participation including sold data. MLS rules may require that the information be submitted to the S throughout the time the Listing is in effect. Subscribers to the MLS may use the information market evaluation or appraisal purposes. Subscribers are other brokers and other real estate fessionals such as appraisers and may include the appraisal district. Any information filed with MLS becomes the property of the MLS for all purposes. Submission of information to MLS sures that persons who use and benefit from the MLS also contribute information.
-14 Initialed for identification by Broker/Associate m, and Salter C.1. Page 3 of 10
3700 See Cave Rd #102 Austin, TX 78746512-328-3939 Kathryn Scathorough

Reside	olial Listing concerning 5201 Tortuga Trail, Austin, TX 76731
Ø 8.	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,
	(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 not be included in the MLS database available to real estate agents and brokers from other nestate offices who subscribe to and participate in the MLS, and their buyer clients may not be away that Seller's Property is offered for sale; (2) Seller's Property will not be included in the MLS download to various real estate Internet sites that are used by the public to search for proper listings; and (3) real estate agents, brokers, and members of the public may be unaware of terms and conditions under which Seller is marketing the Property.
7. ACC	ESS TO THE PROPERTY:
e th (1 (2	uthorizing Access: Authorizing access to the Property means giving permission to another person inter the Property, disclosing to the other person any security codes necessary to enter the Property id lending a key to the other person to enter the Property, directly or through a keybox. To facilitate showing and sale of the Property, Seller instructs Broker to:    access the Property at reasonable times;   authorize other brokers, their associates, inspectors, appraisers, and contractors to access the Property at reasonable times; and   property at reasonable times; and   duplicate keys to facilitate convenient and efficient showings of the Property.
8. <u>Ş</u>	the duling Companies: Broker may engage the following companies to schedule appointments and to theirs to access the Property:
co ev im	A keybox is a locked container placed on the Property that holds a key to the Property keybox makes it more convenient for brokers, their associates, inspectors, appraisers, and intractors to show, inspect, or repair the Property. The keybox is opened by a special mbination, key, or programmed device so that authorized persons may enter the Property, in Seller's absence. Using a keybox will probably increase the number of showings, but civas risks (for example, unputhorized entry, theft, property damage, or personal injury). Ither the Association of REALTORS® nor MLS requires the use of a keybox.
(1)	Broker D is 2 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.
Proj Exc	colling and indemnification: When authorizing access to the Property, Broker, other brokers, their ociates, any keybox provider, or any scheduling company are not responsible for personal injury or perty loss to Seller or any other person. Seller assumes all risk of any loss, damage, or injury, ept for a loss caused by Broker, Seller will indemnify and hold Broker harmless from any no for personal injury, property damage, or other loss.
COOPE prospec procure:	RATION WITH OTHER BROKERS: Broker will allow other brokers to show the Property to live buyers. Broker will offer to pay the other broker a fee as described below if the other broker a buyer that purchases the Property.
R-1101) 01	Page 4 of 10
or T.UARE	15 3700 Bee Cave Rd #102 Ausuin, TX 78746512-328-3939 Kathryn Scarborough

	S concenting 3201 fortuga frait, Austin	, TX 78731		
(1) if the (2) if the B. Non-Mt will offer (1) if the (2) if the	articipants: If the other broker is pay the other broker: e other broker represents the buy e other broker is a subagent:  S Brokers: If the other broker is a to pay the other broker: e other broker represents the buy e other broker is a subagent:  IARY: (Check A or B only.)	yer 3-2-5% of the sales 0 % of the sales not a participant in the ML	price or \$ price or \$ S in which this Listi	and and in a stilled Broke
Broker to accordan (1) If a p	lary Status: Broker may show ts. If a prospective buyer who E o act as an intermediary and B ice with one of the following after respective buyer who Broker rej ing Seller under this Listing. Bro	roker will notify Seller that natives.	at Broker will service	Seller authorizes be the parties in
then advice buyer	servicing Seller to communicate during negotiations to Seller; to the prospective buyer for the	e with, carry out instruct and (b) appoint the assoc same purpose.	oroker will: (a) appoint ions of, and provide tate then servicing	int the associate fe opinions and the prospective
carry buyer; purpos	•	opinions and advice duri ervicing the Seller under th	ner associate to cor ng negotiations to is Listing to the Sell	nmunicate with, the prospective ler for the same
represe	may notify Seller that Broker wi 1, in such an event, the associate entative, who may facilitate the ations to either party.	ill make no appointments e servicing the parties will transaction but will not	as described under act solely as Broker render opinions or	this Paragraph 's Intermediary advice during
D B. No Interme Broker rep	ediary Status: Seller agrees that resents.	Broker will not show the P	roperty to prospect	ive buyers who
aski • may pric writi • may pros othe the mate	er acts as an intermediary und y not disclose to the prospecting price unless otherwise insignation of the prospection of the prospective buyer; not disclose any confider of the confider of the prospective buyer; not disclose any confider process buyer specifically invise instructed in a separate information by the Real Estaterially relates to the condition on treat a party to the transaction violate the Real Estate Lice	tructed in a separate write the prospective buyer with the prospective buyer with 10 Seller unless other than 11 Seller unless other than 12 Seller unless other than 12 Seller unless of the property; with the property;	ill accept a price- ting by Sellet; ill pay a price gre rwise instructed in the information S iting not to disc	ater than the n a separate
(TAR-1101) 01-01-14 Digel & Volkers	initialed for Identification by Broker/As 3700 Bee Cave Rd #102 Austin.	SSOCIATE N. T and Seller TX 78746 512-328-3939	Kathryn Scarbore	Page 5 of 10 ough
		promise to the contract of the		

<ol> <li>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. Broke may not disclose to Seller any confidential information regarding any other person Broker represents of previously represented except as required by law.</li> <li>BROKER'S AUTHORITY:         <ul> <li>Broker will use reasonable efforts and act diligently to market the Property for sale, procure a buyer, and negotiate the sale of the Property.</li> <li>Broker is authorized to display this Listing on the internet without limitation unless one of the following.</li> </ul> </li> </ol>
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.
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
B. Broker is authorized to display this Listing on the internet without limitation unless one of the following
is chacked:
<ul> <li>(1) Seller does not want this Listing to be displayed on the Internet.</li> <li>(2) Seller does not want the address of the Properly to be displayed on the Internet.</li> </ul>
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:
☑ (1) Conventional ☐ (5) Texas Veterans Land Program ☐ (2) VA ☐ (6) Owner Financing ☐ (3) FHA ☐ (7) Other ☐ (4) Cash
<ul> <li>D. In addition to other authority granted by this Listing, Broker may:</li> <li>(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;</li> <li>(2) place a "For Sale" sign on the Property and remove all other signs offering the Property for sale or lease;</li> <li>(3) turnish comparative marketing and sales information about other properties to prospective buyers; including applicable disclosures or notices that Seller is required to make under law or a contract;</li> <li>(5) obtain information from any holder of a note secured by a lien on the Property;</li> <li>(6) accept and deposit earnest money in trust in accordance with a contract for the sale of the Property;</li> <li>(7) disclose the sales price and terms of sale to other brokers, appraisers, or other real estate professionals;</li> <li>(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);</li> <li>(9) advertise, during or after this Listing ends, that Broker sold the Property; and</li> <li>(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).</li> </ul>
E. Broker is not authorized to execute any document in the name of or on behalf of Seller concerning the Property.
AR-1101) 01-01-14 Initiated for Identification by Broker/Associate \mathbb{MT} and Seller (C.T.) Page 6 of 10
gel & Volkers 3700 Bee Cave Rd #102 Austin, TX 78746512-328-3939 Kathryn Scatborough

Residential Listing concerning 5201 Tortuga Trail, Austin, TX 78731	
<ul> <li>12. SELLER'S REPRESENTATIONS: Except as provided by Paragraph 15, Seller represents that:</li> <li>A. Seller has fee simple title to and peaceable possession of the Property and all its improvements fixtures, unless rented, and the legal capacity to convey the Property;</li> <li>B. Seller is not bound by a listing agreement with another broker for the sale, exchange, or lease of Property that is or will be in effect during this Listing;</li> <li>C. any pool or spa and any required enclosures, fences, gates, and latches comply with all applications and ordinarces;</li> <li>D. no person or entity has any right to purchase, lease, or acquire the Property by an option, right refusal, or other agreement;</li> <li>E. Seller is current and not delinquent on all loans and all other financial obligations related to Property; including but not limited to mortgages, home equity loans, home improvement loan homeowner association fees, and taxes, except</li> <li>F. Seller is not aware of any liens or other encumbrances against the Property.</li> </ul>	the to the
except except	πy,
G. the Property is not subject to the jurisdiction of any count;	1
H. all information relating to the Property Seller provides to Broker is true and correct to the best Seller's knowledge; and	of
1. the name of any employer, relocation company, or other entity that provides benefits to Salloc un-	
selling the Property is:	en
<ul> <li>13. SELLER'S ADDITIONAL PROMISES: Seller agrees to: <ul> <li>A. cooperate with Broker to (acililate the showing, marketing, and sale of the Property;</li> <li>B. not rent or lease the Property during this Listing without Broker's prior written approval;</li> <li>C. not negotiate with any prospective buyer who may contact Seller directly, but refer all prospection buyers to Broker;</li> <li>D. not enter into a listing agreement with another broker for the sale, exchange, lease, or management the Property to become effective during this Listing without Broker's prior written approval;</li> <li>E. maintain any pool and all required enclosures in compliance with all applicable laws and ordinances;</li> <li>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;</li> <li>G. complete any disclosures or notices required by law or a contract to sell the Property; and the amend any applicable notices and disclosures if any material change occurs during this Listing.</li> </ul> </li> <li>14. LIMITATION OF LIABILITY:</li> </ul>	of
THE DIRECTION 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.	e
B. Broker is not responsible or liable in any manner for personal injury to any person or for loss of damage to any person's real or personal property resulting from any act or omission not caused by Broker's regligence, including but not fimited 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, vanishem 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) Selfer, negligently or otherwise.	d d
TAR-1101) 01-01-14 Initiated for Identification by Broket/Associate The and Settler TC). Page 7 of 10	
ingel & Volkers 3700 Bee Cave Rd #102 Austin, TX 787e6 512-328-3939 Kathryn Scarborough	
Amough Scaroprolige	

Residential Listin	g concerning5201 Tortuga Trail, Austin, TX 78731
C. Seller altorni (1) are (2) ari Pro	agrees to protect, defend, indemnify, and hold Broker harmless from any damage, cost by's fees, and expenses that:  • caused by Seller, negligently or otherwise;  • from Seller's failure to disclose any material or relevant information about the perty; or  • caused by Seller giving incorrect information to any person.
15 BPECIAL I	
M Property to	Felmoin a nockel listing until instrugged by all as I
/A Dense to be	1 for replacement of eigns. (( ) .
with the state of	termination, Engel & Volkers/Kathryn Scarborough/Michele Turnquist will be reimbursed for all parketing expenses.
receive under Listing, the breaches thi 17. MEDIATION Listing that in be submitted	If Seller breaches this Listing, Seller is in default and will be liable to Broker for the amount of compensation specified in Paragraph 5A and any other compensation Broker is entitled to or this Listing. If a sales price is not determinable in the event of an exchange or breach of this Listing. Price will be the sales price for purposes of computing compensation. If Broker is Listing, Broker is in default and Seller may exercise any remedy at law.  The parties agree to negotiate in good faith in an effort to resolve any dispute related to this hay arise between the parties. If the dispute cannot be resolved by negotiation, the dispute will to mediation. The parties to the dispute will choose a mutually acceptable mediator and will st of mediation equality.
18. ATTORNEY	S FEES: It Seller or Broker is a prevailing party in any legal proceeding brought as a result of ter this Listing or any transaction related to or contemplated by this Listing, such party will be cover from the non-prevailing party all costs of such proceeding and reasonable attorney's
A Information B Seller Disc C Addendum (required it D D Residentia E MUD, Wat F Request to G Request to H Information I Information J Information K Information K Condominin D M. Keybox Aut	ND OTHER DOCUMENTS: Addenda that are part of this Listing and other documents that ed to provide are:  in About Brokerage Services;  ilosure Notice (\$5.008, Texas Property Code);  if or Seller's Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards Property was built before 1978);  if Real Property Affidavit (T-47 Affidavit; refated to existing survey);  or District, or Statutory Tax District Disclosure Notice (Chapter 49, Texas Water Code);  information from an Owners' Association;  r Mortgage Information;  about Mirieral Clauses in Contract Forms;  about On-Site Sewer Facility;  about On-Site Sewer Facility;  about Special Flood Hazard Areas;  im Addendum to Listing;  hortzation to Release and Advertise Certain Information; and
(TAR-1101) 01-01-14 Engel & Volkers	initiated for identification by Broker/Associate T and Seller CT.  Page 8 of 10  3700 Bee Cave Rd #102 Austin, TX 78746 512-328-3939  Kathryn Scarborough
The state of the s	Kathryn Scarborough

### 20. AGREEMENT OF PARTIES:

- A. <u>Entire Agreement</u>: 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. <u>Binding Effect</u>: Seller's obligation to pay Broker earned compensation is binding upon Seller and Seller's heirs, administrators, executors, successors, and permitted assignees.
- D. <u>Joint and Several</u>: All Sellers executing this Listing are jointly and severally liable for the performance of all its terms.
- E. <u>Governing Law</u>: Texas law governs the interpretation, validity, performance, and enforcement of this Listing.
- F. <u>Severability</u>: 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. <u>Notices</u>: 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 Ethica, 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 ilens 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, awimming 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 pamphiet on fead 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 m and Seller	7(1.)	Page 9 of 10
Engel & Volkers	3700 Bee Cave Rd #102 Austin, TX 78746 512-328-3939	Kathryn Starboro	ugh

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.

Ingel & Volkers Broker's Printed Name	440298 License No.	Rob Turner Kok. Tu Seller's Printed Name	-uer
Broker's Signature  Broker's Associate's Signature agent of Broker	io L Dafe	Rob Juny Seller's Signature	10/0/17-
Kathryn Scarborough Broker's Associate's Printed Name,	if applicable	Seller's Printed Name	
		Seller's Signature	Date

(TAR-1101) 01-01-14 Engel & Volkers

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

Kathryn Scarborough



URE OF THIS FORM BY PERSONS WHO ARE NOT MEGABERS OF THE TEXAS ASSOCIATION OF REALTORSE IS NOT AUTHORIZED.

6TH CARR Association of REALTORING, Inc. 1996

### AMENDMENT TO LISTING AGREEMENT BETWEEN THE UNDERSIGNED PARTIES CONCERNING THE PROPERTY AT 5201 Tortuga Trail, Austin, TX 78731

"Owner" means the seller or land	lord of the above-ref	erenced Property.	
Effective 05/24/2018	, Owner a	nd Broker amend the above-referenced Lis	ting as follows
D A. The Listing Price in Para			
B. The date the Listing ends	in Paragraph 4 of th	e Listing is changed to:09/30/2018	•
U. C. Owner instructs Renker to	come madelian the		and to
		flect for all other purposes.	,
D D. Paragraph(s)		ged as follows:	
ngel & Volkers roker's (Company's) Printed Name Broker's Aspoclate's Signature	License No.	Robust Poury Seller or Landlord Seller or Landlord	0518 Date
AR-1404) 1-7-04  rgel & Volkers - Austin 3700 Bee Ca	Ve Ed #1812 Averio, TV 7		Page 1 of 1



### RESIDENTIAL REAL ESTATE LISTING AGREEMENT EXCLUSIVE RIGHT TO SELL

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORSO IS NOT AUTHORIZED.

OF THIS ASSOCIATION OF REALTORSO, INC. 2016

1.	PARTIES: TH	ne parties to this ag	reement (thi	is Listing) are	•			
			\ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \		•			
;	Seller: Rob Tu	rn <b>er</b>		,			···	
		203 Tortuga Trail			<del></del>			
	City, State	, Zip: Austin, TX 7873	1					
	Phone:512	-573-8762			Fax:			
	E-Mail:rur	nerhomes@gmail.con	3		<del></del>			***************************************
E	Broker: Engel &	Volkers Austin						
	Address:3	700 Bee Cave Road,, Su	ite 102	<del></del>	<del>~~~</del>	***************************************	·····	
	City, State	Zip:Austin, TX 7874	5	<del></del>	****			
	Phone 312.	970.1355			Fax:	<del></del>		
	E-Mail:kath	ryn.scarborough@evi	usa.com					
n 2. P	ight to sell the	"Property" means t						
Α	. Land: Lot			, Block		ABS 7 CHAM	BERS TI ACR	0.8040
		Maria de la compania		Ad	dition, City o	Austin		
	in Travis Cou			County	Texas kno	wn as		
	5203 Tortuga	Trail			78731		(addre	ss/zip code),
	or as descr	ibed оп attached e	xhibit. (If Pro	party is a cor	idominium, i	attach Cond	lominium A	ddendum.)
8.	described r items, if a carpeting, r equipment, security arx system, kito	nts: The house, is eal property, including: all equipment increase, all equipment mounts and brack fire detection equipment, gauripment, and all of	ding without apply attic fans, attic fans, in the second apply attic fans, in the second attick atti	limitation, the liances, valar mail boxes, to evisions and ag, plumbing peners, clean	e following process screet elevision ant speakers, and lighting income.	permanenti ons, shutter ennas and heating an fixtures, ch ent, shrubbe	y installed s. awnings satellite dis d air-condi andellers, w	and built-in, wall-to-wall in system and tioning units, rater softener
C.	keys, above logs, and c	: The following de reens, curtains and reground pool, swith controls for: (i) sat the and accessories	d rods, blind mming pool ellile dish s	is, window si equipment a	hades, drap	eries and r	ods, door k	eys, mailbox
	101) 01-01-14 k Volkers	Initialed for IdenIffice 3700 Bee Cay		Associate (175) in, TX 78746 512			hryn Scarboro	Page 1 of 10 bugh

			oncerning5203 Tortuga Trail, Austin, TX 78731	
	C	). Exclusion removed	s: The following improvements and a prior to delivery of possession;	accessories will be retained by Selfer and must be
	Ε	Owners' a	Association: The property D is D is sociation,	not subject to mandatory membership in a property
	S	eller. Seller	<ol> <li>Seller agrees to sell the Property to will pay all typical closing costs charged costs are those set forth in the reside</li> </ol>	Property at the following price: \$3,256,000 or the Listing Price or any other price acceptable to I to sellers of residential real estate in Texas (seller's ential contract forms promulgated by the Texas Real
	T	ERM;		Rit
	A.	This Listin	g begins on 10/04/2017 and	5/31/17 lends at 11:59 p.m. on 67/31/2016
	₿.	If Seller er the contract	nters into a binding written contract to se ct is binding on the date this Listing begin	Il the Property before the date this Listing begins and ns, this Listing will not commence and will be void.
	BF	ROKER CO	MPENSATION:	
,	A.	When earn	ned and payable, Seller will pay Broker:	Lacy Goosen)! Tack Fluor Chris Basse
	Ø	(1) 5% on lo	6 % of the sales price.	Chris Basse
		Propert (2) Broker i buy the	y to anyone at any price on any terms:	y one of the following occurs during this Listing: You will, agrees to exchange, or agrees to option the er broker procures a buyer ready, willing, and able to ther price acceptable to Seller; or
	c.	Pavable: O	nce earned, Broker's compensation is pa	ayable either during this Listing or after it ends at the
		(1) the clos (2) Seller's (3) Seller's	ing and funding of any sale or exchange refusal to sell the Property after Broker's breach of this Listing; or time as otherwise set forth in this Listing	compensation has been earned;
55		contract to s to restore th	are, without fault of Seller, to deliver to sell; (ii) loss of ownership due to foreclos	te Property does not close or fund as a result of: (i) a buyer a deed or a title policy as required by the sure or other legal proceeding; or (iii) Seller's failure ss, to its previous condition by the closing date set
E	). <u>(</u>	Other Comp	ensation:	
	(	Dy Suit, (	compromise, settlement, or otherwise tro	ollects earnest money, the sales price, or damages om a buyer who breaches a contract for the sale of iller will pay Broker, after deducting attorney's fees
Į.	-110	1) 01-01-14	Initialed for Identification by Broker/Associate	
		olkers	3700 Bee Cave Rd #102 Austin, TX 7874	

deduction under the subsequent	ection expenses, an amount equal to the lesser of one-half of the amount collected after the or the amount of the Broker's Compensation stated in Paragraph 5A. Any amount pair is Paragraph 5D(1) is in addition to any amount that Broker may be entitled to receive for entity selling the Property.
(2) Service	
from the	<u>Providers</u> : If Broker refers Seller or a prospective buyer to a service provider (for example table company, telecommunications provider, utility, or contractor) Broker may receive a few service provider for the referral. Any referral fee Broker receives under this Paragraph in addition to any other compensation Broker may receive under this Listing.
(3) Other Fo	es and/or Reimbursable Expenses:
. <del>20 milion de la composicione</del>	
E. Protection P	eriod:
days. *S	on period means that time starting the day after this Listing ends and continuing for 90 tell means any transfer of any fee simple interest in the Property whether by oral or written into roption.
names o sell the l person n	than 10 days after this Listing ends, Broker may send Seller written notice specifying the f persons whose attention was called to the Property during this Listing. If Seller agrees to Property during the protection period to a person named in the notice or to a relative of a amed in the notice, Seller will pay Broker, upon the closing of the sale, the amount Broker we been entitled to receive if this Listing were still in effect.
(a) Seller (b) the P of RE	agraph 5E survives termination of this Listing. This Paragraph 5E will not apply if: ragrees to sell the Property during the protection period; roperty is exclusively listed with another broker who is a member of the Texas Association ALTORS® at the time the sale is negotiated; and ris obligated to pay the other broker a fee for the sale.
F. County: All a	amounts payable to Broker are to be paid in cash in
authorized to	<u>orization</u> : Seller authorizes, and Broker may so instruct, any escrow or closing agent close a transaction for the purchase or acquisition of the Property to collect and disburse amounts payable to Broker under this Listing.
6. LISTING SERVI	CES:
required by I	the this Listing with one or more Multiple Listing Services (MLS) by the earlier of the time MLS rules or 5 days after the date this Listing begins. Seller authorizes Broker to submit about this Listing and the sale of the Property to the MLS.
for particl MLS thro for marke profession the MLS	ALS rules require Broker to accurately and timely submit all information the MLS requires pation including sold data. MLS rules may require that the information be submitted to the ughout the time the Listing is in effect. Subscribers to the MLS may use the information at evaluation or appraisal purposes. Subscribers are other brokers and other real estate hals such as appraisers and may include the appraisal district. Any information filed with becomes the property of the MLS for all purposes. Submission of information to MLS that persons who use and benefit from the MLS also contribute information.
(TAR-1101) 01-01-14	Initiated for Identification by Broker/Associate with and Seller R.T. Page 3 of 10
Engel & Volkers	3700 Bee Cave Rd #102 Austin, TX 78746512-328-3939 Kathryn Scarborough

45.3		ial Listing concerning 5203 Tortuga Trail, Austin, TX 78731
М	ţ	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. 1	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 restate offices who subscribe to and participate in the MLS, and their buyer clients may not be away that Seller's Property is offered for sale; (2) Seller's Property will not be included in the MLS download to various real estate Internet sites that are used by the public to search for proper 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. A	cc	ESS TO THE PROPERTY:
A	an th	uthorizing Access: Authorizing access to the Property means giving permission to another person to atter the Property, disclosing to the other person any security codes necessary to enter the Property at lending a key to the other person to enter the Property, directly or through a keybox. To facilitate access the Property at reasonable times;
		<ul> <li>authorize other brokers, their associates, inspectors, appraisers, and contractors to access the Property at reasonable times; and duplicate keys to facilitate convenient and efficient showings of the Property.</li> </ul>
₿.	Sc	theduling Companies: Broker may engage the following companies to schedule appointments and to the schedule appointment and the schedule appointment appointment and the schedule appointment appointment appointment and the schedule appointment appointment appointment appointment and the schedule appointment appo
C.	co co evi	hybox: A keybox is a locked container placed on the Property that holds a key to the Property, keybox makes it more convenient for brokers, their associates, inspectors, appraisers, and intractors to show, inspect, or repair the Property. The keybox is opened by a special mbination, key, or programmed device so that authorized persons may enter the Property, en in Seller's absence. Using a keybox will probably increase the number of showings, but volves risks (for example, unauthorized entry, theft, property damage, or personal injury). Ither 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.
		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.
	pro	cility and Indemnification: When authorizing access to the Property, Broker, other brokers, their ociates, any keybox provider, or any scheduling company are not responsible for personal injury or certy loss to Seller or any other person. Seller assumes all risk of any loss, damage, or injury, sept for a loss caused by Broker, Seller will indemnify and hold Broker harmless from any m for personal injury, property damage, or other loss.
COC	OPE spec	RATION WITH OTHER BROKERS: Broker will allow other brokers to show the Property to stive buyers. Broker will offer to pay the other broker a fee as described below if the other broker is a buyer that purchases the Property.
AR-110	1) 01	1-01-14 Initialed for Identification by Broker/Associate VY and Seller (7.1.) Page 4 of 10
	4.35.	Page 4 of 10 3700 Bee Cave Rd #102 Austin, TX 78746512-328-3939  Kathryn Scarborough

Residential Listing concerningS203 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 w
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 \$ ;
(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, Broke 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 \$
(2) If the other broker is a subagent: 0 % of the sales price or \$
9. INTERMEDIARY: (Check A or B only.)
A. <u>intermediary Status</u> : 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;
<ul> <li>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;</li> <li>may not treat a party to the transaction dishonestly; and</li> <li>may not violate the Real Estate License Act.</li> </ul>
(TAR-1101) 01-01-14 Initiated for Identification by Broker/Associate and Setter ? Page 5 of 10
Engel & Volkers 3700 Bee Cave Rd #102 Austin, TX 78746 512-328-3939 Kathryn Scarborough

nes	Definal Listing concerning 5203 fortuga Trail, Austin, 1X 78731
i	CONFIDENTIAL INFORMATION: During this Listing or after it ends, Broker may not knowingly disclosinformation 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 observiously represented except as required by law.
11.1	BROKER'S AUTHORITY:
,	A. Broker will use reasonable efforts and act diligently to market the Property for sale, procure a buye and negotiate the sale of the Property.
E	Broker is authorized to display this Listing on the Internet without limitation unless one of the followin is checked:
	<ul> <li>(1) Seller does not want this Listing to be displayed on the Internet.</li> <li>(2) Seller does not want the address of the Property to be displayed on the Internet.</li> </ul>
N	lotice: 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 is response to their search.
C	Broker is authorized to market the Property with the following financing options:
	<ul> <li>In the second of the second of</li></ul>
D	<ul> <li>(1) addition to other authority granted by this Listing, Broker may:</li> <li>(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;</li> <li>(2) place a "For Sale" sign on the Property and remove all other signs offering the Property for sale of lease;</li> <li>(3) furnish comparative marketing and sales information about other properties to prospective buyers; including applicable disclosures or notices that Seller is required to make under law or a contract;</li> <li>(5) obtain information from any holder of a note secured by a fien on the Property;</li> <li>(6) accept and deposit earnest money in trust in accordance with a contract for the sale of the Property;</li> <li>(7) disclose the sales price and terms of sale to other brokers, appraisers, or other real estate professionals;</li> <li>(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);</li> <li>(9) advertise, during or after this Listing ends, that Broker "sold" the Property; and</li> <li>(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).</li> </ul>
E.	Broker is not authorized to execute any document in the name of or on behalf of Seller concerning the Property.
(TAR-1	101) 01-01-14 Initialed for Identification by Broker/Associate and Seller (C.). Page 5 of 10

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

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Engel & Volkers

12.S	ELLER'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;
	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;
	any pool or spa and any required enclosures, fences, gates, and latches comply with all applicable laws and ordinances;
	<ul> <li>no person or entity has any right to purchase, lease, or acquire the Property by an option, right of refusal, or other agreement;</li> </ul>
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
	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;
	all information relating to the Property Seller provides to Broker is true and correct to the best of Seller's knowledge; and the name of any employer, relocation company, or other entity that provides benefits to Seller when
1.	selling the Property is:
13. SE	LLER'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;
	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;
	complete any disclosures or notices required by law or a contract to sell the Property; and amend any applicable notices and disclosures if any material change occurs during this Listing.
14. LIA	RITATION 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.
	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.
(TAR.116	01) 01-01-14 Initiated for Identification by Broker/Associate was and Setter R.T. Page 7 of 10
=	
Engel & I	olkers 3700 Bee Cave Rd #102 Austin, TX 78746 512-328-3939 Kathryn Scarborough

Residential Listing concerning 5203 Tortuga Trail, Austin, TX 78731

Residential Listing concerning 5203 Tortuga Trail, Austin, TX 78731
<ul> <li>C. Seller agrees to protect, defend, indemnify, and hold Broker harmless from any damage, costs, attorney's fees, and expenses that:</li> <li>(1) are caused by Seller, negligently or otherwise;</li> <li>(2) arise from Seller's failure to disclose any material or relevant information about the Property; or</li> <li>(3) are caused by Seller giving incorrect information to any person.</li> </ul>
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 spit 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, \$2,995,000
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:  X 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;  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 to Release and Advertise Certain Information; and

(TAR-1101) 01-01-14 Initialed for Identification by Broker/Associate and Seller (RTT:

Engel & Volkers

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

### 20. AGREEMENT OF PARTIES:

- A. <u>Entire Agreement</u>: 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. <u>Binding Effect</u>: 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. <u>Severability</u>: 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 ilability 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 was and Seller	67.][]	Page 9 of 10
Engel & Volkers	3700 Bee Cave Rd #102 Austin, TX 78746 512-328-3939	Kathryn Scarboro	ugh
	A COLOR OLD A PLANTAGE OF THE PROPERTY OF THE		

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 Rob Turner Seller's Printed Name	Turner
Broker's Signature  Broker's Associate's Signature agent of Broker	Date , as an authorized	Rob Turn Seller's Signature	10/6/13 Date
Kathryn Scarborough Broker's Associate's Printed Name	if applicable	Seller's Printed Name	
		Seller's Signature	Plata

(TAR-1101) 01-01-14

Engel & Volkers

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

Page 10 of 10

Kathryn Scarborough

### Exhibit A-6



### SPROUSE SHRADER SMITH PLLO

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: chellomy@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 Ciclo Center, Suite 601 Austin, TX 78746 Ph. (512) 615-6651 Alt. (512) 347-9977

and the second of the second o

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

Terrentee 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

### 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; Fee Authorization - 5203 Tortuga.pdf; 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

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: We dnesday, August 15, 2018 8:43 AM

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 Independence Title.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.

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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

E	and Ciban					*************************
B. Type of Loan						***************************************
	5. File Number 830300-BAL		7. Loan Number		8. Mortgage Ins (	Case Number
C. Note: This form is furnished to give you a statement of	of actival cettlement con	te Am	Lunts paid to and h		agent em aboum	Te
"(p.o.c.)" were paid outside the closing; they are						nems marked
	. Name & Address of S		4		dress of Lender	
Lauree Z Moffett B	lobert P. Turner and		Turner			
	02 Billings Lane					
<b>1</b>	ustin, TX 78733			1		
				ļ		
G. Property Location		H. Set	lement Agent Nan	ie		
			endence Title			
ARS 7 Chambers TJ ACR.8516, Travis County, TX		5900 S	hepherd Mounta , TX 78730 Tax	in Cove, Bidg 2,	, Ste. 200	
5201 Tortuga Trail Austin, TX 78731	İ	Under	written By: Title	Resources Guar	ranty Company	
			of Settlement			L Settlement Date
			endence Title			8/15/2018
,			Salcones Drive		I	Fund: 8/15/2018
		Austiz	, TX 78731		1	
J. Summary of Borrower's Transaction		V S.	immary of Seller'	* Transaction	I	
100. Gross Amount Due from Borrower			Gross Amount Di			T
101. Contract Sales Price	\$8,150,000.00		Contract Sales Pri	ce		\$8,150,000.00
102. Personal Property	ļ		Personal Property			
103. Settlement Charges to borrower	\$334.00					<u> </u>
104.		404.				
105.		405.				
Adjustments for items paid by seller in advance		Adju	stments for items	paid by seller it	n advance	
106. Property taxes		406.	Property taxes			
107. City property taxes		407.	City property taxe	s		
108. County property taxes		408.	County property to	axes		1
109. School property taxes	<u> </u>	409.	School property ta	xes		
110. HOA Dues		410.	HOA Dues			
III. MUD Taxes			MUD Taxes			
112.	<del></del>	412.				<del></del>
**************************************		413.				
113.		414.				<del></del>
114.	<u></u>	415.		·····		<del> </del>
115.				<del></del>		
116.		416.				
120. Gross Amount Due From Borrower	\$8,150,334.00		Gross Amount D			\$8,150,000.00
200. Amounts Paid By Or in Behalf Of Borrower			Reductions in Am	ount Due to Sel	ler	· •
201. Deposit or earnest money	\$150,000.00		Excess Deposit			
202. Principal amount of new loan(s)		502.	Settlement Charge	s 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 Comm	erce	\$2,463,811.66
Adjustments for items unpaid by seller	l		stments for items			
210. Property taxes 01/01/18 thru 08/15/18	\$57,717.93	-	Property taxes		/18 thru 08/15/18	\$57,717.93
211. City property taxes	331,7750	-	City property taxe			337,777,03
212. County property taxes	<del> </del>	<del></del>	County property to			<del> </del>
213. School property taxes	<del> </del>	-	School property to	<del>~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~</del>		<del> </del>
214. HOA Dues	<del> </del>		HOA Dues			<del> </del>
215. MUD Taxes	<del> </del>		MUD Taxes	***************************************		<del> </del>
216. MOD Taxes	<del> </del>	516.				+
						<del></del>
217.	<del> </del>	517.				<del> </del>
218.	<del> </del>	518.			***************************************	<del></del>
219.		519.				<del></del>
220. Total Paid By/For Borrower	\$217,717.93		Total Reduction			\$2,738,580.39
300, Cash At Settlement From/To Borrower	·		Cash At Settleme	~~~		<del></del>
301. Gross Amount due from borrower (line 120)	\$8,150,334.00		Gross Amount due		<del></del>	\$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		Cash To Seller			\$5,411,419.61
Section 5 of the Real Estate Settlement Procedures Act		Sec	tion 4(a) of RESP.	A mandates that	HUD develop and	prescribe this standard
following: • HUD must develop a Special Information Booklet to help persons borrowing money to finance the purchase of residential real estate to better charges imposed upon the borrower and seller. These are third party disclosure of charges imposed upon the borrower and seller.						third party disclosures
understand the nature and costs of real estate settlement se	are designed to pr	rovide the borrow	wer with pertinent	information during the		
Each lender must provide the booklet to all applicants f			ement process in o			
or for whom it prepares a written application to borrow purchase of residential real estate; • Lenders must prepa						rmation is estimated to reviewing instructions
the Booklet a Good Faith Estimate of the settlement cost						ng the data needed, and
likely to incur in connection with the settlement. T		con	pleting and review	ring the collectio	n of information.	
mandatory.	Thi	s agency may not	collect this in	termation, and you	MB control number,	
		The	information reque	sted does not len	d itself to confide	ntiality.
Previous Editions are Obsolete	Page					form HUD-1 (3/86)
						Handbook 4305.2

700. Total Sales/Broker's Commission base Division of Commission (line 700)		\$8,150,000.00	@2 % = \$163,000.00	Paid From Borrower's	Paid From Seller's
701. \$163,000.00	to Engel	& Volkers Austin		Punds at	Punds at
702.	to			Settlement	Settlement
703. Commission Paid at Settlement				\$0.00	\$163,000.0
704. The following persons, firms or	to				
705. corporations received a portion	to				
706. of the real estate commission amount	to				
707. shown above:		le Turnquist, Scarbor ngs, LLC	ough		
800. Items Payable in Connection with Los					
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 @ \$0/0	ву			
902. Mortgage Insurance Premium for month					
903. Hazard Insurance Premium for years	to				
904. 2nd Lien Interest	to	<del></del>			
1000. Reserves Deposited With Lender					
1001. Hazard insurance	mont	be @	per month		
1002. Mortgage insurance	mont		per month		
	mont		per month		
1003. Property taxes	mont		<del></del>		
1004. City property taxes			per month		······································
1005. County property taxes	mont		per month		
1006. School property taxes	mont		per month		
1007. MUD Taxes	mont		per month		
1008. HOA Dues	mont	ns ( <i>Q</i> )	per month		
1011. Aggregate Adjustment					
1100. Title Charges			<del></del>		
1101. Settlement or closing fee	to				
1102. Abstract or title search	to				
1103. Title examination	to				
1104. Attorney Fee	to				
1105. Attorney Fee		se Shrader Smith PLI	<u>.c</u>		\$5,880.0
1106. Notary fees	to				
107. Attorney's fees for Release of Lien	to Fitzge	rald & Fitzgerald Lav	▼ Office		\$50.0
(includes above items numbers:				)	3 1.473%
1108. Title insurance	to Indep	ndence Title Co.			\$35,945.0
(includes above items numbers:					: Tan Box
1109. Lender's coverage	\$0.00/\$0.0	0 .		4 (4)	
1110. Owner's coverage	\$8,150,00	0.00/\$35,945.00			
1111. Escrow fee	to Indep	endence Title Co.		\$250.00	\$250.0
1112. Guaranty Assessment Recoupment	to Texas	Title Insurance Guard	enty	\$0.00	54.5
Charge	A350C				34.
1113. Couries/Overnight Fees	to Indep	endence Title Co.		\$35.00	\$35.4
114. e-Recording	to Indep	endence Title Co.		53.00	\$3.0
1200. Government Recording and Transfer	Charges				
201. Recording Fees Deed \$46.00; Mort	gage ; Rel \$30.00	to Independe	ace Title Co.	\$46.00	\$30.0
202. City/county tax/stamps Dood; Morte	page	to			
203. State tax/stamps Deed ; Morte		to			
1204.	to				
1300. Additional Settlement Charges			······································		·
I301. Survey - update	to McMi	nn Surveying	<del></del>		\$1,135.0
302. Elevation Certificate		nn Surveying			\$675.0
1303. HOA Transfer Fee	to				30134
304. Home Warranty	to				
305. Property Taxes	to				
1306. Tax Certificate		Real Tax Services, Lt	<del></del>	<del></del>	6/2:
1307. MUD Certificate		Real Tax, Inc.	<del></del>		543.3
1400. Total Settlement Charges (enter on lin	<del></del>		\	\$334.00	F20~ 45-
. 900 Otki geluemeni lariyen tenier on ili	1011335 DEC1101	o suu ooa. Decuus K		1 00.24.00	\$207,050.1

1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)

1 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.

File No. 1830300-BAL Lauree Z Moffert

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.

Settlement Agent

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 detailsr see: Title 18 U.S. Code Section 1001 and Section 1010.

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Page 3

form HUD-1 (3/86) Handbook 4305.2

## Exhibit A-9

### A. Settlement Statement

U.S. Department of Housing and Urban Development

B. Type of Loan					
1. D FHA 2. D FmHA 3. D Conv Unins	6. File Number 1830313-BAL	7. Loan Number	8. Mortgage Ins	Case Number	
C. Note: This form is furnished to give you a statement	of actual settlement cos	ts. Amounts paid to and b	y the settlement agent are shown.	Items marked	
Lauree Z Mossett	e shown here tor inform 3. Name & Address of S Robert P. Turner and 102 Billings Lane Austin, TX 78733	cller	F. Name & Address of Lender	To Bind You and a second se	
G. Property Location		H. Settlement Agent Nan	16	~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~	
		Independence Title			
ABS 7 Chambers TJ ACR 0.8040, Travis County, TX 5203 Tortuga Trail Austin, TX 78731		5900 Shepherd Mountain Cove, Bldg 2, Stc. 200 Austin, TX 78730 Tax ID: 74-1909700 Underwritten By: Tide Resources Guaranty Company			
		Place of Settlement Independence Title		I. Settlement Date 8/15/2018	
		5503 Balcones Drive Austin, TX 78731 Fund: 8/15/2018			
J. Summary of Borrower's Transaction		K. Summary of Seller	s Transaction	1	
100. Gross Amount Due from Borrower		400. Gross Amount D			
101. Contract Sales Price	\$3,050,000.00	401. Contract Sales Pr. 402. Personal Property	ce	\$3,050,000.00	
102. Personal Property  103. Settlement Charges to borrower	\$299.00	<del></del>			
104.		404.			
105.		405.			
Adjustments for Items paid by seller in advance	T	Adjustments for items 406. Property taxes	paid by seller in advance	1	
106. Property taxes 107. City property taxes	<del>                                     </del>	407. City property taxe	rs		
108. County property taxes		408. County property t	axes		
109. School property taxes		409. School property t	EXCS		
110. MUD Taxes	<del> </del>	410. MUD Taxes 411. HOA Dues			
111. HOA Dues 112.		412.			
113.		413.			
114.	·	414.		_	
115.	ļ	415. 416.			
116. 120. Gross Amount Due From Borrower	\$3,050,299.00	<del></del>	ue to Seller	\$3,050,000.00	
200. Amounts Paid By Or in Behalf Of Borrower	J	500. Reductions in Ar			
201. Deposit or earnest money	\$30,000.00		D. D	5173.017.00	
202. Principal amount of new loan(s)  203. Existing loan(s) taken subject to		502. Settlement Charge 503. Existing Loan(s)		\$173,016.80	
204. Loan Amount 2nd Lien		504. Payoff to			
205.		505. Payoff to			
206. Option Fee	\$100.00	<del></del>		\$100.00	
207. 208.	<del> </del>	507.		·	
209.		509.			
Adjustments for items unpaid by seller		Adjustments for item			
210. Property taxes 01/01/18 thru 08/15/18	\$12,003.53	510. Property taxes 511. City property tax	01/01/18 thru 08/15/1	8 \$12,003.53	
211. City property taxes 212. County property taxes	<del> </del>	511. City property tax			
213. School property taxes		513. School property			
214. MUD Taxes	-	514. MUD Taxes			
215. HOA Dues 216.		515. HOA Dues 516.			
217.	<del> </del>	517.			
218.		518.			
219.		519.	Amount Due Calley	F185 120 22	
220. Total Paid By/For Borrower  300. Cash At Settlement From/To Borrower	\$42,103.5	520. Total Reduction 600. Cash At Settlem		\$185,120.33	
301. Gross Amount due from borrower (line 120)	\$3,050,299.00	601. Gross Amount du	e to seller (line 420)	\$3,050,000.00	
302. Less amounts paid by/for borrower (line 220)	\$42,103.5		amt. due seller (line 520)	\$185,120.33	
303. Cash From Borrower Section 5 of the Real Estate Settlement Procedures Act	\$3,008,195.4 (RESPA) requires the	Section 4(a) of RESI	'A mandates that HUD develop ar	\$2,864,879.67 ad prescribe this standard	
following: - HUD must develop a Special Information E	Booklet to help persons	form to be used at the	ne time of loan settlement to prove the borrower and seller. These a	ide full disclosure of all	
borrowing money to finance the purchase of residenti understand the nature and costs of real estate settlement s	ervices;	that are designed to	provide the borrower with pertine		
<ul> <li>Each lender must provide the booklet to all applicants or for whom it prepares a written application to borrow</li> </ul>	from whom it receives	The Public Reporting	order to be a better shopper.  g Burden for this collection of in:	formation is estimated to	
purchase of residential real estate; . Lenders must prep	are and distribute with	average one hour per response, including the time for reviewing instructions			
the Booklet a Good Faith Estimate of the settlement co- likely to incur in connection with the settlement.	These disclosures are	completing and revie	wing the collection of information	L .	
mandatory.		complete this form, u	ot collect this information, and nless it displays a currently valid	OMB control number.	
Pendage Editions are Obsoleta	Pag	The information requ	ested does not lend itself to confic		
Previous Editions are Obsolete	PE	, · ·		10im HOD-1 (3/80)	

702. 703. Commission Paid at Settlement 704. The following persons, firms or 705. corporations received a portion 706. of the real estate commission amount 707. shown above:  10 Michele Turnquist, Scarborough Floidings, LLC  Michele Turnquist, Scarborough Floi	Funds at Settlement SD.00	Funds at Settlement \$61,000.00
703. Commission Paid at Settlement 704. The following persons, firms or to 705. corporations received a portion to 706. of the real estate commission amount 707. shown above:  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 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 9/12/018 @ \$0/day 902. Mortgage Insurance Premium for months to 903. Hazard Insurance Premium for months to 904. 2nd Lien Interest to 905. Reserves Deposited With Lender 1001. Hazard insurance months and 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 1008. HOA Dues		
704. The following persons, firms or 705. corporations received a portion 706. of the real estate commission amount 707. shown above:  808. Items Payable in Connection with Loan 801. Loan Origination Fee % 802. Loan Discount % to 803. Appraisal Fee 804. Credit Report to 805. Lender's Inspection Fee 806. Mortgage Insurance Application to 807. Underwriting Fee 808. Flood Cert Fee to 808. Flood Cert Fee to 809. Processing Fee 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 1004. Znd Lien Interest 1001. Hazard insurance months deper month 1002. Mortgage insurance months per month 1003. Property taxes months deper month 1004. City property taxes months deper month 1005. County property taxes months deper month 1006. School property taxes months deper month 1007. MUDI Taxes months deper month 1008. HOA Dues months deper month 1008. HOA Dues	\$0.00	361,000.00
705. corporations received a portion 706. of the real estate commission amount 707. shown above:  10		
706. of the real estate commission amount 707. shown above:  809. Items Payable in Connection with Loan 801. Loan Origination Fee % to 802. Loan Discount % to 803. Appraisal Fee to 804. Credit Report to 805. Lendor's Inspection Fee to 806. Mortgage Insurance Application to 807. Underwriting Fee to 808. Flood Cert Fee to 808. Flood Cert Fee to 809. Processing Fee to 8010. Tax Services to 8010. Interest from 8/15/2018 to 9/1/2018 @ \$0/day 902. Mortgage Insurance Premium for months to 903. Hazard Insurance Premium for months to 1000. Reserves Deposited With Lender 1001. Hazard insurance Temper to to 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 1006. 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		
707. shown above:  800. Items Payable in Connection with Loan  801. Loan Origination Fee % to  802. Loan Discount % to  803. Appraisal Fee to  804. Credit Report  805. Lender's Inspection Fee to  806. Mortgage Insurance Application  807. Underwriting Fee to  808. Flood Cert Fee to  808. Flood Cert Fee to  809. Processing Fee to  810. Tax Services to  810. 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  1006. Reserves Deposited With Lender  1001. Hazard insurance months and per month  1002. Mortgage insurance months and 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  1007. MUD Taxes months @ per month  1008. HOA Dues months @ per month		
### Holdings, LLC  #### Holdings, LLC  #### Holdings, LLC  #### Holdings, LLC  #### Holdings, LLC  ##### Holdings, LLC  ##### Holdings, LLC  ##################################		
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 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 1006. 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		
802. Loan Discount		
803. Appraisal Fee to 804. Credit Report to 805. Lender's Inspection Fee to 805. Mortgage Insurance Application to 807. Underwriting Fee to 808. Processing Fee to 809. 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 906. 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 1007. MUD Taxes months @ per month 1008. HOA Dues months @ per month		
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806. Mortgage Insurance Application to 807. Underwriting Fee to 808. Flood Cert Fee to 808. Flood Cert Fee to 810. Tax Services to 810. Tax Services to 909. Items Required by Lender To Be Paid In Advance 909. Interest from 87.15/2018 to 97.12018 @ \$0/day 909. Mortgage Insurance Premium for months 909. Hazard Insurance Premium for years to 904. 2nd Lien Interest to 904. 2nd Lien Interest to 906. 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 1007. MUD Taxes months @ per month 1008. HOA Dues months @ per month		
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1007. MUD Taxes months @ per month 1008. HOA Dues months @ per month		
1008. HOA Dues months @ per month		
1011. Aggregate Adjustment		
1100 Title Charges		····
1100. Title Charges  1101. Settlement or closing fee to		
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
		STATE OF THE
1108. Title insurance to Independence Title Co.		\$15,209.00
<del></del>	) 3 (4) (4) (4)	
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
Guaranty Assessment Recomment Texas Title Insurance Guaranty		
Charge to 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.	546.00	······
1202. City/county tax/stamps Deed ; Mortgage to		
I203. 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 1104 Tonorfor Eng. 60		
1303. HOA Transfer Fee to	1 1	
1304. Home Warranty to		
1304. Home Warranty         to           1305. Property Taxes         to		
1304. Home Warranty         to           1305. Property Taxes         to           1306. Tax Certificate         to           Texas Real Tax Services, Ltd.		\$43.30
1304. Home Warranty         to           1305. Property Taxes         to	\$299,00	\$43.30 \$173,016.80

1440. 10733 Settlement Charges (enter on lines 1925) Section J and 597, Settlon K) 5799.00 5773,016.80

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.

Staffy St. Commence and the st

File No. 1830313-BAL

Robert P. Turner

Losl a. June

SETTLEMENT AGENT CERTIFICATION

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

Settlement Agent

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

### **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.

Left Hops

Notary Public, State of Texas

Signed under oath before me on November 13,2019.

MARTHA ANN ADAMS
NOTARY PUBLIC
ID# 267719-7
State of Texas
Germm. Exp. 01-30-2021

Affidavit of Jeff Hobbs – Page 2 of 2

# Exhibit B-1

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

1	ORAL DEPOSITION OF
2	KATHRYN SCARBOROUGH
3	August 27, 2019
4	
5	ORAL DEPOSITION OF KATHRYN SCARBOROUGH, produced as
6	a witness at the instance of the Defendant and
7	Counter-Plaintiff Robert Turner and duly sworn, was
8	taken in the above-styled and numbered cause on
9	August 27, 2019, from 9:21 a.m. to 3:29 p.m., before
10	Amy M. Clark, Certified Shorthand Reporter in and for
11	the State of Texas, reported by computerized stenotype
12	machine at the offices of Coats Rose, P.C., Barton Oaks
13	Plaza, 901 S. MoPac Expressway, Building 1, Suite 500,
14	Austin, Texas 78746, pursuant to the Texas Rules of
15	Civil Procedure and the provisions stated on the record
16	or attached hereto.
17	
18	
19	
20	
21	
22	
23	
24	
25	

```
1
                           APPEARANCES
 2
   FOR PLAINTIFF AND COUNTER-DEFENDANT TURNQUIST PARTNERS
 3
       REALTORS D/B/A ENGLE & VÖLKERS AUSTIN:
 4
        Mr. Rex J. Zgarba
        Coats Rose, P.C.
 5
        Barton Oaks Plaza
        901 S. Mopac Expressway
 6
        Building 1, Suite 500
        Austin, Texas 78746
 7
        Telephone: (512)684-3848
              (512)469-9408
        Fax:
 8
        Email: rzgarba@coatsrose.com
 9
   FOR DEFENDANT AND COUNTER-PLAINTIFF ROBERT TURNER:
10
        Mr. Jeffrey G. Henry
        Sprouse Shrader Smith, PLLC
        805 Las Cimas Parkway
11
        Suite 350
12
        Austin, Texas 78746
        Telephone: (512)615-6650
13
        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
        Armbrust & Brown, PLLC
17
        100 Congress Avenue
        Suite 1300
        Austin, Texas 78701
18
        Telephone: (512)435-2371
19
        Fax: (512)435-2360
        Email: jhobbs@abaustin.com
20
   ALSO PRESENT:
21
        Ms. Michele Turnquist,
22
             Plaintiff and Counter-Defendant
        Ms. Linsey Groos, Sr. Associate General Counsel,
23
             Independence Title
24
25
```

1 KATHRYN SCARBOROUGH, 2 having been first duly sworn, testified as follows: 3 EXAMINATION 4 BY MR. HENRY 5 Will you tell us your name, please. Q. Kathryn Scarborough. 6 Α. 7 Ms. Scarborough, have you ever given a 0. deposition before? 9 No, I have not. Α. 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 Α. Okay. Yeah. If you will, please allow me to finish my 16 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 Α. Okay. 23 And you understand your deposition testimony is under oath? Do you understand that? 25 Α. I do.

- Q. All right. And it can be read or shown to a 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.
- 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.
- Q. Okay. How long have you been a licensed agent?
- 25 A. Eighteen years.

- Q. Are you a broker?
- A. I am not.

1

- Q. Now, you represented my client, Rob Turner, in 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.
- Q. And would you agree that you represented Lauree
  Moffett in her purchase of Mr. Turner's properties on
  Tortuga Trail?
- 10 A. No, I did not.
- Q. Okay. Do you deny that you acted as an intermediary in that transaction?
- 13 A. I was not an intermediary.
- Q. All right. Have you ever told Mr. Turner that you were a intermediary?
- 16 A. No, I have not.
- Q. Have you ever told anyone that you acted as an intermediary?
- A. In an email between my mother and I, there was some conversation regarding the duties that I did perform under the instruction of my client, Mr. Turner.
- Q. And has your mother ever indicated to you or to anyone, to your knowledge, that she acted as an intermediary?
- 25 A. Can you rephrase that.

```
So then if you look at Paragraph 9 -- well, no
 1
       Q.
   let's just go --
 3
                  (Exhibit 9 marked.)
 4
       Q.
            (By Mr. Henry) Hand you what we've marked as
   Exhibit 9 to your deposition.
 6
                 Ask if you can identify this document for
 7 us?
            Yes.
       Α.
            What is that document?
 9
10
            The listing agreement that states that
       Α.
11 Mr. Turner will pay us 5 percent.
12
            I'm gonna hand you Exhibit No. 10 to your
       0.
13 deposition.
                  (Exhibit 10 marked.)
14
15
       Q.
             (By Mr. Henry) You recognize this document?
16
       Α.
            Yes.
                  This is on the lot. This is not on the
17 house.
18
                   And just so that we're clear for the
       Q.
            Okay.
19 future.
            There are two properties.
20
                 The addresses are 5201 Tortuga Trail and
21 5203 Tortuga Trail, correct?
22
       Α.
            Yes.
23
            And 5201 Tortuga Trail is the address for the
24 house, right?
25
            Yes.
       A.
```

- And 5203 Tortuga Trail is the lot, correct? 1 Q. 2 Α. Yes. 3 I may have duplicated these. Q. 4 Α. There was also another one that's missing as well that showed the to-be-built for 6.2. MR. HENRY: Exhibit 9. 6 (By Mr. Henry) Okay. Let's look at Exhibit 9. 7 Q. And this is for 5201 Tortuga Trail, which 8 9 is the house, right? 10 Α. Yes. 11 Is that correct? 0. 12 Α. 5201, yes. 13 And do you see at the bottom of -- I'm assuming Q. 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 I do. Α. 19 And do you see that the -- the -- one of the
- 21 A. Yes.
- 22 Q. Is that Michele Turnquist's initials?
- 23 A. It is. Appears to be.

20 boxes appears to have initial M.T.?

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

1 Q. Okay. 2 Α. And per the contract, you're not part of the 3 contract either. Independence is not? 0. Α. Correct. Just going back to my question, because I think Q. 7 you might have muddied the waters with the reference to 8 18A of the TREC contract. Just to be clear, you're not aware of 9 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? No. 15 Α. And outside of that, those TREC form contracts, 16 0. 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 commission dispute? 21 22 Α. No. 23 MR. HOBBS: I'll pass the witness.

MR. HENRY:

MR. ZGARBA:

24

25

Nothing further.

I'm reserving till trial.

```
CAUSE NO. D-1-GN-18-007069
1
2 TURNQUIST PARTNERS
                                IN THE DISTRICT COURT
  REALTORS, INC., d/b/a
3 ENGEL & VÖLKERS AUSTIN,
          Plaintiff,
5 |vs.
6 ROBERT TURNER, ITOCA,
  LLC, d/b/a INDEPENDENCE
7 TITLE COMPANY, and SECURED)
  LAND TRANSFER, LLC, d/b/a )
8 INDEPENDENCE TITLE,
          Defendants.
10
                                TRAVIS COUNTY, TEXAS
11 ROBERT TURNER,
12
          Counter-Plaintiff,
13 vs.
14 TURNQUIST PARTNERS
   REALTORS, INC., d/b/a
15 ENGEL & VÖLKERS AUSTIN,
         Counter-Defendant. )
                                419TH JUDICIAL DISTRICT
16
17
                    REPORTER'S CERTIFICATE
18
19
            ORAL DEPOSITION OF KATHRYN SCARBOROUGH
20
                        August 27, 2019
21
       I, Amy M. Clark, Certified Shorthand Reporter in and
22
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 _____
      That pursuant to information given to the deposition
 6
 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
           Land Transfers, LLC
13
      Mr. Rex J. Zgarba (0h0m)
           Attorney for Plaintiff
14
15
       That a copy of this certificate was served on all
16
17 parties shown herein on _____ and filed
18 with the Clerk.
       I further certify that I am neither counsel for,
19
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 loutcome of this action.
       Further certification requirements pursuant to
24
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	Jan h. Mak
5	- Mulau
6	Amy M Clark CSR Texas CSR 8753
7	Expiration: 10/31/2021 Ken Owen & Associates, L.P.
8	Firm No. 115 801 West Avenue
9	Austin, Texas 78701 (512)472-0880
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