

Marcus & Millichap  
Real Estate Investment Services

COMMERCIAL  
EARNEST MONEY CONTRACT  
(Real Estate Purchase and Sale Agreement)

THIS DOCUMENT IS INTENDED TO BE A LEGALLY BINDING CONTRACT. READ IT CAREFULLY.

This Earnest Money Contract ("Agreement") concerns the purchase by \_\_\_\_\_ and/or Assigns (hereinafter referred to as "Buyer") and sale by \_\_\_\_\_ (hereinafter referred to as "Seller") of that certain real property and improvements referred to as \_\_\_\_\_ (the "Property") generally located at \_\_\_\_\_ in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_, and more particularly described on attached Addendum A.

The Property shall also include Seller's interests in:

- 1) Any and all privileges and appurtenances pertaining to the Property, including any right, title and interest of Seller in or to adjacent streets, alleys or right(s)-of-way;
- 2) Any and all leases, licenses, occupancy agreements, permits, rents, warranties, guarantees, wastewater capacity and/or security deposits with respect to the Property, or any portion thereof;
- 3) Any and all trade names used in connection with the Property.
- 4) All personal property utilized by Seller in the operation of the Property that is currently located on the Property.

TERMS AND CONDITIONS

For the mutual covenants contained in this Agreement, Seller agrees to convey the Property to Buyer, and Buyer agrees to purchase the Property from Seller, on the following terms and conditions:

- 1) **PURCHASE PRICE:** The total purchase price for the Property is \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "Purchase Price").  
 The Purchase Price will be paid according to the provisions in **Addendum B**.
- 2) **EARNEST MONEY DEPOSIT:** Within \_\_\_\_\_ business days after the Effective Date of this Agreement (as defined below in paragraph 26 below), Buyer shall deposit with \_\_\_\_\_ ("Title Company") \_\_\_\_\_ Dollars (\$\_\_\_\_\_) in the form of a certified check, cashier's check or wire transfer as the earnest money deposit ("Deposit") to be held in trust for the benefit of the parties by \_\_\_\_\_ ("Title Company") in its capacity as escrow agent in one or more fully insured and interest bearing accounts of Federally insured banking or savings institution(s), pursuant to the terms of this Agreement. This sum, any additions thereto, and any interest earned thereon is the Deposit to be applied to the Purchase Price.

With the removal of the contingencies set forth in paragraphs \_\_\_\_\_ and **Addendum B** hereof, Deposit shall be deposited with Seller, and it shall be non-refundable. The entire Deposit shall be credited to the Purchase Price at the Closing Date, unless otherwise provided herein. If Buyer fails to timely deliver the Deposit, Seller may, at Seller's option, terminate this Agreement by delivering a written termination notice to Buyer.

- 3) **CLOSING DATE:** The closing of the sale will be on or before \_\_\_\_\_ days from Effective Date of the Purchase and Sale Agreement (the "Closing Date"). If either party fails to close by the Closing Date, the non-defaulting party may exercise the remedies in Paragraph 13.

- A.** At closing, Seller will execute and deliver, at Seller's expense, a special warranty deed. The deed must include a vendor's lien if any part of the Purchase Price is financed. The deed must convey good and indefeasible title to the Property and show no exceptions other than those permitted under Paragraph 4 or other provisions of the Agreement. Seller must convey the Property at closing:
- (1) with no liens, assessments, or Uniform Commercial Code or other security interest against the Property which will not be satisfied out of the Purchase Price, unless the Buyer is assuming existing loans;
  - (2) without any assumed loans in default; and
  - (3) with no persons in possession of any part of the Property as lessees, tenants at sufferance, or trespassers except tenants under the written leases assigned to Buyer under this Agreement.
- B.** At closing, Seller, at Seller's expense, will also deliver:
- (1) tax statements showing no delinquent taxes on the Property;
  - (2) a bill of sale with warranties to title conveying title, free and clear of all liens, to any personal property defined as part of the Property above, or sold under this Agreement;
  - (3) an assignment of all leases to or on the Property;
  - (4) to the extent that the following items are assignable, an assignment to Buyer of the following items as they relate to the Property or its operations:
    - (a) licenses and permits;
    - (b) maintenance, management, and other agreements; and
    - (c) warranties and guaranties;
  - (5) a rent roll current on the day of the closing certified by Seller as true and correct.
  - (6) evidence that the person executing this Agreement is legally capable and authorized to bind Seller; and
  - (7) any notices, statements, certificates, affidavits, releases, and other documents required by this Agreement, the title commitment, or applicable law that is necessary for the closing of the sale and the issuance of the title policy;
  - (8) an Owner's Policy of Title Insurance issued by the Title Company in the amount of the Purchase Price dated at or after the Closing Date, insuring Buyer against all loss under the Title Policy, subject only to:
    - (1) those title exceptions permitted by this Agreement or as may be approved by Buyer in writing; and
    - (2) the standard printed exceptions contained in the promulgated form of title policy. The standard printed exception as to discrepancies, conflicts, or shortages in area and boundary lines may be deleted by Buyer at Buyer's sole cost and expense and at Buyer's sole option.
  - (9) possession of the Property to Buyer upon closing and funding of the sale in its present condition without any repairs Seller is obligated to complete under this Agreement, ordinary wear and tear excepted.

Until Closing Date, Seller will operate the Property in the same manner as on the Effective Date and will not transfer or dispose of any of the personal property described in this Agreement or to be sold under this Agreement before closing that is not authorized by separate agreement.

- C.** At closing, Buyer will:
- (1) pay the Purchase Price in good funds acceptable to the escrow agent;
  - (2) deliver evidence that the person executing this Agreement is legally capable and authorized to bind Buyer;
  - (3) execute and deliver any notices, statements, certificates, or other documents required by this Agreement or law necessary to close the sale.
- D. PRORATIONS:** All utilities and all other operating expenses with respect to the Property for the month in which the Closing occurs, and real estate and personal property taxes and other assessments and any payments in lieu of taxes with respect to the Property for the year in which the Closing occurs, shall be prorated to the Closing Date. Proration shall be made consistently with local customs and practices, including, without limitation, proration of real estate taxes based on the calendar year.

(a) If the Closing shall occur before rents and all other amounts payable by the tenants or users under the Leases and all other income from the Property have actually been paid for the month in which the Closing occurs, the apportionment of such rents and other amounts and other income shall be upon the basis of such rents, other amounts and other income actually received by Seller. Subsequent to the Closing, if any rents and other income are actually received by Buyer for periods prior to the Closing, all such amounts shall first be applied to post-closing rents due to Buyer and the balance shall be immediately paid by Buyer to Seller. Buyer shall make a good faith effort and attempt to collect any such rents and other amounts and other income not apportioned at the Closing for the benefit of Seller; provided, however, that Buyer shall not be required to expend any funds or institute any litigation in its collection efforts. Nothing in this paragraph shall restrict Seller's right to collect delinquent rents directly from a tenant or user by any legal means, excepting eviction proceedings.

(b) If the Closing shall occur before the actual amount of utilities and all other operating expenses with respect to the Property for the month in which the Closing occurs are determined, the apportionment of such utilities and other operating expenses shall be upon the basis of a reasonable estimate by Seller and Buyer of such utilities and other operating expenses for such month. Subsequent to the Closing, when the actual amount of such utilities and other operating expenses with respect to the Property for the month in which the Closing occurs are determined, the parties agree to adjust the proration of such utilities and other operating expenses and, if necessary, to refund or repay such sums as shall be necessary to effect such adjustment. Buyer shall indemnify, protect, defend and hold Seller harmless from and against any and all claims by and liabilities to any third persons for the amount of the deposits or fees for which Buyer obtains a credit as provided in this paragraph or which Buyer receives directly from Seller. The agreements of Seller and Buyer set forth in this paragraph shall survive the Closing.

**Closing Adjustments.** Unless otherwise provided herein, the following items shall be adjusted between Seller and Buyer as of 12:01 a.m. on the Closing Date:

- (a) Buyer shall be credited with any deposits from tenants or guests of the Hotel (including interest earned thereon to the extent payable to such tenants or guests) in Seller's possession which are refundable to such tenants or guests.
- (b) Net guest room revenue of the Hotel, whether in cash or in Accounts Receivable, arising from occupancy for the night beginning on the day preceding the Closing Date and ending on the Closing Date shall be credited to Seller.
- (c) All other ordinary and customary items of income and expense including, without limitation, room rents receivable from current guests of the Hotel as set forth in the guest ledger for periods prior to the night preceding the Closing Date, water, sewer, electricity and gas charges, real estate taxes and assessments, personal property taxes, items of expense under maintenance contracts, service contracts, personal property leases, rental contracts or equipment or telephone contracts, advertising contracts, cleaning contracts, prepaid rents and deposits for reservations shall be prorated or adjusted as of the Closing Date (to the extent possible with cut off bills as of 12:01 a.m. on the Closing Date, or to such time and date as near as possible thereto). All such items attributable to the period prior to the Closing Date shall be credited to and/or paid by the Seller, and all such items attributable to the period on and after the Closing Date shall be credited to and/or paid by the Buyer. With respect to employee wages (i) Executive Housekeeper and Housekeepers will be paid by Seller until they punch out on the Closing Date, (ii) General Manager, Assistant Manager, Front Office Manager, Guest Service Agents, Executive Housekeeper, Night Auditor, and maintenance personnel will be paid by Seller up to 8:00 a.m. on the Closing Date.
- (d) In addition to the Purchase Price, Seller shall be paid the full amount of all cash on hand at the Hotel, including, without limitation, vending machine receipts relating to the Hotel in existence as of 12:01 a.m. on the Closing Date.

- (e) All Accounts Receivable shall belong to the Seller, and Seller may take action to collect same. In the event Buyer receives payment on account of any Account Receivable attributable to a date prior to Closing, Buyer shall immediately remit same to Seller.
- (f) Linens & Operating Supplies: Seller shall provide Buyer with TWO (2) turns of linens and THIRTY (30) days of Operating Supplies.

The provisions of this paragraph may not specify all adjustments properly to be made in a transaction of this nature. Representatives of Seller and Buyer shall perform all of the adjustments through the Closing Date and any and all other adjustments not specifically referred to herein, which are appropriate and usual. The adjustments hereunder shall be calculated or paid in an amount based upon a fair and reasonable estimated accounting performed and agreed to by representatives of Seller and Buyer at the Closing. Subsequent final adjustments and payments shall be made in cash or other immediately available funds as soon as practicable after the Closing Date, and in any event within NINETY (90) days after the Closing Date, based upon an agreed accounting performed by representatives of Seller and Buyer.

**E. SALES EXPENSES:**

- (1) Seller's Expenses: Seller will pay for the following at or before closing:
  - (a) releases of existing liens, other than those liens assumed by Buyer, including prepayment penalties and recording fees;
  - (b) release of Seller's loan liability, if applicable;
  - (c) tax statements or certificates;
  - (d) preparation of the deed and any bill of sale;
  - (e) one-half of any escrow fee;
  - (f) costs to record any documents to cure title objections that Seller must cure; and
  - (g) other expenses that Seller will pay under other provisions of this Agreement.
- (2) Buyer's Expenses: Buyer will pay for the following at or before closing:
  - (a) all loan expenses (for example, application fees, origination fees, discount fees, buy-down fees, commitment fees, appraisal fees, assumption fees, recording fees, tax service fees, mortgage title policy expenses, credit report fees, document preparation fees, interest expense that Buyer's lender requires Buyer to pay at closing, loan related inspection fees, amortization schedule fees, courier fees, underwriting fees, wire transfer fees, and other fees required by Buyer's lender);
  - (b) preparation fees of any deed of trust;
  - (c) recording fees for the deed and any deed of trust;
  - (d) premiums for flood and hazard insurance as may be required by Buyer's lender;
  - (e) one-half of any escrow fee;
  - (f) copy and delivery fees for delivery of the title commitment and related documents; and
  - (g) other expenses that Buyer will pay under other provisions of this Agreement.

**4) TITLE:**

- A. TITLE INSURANCE POLICY:** Within TEN (10) calendar days after the Effective Date of this Agreement, Seller shall furnish or cause to be furnished to Buyer a commitment for a standard Texas owner's policy of title insurance ("Commitment") to be issued at the Closing Date by the Title Company for the Property. Seller authorizes the company to deliver the commitment and related documents to Buyer at Buyer's address.
- B. SURVEY:** Survey must be made by a registered professional land surveyor acceptable to the Title Company and Buyer's lender:

Within SEVEN (7) days after the Effective Date of this Agreement, Seller shall furnish Seller's existing Survey of the Property to Buyer and the Title Company, along with Seller's Affidavit acceptable to the Title Company for approval of the Survey. If the Survey is not approved by the Title Company or Buyer's Lender, a new Survey will be obtained by Buyer at Buyer's expense, no later than THREE (3) days prior to Closing Date.

The survey must identify the Property by metes and bounds or platted lot description; show that the survey was made and staked on the ground with the corners permanently marked; set forth the dimensions and total area of the Property; show the locations of all improvements, highways, streets, roads, railroads, rivers, creeks or other waterways, fences, easements, and rights of way on the Property with all easements and rights of way referenced to the recording information; show any discrepancies or conflicts in boundaries, any visible encroachments, and any portion of the Property lying in a special flood hazard area as shown on the current Federal Emergency Management Agency Flood Insurance Rate Map; and contain the Surveyors Certificates that the survey is true and correct.

- C. UCC SEARCH:** Within FOURTEEN (14) days after the Effective Date, Seller, at Seller's expense, will furnish Buyer a Uniform Commercial Code (UCC) search prepared by a reporting service and dated after the Effective Date. The search must identify documents that are on file with the Texas Secretary of State and the county where the Property is located that relate to all personal property on the Property that show: (i) Seller, as debtor, and (ii) all other owners of the personal property in the last FIVE (5) years.

Within FIVE (5) calendar days following receipt of the above referenced documents, Buyer shall specify in writing any exceptions to which Buyer reasonably objects. If Buyer fails to object within this time period, all of Buyer's objections shall be deemed to be waived. If Buyer objects to any exceptions, Seller shall, within FIVE (5) calendar days after receipt of Buyer's objections, deliver to Buyer written notice that either (i) Seller will, at Seller's expense, attempt to remove the exception(s) to which Buyer has objected before the Closing Date or (ii) Seller is unwilling or unable to eliminate said exception(s). If Seller fails to so notify Buyer or is unwilling or unable to remove any such exception by the Closing Date, Buyer may either (i) elect to terminate this Agreement and receive back the entire Deposit, in which event Buyer and Seller shall have no further obligations under this Agreement; or, alternatively, (ii) Buyer may elect to purchase the Property hereunder subject to such exception(s).

## 5) NOTICES:

- A. SPECIAL ASSESSMENT DISTRICTS:** If the Property is determined to be situated within a utility district or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49 of the Texas Water Code requires Seller to deliver to Buyer as part of the title documents the required written notice ("MUD Notice") and Buyer agrees to acknowledge receipt of the MUD Notice in writing prior to the Closing Date. The MUD Notice shall set forth the current tax rate, the current bonded indebtedness and the authorized indebtedness of the district, and must comply with all other applicable requirements of the Texas Water Code. If the Property is subject to mandatory membership in a property owner's association, Seller shall notify Buyer of the current annual budget of the property owners' association, and the current authorized fees, dues and/or assessments relating to the Property. Buyer and Seller hereby agree and acknowledge that Agent shall have no responsibility for determining whether the Property is in any such district, nor the compliance by any party with the requirements applicable to such property. If applicable, Buyer, Seller and their respective legal advisors shall prepare and execute an appropriate Addendum to this Agreement as they deem necessary.

- B. TIDALLY INFLUENCED PROPERTY:** If the Property abuts the tidally influenced waters of the state, Section 33.135 of the Texas Natural Resources Code requires a notice regarding coastal area property to be included in this Agreement. Buyer and Seller hereby agree and acknowledge that Agent shall have no responsibility for determining whether the Property is a tidally influenced property, nor the compliance by any party with the requirements applicable to such property. If applicable, Buyer, Seller, and their respective legal advisors shall prepare and execute an appropriate Addendum to this Agreement as they deem necessary.
- C. ABSTRACT:** At the time of the execution of this Agreement, Buyer acknowledges that Agent has advised and hereby advises Buyer, by this writing, that Buyer should have the abstract covering the Property examined by an attorney of Buyer's own selection or that Buyer should be furnished with or obtains a policy of title insurance.
- D. DISCLOSURE OF REAL ESTATE LICENSURE: N/A**
- E. INTRACOASTAL WATERWAY:** If the Property is located seaward of the Gulf Intracoastal Waterway, Section 61.025, Texas Natural Resources Code, requires a notice regarding the seaward location of the Property to be included as part of this Agreement.
- F. MOLD/ALLERGEN ADVISORY:** Buyer is advised of the possible presence within properties of toxic (or otherwise illness-causing) molds, fungi, spores, pollens and/or other botanical substances and/or allergens (e.g. dust, pet dander, insect material, etc.). These substances may be either visible or invisible, may adhere to walls and other accessible and inaccessible surfaces, may be embedded in carpets or other fabrics, may become airborne, and may be mistaken for other household substances and conditions. Exposure carries the potential of possible health consequences. Agent strongly recommends that Buyer contact the Texas Department of Health for further information on this topic. Buyer is advised to consider engaging the services of an environmental or industrial hygienist (or similar, qualified professional) to inspect and test for the presence of harmful mold, fungi, and botanical allergens and substances as part of Buyer's physical condition inspection of the Property, and Buyer is further advised to obtain from such qualified professionals information regarding the level of health-related risk involved and the advisability and feasibility of eradication and abatement. Buyer is expressly cautioned that Agent has no expertise in this area and is, therefore, incapable of conducting any level of inspection of the Property for the possible presence of mold and botanical allergens. Buyer acknowledges that Agent has not made any investigation, determination, warranty or representation with respect to the possible presence of mold or other botanical allergens, and Buyer agrees that the investigation and analysis of the foregoing matters is Buyer's sole responsibility and that Buyer shall not hold Agent responsible therefore.

**6) MATERIAL FACTS:**

To the best of Seller's knowledge and belief: (Check (A) or (B) only)

- (A)** Seller is not aware of any material defects to the Property except as stated in the attached Property Condition Statement (**Addendum F**).
- (B)** Seller is not aware of any of the following, except as described otherwise in this Agreement:
  - (1)** any subsurface: structures, pits, waste, springs, or improvements;
  - (2)** any pending or threatened litigation, condemnation, or assessment affecting the Property;
  - (3)** any environmental hazards or conditions that affect the Property;
  - (4)** whether the Property is or has been used for the storage or disposal of hazardous materials or toxic waste, a dump site or landfill, or any underground tanks or containers;

- (5) whether radon, asbestos insulation or fireproofing, urea-formaldehyde foam insulation, lead-based paint, toxic mold (to the extent that it adversely affects the health of ordinary occupants), or other pollutants or contaminants of any nature now exist or ever existed on the Property;
- (6) whether wetlands, as defined by federal or state law or regulation, are on the Property;
- (7) whether threatened or endangered species or their habitat are on the Property; and
- (8) any material physical defects in the improvements on the Property.

*(describe any exceptions to (1)-(8) in an addendum.)*

**7) INSPECTION CONTINGENCIES:**

**7.1) FEASIBILITY:** Within \_\_\_\_\_ days after the Effective Date, Seller will deliver to Buyer the following items to the extent that the items are in Seller's possession or readily available to Seller. Any item not delivered is deemed not to be in Seller's possession or readily available to Seller. The items Seller will deliver are:

- (A) copies of all current leases pertaining to the Property, including any modifications, supplements, or amendments to the leases (leases, modifications, supplements and/or amendments for multifamily properties will be made available to Buyer during regular business hours at the Property);
- (B) copies of all notes and deeds of trust against the Property that Buyer will assume or that Seller will not pay in full on or before closing;
- (C) copies of all previous environmental assessments, studies, or analyses made on or relating to the Property;
- (D) property tax statements and any appraisal notices for the Property for the previous TWO (2) calendar years;
- (E) plats of the Property;
- (F) copies of current utility bills and/or capacity letters from the Property's water and sewer service provider;
- (G) existing management agreements and service agreements, if any;
- (H) Profit and Loss Statements, Federal Income Tax returns for the past THREE (3) years and Year to Date;
- (I) copy of current insurance policy;
- (J) State Occupancy Tax receipts for the past THREE (3) years and Year to Date; and
- (K) any additional information may be requested by Buyer's lender.

**7.2) INSPECTIONS, STUDIES, OR ASSESSMENTS:**

- (A) Within \_\_\_\_\_ days after the Effective Date, Buyer, at Buyer's expense, may complete or cause to be completed inspections, studies, or assessments of the Property, including all improvements and fixtures. Inspections, studies, or assessments may include, but are not limited to:
  - (1) physical property inspections (for example, structural pest control, mechanical, structural, electrical, and plumbing inspections);
  - (2) economic feasibility studies;
  - (3) environmental assessments (for example, soil tests, air sampling, and paint sampling);

- (4) engineering studies; and
- (5) compliance inspections (for example, compliance determination with zoning ordinances, restrictions, building codes, and statutes).
- (6) profit and loss statements for the last THREE (3) years.

(B) Seller, at Seller's expense, will turn on all utilities necessary for Buyer to make inspections, studies, or assessments.

(C) Buyer must:

- (1) employ only trained and qualified inspectors and assessors;
- (2) notify Seller, in advance, of when the inspectors or assessors will be on the Property;
- (3) abide by any reasonable entry rules or requirements that Seller may require;
- (4) not interfere with existing operations or occupants of the Property; and
- (5) restore the Property to its original condition if altered due to inspections, studies, or assessments that Buyer completes or causes to be completed.

(D) Except for those matters that arise from the negligence of Seller or Seller's agents, Buyer is responsible for any claim, liability, encumbrance, cause of action, and expense resulting from Buyer's inspections, studies, or assessments, including any property damage or personal injury. Buyer will indemnify, hold harmless, and defend Seller and Seller's agents against any claim involving a matter for which Buyer is responsible under this paragraph. This paragraph survives termination of this Agreement.

**7.3) FEASIBILITY PERIOD & RIGHT TO TERMINATE:** Buyer may terminate this Agreement for any reason within \_\_\_\_\_ days after the Effective Date by providing Seller with written notice of termination. If Buyer does not terminate within this time period, Buyer's objections for inspections shall be deemed to be waived. Notwithstanding anything herein to the contrary, \_\_\_\_\_ Dollars (\$\_\_\_\_\_) of the Deposit will be non-refundable and will be distributed to Seller upon any termination of this Agreement as full payment and independent consideration for Seller's performance under this Agreement. If this Agreement is properly terminated by Buyer, the Deposit less the non-refundable portion will be promptly returned to Buyer and the parties will have no further rights or obligations under this agreement except for any that expressly survive the termination of this Agreement.

**7.4) CURRENT OPERATIONS:** After Buyer's right to terminate under paragraph 7.3 expires, Seller may not enter into, amend, or terminate any other agreement that affects the operations of the Property without Buyer's prior written approval. The Seller of a multifamily Property may continue to lease available units without the Buyer's written approval. Seller will continue to operate the Property in its normal course of business, including routine maintenance, payment of insurance premiums, and other day-to-day obligations.

**7.5) NONCONFORMANCE:** Buyer has or will independently investigate and verify to Buyer's satisfaction the extent of any limitations of uses of the Property. Buyer acknowledges that the current use of the Property or the improvements located on the Property (or both) may not conform to applicable Federal, State or municipal laws, ordinances, codes or regulations. Zoning, permitted uses, height limitations, setback requirements, minimum parking requirements, limitations on coverage of improvements to total area of land, Americans with Disabilities Act requirements, wetlands restrictions and other matters may have a significant economic impact upon the intended use of the Property by Buyer. However, if Seller is aware of pending zoning changes and/or current nonconformance with any Federal, State or local laws, ordinances, codes or regulations, Seller shall disclose same to Buyer.

**7.6) OTHER INSPECTION: N/A**

- 8) **SELLER EXCHANGE:** Buyer agrees to cooperate should Seller elect to sell the Property as part of a like-kind exchange under IRC Section 1031. Seller's contemplated exchange shall not impose upon Buyer any additional liability or financial obligation, and Seller agrees to hold Buyer harmless from any liability that might arise from such exchange. This Agreement is not subject to or contingent upon Seller's ability to acquire a suitable exchange property or effectuate an exchange. In the event any exchange contemplated by Seller should fail to occur, for whatever reason, the sale of the Property shall nonetheless be consummated as provided herein.
- 9) **BUYER EXCHANGE:** Seller agrees to cooperate should Buyer elect to purchase the Property as part of a like-kind exchange under IRC Section 1031. Buyer's contemplated exchange shall not impose upon Seller any additional liability or financial obligation, and Buyer agrees to hold Seller harmless from any liability that might arise from such exchange. This Agreement is not subject to or contingent upon Buyer's ability to dispose of its exchange property or effectuate an exchange. In the event any exchange contemplated by Buyer should fail to occur, for whatever reason, the sale of the Property shall nonetheless be consummated as provided herein.
- 10) **"AS IS" CONDITION OF PROPERTY:** AS A MATERIAL PART OF THE CONSIDERATION FOR THIS AGREEMENT, SELLER AND BUYER AGREE THAT EXCEPT FOR THE EXPRESS REPRESENTATIONS IN THIS AGREEMENT, BUYER IS TAKING THE PROPERTY "AS IS" WITH ANY AND ALL LATENT AND PATENT DEFECTS AND THAT THERE IS NO WARRANTY BY SELLER THAT THE PROPERTY IS FIT FOR A PARTICULAR PURPOSE. BUYER ACKNOWLEDGES THAT IT IS NOT RELYING UPON ANY REPRESENTATION, STATEMENT, ASSERTION OR NONASSERTION BY SELLER OR SELLER'S AGENTS WITH RESPECT TO THE PROPERTY CONDITION, BUT IS RELYING SOLELY UPON ITS OWN EXAMINATION OF THE PROPERTY. BUYER TAKES THE PROPERTY UNDER THE EXPRESS UNDERSTANDING THERE ARE NO EXPRESS OR IMPLIED WARRANTIES (EXCEPT FOR LIMITED WARRANTIES OF TITLE SET FORTH IN THE CLOSING DOCUMENTS). THIS PROVISION WILL SURVIVE THE CLOSING.

Seller's Initials \_\_\_\_\_ Buyer's Initials \_\_\_\_\_

- 11) **RISK OF LOSS:** Risk of loss to the Property shall be borne by Seller until title has been conveyed to Buyer or Buyer's designee. In the event that the improvements on the Property are destroyed or materially damaged between the Effective Date of this Agreement and the Closing Date, Buyer shall have the option of demanding and receiving back the Deposit, with the parties being released from all obligations of this Agreement, or, alternatively, taking such improvements as Seller can deliver. Seller shall pay all deductible amounts that are due under the insurance policy and assign all insurance proceeds to Buyer and credit the amount of the deductible due under the insurance policy and will give Buyer a credit against the Purchase Price at closing. Upon Buyer's removal of all inspection contingencies set forth in this Agreement relating to the condition of the Property, Seller shall maintain the Property through the Closing Date in substantially the same condition and repair as approved by Buyer, reasonable wear and tear excepted.
- 12) **CONDEMNATION:** If before closing, condemnation proceedings are commenced against any part of the Property, Buyer may:
- (A) terminate this Agreement by providing written notice to Seller within FIFTEEN (15) days after Buyer is advised of the condemnation proceedings and the Deposit, less any independent consideration under Paragraph 7.3, will be refunded to Buyer; or
  - (B) appear and defend the condemnation proceedings and any award will, at Buyer's election, belong to:
    - (1) Seller and the Purchase Price will be reduced by the same amount; or
    - (2) Buyer and the Purchase Price will not be reduced.

- 13) **DEFAULT:**

- (A) If Buyer fails to comply with this Agreement, Buyer is in default and Seller may:
  - (1) terminate this Agreement and receive the Deposit as liquidated damages, thereby releasing the parties from this Agreement; or
  - (2) enforce specific performance, or seek other relief as may be provided by law, or both.
- (B) If, without fault, Seller is unable within the time allowed to deliver the estoppel certificates or the commitment, Buyer may:
  - (1) terminate this Agreement and receive the Deposit, less any independent consideration under Paragraph 7.3, as the sole remedy; or
  - (2) extend the time for performance up to TEN (10) days and the closing will be extended as necessary.
- (C) Except as provided in Paragraph 13B, if Seller fails to comply with this Agreement, Seller is in default and Buyer may:
  - (1) terminate this Agreement and receive the Deposit, less any independent consideration under Paragraph 7.3, as liquidated damages, thereby releasing the parties from this Agreement; or
  - (2) enforce specific performance, or seek such other relief as may be provided by law, or both.

**14) ESCROW:**

- (A) At closing, the Deposit will be applied first to any cash down payment, then to Buyer's closing costs, and any excess will be refunded to Buyer.
- (B) If both parties make written demand for the Deposit, escrow agent may require payment of unpaid expenses incurred on behalf of the parties and a written release of liability of escrow agent from all parties.
- (C) If one party makes written demand for the Deposit; escrow agent will give notice of the demand by providing to the other party a copy of the demand. If escrow agent does not receive written objection to the demand from the other party within THIRTY (30) days after the date escrow agent sent the demand to the other party, escrow agent may disburse the Deposit to the party making demand, reduced by the amount of unpaid expenses incurred on behalf of the party receiving the Deposit and escrow agent may pay the same to the creditors.
- (D) Escrow agent will deduct any independent consideration under Paragraph 7.3 before disbursing any Deposit to Buyer and will pay the independent consideration to Seller.
- (E) If escrow agent complies with this Paragraph 14, each party hereby releases escrow agent from all claims related to the disbursement of the Deposit.
- (F) Notices under this Paragraph 14 must be sent by certified mail, return receipt requested, or by fax. Notices to escrow agent are effective upon receipt by escrow agent.

**15) ROLLBACK TAXES:** If Seller changes the use of the Property before closing or if a denial of the special evaluation of the Property claimed by Seller results in the assessment of additional taxes, penalties, or interest for periods before closing, the assessments will be the obligation of the Seller. This paragraph 15 survives the Closing Date.

**16) AUTHORIZATION:** Buyer and Seller authorize Agent to disseminate sales information regarding this transaction, including the Purchase Price of the Property.

**17) OTHER BROKERS:** Buyer and Seller agree that, in the event any broker, other than Agent or a broker affiliated with Agent, is involved in the disposition of the Property, Agent shall have no liability to Buyer, Seller or other person or entity, for the acts or omissions of such other broker, who shall not be deemed to be a subagent of Agent.

**18) AGENT'S DISCLAIMER:** Buyer and Seller acknowledge that Agent has not made any investigation, determination, warranty or representation with respect to, without limitation, any of the following: (a) the financial condition or business prospects of the Property, or of any occupant of the Property, or any occupant's intent to continue or renew its occupancy in the Property; (b) the legality of the present or any possible future use of the Property under any federal, state or local law or ordinance; (c) pending or possible future action by any third party or governmental entity or agency which may affect the Property; (d) the condition of the Property, including but not limited to, its physical condition, soil conditions, the integrity and quality of any improvements, and the presence or absence of fungi or wood destroying organisms or pests; (e) the accuracy or completeness of financial information concerning the Property including, without limitation, any income and expense information, projections of square footage, leases, licenses, options and other agreements affecting the Property; (f) the possibility that leases, options, or other agreements, matters or documents exist which affect or encumber the Property and which have not been provided or disclosed by Seller; (g) the presence or location of any hazardous materials on or about the Property, including but not limited to, asbestos, PCB's, lead paint, underground storage tanks or other toxic, hazardous or contaminated substances; (h) the accuracy of any information contained in any estoppel certificate or similar letter from any occupant of the Property; (i) whether the Property is in any special assessment district or is a tidally influenced property; or, (j) the number of legal parcels or units within the Property. When involved, Agent has acted solely as a conduit for the exchange of such information between Buyer and Seller and makes no representation or warranty whatsoever concerning the accuracy or reliability of such information. The Agents do not warrant that Seller will disclose any or all property defects or other matters pertaining to the Property or its condition.

**BUYER AGREES THAT INVESTIGATION AND ANALYSIS OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO THE FOREGOING MATTERS, ARE BUYER'S SOLE, INDEPENDENT RESPONSIBILITY AND THAT BUYER SHALL NOT HOLD AGENT RESPONSIBLE THEREFORE. BUYER AGREES AND ACKNOWLEDGES THAT BUYER HAS NOT RELIED UPON ANY REPRESENTATION OF AGENT IN CONNECTION WITH BUYER'S PURCHASE OF THE PROPERTY.**

**19) AGENT'S LIMITED AUTHORITY AND RESPONSIBILITY:** Agent shall have no authority to bind either Buyer or Seller to any modification or amendment of this Agreement. Agent shall not be responsible for performing any due diligence or other investigation of the Property on behalf of either Buyer or Seller, or for providing either party with professional advice with respect to, without limitation, any legal, tax, engineering, construction or hazardous materials issues.

**20) LIMITATION OF AGENT'S LIABILITY: EXCEPT FOR AGENT'S SOLE GROSS NEGLIGENCE OR SOLE WILLFUL MISCONDUCT, SELLER AND BUYER AGREE TO HOLD THE AGENTS HARMLESS FROM ANY DAMAGES, CLAIMS, COSTS AND EXPENSES RESULTING FROM OR RELATED TO ANY PARTY FURNISHING TO THE AGENTS OR BUYER ANY FALSE, INCORRECT OR INACCURATE INFORMATION WITH RESPECT TO THE PROPERTY OR SELLER'S CONCEALING ANY MATERIAL INFORMATION WITH RESPECT TO THE CONDITION OF THE PROPERTY. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE AGENTS' LIABILITY FOR ERRORS OR OMISSIONS, NEGLIGENCE, OR OTHERWISE, IS LIMITED TO THE RETURN OF THE FEE, IF ANY, PAID TO THE RESPONSIBLE AGENT PURSUANT TO THIS CONTRACT. IN ADDITION, SELLER AND BUYER AGREE TO DEFEND AND HOLD THE AGENTS PARTICIPATING IN THIS TRANSACTION HARMLESS FROM AND AGAINST ANY AND ALL LIABILITIES, CLAIMS, DEBTS, DAMAGES, COSTS, AND EXPENSES INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS FEES AND COURT COSTS, RELATED TO OR ARISING OUT OF OR IN ANY WAY CONNECTED TO REPRESENTATIONS ABOUT THE PROPERTY OR MATTERS THAT SHOULD BE ANALYZED BY EXPERTS.**

**21) ARBITRATION OF DISPUTES:** N/A

**22) SUCCESSORS & ASSIGNS:** This Agreement and any addenda hereto shall be binding upon and inure to the benefit of the heirs, successors, agents, representatives and assigns of the parties hereto.

- 23) **ATTORNEYS' FEES:** In any dispute arising out of this Agreement or the transaction contemplated herein, the prevailing party shall be entitled to recover its reasonable attorneys' fees, experts' fees and costs, including costs of arbitration or other legal proceeding, in addition to any other relief to which that party may be entitled.
- 24) **TIME:** Time is of the essence of this Agreement. The parties require strict compliance with the times for performance. If the last date to perform under a provision of this Agreement falls on a Saturday, Sunday or legal holiday, the time for performance is extended until 5:00 p.m. the next day which is not a Saturday, Sunday or legal holiday.
- 25) **FOREIGN INVESTOR DISCLOSURE:** Seller and Buyer agree to execute and deliver any instrument, affidavit or statement, and to perform any act reasonably necessary to carry out the provisions of the Foreign Investment in Real Property Tax Act (FIRPTA) and regulations promulgated there under. Buyer and Seller both agree to provide a signed FIRPTA form to Agent on or before the closing date.
- 26) **ACCEPTANCE AND EFFECTIVE DATE:** The "Effective Date" of this Agreement for the purpose of performance of all obligations is the date the escrow agent receives this Agreement after all parties execute this Agreement.

This Agreement may be executed in counterparts, and transmitted by facsimile by and to the parties, and each such counterpart shall be deemed an original, and all of them together shall constitute a single instrument.

- 27) **GOVERNING LAW:** This Agreement shall be construed under and governed by the laws of the State of Texas and, unless otherwise provided herein, all obligations of the parties hereunder are to be performed in the county where the Property is located.
- 28) **NON-DISCRIMINATION:** Buyer and Seller acknowledge that it is illegal for either Seller, Buyer or Agent to refuse to lease or sell to any person on the basis of, without limitation, race, color, religion, national origin, sex, age, marital status or physical disability.
- 29) **INTEGRATION AND SURVIVAL:** This Agreement contains the entire understanding and agreement between Buyer and Seller concerning the subject matter herein, and supersedes any and all prior agreements, understandings, promises and representations, whether written or oral, between the Buyer and Seller, concerning the subject matter hereof. There are no other understandings, oral or written, which in any way alter or enlarge the terms of this Agreement, and there are no warranties or representations with respect to the Property or this Agreement of any nature whatsoever either express or implied, except as set forth herein. Should any provision of this Agreement or portion thereof be deemed illegal, invalid or otherwise unenforceable, then to the maximum extent permitted by law, the remainder of the Agreement shall remain valid and binding as between the parties.
- 30) **NOTICES:** All notices required or permitted hereunder shall be given to the parties in writing (with a copy to Agent) at their respective addresses as set forth below, unless otherwise agreed by the parties. Should the date upon which any act required to be performed by this Agreement fall on a Saturday, Sunday or holiday, the time for performance shall be extended to 5:00 p.m. the next business day. All notices between Buyer and Seller must be in writing and are effective when hand-delivered, mailed by certified mail return receipt requested, sent via a nationally recognized overnight carrier, or sent by facsimile transmission to the parties' addresses set out as follows:

Seller:	_____	Buyer:	_____
c/o:	_____	c/o:	_____
Address:	_____	Address:	_____
	_____		_____
Telephone No.:	_____	Telephone No.:	_____
Fax No.:	_____	Fax No.:	_____

Email: \_\_\_\_\_

Email: \_\_\_\_\_

- 31) **ATTACHED ADDENDA:**
  - Information About Brokerage Services
  - Addendum A - Legal Description
  - Addendum B - Third Party Financing

32) **AGENCY:** The Term "Agent" refers to Marcus & Millichap and/or Other Broker, if applicable as set forth below. Each Agent only has duties to the party they represent as identified below. If either Agent is acting as an Intermediary, then that Agent will only have the duties of an Intermediary and both Buyer and Seller consent by their signature below that Agent has provided all proper notices and disclosures to this sale:

Marcus & Millichap Real Estate Investment Brokerage  
Company of Texas:

Agent:	Marcus & Millichap
c/o:	c/o Michael Yu & Rahul Bijlani
Address:	777 Post Oak Blvd, Suite 900
	Houston, TX 77056
Telephone No.:	(832) 333-3080
Fax No.:	(713) 626-1304
Email:	<a href="mailto:MYu@MarcusMillichap.com">MYu@MarcusMillichap.com</a> ;
	<a href="mailto:RBijlani@MarcusMillichap.com">RBijlani@MarcusMillichap.com</a>

Buyer and Seller both acknowledge that they have been presented with the Information About Brokerage Services form prior to execution of this contract and have been advised of the below agency status.

**Marcus & Millichap Real Estate Investment Brokerage  
Company of Texas:**

Michael Yu and Rahul Bijlani represent the Seller only.

Seller will pay Agent the Commission specified by separate written Representation Agreement. Payment of the Commission will not alter the fiduciary relationships between the parties and the Agents.

- 33) **CONSENT REQUIRED:** Buyer, Seller, and Title Company agree that the Agents are third party beneficiaries of this Agreement with respect to the Commission established in the separate Representation Agreement, and that no changes may be made by Buyer, Seller, or Title Company as to the time of payment, amount of payment or the conditions for payment of the Commission without the written consent of the Agents.
- 34) **RIGHT TO CLAIM A LIEN:** Pursuant to Chapter 62 of the Texas Property Code, the Agents hereby disclose their right to claim a lien based on the separate Representation Agreement and any other commission agreements referenced in this Agreement or applicable to the transaction contemplated by this Agreement. This disclosure is hereby incorporated in any such commission agreements.

35) **AGREEMENT AS OFFER.** The execution of this Agreement by the first party constitutes an offer to purchase or sell the Property. Unless, within \_\_\_\_\_ days after the date of execution of this Agreement by the first party, this Agreement is accepted by the other party by signing the offer and delivering a fully executed copy to the first party or Title Company, the offer of this Agreement will be deemed automatically withdrawn, and the Deposit, if any, will be promptly returned to Buyer.

36) **OTHER TERMS AND CONDITIONS:**

**36.1) Franchise Approval Contingency:** Buyer will, at its sole cost and expense, within \_\_\_\_\_ days after Effective Date, make application for and obtain approval within \_\_\_\_\_ days after Effective Date, to continue to operate the Property as a \_\_\_\_\_ pursuant to an agreement with the Franchisor thereof ("**Franchise Approval**"). Buyer shall use its good faith efforts to obtain Franchise Approval and will at all times keep Seller apprised of its efforts to obtain Franchise Approval and respond promptly to all inquiries of Seller in this regard, supplying such information as Seller may reasonably request. Buyer hereby agrees to diligently and timely execute all documents and pay all application and any and all transfer or other fees and expenses required in connection with obtaining Franchise Approval and the continued operation of the Property as contemplated thereby pursuant to a franchise agreement with standards and provisions as are customary for new franchises of a \_\_\_\_\_, which may be more or less favorable to Buyer than the Franchise Agreement is with respect to the Seller. Seller agrees to reasonably cooperate with Buyer in connection with Buyer's obtaining Franchise Approval. If Buyer does not inform Seller in writing that he fails to obtain franchise approval or disapproves the terms that will be imposed by the Franchisor within the \_\_\_\_\_ days as defined in this Paragraph, this Contingency is deemed to be void.

**36.2) Extension** Seller shall grant Buyer a one-time \_\_\_\_\_ day extension of Closing Date, upon written request prior to the original Closing Date and additional deposit of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), which shall be payable to the Seller and shall become non-refundable immediately, and shall apply to the Purchase Price at Closing.

**BUYER AND SELLER HEREBY ACKNOWLEDGE THAT AGENT HAS ADVISED THE PARTIES TO CONSULT WITH THEIR RESPECTIVE LEGAL COUNSEL CONCERNING THE LEGAL EFFECT AND VALIDITY OF THIS AGREEMENT PRIOR TO ITS EXECUTION.**

**The rest of this page intentionally left blank**

Executed below and to be effective as of the Effective Date.

**BUYER:**

**DATE:** \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

By: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SELLER:**

**DATE:** \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

By: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**TITLE COMPANY RECEIPT:** The title company acknowledges receipt of this contract on \_\_\_\_\_ (the Effective Date) and, upon receipt of the Deposit, accepts the Deposit subject to the terms and conditions in this Agreement.

**TITLE COMPANY:**

**DATE:** \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

By: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

NO REPRESENTATION IS MADE BY AGENT AS TO THE LEGAL, FINANCIAL, TAX OR OTHER EFFECTS, OR THE VALIDITY OF, ANY PROVISION OF THIS AGREEMENT. AS A REAL ESTATE BROKER, AGENT IS QUALIFIED TO GIVE ADVICE ON REAL ESTATE MATTERS ONLY. IF YOU DESIRE LEGAL, FINANCIAL, TAX OR OTHER PROFESSIONAL ADVICE, CONSULT YOUR ATTORNEY, ACCOUNTANT, TAX OR OTHER PROFESSIONAL ADVISOR.

**Addendum A  
Legal Description**

**LEGAL DESCRIPTION:**

**The rest of this page intentionally left blank.**

NO REPRESENTATION IS MADE BY AGENT AS TO THE LEGAL, FINANCIAL, TAX OR OTHER EFFECTS, OR THE VALIDITY OF, ANY PROVISION OF THIS AGREEMENT. AS A REAL ESTATE BROKER, AGENT IS QUALIFIED TO GIVE ADVICE ON REAL ESTATE MATTERS ONLY. IF YOU DESIRE LEGAL, FINANCIAL, TAX OR OTHER PROFESSIONAL ADVICE, CONSULT YOUR ATTORNEY, ACCOUNTANT, TAX OR OTHER PROFESSIONAL ADVISOR.

**Addendum B  
Third Party Financing**

**NEW FIRST LOAN:** Buyer shall use Buyer's best efforts, at Buyer's expense, to obtain a new first loan ("First Loan") in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_). to bear interest at origination of not more than \_\_\_\_\_ Percent (\_\_\_\_\_% ) per year (select one with an "X") \_\_\_\_\_ fixed rate \_\_\_\_\_ other \_\_\_\_\_, payable monthly in an initial amount not to exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_), and to be due in not less than \_\_\_\_\_ years, with any loan fee not to exceed \_\_\_\_\_ Percent (\_\_\_\_\_%). First Loan shall be secured by a new first deed of trust on the Property. Buyer shall submit a written application to obtain First Loan to a bona fide lender within \_\_\_\_\_ days of the Effective Date and comply with lender's application requirements. Buyer shall provide proof of funds totaling \_\_\_\_\_ Dollars (\$\_\_\_\_\_ ) to Seller and Agent within \_\_\_\_\_ days of Effective Date. Buyer shall authorize said lender to disclose to Agent and Seller the status of the loan application review and approval upon request. If Buyer fails to apply as required hereinabove or if Buyer fails to notify Seller in writing that Buyer has obtained the First Loan within \_\_\_\_\_ days of the Effective Date, this contingency is deemed to be waived, and Seller has the option to terminate this Agreement and return the Deposit to the Buyer while retaining the independent consideration. Seller shall pay any pre-payment penalties, if any, on any existing financing of Seller not taken subject to or assumed by Buyer.

**The rest of this page intentionally left blank.**

**Approved by the Texas Real Estate Commission for Voluntary Use**

*Texas law requires all real estate licensees to give the following information about brokerage services to prospective buyers, tenants, sellers and landlords.*

## **Information About Brokerage Services**

**B**efore working with a real estate broker, you should know that the duties of a broker depend on whom the broker represents. If you are a prospective seller or landlord (owner) or a prospective buyer or tenant (buyer), you should know that the broker who lists the property for sale or lease is the owner's agent. A broker who acts as a subagent represents the owner in cooperation with the listing broker. A broker who acts as a buyer's agent represents the buyer. A broker may act as an intermediary between the parties if the parties consent in writing. A broker can assist you in locating a property, preparing a contract or lease, or obtaining financing without representing you. A broker is obligated by law to treat you honestly.

**IF THE BROKER REPRESENTS THE OWNER:**

The broker becomes the owner's agent by entering into an agreement with the owner, usually through a written - listing agreement, or by agreeing to act as a subagent by accepting an offer of subagency from the listing broker. A subagent may work in a different real estate office. A listing broker or subagent can assist the buyer but does not represent the buyer and must place the interests of the owner first. The buyer should not tell the owner's agent anything the buyer would not want the owner to know because an owner's agent must disclose to the owner any material information known to the agent.

**IF THE BROKER REPRESENTS THE BUYER:**

The broker becomes the buyer's agent by entering into an agreement to represent the buyer, usually through a written buyer representation agreement. A buyer's agent can assist the owner but does not represent the owner and must place the interests of the buyer first. The owner should not tell a buyer's agent anything the owner would not want the buyer to know because a buyer's agent must disclose to the buyer any material information known to the agent.

**IF THE BROKER ACTS AS AN INTERMEDIARY:**

A broker may act as an intermediary between the parties if the broker complies with The Texas Real Estate License

Act. The broker must obtain the written consent of each party to the transaction to act as an intermediary. The written consent must state who will pay the broker and, in conspicuous bold or underlined print, set forth the broker's obligations as an intermediary. The broker is required to treat each party honestly and fairly and to comply with The Texas Real Estate License Act. A broker who acts as an intermediary in a transaction:

- (1) shall treat all parties honestly;
- (2) may not disclose that the owner will accept a price less than the asking price unless authorized in writing to do so by the owner;
- (3) may not disclose that the buyer will pay a price greater than the price submitted in a written offer unless authorized in writing to do so by the buyer; and
- (4) may not disclose any confidential information or any information that a party specifically instructs the broker in writing not to disclose unless authorized in writing to disclose the information or required to do so by The Texas Real Estate License Act or a court order or if the information materially relates to the condition of the property.

With the parties' consent, a broker acting as an intermediary between the parties may appoint a person who is licensed under The Texas Real Estate License Act and associated with the broker to communicate with and carry out instructions of one party and another person who is licensed under that Act and associated with the broker to communicate with and carry out instructions of the other party.

**If you choose to have a broker represent you,** you should enter into a written agreement with the broker that clearly establishes the broker's obligations and your obligations. The agreement should state how and by whom the broker will be paid. You have the right to choose the type of representation, if any, you wish to receive. Your payment of a fee to a broker does not necessarily establish that the broker represents you. If you have any questions regarding the duties and responsibilities of the broker, you should resolve those questions before proceeding.

Real estate licensee asks that you acknowledge receipt of this information about brokerage services for the licensee's records.

Buyer, Seller, Landlord or Tenant

Date

Texas Real Estate Brokers and Salespersons are licensed and regulated by the Texas Real Estate Commission (TREC). If you have a question or complaint regarding a real estate licensee, you should contact TREC at P.O. Box 12188, Austin, Texas 78711-2188 or 512-465-3960.

