

# EARNEST MONEY CONTRACT

## [RESIDENTIAL]

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\* \* \* \* \*

Date: \_\_\_\_\_, 20\_\_\_\_

1. Parties. The parties to this contract are:

“Seller”: \_\_\_\_\_

“Buyer”: \_\_\_\_\_

“Assiter”: Assiter & Associates, LLC dba Assiter Auctioneers

Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller the Property defined below. Buyer acknowledges and agrees that Buyer is purchasing the Property **AS IS, WHERE IS, IN ITS PRESENT PHYSICAL CONDITION**, subject to ad valorem tax liens, if any, against the Property.

2. Property. The land, improvements and accessories are collectively referred to as the “Property”.

A. Address: \_\_\_\_\_  
\_\_\_\_\_

B. Land: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

D. Accessories. The following described related accessories, if any: window air conditioning units, stove, fireplace screens, curtains and rods, blinds, window shades, draperies and rods, door keys, mailbox keys, above ground pool,

swimming pool equipment and maintenance accessories, artificial fireplace logs, security systems that are not fixtures, and controls for: (i) garage doors, (ii) entry gates, and (iii) other improvements and accessories. "Controls" includes Seller's transferable rights to the (i) software and applications used to access and control improvements or accessories, and (ii) hardware used solely to control improvements or accessories.

- E. Exclusions. The following improvements and accessories will be retained by Seller and must be removed prior to delivery of closing: \_\_\_\_\_.
3. Sales/Purchase Price. The total sales/purchase price is \$\_\_\_\_\_ payable to Seller in cash or immediately available funds at closing.
4. Broker or Sales Agent Disclosure. Texas law requires a real estate broker or sales agent who is a party to a transaction or acting on behalf of a spouse, parent, child, business entity in which the broker or sales agent owns more than 10%, or a trust for which the broker or sales agent acts as a trustee or of which the broker or sales agent or the broker or sales agent's spouse, parent or child is a beneficiary, to notify the other party in writing before entering into a contract of sale. Disclose if applicable: \_\_\_\_\_.
5. Earnest Money. Upon the execution of this Contract by all parties, as a condition precedent to the enforcement of this Contract, Buyer shall deposit 10 percent of the Sales/Purchase Price, totaling \$\_\_\_\_\_ (**the "Earnest Money"**), in immediately available funds with the Title Company. The Title Company is not required to deposit the Earnest Money in an interest bearing account. **The Earnest Money is non-refundable to Buyer**. Within 24 hours of the Closing Date or termination of this Contract, whichever is earlier, the Earnest Money will be distributed by the Title Company to Assiter as compensation for auctioneering services.
6. Title Company. The name and contact information for the Title Company are:
- Name: \_\_\_\_\_
- Address: \_\_\_\_\_
- \_\_\_\_\_
- Telephone No.: \_\_\_\_\_
- Fax No.: \_\_\_\_\_
- Closing Agent: \_\_\_\_\_
- Closing Agent's email address: \_\_\_\_\_
7. Closing Date. Closing will be on or before \_\_\_\_\_, 20\_\_\_\_, at the office of the Title Company.

8. Title Commitment. If a title insurance commitment covering the Property ("**Commitment**") is available on the date of this Contract, Buyer acknowledges receipt of the Commitment. Buyer will accept title to the Property as shown in the Commitment. All exceptions to title shown on Schedule B to the Commitment are "**Permitted Exceptions**". On or before closing, all exceptions to title in Schedule C to the Commitment applicable to Seller will be satisfied by Seller so that they are not exceptions to title in the Title Policy (defined below).

If a Commitment is not available on the date of this Contract, Seller will cause the Title Company to issue a Commitment as soon as possible and send it to Buyer at Buyer's address set forth below.

9. Objections. If the Commitment is not available on the date hereof, within five days after Buyer receives the Commitment, Buyer may object in writing to defects, exceptions, or encumbrances to title shown in the Commitment other than the following items (**the "Permitted Exceptions"**):

- (a) The promulgated exclusions (*including existing building and zoning ordinances*).
- (b) Restrictive covenants, rules, regulations, easements, and other exceptions common to the subdivision in which the Property is located.
- (c) The standard printed exception for standby fees, taxes and assessments.
- (d) Utility easements created by the dedication deed or plat of the subdivision in which the Property is located.
- (e) The standard printed exception as to marital rights.
- (f) The standard printed exception as to waters, tidelands, beaches, streams, and related matters.
- (g) The standard printed exception as to discrepancies, conflicts, shortages in area or boundary lines, encroachments or protrusions, or overlapping improvements.
- (h) All oil, gas, and other minerals not owned by Seller.

Provided Seller is not obligated to incur any expense, Seller shall cure timely objections of Buyer within 15 days after Seller receives the objections and the Closing Date will be extended as necessary. If objections are not cured within such 15-day period, this Contract will terminate and the Earnest Money will be paid to Assiter in accordance with Paragraph 5.

10. Title Insurance. \_\_\_\_\_ will pay the cost of an owner policy of title insurance (**the "Title Policy"**) issued by the Title Company in the amount of the sales/purchase price dated at or after closing, insuring Buyer against loss under the provisions of the Title Policy subject to the Permitted Exceptions.
11. Deed. At closing, Seller will convey the Property to Buyer as-is by a special warranty deed subject to the Permitted Exceptions.

12. Seller's Closing Costs. Seller shall pay the following closing costs: (i) preparation of special warranty deed, (ii) title curative costs, (iii) tax certificates, (iv) one-half of the escrow fees, (v) Seller's attorney's fees, and (vi) other expenses provided herein.
13. Buyer's Closing Costs. Buyer shall pay the following closing costs: (i) one-half of the escrow fees, (ii) recording special warranty deed, (iii) Buyer's attorney's fees, and (iv) other expenses provided herein.
14. Prorations. Taxes for the current year, interest, maintenance fees, and assessments 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.
15. Casualty Loss. If any part of the Property is damaged or destroyed by fire or other casualty after the effective date of this Contract, Seller shall restore the Property to its previous condition as soon as reasonably possible, but in any event by the Closing Date. If Seller fails to do so due to factors beyond Seller's control, Buyer may (a) terminate this Contract and the Earnest Money will be delivered pursuant to Paragraph 5, (b) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (c) accept the Property in its damaged condition with an assignment of insurance proceeds, if permitted by Seller's insurance carrier, and receive credit from Seller at closing in the amount of the deductible under the insurance policy. Seller's obligations under this paragraph are independent of any other obligations of Seller under this Contract.
16. Escrow. The Title Company (i) is not a party to this Contract and does not assume or have any liability for performance or non-performance of any party to this Contract and (ii) has the right to require from all parties a written release of liability of the Title Company which authorizes the disbursement of the Earnest Money. If any party unreasonably fails to deliver promptly the document described in (ii) above, that party will be liable for attorney's fees.
17. Seller's Remedies. If Buyer fails to comply with this Contract, Buyer will be in default and Seller may either:
  - (a) terminate this Contract and receive the Earnest Money as liquidated damages, but the Earnest Money will be distributed pursuant to Paragraph 5 and there will be no further obligation to be borne, performed, or enforced by any party hereto; or,
  - (b) enforce specific performance hereof; or,
  - (c) seek other relief as may be provided by law.
18. Buyer's Remedies. If Seller fails to comply with this Contract, Seller will be in default and Buyer may either:
  - (a) terminate this Contract with the Earnest Money being paid to Buyer; or,
  - (b) enforce specific performance hereof; or,

(c) seek other relief as may be provided by law.

19. Notice to Buyer. According to the terms of the Real Estate License Act of Texas, Buyer is advised by Assiter that Buyer should have the abstract covering the Property examined by an attorney of Buyer's selection, or be furnished with or obtain an owner policy of title insurance.
20. 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 annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within an extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Property for further information.
21. Notice of Additional Tax Liability. Pursuant to §5.010 of the Texas Property Code, Seller gives Buyer the following notice:

**NOTICE REGARDING POSSIBLE LIABILITY FOR ADDITIONAL TAXES.**

**If for the current ad valorem tax year the taxable value of the land that is the subject of this Contract is determined by a special appraisal method that allows for appraisal of the land at less than its market value, the person to whom the land is transferred may not be allowed to qualify the land for that special appraisal in a subsequent tax year and the land may then be appraised at its full market value. In addition, the transfer of the land or a subsequent change in the use of the land may result in the imposition of an additional tax plus interest as a penalty for the transfer or the change in the use of the land. The taxable value of the land and the applicable method of appraisal for the current tax year is public information and may be obtained from the tax appraisal district established for the county in which the land is located.**

22. Notice of Membership in Property Owners Association. The Property [ ] is [ ] not subject to mandatory membership in a property owners association(s). If the Property is subject to mandatory membership in a property owners association(s), Seller notifies Buyer under §5.012, Texas Property Code, that, as a purchaser of property in the residential community, you are obligated to be a member of the property owners association(s). Restrictive covenants governing the use and occupancy of the Property and all dedicatory instruments governing the establishment, maintenance, or operation of this residential community have been or will be recorded in the Real Property Records of the county in which the Property is located. Copies of the restrictive covenants and dedicatory instruments may be obtained from the county clerk. **You are obligated to pay assessments to the property owners association. The amount of the assessments is subject to change. Your failure to pay the assessments could result in enforcement of the association's lien on and the foreclosure of the Property.**

Section 207.003, Property Code, entitles an owner to receive copies of any document that governs the establishment, maintenance, or operation of a subdivision, including,

but not limited to, restrictions, bylaws, rules and regulations, and a resale certificate from a property owners' association. A resale certificate contains information including, but not limited to, statements specifying the amount and frequency of regular assessments and the style and cause number of lawsuits to which the property owners' association is a party, other than lawsuits relating to unpaid ad valorem taxes of an individual member of the association. These documents must be made available to you by the property owners' association or the association's agent on your request.

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

23. Statutory Tax Districts. If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this Contract, and Buyer acknowledges receipt of the notice.
24. Tide Waters. If the Property abuts the tidally influenced waters of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included in the contract. An addendum containing the notice promulgated by TREC or required by the parties must be used.
25. Property Located in a Certificate Service Area of a Utility Service Provider. Notice required by §13.257, Water Code: The Property 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 the 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 the Property. You are advised to determine if the Property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to the Property. The undersigned Buyer hereby acknowledges receipt of the foregoing notice at or before the execution of this Contract for the purchase of the Property or at closing or purchase of the Property.
26. Public Improvement Districts. If the Property is in a public improvement district, Seller must give Buyer written notice as required by §5.014, Property Code. An addendum containing the required notice shall be attached to this contract.
27. 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.
28. Propane Gas System Service Area. If the Property is located in a propane gas system service area owned by a distribution system retailer, Seller must give Buyer written notice as required by §141.010, Texas Utilities Code. An addendum containing the notice approved by the TREC or required by the parties should be used.

29. 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."
30. 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.
31. Seller's Disclosure. Pursuant to §5.008, Texas Property Code, Buyer acknowledges receipt of the Seller's Disclosure Notice. The notice was given to Buyer because the law requires the notice be given to Buyer. Buyer acknowledges Buyer has not relied on any of the statements set forth in the notice. Buyer waives the right to have the Property inspected by a qualified inspector because Buyer is satisfied as to the condition of the Property.
32. Asbestos Disclosure Notice. If the improvements on the Property were constructed before 1981, there may be asbestos containing materials present in the Property. It is Buyer's responsibility to ensure compliance with 15 U.S.C. sections 2641 through 2656 and 29 C.R.R. sections 1910.101 *et seq.* and 1926.1101 *et seq.*
33. Gulf Intracoastal Waterway. If the Property is located seaward of the Gulf Intracoastal Waterway to its southernmost point and then seaward of the longitudinal line also known as 97 degrees, 12', 19" which runs southerly to the international boundary from the intersection of the centerline of the Gulf Intracoastal Waterway and the Brownsville Ship Channel, Section 61.025, Texas Natural Resources Code, requires a statement to be included in the contract for conveyance of the Property.
34. Examination of Property. **BUYER HAS EXAMINED THE PROPERTY TO BUYER'S COMPLETE SATISFACTION AND KNOWS ITS CONDITION. IN PURCHASING THE PROPERTY, BUYER RELIES ONLY ON BUYER'S EXAMINATION AND JUDGMENT, NOT ON THE REPRESENTATION OF SELLER OR ANY OTHER PERSON AS TO VALUE, FUTURE VALUE, CONDITION, SIZE, AGE, USE, ENVIRONMENTAL CONDITION, OR ANY OTHER MATTER. BUYER ACKNOWLEDGES THAT IN SELLING THE PROPERTY, SELLER MAKES NO WARRANTIES OTHER THAN TITLE. THE PROVISIONS OF THIS PARAGRAPH WILL SURVIVE THE CLOSING.**
35. Property Condition. **BUYER IS PURCHASING THE PROPERTY ON AN "AS IS" BASIS, WITH ALL FAULTS AND PROBLEMS OF ANY KIND AND NATURE, KNOWN OR UNKNOWN, PATENT OR LATENT, OF A PHYSICAL, ENVIRONMENTAL, OR LEGAL CONCERN, OR OTHERWISE. THE PURCHASE PRICE REFLECTS THE EXISTING CONDITION OF THE PROPERTY AND ANY DAMAGE OR DETRIMENT BUYER MAY SUFFER BY REASON OF THE CONDITION OF THE PROPERTY IS FULLY COMPENSATED FOR BY THE PURCHASE PRICE. THE PROVISIONS OF THIS PARAGRAPH WILL SURVIVE THE CLOSING.**

36. Seller's Disclosure of Lead-Based Paint and Lead-Based Paint Hazards is required by federal law for a residential dwelling constructed prior to 1978.
37. 1031 Deferred Exchange.
- (a) Buyer is aware that Seller may perform a 1031 Tax Deferred Exchange. Buyer agrees to cooperate in the exchange. Seller will hold Buyer harmless from all claims, liabilities, costs, or delays in time resulting from the exchange.
- (b) Seller is aware that Buyer may perform a 1031 Tax Deferred Exchange. Seller agrees to cooperate in the exchange. Buyer will hold Seller harmless from all claims, liabilities, costs, or delays in time resulting from the exchange.
38. Possession. Possession of the Property will be delivered to Buyer at closing and funding.
39. Notices. All notices from one party to the other must be in writing and are effective when mailed to, hand delivered at, or transmitted by fax or electronic transmission to the party to receive it at the addresses set forth on the signature pages to this Contract.
40. Time. Time is of the essence of this Contract.
41. Mutual Understanding. Seller and Buyer have carefully read and understand the effect of this Contract. Each of the parties has either (i) had the assistance of separate counsel in carefully reviewing, discussing, and considering all the terms of this Contract or (ii) waived the right to consult with an attorney. This Contract will be construed as if prepared by both Seller and Buyer.
42. Mediation. Seller and Buyer shall submit in good faith to mediation before filing a lawsuit.
43. Attorney's Fees. Any party to this Contract or the Title Company who prevails in any legal proceeding brought under or with relation to this Contract or transaction will be additionally entitled to recover court costs and reasonable attorney's fees.
44. Agreement of Parties. This Contract contains the entire agreement of the parties and cannot be changed except by their written agreement. Addenda which are a part of this Contract are *(check all applicable boxes)*:

- |                                                                                                                                                      |                                                                                                  |
|------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Addendum for Property Subject to Mandatory Membership in a Property Owners Association                                      | <input type="checkbox"/> Utility District Notice [Chapter 49, Texas Water Code]                  |
| <input type="checkbox"/> Addendum for Seller's Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards as Required by Federal Law | <input type="checkbox"/> Notice to Buyer of Property Located in Certain Annexed Water Districts  |
| <input type="checkbox"/> Seller's Disclosure Notice                                                                                                  | <input type="checkbox"/> Addendum for Property Located Seaward of the Gulf Intracoastal Waterway |
| <input type="checkbox"/> Addendum Containing Notice of Obligation to pay Improvement District Assessment                                             | <input type="checkbox"/> Notice of Water Level Fluctuations                                      |
|                                                                                                                                                      | <input type="checkbox"/> Notice to Buyer Regarding Coastal Area Property                         |
| <input type="checkbox"/> Addendum for Property in a Propane Gas System Service Area                                                                  | <input type="checkbox"/> Non-Realty Items Addendum                                               |
| <input type="checkbox"/> Addendum for Reservation of Oil, Gas and Other Minerals                                                                     | <input type="checkbox"/> Other (list): _____                                                     |
|                                                                                                                                                      | _____                                                                                            |
|                                                                                                                                                      | _____                                                                                            |

45. Non-Foreign Person Affidavit. At closing, Seller shall deliver to Buyer a duly executed affidavit stating (i) Seller's United States Taxpayer Identification Number for federal income tax purposes and (ii) that Seller is not a "foreign person" within the meaning of Section 1445, et seq., of the Internal Revenue Code.
46. Parties Bound. This Contract is binding upon and inures to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns.
47. Counterparts. This Contract may be executed in one or more separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
48. Paragraph Headings. Paragraph headings are included only for convenience and are not to be used to construe any provision of this Contract.
49. Gender. Whenever the context requires, the singular includes the plural, the plural the singular, and the use of any gender includes all genders.
50. Consult Your Attorney. **ASSITER CANNOT GIVE LEGAL ADVICE. THIS IS A LEGALLY BINDING CONTRACT AND SHOULD BE READ VERY CAREFULLY. IF YOU DO NOT UNDERSTAND THE EFFECT OF THIS CONTRACT, CONSULT WITH YOUR ATTORNEY BEFORE SIGNING.**

INTENTIONAL END OF PAGE

[signatures on following page]

Address:

\_\_\_\_\_  
\_\_\_\_\_  
Telephone No. \_\_\_\_\_  
Facsimile No. \_\_\_\_\_  
Email: \_\_\_\_\_

SELLER:

\_\_\_\_\_  
\_\_\_\_\_

Address:

\_\_\_\_\_  
\_\_\_\_\_  
Telephone No. \_\_\_\_\_  
Facsimile No. \_\_\_\_\_  
Email: \_\_\_\_\_

BUYER:

\_\_\_\_\_  
\_\_\_\_\_

Address:

16650 Interstate 27  
Canyon, TX 79015-6157  
Telephone No. (806) 655-3900  
Facsimile No. (806) 655-3939  
Email: spanky@assiter.com

APPROVED BY ASSITER:

**ASSITER & ASSOCIATES, LLC,**  
a Texas limited liability company

By: \_\_\_\_\_  
**Tommy Ray Assiter, II, Member**

RECEIPT BY TITLE COMPANY

The Title Company acknowledges receipt of this Contract and \$\_\_\_\_\_ as Earnest Money from Buyer in the form of \_\_\_\_\_.

Dated: \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_