

**RESOLUTION NO. 2006- 227 R**

**A resolution ratifying the City's execution of a One to Four Family Residential Contract (Earnest Money Contract) for the purchase of Tract 5 of Farm Lot 3, Block 3, Range 1, East Above Town, Original Four League Grant to the Town of Victoria Texas, also known as 3303 N. Vine, from Eric and Wendy Herman in the amount of \$23,000.00 and authorizing acceptance thereof; and declaring an effective date.**

IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF VICTORIA, TEXAS:

1.

The City's execution of a One to Four Family Residential Contract (Earnest Money Contract) for the purchase of Tract 5 of Farm Lot 3, Block 3, Range 1, East Above Town, Original Four League Grant to the Town of Victoria Texas in the amount of \$23,000 plus necessary expenses related thereto, which is attached hereto as **Exhibit "A"**, is ratified, and may be modified in the form approved by the City Attorney.

2.

The City Manager is authorized to accept a deed transferring the aforementioned property to the City of Victoria.

3.

This resolution shall become effective immediately upon adoption.

PASSED, this the 12<sup>th</sup> day of December, 2006.

AYES: 7

NAYS: 0

ABSTENTIONS: 0

APPROVED AND ADOPTED, this the 12<sup>th</sup> day of December, 2006.



ATTEST:

*Scarlet Swoboda*  
SCARLET SWOBODA, City Secretary

*Will Armstrong*  
WILL ARMSTRONG, Mayor of the  
City of Victoria, Texas

APPROVED AS TO LEGAL FORM:

*David Atmar Smith*  
DAVID ATMAR SMITH, City Attorney

Distribution: Legal Department  
Parks Department

Copies Sent: DECEMBER 13, 2006



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

02-13-06

NOTICE: Not For Use For Condominium Transactions

1. PARTIES: Eric and Wendy Herman (Seller) agrees to sell and convey to City of Victoria (Buyer) and Buyer agrees to buy from Seller the Property described below.

2. PROPERTY:

A. LAND: Lot 3 Block 3 RI EAT T-5 Addition, City of Victoria, County of Victoria, Texas, known as 3303 N. Vine 77901 (address/zip code), or as described on attached exhibit.

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

C. ACCESSORIES: The following described related accessories, if any: window air conditioning units, stove, fireplace screens, curtains and rods, blinds, window shades, draperies and rods, controls for satellite dish system, controls for garage door openers, entry gate controls, door keys, mailbox keys, above ground pool, swimming pool equipment and maintenance accessories, and artificial fireplace logs.

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

The land, improvements and accessories are collectively referred to as the "Property".

3. SALES PRICE:

- A. Cash portion of Sales Price payable by Buyer at closing
B. Sum of all financing described below (excluding any loan funding fee or mortgage insurance premium)
C. Sales Price (Sum of A and B) \$23,000.00

4. FINANCING: The portion of Sales Price not payable in cash will be paid as follows: (Check applicable boxes below)

- A. THIRD PARTY FINANCING: One or more third party mortgage loans in the total amount of \$ (excluding any loan funding fee or mortgage insurance premium).
(1) Property Approval: If the Property does not satisfy the lenders' underwriting requirements for the loan(s), this contract will terminate and the earnest money will be refunded to Buyer.
(2) Financing Approval: (Check one box only)
(a) This contract is subject to Buyer being approved for the financing described in the attached Third Party Financing Condition Addendum.
(b) This contract is not subject to Buyer being approved for financing and does not involve FHA or VA financing.
B. ASSUMPTION: The assumption of the unpaid principal balance of one or more promissory notes described in the attached TREC Loan Assumption Addendum.
C. SELLER FINANCING: A promissory note from Buyer to Seller of \$ secured by vendor's and deed of trust liens, and containing the terms and conditions described in the attached TREC Seller Financing Addendum. If an owner policy of title insurance is furnished, Buyer shall furnish Seller with a mortgagee policy of title insurance.

5. EARNEST MONEY: Upon execution of this contract by both parties, Buyer shall deposit \$500.00 as earnest money with Stewart Title of Victoria, as escrow agent, at 202 W. Goodwin, Victoria, Texas 77901 (address). Buyer shall deposit additional earnest money of \$ with escrow agent within days after the effective date of this contract. If Buyer fails to deposit the earnest money as required by this contract, Buyer will be in default.

6. TITLE POLICY AND SURVEY:

A. TITLE POLICY: Seller shall furnish to Buyer at Seller's Buyer's expense an owner policy of title insurance (Title Policy) issued by Stewart Title (Title Company) in the amount of the Sales Price, before or after closing, insuring Buyer against loss under

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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 4.
- (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. Buyer, at Buyer's expense, may have the exception amended to read, "shortages in area".

B. COMMITMENT: Within 20 days after the Title Company receives a copy of this contract, Seller shall furnish to Buyer a commitment for title insurance (Commitment) and, at Buyer's expense, legible copies of restrictive covenants and documents evidencing exceptions in the Commitment (Exception Documents) other than the standard printed exceptions. Seller authorizes the Title Company to deliver the Commitment and Exception Documents to Buyer at Buyer's address shown in Paragraph 21. If the Commitment and Exception Documents are not delivered to Buyer within the specified time, the time for delivery will be automatically extended up to 15 days or the Closing Date, whichever is earlier.

C. SURVEY: The survey must be made by a registered professional land surveyor acceptable to the Title Company and any lender. (Check one box only)

(1) Within \_\_\_\_\_ days after the effective date of this contract, Seller shall furnish to Buyer and Title Company Seller's existing survey of the Property and a Residential Real Property Affidavit promulgated by the Texas Department of Insurance (Affidavit). If the existing survey or Affidavit is not acceptable to Title Company or Buyer's lender, Buyer shall obtain a new survey at  Seller's  Buyer's expense no later than 3 days prior to Closing Date. If Seller fails to furnish the existing survey or Affidavit within the time prescribed, Buyer shall obtain a new survey at Seller's expense no later than 3 days prior to Closing Date.

(2) Within before closing 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. Seller will be furnished a copy.

(3) Within \_\_\_\_\_ days after the effective date of this contract, Seller, at Seller's expense shall furnish a new survey to Buyer.

D. OBJECTIONS: Buyer may object in writing to defects, exceptions, or encumbrances to title: disclosed on the survey other than items 6A(1) through (7) above; disclosed in the Commitment other than items 6A(1) through (8) above; or which prohibit the following use or activity: n/a

Buyer must object not later than (i) the Closing Date or (ii) \_\_\_\_\_ days after Buyer receives the Commitment, Exception Documents, and the survey, whichever is earlier. 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 the timely objections of Buyer or any third party lender 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 refunded to Buyer unless Buyer waives the objections.

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) MANDATORY OWNERS' ASSOCIATION MEMBERSHIP: The Property  is  is not subject to mandatory membership in an owners' association. If the Property is subject to mandatory membership in an owners' association, Seller notifies Buyer under §5.012, Texas Property Code, that, as a purchaser of property in the residential community in which the Property is located, you are obligated to be a member of the owners' association. Restrictive covenants governing the use and occupancy of the Property and a dedicatory instrument governing the establishment, maintenance, and operation of this residential community have been or will be recorded in the Real Property Records of the county in which the Property is located. Copies of the restrictive covenants and dedicatory instrument may be obtained from the county clerk. You are

Initialed for identification by Buyer [Signature] and Seller [Signature]  
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obligated to pay assessments to the owners' association. 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 the Property. If Buyer is concerned about these matters, the TREC promulgated Addendum for Property Subject to Mandatory Membership in an Owner's Association should be used.

(3) **STATUTORY TAX DISTRICTS:** If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this contract.

(4) **TIDE WATERS:** If the Property abuts the tidally influenced waters of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included in the contract. An addendum containing the notice promulgated by TREC or required by the parties must be used.

(5) **ANNEXATION:** If the Property is located outside the limits of a municipality, Seller notifies Buyer under §5.011, Texas Property Code, that the Property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Property for further information.

(6) **PROPERTY LOCATED IN A CERTIFICATED SERVICE AREA OF A UTILITY SERVICE PROVIDER:** Notice required by §13.257, Water Code: The real property, described in Paragraph 2, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned Buyer hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in Paragraph 2 or at closing of purchase of the real property.

(7) **PUBLIC IMPROVEMENT DISTRICTS:** If the Property is in a public improvement district, §5.014, Property Code, requires Seller to notify Buyer as follows: As a purchaser of this parcel of real property you are obligated to pay an assessment to a municipality or county for an improvement project undertaken by a public improvement district under Chapter 372, Local Government Code. The assessment may be due annually or in periodic installments. More information concerning the amount of the assessment and the due dates of that assessment may be obtained from the municipality or county levying the assessment. The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of your property.

**7. PROPERTY CONDITION:**

A. **ACCESS, INSPECTIONS AND UTILITIES:** Seller shall permit Buyer and Buyer's agents access to the Property at reasonable times. Buyer may have the Property inspected by inspectors selected by Buyer and licensed by TREC or otherwise permitted by law to make inspections. Seller at Seller's expense shall turn on existing utilities for inspections.

B. **SELLER'S DISCLOSURE NOTICE PURSUANT TO §5.008, TEXAS PROPERTY CODE (Notice):**  
(Check one box only)

(1) Buyer has received the Notice.

(2) Buyer has not received the Notice. Within \_\_\_\_\_ days after the effective date of this contract, Seller shall deliver the Notice to Buyer. If Buyer does not receive the Notice, Buyer may terminate this contract at any time prior to the closing and the earnest money will be refunded to Buyer. If Seller delivers the Notice, Buyer may terminate this contract for any reason within 7 days after Buyer receives the Notice or prior to the closing, whichever first occurs, and the earnest money will be refunded to Buyer.

(3) The Seller is not required to furnish the notice under the Texas Property Code.

C. **SELLER'S DISCLOSURE OF LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS** is required by Federal law for a residential dwelling constructed prior to 1978.

D. **ACCEPTANCE OF PROPERTY CONDITION:** Buyer accepts the Property in its present condition; provided Seller, at Seller's expense, shall complete the following specific repairs and treatments: n/a

E. **LENDER REQUIRED REPAIRS AND TREATMENTS:** Unless otherwise agreed in writing, neither party is obligated to pay for lender required repairs, which included treatment for wood destroying insects. If the parties

Initialed for identification by Buyer [Signature] and Seller [Signature]

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do not agree to pay for the lender required repairs or treatments, this contract will terminate and the earnest money will be refunded to Buyer. If the cost of lender required repairs and treatments exceeds 5% of the Sales Price, Buyer may terminate this contract and the earnest money will be refunded to Buyer.

F. **COMPLETION OF REPAIRS AND TREATMENTS:** Unless otherwise agreed in writing, Seller shall complete all agreed repairs and treatments prior to the Closing Date. All required permits must be obtained, and repairs and treatments must be performed by persons who are licensed or otherwise authorized by law to provide such repairs or treatments. At Buyer's election, any transferable warranties received by Seller with respect to the repairs and treatments will be transferred to Buyer at Buyer's expense. If Seller fails to complete any agreed repairs and treatments prior to the Closing Date, Buyer may do so and receive reimbursement from Seller at closing. The Closing Date will be extended up to 15 days, if necessary, to complete repairs and treatments.

G. **ENVIRONMENTAL MATTERS:** Buyer is advised that the presence of wetlands, toxic substances, including asbestos and wastes or other environmental hazards, or the presence of a threatened or endangered species or its habitat may affect Buyer's intended use of the Property. If Buyer is concerned about these matters, an addendum promulgated by TREC or required by the parties should be used.

H. **RESIDENTIAL SERVICE CONTRACTS:** Buyer may purchase a residential service contract from a residential service company licensed by TREC. If Buyer purchases a residential service contract, Seller shall reimburse Buyer at closing for the cost of the residential service contract in an amount not exceeding \$ n/a. Buyer should review any residential service contract for the scope of coverage, exclusions and limitations. The purchase of a residential service contract is optional. Similar coverage may be purchased from various companies authorized to do business in Texas.

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

9. **CLOSING:**

A. The closing of the sale will be on or before December 20, 2006, 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 required of them by this contract, the Commitment or law necessary for the closing of the sale and the issuance of the Title Policy.

C. Unless expressly prohibited by written agreement, Seller may continue to show the Property and receive, negotiate and accept backup offers.

D. All covenants, representations and warranties in this contract survive closing.

10. **POSSESSION:** Seller shall deliver to Buyer possession of the Property in its present or required condition, ordinary wear and tear excepted:  upon closing and funding  according to a temporary residential lease form promulgated by TREC or other written lease required by the parties. Any possession by Buyer prior to closing or by Seller after closing which is not authorized by a written lease will establish a tenancy at sufferance relationship between the parties. Consult your insurance agent prior to change of ownership and possession because insurance coverage may be limited or terminated. The absence of a written lease or appropriate insurance coverage may expose the parties to economic loss.

11. **SPECIAL PROVISIONS:** (Insert only factual statements and business details applicable to the sale. TREC rules prohibit licensees from adding factual statements or business details for which a contract addendum, lease or other form has been promulgated by TREC for mandatory use.) *Buyer will have deed drawn up.*



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**12. SETTLEMENT AND OTHER EXPENSES:**

A. The following expenses must be paid at or prior to closing:

(1) Expenses payable by Seller (Seller's Expenses):

(a) Releases of existing liens, including prepayment penalties and recording fees; release of Seller's loan liability; tax statements or certificates; preparation of deed; one-half of escrow fee; and other expenses payable by Seller under this contract.

(b) Seller shall also pay an amount not to exceed \$ n/a to be applied in the following order: Buyer's Expenses which Buyer is prohibited from paying by FHA, VA, Texas Veterans Housing Assistance Program 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):

(a) Loan origination, discount, buy-down, and commitment fees (Loan Fees).

(b) Appraisal fees; loan application fees; 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; mortgagee title policy with endorsements required by lender; loan-related inspection fees; photos; amortization schedules; one-half of escrow fee; all prepaid items, including required premiums for flood and hazard insurance, reserve deposits for insurance, ad valorem taxes and special governmental assessments; final compliance inspection; courier fee; repair inspection; underwriting fee; wire transfer fee; expenses incident to any loan; and other expenses payable by Buyer under this contract.

B. Buyer shall pay Private Mortgage Insurance Premium (PMI), VA Loan Funding Fee, or FHA Mortgage Insurance Premium (MIP) as required by the lender.

C. If any expense exceeds an amount expressly stated in this contract for such expense to be paid by a party, that party may terminate this contract unless the other party agrees to pay such excess. Buyer may not pay charges and fees expressly prohibited by FHA, VA, Texas Veterans Housing Assistance Program or other governmental loan program regulations.

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

14. CASUALTY LOSS: If any part of the Property is damaged or destroyed by fire or other casualty after the effective date of this contract, Seller shall restore the Property to its previous condition as soon as reasonably possible, but in any event by the Closing Date. If Seller fails to do so due to factors beyond Seller's control, Buyer may (a) terminate this contract and the earnest money will be refunded to Buyer (b) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (c) accept the Property in its damaged condition with an assignment of insurance proceeds and receive credit from Seller at closing in the amount of the deductible under the insurance policy. Seller's obligations under this paragraph are independent of any other obligations of Seller under this contract.

15. DEFAULT: If Buyer fails to comply with this contract, Buyer will be in default, and Seller may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money as liquidated damages, thereby releasing both parties from this contract. If, due to factors beyond Seller's control, Seller fails within the time allowed to make any non-casualty repairs or deliver the Commitment, or survey, if required of Seller, Buyer may (a) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (b) terminate this contract as the sole remedy and receive the earnest money. If Seller fails to comply with this contract for any other reason, Seller will be in default and Buyer may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money, thereby releasing both parties from this contract.

16. MEDIATION: It is the policy of the State of Texas to encourage resolution of disputes through alternative dispute resolution procedures such as mediation. Any dispute between Seller and Buyer related to this contract which is not resolved through informal discussion  will  will not 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: The prevailing party in any legal proceeding related to this contract is entitled to recover reasonable attorney's fees and all costs of such proceeding incurred by the prevailing party.

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**18. ESCROW:**

- A. **ESCROW:** The escrow agent is not (i) a party to this contract and does not have liability for the performance or nonperformance of any party to this contract, (ii) liable for interest on the earnest money and (iii) liable for the loss of any earnest money caused by the failure of any financial institution in which the earnest money has been deposited unless the financial institution is acting as escrow agent.
- B. **EXPENSES:** At closing, the earnest money must be applied first to any cash down payment, then to Buyer's expenses and any excess refunded to Buyer. If no closing occurs, escrow agent may require payment of unpaid expenses incurred on behalf of the parties and a written release of liability of escrow agent from all parties.
- C. **DEMAND:** Upon termination of this contract, either party or the escrow agent may send a release of earnest money to each party and the parties shall execute counterparts of the release and deliver same to the escrow agent. If either party fails to execute the release, either party may make a written demand to the escrow agent for the earnest money. If only one party makes written demand for the earnest money, escrow agent shall promptly provide a copy of the demand to the other party. If escrow agent does not receive written objection to the demand from the other party within 15 days, escrow agent may disburse the earnest money to the party making demand reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and escrow agent may pay the same to the creditors. If escrow agent complies with the provisions of this paragraph, each party hereby releases escrow agent from all adverse claims related to the disbursement of the earnest money.
- D. **DAMAGES:** Any party who wrongfully fails or refuses to sign a release acceptable to the escrow agent within 7 days of receipt of the request will be liable to the other party for liquidated damages of three times the amount of the earnest money.
- 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:** Seller represents that as of the Closing Date (a) there will be no liens, assessments, or security interests against the Property which will not be satisfied out of the sales proceeds unless securing payment of any loans assumed by Buyer and (b) assumed loans will not be in default. If any representation of Seller in this contract is untrue on the Closing Date, Seller will be in default.

**20. FEDERAL TAX REQUIREMENTS:** If Seller is a "foreign person," as defined by applicable law, or if Seller fails to deliver an affidavit to Buyer that Seller is not a "foreign person," then Buyer shall withhold from the sales proceeds an amount sufficient to comply with applicable tax law and deliver the same to the Internal Revenue Service together with appropriate tax forms. Internal Revenue Service regulations require filing written reports if currency in excess of specified amounts is received in the transaction.

**21. NOTICES:** All notices from one party to the other must be in writing and are effective when mailed to, hand-delivered at, or transmitted by facsimile or electronic transmission as follows:

<p>To Buyer at:</p> <p><u>105 W. Juan Linn</u></p> <p><u>Victoria, Tx 77901</u></p> <p><u>Attn: David Smith, Attorney</u></p> <p>Telephone: <u>(361) 482-3520</u></p> <p>Facsimile: _____</p> <p>E-mail: <u>dsmith@victoriatx.org</u></p>	<p>To Seller at:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Telephone: <u>(361) -</u></p> <p>Facsimile: _____</p> <p>E-mail: _____</p>
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Initialed for identification by Buyer DS and Seller EA  
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22. **AGREEMENT OF PARTIES:** This contract contains the entire agreement of the parties and cannot be changed except by their written agreement. Addenda which are a part of this contract are (Check all applicable boxes):

- Third Party Financing Condition Addendum
- Seller Financing Addendum
- Loan Assumption Addendum
- Buyer's Temporary Residential Lease
- Seller's Temporary Residential Lease
- Addendum for Sale of Other Property by Buyer
- Addendum for Seller's Disclosure of Information on Lead-based Paint and Lead-based Paint Hazards as Required by Federal Law
- Addendum for Property Subject to Mandatory Membership in an Owners' Association
- Environmental Assessment, Threatened or Endangered Species and Wetlands Addendum
- Addendum for "Back-Up" Contract
- Addendum for Coastal Area Property
- Addendum for Property Located Seaward of the Gulf Intracoastal Waterway
- Addendum for Release of Liability on Assumption of FHA, VA, or Conventional Loan Restoration of Seller's Entitlement for VA Guaranteed Loan
- Other (list): \_\_\_\_\_

23. **TERMINATION OPTION:** For nominal consideration, the receipt of which is hereby acknowledged by Seller, and Buyer's agreement to pay Seller \$ \_\_\_\_\_ (Option Fee) within 2 days after the effective date of this contract, Seller grants Buyer the unrestricted right to terminate this contract by giving notice of termination to Seller within \_\_\_\_\_ days after the effective date of this contract. If no dollar amount is stated as the Option Fee or if Buyer fails to pay the Option Fee within the time prescribed, this paragraph will not be a part of this contract and Buyer shall not have the unrestricted right to terminate this contract. If Buyer gives notice of termination within the time prescribed, the Option Fee will not be refunded; however, any earnest money will be refunded to Buyer. The Option Fee  will  will not be credited to the Sales Price at closing. Time is of the essence for this paragraph and strict compliance with the time for performance is required.

24. **CONSULT AN ATTORNEY:** Real estate licensees cannot give legal advice. READ THIS CONTRACT CAREFULLY. If you do not understand the effect of this contract, consult an attorney BEFORE signing.

Buyer's Attorney is: David Smith Seller's Attorney is: \_\_\_\_\_

Telephone: (361) 485-3520 Telephone: \_\_\_\_\_

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

E-mail: dsmith@victoriatx.org E-mail: \_\_\_\_\_

EXECUTED the 11 day of December, 2006 (EFFECTIVE DATE).  
(BROKER: FILL IN THE DATE OF FINAL ACCEPTANCE.)

Buyer  
City of Victoria  
Buyer  
Craig Anthony

Seller  
Eric Herman  
Eric Herman  
Seller  
Wendy Herman  
Wendy Herman



The form of this contract has been approved by the Texas Real Estate Commission. TREC forms are intended for use only by trained real estate licensees. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188. 1-800-250-8732 or (512) 459-6544 (http://www.trec.state.tx.us) TREC NO 20-7 This form replaces TREC NO 20-6.

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Victoria, TX 77901  
 (Address of Property)

**BROKER INFORMATION AND RATIFICATION OF FEE**

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

Other Broker License No.  
 represents  Buyer only as Buyer's agent  
 Seller as Listing Broker's subagent

**Buckert Realty Group** License No. 0291005  
 Listing Broker represents  Seller and Buyer as an intermediary  
 Seller only as Seller's agent

Associate Telephone

Caleb Weatherford (361) 655-0438  
 Listing Associate Telephone  
**Caleb Weatherford**

Broker's Address

3901 N. Main St. (361) 572-8200  
 Listing Associate's Office Address Facsimile

City State Zip

Victoria TX 77901  
 City State Zip

Facsimile

caleb@BuckertRealty.com  
 Email Address

Email Address

Shirley Buckert (361) 649-9700  
 Selling Associate Telephone  
**Shirley Buckert**

3901 N. Main St. (361) 572-8200  
 Selling Associate's Office Address Facsimile

Victoria TX 77901  
 City State Zip

shirley@BuckertRealty.com  
 Email Address

**OPTION FEE RECEIPT**

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

Seller or Listing Broker

Date

**CONTRACT AND EARNEST MONEY RECEIPT**

Receipt of  Contract and  \$ 500<sup>00</sup> Earnest Money in the form of Co. # 056903  
 is acknowledged.

Escrow Agent: Stewart Title Date: 10/5/06

By: Stacy Coyt

Address: 202 W. Gordon Email Address: 361-575-4781

City: Victoria TX 77901 Telephone: 361-575-7933

State: TX Zip: 77901 Facsimile: 361-575-7933

Exhibit "A"



10-25-93

**ENVIRONMENTAL ASSESSMENT, THREATENED OR ENDANGERED SPECIES, AND WETLANDS ADDENDUM**

PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)

**ADDENDUM TO EARNEST MONEY CONTRACT BETWEEN THE UNDERSIGNED PARTIES CONCERNING THE PROPERTY AT 3303 N. Vine, Victoria, TX 77901**

(Address)

- A. ENVIRONMENTAL ASSESSMENT: Buyer, at Buyer's expense, may obtain an Environmental Assessment Report prepared by an environmental specialist.
- B. THREATENED OR ENDANGERED SPECIES: Buyer, at Buyer's expense, may obtain a report from a natural resources professional to determine if there are any threatened or endangered species or their habitats as defined by the Texas Parks and Wildlife Department or the U.S. Fish and Wildlife Service.
- C. WETLANDS: Buyer, at Buyer's expense, may obtain a report from an environmental specialist to determine if there are wetlands, as defined by federal or state law or regulation.

~~Within \_\_\_\_\_ days after the Effective Date of the contract, Buyer may terminate the contract by furnishing Seller a copy of any report noted above that adversely affects the use of the Property and the Earnest Money shall be refunded to Buyer. If Buyer does not furnish Seller a copy of the unacceptable report within the prescribed time and give Seller notice that Buyer has terminated the contract, Buyer shall be deemed to have accepted the Property.~~

Buyer City of Victoria

Buyer

Seller Eric Herman

Seller Wendy Herman

INITIAL  
EY  
HERE

SIGN  
←  
HERE

SIGN  
←  
HERE

The form of this addendum has been approved by the Texas Real Estate Commission for use only with similarly approved or promulgated forms of contracts. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not suitable for complex transactions. (10-93) TREC No. 28-0.

01A TREC No. 28-0

Page 1 of 1

(TAR-1917) 10-25-93

Buckert Realty Group 3901 N. Malm, Victoria TX 77901  
Phone: (361) 572-8200 Fax: (361) 572-8201

Shirley Buckert

T5302903.ZPX

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Exhibit "A"

00T-28-2006 THU 05:35 PM FaithPromiseChurch 86648\*\*\*\*7  
 10/17/2006 205 11:47 FAX 36: 1301 BUCKNER REAL ESTATE

P. 10  
 10/16/06



**TEXAS ASSOCIATION OF REALTORS®  
 SELLER'S DISCLOSURE NOTICE**

Section 5.008, Property Code requires a seller of residential property of not more than one dwelling unit to deliver a Seller's Disclosure Notice to a buyer on or before the effective date of a contract. This form complies with and contains additional disclosures which exceed the minimum disclosures required by the Code.

CONCERNING THE PROPERTY AT 3303 N. Vine  
Victoria, TX 77901

THIS NOTICE IS A DISCLOSURE OF SELLER'S KNOWLEDGE OF THE CONDITION OF THE PROPERTY AS OF THE DATE SIGNED BY SELLER AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE BUYER MAY WISH TO OBTAIN. IT IS NOT A WARRANTY OF ANY KIND BY SELLER, SELLER'S AGENTS, OR ANY OTHER AGENT.

Seller  is  is not occupying the Property. If unoccupied (by Seller), how long since Seller has occupied the Property?  
 \_\_\_\_\_ or  never occupied the Property

Section 1. The Property has the items marked below: (Mark Yes (Y), No (N), or Unknown (U))  
 Note: This notice does not establish which items will or will not be conveyed.  
 The terms of a contract will determine which items will and will not be conveyed.

Item	Y	N	U
Cable TV Wiring			X
Carbon Monoxide Det.		X	
Ceiling Fans	X		
Cooktop		X	
Dishwasher		X	
Disposal		X	
Exhaust Fans	X		
Fences	X		
Fire Detection Equip.		X	
French Drain		X	
Gas Fixtures			

Item	Y	N	U
Gas Lines (Nat/LP)			X
Hot Tub			X
Interroom System			X
Microwave			X
Outdoor Grill			X
Oven			X
Patio/Decking		X	
Plumbing System		X	
Pool			X
Pool Equipment			X
Pool Maint. Accessories			X

Item	Y	N	U
Pool Heater			X
Public Sewer System		X	
Rain Gutters		X	
Range/Stove			X
Roof/Attic Vents		X	
Sauna			X
Spa			X
Trash Compactor			X
TV Antenna			X
Washer/Dryer Hookup			X
Window Screens		X	

Item	Y	N	U	Additional Information
Central A/C		X		<input type="checkbox"/> electric <input type="checkbox"/> gas number of units:
Wall/Window AC Units	X			number of units:
Attic Fan(s)		X		If yes, describe:
Evaporative Coolers		X		number of units:
Central Heat		X		<input type="checkbox"/> electric <input type="checkbox"/> gas number of units:
Other Heat		X		If yes, describe:
Fireplace & Chimney		X		<input type="checkbox"/> woodburning (no.) <input type="checkbox"/> mook (no.) other:
Carport		X		<input type="checkbox"/> attached <input type="checkbox"/> not attached
Garage		X		<input type="checkbox"/> attached <input type="checkbox"/> not attached
Garage Door Openers		X		number of units: number of remotes:
Satellite Dish & Controls		X		<input type="checkbox"/> owned <input type="checkbox"/> leased from
Security System		X		<input type="checkbox"/> owned <input type="checkbox"/> leased from
Water Heater	X			<input type="checkbox"/> electric <input checked="" type="checkbox"/> gas <input type="checkbox"/> other. number of units:
Water Softener		X		<input type="checkbox"/> owned <input type="checkbox"/> leased from
Underground Lawn Sprinkler		X		<input type="checkbox"/> automatic <input type="checkbox"/> manual areas covered:
Septic / On-Site Sewer Facility		X		If yes, attach information About On-Site Sewer Facility (TAR-1407)

(TAR-1408) 4-28-04

Initialed by: Seller: [Signature] and Buyer: [Signature]

Page 1 of 4

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Form: 261-676-2000 Fax: HERE

McNorswell

Exhibit "A"

OCT-26-2008 THU 06:38 PM FaithPromiseChurch 885480007  
 10/17/2008 TUE 11:48 FAX 361 7201 SUCFURE REAL ESTATE

P. 11  
 0011/010

Concerning the Property at 3303 N. Vine  
Victoria, TX 77901

Water supply provided by:  city  well  MUD  co-op  unknown  other: \_\_\_\_\_

Was the Property built before 1978?  yes  no  unknown  
 (if yes, complete, sign, and attach TAR-1906 concerning lead-based paint hazards).

Roof Type: Asph/Flt Age: 1 year (approximate)  
 Is there an overlay roof covering on the Property (shingles or roof covering placed over existing shingles or roof covering)?  
 yes  no  unknown

Are you (Seller) aware of any of the items listed in this Section 1 that are not in working condition, that have defects, or are in need of repair?  yes  no If yes, describe (attach additional sheets if necessary): Property is being sold AS IS.

**Section 2. Are you (Seller) aware of any defects or malfunctions in any of the following?: (Mark Yes (Y) if you are aware and No (N) if you are not aware.)**

Item	Y	N	Item	Y	N	Item	Y	N
Basement			Floors			Sidewalks		
Ceilings			Foundation / Slab(s)			Walls / Fences		
Doors			Interior Walls			Windows		
Driveways			Lighting Fixtures			Other Structural Components		
Electrical Systems			Plumbing Systems					
Exterior Walls			Roof					

If the answer to any of the items in Section 2 is yes, explain (attach additional sheets if necessary): Property is being sold AS IS.

**Section 3. Are you (Seller) aware of any of the following conditions: (Mark Yes (Y) if you are aware and No (N) if you are not aware.)**

Condition	Y	N	Condition	Y	N
Aluminum Wiring			Previous Roof Repairs		
Asbestos Components			Other Structural Repairs		
Diseased Trees: <input type="checkbox"/> oak wilt <input type="checkbox"/> _____			Radon Gas		
Endangered Species/Habitat on Property			Settling		
Fault Lines			Soil Movement		
Hazardous or Toxic Waste			Subsurface Structure or Pits		
Improper Drainage			Underground Storage Tanks		
Intermittent or Weather Springs			Unplatted Easements		
Landfill			Unrecorded Easements		
Lead-Based Paint or Lead-Based Pt. Hazards			Urea-formaldehyde Insulation		
Encroachments onto the Property			Water Penetration		
Improvements encroaching on others' property			Wetlands on Property		
Located in 100-year Floodplain			Wood Rot		
Present Flood Insurance Coverage (if yes, attach TAR-1414)			Active Infestation of termites or other wood-destroying insects (WDI)		
Previous Flooding into the Structures			Previous treatment for termites or WDI		
Previous Flooding onto the Property			Previous termite or WDI damage repaired		
Previous Fires			Termite or WDI damage pending repair		
Previous Foundation Repairs					

Exhibit "A"

OCT-28-2006 THU 06:38 PM  
10/27/2006 FRI 11:48 FAX 36:

FaithPromiseChurch  
201 BUCKINGHAM ROAD WISCONSIN

86548777

P. 12

2012/015

Concerning the Property at 3303 N. Vine  
Victoria, TX 77801

If the answer to any of the items in Section 3 is yes, explain (attach additional sheets if necessary): Property  
is being sold as is. New Roof. Has been  
treated for termites. Needs more treatment

Section 4. Are you (Seller) aware of any item, equipment, or system in or on the Property that is in need of repair, which has not been previously disclosed in this notice?  yes  no If yes, explain (attach additional sheets if necessary):

Section 5. Are you (Seller) aware of any of the following (Mark Yes (Y) if you are aware. Mark No (N) if you are not aware.)

- Room additions, structural modifications, or other alterations or repairs made without necessary permits or not in compliance with building codes in effect at the time.
- Homeowners' associations or maintenance fees or assessments. If yes, complete the following:  
Name of association: \_\_\_\_\_  
Manager's name: \_\_\_\_\_ Phone: \_\_\_\_\_  
Fees or assessments are: \$ \_\_\_\_\_ per \_\_\_\_\_ and are:  mandatory  voluntary  
Any unpaid fees or assessment for the Property?  yes (\$ \_\_\_\_\_)  no  
If the Property is in more than one association, provide information about the other associations below or attach information to this notice.
- Any common area (facilities such as pools, tennis courts, walkways, or other) co-owned in undivided interest with others. If yes, complete the following:  
Any optional user fees for common facilities charged?  yes  no If yes, describe: \_\_\_\_\_
- Any notices of violations of deed restrictions or governmental ordinances affecting the condition or use of the Property.
- Any lawsuits or other legal proceedings directly or indirectly affecting the Property.
- Any death on the Property except for those deaths caused by: natural causes, suicide, or accident unrelated to the condition of the Property.
- Any condition on the Property which materially affects the health or safety of an individual.
- Any repairs or treatments, other than routine maintenance, made to the Property to remediate environmental hazards such as asbestos, radon, lead-based paint, urea-formaldehyde, or mold.  
If yes, attach any certificates or other documentation identifying the extent of the remediation (for example, certificate of mold remediation or other remediation).

If the answer to any of the items in Section 5 is yes, explain (attach additional sheets if necessary):

Section 6. Do you (Seller) have a survey of the Property available for review?  yes  no If yes, a copy of the survey  is  is not attached.

(TAR-14(B) 4-26-04

Initialed by: Seller: [Signature] and Buyer: [Signature]

Page 9 of 4  
Eric Hermans

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OCT-26-2006 THU 06:37 PM FaithPromiseChurch 86548  
10/17/2006 SUN 11:49 FAX 361. 201 SUFFER BRAD, BRADEN

P. 13  
0013/015

Concerning the Property at 3303 N. Vine  
Victoria, TX 77901

Section 7. Within the last 4 years, have you (Seller) received any written inspection reports from persons who regularly provide inspections and who are either licensed as inspectors or otherwise permitted by law to perform inspections?  yes  no if yes, attach copies and complete the following:

Inspection Date	Type	Name of Inspector	No. of Pages

Note: A buyer should not rely on the above-cited reports as a reflection of the current condition of the Property. A buyer should obtain inspections from inspectors chosen by the buyer.

Section 8. Check any tax exemption(s) which you (Seller) currently claim for the Property:  
 Homestead  Senior Citizen  Disabled  Disabled Veteran  Agricultural  Wildlife Management  
 Other: \_\_\_\_\_  Unknown

Section 9. Have you (Seller) ever received proceeds for a claim for damage to the Property (for example, an insurance claim or a settlement or award in a legal proceeding) and not used the proceeds to make the repairs for which the claim was made?  yes  no if yes, explain: \_\_\_\_\_

Seller acknowledges that the statements in this notice are true to the best of Seller's belief and that no person, including the broker(s), has instructed or influenced Seller to provide inaccurate information or to omit any material information.

Eric Herman 10-25-06      Wendy Herman 10-25-06  
 Signature of Seller      Date      Signature of Seller      Date  
 Printed name: Eric Herman      Printed name: Wendy Herman

**NOTICES TO BUYER:**

The Texas Department of Public Safety maintains a database that the public may search, at no cost, to determine if registered sex offenders are located in certain zip code areas. To search the database, visit [www.tdps.state.tx.us](http://www.tdps.state.tx.us). For information concerning past criminal activity in certain areas or neighborhoods, contact the local police department.

If you are basing your offers on square footage, measurements, or boundaries, you should have those items independently measured to verify any reported information.

This Seller's Disclosure Notice was completed by Seller as of the date signed. The brokers have relied on this notice as true and correct and have no reason to believe it to be false or inaccurate. YOU ARE ENCOURAGED TO HAVE AN INSPECTOR OF YOUR CHOICE INSPECT THE PROPERTY.

The undersigned Buyer acknowledges receipt of the foregoing notice.

David A. [Signature]      for City of Victoria      11/16/2006  
 Signature of Buyer      Date      Signature of Buyer      Date  
 Printed name: David A. [Signature]      Printed name: \_\_\_\_\_

City Attorney