

EARNEST MONEY CONTRACT

Date: March 17, 2018

1. Parties. The parties to this contract are:

"Seller": Guy McSwain, POA for Arlan B. McSwain

"Buyer": _____

Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller the Property defined below.

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

A. Address: 700 Ellen Lee Ct

Bryan, TX 77802

B. Land: BROOK HOLLOW #4, BLOCK 3, LOT 11

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 owned by Seller and 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, and controls for: (i) garage doors, (ii) entry gates, and (iii) other improvements and 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. License Holder Disclosure. Texas law requires a real estate license holder who is a party to a transaction or acting on behalf of a spouse, parent, child, business entity in which the license holder owns more than 10.00%, or a trust for which the license holder acts as a trustee or of which the license holder or the license holder's spouse, parent or child is a beneficiary, to notify the other party in writing before entering into a contract of sale. Disclose if applicable: _____.
5. Earnest Money. Upon the execution of this Contract by all parties, as a condition precedent to the enforcement of this Contract, Buyer shall deposit \$ _____ (**"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. At closing, the Earnest Money will be applied to the sales/purchase price.
6. Title Company. The name and contact information for the Title Company are:
- | | |
|---------------------------------------|--|
| <u>Name:</u> | University Title |
| <u>Address:</u> | 1021 University Dr. E
College Station, TX 77840 |
| <u>Telephone No.:</u> | 979-260-9818 |
| <u>Fax No.:</u> | 866-390-3080 |
| <u>Closing Agent:</u> | |
| <u>Closing Agent's email address:</u> | |
7. Closing Date. Closing will be on or before April 17, 2018, 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 common to the platted 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 the 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 refunded to Buyer unless Buyer waives the objections.

10. Title Insurance. Buyer 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 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 refunded to Buyer, (b) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (c) accept the Property in its damaged condition with an assignment of insurance proceeds, if permitted by Seller's insurance carrier, and receive credit from Seller at closing in the amount of the deductible under the insurance policy. Seller's obligations under this paragraph are independent of any other obligations of Seller under this Contract.
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. If Seller is entitled to the Earnest Money, it will be disbursed as provided herein. If Buyer is entitled to the Earnest Money, it will be reduced by the amount of any actual expenses incurred on behalf of Buyer, and the Title Company will pay the same to the creditors entitled thereto.
17. Auctioneer's Commission. Holub Real Estate, LLC, a Texas limited liability company, served as the auctioneer and real estate broker ("**Auctioneer**") and has conducted the auction to sell the Property. Seller shall pay Auctioneer, in Comal County, Texas, a commission as set forth in a separate agreement. The Title Company is authorized to disburse Auctioneer's fee from Seller's funds.
18. 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, thereby releasing all parties from this Contract, but the Earnest Money will (i) be applied first to pay the cost of advertising and direct expenses incurred in connection with the auction and (ii) the balance, if any, be disbursed one-half to Auctioneer and one-half to Seller, 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.
19. Buyer's Remedies. If Seller fails to comply with this Contract, Seller will be in default and Buyer may either:
 - (a) terminate this Contract and receive the Earnest Money as liquidated damages, thereby releasing all parties from this Contract; or,

- (b) enforce specific performance hereof; or,
 - (c) seek other relief as may be provided by law.
20. Notice to Buyer. According to the terms of the Real Estate License Act of Texas, Buyer is advised by Auctioneer 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.
21. 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.
22. 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.

23. Notice of Membership in Property Owners Association. If the Property is located in a subdivision which has mandatory membership in a property owners association before bidding on the Property, Buyer is advised that under:
- (a) Section 5.012, Texas Property Code, Buyer will be obligated to be a member of the property owners association. The information concerning the property owners association restrictive covenants governing the use and occupancy of the Property and all dedicatory instruments governing the establishment, maintenance, or operation of the residential community are available to Buyer either (i) on the Auctioneer's website or (ii) in the real property records of the county in which the Property is located. Copies of such documents may be obtained from the county clerk. Buyer acknowledges receipt and review of the documents concerning the property owners association. **Buyer is 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.**

- (b) Section 207.003, Texas Property Code, Buyer acknowledges that Buyer has either received or reviewed, on the Auctioneer's website, documents that govern 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 or the association's agent on your request.
24. 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.
25. 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.
26. 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.
27. 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.
28. 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.

29. 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.
30. 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."
31. 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.
32. 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 but 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.
33. 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.**
34. 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.**
35. 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.
36. 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.

37. Possession. Possession of the Property will be delivered to Buyer at closing and funding.
38. 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.
39. Time. Time is of the essence of this Contract.
40. 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.
41. Mediation. Seller and Buyer shall submit in good faith to mediation before filing a lawsuit.
42. 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.
43. 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"/> Addendum for Property Located Seaward of the Gulf Intracoastal Waterway |
| <input type="checkbox"/> Addendum for Reservation of Oil, Gas and Other Minerals | <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"/> Addendum for Coastal Area Property | <input type="checkbox"/> Addendum for Property in a Propane Gas System Service Area |
| <input type="checkbox"/> Environmental Assessment, Threatened or Endangered Species and Wetlands Addendum | <input type="checkbox"/> Other (list): _____ |
44. 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.
45. 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.
46. 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.

47. Paragraph Headings. Paragraph headings are included only for convenience and are not to be used to construe any provision of this Contract.
48. Gender. Whenever the context requires, the singular includes the plural, the plural the singular, and the use of any gender includes all genders.
49. Consult Your Attorney. **AUCTIONEER 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.**
50. No Warranty by Auctioneer. There is no warranty offered, expressed or implied, by Holub Real Estate & Gary Holub or Sellers for any property. All property is sold AS-IS, WHERE-IS, and with all faults and defects therein. ALL SALES ARE FINAL. All information provided is believed to be correct but NO warranty as such is either expressed or implied, including but not limited to the merchantability or fitness for a particular purpose. Bidder is solely responsible to determine condition, age, authenticity, value or any other determinative factor. Bidder inspection of the property prior to submitting a bid is strongly recommended. Auctioneer reserves the right to add or withdraw property from the auction. Auctioneer reserves the right to sell property absolute or with reserve, at Sellers discretion. The Seller does have the right to make the final bid and the Auctioneer does have the right to bid on behalf of the Seller. The auctioneer reserves the right to open the bid as the result of a tie bid or discrepancies in the bid.

Address: 700 Ellen Lee Ct.
Bryan, Tx 77802

SELLER:

Guy McSwain,
POA for Arlan B. McSwain

Telephone No. (281) 728-5912
Facsimile No. _____
Email: guy.mcswain@gmail.com

Address:

BUYER:

Telephone No. _____
Facsimile No. _____
Email: _____

Address:

APPROVED BY AUCTIONEER/BROKER:

1439 Hanz Dr. Ste #100
New Braunfels, TX 78130
Telephone No. (830) 221-5550
Facsimile No. (830) 214-6603
Email: gary@holubrealestate.com

Holub Real Estate, LLC,
a Texas limited liability company

By: _____
Gary Holub

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: _____