

Blue-Chip Boilerplate for Real-Estate Documents

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Boilerplate matters.

Not every boilerplate provision will matter in every transaction, and some common boilerplate provisions address issues so remote that they will rarely prove to be consequential. But more often than many lawyers realize, judges and other arbiters decide document disputes not by interpreting the core contractual provisions but by enforcing the boilerplate. And sometimes an arbiter's decision may hinge on the absence of a common boilerplate provision (such as an integration clause).

Most boilerplate provisions have been transferred from other documents, with little or no tweaking, and have then been largely ignored while parties focused upon the deal-term provisions. And yet some common boilerplate provisions are poorly written, some are antiquated, and some are completely out of place.

There is a common conception that boilerplate is nonnegotiable. Perhaps that's partly etymological: "Boilerplate" originally referred to the language engraved on steel plates that were affixed to boilers. Its use then extended to the copy set into printing plates or molds that were distributed to newspaper for use without revision. And even when its use first extended to encompass all provisions in a document that address issues that are peripheral to the deal terms, word-processing software did not exist. The boilerplate could be revised, but not with ease. A lawyer in the 1950s could be excused for focusing exclusively on the deal terms and leaving boilerplate alone.

Why are boilerplate provisions still largely ignored? Time is certainly a factor. Lawyers still work under severe time constraints, and the market for their services is hypersensitive to differences in their productivity. Clients expect their lawyers to use off-the-shelf templates and revise them solely to reflect the deal terms. Regardless of how clunky and antiquated the boilerplate in the templates might be, clients don't want to pay for the additional time necessary to review, revise, and renegotiate it.

I obsess about this. So I decided to take a sabbatical: I reviewed hundreds of real-estate documents, collected the best boilerplate provisions, rewrote some of them to reflect recent changes in the law and advances in technology, and otherwise distilled them into a single alphabetized set of model "blue-chip boilerplate."

It was a wordy job, but somebody had to do it.

I don't pretend that my work product is complete. Many of the provisions can be improved further, and there are probably provisions that I have overlooked. But it's a start.

I have included model provisions not just for the ten or twelve most common species of boilerplate but also for other provisions (e.g., contingency clauses) that aren't

generally thought of as “boilerplate” but that, because they are so common, are often overlooked in letters of intent or other preliminary recitations of deal terms. And I have included a few such provisions (e.g., a warrant of attorney to confess judgment) that are particular to Pennsylvania.

I hasten to explain that model provisions below, having been pulled from many different types of real-estate documents, do not all belong together. They are an assembly that would never occur naturally in one real-estate document. If you use them, you’ll have to pick and choose those suited for the occasion.

Likewise, most of the provisions below are partial to one or some but not all of the parties to the documents. I have not provided provisions in alternative forms, drafted from the perspective of different parties. And when there are subspecies of a boilerplate provision (e.g., general and specific releases), I have provided examples of only one of them.

I hope you find the provisions helpful. Please do not hesitate to send to me your recommendations and comments, positive or negative, at wmaffucci@sogtlaw.com.

Additional Assurances. Except as specified below in this section, the parties will execute such additional documents (if any) and take such additional actions (if any) as are necessary to accomplish the objectives that are expressed in this Agreement or that are necessarily implied by the express provisions of this Agreement. But no party will be required by this section to make additional representations or warranties or to incur legal liability (or bear the risk of substantial liability) as a result of its actions. Nothing in this section will operate to limit the effect of § ___ (Integration) [below/above].

Advice of Counsel. The parties have either reviewed this Agreement with their own attorneys or knowingly, intelligently, and voluntarily waived the right to do so. The provisions of this Agreement must be construed in accordance with their fair meaning, without any presumption that ambiguities in the agreement are to be resolved in favor of a party or parties that were not represented by counsel in connection with the negotiation or execution of this Agreement.

Ambiguities. This Agreement is the joint work product of the parties, regardless of the extent to which the respective parties actually participated in drafting it. The provisions of this Agreement must be construed in accordance with their fair meaning, without any presumption that ambiguities are to be resolved either for or against the party that drafted the language at issue.

Amendment. This Agreement may not be amended except by a written instrument signed by all of the parties.

As-Is/Where-Is (*see* **Condition of Real Property / Inspection Contingency**)

Assignment. Except if and as otherwise set forth expressly in this Agreement, the parties may not assign their interests (or any of their rights and obligations) in this Agreement without the prior written consent of [all of] the other [party/parties]. An attempt to assign interests in violation of this section would be ineffective and would not serve to relieve the party that attempted the assignment of its obligations under this Agreement.

Attorney Fees. If any dispute arising under this Agreement results in an arbitration award or a judgment, the party or parties that substantially prevail in the award or judgment will be entitled to recover from the party or parties against whom the dispute was resolved all of the attorney fees reasonably incurred by the prevailing party or parties. That amount may be included in the arbitration award or judgment. The rights granted in this section will not merge into a judgment or order. They will survive through all appeals and through all proceedings to execute upon or otherwise enforce the award or judgment.

Authority of Signatories (*see Signatories*)

Bankruptcy. If _____ (called "**Debtor**" in this section) either files a voluntary bankruptcy proceeding or is made a party to an involuntary bankruptcy proceeding that the Debtor does not remove or discharge within ninety (90) days after its filing, all of the following provisions will apply:

- (i) Debtor will consent to, and will not oppose, any motion for relief from the automatic stay brought by _____ (called "**Creditor**" in this section).
- (ii) "Cause," as defined in 11 U.S.C. ("**Bankruptcy Code**") § 362(d), will exist for relief from the automatic stay ("**Automatic Stay**") effected by Bankruptcy Code § 362(a).
- (iii) There is no equity in the Real Property (i.e., the fair market value of the Real Property is less than the sum of all of the liens secured by the Real Property).
- (iv) The Real Property is not necessary to a successful reorganization of the Debtor's estate.
- (v) Creditor's entitlement to relief from the Automatic Stay will not be dependent upon Creditor's ability to fulfill the requirements of Bankruptcy Code § 362(d).
- (vi) Debtor will have no prospect for a successful or effective reorganization.
- (vii) Debtor will not be able, during the pendency of the bankruptcy proceeding, to adequately protect the collateral securing Debtor's obligations to Creditor.
- (viii) All accounts receivable of Debtor will be "cash collateral" within the meaning of the Bankruptcy Code, and, during the pendency of the

bankruptcy proceeding, Debtor will not be able to use the cash collateral for any purpose unless Debtor first obtains the written consent of Creditor (which Creditor can refuse to give in its sole discretion) or an order of the bankruptcy court expressly permitting such use.

- (ix) Debtor's rejection or failure to honor its contractual obligations to Creditor during the bankruptcy proceeding would constitute sufficient evidence that Borrower had commenced the proceeding in bad faith and for the sole purpose of frustrating and delaying the exercise of the rights and remedies of Creditor.

Debtor's agreement to the provisions set forth immediately above is a material inducement to Creditor's decision to enter into this Agreement.

Brokers. The parties represent and warrant to each other that they have not engaged or otherwise involved any third-party broker ("**Broker**") in connection the transactions effected or otherwise contemplated by this Agreement, except as follows (if applicable):

- (i) _____ has engaged or involved _____, which is a _____ with an address of _____.
- (ii) _____ has engaged or involved _____, which is a _____ with an address of _____.
- (iii) _____ has engaged or involved _____, which is a _____ with an address of _____.

In each case specified above, the party or parties that engaged or otherwise involved the Broker will be solely responsible for, and will indemnify and hold the other party or parties harmless with regard to, any commission, fee, or other payment, or other compensation earned or claimed by the Broker. A party that has retained a Broker that is not identified above will defend, indemnify, and hold harmless the other [party/parties] from all claims by the Broker. As used in this Agreement, a "Broker" means (i) any third party (including but not limited to a "broker," an "associate broker," or a "salesperson") licensed or otherwise recognized in the Real Estate Licensing Act, 63 Pa. Stat. §§ 355.101 *et seq.* ("**Licensing Act**"), or in the correlative statutes or regulations of any other jurisdiction and (ii) any third party who is not licensed or recognized by the Licensing Act or in the correlative statutes and regulations of any other jurisdiction but who nevertheless claims entitlement to compensation for services rendered or allegedly rendered in anticipation of or in connection with this Agreement.

Bulk Sales.

- (a) Buyer acknowledges that the Real Property constitutes fifty-one percent (51%) or more of the assets held by or on behalf of Seller within the Commonwealth of Pennsylvania ("**Commonwealth**").

(b) Seller represents that it will pay before the Closing (i) all taxes due to the Commonwealth of Pennsylvania or any department or instrumentality thereof (including the Department of Revenue and Department of Labor and Industry) as of the Effective Date, and (ii) all taxes that may become due between the Effective Date and Closing. Seller will also (i) promptly apply for a “bulk-sale clearance certificate” (“**Certificate**”) pursuant to 72 Pa. Cons. Stat. § 1403 (“**Bulk Sales Law**”), including any regulations promulgated under it, (ii) thereafter attempt diligently to obtain the Certificate, and (iii) take any other action reasonably required to prevent the transfer to Buyer of Seller’s liability for any taxes assessed by the Commonwealth. But neither the fact that Seller has those obligations nor any action taken by Seller to fulfill those obligations will justify delaying settlement under this Agreement, regardless of whether the Commonwealth has issued the Certificate.

(c) Buyer will cooperate with Seller in connection with Seller’s application for the Certificate. Among other things, Buyer will, at least ten (10) days before the Closing, submit all notices (with a copy to Seller) required by the Bulk Sales Law to identify Buyer as the purchaser of the Real Property.

(d) Seller will indemnify, defend, and hold Buyer harmless from and against any and all losses, claims, damages and liabilities, including, without limitation, penalties, interest, attorneys' fees and costs of defense resulting from Seller's late or non-payment, of any taxes imposed upon Seller by the Commonwealth of Pennsylvania or any department or instrumentality thereof (including the Pennsylvania Department of Revenue and Department of Labor and Industry). The representations, warranties, covenants and indemnification set forth in this Section 6 will survive Closing.

Captions (*see* **Headings and Captions**)

Casualty (*see* **Risk of Loss**)

Choice of Law. This Agreement is governed by the laws of the Commonwealth of Pennsylvania, regardless of whether application of the choice-of-law principles of Pennsylvania would require, in the absence of this choice-of-law section, that this Agreement be governed by and interpreted under the law of another jurisdiction.

Cognovit (*see* **Confession of Judgment**)

Complete Agreement (*see* **Integration**)

Condemnation. If before the Closing Seller learns of any threatened, contemplated, commenced, or consummated proceedings in eminent domain (“**Condemnation Event**”) regarding the Real Property, Seller will provide Buyer with written notice (“**Condemnation Notice**”) of the Condemnation Event. Within twenty (20) days after Seller provides the Condemnation Notice to Buyer, Buyer may, at its option, by written notice (“**Termination Notice**”) delivered to Seller given within that time, unilaterally terminate this Agreement, in which case all further rights and obligations of the parties under this Agreement will terminate, except those expressly stated to survive termination. Buyer’s failure to deliver a

timely Termination Notice would effect a waiver of Buyer's right to terminate this Agreement as a result of the Condemnation Event, in which case the Closing will occur as contemplated by this Agreement, with no revision of the Purchase Price, but Seller will at the Closing (i) deliver to Buyer at the Closing all proceeds ("Condemnation Proceeds"), if any, Seller has received as a result of the Condemnation Event attributable to the Real Property and (ii) unconditionally assign to Buyer Seller's right to any additional Condemnation Proceeds that Seller receives after Closing.

Condition of the Real Property / Inspection Contingency

(a) Subject to the provisions of subsection (b) of this section, Buyer is purchasing the Real Property "AS IS" and "WHERE IS," based upon Buyer's own inspection of the Real Property, and without reliance upon any representation or statement (express or implied) by Seller (and/or by any agent or agents of Seller) as to any, some, or all of the following:

- (i) the location, configuration, and size of the Real Property (or of any portion of it);
- (ii) the physical condition of the Real Property (or of any portion of the Premises);
- (iii) the environmental condition of the Real Property (or of any portion of the it) or of the area (or of any portion of the area) surrounding the Real Property;
- (iv) the title to the Real Property (or to any part of it);
- (v) the suitability and/or feasibility of Buyer's anticipated use and/or renovations to the Real Property;
- (vi) the nature, quality, or serviceability of the utilities and/or of other services to the Real Property;
- (vii) the nature, configuration, condition, or serviceability of the mechanical systems of the Real Property (and/or of any portion of it);
- (viii) the use or uses to which the Real Property may, under applicable zoning and land-use laws and regulations (and any other municipal, state and federal law), be put;
- (ix) the compliance or non-compliance of the Real Property (or of any part or parts of the Real Property) with applicable housing, building, electrical, fire, safety, or plumbing ordinances, codes, and/or laws;
- (x) the "reputation" of the Real Property and the occurrence or nonoccurrence of historical events at the Real Property; and

(xi) the nature, configuration, and condition of the neighborhood or area surrounding the Real Property.

(b) Buyer has the right, at its sole cost and expense, to conduct, within forty-five (45) days after the Effective Date, such inspections and investigations of and concerning the Real Property as Buyer desires (provided such inspections and investigations are conducted in accordance with subsection (d) of this section). The inspections and investigations may regard any of the matters enumerated above in subsection (a) of this section. If, as a result of such investigations or inspections, Buyer is dissatisfied with the Real Property, or if Buyer has not completed such investigations or inspections (after having commenced and diligently proceeded with the same), Buyer will have the right, in the exercise of its sole discretion, to terminate this Agreement by delivering to Seller a written termination notice (“**Inspection-Termination Notice**”) before 5:00 p.m. (time prevailing in _____) on the forty-fifth (45th) calendar day following the Effective Date (“**Inspection-Termination Deadline**”).

(c) If Buyer timely exercises the termination right set forth in this section, this Agreement will become null and void, all down monies (together with any interest) will be returned to Buyer, and neither party will have any further rights, liabilities, or obligations hereunder (except with respect to the payment of the down monies). Buyer’s failure to deliver the Inspection-Termination Notice to Seller such that Seller receives it by the Inspection-Termination Deadline, regardless of whether or the extent to which Buyer is satisfied with the results of Buyer’s inspections and investigations, would automatically and unconditionally effect a waiver of any right by Buyer to terminate this Agreement pursuant to this section.

(d) Seller and its agents must accommodate all reasonable requests by Buyer to enable Buyer and Buyer’s contractors, inspectors, engineers, architects, and related agents to inspect the Real Property and conduct reasonable and non-destructive tests thereof, all at Buyer’s own risk and expense, before the Inspection-Termination Deadline. For purposes of environmental investigations and/or investigations conducted pursuant to this subsection (d), a “reasonable and non-destructive test” means a test that is necessarily and properly conducted by Buyer or Buyer’s agents to complete a Phase II environmental inspection of the Real Property, that does not damage or weaken the Real Property (or any portion of the Real Property, including but not limited to its structural members), that effects no substantial change to or defect in the interior or exterior portions of the Real Property, and that imposes no immediate or future cost upon Seller in connection with the repair or restoration of the Real Property resulting solely from the manner in which the tests were performed.

(e) Buyer and Buyer’s contractors, inspectors, engineers, architects, and related agents (including any prospective lender of Buyer and any inspector, appraiser, architect, engineer or related agent of any prospective lender), will, prior to the Closing, have access to the Real Property at such reasonable time or times as Buyer requests.

Confession of Judgment for Money. THE FOLLOWING SECTION SETS FORTH A WARRANT OF ATTORNEY BY WHICH [OBLIGOR] GRANTS AUTHORITY TO [OBLIGEE’S] ATTORNEY (AND TO ANY CLERK OF COURT OR PROTHONOTARY) TO CONFESS JUDGMENT AGAINST [OBLIGOR]. BECAUSE THIS PARAGRAPH

REQUIRES [OBLIGOR] TO WAIVE IMPORTANT DUE-PROCESS RIGHTS AND OTHER CONSTITUTIONAL RIGHTS, [OBLIGOR] ACKNOWLEDGES AND AGREES THAT IT IS APPROPRIATE FOR [OBLIGOR] TO EXPRESS ITS CONSENT TO SUCH WAIVERS BY SIGNING OR INITIALING THE FOLLOWING ACKNOWLEDGEMENTS AND REPRESENTATIONS (IN WHICH "YOU" MEANS [OBLIGOR] AND, IF APPROPRIATE, [OBLIGOR'S] HEIRS, SUCCESSORS, AND/OR ASSIGNS).

(I) YOU HAVE DISCUSSED WITH YOUR OWN ATTORNEY THE CONSEQUENCES OF GRANTING SUCH A WARRANT OF ATTORNEY (OR YOU HAVE WILLFULLY AND KNOWINGLY ELECTED NOT TO HAVE SUCH A DISCUSSION WITH AN ATTORNEY WHO REPRESENTS YOU).

(II) YOU UNDERSTAND THE CONSEQUENCES OF GRANTING SUCH A WARRANT OF ATTORNEY, INCLUDING BUT NOT LIMITED TO THE FACT THAT YOU ARE THEREBY WAIVING IMPORTANT RIGHTS THAT YOU WOULD OTHERWISE HAVE UNDER THE CONSTITUTIONS OF THE UNITED STATES OF AMERICA AND OF THE COMMONWEALTH OF PENNSYLVANIA.

(III) YOU UNDERSTAND THAT AMONG THE RIGHTS YOU WILL WAIVE BY GRANTING SUCH A WARRANTY OF ATTORNEY ARE (A) THE RIGHT TO RECEIVE PRIOR NOTICE OF PROCEEDINGS THAT WILL RESULT IN THE IMMEDIATE ENTRY OF JUDGMENT OR JUDGMENTS AGAINST YOU AND (B) THE RIGHT TO RECEIVE PRIOR NOTICE OF PROCEEDINGS TO ENFORCE SUCH A JUDGMENT BY HAVING A SHERIFF OR MARSHAL SEIZE AND SELL YOUR REAL PROPERTY OR PERSONAL PROPERTY AND/OR BY HAVING A SHERIFF OR MARSHAL GARNISH YOUR BANK ACCOUNTS OR OTHER PROPERTY HELD BY THIRD PERSONS.

(IV) YOU UNCONDITIONALLY AND VOLUNTARILY ACCEPT THE CONSEQUENCES OF GRANTING SUCH A WARRANT OF ATTORNEY.

(V) YOU SPECIFICALLY ACKNOWLEDGE ALL OF THE FOREGOING BY SIGNING OR INITIALING THE SPACE(S) IMMEDIATELY BELOW:

(Sign or Initial)

(Sign or Initial)

[OBLIGOR], on its behalf and on behalf of its heirs, successors and assigns, hereby authorizes any attorney of any court within the United States (and any clerk of court or

prothonotary of such court) to take the following action, which may be taken without providing any notice (except (A) such notice, if any, as is expressly required by the terms of this _____ and/or (B) such notice, if any, as is expressly mandated by non-waivable statute or by non-waivable rule of court (it being understood that no such statute and no such rule of court will obligate [OBLIGEE] to provide any notice if and to the extent that the notice requirements of such statute or rule of court may be waived), immediately, upon and at any time or times after the occurrence of a default by [OBLIGOR] hereunder:

i. To appear for [OBLIGOR] and, with or without a declaration filed, to confess a judgment or judgments against [OBLIGOR] and in favor of [OBLIGEE] for the debt (i.e., the amounts or sums due) evidenced by or due pursuant to the _____ (or for any or some of it), such debt to include any, some, or all of the following (at [OBLIGEE'S] election) to the full extent that they are due or otherwise collectible under this _____:

(A) principal (whether or not, and regardless to the extent to which, such principal is due pursuant to an acceleration or accelerations of the dates on which such principal would otherwise be due),

(B) interest,

(C) late charges,

(D) costs of collection,

(E) attorney fees (for enforcement and collection), which will be liquidated and calculated as _____ percent (____%) of the principal then due (whether or not, and regardless to the extent to which, such amounts are due pursuant to an acceleration of the dates on which such principal would otherwise be due), the [OBLIGOR] hereby acknowledging and agreeing that liquidating and calculating the attorney fee as aforesaid is reasonable and appropriate in light of difficulty of determining the total attorney fee that ultimately be incurred in the event of a default by [OBLIGOR] hereunder, and

(F) other amounts due under the _____.

ii. To issue an execution or executions (including but not limited to garnishment execution(s)) upon such a judgment or judgments, such executions to issue (at [OBLIGEE'S] discretion) upon any real property and/or personal property (including but not limited to bank accounts), until such judgment or judgments are satisfied in full.

iii. To take any other actions (whether or not such other actions require court process) to enforce such judgment or judgments.

[OBLIGOR] hereby unconditionally and forever releases and waives (i) all rights that [OBLIGOR] would otherwise have to object to, interfere with, attack, seek to strike or open, or seek to stay the aforesaid entry of judgment or judgments and/or the aforesaid issuance and consummation of execution or executions thereon, (ii) any and all errors heretofore or hereafter committed by [OBLIGEE] in connection with this _____ and/or in connection with [OBLIGEE'S] enforcement of its rights under this paragraph, (iii) inquisition and condemnation of any property seized or levied upon by virtue of such execution, and (iv) any exemptions to which [OBLIGOR] would otherwise be entitled under any statute, law, ordinance, regulation or rule of law.

The authority granted to [OBLIGEE] to confess judgment will not be exhausted by any exercise or exercises thereof. Rather, such authority will continue and will be exercisable thereafter from time to time and at all times until full payment of all amounts due under this _____.

[OBLIGOR] acknowledges and agrees (a) that this _____ is being executed in connection with a commercial transaction and that the foregoing warrant of attorney to confess judgment is being provided by [OBLIGEE] in connection with such commercial transaction and (b) [OBLIGEE'S] confession of judgment hereunder or under a guaranty or surety agreement in accordance with the such warrant of attorney to confess judgment would be in accordance with the reasonable expectations of [OBLIGOR] in regard thereto. To the full extent permitted by law, [OBLIGOR] waives and releases any protections that [OBLIGOR] would otherwise have 20 Pa. Cons. Stat. § 5601.3(b) and agrees that 20 Pa. Cons. Stat. § 5601.3(b) is inapplicable to this _____ and imposes no fiduciary obligations (or any other obligations) upon [OBLIGEE].

< Note: Add an acknowledgment block to the instrument to ensure compliance with 20 Pa. Cons. Stat. § 5601.3(b). >

Confidentiality. The parties to this Agreement will hold its terms in strict confidence. Except as set forth below, they may not disclose any of the terms of this Agreement to any third party or third parties. A party injured by a disclosure of a term of this Agreement in violation of this section will have the rights (i) to seek recovery of any damages resulting from the disclosure and (ii) to obtain an injunction against future disclosures in violation of this section. Nothing in this Agreement will prevent a party for making such disclosures as the party is compelled by law (such as by a subpoena) to make, if (but only if) the party first provides the other [party/parties] with written notice of the contemplated disclosure sufficiently far in advance of the disclosure to provide the other [party/parties] with the opportunity, if appropriate, to seek a protective order. And nothing in this Agreement will from prevent party from disclosing its terms to the party's legal or financial advisors, provided the advisors first acknowledge in writing that they will be governed by the same confidentiality provisions.

Consent (*see Discretion*)

Controlling Document. If and to the extent that the terms of this Agreement conflict with the terms of any other agreements (written or oral) between the parties that predate this Agreement or that are executed simultaneously with this Agreement and that address the issues here addressed, the terms of this Agreement will control.

Counterparts. This Agreement may be executed in multiple counterparts. “Counterparts” are physical or electronic duplicates of this Agreement that contain all of its text and all of the signatures of all of the parties. A counterpart may contain more than one copy of one or more of the signature pages, and the signatures of the parties may appear on different copies of the signature pages.

Disclosure (*see Seller’s Disclosure Statement*)

Discretion. Whenever a provision of this Agreement specifies that a party has the “absolute right” to take action or to refrain from taking action, and whenever a provision of this Agreement specifies that such right may be exercised or such right may be taken in the sole discretion of the party, that party may exercise the right without regard to any standard of reasonableness.

Disparagement. The parties to this Agreement will not make any public statements that disparage the other [party/parties] to this Agreement and that regard any actions or events that have occurred at any time through the date of this Agreement. A party injured by a disparaging statement made in violation of this section will have the right to seek recovery of any damages resulting from the disparagement and will have the right at law or in equity to obtain an injunction against future violations of this section.

Draft Not an Offer. This Agreement will not take effect until it has been signed by [all/both] parties. The delivery of an unsigned draft of this Agreement by one party to another does not constitute an offer by the party making the delivery to execute the Agreement, and the party to whom a draft is delivered does not have the power to compel the party making the delivery to sign it.

Effective Date. This Agreement, once signed by [all/both] of the parties, will be effective as of _____, 20___, regardless of whether or the extent to which the parties actually executed it by that date.

Environmental (*see Condition of the Real Property / Inspection Contingency*)

Entire Agreement (*see Integration*)

Equitable Relief. Equitable remedies might be available to enforce the provisions of this Agreement even if they are not set forth expressly in this Agreement. If the remedies that are set forth expressly in this Agreement or that are available as a matter of law are not adequate to serve the purposes of this Agreement, the aggrieved party may seek specific performance of the other party’s obligations or may ask the court or tribunal to fashion other equitable relief.

Exhibits. The exhibits that are attached to this Agreement are incorporated into and constitute substantive provisions of it.

FIRPTA Representation. Pursuant to 26 U.S.C. § 1445, Seller represents and warrants that Seller is not a foreign person, foreign corporation, foreign partnership, foreign trust, or foreign estate (as defined by the Internal Revenue Code and Income Tax Regulations) and that, accordingly, Buyer will not be required to withhold any tax from the proceeds of the sale contemplated by this Agreement. At the settlement, Seller will execute and deliver to Buyer an appropriate certification of its non-foreign status.

Footers and Headers. If there are footers or headers in this Agreement that were generated by the word-processing or document-management software that the parties used to create this Agreement, the footers and headers are not part of this Agreement. Inconsistencies (if any) between or among the footers and headers as they appear on different pages of this Agreement or as they appear on the same pages of different counterparts of this Agreement will not affect the enforceability of this Agreement.

Forbearance (*see* **Indulgences**)

Force Majeure. A party will not be liable for delay in performing or for failing to perform if and to the extent such delay or failure results from fire, labor dispute, strike, war, insurrection, terrorist action, government restriction, act of God, or other force majeure. But a party whose delay in performing or failure to perform results from force majeure must use its best efforts to resume performance as promptly as possible.

Further Assurances (*see* “**Additional Assurances**”)

Gender (*see* **Interpretation**)

Governing Law (*see* **Choice of Law**)

Headings and Captions. The headings and captions of this Agreement are included solely for the convenience of the parties. They are not substantive provisions of this Agreement, and they do not affect the meaning, construction, or effect of this Agreement.

Inability To Perform (*see* **Force Majeure**)

Indulgences. The failure of a party to exercise a right under this Agreement will not operate to waive or limit that party’s ability to enforce that right strictly going forward. Neither will a party’s delay in enforcing that right or failure to enforce that right strictly waive or limit that party’s right to enforce that right strictly going forward.

Inspection (*see* **Condition of the Real Property / Inspection Contingency**)

Integration. This Agreement constitutes the entire agreement between the parties with regard to the matters addressed in it. It supersedes and nullifies any prior understandings or agreements, whether written or oral, between the parties with regard to those matters. Nothing in this section will limit or otherwise affect the obligations of the parties as set forth in the “Additional Assurances” section in § __ [above/below], it being understood that the actions required by that section, although taken in the future, are part of this Agreement.

Interpretation. In this Agreement, unless otherwise stated expressly or by clear implication from the context, the following rules of interpretation will apply:

- (a) A reference to —
 - (i) the singular includes the plural, and vice versa,
 - (ii) a gender includes all genders,
 - (iii) a person, corporation, trust, partnership, unincorporated body, or other entity includes any of them,
 - (iv) a party to this Agreement or to another agreement or document includes the party's successors and permitted substitutes or assigns,
 - (v) a writing includes a facsimile, an e-mail, and another electronic rendering of words in a permanently visible form, and
 - (vi) conduct includes an act, omission, statement, or undertaking, whether or not in writing.
- (b) Other grammatical forms of a defined word or phrase have a corresponding meaning.

Joint Venture (*see* **Relationship of Parties**)

Joint Work Product (*see* **Ambiguities**)

Jurisdiction and Venue. The courts of the Commonwealth of Pennsylvania situated in _____ County and the federal courts situated in the _____ District of Pennsylvania will have exclusive jurisdiction over any dispute or controversy arising under or related to this Agreement. The parties consent to the personal and exclusive jurisdiction of those courts. No party may oppose the transfer to one of the courts identified above of any litigation brought elsewhere in violation of this section.

Jury Trial (Waiver). TO THE FULLEST EXTENT PERMITTED BY LAW, THE PARTIES TO THIS AGREEMENT KNOWINGLY, INTELLIGENTLY, VOLUNTARILY, AND AFTER CONSULTING WITH COUNSEL (OR AFTER HAVING WAIVED THE OPPORTUNITY TO CONSULT WITH COUNSEL) **WAIVE THE RIGHT**

TO TRIAL BY JURY, WHICH IS A RIGHT THAT THEY WOULD OR MIGHT OTHERWISE HAVE HAD UNDER THE CONSTITUTIONS OF THE UNITED STATES OF AMERICA AND THE COMMONWEALTH OF PENNSYLVANIA. THIS WAIVER APPLIES IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER IN CONTRACT, TORT, OR OTHERWISE) RELATING DIRECTLY OR INDIRECTLY TO THE TERMS OF THIS AGREEMENT. The parties' reciprocal agreement to the waiver set forth in the foregoing sentence is a material inducement to the parties' respective agreements to the other terms of this Agreement.

Lead-Paint Contingency (mandatory for residences built before 1978).

Buyer's obligation to complete settlement under this Agreement is contingent upon a test of the Real Property for the presence of lead paint conducted by a testing service selected and paid for by Buyer pursuant to this section. Buyer will have ten (10) days after Seller's execution of this Agreement within which to have the test conducted. If the written results of the test disclose that there is lead paint in the Real Property, Buyer may terminate this Agreement by written notice delivered to Seller within five (5) days after Buyer's receipt of the results, in which event all deposit monies, together with any interest on them, must be returned to Buyer, this Agreement will be null and void, and the parties will have no further liabilities of obligations hereunder.

Merger. Except if and as otherwise expressly provided in this Agreement, the terms, rights, obligations, representations, warranties, and covenants ("**Contract Provisions**") of this Agreement will merge into and be extinguished by the passage of title pursuant to this Agreement. The only Contract Provisions that will survive the passage of title will be those (if any) that survive the passage of title under the express provisions of this Agreement, those set forth in the deed, and those set forth in any other documents executed at or in connection with the Closing.

Modification (*see* **Amendment**)

Mortgage Contingency. If Buyer within ten (10) days applies for mortgage-loan financing ("**Mortgage Financing**") as described in this section, Buyer's obligation to complete the transaction contemplated by this Agreement is contingent upon Buyer's ability to obtain the Mortgage Financing as set forth in a written commitment ("**Mortgage Commitment**") received by Buyer from a reputable institutional lender within _____ () days after the Effective Date ("**Commitment Deadline**"). Buyer will not be obligated to accept a Mortgage Commitment if the Mortgage Financing for which it provides (i) is not in the amount of at least _____ (\$ _____), (ii) is not payable within a term of at least _____ () years (and in equal monthly payments of principal and interest), (iii) includes interest of more than _____ percent (%) per annum, (iv) includes the payment of fees and other charges in excess of _____ Dollars (\$ _____), or (v) does not permit prepayment in whole or in part at any time without penalty. If Buyer does not obtain the Mortgage Commitment by the Commitment Deadline, Buyer will have the right (but not the obligation) to terminate this Agreement by written notice ("**Mortgage-Termination Notice**") delivered by Buyer to Seller before the end of the second (2nd) business day following the Commitment Deadline. If Buyer timely exercises that termination right, Seller will promptly return to Buyer all down monies (with any interest), this Agreement will be null and void, and

neither party will have any rights or obligations under this Agreement. If Buyer obtains the Mortgage Commitment by the Commitment Deadline, or if Buyer (for whatever reason) does not deliver the Mortgage-Termination Notice by the end of the second (2nd) business day following the Commitment Deadline, Buyer will be obligated to proceed to the Closing in accordance with the terms of this Agreement.

Notices. A notice given under or in connection with this Agreement must be in writing, must be delivered to the address of the party as it appears below (or at such alternative address that the intended recipient of the notice has previously provided in a notice that complies with this section) to the party sending the notice, and must be delivered in one of the following ways:

- (a) by hand, in which case it will be effective when actually received;
- (b) by nationally recognized overnight courier, with directions that the notice be delivered overnight, in which case the notice will be effective at the close of the next business day in the time zone that includes the address of the notice;
- (c) by certified mail (requesting a return receipt), in which case —
 - (i) it will be effective as of the date it is received (as evidenced by the return receipt) if the sender has received back a signed receipt by the end of the tenth business day following the deposit of the notice in the mail, but
 - (ii) it will be effective as of the end of the tenth (10th) business day following deposit in the mail if the seller has not by that time received back either a signed receipt or the notice itself;
- (d) via e-mail and (simultaneously or immediately afterward) via one of the other methods authorized by this section, in which case it will be effective immediately following the e-mail transmission.

The addresses of the parties are as follows (unless different address has been provided as described above in this section):

Telephone _____
E-Mail _____

Although notices will be effective if served upon the recipients as specified above, the party sending a notice must also send a copy of the notice, simultaneously and in one of the manners specified above, upon the following attorneys or representatives of the parties:

If to _____:

Telephone _____
E-Mail _____

If to _____:

Telephone _____
E-Mail _____

If to _____:

Telephone _____
E-Mail _____

If to _____:

Telephone _____
E-Mail _____

Number (*see* **Interpretation**)

OFAC. Seller represents and warrants to Buyer that neither Seller nor any affiliate or representative of Seller nor any Person (as defined below) directly or indirectly holding any legal or beneficial interest whatsoever in Seller (collectively "**Seller Parties**") is, or at any time during the term of this Agreement will be —

- (i) a Person with whom a United States Person or financial institution established under the laws of the United States is prohibited from transacting business of the type contemplated by this Agreement, whether such prohibition arises under U.S. law, regulation, executive order (including but not limited to executive orders and lists published by the United States Office of Foreign Assets Control with respect to "Specially Designated Nationals and Blocked Persons") or otherwise,
- (ii) included in, owned by, controlled by, acting for or on behalf of, providing assistance, support, sponsorship, or services of any kind to, or otherwise associated with any of the persons or entities referred to or described in Executive Order 13224 - Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended,
- (iii) in violation of any provisions of the USA Patriot Act, Pub. L. No. 107-56.

As used above, "**Person**" means any individual, partnership, corporation, limited liability company, trust or other entity, and "**United States Person**" means a person that is a

citizen or resident of the United States, a corporation, partnership, limited liability company, or other entity created or organized in or under the laws of the United States or any political subdivision thereof, or an estate or trust the income of which is subject to United States federal income taxation regardless of its source. Seller covenants and agrees to deliver to Buyer any certification or other evidence requested from time to time by Buyer, in its sole discretion, confirming Seller's compliance with the provisions of this section.

Oral Modification (*see Amendment*)

Other Acts (*see Additional Assurances*)

Persons Bound (*see Successors and Assigns*)

Prior Agreements (*see Integration*)

Radon Contingency. Buyer's obligation to complete settlement under this Agreement is contingent upon a test of the Real Property for the presence of radon gas conducted by a testing service selected and paid for by Buyer pursuant to this section. Buyer will have ten (10) days after Seller executes this Agreement within which to have a charcoal test performed utilizing three (3) canisters and conducted over five (5) days. If the written results of the test disclose that the level of radon exceeds four (4.0) picocuries per liter, Buyer may terminate this Agreement by written notice delivered to Seller within five (5) days after Buyer receives the results, in which event all deposit monies, together with any interest, must be returned to Buyer, this Agreement will be null and void, and the parties will have no further rights or obligations under this Agreement.

Real Estate Recovery Fund. The Commonwealth of Pennsylvania has established a Real Estate Recovery Fund from which an aggrieved person may under certain circumstances recover damages in the event such aggrieved person obtains a judgment against a person licensed under the Pennsylvania Real Estate Licensing and Registration Act. For additional information, call the Pennsylvania Real Estate Commission at 717-783-3658.

Recordation. No party may record this Agreement or any memorandum or summary of this Agreement in the land records or in any other local, state, or federal database of agreements affecting real estate. A violation of this section by any party will constitute a slander of title and a contractual default entitling [any other/the other] party to have the recording stricken immediately and to recover all damages (including but not limited to attorney fees and recording fees) resulting from such recordation.

Relationship of Parties. Neither the parties' entry into this Agreement nor their actions taken in anticipation of or pursuant to it establish that they are in partnership, that they are joint venturers, or that they are in any contract of employment. The fact that a party has entered into this Agreement does not subject that party to liability or responsibility for the debts of the other party or parties.

Release [reciprocal and specific]. The parties, each acting on its own behalf and on behalf of its heirs, successors, and assigns, each immediately, unconditionally, and forever releases and discharges the other party or parties and its or their heirs, successors, assigns, agents, employees, affiliates, directors, officers, contractors, representatives, personal representatives, and attorneys (collectively, “**Released Parties**”) from any and all actions, causes of action, suits, debts, dues, accounts, contracts, covenants, agreements, judgments, claims, and demands (collectively, “**Released Matters**”) that the releasing party ever had, now has, or ever would have (but for the execution of this release) against the Released Parties arising under or related to the following:

- (a) _____

- (b) _____
_____, and

- (c) _____

The release above is effective regardless of whether or the extent to which the Released Matters (i) exist in law or in equity, (ii) are known or unknown, (iii) are contingent or non-contingent, (iv) are choate or inchoate, or (v) now exist (but for the execution of this release) or have existed at any time since the beginning of the world.

Remedies Cumulative. All remedies in this Agreement are distinct and cumulative to any other right or remedy under this Agreement or under the _____. The remedies may be exercised concurrently, independently, or successively.

Representations and Warranties [Agreement of Sale]. The representations, warranties, covenants, agreements, and indemnities set forth in this Agreement will remain operative and will survive the execution and delivery of the deed. They will not be merged into the deed.

Representations and Warranties [Other]. The representations, warranties, covenants, agreements, and indemnities set forth in this Agreement will remain operative and will survive for a period of ____ years following the Effective Date.

Risk of Loss.

- (a) In the event of loss or damage to the Real Property or any portion thereof that is not “Major” (as defined below), this Agreement will remain in full force and effect, and (i) neither Buyer nor Seller will have the right to terminate this Agreement and (ii) the parties must consummate this transaction in accordance

with this Agreement, without any abatement of the Purchase Price, and without any liability or obligation on the part of Seller by reason of the loss damage, except as follows: Seller will provide a credit against the Purchase Price equal to Seller's interest in insurance proceeds that have been collected by Seller, and Seller will assign to Buyer all of Seller's right, title, and interest in the proceeds to be paid on the claim of loss, less any sums expended by Seller prior to Closing in connection with its insurance claim or for the restoration or repair of the Real Property.

- (b) In the event of a "Major" loss or damage (as defined below) to the Seller Property or any portion thereof, Buyer may terminate this Agreement by written notice to Seller. If Buyer does not give written notice of termination of this Agreement within twenty (20) days after Seller sends Buyer written notice of the occurrence of Major loss or damage, then Buyer will be deemed to have elected to proceed with Closing, in which event, (i) the transaction will proceed as contemplated herein, (ii) Seller will provide a credit against the Purchase Price equal to Seller's interest in insurance proceeds that have been collected by Seller, and (iii) Seller will assign to Buyer all of Seller's right, title, and interest in the proceeds to be paid on the claim of loss, less any sums expended by Seller prior to Closing in connection with its insurance claim or for the restoration or repair of the damaged Real Property.
- (c) "Major" loss or damage to the Real Property (or of any part of it) is that which (i) would reasonably require the expenditure of sums equal to or greater than _____ (\$ _____) to repair or (ii) would reasonably require more than _____ (____) days after the loss or damage to repair. The estimated expense of the repair and the estimated time of repair would be determined by an independent appraiser chosen by Buyer and reasonably acceptable to Seller.

Rules and Regulations. The rules and regulations ("**Rules/Regs**") attached to this Agreement as Exhibit ___ are incorporated into this Agreement. _____ retains the right to amend or supplement the Rules/Regs at any time, with the amended or supplemented Rules/Regs immediately becoming part of this Agreement, provided the amendment or supplementation is reasonable and does not deprive _____ of any substantial rights or benefits set forth in this Agreement.

Running With the Land. The benefits and burdens created or imposed by §§ _____ of this Agreement will run with title to the Real Property, such that they will benefit and be binding upon successors-in-title to the Real Property.

Seal. This Agreement constitutes an instrument executed under seal, regardless of whether the actual seals of the parties appear on this Agreement and regardless of the form of any seal that actually appears on this Agreement.

Seller's Disclosure Statement. Buyer acknowledges that Seller has delivered to Buyer the written disclosure statement required by the Real Estate Seller Disclosure Act, 68 Pa. Stat. §§ 7301-7315.

Severability. If one or more of the provisions of this Agreement are deemed by a court or other tribunal of competent jurisdiction to be unenforceable, then (i) the provisions will automatically be modified to remove the unenforceability (to the extent possible without defeating the purposes of this Agreement) and (ii) the rest of this Agreement will, to the extent possible and necessary to effect the purposes of this Agreement, remain in effect.

Signatories. To the extent that the parties to this Agreement are not natural persons (i.e., human beings), the natural persons who sign this Agreement on behalf of those parties (i) warrant and represent, by their signatures, that they are fully authorized to bind their respective parties to this Agreement and (ii) acknowledge that they will be personally liable for any loss suffered by another party or other parties in reliance upon that warranty and representation.

Signatures (faxed or electronic). Facsimile copies or copies or print-outs of e-mail or other electronic signatures are competent evidence of the agreement of the signatories to bind themselves or the persons they represent to the terms of this Agreement, but such evidence will be rebuttable by other competent evidence that the facsimile or electronic signature is not valid.

Statute of Limitations (Waiver). The _____ unilaterally waives the benefit of all statutes or other rules of limitations and agrees that, to the extent permitted by law, there will be no limit on the time within which _____ must enforce its rights under this Agreement.

Successors and Assigns. This Agreement will be binding upon and will inure to the benefit of the parties' respective successors and permitted assigns.

Third-Party Beneficiaries. This Agreement is for the benefit of only the parties and to the third persons (if any) referenced in this Agreement expressly as beneficiaries of it.

Time of the Essence. Time is of the essence of every provision in this Agreement that requires or contemplates that action be taken within a specified period of time. Any statements elsewhere in this Agreement that specify that time is of the essence of those provisions will serve only to reiterate that time is of the essence and will not support any inference that time is not of the essence of a provision that does not contain such a specification.

Venue (*see* **Jurisdiction and Venue**)

Waiver (*see* **Indulgences**)

Waiver of Jury Trial (*see* **Jury Trial**)

Warrant of Attorney (*see* **Confession of Judgment**)

Zoning. Seller represents that the Real Property is zoned ____ and that Seller is not aware of any pending or contemplated change to that zoning designation.

§ 1031. [Both parties/each party] must, if requested by [the other/another] party (the request to be made at least fifteen (15) days prior to the Closing), cooperate with the requesting [party/parties] to enable the requesting [party/parties] to designate the contemplated conveyance of the Real Property as a tax-deferred like-kind exchange of real property ("**§ 1031 Exchange**") under Internal Revenue Code § 1031 ("**§ 1031**"). At the request of the requesting party/parties], the obligation to cooperate will include permitting the Real Property to be conveyed to an intermediary qualified to facilitate exchanges under § 1031. But the obligation to cooperate under this section does not include an obligation by the cooperating [party/parties] to incur any expense or to assume any liability, and the requesting [party/parties] will not have the unilateral power to postpone the Closing for the sole purpose of effecting the § 1031 Exchange.