

Special Stipulations – Texas

1. Defined Terms. Capitalized terms used and not defined in these special stipulations (“Stipulations”) shall have the meanings assigned to such terms in the purchase and sale agreement to which these Stipulations are attached (the “Agreement”). Buyer and Seller may each be referred to herein as a “Party” and together as the “Parties”.
2. Stipulations Control. These Stipulations shall be integrated into and form a part of the Agreement. In the event of any conflict between any Stipulations, the Agreement, or any addenda, stipulations, or other documentation relating to the Agreement, these Stipulations shall control.
3. No Representations or Warranties; AS IS Condition. (i) Buyer warrants, acknowledges and agrees with Seller that Buyer is purchasing the Property in its "AS IS/WHERE IS" condition, "WITH ALL FAULTS" and with all physical latent or patent defects, and specifically and expressly without any warranties, representations or guarantees, either express or implied, of any kind, nature or type whatsoever from or on behalf of the Seller. Buyer acknowledges that Buyer has not relied and is not relying upon any information, document, sales brochures or other literature, maps or sketches, projection, pro forma statement, representation, guarantee or warranty (whether express or implied, or oral or written, material or immaterial) that may have been given by or made by or on behalf of the Seller.
 - (ii) Buyer hereby acknowledges that it shall not be entitled to, and shall not rely on the Seller or its agents as to (i) the quality, nature, adequacy or physical condition of the Property including, but not limited to, appurtenances, access, landscaping, parking facilities, sewage or utility systems, or facilities at the Property, if any; (ii) the quality, nature, adequacy or physical condition of soils or ground water at the Property; (iii) the existence, quality, nature, adequacy or physical condition of any utilities serving the Property or available at its boundaries; (iv) the development potential of the Property, its habitability, merchantability of fitness, suitability or adequacy of the Property for any particular purpose; (v) the zoning or other legal status of the Property, including but not limited to, condemnation or threat of condemnation; (vi) the Property's operational compliance with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions or restrictions of any governmental or quasi-governmental entity; (vii) the Property's operational compliance with any applicable labor laws or building codes concerning labor and material used or incorporated into the Property or any other labor or materials relating in any way to the Property; or (viii) the condition of title to the Property or the nature, status and extent of any right of way, lease, right of redemption, possession, lien, encumbrance, license, reservation, covenant, condition, restriction or any other matter affecting title to the Property except as may be set forth in the owner's policy.
 - (iii) Buyer acknowledges and agrees with Seller that with respect to the Property Seller has not, does not and will not make any warranties or representations, express or implied, or arising by operation of law, including, but in no way limited to, any warranty of condition, merchantability, habitability or fitness for a particular use, or with respect to the value, profitability or marketability of the Property. Buyer acknowledges that Seller has not, does not and will not make any representation or warranty with regard to existence or non-existence at any time or hazardous waste or substances in the Property or on, at or under the surface of the Property or with regard to compliance with any environmental protection, pollution or land use laws, rules, regulation, orders or requirements including, but not limited to, those pertaining to the handling, generating, treating, storing or disposing of any hazardous waste or substance, lead based paint or radon.
 - (iv) Buyer acknowledges that it is Buyer's responsibility to undertake such due diligence and to make such legal, factual and other inquiries and investigations as Buyer deems necessary, desirable or appropriate with respect to acquiring the Property. Such inquiries and investigations may include, but shall not be limited to, any oral or unrecorded leases and contracts pertaining to the Property, the physical components of all portions of the Property, the condition of the Property (including the existence of any hazardous or toxic wastes or other contaminants), the existence of any wood destroying organisms on the Property, such state facts as an accurate survey and inspection would show, the present and future zoning ordinances, resolutions and regulations of the city, county and state where the Property is located and the value and marketability of the Property.
 - (v) In the event that the local government requires an inspection of the Property, a certificate of occupancy or other approval or certification of any kind or nature, Buyer shall be responsible for performing such inspection and obtaining such certification or approval. Seller shall have no responsibility or obligation to correct any violations or remedy any issues of non-compliance whether now existing or hereafter arising.
 - (vi) Without in any way limiting the generality of the preceding subparagraphs (i) through (vi), Buyer specifically acknowledges and agrees that Buyer hereby waives, releases and discharges any claim it has, might have had or may have against the Seller with respect to the condition of the Property, either patent or latent as well as Buyer's ability or inability to obtain or maintain building permits, either temporary or final certificates of occupancy or other licenses for the use or operation of the Property, the real estate taxes or assessments now or hereafter payable thereon, the compliance with any environmental protection, pollution or land use laws, rules, regulations or requirements, and any other state of facts which exists with respect to the Property.
4. Selection of Settlement Agent. Buyer and Seller agree that X Seller Buyer will designate Mainstay National Title or such other title agent agreed upon between Buyer and Seller (“Settlement Agent”), will act as the settlement agent for the purchase and sale of the Property, and Settlement Agent shall (i) issue the Buyer’s title insurance policy for the Property; (ii) hold any EMD or trust money, as applicable, pursuant to the Agreement, and (iii) record the deed for the Property upon COE. All closing documents required to facilitate the closing and transfer of the Property shall be prepared by the title agent or other third party engaged by Seller.
5. Title Expenses. X Seller Buyer shall pay for the Owner’s Policy, title search charges, any settlement agent fee owed to Settlement Agent for its services. Seller shall pay municipal lien search fees. Seller shall pay the cost for preparing and recording of any instruments required to clear Seller’s title, and any documentary or transfer taxes required to be paid in connection with the sale of the Property (except as otherwise required by applicable law). Notwithstanding the terms of this Section 5, in the event Buyer or Seller engages the services of any other third party to assist Buyer or Seller with their review of the closing documents or facilitate a split closing, Buyer or Seller shall be responsible for all costs and fees associated with Buyer’s or Seller’s engagement.
6. Prorations. The Parties agree there shall be no re-proration of real estate taxes and that all real estate tax prorations shall be final at Closing.
7. Closing. The Closing shall take place at the offices of the Settlement Agent (either in person, or through a mail-away closing), or such other location as may be determined by Seller. Notwithstanding the foregoing, if the Parties and Settlement Agent have not agreed on a finalized settlement statement at least two (2) business days prior to the Closing Date, then the Closing Date shall be extended to the next business day that is at least two (2) business days after the Parties and Settlement Agent agree on a finalized settlement statement. To the extent possible, the Parties agree to cooperate to close the transaction by mail through the Settlement Agent.
 - (i) At Closing, Seller shall deliver to Buyer the following items, which items shall be in form and substance reasonably satisfactory to Buyer: (a) a Limited Warranty Deed in recordable form conveying good and marketable fee simple title to the Property, subject only to the Permitted Exceptions, reciting only nominal consideration; (b) an As Is Bill of Sale conveying Seller’s interest in the Personalty; (c) a standard non foreign affidavit stating Seller is not a foreign entity; (d) an owner’s affidavit in the form required by Settlement Agent; (e) an executed counterpart of the closing statement; and (f) any other items or documents affecting the conveyance and sale of the Property which may be reasonably requested by the Buyer or the Title Insurer to satisfy the Seller’s requirements and the “standard exceptions” as set forth in the Title Commitment.

- (ii) At Closing Buyer shall deliver to Seller: (a) the Purchase Price via wire transfer; (b) an executed counterpart of the closing statement; and (c) any other items or documents affecting the conveyance and sale of the Property that is in Buyer's possession or is reasonably obtainable by Buyer which may be reasonably requested by Seller or the Settlement Agent.
8. Limitation of Seller Liability. In the event of a Seller default, Buyer's sole and exclusive remedy shall be limited to return of the EMD to Buyer and thereafter neither Party shall have any rights or obligations hereunder.
9. Force Majeure. As used herein, "Force Majeure" means any act of God, explosion, fire, flood, hurricane, tropical storm, wildfire, earthquake, pandemic, or any other extreme weather event, fuel or energy shortage, war and other hostilities, civil commotion, governmental acts, or any other circumstance of a similar nature beyond the reasonable control of either Party. In the event a Party is affected by a Force Majeure that delays or prevents the affected Party's ability to perform its obligations, the affected Party shall not be deemed to have breached the Agreement. In such event, the affected Party shall notify the other Party of such Force Majeure, and the Parties will reasonably cooperate and work together in good faith to agree on a reasonable extension of time or other temporary accommodation to enable the affected Party to perform its obligations.
10. Confidentiality. All non-public information provided or disclosed by Buyer or Seller to each other in connection with this Agreement, including the existence and terms of this Agreement, is confidential and proprietary to the disclosing party, and the receiving party shall hold such information in strict confidence. Such information may be used solely for the purpose of consummating the transaction under this Agreement, and may not be otherwise used or disclosed for any other purpose or to any party, other than as required to complete the Closing or as compelled by applicable laws or regulations.
11. Assignability. The PSA nor any of the rights, title or interest shall not be assigned by Buyer without the prior written consent of Seller, which such consent shall not be unreasonably withheld. Buyer shall not be released under any of its obligations under the PSA.