

OIL, GAS AND MINERAL RIGHTS ADDENDUM TO AGREEMENT OF SALE

This form recommended and approved for, but not restricted to use by, the members of the Pennsylvania Association of REALTORS® (PAR).

1 **PROPERTY** _____
2 **SELLER** _____
3 **BUYER** _____
4 **DATE OF AGREEMENT** _____

5 **1. Examination of Oil, Gas and Mineral Rights**

- 6 **WAIVED.** Buyer has the option to conduct an unlimited title examination and/or any other investigation to determine the status of
- 7 oil, gas and mineral rights pertaining to the Property. Buyer **WAIVES THIS OPTION** and agrees to the Terms of the **RELEASE** para-
- 8 graph of the Agreement of Sale.
- 9 **ELECTED.** Contingency Period: ____ days (20 if not specified) from the Execution Date of the Agreement of Sale.
- 10 (A) Within the Contingency Period Buyer, at Buyer’s expense, may undertake a title examination of unlimited years and/or take what-
- 11 ever action(s) Buyer deems necessary to determine whether oil, gas and/or mineral rights will pass with transfer of title from
- 12 Seller to Buyer, and if not, to determine the extent and manner by which these rights are affected.
- 13 (B) If the title examination and assessment performed by or on behalf of Buyer reveals Seller’s inability to convey full and mar-
- 14 ketable title to oil, gas and/or mineral rights (except for the exceptions and reservations stated herein) to Buyer, Buyer will, with-
- 15 in the Contingency Period:
- 16 1. Accept the Property with such title as Seller can give and agree to the Terms in the **RELEASE** paragraph of the Agreement of Sale, OR
- 17 2. Terminate the Agreement of Sale by written notice to Seller, with all deposit monies returned to Buyer according to the terms
- 18 of the Agreement of Sale.

19 **2. Oil, Gas and Mineral Rights Excepted**

- 20 **NOT APPLICABLE.**
- 21 **APPLICABLE.** Some oil, gas and/or mineral rights have been previously transferred by Seller or a previous owner of the Property,
- 22 and Seller does not own all oil, gas and/or mineral rights. Seller is not transferring title to those oil, gas and/or mineral rights that
- 23 have been previously transferred and title to those rights is excepted. The warranty of title identified in the Agreement of Sale does
- 24 not pertain to the oil, gas and mineral rights excepted. Seller will not defend title to these rights and does not covenant that Buyer
- 25 will have quiet enjoyment of these rights.
- 26 Seller is aware of prior transfers of oil, gas and/or mineral rights by Seller or a prior owner (exceptions) as follows: _____
- 27 _____
- 28 _____

The exceptions listed above are to the best of Seller’s knowledge and may not reflect all oil, gas and/or mineral rights previously transferred from the Property. Buyer is advised to conduct a full examination of oil, gas and/or mineral rights for the Property.

32 **3. Seller’s Reservation of Oil, Gas and Mineral Rights**

- 33 (A) **NOT APPLICABLE.**
- 34 **APPLICABLE.** Seller is reserving certain oil, gas, and/or mineral rights to Seller and is not transferring them to Buyer. Seller
- 35 will, within ____ days (5 if not specified) furnish to Buyer the reservation language that will appear in the deed that conveys title
- 36 to the Property to Buyer. The warranty of title identified in the Agreement of Sale does not pertain to the oil, gas and/or mineral
- 37 rights identified by the reservation language. Seller will not defend title to these rights and does not covenant that Buyer will have
- 38 quiet enjoyment of these rights.
- 39 (B) Upon receiving the reservation language, or if Seller fails to provide reservation language within the time stated, Buyer will, within
- 40 ____ days (10 if not specified):
- 41 1. Accept the Property and agree to the terms of the **RELEASE** paragraph of the Agreement of Sale, OR
- 42 2. Terminate the Agreement of Sale by written notice to Seller, with all deposit monies returned to Buyer according to the terms of
- 43 the Agreement of Sale, OR
- 44 3. Enter into a mutually acceptable written agreement with Seller.

If Buyer and Seller do not reach a written agreement during the time stated in this paragraph, and Buyer does not terminate the Agreement of Sale by written notice to Seller within that time, Buyer accepts the Property and agrees to the terms in the RELEASE paragraph of the Agreement of Sale.

48 4. Seller has attached copies of all written oil, gas, and/or mineral rights leases and other documents (e.g. leases, royalty agreements) with-

49 in Seller’s possession having to do with past transfers of these rights, to this Addendum.

50 **All other terms and conditions of the Agreement of Sale remain unchanged and in full force and effect.**

51 **WITNESS** _____ **BUYER** _____ **DATE** _____

52 **WITNESS** _____ **BUYER** _____ **DATE** _____

53 **WITNESS** _____ **BUYER** _____ **DATE** _____

54 **WITNESS** _____ **SELLER** _____ **DATE** _____

55 **WITNESS** _____ **SELLER** _____ **DATE** _____

56 **WITNESS** _____ **SELLER** _____ **DATE** _____

NOTICES REGARDING OIL, GAS AND MINERAL RIGHTS

The owner of a property has a variety of rights that go along with that property, including surface rights (such as the right to use the land for building or to grow crops) and certain subsurface rights (including the right to extract materials from below the ground). Among the various subsurface rights are the rights to explore for, and remove, oil, gas and various minerals such as coal.

Surface and subsurface rights are often transferred together, but sometimes are transferred separately. Despite the best intentions of sellers, property owners are often not aware of the precise extent of the oil, gas and/or mineral rights that they may or may not own. Some owners have all the rights associated with their property, some may be subject to a lease allowing others to access those resources, and still others may have had some or all of the subsurface rights to their land split off and sold.

Determining who owns the various oil, gas and mineral rights to a property can be a difficult and complex exercise, and should only be done by an attorney or title company with expertise in this area. If there is any question about the ownership of rights associated with a particular property, buyers are strongly encouraged to perform an extensive title search before moving forward with the transaction.

Aside from the questions about ownership, some properties are subject to the terms of existing leases that give outside parties (such as exploration, drilling or mining companies) the ability to exercise certain subsurface rights in exchange for payments or royalties to the owner(s) of these rights, who may or may not be the surface owners. These leases can be very legally complex and could drastically impact the surface rights of the landowner. For example, some leases give exploration companies a broad ability to drill, mine and/or transport materials over the land with minimal input from the landowner. Leases may also restrict the ability of the surface owner to use the property if it would conflict in any way with the subsurface rights. Before purchasing any land subject to an existing lease, buyers should have the lease reviewed by an attorney with expertise in this area of law in order to be sure that the extent of the lease is fully understood.

Exception and Reservation of Rights

A typical Agreement of Sale conveys all rights to a property to the buyer as part of the sale. If certain rights have been transferred to someone else by the current landowner or a prior owner, those rights cannot be transferred to the current buyer. These rights are considered to be excepted from the transaction. Sellers with knowledge of prior exceptions are asked to list those exceptions in Paragraph 2. Buyers are still strongly encouraged to conduct a thorough title search in order to be sure that the listed exceptions are the only existing exceptions.

In some transactions a seller may wish to retain certain rights while transferring less than the complete bundle of rights to the buyer. For example, a seller may elect to sell the surface rights and mineral rights, but keep rights to subsurface oil and gas exploration. In this case, the retained rights are considered to be reserved by the seller. This practice requires that a deed be drawn up that specifies which parties will be obtaining which rights. Paragraph 3 requires that the seller provide the buyer with the specific reservation language that the buyer expects to include in the new deed so the buyer can determine if he/she is willing to move forward on those grounds. The reservation language and any review of that language should be done by an attorney with expertise in this area of law.

Additional Information

For additional information regarding oil, gas and mineral ownership, leasing and transfer in the Commonwealth of Pennsylvania, you can visit the Pennsylvania Bureau of Oil and Gas Management (www.dep.state.pa.us/dep/deputate/minres/oilgas/oilgas.htm), Pennsylvania Department of Natural Resources' Oil and Gas Resources (www.dcnr.state.pa.us/topogeo/oilandgas/index.aspx) or the Penn State Dickinson School of Law's Natural Gas Exploration page (<http://www.dsl.psu.edu/centers/aglaw/gas.cfm>).