

CONTRACT TO PURCHASE

This Contract to Purchase ("**Contract**") is entered into this ____ day of April, 2020, between **Nicholas J. Hermes** ("**Seller**"), and _____, a(n) _____ ("**Buyer**"), who contract to sell and purchase, respectively, for the Purchase Price, as set forth below, and on the terms and conditions set forth in this Contract, the following described real estate commonly known as: Tract 2 in the Auction Materials located in Lee County, Illinois, which consists of approximately 1.258 acres m/l and is legally described and/or generally depicted in **Exhibit A** attached hereto (the "**Property**") and in the Survey dated August 7, 2019 by William E. Holt, showing the actual boundaries of the Property ("**Existing Survey**").

1. PURCHASE PRICE AND TERMS

Acres	<u>1.258</u>
Total Purchase Price	\$ _____
Earnest Money Deposit (10%)	\$ _____
Approximate Balance Due at Closing (Not including closing costs and prorations)	\$ _____

Buyer hereby acknowledges that Buyer had access to or has received the Existing Survey for the Property.

2. METHOD OF PAYMENT

The Purchase Price shall be paid by Buyer to Seller by: (i) application of the Earnest Money Deposit to the Purchase Price; and (ii) Buyer delivering to the Closing Agent by no later than 10:00 A.M. Central Standard Time on the Closing Date the balance of the Purchase Price by wire transfer of federal funds to the Closing Agent.

3. CONVEYANCE

At Closing, Seller shall convey and transfer the Property to Buyer by a Warranty Deed subject to the Permitted Exceptions (the "**Deed**").

4. CLOSING AND CLOSING DOCUMENTS

A. **Closing and Closing Date.** The closing of the purchase of the Property pursuant to this Contract ("**Closing**") shall occur on or before May 11, 2020, or at such other time as may be mutually agreed to in writing by Seller and Buyer ("**Closing Date**"). Notwithstanding the foregoing, Seller and Buyer acknowledge and agree that the Closing Date shall be automatically extended if such extension is required to complete any of the required closing documents or to obtain any governmental approval(s) required for Seller to convey the Property and such extended Closing Date will be no later than five (5) days after the closing documents and/or the Survey are completed and/or the governmental approval(s) are obtained and the Title

Company is prepared to issue an Owner's Title Policy. There shall be no contingency period for Buyer to obtain governmental approvals for the development of the Property.

B. Closing Agent and Closing Costs. The Closing shall be held at Kenzley Title Group, Inc., 308 N. Cherry Street, Morrison, IL 61270 (hereinafter referred to as "**Closing Agent**" or "**Title Company**"). In the event the Closing is held at the Title Company, and a Closing fee is charged, the Buyer and Seller shall split the cost of that closing fee, each paying fifty percent (50%). Buyer shall be responsible for the cost of recording the Deed, any closing costs due to Buyer securing financing (including, without limitation the cost of the loan policy and escrow fees related thereto), and any other costs customary charged to Buyer. Each party shall pay its own legal fees. Seller shall be responsible for the payment of all transfer taxes and documentary stamp taxes, except for municipal taxes, if any, which shall be paid by the party required to pay such taxes by law.

C. Closing Documents:

1. **Seller's Closing Deliveries:** At Closing, Seller shall deliver to Closing Agent the following: (i) the Deed; (ii) an Owner's Title Affidavit, or any other documents reasonably requested by the Title Company for the issuance of the Owner's Title Policy; (iii) a FIRPTA Statement; (iv) all required real estate transfer declarations, returns, and/or affidavits; (v) Seller executed counterpart of the closing statement; and (vi) such other documents as are reasonably required by the Title Company or Closing Agent to consummate the Closing.
2. **Buyer's Closing Deliveries:** At Closing, Buyer shall deliver to Closing Agent the following: (i) the balance of the Purchase Price due at Closing; (ii) any documents or affidavits reasonably requested by the Title Company for the issuance of the Owner's Title Policy; (iii) Buyer executed counterpart of all required real estate transfer declarations, returns, and/or affidavits; (iv) Buyer executed counterpart of the closing statement; and (v) such other documents as are reasonably required by the Title Company or Closing Agent to consummate the Closing.

5. POSSESSION

The Parties agree that possession of the Property is to be delivered to Buyer on the Closing Date, subject only to the Permitted Exceptions.

6. REAL ESTATE TAXES

A. Real estate taxes and assessments for the years prior to the year of the Closing. Accrued and unpaid real estate taxes and assessments for the years prior to the year of the Closing which are due and payable prior to the Closing Date shall be paid by Seller. If such real estate taxes and assessments are not payable as of the Closing Date, Seller shall provide Buyer, at closing, with a credit for such real estate taxes and assessments, based on the most recent ascertainable tax bill available for the Property. Such proration shall be final.

B. Real estate taxes and assessments for the year of the Closing and following years. Seller shall provide Buyer, at closing, with a credit for the 2020 real estate taxes payable in 2021 from the beginning of the 2020 tax year through the Closing Date. Buyer shall be solely responsible for the payment of all subsequent real estate taxes and all other assessments applicable to the Property for the year of the Closing and any time thereafter.

7. TITLE EVIDENCE

No less than fourteen (14) days prior to the Closing Date, Seller shall furnish to Buyer satisfactory evidence of title to the Property which shall be a Commitment for Title Insurance issued by the Title Company, showing the condition of title to the Property (the "**Title Commitment**") and committing the company to issue an owner's policy in the usual form insuring merchantable title to the Property in Buyer's name for the amount of the Purchase Price. The title to the Property to be conveyed to Buyer shall be free and clear of all liens and encumbrances, subject to the Permitted Exceptions. Conveyance of title shall be by Warranty Deed. In the event any exceptions or defects appear in the Title Commitment that are unacceptable to Buyer, then Buyer shall notify Seller in writing of such fact. Seller may, at Seller's option undertake to commit to eliminate or modify such unacceptable exceptions to the reasonable satisfaction of Buyer. If Seller is unwilling or unable to commit to cure such objections within five (5) days after Seller's receipt of Buyer's objections, Buyer may either (i) terminate this Agreement by notice in writing to Seller or (ii) accept title subject to such objections

Buyer further acknowledges and agrees to accept title to the Property subject to the following: (a) the general exceptions against title to the Property appearing in the Title Commitment; (b) all real estate taxes and assessments which are not due and payable as of the Closing Date; (c) restrictions or reservations of any type; (d) zoning laws and ordinances; (e) roadways, rights of way, and easements; (f) drainage ditches, feeders and laterals; (g) all outstanding mineral rights or reservations, oil, gas or mineral leases, if any; (h) water districts, water rights; and (i) matters which could be disclosed by a survey of the Property; (collectively, the "**Permitted Exceptions**").

At the Closing, Seller shall render payment and deliver requested document to the Title Company to cause the Title Commitment to be converted into an Owner's Title Policy in the amount of the Purchase Price showing Buyer as the owner of the Property as of the Closing Date, subject to the Permitted Exceptions. Seller shall not be required to provide any endorsements to the Owner's Title Policy. The cost of the Owner's Title Policy shall be paid for by Seller.

8. WARRANTIES

Buyer acknowledges and agrees that (i) Buyer has had an opportunity to inspect the Property or is otherwise familiar with it, and (ii) is satisfied in all respects with (x) the physical and environmental condition of the Property, (y) its suitability for any and all activities and uses that Buyer intends to conduct thereon, and (z) the availability of all necessary utilities and access. Buyer understands that Seller makes no representation, and specifically disclaims any warranty (oral or written) as to the condition, quality, or serviceability of the Property or any environmental soil condition concerning or affecting the Property for any particular purpose. Buyer specifically acknowledges that Buyer is not relying on (and Seller hereby disclaims and renounces) any representations or warranties made by or on behalf of Seller of any kind or nature whatsoever, except for those particular representations and warranties expressly provided in this

Contract. Buyer further understands that, by entering into the Contract, Buyer is agreeing to accept the Property in a strictly “WHERE IS - AS IS” condition.

9. DEFAULT

A. If Seller is unable to convey title to the Property in accordance with the condition in this Agreement, Buyer may, at Buyer’s option, terminate this Agreement by written notice forwarded to Seller on or prior to the Closing Date, or may continue to respect and abide by the terms of the Agreement. If Seller fails to consummate this Agreement for any reason other than Buyer’s Default (as defined below) or a termination of this Agreement by Seller or Buyer pursuant to a right to do so expressly provided for in the Agreement (a “Seller’s Default”), Buyer may elect to enforce this Agreement by an action for specific performance, or seek damages. The exercise of one or more of said rights or remedies shall not impair Buyer’s right to exercise any other right or remedy provided for in this Agreement.

B. If Buyer fails to consummate this Agreement for any reason other than Seller’s Default or a termination of this Agreement by Seller or Buyer pursuant to a right to do so expressly provided for in this Agreement (a “Buyer’s Default”), Seller shall have all rights and remedies given at law or in equity, including, without limitation specific performance.

C. Notwithstanding anything herein contained to the contrary, no party alleged to be in Default hereunder shall be deemed to be in Default unless and until the party alleging such Default has sent written notice to the other party specifying the nature of the alleged Default and such alleged Default has not been cured within five (5) days after the date of such notice.

D. If any litigation ensues between the parties hereto involving enforcement or interpretation of the provisions of this Agreement, the party prevailing in any such litigation shall be entitled to recover from the non-prevailing party its reasonable attorneys’ fees and court costs.

10. COMMISSION

Seller shall be responsible for any real estate brokerage commission owed to Sullivan Auctioneers, LLC as the listing broker utilized by Sellers. Sellers shall not be responsible for any real estate broker commission owed to any broker retained or utilized by Buyer.

11. EARNEST MONEY ESCROW

Simultaneously with the execution and delivery of this Contract by Buyer and Seller, Buyer shall deposit the Earnest Money Deposit (which shall be considered the “Earnest Money”) with Lane & Waterman LLP, as escrow agent (“Escrow Agent”), to be held in an escrow account for the mutual benefit of Seller and Buyer, and disbursed according to the terms of this Contract. Buyer acknowledges and agrees that Escrow Agent is authorized to wire the Earnest Money Deposit to the Title Company to complete Closing, no less than one (1) business day prior to the Closing Date to be held and applied toward the Purchase Price.

12. RETURN OF EARNEST MONEY

In the event that the transaction does not close and the Escrow Agent is holding the Earnest Money in its escrow account on behalf of Buyer and Seller, said Earnest Money Deposit will be returned or held by Escrow Agent in accordance with the following terms:

A. Escrow Agent holding the Earnest Money shall give Seller and Buyer ten (10) days written notice as to the Escrow Agent's proposed distribution of the Earnest Money; and

B. If neither Buyer nor Seller provide the Escrow Agent with a written objection to Escrow Agent's proposed distribution within said ten (10) day period, it shall be considered that the Buyer and Seller agree with the Escrow Agent's proposed distribution, and Escrow Agent shall distribute the proceeds in the manner set forth in the Escrow Agent's notice.

Buyer and Seller acknowledge that as long as Escrow Agent returns the Earnest Money in accordance with the provisions of this Section 12, this Contract provision is considered as written consent to disburse said Earnest Money. **In the event that the Buyer and the Seller fails to reach an agreement regarding dispersal of the Earnest Money, the Escrow Agent is authorized to file an interpleader action, and the Parties agree that the Escrow Agent will be reimbursed from the Earnest Money for all costs incurred in connection with such filing, including reasonable attorney's fees.**

13. **ENVIRONMENTAL MATTERS** Intentionally left blank.

14. **CONDEMNATION** If, after the date of this Agreement and prior to the Closing Date, all or any material portion (in the sole judgment of Buyer or its lender) of the Property is taken by exercise of the power of eminent domain or any proceedings are threatened or instituted to effect such a taking, Seller shall immediately give Buyer notice of such occurrence, and Buyer may, within fifteen (15) days after receipt of such notice, elect either (a) to terminate this Agreement and all obligations of the parties hereunder shall cease and this Agreement shall have no further force and effect, or (b) to close the transaction contemplated hereby as scheduled (except that if the Closing Date is sooner than fifteen (15) days following Buyer's receipt of such notice, Closing shall be delayed until Buyer makes such election), in which event Seller shall assign and/or pay to Buyer at Closing all condemnation awards or other damages collected or claimed with respect to such taking.

15. **GENERAL CONDITIONS AND STIPULATIONS**

A. **Benefit.** Time shall be considered to be of the essence of this Contract. The warranties and agreement herein contained shall extend to and be obligatory upon the heirs, executors, administrators, successors and assigns of the parties hereto.

B. **Construction.** The headings of various sections in this Agreement are for convenience only, and are not to be utilized in construing the content or meaning of the substantive provisions hereof. If there is more than one Seller or Buyer, the word "Seller" or "Buyer" wherever used herein shall, respectively, be construed to mean Seller and Buyers, and the necessary grammatical plural changes shall in all cases be assumed as though in each case fully expressed.

C. **Notices.** All notices, demands and other communications (collectively, "**Notice**") herein required or given hereunder shall be in writing, addressed as follows:

To Seller:

Nicholas J. Hermes
1690 Mound Hill Road
Dixon, IL 61021

Copy to Seller's
Attorney:

Lane & Waterman, LLP
c/o Samuel J. Skorepa
220 N. Main Street, Suite 600
Davenport, IA 52801
Telephone: (563) 333-6646
Facsimile: (563) 324-1616
Email: sskorepa@l-wlaw.com

To Buyer:

Telephone: _____
Facsimile: _____
Email: _____

Copy to Buyer's
Attorney:

Telephone: _____
Facsimile: _____
Email: _____

Notices must be addressed to Seller or Buyer at each identified addressee above. The mailing of a Notice by U.S Mail at the respective addresses shall be sufficient service as of three (3) business following such mailing. Notices may also be sent by (i) facsimile to Seller or Buyer at the respective facsimile numbers set forth above and shall be deemed properly delivered and received the same day as the confirmation transmission of such facsimile notice, or (ii) via email to Seller or Buyer at their respective email addresses (provided that a copy of such notice is also delivered within 24 hours to the party by one of the other methods listed herein) and shall be deemed received on the date of delivery.

D. Entire Agreement. This Contract contains all the terms and conditions agreed upon by the parties hereof, and supersedes all oral agreement, undertakings, promises, warranties, representations or covenants not contained herein and regarding the subject matter of this Contract.

E. Amendment. This Contract may only be amended or altered in writing signed by all parties.

F. Additional Information. Seller and Buyer agree to provide all information necessary to complete and execute all documents and perform all actions necessary to comply with the following: (a) Real Estate Settlement Procedures Act of 1974; (b) Internal Revenue Service Form 1099S; (c) Section 445 of the Internal Revenue Code as amended (which deals with the citizenship of the Seller); (d) if required by either party, a mutually agreeable summary of the closing transaction, and (e) all laws, statutes, ordinances and regulations applicable to the transaction.

G. Like-Kind Exchange. Seller understands and agrees that Buyer may qualify its acquisition of the Property as part of a like-kind exchange under Section 1031 of the Internal Revenue Code. Notwithstanding any other provision in the Contract to the contrary, Buyer may assign its rights under the Contract to a qualified intermediary or an exchange accommodation titleholder of its choosing for the purpose of effecting a like-kind exchange transaction; provided, however, that no such assignment shall operate to release Buyer from its obligations under the Contract and Buyer shall unconditionally guarantee the full and timely performance by any such assignee of each and every one of the obligations and undertakings of the Buyer under the terms of the Contract. Seller agrees to execute an acknowledgment of any such assignment and otherwise to cooperate reasonably with Buyer to qualify Buyer's acquisition of the Property as a like-kind exchange; provided, however, that Seller will not be required to acquire title to any other property to consummate Buyer's exchange and Seller will not be required to assume any additional liabilities or obligations or incur any additional expense as a result of Buyer's exchange.

H. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Illinois.

I. Counterparts. Facsimile copies and signatures on this Contract shall be as valid as an originally signed Contract. This Contract may be executed in counterparts.

SIGNATURE PAGES FOLLOW ON NEXT PAGE

SIGNATURE PAGE

Seller does hereby accept the foregoing Contract this _____ day of April, 2020.

BUYER:

SELLER:

[Print Name of Buyer, and if applicable, Type of Corporate Entity]

Name: Nicholas J. Hermes

By: _____
Name: _____
Title: _____

Buyer - F.E.I.N. or Social Security Number:

Buyer - Provide where Future Tax Bills and Original Deed should be mailed to after recording:

EXHIBIT A

LEGAL DESCRIPTION/DEPICTION OF PROPERTY

The Property described on the Deed recorded as Vol. No. 9110-1413 in the office of the Lee County Recorder;
Containing 1.258 acres, more or less.