

# REAL ESTATE CONTRACT

This Contract is made and entered into on this 17<sup>th</sup> day of February, 2018, by and between **Howard P. Miller** and **Helen M. Miller**, hereinafter referred to as the "Sellers," and \_\_\_\_\_, hereinafter referred to as the "Purchaser."

WITNESSETH:

The Sellers hereby agree to sell and convey all of their right, title, and interest, and the Purchaser hereby agrees to buy all of the Sellers' right, title, and interest in and to the following described unimproved agricultural real property, including mineral rights, to-wit:

All that part of the North Half of the Northwest Quarter (N/2 NW/4) of Section 18, Township 4 South, Range 7 East of the 6<sup>th</sup> P.M., Marshall County, Kansas, lying South of the Big Blue River and West of a due North and South line located 120 rods East of the West Line of said Section 18; and

All that part of the North Half of the Northeast Quarter (N/2 NE/4) of Section 13, Township 4 South, Range 6 East of the 6<sup>th</sup> P.M., Marshall County, Kansas lying East of the Center Line of West River Road; and

All that part of the Southwest Quarter of the Southwest Quarter (SW/4 SW/4) of Section 7, Township 4 South, Range 7 East of the 6<sup>th</sup> P.M., Marshall County Kansas, lying West of the Big Blue River; and

All that part of the South Half (S/2) of Section 12, Township 4 South, Range 6 East of the 6<sup>th</sup> P.M., Marshall County, Kansas, lying West of the Big Blue River, and lying East of the Center Line of West River Road, LESS a tract defined by survey;

Subject to all restrictions, easements, and rights-of-way, visible, invisible and of record.

THE PARTIES FURTHER AGREE AS FOLLOWS:

1. The purchase price for the above described unimproved agricultural property [77 acres, more or less] shall be the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), which shall be paid in the following manner:

- (a) An earnest payment in an amount equivalent to Ten Percent (10%) of the purchase price, the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), due on the date of auction sale, February 17, 2018; and
- (b) The remaining balance of the purchase price, with cost due, if any, in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), shall be paid in full at the time of closing, on or before March 31, 2018, the projected date of closing.
- (c) The Purchaser's payments shall be made to the Sellers in care of and through the designated Escrow/Closing Agent and shall be payable to the "Marshall County Abstract and Title Company." Further, the Purchaser's payment at closing shall be in the form of a wire transfer, cashier's check, money order or other certified funds.



2. Within a reasonable time following the execution of this Contract, the Purchaser shall be provided with an offer to insure the title to the described real estate, such insurance to be in the amount of the purchase price and issued by a title insurance company authorized to underwrite title insurance in Kansas. After receipt thereof, the Purchaser shall have ten (10) days to examine the offer to insure and assert written objections to the exclusions set forth therein; provided, however, that exclusions to taxes which are not due, matters not shown on the public record, or any matters which are of record and a part of the bargained for exchange, **shall not** be objectionable. *Objections not so made by the Purchaser shall be deemed waived.* Thereafter, the Sellers shall have a reasonable time to satisfy any underwriting requirements and remove objectionable exclusions.

3. **The parties agree to split equally, on a 50-50 basis, the premium expense of the standard owners' title insurance policy with coverage in the amount of the purchase price.** The Purchaser shall be responsible for any expenses incurred in the examination of the offer to insure title and assertion of written objections thereto and for any additional title or mortgage insurance that may be required by the Purchaser's lender. The Sellers shall bear the expenses, if any, of satisfying the underwriting requirements and removing objectionable exclusions.

4. At or prior to closing, the Sellers shall execute a Warranty Deed conveying the described real property to the Purchaser and said deed shall be deposited with the Escrow/Closing Agent to hold pending closing and payment in full of the purchase price. Upon payment of the purchase price in full, the deed shall be released to the Purchaser who shall be responsible for the expense of recording the same.

5. The parties hereto make and designate the Marshall County Abstract & Title Company, 1110 Broadway Street, Marysville, Kansas, as the Escrow/Closing Agent for this transaction, and they do hereby authorize and direct the Escrow/Closing Agent to pay the necessary and incidental expenses of the sale of the described real property (including payment of a sales commission to Midwest Land & Home) and to take whatever further actions as may be reasonably necessary to complete the escrow and closing of the subject transaction. Thereafter, the Escrow/Closing Agent shall pay over the net sale proceeds to the Sellers or their assigns. In accepting any funds or documents under this Contract, it is agreed and understood by the parties that in the event of a disagreement between them, the Escrow/Closing Agent will and does reserve the right to hold all monies and documents in escrow until a mutual agreement is reached by the parties or until delivery thereof is authorized by the final decree or order of a court of competent jurisdiction. The Escrow/Closing may independently bring an appropriate action for leave to deposit any such monies and documents with the court pending such court determination. **The parties agree to split equally, on a 50-50 basis, the fee charged by the Escrow/Closing Agent for closing the real estate transaction. The Purchaser shall be solely responsible for any fees and/or expenses incident to the Purchaser's loan closing and for any loan closing costs including but not limited to fees for appraisals, credit reports, and mortgage registration and recording.**

6. Notwithstanding any other terms of this Contract providing for the forfeiture or refund of the earnest money deposited, the parties understand that applicable Kansas real estate laws prohibit the Escrow/Closing Agent from distributing the earnest money, once deposited, without the consent of all parties to this agreement. However, the parties hereto do agree that the Escrow/Closing Agent may distribute the earnest money under either procedure set forth below when written authorization is not obtained from both parties:

(a) The parties agree that failure by either party to respond in writing to a certified letter from the Escrow/Closing Agent, within seven (7) days of receipt thereof, shall constitute a consent to distribution of the earnest money as suggested in any such certified letter.

(b) The parties agree that a party's failure to make written demand for return or forfeiture of the earnest money deposited, within thirty (30) days of notice of cancellation of this Contract, shall constitute a consent by such party to the distribution of the earnest money as demanded by the other party.



7. The Sellers authorize the Escrow/Closing Agent to receive any mortgage or loan information relative to the above-referenced property, specifically directing their lending institution to provide any mortgage pay-off amounts upon request of the Escrow/Closing Agent. The Purchaser also authorizes the Escrow/Closing Agent to receive any mortgage or loan information relative to the above-referenced property and to release to the lending institution which is financing the purchase a copy of this Contract, the Deed, the closing statement, and any other information or documents regarding this sales transaction as may be required for the loan application and the closing of this transaction.

8. The parties agree that time is of the essence and that the closing of this transaction shall be on or before March 31, 2018, unless extended in writing by mutual agreement of the parties.

9. Possession of the above described real property shall be delivered by the Sellers to the Purchaser immediately following closing of this transaction free and clear of any lease interests or input liens to any farm tenants. The Sellers and former tenant reserve all right to receive any government farm program payment for the 2017 crop year, regardless of when such payments are made. The Purchasers shall receive any such payments attributable to the 2018 crop year.

10. The Purchaser hereby acknowledges that prior to executing this Contract, the Purchaser was afforded one or more opportunities to enter upon and inspect the described property, by an agent employed by the Purchaser for general condition including but not limited to the environmental condition. *Failure by the Purchaser to inspect the unimproved property and raise objections before executing this Contract shall be deemed an expressed waiver by the Purchaser of the rights of inspection and objection.* By signing this Contract, the Purchaser acknowledges that the Purchaser has not relied on any representation made by the Sellers or their agents, but has instead relied on the Purchaser's own review and examination of the subject property. The Purchaser expressly agrees to accept the described property in the present existing condition, **"AS IS" and "WHERE IS"**, subject to all applicable zoning ordinances and other codes and regulations imposed by government authority, and without any warranties on the part of the Sellers or their agents, except as to insurable title of the described real property.

11. The Sellers shall pay all real property taxes and assessments for the year 2017 and all prior years. The Purchaser shall pay all taxes and assessments that become due for the year 2018 and all future years.

12. The Sellers shall bear all risk of loss, damage or destruction by casualty or other causes to the described property until the date of closing. From and after closing, the Purchaser shall be solely responsible for insuring the property and shall bear all risk of loss or damage.

13. The Sellers agree to provide the described property to the Purchaser free and clear of all mortgages, liens, and encumbrances and to pay all contractors, laborers, material men or suppliers for work done or materials furnished to the described real property prior to the date closing which might form the basis for a mechanic's lien. The Sellers shall indemnify and hold the Purchaser harmless from any such lien, mortgage, encumbrance or other obligation for payment due of the Sellers or arising by reason of the Sellers' actions prior to closing.

14. Pursuant to Kansas law, Midwest Land and Home, Jeff Dankenbring, Broker, makes the following agency disclosures to the parties hereto, in writing, as part of this Contract, to-wit:

(a) Midwest Land and Home, Jeff Dankenbring, Broker, his agents and representatives, shall be the agents for the Sellers only, with a duty to represent only the Sellers' interest, and they shall not be the agents for or represent the interests of the Purchaser; and



(b) By signing this Contract, the parties hereto expressly acknowledge and agree that no representations have been made, nor any expressed or implied warranties given by Midwest Land and Home, Jeff Dankenbring, or by any of his agents and representatives, nor have they assumed any responsibility, directly or indirectly, with respect to the condition of the described real property.

15. In the event the Purchaser fails to comply with any of the terms and provisions herein set forth to be performed by the Purchaser, then the Sellers, at their option, may require the specific performance of this Contract and recover damages resulting from the failure to so perform. In the alternative, the Sellers may declare this Contract null and void, and in such event: (a) All rights and interest hereby created or existing in favor of or derived from the Purchaser shall absolutely cease and terminate; and (b) the right of possession and all legal and equitable interest in and to said property hereby contracted or created hereunder shall revert to and revest in the Sellers without any declaration or forfeiture or act of re-entry, and without any other act to be performed by the Sellers, as absolutely and fully as if this Contract had never been made; and (c) *all amounts paid by the Purchaser as set forth above in the Contract shall be forfeited to the Sellers as liquidated damages.* In addition and/or in the alternative, the Sellers may pursue any other right or remedy that may be available to them at law or in equity. It is further agreed the Sellers shall also be entitled to their reasonable attorneys fees, if any, in the event of a breach on the part of the Purchaser incurred in the enforcement of this Contract.

**16. The parties agree to split, on a 50-50 basis, the legal fees incurred in preparing this Contract and the necessary transfer instruments.**

17. The parties hereto agree that this Contract constitutes their entire agreement and that there are no unwritten, oral, or implied promises, covenants, or warranties.

18. It is also agreed by the parties that this Contract may be amended or modified only by a written, mutually signed agreement of the parties attached hereto and made a part hereof.

19. The terms and conditions of this Contract shall extend to and be binding upon the heirs, executors, administrators, trustees, devisees, successors, and assigns of the respective parties.

20. The parties hereto agree this Contract may be executed in counterparts by and between the respective parties, and that such counterparts shall be construed together as a single document.

EACH PARTY, BY SIGNING THIS REAL ESTATE CONTRACT, ACKNOWLEDGES THAT THE PARTY HAS READ AND UNDERSTOOD THE ENTIRE CONTRACT.

This REAL ESTATE CONTRACT is executed on the day and year first above written:

SELLERS:

PURCHASERS:

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Howard P. Miller

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Helen M. Miller

ACCEPTANCE AND RECEIPT OF  
THE ESCROW/CLOSING AGENT

I, the undersigned agent of the Marshall County Abstract & Title Company, 1110 Broadway, Marysville, Kansas, hereby accept, on behalf of said firm, the duties and responsibilities as the Escrow/Closing Agent for purposes of completing the above and foregoing described transaction.

And further, I hereby acknowledge receipt of the Purchasers' earnest payment in the amount of

\_\_\_\_\_ into escrow on this \_\_\_\_ day of February, 2018.

Marshall County Abstract & Title Company

By: \_\_\_\_\_