

File No. 136423 (Tract 6)

**AUCTION CONTRACT FOR THE SALE OF REAL ESTATE**

THIS AGREEMENT, Entered into this 29<sup>th</sup> day of July, 2023, by and between **Pishny Four, LLC, a Kansas Limited Liability Company**, as Seller and \_\_\_\_\_, as Buyer (collectively referred to herein as the “Parties”):

WITNESSETH: That Seller, for the consideration mentioned agrees to sell to Buyer, or heirs, successors and assigns of Buyer, the following real estate, to wit:

**The North Half of the Southwest Quarter of Section 21, Township 4 South, Range 6 East of the 6th P.M., Marshall County, Kansas.**

**Seller’s interest in mineral rights, if any, will transfer to Buyer at closing.**

**Regarding water rights, there are no water rights appurtenant to this tract. Buyer acknowledges that Seller makes no warranty regarding Buyer ability to obtain appropriated water rights for this tract through the Kansas Division of Water Resources.**

**All material showing acres are estimates. The purchase price will not change due to actual acres being greater or less than the acres shown in any materials.**

**(Shown as “Tract 6” on Midwest Land & Home sale bill and subject to the terms contained herein);**

**SUBJECT TO (i) 2023 taxes and general and special assessments, (ii) any and all easements, controlled access rights, reservations, restrictions, covenants, roadways, rights of way, encumbrances, exceptions, agreements documents, orders, certificates, resolutions, building restrictions and other matters of record (iii) all encroachments and matters and potential claims of adverse possession both of record which would be shown by an accurate survey or inspection of the, (iv) underground and overhead cables, lines and utility services, and other matters which would be disclosed by a physical inspection of the Property, (v) and all existing zoning ordinances, laws, codes, statutes and subdivision regulations affecting the Property, and (vi) riparian rights, and accretion, erosion and avulsion by reason of future changes of location of the river.**

**Buyer hereby acknowledges that in order to remain eligible for programs and payments from the United States Department of Agriculture (USDA), Buyer must notify the United States Department of Agriculture (USDA) within 30 days of the date of the recording the deed, that Buyer has purchased the subject property. Buyer acknowledges that Buyer will be required to enter into a new contract with the USDA in order to enroll in the current farm program and to be eligible to receive payments under the farm program. Buyer hereby acknowledges that Seller shall have no liability to Buyer for any loss caused by Buyer not properly notifying the USDA and Seller shall not be required to reimburse Buyer for any loss, due to the loss of eligibility under the current farm program, caused by Buyer not properly notifying the USDA nor any loss caused by Buyer not entering into a contract with the USDA regarding payments and eligibility under the current farm program.**

**Buyer accepts the Real Estate subject to all applicable zoning ordinances and other codes and regulations imposed by governmental authority. Seller makes no warranty, either expressed or implied regarding the zoning classification of the Real Estate, and Buyer acknowledges that Buyer takes the Real Estate subject to the current zoning classification and that any intended use of Buyer of the property not within said classification may require a change in zoning classification**

**for the property and that is not a contingency of this sale.**

1. Buyer agrees to purchase the described Real Estate, and to pay to Seller the sum of (\$ \_\_\_\_\_) in the manner following: **10% of said purchase price, being (\$ \_\_\_\_\_)**, on the signing of this contract, to be held in escrow with Charlson & Wilson Bonded Abstracters, Inc., Manhattan, Kansas, as earnest money to the date of closing and then applied to the purchase price; and the balance of said purchase price, to be paid on the Closing Date, with the Closing Date to be on or before September 6, 2023.
2. Buyer Acknowledgments
  - a. Buyer acknowledges that the earnest money deposit is non-refundable and that this contract is not contingent upon financing nor the property appraising for the purchase price.
  - b. Buyer acknowledges that they have completed all inspections of the Real Estate prior to the date of this contract, and Buyer accepts the Real Estate in "existing condition" without further requirement or warranty from Seller. Buyer acknowledges that they have made all desired inspections of the Real Estate, is aware of the condition of the Real Estate, and has not relied upon any representations from Seller or Seller's agent(s) concerning the condition of the Real Estate. Seller neither offers nor extends any express or implied warranties with regard to the condition of the Real Estate.
  - c. Buyer acknowledges that all information provided by Seller or Seller's agents is from reliable sources, however, Buyers acknowledge that they verified any information that they relied upon to bid and purchase this property. Seller expressly disclaims any liability for errors, omissions or changes regarding information provided to Buyer prior to the Auction. Buyer acknowledges that they have not relied upon any representations made by Seller or Seller's agents and that they relied upon their own inspections of the property and opinions from parties other than the Seller or Seller's agents and that they conducted said inspections prior to the Auction. The buyer acknowledges that statements made prior to or during the auction take precedence over all printed material.
  - d. Buyer further acknowledges that (i) neither Seller, nor any principal, agent, attorney, officer, employee, broker or other representation of Seller has made any representations or warranties of any kind whatsoever, either express or implied, with respect to the Property or any of such related matters, and (ii) that Buyer is not relying on any warranty, representation, or covenant, express or implied, with respect to the property and is buying the Property in its "as-in" condition with all faults. In particular, but without limitation, Seller makes no representations or warranties with respect to the use, condition, including without limitation the condition of the soils or groundwaters of the Property and the presence or absence of toxic materials or hazardous substances on or under the Property, occupation or management of the Property, compliance with applicable statutes, laws, codes, ordinances, regulations or requirements relating to leasing, zoning, subdivision, planning, building, fire, safety, health or environmental matters, compliance with covenants, conditions and restrictions (whether or not of record), other local, municipal, regional, state or federal requirements, or other statutes, laws, codes, ordinances, regulations or requirements. Buyer acknowledges that it is knowledgeable in real estate matters, and that closing with Buyer will be deemed approval by Buyer without reservation of all aspects of this transaction, including but not limited to the physical condition of the Property, the use, the title, and the financial aspects of the operation of the Property.
  - e. Buyer acknowledges that Buyer and adjoining landowners shall be responsible for the construction of any partition fences between the real estate and adjoining tracts. Seller is not

responsible for any partition fencing.

- f. The escrow agent reserves the right to require the balance of the purchase price to be provided by bank wire transfer to the escrow agent's financial institution at or prior to the Closing Date. Notwithstanding the definition of good funds in Kansas law, it is agreed by the Parties that funds to close must be fully settled and unconditionally credited to the account of the escrow agent at or prior to the Closing Date.
- g. Buyer shall have possession of the Real Estate on the date of closing of this transaction at 5:00 P.M. The Real Estate is subject to tenants rights in the real estate, being a verbal agricultural lease. Buyer agrees to take the real estate subject to said lease and shall receive the second half of the cash rent due from the tenant on November 15, 2023. Buyer acknowledges that they will be responsible for collecting said rent and for terminating said agricultural lease pursuant to Kansas law.

### 3. Seller Rights and Responsibilities

- a. Seller shall execute to Buyer a Special Warranty Deed conveying the Real Estate to Buyer, in fee simple, free and clear of all liens and encumbrances, subject only to exceptions hereinbefore stated. Said deed, together with a copy of this agreement, shall be deposited in escrow with Charlson and Wilson Bonded Abstracters, Inc., Manhattan, Kansas, until the Closing Date, when said deed shall be delivered to the Buyer.
- b. Seller shall furnish to Buyer prior to the Closing Date, the cost to be shared as stated in Section 5(a), a commitment for a standard owner's policy of title insurance from Charlson and Wilson Bonded Abstracters, Inc., showing marketable title in Seller, subject to exceptions hereinbefore stated. Buyer shall make any objections relative to the marketability of the title in writing to Seller prior to the Closing Date, and any objections not so furnished shall be deemed waived by Buyer. The owner's policy of title insurance shall be issued following the Closing Date, and shall insure Buyer against loss or damage to the extent of the purchase price by reason of defects in Seller's title to the Real Estate, subject to exceptions hereinbefore stated and exceptions noted in Schedule B of said policy.
- c. Seller shall have not more than 30 days after the Closing Date to remedy any title defects, and if legal proceedings are necessary, they shall be commenced promptly and prosecuted to completion. The Closing Date of this sale shall be extended until title or other work necessary to render the title marketable shall be concluded. If Seller is unable to furnish marketable title as provided by the 30 days after the Closing Date, then this contract shall terminate, and all monies paid by or on behalf of Buyer, if any, shall be returned to Buyer, and the escrow agent shall return the deed to Seller, and all parties shall be released from further liability hereunder. Buyer shall not have a claim against Seller should the consummation of this contract be prevented because of the inability of the Seller to deliver marketable title. the Title Standards adopted by the Kansas Bar Association and the Kansas Marketable Title Act shall control in the case of dispute between the Parties.
- d. Seller shall bear all risk of loss or damage to the Real Estate to the Closing Date.

### 4. Taxes

- a. Seller shall pay all general real estate taxes levied against the Real Estate for the calendar year preceding the year in which closing occurs and all prior years. General real estate taxes for the year in which closing occurs will be prorated to Closing Date; real estate taxes for the current year shall be prorated provided by the Marshall county appraiser. Proration of taxes at closing

between the parties based upon this amount will be final. Buyer assumes all real estate taxes not yet due and payable, from and after the Closing Date. Neither Seller, the Seller's agent(s) nor the escrow agent shall be responsible for the payment of any increase in taxes resulting from reassessment, classification or increase in mill levy after the date of closing.

5. Costs

- a. The Parties shall **share equally** in the cost of document drafting and escrow/settlement services from Charlson and Wilson Bonded Abstracters, Inc. (\$400.00), and the cost of the premium for an owner's policy of title insurance. Buyer agrees to pay all mortgage closing costs and fees, including the appraisal fee, credit report fee, the premium for the loan policy of title insurance and for recording the deed and mortgage, and for any inspection fees, but acknowledges that this contract is not contingent upon any of these items.

6. Default

- a. Seller or Buyer is in default under this contract if either fails to comply with any material covenant, agreement or obligation within any time limit required by this contract. Following a default by either Seller or Buyer under this contract, the other party shall have the following remedies, to wit:
  - i. If the Seller defaults, Buyer may pursue any remedy and damages available at law or in equity, including an action for specific performance;
  - ii. If Buyer defaults, Seller may terminate this contract by written notice to Buyer and, at Seller's option, (i) either retain the earnest money, if any, as liquidated damages and not as penalty, as the Seller's sole remedy, or (ii) pursue any other remedy and damages available at law or in equity, or Seller may elect to treat this contract as being in full force and effect and Seller shall have the right to an action for specific performance or damages or both.

7. Disclosures/Agents/Commission

- a. The real estate firm/firms involved in this transaction are agents only, not parties to this contract, and will in no case be held liable to either party for performance of any term or condition of this contract or for damages for non-performance. Buyer acknowledges that said firm/firms have made no representations and have given no express or implied warranties with regard to the condition of the Real Estate. The Parties agree that the real estate firm/firms shall not be responsible for the conduct of third parties providing specialized services whether those services were arranged by Seller, Buyer or the real estate firm/firms on behalf of either.
- b. The Parties agree that the real estate licensees involved in this transaction are not experts regarding whether any environmental or health hazards, defects in the mechanical equipment or systems, structural defects, or damage from wood destroying organisms exist in and on Real Estate. The Parties shall seek expert advice and obtain inspections to determine such conditions exist in and on the Real Estate. If inspections are not performed regarding all or part of the Real Estate, Buyer is bound by whatever information an inspection would have revealed, and waives any claim, right or cause of action relating to or arising from any condition of the Real Estate that would have been apparent had such inspections been performed.
- c. Buyer shall not sell, assign or transfer this contract or any interest under it, or any interest in or to said Real Estate prior to the Closing Date, without first obtaining the written consent of Seller.

Except that either party may assign their interest for the sole purpose of a 1031 exchange as stated below.

- d. **Section 1031 Exchange:** The Parties to this contract acknowledge and agree that either party may wish to make this transaction a part of an exchange or trade for other property pursuant to IRC Section 1031. In the event either party chooses to effectuate such exchange or trade, the other party shall cooperate fully in executing such documents as may be reasonably necessary to consummate such exchange or trade, including real estate contracts. The cooperating party shall incur no liability or cost in connection with said exchange or trade, and the trading party shall indemnify cooperating party against any liability in connection with such exchange or trade. **Either party that decides to complete a 1031 exchange agrees to give the other party notice of their intent to do so within a reasonable time prior to the closing date so that the closing date is not delayed.**
  - e. **DISCLOSURE:** Pursuant to applicable state law, Midwest Land & Home, notifies the undersigned Buyer in writing as part of this contract as follows: The licensee will be acting as agent of the Seller with the duty to represent the Seller's interest, the licensee will **not** be acting as the agent of the undersigned Buyer, and all information given to licensee will be disclosed to Seller;
  - f. Seller acknowledges that Charlson & Wilson Bonded Abstracters, Inc., will pay Midwest Land & Home, its commission based on the purchase price set forth herein pursuant to the listing agreement between Seller and Midwest Land & Home from the escrow proceeds at date of closing of this transaction.
8. Miscellaneous
- a. Charlson and Wilson Bonded Abstracters, Inc., Manhattan, Kansas, is appointed as escrow agent for this sale and shall have the authority to do whatever necessary to aid in the handling of this escrow. In accepting any funds or documents delivered hereunder, it is agreed and understood that, in the event of disagreement between the Parties to this contract, the escrow agent reserves the right to hold all money and documents concerning this escrow until the Parties agree or until delivery is legally authorized by final judgment or decree from a court of competent jurisdiction. The escrow agent may bring an appropriate action or proceeding for leave to deposit said money and/or documents in court pending such determination, and shall have the right to employ attorneys for the reasonable protection of the escrow property, and of itself and shall have the right to reimburse itself out of any funds in its possession for costs, expenses, attorney fees and its compensation, and shall have a lien on all money and documents held in escrow to cover same. The Parties agree that the escrow agent may retain any interest earned on escrowed funds and that if this contract is canceled by the parties or if the earnest money is to be forfeited or refunded, the amount to be distributed shall first be reduced by any unpaid charges for credit reports, appraisals, surveys, termite, mechanical and other inspections, and title investigation fees, if any, incurred by the escrow agent on behalf of the party receiving the funds.
  - b. The parties acknowledge that the Escrow Agent does not pay interest to either party on earnest money or any other funds held by the Escrow Agent.
  - c. This contract may be executed by facsimile or electronic signature by any party and such signature will be binding without delivery of an original signature being required. This contract may be executed in several counterparts, each of which will be considered an original, and all of

which together shall constitute one agreement.

- d. This contract constitutes the complete agreement of the Parties concerning the Real Estate, shall supersede all previous agreements, whether oral or written, and may be modified only by a subsequent written agreement signed by all the Parties.
- e. The parties acknowledge that Todd A. Sheppard is an attorney licensed in the State of Kansas, is employed by Charlson & Wilson Bonded Abstracters, Inc., and that he drafted this contract at the request of the Parties, according to their instructions. The Parties acknowledge that such party has had the opportunity to employ such party's own independent attorney and/or tax advisor in regard to this contract. The Parties acknowledge that neither Todd A. Sheppard nor Charlson & Wilson Bonded Abstracters, Inc., represents the parties as an attorney in this transaction and, in the event of a dispute, the Parties will need to retain independent counsel.
- f. Time is of the essence of this contract and that all covenants and agreements herein shall extend to and be binding upon the respective heirs, executors, administrators, successors and assigns of the Parties.

**Seller:**

Pishny Four, LLC, a Kansas Limited Liability Company

\_\_\_\_\_  
By: Norman Pishny, Managing Member

\_\_\_\_\_  
Date

**Buyer:**

\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_

\_\_\_\_\_  
Date

Buyer Current Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

Phone Number: \_\_\_\_\_.

E-mail address: \_\_\_\_\_.