



Representing Sellers and Buyers of Agricultural Properties

September 17, 2020

Presented by:

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Pre-Contract Issues – Seller

- **Who owns the property?**
 - Do we have multiple owners?
 - Are all owners in agreement to sell?
 - Are there any partition issues?



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Pre-Contract Issues – Seller

- **Is the farm currently subject to a lease?**
 - Is the lease written or oral?
 - Is a termination required and, if yes, has it been sent?
 - Are there any rent payments due after closing (i.e., bonus rent)?/
 - Are any reimbursements due the tenant (i.e., lime or tillage)?
 - Does the tenant have a right of first refusal/option or been approached as a purchaser?



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Pre-Contract Issues – Seller

- **Is there a farm manager involved?**
 - If yes, determine if farm manager has right to list property or is otherwise entitled to a fee upon sale.
 - Have all farm management fees been paid?
 - Have farm manager provide all relevant farm information (i.e., soil reports, tiling information, FSA information, etc.).



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Pre-Contract Issues – Seller

- **Will a broker be hired to list the farm?**
- **Will the sale be via an auction?**
 - If yes, has the auction contract been reviewed?
 - Has a contract been provided by the auction company or has the auction company requested a draft?
 - Will the farm be sold in multiple tracts?
 - If yes, have or will surveys be completed?



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Contract Issues

- **Will the farm be sold in multiple tracts?**
 - If yes, will a survey be required or are the separate tracts existing parcels?
- **Purchase Price**
 - Is the purchase price a fixed amount or based on surveyed/tillable acres?
 - If based on surveyed/tillable acres, who is paying for survey?



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Contract Issues

- **Survey Issues**
 - Who is paying?
- **Encroachment Issues**
 - Does the survey indicate that farming activities encroach onto a neighboring property or does a neighbor’s activity encroach onto the property being sold?



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Contract Issues

- **Title Commitment**
 - Are there any easement issues?
 - Presence of Natural Gas Lines
 - Drainage Ditch



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Contract Issues

■ Mineral Rights

- Many title companies will not insure mineral rights or provide exceptions to title.
- Are there mineral rights leases on the property?
 - If yes, is there active production?
 - If no active production, request Affidavit of Non-Production from Seller in order to have title company delete old leases.



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Contract Issues

■ Wind/Solar Leases

- Is the farm subject to a wind/solar lease/option?
 - If yes, has the lease commenced or is it still in the option phase?
 - If still in option phase, how should option fee be handled?
 - If in active production, how are lease payments to be handled?



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Contract Issues

■ Due Diligence Period

- Does the Buyer require a due diligence period?
 - Typically required by your larger pension fund buyers.
 - If yes, how long is the period?
 - Typically 30-45 days.
- Does the buyer have the right to extend the due diligence period?
 - If yes, does the buyer need to put down additional earnest money?



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Contract Issues

■ Due Diligence Period

- Does the earnest money (including any additional earnest money) become non-refundable at the expiration of the due diligence period?
- Does the buyer need to send notice of termination prior to the expiration of the due diligence period or does the contract automatically terminate unless the buyer sends notice of acceptance?
- What type of testing is allowed?



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Contract Issues

Lease Issues

- Is the farm subject to a lease?
 - Does the lease extend beyond the current crop year?
 - Has a notice of termination been sent?
- Is the lease a cash rent lease or a crop share lease?
 - Crop share lease may be relevant if a family member is farming or if the owner needed to maintain active farming for special use valuation for estate.



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Contract Issues

Lease Issues

- Has rent been paid?
 - Is the rent to be prorated?
 - Answer may depend on the timing of the sale as it relates to the growing season.



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Contract Issues

- **Real Estate Taxes**

- Standard is whichever entity receives the rental income pays the real estate taxes for that crop year.
 - For example, if the sale occurs in October 2020 and the Seller was entitled to all of the 2020 crop income, then Seller would be responsible for the 2020 real estate taxes payable in 2021.



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Contract Issues

- **Real Estate Taxes**

- If Seller is providing credit at closing, what is the basis for proration?
 - Based on current year taxes or is a percentage increase applied to current year taxes?



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Contract Issues

Real Estate Taxes

- If the farm has been split, how are taxes to be prorated?
 - Value of Farmland
 - Value of Homestead Site
 - Value of any Other Farm Improvements (i.e., barn or grain storage facilities)



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Contract Issues

Is the Seller providing any representations or warranties?

- Typically, the larger pension fund buyers will require the Seller to provide representations and warranties.



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Contract Issues

- **Are there any Conservation Reserve Program (CRP) or Farm Service Agency (FSA) Issues?**
 - If there are CRP or FSA Agreements in place, the contract needs to provide that the Buyer agrees to continue the Agreements or there could be adverse consequences to Seller



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Post-Closing Issues

- **If representing a Buyer that is a foreign individual or entity, disclosure will be required.**
 - Agricultural Foreign Investment Disclosure Act: 765 ILCS 50/1 to 50/8
 - <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2146&ChapterID=62>
 - Failure to comply could result in civil penalties up to 25% of the fair market value of the land.



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Post-Closing Issues

- If the property is subject to any CRP/FSA programs, Buyer will need to make appropriate filings with the local FSA office.



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Thank you for attending today's program.

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ILLINOIS FARM SALES CONTRACT

This Illinois Farm Sales Contract ("Agreement") is made and entered into to be effective as of the _____ day of _____, _____ ("Effective Date"), by and between _____ ("Seller"), and _____ ("Buyer"). Seller and Buyer are hereinafter individually referred to as a "Party" and collectively as "Parties."

RECITALS

A. Seller is the owner of certain real estate located in _____ County, Illinois, consisting of approximately _____ acres.

B. Seller desires to sell the real estate to Buyer and Buyer desires to purchase the real estate from Seller.

NOW THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

- MUTUAL COVENANTS.** Seller agrees to sell and Buyer agrees to purchase the real estate situated in _____ County, Illinois, consisting of _____ gross acres and _____ tillable acres, more or less, as described on **Exhibit A** attached hereto and incorporated by reference herein ("Land"), together with all easements, permits, licenses, rights, privileges, franchises, and all other appurtenances, whether or not located on the Land hereinafter, together with the Land, referred to as the "Subject Property", upon the terms set forth in this Agreement.
- PURCHASE PRICE.** Buyer agrees to pay to Seller the Purchase Price which shall be the lesser of (i) \$ _____ or (ii) the sum of the products obtained by (a) multiplying the tillable acres of the Subject Property as listed by the Farm Service Agency office located in _____ County, Illinois ("FSA Office") by \$9,231. Buyer, within five (5) business days of the execution of the Contract will pay \$ _____ as earnest money ("Earnest Money") to be held in an account of _____ ("Title Company") as escrow agent hereunder for delivery to Seller at the time of Closing, as defined herein. The balance of the Purchase Price, adjusted by prorations and credits allowed the Parties by this Agreement shall be paid to Seller at Closing by wire transfer, cashier's check, or other form of payment acceptable to Seller.
- POSSESSION AND CLOSING.** Provided that the Buyer has sent the Satisfaction Notice, as defined herein, Seller shall deliver possession of the Subject Property to Buyer concurrently with the closing of this transaction ("Closing") which shall be held _____ () days following the expiration of the Due Diligence Period, as defined herein ("Closing Date"). Closing shall be held at the offices of the Title Company or such other place as the Parties may agree. The Parties hereby acknowledge and agree the Closing shall be an escrow closing and a Party's presence at the Closing is not required. Any fees charged by Title Company for handling this transaction shall be split equally between the Parties.
- DEED OF CONVEYANCE AND CLOSING DOCUMENTS.** If the Satisfaction Notice is given by Buyer on or before the end of the Due Diligence Period (including any extension pursuant to Section 7) and neither of the Parties is in breach of any of its obligations under this Agreement, the Parties shall, on or before the Closing Date, deliver the following to Title Company (collectively, "Deliveries"):

A. Buyer's Deliveries. Upon notification from Title Company that Title Company is prepared to close this transaction ("Closing Notification"), Buyer shall deliver the following to Title Company:

1. Remainder of Purchase Price. Buyer shall deposit with Title Company the balance of the Purchase Price, subject to credits and prorations provided herein, via wire transfer;
2. Real Estate Transfer Declaration. The Real Estate Transfer Declaration required by the State duly executed or initialed by Buyer; and
3. Other Documents. Any other documents or instruments reasonably necessary or appropriate, consistent with this Agreement, as may be required by Escrow Agent or the Title Company.

B. Seller's Deliveries. Upon receipt of the Closing Notification, Seller shall deliver the following to Title Company:

1. Deed. A General Warranty Deed, fully executed and acknowledged, in recordable form, in form reasonably satisfactory to Buyer and Title Company;
2. FSA Transfer Documents. All documents necessary to transfer the FSA Programs or Conservation Reserve Program contracts to Buyer, if required;
3. Non-Foreign Affidavit. A Non-Foreign Person Affidavit, duly executed and sworn to by Seller and acknowledged in form and content reasonably required by Buyer;
4. Other Affidavits. Any affidavit or certificate required by any agency of State of Illinois or, Title Company, or reasonably required by Buyer, to be filed with regard to any ad valorem or other tax pertaining to the Subject Property or the sale of the Subject Property;
5. Real Estate Transfer Declaration. The Real Estate Transfer Declaration required by the State of Illinois duly executed by Seller;
6. Supplemental Representation Certificate. A certificate executed by Seller confirming, as of the Closing Date, all representations and warranties made by Seller in this Agreement continue to be true and correct; and
7. Other Documents. Any other documents or instruments reasonably necessary or appropriate, consistent with this Agreement, as may be required by Escrow Agent or Title Company.

5. MINERAL RIGHTS. One hundred per cent (100%) of all mineral rights owned by Seller with respect to the Subject Property shall be conveyed to the Buyer at Closing.

6. **SURVEY.** Seller, within five (5) days of the execution of this Agreement, shall provide Buyer with copies of all existing surveys and FSA Office information for the Subject Property that Seller has in its possession. To the extent Buyer desires a new or updated survey of the Subject Property, Buyer may obtain such survey at its sole cost and expense during the pendency of this transaction.

7. **DUE DILIGENCE PERIOD.** Buyer shall have thirty (30) days following the execution of this Agreement (“Due Diligence Period”) in which to conduct due diligence on the Subject Property, including but not limited to a Phase 1 Environmental Study on the Subject Property, all of such due diligence shall be completed at Buyer’s expense. In the event that Buyer requires additional time to complete its Due Diligence Period, Buyer may extend the Due Diligence Period by one (1) addition fifteen (15) day period by providing Seller with notice of such extension prior to the expiration of the initial Due Diligence Period. In the event that during the Due Diligence Period, Buyer, in its sole and absolute discretion, determines that the Subject Property is not suitable for Buyer’s acquisition, then Buyer may elect not to proceed with the transaction and terminate this Contract. In the event of such termination, Buyer shall be entitled to a refund of the Earnest Money. If, upon completion of its due diligence, Buyer is satisfied with the Subject Property and all aspects thereof, as determined by Buyer in its sole and absolute discretion, Buyer will, prior to the expiration of the Due Diligence Period, give Seller a notice to that effect (“Satisfaction Notice”). If Buyer fails to provide Seller with the Satisfaction Notice, which Buyer may withhold for any or no reason, prior to the expiration of the Due Diligence Period (as the same may be extended pursuant to the foregoing provisions of this Section 7 or by mutual agreement of the Parties), this Agreement shall automatically terminate without any further liability of the Parties to each other, except for Buyer’s duty pursuant to this Section 7 to indemnify and hold Seller harmless from Buyer’s due diligence activities on the Property and, in such event, Escrow Agent shall immediately return the Deposit to Buyer. Seller shall grant access to the Subject Property during normal business hours between the date of this Agreement and the date of the Closing to Buyer, Buyer’s agents, surveyors, consultants, inspectors and other representatives (“Buyer’s Agents”) for the purpose of inspecting, surveying and otherwise performing due diligence activities at the Subject Property. Buyer agrees to indemnify, defend and hold Seller harmless from any loss or damage arising from Buyer’s Agents activities on the Subject Property, and Buyer shall responsible for the repair of any damage to the Subject Property caused by Buyer’s Agents’ action at the Subject Property.

8. **REAL ESTATE TAXES AND SPECIAL ASSESSMENTS.** The Seller shall pay, or give Buyer a credit for, the real estate taxes for the Subject Property for 2019 payable in 2020. Real Estate taxes for all subsequent years shall be paid by Buyer. Buyer shall pay any special assessments with respect to the Subject Property levied after the date of execution of this Agreement by both parties and Seller shall pay, or give Buyer a credit for, any special assessments existing as of the date of execution of this Agreement.

9. **EVIDENCE OF TITLE.** Seller shall, within ten (10) days of the execution of the Agreement, provide Buyer a commitment to issue an ALTA title insurance policy in the amount of the Purchase Price, which shall be issued by Title Company together with legible copies of all schedule B exception documents. If the title commitment discloses exceptions unacceptable to Buyer (“Unacceptable Exceptions”), Buyer shall give written notice of such Unacceptable Exceptions to Seller within fifteen (15) days of the receipt of such commitment and all schedule B exception documents. Seller shall have a reasonable time, not to exceed thirty (30) days, to have such Unacceptable Exceptions removed; provided however that any such Unacceptable Exceptions which may be removed by the payment of money may be cured by deduction

from the Purchase Price at Closing. If Seller is unable or unwilling to cure such Unacceptable Exceptions within said thirty (30) day period, then Buyer shall have the option to terminate the Agreement in which case Buyer shall be entitled to a refund of the Earnest Money. The parties agree that the Closing Date shall automatically be extended until at least ten (10) days after the Seller's removal of such Unacceptable Exceptions.

10. **DEFAULT.** If Buyer fails to perform any obligation imposed by this Agreement, Seller may serve written notice of default upon Buyer and if such default is not corrected within fifteen (15) days thereafter, at the option of the Seller, Buyer's rights under this Agreement shall terminate and the Seller shall be entitled to pursue any remedies available at law or at equity. If Seller fails to perform any obligations imposed by this Agreement, Buyer may serve written notice of default upon Seller and if such default is not corrected within fifteen (15) days thereafter, at the option of Buyer, Seller's rights under this Agreement shall terminate and Buyer shall be entitled to pursue any remedies available at law or at equity. The parties reserve the right to seek specific performance of the terms of this Agreement. In the event of default hereunder, the defaulting party shall be liable for all damages, court costs and attorneys' fees incurred by the non-defaulting party in enforcing the terms and provisions of this Agreement.

11. **NOTICES.** All notices, requests, demands, and other communications hereunder shall be in writing and shall be given by (i) established express delivery service which maintains delivery records, (ii) hand delivery, or (iii) certified or registered mail, postage prepaid, return receipt requested, to the parties at the addresses set forth below, or at such other address as the Parties may designate by written notice in the above manner. Notices and other communications may also be given by electronic mail, provided the notice or other communication is concurrently given by one of the above methods. Notices are effective upon receipt, or upon attempted delivery if delivery is refused or if delivery is impossible because of failure to provide a reasonable means for accomplishing delivery.

If to Seller:

Telephone No. (____)

Email:

With a Copy to:

Telephone No. (____)

Email:

If to Buyer:

Telephone No. (____)
Email:

With a Copy to:

Telephone No. (____)
Email:

If to Title Company:

Telephone No. (____)
Email:

Either Party may, by giving notice pursuant hereto, change the information set forth above.

12. **LEASE INFORMATION. INSERT LEASE INFORMATION OR ADD REPRESENTATION THAT THERE IS NO LEASE FOR SPECIFIC CROP YEAR.**

13. **TAX EXCHANGE.** Seller hereby acknowledges that it may be the intent of Buyer, in agreeing to purchase the Subject Property described herein, to effect a tax-deferred exchange at no liability or expense to Seller, pursuant to Section 1031 of the Internal Revenue Code. Buyer and Seller agree that Buyer shall have the right to assign all of its rights under this Agreement to a qualified intermediary or other accommodation party pursuant to Section 1031. Seller further agrees to cooperate with Buyer in good faith and to sign documents reasonably requested by Buyer to acknowledge the assignment of Buyer's rights hereunder and the receipt by Seller of notices of such assignment, and similar documents. Buyer agrees that the closing shall not be delayed as a result thereof and that Seller shall not be required to accept legal title to any property other than the Subject Property as a result of Buyer's tax-deferred exchange. All expenses associated with any tax-deferred exchange initiated by the Buyer shall be the sole obligation of the Buyer.

Similarly, Buyer hereby acknowledges that it may be the intent of Seller, in agreeing to sell the Subject Property described herein, to effect a tax-deferred exchange at no liability or expense to Buyer, pursuant to Section 1031 of the Internal Revenue Code. Buyer and Seller agree that Seller shall have the right to assign all of its rights under this Agreement to a qualified intermediary or other accommodation party pursuant to Section 1031. Buyer further agrees to cooperate with Seller in good faith and to sign documents reasonably requested by Seller to acknowledge the assignment of Seller's rights hereunder and the receipt by Buyer of notices of such assignment, and similar documents. Seller agrees that the closing shall not be delayed as a result thereof and that Buyer shall not be required to accept legal title to any property other than the Subject Property as a result of Seller's tax-deferred exchange. All expenses

associates with any tax-deferred exchange initiated by the Seller shall be the sole obligation of the Seller.

14. **LIABILITY OF ESCROW AGENT.** The Parties acknowledge that any escrow agent (“Escrow Agent”) hereunder is acting at their request and at their convenience. Escrow Agent, when acting in such capacity, shall not be deemed to be the agent of either of the Parties hereto and Escrow Agent shall not be liable to either of the Parties for any acts or omissions on its part unless taken or suffered in bad faith, in willful disregard of this Agreement, or involving Escrow Agent’s gross negligence. Seller and Buyer shall, jointly and severally, indemnify, defend and hold Escrow Agent harmless from and against all costs, claims, and expenses, including reasonable attorneys’ fees, incurred in connection with the performance of Escrow Agent’s duties hereunder except with respect to acts or omissions taken or suffered by Escrow Agent in bad faith, in willful disregard of this Agreement, or involving gross negligence on the part of the Escrow Agent. In no event shall the Escrow Agent be liable for unearned interest with respect to the earnest money deposit and all interest accrued thereon to the non-defaulting party.

15. **ENTIRETY OF AGREEMENT.** This Agreement contains the entire agreement between the parties.

16. **TIME OF THE ESSENCE.** The time for performance of the obligations of the parties is of the essence of this Agreement.

17. **BINDING AGREEMENT.** If Buyer and Seller accept this offer, it shall constitute a binding agreement for sale of the Subject Property in accordance with the terms and conditions specified herein.

18. **REPRESENTATIONS/WARRANTIES BY SELLER.** Seller represents and warrants to Buyer as of the date of this Agreement, and as of the Closing Date, that:

- A. Seller has the full right, power and authority to enter into this Agreement and to perform the provisions of this Agreement.
- B. Seller has received no notice of any condemnation or eminent domain proceedings pending or contemplated against the Subject Property, or any part thereof, and Seller has not received any notice, oral or written, of the desire of any public authority or other entity to take or use the Subject Property, or any part thereof, and to the best of Seller's knowledge, none of the foregoing is pending or contemplated.
- C. Seller does not know of any litigation or threatened litigation, affecting the Subject Property, or any part thereof, or Seller's right to sell the Subject Property, and to the best of Seller's knowledge, none of the foregoing is pending or contemplated. Seller shall give Buyer prompt notice of any such litigation instituted prior to Closing of which it receives notice.
- D. The Subject Property is free and clear of any and all liens or other similar claims, except as disclosed in the title commitment to be obtained pursuant to Section 9 hereof.
- E. Other than generally published statewide increases in assessed values, Seller has not received any notice of a proposed increase in the assessed valuation of the Subject Property for ad valorem tax purposes and Seller has no knowledge of any proceeding pending or presently being prosecuted in the respect thereof.

F. To the best of Seller's knowledge, no hazardous material exists on or in the Subject Property. Seller has received no notice of the existence or possibility of the existence of any hazardous material on or in the Subject Property from any person or governmental authority.

G. All mortgage liens, deeds of trust or other monetary liens created by, through or under Seller encumbering the Subject Property shall be fully released at Closing at Seller's sole expense.

H. Seller is in compliance with all government Farm Service Agency programs and Conservation Reserve Program contracts related to the Subject Property and has provided Buyer with copies of any such program documents or contracts.

Seller covenants and agrees that Seller will not knowingly take or cause to be taken any action, or fail to perform any obligation, which would cause any of the foregoing representations or warranties to be materially untrue as of Closing. Seller shall immediately notify Buyer, in writing, of any event or condition known to Seller that occurs prior to Closing hereunder, which causes a change in the facts relating to, or the truth of, any of the above representations or warranties. All representations and warranties set forth in this Agreement shall survive the Closing.

19. **NO RULE OF STRICT CONSTRUCTION.** The language contained herein shall be deemed as approved by all parties hereto to express their mutual consent. No rule of strict construction shall be applied against a Party to this Agreement.
20. **ASSIGNMENT.** The terms of this Agreement shall be binding upon the Parties, their successors and assigns. Seller specifically acknowledges Buyer shall have the right to assign this Agreement at its discretion upon providing written notice to Seller.
21. **FACSIMILE SIGNATURES.** The Parties acknowledge photocopies of this Agreement which have been executed by the Parties hereto or their respective agents shall be binding upon the Parties as if such photocopies were originals regardless of whether such photocopies of the Agreement have been delivered by personal service, regular mail, facsimile transmission or otherwise. Upon request from a Party hereto, the other Party agrees to execute an original Agreement upon presentation thereof if such Agreement has previously been executed and delivered in photocopy form by personal delivery, facsimile transmission, regular mail or otherwise.
22. **REAL ESTATE BROKER. IDENTIFY ANY BROKER'S REPRESENTING THE PARTIES AND WHO IS PAYING THE COMMISSION.** Except for the representation of Buyer by Buyer's Broker, Seller and Buyer each represent and warrant strictly for themselves that each has not dealt with any broker or finder in connection with any of the transactions contemplated by this Agreement, and insofar as each for themselves know, no broker, agent, or other person is entitled to any commission or fee with respect to any such transaction. Further, each Party shall indemnify, defend and hold the other Party harmless from and against any claim or loss incurred or suffered as a result of any agent's or broker's commission or finder's fee alleged to be payable because of any statement, act or omission of the indemnifying party.
23. **FSA Payments.** Seller shall be entitled to any FSA or crop payments with respect to the Subject

Property for the _____ crop year. Any Conservation Reserve Program payments paid in October _____ with respect to the Subject Property will be prorated as of the Closing Date. All future FSA or Conservation Reserve Program payments shall be payable to Buyer and retained by Buyer for Buyer's sole benefit. All FSA contracts and Conservation Reserve Program contracts (if any) concerning the Subject Property will be assigned by Seller to Buyer and assumed by Buyer at Closing.

IN WITNESS WHEREOF the Parties have caused this Agreement to be signed the day and year first above written by themselves or their respective duly authorized officers.

SELLER:

BUYER:

By: _____
Name (Print):
Its (Title):

By: _____
Name (Print):
Its (Title):

ACCEPTANCE OF TITLE COMPANY

Title Company hereby accepts this Agreement, agrees to act as Escrow Agent hereunder, and agrees to be bound by the terms and conditions of this Agreement pertaining to Escrow Agent and to perform Escrow Agent's duties and responsibilities as set forth in this Agreement.

ESCROW AGENT:

By: _____
Its:



Exhibit "A"
LEGAL DESCRIPTION

To be attached.



ILLINOIS FARM SALES CONTRACT

This Illinois Farm Sales Contract ("Agreement") is made and entered into to be effective as of the _____ day of _____, _____ ("Effective Date"), by and between _____ ("Seller"), and _____ ("Buyer"). Seller and Buyer are hereinafter individually referred to as a "Party" and collectively as "Parties."

RECITALS

A. Seller is the owner of certain real estate located in _____ County, Illinois, consisting of approximately _____ acres.

B. Seller desires to sell the real estate to Buyer and Buyer desires to purchase the real estate from Seller.

NOW THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

- MUTUAL COVENANTS.** Seller agrees to sell and Buyer agrees to purchase the real estate, together with all improvements and appurtenances thereon, situated in _____ County, Illinois, consisting of ___ acres, more or less, as described on **Exhibit A** attached hereto and incorporated by reference herein, hereinafter referred to as the "Subject Property", upon the terms set forth in this Contract.
- PURCHASE PRICE.** Buyer agrees to pay to Seller the total sum of _____ Dollars (\$ _____). Buyer will pay \$ _____ as earnest money to be held in an account of _____ ("Escrow Agent") as Escrow Agent hereunder for delivery to Seller at the time of closing. The balance of the purchase price, adjusted by prorations and credits allowed the parties by this Contract shall be paid to Seller at closing by wire transfer, cashier's check, or other form of payment acceptable to Seller.
- POSSESSION AND CLOSING.** Seller shall deliver possession of the Subject Property to Buyer, subject to the rights of any tenant in possession, concurrently with the closing of this transaction which shall be held on or before _____, unless the parties mutually agree in writing to extend the closing date. Closing shall be held at the offices of the title insurance company selected by Seller or at such other place and time as the parties may agree in writing. Any fees charged by title insurance company for closing this transaction shall be equally paid by Buyer.
- CONDITION OF PREMISES AND PERSONAL PROPERTY.** Buyer acknowledges that it has inspected the Property, and that it is acquainted with the condition thereof and accepts the same as of the time Buyer executed this Contract in its **as-is condition**.
- MINERAL RIGHTS.** 100% of all mineral rights owned by Seller with respect to the subject real property shall be conveyed to the Buyer at closing. To the extent that Buyer desires to have a mineral rights search, Buyer shall be solely responsible for any and all costs associated with such search.

6. **DEED OF CONVEYANCE.** Seller shall execute a recordable _____ Deed (“Deed”) sufficient to convey the Subject Property to Buyer or its nominee, in fee simple absolute, subject only to exceptions permitted. The Deed shall be delivered to Buyer at the closing of this transaction upon Buyer's compliance with the terms of this Contract.
7. **REAL ESTATE TAXES AND SPECIAL ASSESSMENTS.** Seller shall pay, or give Buyer a credit for, the ____ calendar year real estate taxes for the Subject Property. Real estate taxes for all subsequent years shall be paid by Buyer. Buyer shall pay any special assessments with respect to the Subject Property levied after the date of execution of this Contract by both parties and Seller shall pay, or give Buyer a credit for, any special assessments existing as of the date of execution of this Contract.
8. **EVIDENCE OF TITLE.** Seller shall, within fifteen (15) business days of the execution of this Contract, provide Buyer a commitment to issue an ALTA title insurance policy for the Subject Property in the amount of the purchase price, issued by a title insurance company selected by Seller which is authorized to transact business in the state in which the Subject Property is located. The title insurance commitment shall commit the title insurance company to issue Buyer its standard owner’s policy in the amount of the purchase price subject only to its standard exceptions, rights of tenants in possession, covenants, conditions, restrictions, applicable zoning and building restrictions, rights of way for public roads; drainage rights; easements apparent or of record; general mineral interests exception and general real estate taxes for the year 20__ and all subsequent years. The costs for any lender’s policy, endorsements to the title company’s standard owner’s policy or insurance for any amounts in excess of the purchase price shall be Buyer’s sole cost and expense.
9. **COMMISSION. INSERT ANY BROKER INFORMATION AND WHO PAYS.** Each party agrees to indemnify, defend and hold harmless the other party hereto in respect to any claims or demands for commissions, fees, other compensation, judgments, attorneys fees and expenses of any nature or kind which it may become liable to pay by reason of any claims by or on behalf of brokers, finders, or agents who have dealt with or been employed by the other party hereto in connection with the transaction contemplated by this Contract, or any litigation or similar proceeding arising from such claims. Each party represents to the other that there is no valid basis for such claims.
10. **DEFAULT.** If Buyer fails to perform any obligation imposed by this Contract, Seller may serve written notice of default upon Buyer and if such default is not corrected within ten (10) days thereafter, at the option of the Seller, Buyer’s rights under this Contract shall terminate and the Seller shall be entitled to pursue any remedies available at law or at equity. If Seller fails to perform any obligations imposed by this Contract, Buyer may serve written notice of default upon Seller and if such default is not corrected within ten (10) days thereafter, at the option of Buyer, Seller’s rights under this Contract shall terminate and Buyer shall be entitled to pursue any remedies available at law or at equity. The parties reserve the right to seek specific performance of the terms of this Contract. In the event of default hereunder, the defaulting party shall be liable for all damages, court costs and attorneys’ fees incurred by the non-defaulting party in enforcing the terms and provisions of this Contract.

11. **NOTICES.** All notices, requests, demands, and other communications hereunder shall be in writing and shall be given by (i) established express delivery service which maintains delivery records, (ii) hand delivery, or (iii) certified or registered mail, postage prepaid, return receipt requested, to the parties at the addresses set forth below, or at such other address as the Parties may designate by written notice in the above manner. Notices and other communications may also be given by electronic mail, provided the notice or other communication is concurrently given by one of the above methods. Notices are effective upon receipt, or upon attempted delivery if delivery is refused or if delivery is impossible because of failure to provide a reasonable means for accomplishing delivery.

If to Seller:

Telephone No. (____)

Email:

With a Copy to:

Telephone No. (____)

Email:

If to Buyer:

Telephone No. (____)

Email:

With a Copy to:

Telephone No. (____)

Email:

If to Title Company:

Telephone No. (____)

Email:

Either Party may, by giving notice pursuant hereto, change the information set forth above.

12. **LEASE INFORMATION.** INSERT LEASE INFORMATION OR ADD REPRESENTATION THAT THERE IS NO LEASE FOR SPECIFIC CROP YEAR.

13. **TAX EXCHANGE.** Seller hereby acknowledges that it may be the intent of Buyer, in agreeing to purchase the Subject Property described herein, to effect a tax-deferred exchange at no liability or expense to Seller, pursuant to Section 1031 of the Internal Revenue Code. Buyer and Seller agree that Buyer shall have the right to assign all of its rights under this Contract to a qualified intermediary or other accommodation party pursuant to Section 1031. Seller further agrees to cooperate with Buyer in good faith and to sign documents reasonably requested by Buyer to acknowledge the assignment of Buyer's rights hereunder and the receipt by Seller of notices of such assignment, and similar documents. Buyer agrees that the closing shall not be delayed as a result thereof and Seller shall not be required to accept legal title to any property other than the Subject Property as a result of Buyer's tax-deferred exchange. All expenses associated with any tax-deferred exchange initiated by the Buyer shall be the sole obligation of the Buyer.

Similarly, Buyer hereby acknowledges that it may be the intent of Seller, in agreeing to sell the Subject Property described herein, to effect a tax-deferred exchange at no liability or expense to Buyer, pursuant to Section 1031 of the Internal Revenue Code. Buyer and Seller agree that Seller shall have the right to assign all of its rights under this Contract to a qualified intermediary or other accommodation party pursuant to Section 1031. Buyer further agrees to cooperate with Seller in good faith and to sign documents reasonably requested by Seller to acknowledge the assignment of Seller's rights hereunder and the receipt by Buyer of notices of such assignment, and similar documents. Seller agrees that the closing shall not be delayed as a result thereof and Buyer shall not be required to accept legal title to any property other than the Subject Property as a result of Seller's tax-deferred exchange. All expenses associated with any tax-deferred exchange initiated by the Seller shall be the sole obligation of the Seller.

14. **LIABILITY OF ESCROW AGENT.** The parties acknowledge that the Escrow Agent hereunder is acting at their request and at their convenience. Escrow Agent when acting in such capacity shall not be deemed to be the agent of either of the parties hereto and Escrow Agent shall not be liable to either of the parties for any acts or omissions on its part unless taken or suffered in bad faith, in willful disregard of this Contract, or involving gross negligence. Seller and Buyer shall, jointly and severally, indemnify, defend and hold Escrow Agent harmless from and against all costs, claims, and expenses, including reasonable attorneys' fees, incurred in connection with the performance of Escrow Agent's duties hereunder except with respect to acts or omissions taken or suffered by Escrow Agent in bad faith, in willful disregard of this Contract, or involving gross negligence on the part of Escrow Agent. In no event shall Escrow Agent be liable for unearned interest with respect to the earnest money deposit.

15. **INDEMNITY.** Buyer shall indemnify and hold Seller harmless from and against any and all claims, liabilities, losses, damages, causes of action and expenses (including court costs and reasonable

attorney's fees related thereto) arising out of, in connection with or resulting from Buyer's investigation of the Subject Property or the Buyer's use, occupancy or operation of the Subject Property from and after Closing, including any such matters arising out of the violation of any environmental law, rule or regulation. The terms of this Section 13 shall survive the closing.

16. **ENTIRETY OF AGREEMENT.** This Contract contains the entire agreement between the parties.
17. **TIME OF THE ESSENCE.** The time for performance of the obligations of the parties is of the essence of this Contract.
18. **BINDING AGREEMENT.** If Buyer and Seller accept this offer, it shall constitute a binding agreement for sale and purchase of the Subject Property in accordance with the terms and conditions specified herein.
19. **REPRESENTATIONS/WARRANTIES.** Each party represents and warrants to the other that the person executing this Contract on behalf of such party is authorized to execute such Contract and bind such party. In addition, each party represents and warrants that such party has the full right, power and authority to enter into this Contract and to perform the provisions of this Contract.
20. **NO RULE OF STRICT CONSTRUCTION.** The language contained herein shall be deemed as approved by all parties hereto to express their mutual consent. No rule of strict construction shall be applied against any party to this Contract.
21. **ASSIGNMENT.** The terms of this Contract shall be binding upon the parties, their successors and assigns; provided however that Buyer may not assign this Contract or Buyer's rights and obligations hereunder without Seller's prior written consent which Seller may withhold in its sole discretion.
22. **FACSIMILE SIGNATURES.** The parties acknowledge that photocopies of this Contract which have been executed by the parties hereto or their respective agents shall be binding upon the parties as if such photocopies were originals regardless of whether such photocopies of the Contract have been delivered by personal service, regular mail, facsimile transmission or otherwise. Upon request from any party hereto, all other parties agree to execute an original Contract upon presentation thereof if such Contract has previously been executed and delivered in photocopy form by personal delivery, facsimile transmission, regular mail or otherwise.

SELLER:

BUYER:

By: _____
Name (Print):
Its (Title):

By: _____
Name (Print):
Its (Title):

Exhibit "A"
LEGAL DESCRIPTION

