

# REAL ESTATE CONTRACT

## Tracts 1 & 2

This Contract is made and entered into on this 2<sup>nd</sup> day of March, 2019, by and between **D&D Farm Partnership**, hereinafter referred to as the "Seller," and \_\_\_\_\_, hereinafter referred to as the "Purchaser."

WITNESSETH:

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

Southeast Quarter (SE/4) of Section 30, Township 5 South, Range 6 East of the 6<sup>th</sup> P.M., in Marshall County, Kansas, LESS road right-of-way, consisting of 157 acres, more or less;

AND

Southwest Quarter (SW/4) of Section 30, Township 5 South, Range 6 East of the 6<sup>th</sup> P.M., in Marshall County, Kansas, LESS road right-of-way, consisting of 159 acres, more or less;

Subject to all easements, restrictions, 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 shall be the sum of \$ \_\_\_\_\_, which shall be paid in the following manner:

- (a) A down payment in the amount of Ten Percent (10%) of the purchase price, the sum of \$ \_\_\_\_\_, due on the date of auction sale, March 2, 2019; and
- (b) The remaining balance of the purchase price, together with costs due, in the sum of \$ \_\_\_\_\_, shall be paid in full at the time of closing, on or before April 5, 2019, the projected date of closing.
- (c) The Purchaser's payments shall be made to the Seller in care of and through the designated Escrow/Closing Agent and shall be made payable to the "Spain Client Trust". 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 Marshall County Abstract & Title Co., Inc., a title insurance company authorized to underwrite title insurance in Kansas. After receipt thereof, the Purchaser shall have a reasonable time 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 Seller shall have a reasonable time to satisfy any underwriting requirements and remove objectionable exclusions.

3. In no event shall the Seller be responsible for providing the Purchaser with any legal survey of the above described tract. However, the Purchaser, at the Purchaser's own option and expense, may obtain a survey. In the event the Purchaser elects not to obtain a survey, it is understood and agreed the Seller shall not be liable for any defect, encroachment, over lap, boundary line dispute, acreage discrepancy or any other matters which would have been disclosed by a survey. To the best of the Seller's knowledge, there are no property line overlaps, encroachments or boundary line disputes.

4. In the event the Seller is unable to deliver insurable title to the Purchaser within a reasonable period of time, then this Contract may, at either party's option, be declared null and void, in which event the parties shall be released of further obligation to one another; provided, however, that expenses incurred and costs advanced in reasonable expectation of completion of the sale shall be paid by the parties as set forth in this Contract. The Purchaser shall *not* have a claim against the Seller in the event the completion of this Contract is prevented because of the Seller's inability to deliver insurable title in a reasonable, timely and cost-efficient manner. For purposes of this Contract "insurable title" shall mean real estate title that a title company authorized to do business in Kansas is willing to insure subject to standard exclusions.

5. **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 Seller shall bear the expenses, if any, of satisfying the underwriting requirements and removing objectionable exclusions.

6. At or prior to closing, the Seller shall cause a Warranty Deed to be executed 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.**

7. The parties hereto make and designate the Spain Law Office, P.A., 107 S. Kansas Avenue, Waterville, 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 and 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.**

8. The Seller authorizes 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.

9. The parties will furnish the Escrow Agent with their social security account number in compliance with the tax reform act of 1984 and the Seller will execute an Internal Revenue Service Form W-9 to be prepared by the Escrow Agent. The Escrow Agent is responsible for completion and filing of Internal Revenue Service Form 1099-S required to report the sale or exchange of real estate.

10. 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.

11. Provided the Escrow/Closing Agent performs all of its obligations under this Contract, the parties mutually agree to defend, indemnify and hold the Escrow/Closing Agent harmless from any and all liabilities or losses by reason of this Contract and in connection with any court action arising out of this Contract. The provisions of this paragraph shall survive the closing of this transaction.

12. The parties agree that time is of the essence and that the closing of this transaction shall be on or before April 5, 2019, unless extended in writing by mutual agreement of the parties.

13. The Purchaser shall be entitled to immediate possession of the described property following receipt of down payment into escrow. The Seller reserves the right to all farm income and government program payments for the period prior to closing regardless of the date paid. The Purchaser shall be entitled to all such payments and income arising after the date of closing.

14. To the extent that any portion of the subject property is enrolled in government sponsored farm programs, the Purchaser shall succeed to such government sponsored program contracts. Seller shall be entitled to retain any farm program or governmental payments attributable to the 2018 crop but paid in the following year. The Seller and/or the Broker do not guarantee the eligibility or the success of the Purchaser in any government sponsored programs. The Purchaser must adhere to all government sponsored program contract requirements and agrees to hold Seller harmless from any damages, claims, penalties, fines or causes of action should the Purchaser fail to comply and penalties or forfeiture is imposed.

15. 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, either personally or 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.

16. The Purchaser is hereby advised that Kansas law requires persons who are convicted of certain crimes, including sexually violent crimes, to register with the sheriff of the county in which they reside. If you, as the Purchaser, desire to access information regarding those registrants, you may find such information on the homepage of the Kansas Bureau of Investigation (KBI) at <http://www.Kansas.gov/kbi> or by contacting the local sheriff's office.

17. The Seller shall pay all taxes and assessments on said real property for the year 2018 and all prior years. The Purchaser shall pay all taxes and assessments that become due and payable for the year 2019 and all future years. There shall be no proration of the 2019 property taxes.

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

19. The Seller agrees 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 Seller shall indemnify and hold the Purchaser harmless from any such lien, mortgage, encumbrance or other obligation for payment due of the Seller or arising by reason of the Seller's actions prior to closing.

20. Midwest Land and Home is the Broker/Auctioneer, and hereby notifies the undersigned Purchaser, as follows: (a) Midwest Land and Home is acting as Seller's Agent and represents the Seller's interest; (b) the undersigned acknowledges that the above disclosure notice was announced to all potential bidders prior to the auction. Notwithstanding any other provision set forth herein, Seller shall be responsible for the real estate commission payable to Midwest Land and Home. By signing this contract, Seller and Purchaser acknowledge that they have read and understand the foregoing Brokerage Relationships Disclosure and further acknowledge that they were previously furnished with a copy of the Kansas Brokerage Relationships in Real Estate Transactions brochure. The real estate firm involved in this transaction are agents only and not parties to this contract and will in no case whatsoever be held liable to either party for performance of any term or condition of this agreement or for damages for non-performance. Purchaser acknowledges that said firm has made no representations and has given no express or implied warranties with regard to the condition of the subject property. Seller and Purchaser agree that the real estate firm shall not be responsible for the conduct of third parties providing specialized services whether those services were arranged by Seller, Purchaser or the real estate firm on behalf of either.

21. 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 Seller, 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 Seller 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 Seller without any declaration or forfeiture or act of re-entry, and without any other act to be performed by the Seller, 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 Seller as liquidated damages.* In addition and/or in the alternative, the Seller may pursue any other right or remedy that may be available to them at law or in equity. It is further agreed the Seller shall also be entitled to their reasonable attorneys fees, if any, incurred in the enforcement of this Contract in the event of a breach on the part of the Purchaser.

22. The Purchaser has been advised and hereby acknowledges that this Contract has been prepared at the expressed directions of the Seller. **There notwithstanding, the parties agree to split equally, on a 50-50 basis, the legal fees to prepare this Contract and the necessary transfer documents.**

23. The parties acknowledge that either or both may desire to accomplish an IRS Code Section 1031 tax deferred exchange and that each party's rights and obligations under this agreement may be assigned to a third party for the purposes of completing such exchange. Any party desiring to make an IRS Code section 1031 exchange shall be hereinafter referred to as the "electing party." The parties agree to accept performance from said third party and shall tender performance to said third party and shall cooperate with the electing party and said third party in any manner reasonably necessary or desirable in order to effectuate such exchange, provided that the electing party shall be responsible for any additional expense or liability resulting from said party's exchange. If both parties so elect, Seller shall be responsible for any additional expense or liability resulting from Seller's exchange, and Purchaser shall be responsible for any additional expense or liability resulting from Purchaser's exchange.

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

25. 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.

26. 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.

27. 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:

SELLER:

PURCHASER:

**D&D Farm Partnership**

\_\_\_\_\_  
Darcy A. Dobrovolny

\_\_\_\_\_  
Dallas J. Dobrovolny

ACCEPTANCE AND RECEIPT OF  
THE ESCROW/CLOSING AGENT

I, the undersigned agent of the Spain Law Office, P.A., Waterville, 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 acknowledge receipt of the Purchasers' earnest payment in the sum of \_\_\_\_\_ into escrow on this 2<sup>nd</sup> day of March, 2019.

Spain Law Office, P.A.

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