

## AGREEMENT TO PURCHASE REAL ESTATE

**Daniel J. Lemme**, (“Seller”), of 5735 E. 41st Street Sioux Falls South Dakota 57110, enters into this purchase agreement as Seller with Lincoln County, South Dakota (“Purchaser”), of 104 N. Main Street, Canton, South Dakota 57013, and its assigns, and sells and forever disclaims the following described real property, approximately **154 acres**, parcel number 100.50.76.1000, (hereinafter the “Property”), and being legally described as follows:

The Northeast Quarter (NE1/4) of Section 36, Township 100, Range 51 West of the 5<sup>th</sup> P.M., Except the West 370.42 Feet of the East 2,132.80 Feet of the North 823.17, Lincoln County, South Dakota

**1. Price and Terms of Payment.** The purchase price for the Property shall be **One Million Four Hundred Thousand Dollars (\$1,400,000.00)**, without interest at the time of closing.

**2. Purchase Time Frame.** This agreement shall terminate and be of no further force or effect and Purchaser shall forfeit all of Purchaser’s rights hereunder, if Lincoln County is unable to obtain financing. Lincoln County shall use all due diligence to obtain financing and complete this transaction. **Seller shall have the right to remove fill dirt from the low land on the property which Lincoln County will designate as a retention pond. The limitation on removal of fill dirt shall not exceed 75,000 cubic yards, with said removal of fill dirt being completed by the Seller on or before December 31, 2022.**

**3. Title.** Purchaser shall secure for examination a Commitment for Owner’s Policy of Title Insurance on the Real Property in the amount of the purchase price.

After receipt of the commitment, the Purchaser shall have the same examined, and the Seller shall evenly share the cost, and notify the Seller within seven (7) days of receipt of commitment or abstract, of the defects in the title, if any. If the Commitment shows exceptions that are objectionable to Purchaser, then Purchaser shall notify Seller, in writing, specifying any such objectionable title matter. Prior to Closing, Purchaser shall have received adequate assurances that any such objectionable title matter will be removed or endorsed over on or before closing; provided, however, Seller shall not be in breach or default of this agreement if Purchaser does not receive such assurances, it being understood that Seller shall have no duty or obligation to cause any objectionable title matter to be removed or endorsed over. If Seller does not cause an objectionable title matter to be removed or endorsed over, Seller shall provide written notice to Purchaser of the same at least three (3) business days prior Closing. Purchaser may terminate this Agreement if Seller fails to cure any objectionable title matter and receive a full refund of its Earnest Money. Matters disclosed by the Commitment which are not objected to by Purchaser in a timely manner or which are objected to, but which are waived by Purchaser shall constitute permitted encumbrances. Failure of Purchaser to notify Seller in writing of any objectionable title or survey matter within the time periods prescribed herein shall constitute an election by Purchaser to take title to the Property subject to the Permitted Encumbrances. If, at closing, Purchaser is unable to obtain an owner’s policy consistent with its timely title objections, Purchaser may terminate this Agreement and receive its Earnest Money.

Seller hereby represents and warrants that Seller has good and marketable title to all property herein, free and clear of all liens and encumbrances except easements, reservations, mortgages or lender's collateral agreements attached to the Property, and conveyances existing and of record. Seller represents that they have the unrestricted ability to convey good and marketable title to the Purchaser with respect thereto. Breach of this representation by Seller shall constitute a material breach of this agreement. If the Seller is not able to convey good and marketable title to all properties described herein, due to breach of this representation, by the date of closing, Purchaser shall have the option to extend the closing date to facilitate curative action or to receive the return of the full amount of the price. Alternatively, Purchaser shall have the right to waive all or any one or more of such defects and accept the property subject to said defect so waived.

The cost of the title insurance shall be paid equally by the parties.

**4. Obligations and Cooperation of Seller.** Seller agrees that Purchaser, its agents, employees, or nominees, are hereby granted the right to enter on all or any portion of the Property for the purpose of making any engineering, geological, soil, archaeological or other work as may be reasonably necessary or appropriate. Purchaser agrees to indemnify and hold harmless the Seller from any damages to the Property or to persons or property occurring as a result of any tests undertaken by Purchaser or by the entry of Purchaser, its agents, employees or nominees on the Property. Purchaser shall purchase the Property on an "as is" basis.

**5. Closing.** Closing shall occur on or before September 30, 2020 unless otherwise agreed by Purchaser and Seller by amendment to this Agreement.

**6. Possession.** The Property being purchased shall pass from Seller to Purchaser at the time of closing.

**7. Taxes and Assessments; Other Expenses.** Seller agrees to pay for all taxes and assessments levied upon such portion of the Property being purchased by Purchaser, prorated to the date of closing, and Purchaser agrees to pay all subsequent real property taxes. Seller shall pay all applicable state transfer tax due on the Warranty Deed to be delivered by Seller. Purchaser shall pay all reasonable and customary closing fees or charges imposed for Closing the purchase of the Subject Property. Each party shall pay their own attorney's fees incurred in connection with the preparation and negotiation of any and all documents required for this Option or the closing of this transaction. Purchaser shall pay all other special assessments.

**8. Default Provision.** Time is hereby declared to be of the essence of this agreement, and in the event Purchaser should fail to make any payment promptly when the same is due, or should the Purchaser fail to keep or perform any of the covenants and conditions on its part to be kept according to the terms of this agreement, the Seller shall have the right to give Purchaser 30 days written notice of the default. The notice of default, if given, shall be mailed to Purchaser at the address specified in this agreement by certified mail, with return receipt requested, postage prepaid. If the Purchaser should fail to correct the default within 30 days after the date of mailing the notice, the Seller's only remedy shall be the right to declare this

agreement terminated and ended; shall be entitled to immediate possession of the property not purchased by Purchaser.

Should Seller fail to keep and perform any of the covenants and conditions on its part to be kept according to the terms of this agreement, the Purchaser shall have the right to give the Seller 30 days' written notice of the default. The notice of default, if given, shall be mailed to the Seller at the address specified in this agreement by certified mail, with return receipt requested, postage prepaid. If the Seller should fail to correct the default within 30 days after the date of mailing the notice, Purchaser may proceed to specifically enforce the terms of this agreement through a court of competent jurisdiction.

In the event that either party to this agreement defaults in the performance of the same, the non-defaulting party shall have the right to employ legal counsel and shall have the right to recover its necessary costs and attorney fees from the defaulting party.

**9. Notices.** All notices or inquiries between the parties hereto shall be delivered or mailed to the following addresses:

Seller: Daniel J. Lemme  
5735 E. 41<sup>st</sup> St.  
Sioux Falls, SD 57110

Purchaser: Lincoln County, South Dakota  
104 N. Main St.  
Canton, SD 57013

**10. Delivery of Warranty Deed at Closing.** Purchaser exercises as herein provided, a Warranty Deed shall be executed by Seller conveying the subject Property to Purchaser shall be delivered to Purchaser at time of closing, upon full payment of the amount then due to Seller. The conveyance of title by warranty deed shall be subject only to easements, covenants and restrictions of record.

**11. Broker's Commission.** Purchaser has not retained any broker/realtor and shall not pay any realtor's fees or commissions regarding this transaction. Seller has not retained any broker/realtor and shall not pay any realtor's fees or commissions regarding this transaction.

**12. CRP Payments / Existing Lease(s):** All contract payments for CRP (Conservation Reserve Program) and payments for any agricultural lease that currently exist shall be fully retained by the Seller for the 2020 year. Upon the time of Closing, Seller agrees to provide notice to any Tenant for the purpose of terminating any existing agricultural lease.

**13. Contingencies.** Purchaser shall have the right to terminate this agreement at any time prior to Closing by written notice to the Seller under the following conditions:

- A. Discovery of Native American burial grounds, remains or the like on the Real Property; or

- B. Any 'Jurisdictional Wetlands' located on the Real Property as defined and determined by the appropriate governmental entity exceeds approximately 34 acres of Real Property; or
- C. The reasonable determination by Purchaser that there are environmental hazard problems with Real Property; or
- D. After engineering, geological, soil, archaeological or other survey of the property it is determined that Lincoln County cannot construct a public safety center.

**14. Laws of South Dakota.** This Agreement shall be governed and construed by and under the laws of the State of South Dakota.

**15. Entire Agreement.** This Agreement supersedes all prior discussions and agreements between the Seller and Purchaser with respect to the Real Property and contains the sole and entire understanding between the Seller and Purchaser with respect to the same. This Agreement shall not be modified or amended in any respect except by a written instrument executed by or on behalf of each of the parties to this Agreement.

**16. Successors in Interest; Assignment.** This Option shall inure to the benefit of and bind the heirs, personal representatives, successors and assigns of the parties hereto. Neither party shall assign this Option without the prior written consent of the other party.

IN WITNESS WHEREOF, the parties have hereunto affixed their hands and seals the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Lincoln County, South Dakota

\_\_\_\_\_  
Daniel J. Lemme

STATE OF SOUTH DAKOTA) ) SS.  
COUNTY OF LINCOLN )

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2020, before me, the undersigned officers, personally appeared \_\_\_\_\_, known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

\_\_\_\_\_

Notary Public

State of South Dakota

My Commission Expires: \_\_\_\_\_

Lincoln County

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

Its: Chairman

Daniel J. Lemme

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

Its: