

Prepared by Paul A. Miller, Miller Law Offices

**OFFER TO BUY REAL ESTATE AND ACCEPTANCE**

Thomas McNierney Estate (Sellers) – Tract 4

The undersigned BUYERS hereby offer to buy and the undersigned SELLERS by their acceptance agree to sell the real property situated in Salem Township, Henry County, Iowa, and legally described as:

Tract #4: 50 acres m/l, Section 22, Salem Township, Henry County, Iowa

together with any easements and appurtenant servient estates, but subject to any reasonable easements of record for public utilities or roads, any zoning restrictions customary restrictive covenants and mineral reservations of record, if any.

1. PURCHASE PRICE. The Purchase Price shall be \$ \_\_\_\_\_ and the method of payment shall be as follows: 20% down, \$ \_\_\_\_\_ with this offer, to be deposited upon acceptance of this offer and held in trust by Richard Realty and Auction as earnest money, to be delivered to the SELLERS upon performance of SELLERS' obligations and satisfaction of BUYERS' contingencies, if any; and the balance of the Purchase Price, as follows: balance due at closing at Miller Law Offices, 119 N Court, Fairfield, IA 52556

2. REAL ESTATE TAXES. Sellers shall pay any taxes due, delinquent and pro-rata. Buyers shall pay all subsequent real estate taxes.

Unless otherwise provided in this Agreement, at closing SELLERS shall pay BUYERS, or BUYERS shall be given a credit for, taxes from the first day of July prior to possession to the date of possession based upon the last known actual net real estate taxes payable according to public records. However, if such taxes are based upon a partial assessment of the present property improvements or a changed tax classification as of the date of possession, such proration shall be based on the current levy rate, assessed value, legislative tax rollbacks and real estate tax exemptions that will actually be applicable as shown by the assessor's records on the date of possession.

3. SPECIAL ASSESSMENTS. SELLERS shall pay in full at time of closing all special assessments which are a lien on the Property as of the date of acceptance February 16, 2010.

4. POSSESSION AND CLOSING. If BUYERS timely perform all obligations, possession of the Property shall be delivered to Buyers on March 16, 2010, and any adjustments of rent, insurance, interest and all charges attributable to the SELLERS' possession shall be made as of the date of possession. Closing shall occur after the approval of title by BUYERS and vacation of the Property by SELLERS, but prior to possession by BUYERS. If possession is given on a day other than closing, the parties shall make a separate agreement with adjustments as of the date of possession. This transaction shall be considered closed: Upon the delivery of the title transfer documents to BUYERS and receipt of all funds then due at closing from BUYERS

under the Agreement.

5. **CONDITION OF PROPERTY.** The property as of the date of this Agreement, including buildings, grounds, and all improvements, will be preserved by the SELLERS in its present condition until possession, ordinary wear and tear excepted. SELLERS make no warranties, expressed or implied, as to the condition of the property. BUYERS acknowledge that they have made a satisfactory inspection of the Property and are purchasing the Property in its existing condition.

6. **ABSTRACT AND TITLE.** SELLERS, at their expense, shall promptly obtain an abstract of title to the Property continued through the date of acceptance of this Agreement, February 16, 2010, and deliver it to BUYERS' attorney for examination. It shall show marketable title in SELLERS in conformity with this Agreement, Iowa law, and title standards of the Iowa State Bar Association. The SELLERS shall make every reasonable effort to promptly perfect title. If closing is delayed due to SELLERS' inability to provide marketable title, this Agreement shall continue in force and effect until either party rescinds the Agreement after giving ten days written notice to the other party. The abstract shall become the property of BUYERS when the Purchase Price is paid in full. SELLERS shall pay the costs of any additional abstracting and title work due to any act or omission of SELLERS, including transfers by or the death of SELLERS or their assignees. Unless stricken, the abstract shall be obtained from an abstracter qualified by the Guaranty Division of the Iowa Housing Finance Authority.

7. **SURVEY.** The sellers shall not be obligated to furnish a survey on this tract. BUYERS may, at BUYERS' expense prior to closing, have the property surveyed and certified by a registered land surveyor.

8. **ENVIRONMENTAL MATTERS.** SELLERS warrant to the best of their knowledge and belief that there are no abandoned wells, solid waste disposal sites, hazardous wastes or substances, or underground storage tanks located on the Property. SELLERS shall also provide BUYERS with a properly executed GROUNDWATER HAZARD STATEMENT showing any wells, private burial sites, solid waste disposal sites, private sewage disposal system, hazardous waste and underground storage tanks on the Property unless disclosed here: unknown by seller. If in the future a site clean-up is required it shall be at the expense of the buyers.

9. **DEED.** Upon payment of the Purchase Price, SELLERS shall convey the Property to BUYERS by court officer deed, free and clear of all liens, restrictions, and encumbrances except as provided in this Agreement. General warranties of the title shall extend to the time of delivery of the deed excepting liens and encumbrances suffered or permitted by BUYERS.

10 **USE OF PURCHASE PRICE.** At time of settlement, funds of the Purchase Price may be used to pay taxes and other liens and to acquire outstanding interests, if any, of others.

11. **APPROVAL OF COURT.** If the Property is an asset of an estate, trust or conservatorship, this Agreement is contingent upon Court approval unless Court approval is not required under Iowa law and title standards of the Iowa State Bar Association. If the sale of the Property is subject to Court approval, the fiduciary shall promptly submit this Agreement for

such approval. If this Agreement is not so approved by either party may declare this Agreement null and void, and all payments made hereunder shall be made to BUYERS.

## 12. REMEDIES OF THE PARTIES.

A. If BUYERS fail to timely perform this Agreement, SELLERS may forfeit it as provided in the Iowa Code (Chapter 656), and all payments made shall be forfeited; or, at SELLERS' option, upon thirty days written notice of intention to accelerate the payment of the entire balance because of BUYERS' default (during which thirty days the default is not corrected), SELLERS may declare the entire balance immediately due and payable. Thereafter this Agreement may be foreclosed in equity and the Court may appoint a receiver.

B. If SELLERS fail to timely perform this Agreement, BUYERS have the right to have all payments made returned to them.

C. BUYERS and SELLERS are also entitled to utilize any and all other remedies or actions at law or in equity available to them, and the prevailing parties shall be entitled to obtain judgment for costs and attorney fees.

13. NOTICE. Any notice under this Agreement shall be in writing and be deemed served when it is delivered by personal delivery or mailed by certified mail, addressed to the parties at the addresses given below.

14. GENERAL PROVISIONS. In the performance of each part of this Agreement, time shall be of the essence. Failure to promptly assert rights herein shall not, however, be a waiver of such rights or a waiver of any existing or subsequent default. This Agreement shall apply to and bind the successors in interest of the parties. This Agreement shall survive the closing. This Agreement contains the entire agreement of the parties and shall not be amended except by a written instrument duly signed by SELLERS and BUYERS. Paragraph headings are for convenience of reference and shall not limit or affect the meaning of this Agreement. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender according to the context.

15. INSPECTION OF PRIVATE SEWAGE DISPOSAL SYSTEM. Seller represents and warrants to Buyer that the Property is not served by a private sewage disposal system, and there are no known private sewage disposal systems on the property.

16. ADDITIONAL PROVISIONS. 20% down, Balance to be paid on or before March 16, 2010 upon delivery of merchantable abstract and deed. This real estate is selling subject to public road easements and all other easements of record. If one buyer purchases more than one tract the seller shall only be obligated to furnish one abstract and deed. Husband and wife shall constitute one buyer. It shall be the obligation of the buyer of this tract to report to the Henry County FSA office and show filed deed in order to receive the following, if applicable: allotted base acres and/or any future government programs. Buyer shall be responsible for any fencing in accordance with Iowa state law. The buyers acknowledge that they have carefully and thoroughly inspected the real estate and are familiar with the premises. The buyers are buying

this real estate in its "as is" condition and there are no expressed or implied warranties pertaining to the same.

ACCEPTANCE. When accepted, this Agreement shall become a binding contract.

Accepted February 16, 2010  
SELLERS

Dated February 16, 2010  
BUYERS

\_\_\_\_\_  
Theresa McNierney, Executor of the  
Thomas McNierney Estate  
SS# \_\_\_\_\_

\_\_\_\_\_  
Print Name \_\_\_\_\_  
SS# \_\_\_\_\_

\_\_\_\_\_  
Address : 119 N Court, Fairfield, IA 52556  
Telephone: (641) 472-5049

\_\_\_\_\_  
Print Name \_\_\_\_\_  
SS# \_\_\_\_\_

Address : \_\_\_\_\_  
Telephone: \_\_\_\_\_

Attorney for Seller: Paul A. Miller

Attorney for Buyer:  
  
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