

**CONTRACT FOR SALE OF REAL
ESTATE**

Bidder No. _____

1. **PARTIES:** Bert J Swinger Testamentary Trust by: Myrlene Swinger Trustee , Myrlene Swinger (a single person) ("**Seller**") agrees to sell and convey to _____ ("**Buyer**") and Buyer agrees to buy from Seller the Property described below according to the terms hereof.

2. **SALES PRICE:**

Auction Price	\$ _____
Buyer's Premium (5.0%)	\$ _____
TOTAL Sales Price	\$ _____

The Total Sales Price shall be paid by Buyer to Seller by wire transfer of immediately available funds at Closing.

3. **EARNEST MONEY:** Upon execution of this Contract by both parties, Buyer must deposit immediately available funds equal to 10.0% of the Total Sales Price (\$ _____) as earnest money (the "**Earnest Money**") with Kirksey & Parsons, PLLC, (the "**Escrow Agent**"). If Buyer fails to deposit the Earnest Money as required by this Contract, Buyer will be in default. Immediate available funds (the "Earnest Money Deposit") is herewith deposited by the Buyer with Kirksey & Parsons, A Professional L.L.C. (the "Escrow Agent") as earnest money to be held by the Escrow Agent without interest and applied in partial payment of the total purchase price on the Closing Date. The Earnest Money Deposit contemplated herein, is made with the understanding that the Escrow Agent (i) does not assume or have any liability for performance or non-performance of any part, (ii) has the right to require the receipt, release and authorization in writing of all parties before paying the Earnest Money Deposit to any party, and (iii) is not liable for interest or other charge on the funds

4. **PROPERTY:** As used in this Contract, the term "**Property**" means any and all of the following:

A. Certain real property owned by Seller and situated in Texas County, Oklahoma, described on **EXHIBIT "A"** attached hereto and made a part hereof for all purposes, together with all improvements thereon and all rights, privileges and appurtenances pertaining thereto, including but not limited to water rights, claims and permits, easements, and all rights and obligations of applicable government programs for years after the 2019 crop year.

- B. The following items, if any: windmills and tanks, domestic water systems, barns, fences, and all other property owned by Seller and attached to the above described real property.
5. **EXCEPTIONS, RESERVATIONS, AND CONDITIONS:** The Property will be conveyed subject to the following exceptions, reservations, and conditions:
- A. The oil, gas and other minerals, royalties, and timber interests presently outstanding in third parties.
- B. Reservation by Seller of all of the oil, gas, and other minerals owned by Seller in, on and under and that may be produced from the Property, together with the right of ingress and egress at all times for the purpose of exploration, development and removal of the same.
- C. All items indicated on the abstract as set forth herein.
- D. Easements, rights-of-way and prescriptive easements whether of record or not, rights of adjoining owners in fences situated on a common boundary, and any encroachments or overlapping of improvements.
- E. Easements, if any, described on **EXHIBIT "A"**; and easements which may be created at the sole discretion of Seller to benefit tracts of land described in the auction sales brochure, of which the Property is a part, circulated by Clift Land Auction, L.P. and Clift Land Brokers, and as described in the information furnished to Buyer at the auction of the Property.
6. **ABSTRACT AND TITLE EXAMINATION:**
- A. Seller shall make available to Purchaser, not less than ten (10) days prior to the closing of this contract, at Seller's expense, an abstract of title certified to date by a bonded abstracter. Upon delivery of said abstract of title, certified to date, Purchaser shall have a reasonable time, not to exceed ten (10) days, to examine the abstract and return the same to Seller with any written objections concerning the marketability of the title or the same shall be deemed waived.
- B. If the Seller shall be unable to deliver marketable title as herein provided, the money shall be returned to Purchaser and this contract shall be of no further force or effect; provided, however, Seller shall have a reasonable time, not to exceed one hundred twenty (120) days, to satisfy any valid objections to title. In the event Seller is unable to furnish marketable title within one hundred twenty (120) days Contract shall be null and void, and Seller shall return all monies paid under this Contract to Purchaser and all papers executed by the parties shall be returned to the respective parties entitled thereto, and thereupon, all rights of the parties hereunder shall end.

- C. **SURVEY AND SURVEYED ACRES SALES PRICE:** At Seller's sole and exclusive option, Seller may survey the Property. If Seller determines that a survey is necessary to provide a sufficient legal description of the Property for purposes of obtaining an abstract, Seller shall provide such survey at Seller's expense. If the Property is surveyed, the Sales Price shall be adjusted to reflect the acres as shown by the survey (the "**Surveyed Acres**"). Following the survey, the Surveyed Acres Sales Price shall be determined by dividing the Total Sales Price set out in Paragraph 2 above by the number of acres stated in the auction sales brochure to determine the Cost Per Acre. The Cost Per Acre shall be multiplied by the Surveyed Acres to determine the Surveyed Acres Sales Price. The Total Sales Price set out in Paragraph 2 above shall be replaced with the Surveyed Acres Sales Price as determined pursuant to this paragraph.

7. **NOTICE TO SELLER AND BUYER:**

- (1) Eligibility for government farm program benefits may depend upon compliance with a soil conservation plan for the Property. *Before signing this Contract, Buyer has satisfied itself as to compliance with the conservation plan for the Property and all other government programs. Seller does not warrant Buyer's eligibility for government programs.*
- (2) Buyer is advised that the presence of wetlands, toxic substances, including asbestos and wastes or other environmental hazards or the presence of a threatened or endangered species or its habitat may affect Buyer's intended use of the Property.

8. **PROPERTY CONDITION:**

- A. **INSPECTIONS AND ACCESS:** Buyer acknowledges that Buyer has had the opportunity to inspect the Property. Buyer acknowledges that there may be junk and other debris located on the Property. Buyer accepts the Property according to the terms of this Contract.
- B. **PROPERTY CONDITION: EXCEPT AS EXPRESSLY SET FORTH IN THIS CONTRACT AND OTHER THAN SELLER'S SPECIAL WARRANTY OF TITLE, IF ANY, SET FORTH IN THE DEED, IT IS UNDERSTOOD AND AGREED THAT NEITHER SELLER, BROKER, OR AUCTIONEER IS MAKING OR HAS AT ANY TIME MADE ANY WARRANTY OR REPRESENTATION OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, ZONING, TAX CONSEQUENCES, LATENT OR PATENT PHYSICAL OR ENVIRONMENTAL CONDITION, UTILITIES, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, THE COMPLIANCE OF THE PROPERTY WITH LEGAL**

REQUIREMENTS OR ANY OTHER MATTER OR THING REGARDING THE PROPERTY OR ANY PORTION THEREOF.

BUYER ACKNOWLEDGES AND AGREES THAT UPON CLOSING, SELLER SHALL SELL AND CONVEY TO BUYER AND BUYER SHALL ACCEPT FROM SELLER THE PROPERTY AND THE LAND "AS IS, WHERE IS, WITH ALL FAULTS", EXCEPT TO THE EXTENT EXPRESSLY PROVIDED OTHERWISE IN THIS CONTRACT.

BUYER HAS NOT RELIED ON AND WILL NOT RELY ON, AND NO SELLER SHALL BE LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY OR RELATED THERETO MADE OR FURNISHED BY SELLER, BROKER, AUCTIONEER, OR ANY PARTY REPRESENTING OR PURPORTING TO REPRESENT SELLER, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, UNLESS SPECIFICALLY SET FORTH IN THIS CONTRACT.

THE DEED CONVEYING TITLE TO THE PROPERTY WILL CONTAIN SIMILAR PROVISIONS TO THE ABOVE. THE PROVISIONS OF THIS SECTION WILL SURVIVE CLOSING THIS TRANSACTION.

- C. (1) At Closing, Buyer will accept the Property in its current condition reasonable wear accepted. Buyer releases Seller from any responsibility to remediate or remove any Hazardous Substance (*defined below*) and any violation of Environmental Laws (defined below).
- (2) For purposes of this Contract:
- (a) the term "**Environmental Laws**" means any and all laws, statutes, ordinances, rules, regulations, judgments, orders, decrees, permits, licenses, or other governmental restrictions or requirements relating to health, the environment, any "Hazardous Substance" now or any time prior to Closing in effect in the jurisdiction in which the Property is located, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1986, as amended (42 U.S.C. § 9601 *et seq.*), the Resource Conservation Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, as now or hereafter amended (42 U.S.C. § 6901 *et seq.*), the Hazardous Materials Transportation Act, as amended (49 U.S.C. § 1801 *et seq.*), the Clean Air Act, as amended (42 U.S.C. § 7401, *et seq.*), the Clean Water Act, as amended (33 U.S.C. § 1251 *et seq.*), the Toxic Substances and Control Act, as amended, 15 U.S.C. Sections 2601 *et seq.*, any and all state and local laws similar to, in whole or in part, federal toxic waste laws, which from time to time

are in effect in the jurisdiction in which the Property is located, and the regulations adopted pursuant thereto, any laws or regulations governing “wetlands”, and any common law theory based on nuisance or strict liability; and,

- (b) the term “**Hazardous Substance**” means any substance, material, or waste which is regulated by any local government authority, the State of Oklahoma, or other state where applicable, or the United States Government, including, without limitation, any material or substance which is (i) defined as a “hazardous waste”, “hazardous material”, “hazardous substances”, “extremely hazardous waste”, “extremely hazardous substance”, “regulated substance” or “restricted hazardous waste” under any provision of the Environmental Laws and (ii) petroleum, including crude oil and any fraction thereof and any refined petroleum products and derivatives thereof.

9. **BROKERS' FEES:**

- A. Seller shall be solely responsible for the brokers’ fees due to Clift Land Brokers (“**Broker**”), an Oklahoma licensed real estate broker. Broker is Seller’s exclusive agent. **BROKER DOES NOT REPRESENT BUYER.**
- B. Broker will pay up to a 2.0% commission to any broker who represents Buyer and who has complied with the guidelines set by Broker in connection with the land auction by Seller of approximately 320 acres, more or less. **BUYER IS SOLELY RESPONSIBLE FOR ANY ADDITIONAL COMMISSION DUE TO BUYER’S BROKER AND SHALL INDEMNIFY AND HOLD SELLER HARMLESS FROM ANY CLAIMS BY A BROKER REPRESENTING BUYER, INCLUDING BUT NOT LIMITED TO ATTORNEY’S FEES AND REASONABLE COSTS.**
10. **CLOSING:** The closing (“**Closing**”) of the sale will be on or before September 9, 2019, (the “**Closing Date**”), in the offices of the Escrow agent. Except for title issues as set forth herein, if either party fails to close this sale by the Closing Date, the non-defaulting party will be entitled to the remedies contained in Paragraph 15 below. At Closing, Seller shall furnish tax statements or certificates showing no delinquent taxes, and a deed, in a form solely satisfactory to Seller, conveying good and indefeasible title to Buyer.
11. **POSSESSION:** Seller shall deliver possession of the Property to Buyer at Closing and funding. The CRP payment for 2018-19 **will not** be prorated to September 30th, 2019.
12. **SETTLEMENT AND OTHER EXPENSES:** The following expenses must be paid at or prior to Closing:

- A. Seller's Expenses: Releases of existing liens, including prepayment penalties and recording fees; release of Seller's loan liability; tax statements or certificates; preparation of deed; one-half of the escrow fee charged by the Title Company; and other expenses stipulated to be paid by Seller under other provisions of this Contract.
- B. Buyer's Expenses: Loan application, origination and commitment fees; lender required expenses incident to new loans, including PMI premium, preparation of loan documents, recording fees, tax service and research fees, warehouse or underwriting fees, amortization schedule, premiums for mortgagee title policies and endorsements required by lender, credit reports, photos; required premiums for flood and hazard insurance; required reserve deposit for insurance premiums and ad valorem taxes; interest on all monthly installment notes from date of disbursements to one month prior to dates of first monthly payments; customary Program Loan costs for Buyer; one-half of the escrow fee charged by the Title Company; recording fees, and other expenses stipulated to be paid by Buyer under other provisions of this Contract.

13. **PRORATIONS AND ROLLBACK TAXES:**

- A. PRORATIONS: Taxes for the year in which Closing occurs will be prorated through the Closing Date.
- B. Conservation Reserve Program- Buyer will receive all of the 2020 CRP payments and any future payments from the USDA-FSA office. Buyer will assume all rights and responsibilities of future compliance. Buyer will become the successor of CRP contract(s).
- B. ROLLBACK TAXES: If this sale or Buyer's use of the Property after Closing results in the assessment of additional taxes, penalties, or interest (**the “Assessments”**) for periods prior to Closing, the Assessments will be the obligation of Buyer. If Seller's change in use of the Property prior to Closing or denial of a special use valuation on the Property claimed by Seller results in the Assessments for periods prior to Closing, the Assessments will be the obligation of Seller. Obligations imposed by this paragraph will survive Closing.

14. **CASUALTY LOSS:** In the event of loss or damage to the improvements by fire or other cause, prior to closing, the proceeds of Seller's existing insurance policy coverage shall be used to repair said loss or damage. But if the proceeds are insufficient to repair the same, Buyer, at Buyer's option, may terminate this Contract. The risk of loss shall be Seller's until the time of closing. The risk of loss shall be Buyer's after the time of closing.

15. **DEFAULT:** If Buyer fails to comply with this Contract, Buyer will be in default, and Seller's sole remedy will be to either (a) enforce specific performance or (b) terminate this Contract and receive the Earnest Money as liquidated damages, thereby releasing both parties from this Contract. If Seller fails to comply with this Contract, Seller will be

in default and Buyer's sole remedy will be to either (i) enforce specific performance or (ii) terminate this Contract and receive the Earnest Money, thereby releasing both parties from this Contract.

16. **ATTORNEY'S FEES:** The prevailing party in any legal proceeding brought under or with respect to the transaction described in this Contract is entitled to recover from the non-prevailing party all costs of such proceeding and reasonable attorney's fees.
17. **REPRESENTATIONS:** Seller represents that as of the Closing Date there will be no liens, assessments, or security interests against the Property.
18. **FEDERAL TAX REQUIREMENT:** If Seller is a "foreign person" as defined by applicable law, or if Seller fails to deliver an affidavit that Seller is not a "foreign person", then Buyer shall withhold from the sales proceeds an amount sufficient to comply with applicable tax law and deliver the same to the Internal Revenue Service together with appropriate tax forms. IRS regulations require filing written reports if cash in excess of specified amounts is received in the transaction.
19. **AGREEMENT OF PARTIES:** This Contract, together with the attached exhibits, contains the entire agreement of the parties and cannot be changed except by their written agreement. This Contract supersedes all prior negotiations, correspondence, understandings, brochures, and agreements among the parties hereto respecting the subject matter hereof.
20. **CONSULT YOUR ATTORNEY:** This Contract was furnished to Buyer prior to its execution. The Buyer has been advised to consult an attorney BEFORE signing.
21. **NOTICES:** All notices from the parties to each other must be in writing and are effective when mailed, via certified mail, postage prepaid or hand-delivered as follows:

If to Seller: Bert J.Swinger Testamentary Trust, By; Mrylene Swinger Trustee
Mrylene Swinger (Individual)
1510 E Ash St
Canton, IL 61520

with copies to: Clift Land Brokers
Attn: George Clift
905 S. Fillmore St., Ste. 102
Amarillo, TX 79101
Telephone No. 806.355.9856
Cell No. 806.674.8979
Facsimile No. 806.358.3481
E-mail: George@CliftLandBrokers.com

If to Buyer: _____

Telephone No. _____

Cell No. _____

Facsimile No. _____

E-mail: _____

with copies to:

Telephone No. _____

Facsimile No. _____

E-mail: _____

If to Escrow Agent:

Thad Parson
Kirksey, & Parsons, PLLC
112 Glaydas St
Hooker, OK 73945
Telephone No.580-652-3322
Facsimile No.580-652-2267
E-mail: tparsons@trippetkee.com

22. **TAX-FREE EXCHANGE:** Each party shall cooperate fully with the other party in connection with any tax-free exchange the party or party's assignees desire to complete. Neither party shall be charged with any additional expense as a result of cooperating with an exchange transaction for the other party. **Each party shall indemnify and hold the other party harmless from any liability incurred by the other party as a result of that other party cooperation in the tax-free exchange.**

23. **ESCROW:** The Earnest Money is deposited with the Title Company with the understanding that the Title Company is not a party to this Contract and does not have any liability for the performance or nonperformance of any party to this Contract. If both parties make written demand for the Earnest Money, the Title Company may require payment of unpaid expenses incurred on behalf of the parties and a written release of liability of the Title Company from all parties. If one party makes written demand for the Earnest Money, the Title Company shall give notice of the demand by providing to the other party a copy of the demand. If the Title Company does not receive written objection to the demand from the other party within 30 days after notice to the other party, the Title Company may disburse the Earnest Money to the party making demand reduced by the amount of unpaid expenses incurred by the Title Company and the Title Company may pay the same to the creditors. If the Title Company complies with the provisions of this paragraph, each party releases the Title Company from all adverse claims related to the disbursement of the Earnest Money. The Title Company's notice to the other party will be effective when deposited in the U.S. mail, postage prepaid, certified mail, return receipt requested, addressed to the other party at such party's address shown above. Notice of objection to the demand will be deemed effective upon receipt by escrow agent.
24. **PARAGRAPH HEADINGS:** The paragraph headings are included only for convenience and are not to be used to construe any provision of this Contract.

EXECUTED the ____ day of July, 2019 (the "**Effective Date**").

[INTENTIONAL END OF PAGE]

SELLER'S SIGNATURE PAGE
TO CONTRACT FOR SALE OF REAL ESTATE

OWNERS:

By: _____

Bert J. Swinger Testamentary Trust, By: Mrylene Swinger Trustee

By: Mrylene Swinger (Individual)

BUYER'S SIGNATURE PAGE
TO CONTRACT FOR SALE OF REAL ESTATE

Tract No. _____

Bidder No. _____

BUYER:

TITLE COMPANY RECEIPT

Receipt of [___] Contract and [___] \$_____ Earnest Money in the form of _____ is acknowledged.

Date: _____.

By: _____
Name: _____
Title: _____

SAMPLE

EXHIBIT "A"

Tract #1 – SW/4 of Section 18 T6N R14E Texas County, OK
Tract #2 – NE/4 of Section 24, T6N R13E Texas County, OK

SAMPLE

LENDER INFORMATION

AUCTION _____ TRACT NO _____

Buyer Name _____

Buyer Mailing Address _____

City _____ State _____ Zip Code _____

Buyer Phone # _____ Buyer Fax # _____

Buyer Email Address _____

Name of Lending Institution _____

Name of Personal Banker _____

Address _____ City _____ State _____ Zip _____

Lender's Phone # _____ Fax # _____

Lender's Email Address _____

OKLAHOMA REAL ESTATE COMMISSION

DISCLOSURE TO SELLER OR BUYER OF BROKERAGE DUTIES, RESPONSIBILITIES AND SERVICES

This notice may be part of or attached to any of the following:

- Buyer Brokerage Agreement, Listing Brokerage Agreement, Option Agreement, Sales Agreement, Exchange Agreement, Other

1. Duties and Responsibilities. A Broker who provides Brokerage Services to one or both parties shall describe and disclose in writing the Broker's duties and responsibilities prior to the party or parties signing a contract to sell, purchase, option, or exchange real estate.

A Broker shall have the following duties and responsibilities which are mandatory and may not be abrogated or waived by a Broker, whether working with one party, or working with both parties:

- A. treat all parties to the transaction with honesty and exercise reasonable skill and care;
B. unless specifically waived in writing by a party to the transaction:
1) receive all written offer and counteroffers;
2) reduce offers or counteroffers to a written form upon request of any party to a transaction; and
3) present timely all written offers and counteroffers.
C. inform, in writing, the party for whom the Broker is providing Brokerage Services when an offer is made that the party will be expected to pay certain closing costs, Brokerage Service costs and the approximate amount of the costs;
D. keep the party for whom the Broker is providing Brokerage Services informed regarding the transaction;
E. timely account for all money and property received by the Broker;
F. keep confidential information received from a party or prospective party confidential.
G. disclose information pertaining to the Property as required by Residential Property Condition Disclosure Act;
H. comply with all requirements of the Oklahoma Real Estate Code and all applicable statutes and rules;
I. when working with one party or both parties to a transaction, the duties and responsibilities set forth in this section shall remain in place for both parties.

2. Brokerage Services provided to both parties to the transaction. The Oklahoma broker relationships law (Title 59, Oklahoma Statutes, Section 858-351 – 858-363) allows a real estate Firm to provide brokerage services to both parties to the transaction.

3. Broker providing fewer services. If a Broker intends to provide fewer Brokerage Services than those required to complete a transaction, the Broker shall provide written disclosure to the party for whom the Broker is providing services.

4. Confirmation of disclosure of duties and responsibilities. The duties and responsibilities disclosed by the Broker shall be confirmed in writing by each party in a separate provision, incorporated in or attached to the contract to purchase, option or exchange real estate.

I understand and acknowledge that I have received this notice on ___ day of ___, 20__.

(Print Name) _____ (Signature) _____

(Print Name) _____ (Signature) _____