

COMMERCIAL REAL ESTATE PURCHASE CONTRACT

THIS CONTRACT made and entered into this ____ day of September, 2023, by and between **TOPFLIGHT GRAIN, INC., ORGANIZED UNDER THE AGRICULTURAL CO-OPERATIVE ACT, AND REGULATED BY THE ILLINOIS DEPARTMENT OF AGRICULTURE**, by **JEREMY WELCH, CHIEF FINANCIAL OFFICER**, ("Seller") and _____, ("Buyer").

1. **Real Property.** Seller hereby sells and agrees to convey to Buyer, and Buyer hereby purchases from Seller the following described property, upon the terms and conditions set forth herein to-wit:

- (a) A tract of land located in Logan County, Illinois, located on real estate more particularly described as follows:

Part of the Southwest Quarter of the Northeast Quarter of Section 2, Township 20 North, Range 2 West of the Third Principal Meridian, Logan County, Illinois, more particularly described as follows: Beginning at the intersection of the south line of Block 12 of the Town of Lawndale with the existing northwesterly right-of-way line of the Union Pacific Railroad, thence South 88° 49' 29" West, along the south line of Block 12, a distance of 142.29 feet; thence South 19° 31' 10" East, 65.02 feet; thence South 30° 31' 08" East, 51.11 feet to the existing northwesterly right-of-way line of the Union Pacific Railroad; thence North 41° 08' 55" East along the existing railroad right-of-way line, 143.73 feet to the Point of Beginning, containing 0.181 acres, more or less.

PIN: 08-712-001-00

(hereinafter, the "Real Property"); and

The above-described legal description is for information purposes only. The proper legal description will be provided on the Deed pursuant to the title commitment for Deed purposes and issuance of title insurance.

- (b) all estates, rights, privileges, appurtenances and easements pertaining to the Real Property.

2. **Purchase Price.** The total purchase price for the Real Property is \$____("Purchase Price"). The Purchase Price shall be paid as follows:

- (a) Buyer shall put down an earnest money deposit of 10% of the bid VIA CERTIFIED BANK FUNDS, once the bidding has closed and has been accepted. This earnest money deposit is to be made to the sellers attorney, Foltz & Rupiper (the "Escrow Agent") to be held in trust until the Closing Date (as hereinafter defined) hereof. The parties hereby jointly instruct the Escrow Agent to hold the Earnest Money in escrow. At Closing, the entire Earnest Money amount will be applied to the Purchase Price and constitute a closing statement credit to the Buyer.
- (b) Buyer shall pay Seller the balance of the Purchase Price by wire transfer at the Closing, subject to adjustments as set forth herein.

3. Seller's Disclaimer. BUYERS ACKNOWLEDGE AGREE THAT THIS PROPERTY IS BEING SOLD AS/IS.

- (a) Seller disclaims the making of any covenants, representations, or warranties, express or implied, regarding the Property or matters affecting the Property, including, without limitation, the value of the Property, the income to be derived from the Property, the physical condition of the Real Property, the boundaries of the Real Property, pest control matters, soil condition, hazardous waste, toxic substance or other environmental matters, compliance with building, health, safety, land use and zoning laws, regulations and orders, structural and other engineering characteristics, traffic patterns, the rentable square footage of the Property, and any other matters which may be or could have been the subject of Purchaser's due diligence review, investigations, or inspections. Purchaser, moreover, acknowledges that (a) Seller did not develop or construct the Property (b) Purchaser is a sophisticated investor, knowledgeable and experienced in the financial and business risks attendant to an investment in real property and capable of evaluating the merits and risks of entering into this Agreement and purchasing the Property; (c) Purchaser has entered into this Agreement after performing its own (or its experts') reviews, investigations, and inspections of the physical, environmental, economic and legal condition of the Property, including, without limitation, the mechanical, electrical, HVAC and other systems, and any other documents relating to the Property, the compliance of the Property with laws and governmental regulations, and the operation of the Property; and (d) Purchaser is not relying upon any covenants, representations, or warranties, other than those set forth in the Deed, the other documents executed and delivered by Seller at the Closing, made by Seller or anyone acting or claiming to act on Seller's behalf concerning the Property. Purchaser acknowledges that Seller does not guaranty the enforceability of any lease or contract, or the attainment of any income or expense projection. Purchaser further acknowledges that it has not received from Seller any accounting, tax, legal, architectural, engineering, property management or other advice with respect to this transaction and

is relying upon the advice of its own accounting, tax, legal, architectural, engineering, property management and other advisors. Subject to the provisions of the Deed and the other documents executed and delivered by Seller in connection with the Closing, Purchaser purchases the Property in its "AS IS" condition as of the date of this Agreement, and assumes the risk that adverse physical, environmental, economic or legal conditions may not have been revealed by its reviews, investigations, and inspections. Purchaser's agreement to purchase the Property "AS IS" is a material inducement to Seller to agree to sell the Property at the Purchase Price provided herein. Seller shall have no liability for any subsequently discovered defects, whether latent or patent.

(b) Upon the Effective Date, Purchaser shall assume all risks with respect to the Property, known and unknown, suspected and unsuspected. Purchaser and its agents, employees, affiliates, successors and assigns, shall be solely liable for, and shall indemnify, defend and hold harmless Seller, its agents, employees, affiliates, successors and assigns from any and all claims, demands, causes of action, and liabilities, at law or in equity, known or unknown, suspected or unsuspected, relating to personal injury, property damage, economic loss, or other damages suffered by Purchaser or any third party arising out of the physical, environmental, economic, legal or other condition of the Property (collectively referred to hereinafter as "Claims"), even if the proximate or legal cause of such Claims relate to a condition, known or unknown to Purchaser, which was in existence prior to the Effective Date. Purchaser and its agents, employees, affiliates, successors, and assigns, knowingly and intentionally releases Seller and its agents, employees, affiliates, successors, and assigns, from any and all such Claims, known or unknown, suspected or unsuspected. Purchaser's agreements herein to assume all risks with respect to the Property, and release and indemnify Seller with respect to all actual or potential Claims, are a material inducement to Seller to agree to sell the Property at the Purchase Price provided herein.

(c) Purchaser expressly assumes all environmental and other liabilities with respect to the Property and releases and indemnifies Seller from same, whether such liability is imposed by statute or derived from common law including, but not limited to, liabilities arising under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Hazardous and Solid Waste Amendments Act, the Resource Conservation and Recovery Act ("RCRA"), the Federal Water Pollution Control Act, the Safe Drinking Water Act, the Toxic Substances Control Act, the Superfund Amendments and Re-authorization Act and the Hazardous Materials Transportation Act, all as amended, and all other comparable federal, state or local environmental, conservation or protection laws, rules or regulations. The foregoing assumption and release shall survive closing. All statements of fact or disclosures, if any,

made in this Agreement or in connection with this Agreement, do not constitute warranties or representations of any nature. The foregoing provision shall survive Closing and shall not be deemed merged into any instrument of conveyance delivered at Closing.

By its initials below, Purchaser acknowledges that it fully understands, appreciates, and accepts all of the terms of the foregoing Sections 4(a), (b), and (c) _____ (“Seller’s Disclaimer”).

4. Title.

- (a) Conveyance of Title. Seller shall deliver to Buyer a Warranty Deed (the "Deed") conveying to Buyer title to the Real Property free and clear of all claims, liens and encumbrances, except for (i) such exceptions as Buyer may approve in writing; (ii) all building and use restrictions and easements of record or in place affecting the Real Property; (iii) title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount which may be removed by the payment of money at the time of Closing and which the Seller may so remove at that time by using the funds be paid upon the delivery of the Deed (iv) all zoning and building restrictions of any governmental body affecting the Real Property; and (v) lien of the real property taxes for the current year and subsequent years and (vi) matters which can only be discovered by a survey of the property(collectively, "Permitted Exceptions").
- (b) Title Commitment. Seller shall deliver to Buyer within thirty (30) days after the date of this Contract, a title commitment ("Title Commitment") issued by Prairie Land Title Company, 507 Pulaski Street, Lincoln, IL 62656, 217-605-0210, (the "Title Company") showing title to the Real Property in Seller, copies of all exceptions set forth in the Title Commitment, and the terms by which the Title Company agrees to issue to Buyer an owner's policy of title insurance (the "Title Policy") issued on form ALTA 2006 Owner Policy, together, for the Real Property only, with endorsements for access, survey, contiguity, extended coverage, comprehensive, parcel identification number, zoning 3.1, if available, and any other endorsements, extended coverage, or modifications to the Title Policy as may be requested by Buyer, in the amount of the Purchase Price insuring Buyer's fee simple title to the Real Property subject to the terms of such policy and the Permitted Exceptions as herein described. The expense of examination of title and all title insurance premiums to issue the Title Commitment and Title Policy shall be paid by Seller.
- (c) Defects and Cure. The Title Commitment is referred to herein as "Title Evidence". If the Title Evidence discloses, with conditions which might adversely affect Buyer or the Real Property or, with respect to the

Title Commitment, deficiencies in endorsements or matters other than the Permitted Exceptions (hereinafter, collectively, referred to as the "Defects"), the Defects shall be cured by Seller within a reasonable amount of time, from the delivery of the Title Evidence or on or before the Closing Date, whichever is later (such period, the "Cure Period") by removing the Defects or causing the Title Company to insure over the Defects. If Seller does not cure the Defects during the Cure Period, Buyer may extend the Closing Date to permit additional time for the Defects to be removed, may terminate this Contract and waive all claims for damages against Seller, or close on the purchase of the Real Property subject to the exceptions and waive all claims for damages against Seller.

5. **Inspections.** Purchaser has over the forty five day period prior to the Closing Date to inspect all aspects of the Property, including without limitation, the development, usage, operation and marketability, any and all permits and approvals necessary for Purchaser's usage, zoning, environmental matters, and matters related to title. Purchaser is satisfied with its investigation and desires to proceed with the execution of this Agreement

6. **Personal Property.** None - Not Applicable.

7. **Prorations.** Seller shall pay all insurance premiums, utility charges, and any other ordinary expenses relating to the Real Property to the date of Closing. Seller shall pay the 2022 real estate taxes payable in 2023, and Buyer shall pay all of the 2023 real estate taxes payable in 2024, and all future years' real estate taxes.

8. **Closing.** The closing of this transaction (the "Closing") shall take place on or before forty-five days after the May 25, 2023 auction end date, at Prairie Land Title Company, 507 Pulaski Street, Lincoln, IL 62656, 217-605-0210, or at such other time and place as the parties may mutually agree (the "Closing Date").

(a) At the Closing, the Seller shall deliver the following:

- (1) The Deed.
- (2) A duly executed Illinois Real Estate Transfer Declaration (PTax) as required by the Illinois Real Estate Transfer Law, 35ILCS 200/31-1 et seq., as amended.
- (3) A mechanic's lien affidavit in the form customarily utilized by

Title Company to enable the Title Company to delete the mechanic's lien exception from the Title Policy.

- (4) Such other instruments and/or affidavits as are required by the Title Company to enable the Title Company to delete any other standard exceptions from the Title Policy.
- (5) Such other amounts and instruments as are required by this Contract, reasonably required by the Title Company and/or as are reasonably necessary or appropriate to consummate the sale contemplated by this Contract, including without limitation, such amounts and instruments necessary to release any other liens or encumbrances on the Real Property that are not Permitted Exceptions.

(b) Buyer shall at Closing deliver the following:

- (1) The cash amount described in Section 2 above, delivered by wire transfer to the Title Company for disbursement to Seller pursuant to instructions given by Seller.
- (2) A resolution of Buyer authorizing these transactions, a copy of its Operating Agreement and Articles of Organization, and a certificate from the Illinois Secretary of State that it is in good standing.
- (3) Such other documents and instruments as the Title Company reasonably requires to evidence the due organization and valid existence of Buyer.

9. **Possession.** Seller shall deliver possession of the Real Property to the Buyer on the Closing Date.

10. **Condemnation.** If any of the Real Property is condemned under the power of eminent domain, is the subject of a threatened condemnation, or is conveyed to a condemning authority in lieu of condemnation, Seller shall notify Buyer in writing of condemnation with three (3) days of its occurrence, and Buyer shall within ten (10) days of the notice have the option to:

- (a) proceed to close this transaction on the terms contained herein and receive an assignment of the award or condemnation payment (or the right to receive the same, if not received before Closing)
- (b) or elect to rescind this Contract by written notice delivered to Seller within ten (10) days after Buyer receives notice of the condemnation, in which event the Earnest Money and all other sums paid to Buyer under

this Contract shall be immediately refunded to Buyer and Seller and Buyer shall have no further obligation hereunder.

11. **Default & Attorney's Fees.**

- (a) If Seller has performed its obligations under this Contract but Buyer defaults in performing its obligations under this Contract, then in such event Seller shall give Buyer written notice of the default. If the default is not cured by Buyer within twenty (20) days of the date of the notice, Seller shall have the right, as its sole right and remedy, to cancel this Contract and retain the Earnest Money. If, at any time, Seller defaults in the performance of its obligations under this Contract, then in such event Buyer shall give Seller written notice of the default. If Seller does not cure the default within twenty (20) days of the date of the notice, then Buyer shall have as its sole right and remedy to cancel this Contract (in which event the Earnest Money shall be immediately refunded to Buyer). Each party to this contract will be responsible for their respective Attorney's Fees in the event of any action brought for the interpretation or enforcement of this contract.

12. **Notices.** Any notices to be given either party shall be mailed by certified mail, postage prepaid, delivered by overnight express, or personally served. In the event of mailing, notices shall be deemed effective three (3) days after posting; in the event of overnight delivery, notices shall be deemed effective on the next business day following deposit with the delivery service; in the event of personal service, notices shall be deemed effective when delivered.

All notices to *Seller* shall be sent to:

TopFlight Grain
420 W Marion
Monticello, IL 61856
(217) 762-2163
jwelch@tfgrain.com

All notices to *Buyer* shall be sent to:

Name _____
Address _____
City, State Zip _____
Phone Number _____
Email Address _____

13. **Assignment/Successors and Assigns.** This Contract shall extend to and be binding upon the heirs, executors, administrators, legal representatives, successors and assigns of the

respective parties. Buyer may assign or transfer its rights under this Contract to an affiliate, provided that such affiliate agrees to be bound by all of the terms and provisions hereof.

14. **Miscellaneous.**

- (a) Expenses. Except as specifically set forth in this Contract to the contrary, all fees and expenses incurred by Seller in connection with this Contract will be borne by Seller and all fees and expenses incurred by Buyer in connection with this Contract will be borne by Buyer.
- (b) Entire Contract Amendments. This Contract and the agreements, instruments, schedules, and other writings referred to in this Contract and the instruments to be delivered on the Closing Date contain the entire understanding of the parties with respect to the subject matter of this Contract. There are no restrictions, agreements, promises, warranties, covenants, or undertakings other than those expressly set forth herein or therein. This Contract supersedes all prior agreements and understandings between the parties with respect to its subject matter. This Contract may be amended only by a written instrument duly executed by all of the parties or their successors or assigns.
- (c) No Waiver. No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the party giving such waiver, and no such waiver shall be deemed a waiver of any subsequent breach or default of the same or a similar nature.
- (d) Headings. The section and paragraph headings contained herein are for the convenience of the parties only and are not intended to define or limit the contents of their sections and paragraphs.
- (e) Choice of Law. This Contract and the rights and obligations of the parties hereunder be construed and interpreted in accordance with the laws of the State of Illinois, notwithstanding the conflict of laws provision of any jurisdiction. Any lawsuit brought to enforce or interpret this Contract shall be brought in Logan County Circuit Court, Logan County, Illinois.
- (f) Time of the Essence. Time is of the essence in the performance of the terms of this Contract. Any breach of any provision, covenant or warranty herein by either party including but not limited to a failure to convey, receive or transfer in a timely manner all and any property described herein by acceptable deed, bill of sale or other document, will constitute a material breach hereof and will constitute a default on the entire Contract at the option of the non-breaching party. Wherever under the terms and provisions of this Contract the time for performance falls upon a Saturday,

Sunday or legal holiday, such time for performance shall be extended to the next business day.

- (g) Execution of Documents. Buyer and Seller agree to execute such further documents and take such further steps as may be necessary to fully effectuate the performance of this Contract. This Contract shall not become effective and binding until fully executed and delivered by Buyer, Seller, and Escrow Agent. This Contract may be executed using any number of counterparts and shall be fully effective and enforceable upon exchange of such executed counterparts by facsimile transmittal. Immediately following the exchange of executed counterparts by facsimile transmittal, the parties shall transmit signed original counterparts to each other but the failure of either party to comply with this requirement shall not render this Contract void or otherwise unenforceable.
- (h) Survivability. All representations, warranties, covenants and agreements made by the parties hereto shall survive the Closing of the transaction contemplated by this Contract and shall not be merged in the deed given by Seller to Buyer.
- (i) Captions. The captions at the beginning of the several Sections or Paragraphs, respectively, are for convenience in locating the context, but are not part of the context.

15. **Unenforceability.** In the event any term or provision of this Contract shall be held illegal, invalid, unenforceable or inoperative as a matter of law, the remaining terms and provisions of this Contract shall not be affected thereby, but each such term and provision shall be valid and shall remain in full force and effect.

16. **Preparation of Contract.** This Contract shall not be construed more strongly against either party regardless of who is responsible for its preparation.

17. **Broker Commission.** Seller shall pay any and all commissions due to their Real Estate Broker incurred in this transaction which shall be shared equally between Buyer's broker and Sellers' Broker.

- (a) Auction Fee. The Seller agrees to pay Rob Nord/ Martin Auction a real estate commission/auction fee equal to 5% of the total sales price of the property achieved on sale day. This commission is payable at closing.
- (b) Buyer's Premium. A buyer's premium will be charged at the rate of 5% to any successful bidder and retained by the Auction Company. Buyers will

also be responsible for any internet fees charged by the internet vendor. This cost is a pass-through expense to the buyer and the Seller is not responsible for this cost. Martin Auction will pay for the listing costs associated with using this method. This cost would be collected from the Buyer at closing.

Intending this Contract to be fully binding upon them, the parties have executed this Contract the day and year shown below.

TOPFLIGHT GRAIN, Seller
By Jeremy Welch, CFO

Date

BUYER

Date

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