



Story County Conservation Board - McFarland Park 56461 180th St. - Ames, Iowa 50010-9451
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www.storycountyconservation.org

Memorandum

To: Story County Conservation Board
From: Michael D. Cox, Director *u*
Date: March 9, 2020
Re: Consideration of Offer to Buy Real Estate Agreement with the Iowa Natural Heritage Foundation for Real Property in Section 6 of Howard Township

The attached real estate agreement calls for purchase of property owned by the Iowa Natural Heritage Foundation along the South Skunk River north of Story City. The property consists of a mix of wetlands, riparian woodland, and oxbows. The property has a high conservation value for water quality protection, and habitat protection. The Conservation Board strategic plan, the Story County Comprehensive Plan -C2C, as well as the water quality assessment call for protection of river buffers. This property has been offered at a bargain sale and we have received a \$76,424.00 grant from the REAP program. I suggest that the funding source be the Energy Transfer Fund.

Staff urges your approval and recommendation to the Story County Board of Supervisors.

Approval

Disapproval

Date

Date

Ross A. Baxter

**OFFER TO BUY REAL ESTATE AND ACCEPTANCE
(NONRESIDENTIAL)**

TO: Iowa Natural Heritage Foundation,(Sellers)

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

All that part of the Southwest Fractional Quarter (SW $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) lying East of the center line of Skunk River, and Lot Four (4) in the Northwest Fractional Quarter (NW $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$), all in Section Six (6), Township Eighty-five (85) North, Range Twenty-three (23) West of the 5th P.M., Story County, Iowa, except Parcel "B" a part of the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 6-T85N-R23W of the 5th P.M., Story County, Iowa, as shown on the Plat of Survey recorded on November 29, 2018, as Inst. No. 18-10717, Slide 622, Page 3.

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, herein referred to as the "Property," upon the following terms and conditions provided BUYERS, on possession, are permitted to use the Property for any legal purpose.

1. **PURCHASE PRICE.** The Purchase Price shall be **\$175,000.00** and the method of payment shall be as follows: **Entire balance to be paid at closing, closing to take place on or before April 20th, 2020.**

2. **REAL ESTATE TAXES.** Sellers shall pay taxes prorated to the date of possession and any unpaid real estate taxes payable in prior years. 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.**

A. 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 28th, 2020**.

B. All charges for solid waste removal, sewage and maintenance that are attributable to SELLERS' possession, including those for which assessments arise after closing, shall be paid by SELLERS.

C. Any preliminary or deficiency assessment which cannot be discharged by payment shall be paid by SELLERS through an escrow account with sufficient funds to pay such liens when payable, with any unused funds returned to SELLERS.

D. BUYERS shall pay all other special assessments or installments not payable by SELLERS.

4. **RISK OF LOSS AND INSURANCE.** SELLERS shall bear the risk of loss or damage to the Property prior to closing or possession, whichever first occurs. SELLERS agree to maintain existing insurance and BUYERS may purchase additional insurance. In the event of substantial damage or destruction prior to closing, this Agreement shall be null and void; provided, however, BUYERS shall have the option to complete the closing and receive insurance proceeds regardless of the extent of damages. The property shall be deemed substantially damaged or destroyed if it cannot be restored to its present condition on or before the closing date.

5. **POSSESSION AND CLOSING.** If BUYERS timely perform all obligations, possession of the Property shall be delivered to Buyers **on or before April 20th, 2020**, 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. SELLERS agree to permit BUYERS to inspect the Property within 24 hours prior to closing to assure that the premises are in the condition required by this Agreement. 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 filing of the title transfer documents and receipt of all funds due at closing from BUYERS under the Agreement.

6. **FIXTURES.** Included with the Property shall be all fixtures that integrally belong to, are specifically adapted to or are a part of the real estate, whether attached or detached. Also included shall be the following:

The following items shall not be included:

7. **CONDITION OF PROPERTY.** The Property is being sold "As Is."

8. **ABSTRACT AND TITLE.** SELLERS, at their expense, shall promptly obtain an abstract of title to the Property continued through a date **no more than 30 days from closing**, 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.

9. SURVEY. N/A

10. ENVIRONMENTAL MATTERS.

A. 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, the Property does not contain levels of radon gas, asbestos, or urea-formaldehyde foam insulation which require remediation under current governmental standards, and SELLERS have done nothing to contaminate the Property with hazardous wastes or substances. SELLERS warrant that the property is not subject to any local, state, or federal judicial or administrative action, investigation or order, as the case may be, regarding wells, solid waste disposal sites, hazardous wastes or substances, or underground storage tanks. SELLERS shall also provide BUYERS with a properly executed GROUNDWATER HAZARD STATEMENT showing no wells, private burial sites, solid waste disposal sites, private sewage disposal system, hazardous waste and underground storage tanks on the Property unless disclosed here:

B. BUYERS may at their expense, within 10 days after the date of acceptance, obtain a report from a qualified engineer or other person qualified to analyze the existence or nature of any hazardous materials, substances, conditions or wastes located on the Property. In the event any hazardous materials, substances, conditions or wastes are discovered on the Property, BUYERS' obligation hereunder shall be contingent upon the removal of such materials, substances, conditions or wastes or other resolution of the matter reasonably satisfactory to BUYERS. However, in the event SELLERS are required to expend any sum in excess of \$ 5,000 to remove any hazardous materials, substances, conditions or wastes, SELLERS shall have the option to cancel this transaction and refund to BUYERS all earnest money paid and declare this Agreement null and void. The expense of any inspection shall be paid by BUYERS. The expense of any action necessary to remove or otherwise make safe any hazardous material, substances, conditions or waste shall be paid by SELLERS, subject to SELLERS' right to cancel this transaction as provided above.

11. DEED. Upon payment of the Purchase Price, SELLERS shall convey the Property to BUYERS by **Corporate Warranty 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.

12. JOINT TENANCY IN PROCEEDS AND IN REAL ESTATE. Intentionally omitted.

13. JOINDER BY SELLER'S SPOUSE. Intentionally omitted.

14. STATEMENT AS TO LIENS. Intentionally omitted.

15. 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.

16. APPROVAL OF COURT. Intentionally omitted.

17. 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.

18. 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.

19. 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.

20. NO REAL ESTATE AGENT OR BROKER. Neither party has used the service of a real estate agent or broker in connection with this transaction.

21. CERTIFICATION. Buyers and Sellers each certify that they are not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person" or any other banned or blocked person, entity, nation or transaction pursuant to

any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and are not engaged in this transaction, directly or indirectly on behalf of, any such person, group, entity or nation. Each party hereby agrees to defend, indemnify and hold harmless the other party from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorney's fees and costs) arising from or related to my breach of the foregoing certification.

22. 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.

23. ADDITIONAL PROVISIONS.

ACCEPTANCE. When accepted, this Agreement shall become a binding contract. If not accepted and delivered to BUYERS on or before the **28th day of February 2020**, this Agreement shall be null and void and all payments made shall be returned immediately to BUYERS. If accepted by SELLERS at a later date and acceptance is satisfied in writing, then this contract shall be valid and binding.

Accepted 3/5/2020
SELLERS
Iowa Natural Heritage Foundation

Dated _____
BUYERS
Story County Conservation Board

 LRD
Ross Baxter, Land Projects Director

Address : 56461 180th St, Ames, IA
50010

Telephone: 515-232-2516

Address : 505 5th Ave. Ste 444, Des
Moines, IA 50309
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