

AUCTION PURCHASE AND SALE CONTRACT

THIS CONTRACT (“Contract”) is made as of _____, 2023, by and between the United States Marshals Service, as Seller (“Seller”), and _____ (“Buyer”). (Seller and Buyer hereinafter jointly referred to as the “Parties” and each a “Party”).

RECITALS

WHEREAS, the U.S. District Court for the Middle District of North Carolina (the “Court”), has issued its Order of Sale, dated November 22, 2022, in the case of United States v. Tilley, Case No. 1:19-CV-626, which directs the United States Marshal to sell, among other things, the Real Property (the “Real Property”) identified as:

(Insert address and legal description)

A copy of the Order of Sale is attached as Exhibit A and expressly incorporated herein by reference; and

WHEREAS, the U.S. Marshal for the Middle District of North Carolina is authorized to sell the Real Property pursuant to the terms and conditions of the Order of Sale; and

WHEREAS, at an auction conducted this day by Rogers Realty & Auction Co., Inc. (“Auction Company”), Buyer has become the high bidder, and for and in consideration for the mutual promises set forth herein, together with other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and subject to confirmation by the Court, Seller has agreed to sell and convey, and Buyer has agreed to buy by becoming the high bidder the Real Property, together with all fixtures and improvements thereon, upon the following terms and conditions:

TERMS AND CONDITIONS

1) **TERMS AND CONDITIONS SET FORTH IN ORDER OF SALE.** BUYER ACKNOWLEDGES THAT ALL TERMS AND CONDITIONS SET FORTH IN COURT’S ORDER OF SALE, ATTACHED HERETO AS EXHIBIT A, ARE EXPRESSLY INCORPORATED INTO THIS CONTRACT AND APPLY TO THE SALE. TO THE EXTENT THE TERMS AND CONDITIONS SET FORTH IN THIS CONTRACT BELOW ARE CONTRARY TO THE ORDER OF SALE, THE TERMS AND CONDITIONS SET FORTH IN ORDER OF SALE SHALL PREVAIL AND GOVERN. BUYER IS ADVISED TO REVIEW THE ORDER OF SALE.

2) **REAL PROPERTY SOLD “AS IS” EXCEPT THAT IT IS SOLD FREE AND CLEAR OF ALL RIGHTS, TITLES, CLAIMS, LIENS, AND INTERESTS, IF ANY, OF CERTAIN THIRD PARTIES.** The Real Property, together with all fixtures and improvements thereon, is sold “AS IS,” with no representations, warranties, or guarantees, and with all faults, including but not limited to all liens and encumbrances thereon, except that the Real Property is, pursuant to the Order of Sale, sold free and clear of all rights, titles, claims, liens, and interests of all parties to the civil action styled United States v. Tilley, Case No. 1:19-CV-626 (M.D.N.C.), as listed in the Order of Sale at footnote 2, and any successors in interest or transferees of those parties, and of former defendants Aberdeen Produce & Provisions Co., L.L.C., Robert W. Carrington, Jr., and Cynthia Dorr, and any successors in interest or transferees of those former defendants. On confirmation of the sale by the U.S. District Court for the Middle District of North Carolina, ownership and possession of the Real Property shall transfer to the Buyer, or to the designee

of the Buyer, and all interests in, liens against, and titles and claims to, the property that are held or asserted by the parties to this action shall be discharged and extinguished.

3) **REAL PROPERTY.** The Real Property is the following legally described real estate in the County of _____, North Carolina, together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto:

NOTE: Prior to signing this Contract, Buyer is advised to review Restrictive Covenants, if any, which may limit the use of the Real Property, and to read the Declaration of Restrictive Covenants, Bylaws, Articles of Incorporation, Rules and Regulations, and other governing documents of the owners’ association and/or the subdivision, if applicable. If the Real Property is subject to regulation by an owners’ association, it is recommended that Buyer obtain a copy of a completed Owners’ Association Disclosure and Addendum (standard form 2A12-T) prior to signing this Contract, and include it as an addendum hereto.

4) **MINIMUM BID.** The minimum bid for the Real Property was determined by Seller to be \$_____ (the “Minimum Bid”).

5) **PURCHASE PRICE.** The Purchase Price of the Real Property is \$_____ (the “Purchase Price”).

6) **EARNEST MONEY DEPOSIT.** Upon Seller’s execution of this Contract, Buyer shall tender an Earnest Money Deposit by money order, or by cashier’s or certified check, payable to the “United States District Court for the Middle District of North Carolina” in the amount of 15% of the Minimum Bid or _____ AND NO/100 DOLLARS (\$_____) (the “Earnest Money Deposit”) to the Auction Company. The Auction Company shall then give the money order, or cashier’s or certified check, to Seller which shall then deposit the funds with the Clerk of the Court.

7) **CONFIRMATION OF SALE.** Upon full payment of the Earnest Money Deposit, Seller shall, as soon as practicable but in any event within **seven (7) days** of such payment, move the Court, or at its discretion shall request the U.S. Attorney’s Office to move the Court, for an Order confirming the sale.

8) **CLOSING.** Unless otherwise agreed to by the Parties in writing, the Closing shall occur within **fourteen (14) days** of the Court’s entry of an Order confirming the sale. At the Closing, the following shall occur:

- a. **PAYMENT OF THE BALANCE OF THE PURCHASE PRICE.** Buyer shall pay, by certified or cashier’s check, the balance of the Purchase Price, that is the Purchase Price less the amount of Earnest Money Deposit actually paid by Buyer. The check shall be made payable to the “United States District Court for the Middle District of North Carolina” and shall be given to the Auction Company. The Auction Company shall then give the cashier’s or certified check to Seller which shall then deposit the funds with the Clerk of the Court.
- b. **DELIVERY OF QUITCLAIM DEED.** Upon payment of the balance of the Purchase Price, Seller shall issue a quitclaim deed for the Real Property effective as of the date of the confirmation of the sale, and deliver the deed to Buyer.

9) **BUYER'S DEFAULT.** If Buyer defaults in Buyer's obligations to purchase the Real Property under this Contract, the Earnest Money Deposit shall constitute Seller's fixed and full liquidated damages. Buyer and Seller acknowledge and agree that Seller's actual damages for Buyer's breach for failure to purchase the Real Property will be impossible to accurately estimate or calculate, but that the sum herein stipulated is a reasonable amount. Therefore, any retention of the Earnest Money Deposit as liquidated damages hereunder shall not constitute, nor be deemed to constitute, a penalty.

10) **SELLER'S DEFAULT.** If Seller defaults in Seller's obligation to issue and deliver a quitclaim deed at Closing, the Earnest Money Deposit actually paid by Buyer shall be refunded to Buyer, and Seller shall, as soon as practicable, take all reasonable steps to refund the Earnest Money Deposit to Buyer, including, but not limited to, requesting the Clerk refund the Earnest Money Deposit to Buyer and, if necessary, moving the Court for an Order directing the Clerk to refund the Earnest Money Deposit to Buyer. Buyer shall have no further remedies in law or equity against Seller under this Contract.

11) **FINANCING CONTINGENCIES AND INSPECTION RIGHTS.** THERE ARE NO FINANCING CONTINGENCIES OR ANY POST-AUCTION INSPECTION RIGHTS FOR BUYER. SELLER IS NOT OBLIGATED TO MAKE ANY REPAIRS, CHANGES, IMPROVEMENTS OR OTHER MODIFICATIONS TO THE REAL PROPERTY. BUYER REPRESENTS THAT PRIOR TO SUBMITTING THE HIGH BID FOR THE REAL PROPERTY, BUYER DETERMINED THAT THE REAL PROPERTY MEETS ALL LEGAL REQUIREMENTS FOR BUYER'S INTENDED USE OF THE REAL PROPERTY AND IS NOT SUBJECT TO GOVERNMENTAL OR PRIVATE RESTRICTIONS THAT WILL INTERFERE WITH SUCH INTENDED USE, INCLUDING, BUT NOT LIMITED TO ENVIRONMENTAL REGULATIONS, WETLAND QUALIFICATION, FLOOD HAZARD OR FLOOD PLAIN DESIGNATION AND SEPTIC SYSTEM SUITABILITY.

12) **PRORATIONS AND PAYMENT OF CLOSING EXPENSES.**

- a. Seller is solely responsible for payment of Auction Company's commission for the sale of the Real Property from the sale proceeds;
- b. Buyer is solely responsible for all other expenses incurred by Buyer and of sale, unless expressly excluded herein, to include, without limitation, the expense of any survey ordered by Buyer for the benefit of Buyer, tax assessments, recording fees, etc.;
- c. Seller shall pay, from the sale proceeds, any and all real property taxes or similar assessments made by a municipal or county taxing authority against the Real Property prior to the date of the Order confirming the sale, and Buyer shall be solely responsible for any and all real property taxes or similar assessments made by a municipal or county taxing authority against the Real Property on or after the date of the Order confirming sale; and
- d. Except as expressly provided herein, Seller is not responsible for any costs incurred by Buyer, and Buyer is not responsible for any costs incurred by Seller as a result of the purchase and sale of the Real Property.
- e. If the Real Property is subject to any pending or confirmed governmental or owners' association special assessments, then they shall be the sole obligation of Buyer to pay.

13) **WAIVER.** The failure of any Party at any time or times to require performance of any provision hereof will in no manner affect the right of such Party at a later time to enforce the same or any other provisions of this Contract. No waiver of any condition or of the breach of any term contained in this Contract in one or more instances may be deemed to be or construed as a further or continuing waiver of such condition or breach or a waiver of any other condition or of the breach of any other term of this Contract.

14) **SEVERABILITY.** Any term or provision of this Contract that is invalid or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Contract or affecting the validity or enforceability of any of the terms or provisions of this Contract in any other jurisdiction. If any provision of this Contract is so broad as to be unenforceable, the provision will be interpreted to be only as broad as is enforceable.

15) **NOTICES.** Unless otherwise provided herein, all notices or other communications that are required or permitted to be given or made by any Party hereto or to Auction Company in connection with this Contract shall be in writing and shall be deemed sufficient and properly given if (a) delivered in person or by reputable delivery service at the street address set out below, or (b) sent via facsimile transmission to the number set out below or in such notice with proof of delivery. The delivery address and facsimile transmission number for receipt of notice by each Party is as follows:

As to Seller: U.S. Marshals Service
Middle District of North Carolina
324 Market Street
Greensboro, NC 27401
Attention: _____

As to Buyer: _____

Attention:
Facsimile No.:

As to Auction Company: Rogers Realty & Auction Co., Inc
P. O. Box 729, 1310 EMS Drive
Mount Airy, NC 27030
Attention: Bracky Rogers
Facsimile No.: 336-786-1621

Any of the above mentioned Parties and/or Auction Company, may, by like notice, designate any further or different addresses or facsimile transmission numbers to which subsequent notices shall be sent. Any notice or other communication including United States Mail (but excluding United States Express Mail), shall be deemed delivered when actually received at the address of the party to whom directed.

16) **COUNTERPARTS.** This Contract may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which, taken together, shall constitute one and the same instrument. Any signature delivered by a Party hereto by facsimile transmission or by electronic mail in a portable document format shall be deemed an original signature hereto, and the Parties hereby

agree to accept and rely upon any such document sent by facsimile transmission or by electronic mail as if same bore original signatures.

17) **TIME OF ESSENCE.** With respect to all the terms and conditions of this Contract, time is of the essence.

18) **ENTIRE AGREEMENT.** This Contract, which expressly includes the Order of Sale, constitutes the entire agreement between the Parties hereto and no representations, inducements, promises or agreements, oral or otherwise, not embodied herein, shall be of any force or effect, unless same is in writing signed by all of the parties hereto.

19) **BINDING EFFECT.** This Contract shall be binding upon and shall inure to the benefit of the Parties hereto, their respective heirs, assigns, personal representatives or successors in interest.

20) **GENDER AND WORD CONSTRUCTION.** The masculine, feminine or neuter, wherever used herein, shall be deemed to represent the masculine, feminine or neuter, whichever is appropriate, and the singular or plural forms of words, wherever used herein, shall be deemed to represent the form, singular or plural, which is appropriate.

21) **CAPTIONS.** The captions and headings throughout this Contract are for convenience and reference only. The words contained therein shall in no way be deemed or held to define, limit, describe, explain, modify or amplify, or add to the interpretation, construction or meaning of any of the provisions or the scope or intent of this Contract, nor in any way affect this Contract.

22) **EXHIBITS.** Each and every exhibit and schedule referred to or otherwise mentioned in this Contract is attached to this Contract and is and shall be construed to be made a part of this Contract by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit and schedule were set forth in full and at length every time it is referred to or otherwise mentioned.

23) **GOVERNING LAW.** The enforcement, interpretation and construction of this Contract, and all matters relating hereto, will be governed by federal law, and in the event that federal law is silent or inapplicable, the laws of the state in which the Real Property is located shall apply, to the extent permitted by federal law, without giving effect to the conflict of laws principles of the applicable state law.

24) **DATE OF CONTRACT.** For purposes of this Contract, the "Date of this Contract" shall be deemed to be the latter of the dates of execution of this Contract by Seller and Buyer, such dates being opposite the signatures of said Parties.

25) **FURTHER COOPERATION AND GOOD FAITH.** Subject to the terms and conditions of this Contract, the Parties agree to assist and cooperate with each other to make effective the transactions contemplated by this Contract. The Parties agree to act in good faith with respect to each and every term of this Contract.

26) **NO ASSIGNMENT.** Neither this Contract nor any of the rights, interests, nor obligations hereunder may be assigned by either Party hereto (whether by operation of law or otherwise) without the prior written consent of the other Party.

27) **NO THIRD PARTY BENEFICIARIES.** Except as provided elsewhere in this Contract, no one will be deemed a third party or other beneficiary of this Contract, or will have any right or other entitlement in connection with any provision of this Contract or seek any remedy, right or entitlement in connection with this Contract.

28) **INTERPRETATION.** In the event an ambiguity or question of intent or interpretation arises, this Contract shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this Contract.

29) **AMENDMENTS.** This Contract may not be amended except in writing signed by both Parties through their duly authorized representatives.

IN WITNESS HERETO, the Parties knowingly and voluntarily execute this Contract by their signatures, or the signatures of their duly authorized agents, as affixed below.

SELLER:

Date: _____

UNITED STATES MARSHALS SERVICE

By: _____

Name:

Title: United States Marshal

BUYER:

Date: _____

By: _____

Name:

Title:

AUCTION COMPANY AGENT:

Date:

By: _____

Name: R. Bracky Rogers

Title: