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Prepared by/	Todd W. Anderson	Taxpayer Address:
Return To:	Elderkin & Pirnie, P.L.C.	First Citizens Bank
	PO Box 1968	2601-4 <sup>th</sup> Street SW
	Cedar Rapids, Iowa 52406	Mason City Iowa 50401
	Telephone: 319-362-2137	
	Facsimile: 319-362-1640	

### OFFER TO BUY REAL ESTATE AND ACCEPTANCE

TO: FIRST CITIZENS BANK, EXECUTOR OF THE ESTATE OF WILLIAM J. KUNZ  
("SELLER")

The undersigned BUYERS hereby offer to buy and the undersigned SELLER, by its acceptance, agrees to sell the real property situated in Kossuth County, Iowa, legally described as:

Northeast Quarter (NE ¼) of Section Ten (10), Township  
Ninety-six (96) North, Range Twenty-seven (27), West of the  
5<sup>th</sup> P.M.,

(which legal description shall be confirmed from the abstract of title) together with any easements and appurtenant servient estates, but subject to applicable zoning laws and also subject to any and all easements, restrictions, covenants, encroachments and mineral reservations of record, if any, herein referred to as the "Property," upon the following terms, provided BUYERS, upon taking possession of the Property, are permitted to use the Property for agricultural purposes:

1. **PURCHASE PRICE.** The Purchase Price shall be \_\_\_\_\_ Dollars  
(\$ \_\_\_\_\_) (the "Purchase Price") and the method of payment shall be as follows:

A. \_\_\_\_\_ Dollars  
(\$ \_\_\_\_\_) (which amount shall be equal to ten percent (10%) of the Purchase Price) shall be paid upon the execution of this Offer to Buy Real Estate and Acceptance (the "Agreement"), which funds shall be deposited and held in trust by SELLER, as earnest money. Such sum shall be delivered to SELLER, as part of the Purchase Price, upon the performance of all obligations established in this Agreement.

B. The balance of the Purchase Price, including the earnest money payment, is to be paid by BUYERS to SELLER, via cashier's check, wire transfer or other immediately available funds, at the time of closing, with adjustment for closing costs to be added or deducted from this amount.

**2. REAL ESTATE/TRANSFER TAXES.**

A. SELLER shall pay all real estate taxes that are due and payable as of the date of possession and constitute a lien against the Property, including any unpaid real estate taxes for any prior years.

B. SELLER shall pay the prorated share, based upon the date of possession, of the real estate taxes for the fiscal year in which possession is given (ending June 30, 2019), due and payable in the subsequent fiscal year (commencing July 1, 2019). BUYERS shall be given a credit for such proration at closing based upon the last known actual net real estate taxes payable according to public record.

C. BUYERS shall pay all subsequent real estate taxes.

D. SELLER shall pay all revenue stamps/transfer taxes assessed as a result of this transaction pursuant to Iowa Code Chapter 428A.

**3. SPECIAL ASSESSMENTS.**

A. SELLER shall pay in full all special assessments which are a lien on the Property and, if not paid, would be delinquent during the calendar year this Agreement is executed, and all prior installments thereof.

B. BUYERS shall pay all other special assessments.

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

**5. POSSESSION AND CLOSING.** If BUYERS timely perform all obligations established in this Agreement, possession of the Property shall be delivered to BUYERS on April 26, 2019, or sooner or later by mutual agreement, and any adjustments of rent, insurance, taxes, interest and all charges attributable to SELLER'S possession shall be made as of the date of possession. Closing shall occur after approval of title and vacation of the Property by SELLER, but prior to possession by BUYERS. SELLER agrees to permit BUYERS to inspect the Property within twenty-four (24) hours prior to closing to assure that

the Property is 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 delivery of the title transfer documents to BUYERS and receipt of all funds then due at closing from BUYERS under this Agreement. Closing shall be held at First Citizens Bank in Mason City, Iowa at the address set forth below.

The Property is being sold free and clear of any rental agreements relating to the 2019 farming season.

6. **NO FIXTURES.** The Property is bare ground with a corn crib. No fixtures are included with the Property.

7. **CONDITION OF THE PROPERTY.**

A. The Property as of the date of this Agreement, including the building, grounds and all improvements, will be preserved by SELLER in its present condition until possession is delivered to BUYERS, ordinary wear and tear excepted.

B. **BUYERS agree at the closing that they are purchasing the Property and that SELLER is selling the Property “as is” and in its existing condition, with no representations or warranties, expressed or implied, regarding the Property, whatsoever, except as otherwise provided in this Agreement.**

C. BUYERS will be solely responsible for installing any additional entrances to the Property that are desired by BUYERS (if any). BUYERS shall also be solely responsible for installing, replacing and/or repairing any fencing that relates to the Property, consistent with Iowa law.

D. SELLER states that it has no personal knowledge of any abandoned wells, solid waste disposal sites, hazardous wastes or substances or underground storage tanks located on the Property. SELLER further states that SELLER has done nothing to contaminate the Property with hazardous wastes or substances. BUYERS agree that they will be solely responsible for any expenses that may be incurred in the future relating to remediation or other clean-up expenses as well as any other expenses directly or indirectly relating to any abandoned wells, solid waste disposal sites, hazardous wastes or substances, or underground storage tanks located on the Property, whether such condition existed on the date of this Agreement or subsequent to the date of this Agreement.

8. **ABSTRACT AND TITLE.** SELLER, at its expense, shall promptly obtain an abstract of title to the Property continued through the date of the acceptance of this Agreement, and deliver it to BUYERS’ attorney for examination. It shall show merchantable title in SELLER in conformity with this Agreement, Iowa law, and Title Standards of the Iowa State Bar Association. SELLER shall make every reasonable effort to promptly perfect title.

If closing is delayed due to SELLER'S inability to provide marketable title, this Agreement shall continue in force and effect until either party rescinds the Agreement after giving twenty (20) days written notice to the other party. The abstract shall become the property of BUYERS when the Purchase Price is paid in full. SELLER shall pay the costs of any additional abstracting and title work due to any act or omission of SELLER, including transfers by SELLER or its assignees.

9. **SURVEY.** BUYERS may, at BUYERS' expense prior to closing, have the Property surveyed and certified by a Registered Land Surveyor. If the survey shows any encroachment on the Property or if any improvements located on the Property encroach on lands of others, the encroachments shall be treated as a title defect. If the survey is required under Chapter 354, SELLER shall pay the cost thereof.

10. **DEED.** Upon payment of the Purchase Price, SELLER shall convey the Property to BUYERS by Court Officer Deed, free and clear of all liens, restrictions and encumbrances, except as otherwise provided in this Agreement.

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

12. **REMEDIES OF THE PARTIES.**

A. If BUYERS fail to timely perform this Agreement, SELLER may forfeit it as provided in the Iowa Code (Chapter 656), and all payments made shall be forfeited; or, at SELLER'S option, upon thirty (30) days written notice of intention to accelerate the payment of the entire balance because of BUYERS' default (during which thirty (30) days the default is not corrected), SELLER 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. In the event of a default by SELLER hereunder, BUYERS may, at their option, elect to (i) enforce the terms of this Agreement, or (ii) demand and be entitled to an immediate refund of their entire earnest money deposit and terminate this Agreement.

C. BUYERS and SELLER are also entitled to utilize any and all other remedies or actions at law or in equity available to them, specifically including but not limited to the right to demand specific performance of this Agreement.

D. Upon a default by BUYERS or SELLER, the nondefaulting party shall also be able to recover from the defaulting party all costs and reasonable attorney's fees required in order to enforce this Agreement.

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

14. **ADDITIONAL PROVISIONS.**

A. **No Real Estate Agent or Broker.** Neither party has used the services of a real estate agent or broker in connection with this transaction. SELLER agrees to indemnify BUYERS and BUYERS agree to indemnify SELLER for any claim by a real estate agent or broker arising out of or related to this transaction that was hired or contracted by that party. Notwithstanding the foregoing, SELLER has engaged Steffes Group, Inc. as the auctioneer of the Property and SELLER will solely be responsible for paying all amounts due to Steffes Group, Inc. relating to the auction/sale of the Property.

B. **No Financing Contingency.** This Agreement is NOT contingent upon BUYERS obtaining financing to purchase the Property.

C. **General Provisions.** In the performance of each part of this Agreement, time shall be of the essence. Failure to promptly assert rights established in this Agreement 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. Words and phrases included in this Agreement shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender according to the context.

D. **Construction.** This Agreement shall be construed and enforced in accordance with the laws of the State of Iowa.

E. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

F. **Entire Agreement.** This Agreement constitutes the entire agreement between SELLER and BUYERS pertaining to the subject matters of this Agreement, and supersedes all negotiations, preliminary agreements and all prior and contemporaneous discussions and understandings of the parties in connection with the subject matters of this Agreement. This Agreement also supersedes (i) any terms set forth in any auction flyer or other advertisement relating to the sale/auction of the Property, and (ii) any terms discussed at or prior to the auction of the Property.

G. **Amendments.** No amendment, waiver, change or modification of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed or initialed by the parties or by their duly authorized agents. Waiver of any provision of this Agreement on one occasion shall not be

deemed a waiver of future compliance with the terms of this Agreement and such provision shall remain in full force and effect.

H. **Severability.** If any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable, and if, for any reason, a court finds that any provision of this Agreement is invalid, illegal or unenforceable as written, but that by limiting such provision it would become valid, legal and enforceable, then such provision shall be deemed to be written and shall be construed and enforced as so limited.

I. **Construction.** It is the intention of the parties that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other which would render the provision valid, then the provision shall have the meaning which renders it valid. It is agreed that if any provision of this Agreement shall be found by any court of competent jurisdiction to be unclear and ambiguous, that the rule of contract construction that any such provision be construed against the party who prepared the instrument shall not apply.

J. **Captions.** The captions and headings of the paragraphs of this Agreement are for convenience only and are not to be used to interpret or define the provisions of this Agreement.

K. **Legal Counsel.** Each of the parties to this Agreement has been afforded the opportunity to seek legal counsel with respect to how the terms and conditions of this Agreement may affect them. By their execution of this Agreement, each of the parties to this Agreement acknowledge that they have sought independent legal counsel or have been afforded the opportunity to do so and have decided not to exercise such right.

In addition, BUYERS and SELLER recognize and agree that Todd W. Anderson and the attorneys at Elderkin & Pirnie, P.L.C. are representing SELLER, only, and are not providing and will not be providing any legal representation or advice to BUYERS with regard to this real estate transaction or this Agreement.

L. **FSA Office.** It shall be the obligation of BUYERS to report to the Kossuth County, Iowa FSA Office and show the filed Court Officer Deed relating to the Property in order to apply for and/or receive the following, if applicable: (i) allotted base acres, and (ii) any future government programs and benefits.

15. **CERTIFICATION.** BUYERS and SELLER 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 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 its breach of the foregoing certification.

16. **BINDING CONTRACT.** When signed by BUYERS and SELLER, this Agreement shall become a legally binding contract.

Dated: March 26, 2019

Dated: March 26, 2019

**BUYERS:**

**SELLER:**

X \_\_\_\_\_

Estate of William J. Kunz  
First Citizens Bank, Executor  
2601-4<sup>th</sup> Street SW  
Mason City, Iowa 50401

\_\_\_\_\_  
Print Name of Buyer  
Address:

By: \_\_\_\_\_  
Roberta Cornelius, Vice President  
and Senior Trust Officer

\_\_\_\_\_

Phone No. \_\_\_\_\_

X \_\_\_\_\_

\_\_\_\_\_  
Print Name of Buyer  
Address:

\_\_\_\_\_

Phone No. \_\_\_\_\_