

AUCTION AGREEMENT TO PURCHASE AND SELL REAL ESTATE

This Auction Agreement to Purchase and Sell Real Estate (“**Agreement**”) is entered into this ____ day of October, 2021 (the “**Effective Date**”) by and between Little Red Hen, Inc., an Idaho corporation (“**Little Red Hen**”), Thomas J. McDevitt Family Trust (“**McDevitt Trust**”) (together, Little Red Hen and McDevitt Trust are referred to herein each as a “**Seller**” individually, or the “**Sellers**” collectively) and _____ (“**Buyer**”).

1. PROPERTY; PURCHASE AND SALE.

- i. Little Red Hen, Inc. is the owner of that certain real property in Pocatello, Idaho, Bannock County, legally described as “**Parcel 1**” on **EXHIBIT A** attached hereto. Little Red Hen, Inc. agrees to sell, and Buyer agrees to purchase Parcel 1, together with all appurtenances thereto.
- ii. The Thomas J. McDevitt Family Trust is the owner of that certain real property in Pocatello Idaho, Bannock County legally described as “**Parcel 2**” on **EXHIBIT A** attached hereto. The Thomas J. McDevitt Family Trust agrees to sell, and Buyer agrees to purchase Parcel 2, together with all appurtenances thereto.
- iii. Together, Parcel 1 and Parcel 2 are referred to herein as the “**Property**.”

2. CLOSING. The date of closing of the transaction contemplated herein shall be on or before that date which is thirty (30) calendar days after the Effective Date (the “**Closing Date**”). The closing shall take place at the office of First American Title, whose address is 2150 S Bonito Way, Meridian, ID with Tami Dejournett-Albert (“**Closing Agent**”). Possession of the Property shall be transferred to Buyer on the Closing Date.

3. CLOSING EXTENSION. Buyer shall be entitled to one (1), one (1) month extension option of the Closing Date (“**Extension Option**”). Said Extension Option shall be at a cost to Buyer of \$1,000,000.00 (“**Extension Fee**”). The Extension Fee shall be immediately non-refundable to Buyer upon deposit and shall be applicable to the Purchase Price. Buyer may exercise the Extension Option by notifying Sellers and Closing Agent of such election in writing and upon the payment of the Extension Fee to the Closing Agent prior to the end of the current Closing Date. Upon payment of the Extension Fee to the Closing Agent, the Extension Fee will initially be deposited in an account with Closing Agent, and upon funding of said amount, shall be disbursed to Sellers and deposited in Sellers’ account.

4. PURCHASE PRICE AND TERMS. The purchase price of the Property is _____ and no/100’s Dollars (\$ _____), which was the highest bid price at the auction. The Purchase Price shall be payable in collectible U.S. Dollars as follows:

(a) **Earnest Money.** An amount of Five Hundred Thousand and no/100’s Dollars (\$500,000) in the form of a cashier’s check (“**Earnest Money**”) is to be paid on the Effective Date and held by Closing Agent. The Earnest Money shall be non-refundable to Buyer, except in the event of a Seller default, and applied to the Purchase Price at closing.

Buyer

Seller

(b) Payment of Balance of Purchase Price. The balance of the Purchase Price after credits, adjustments and pro-rations, shall be paid to Sellers by Buyer at the time of closing in cash, immediately available funds.

5. NO CONTINGENCIES. There are no conditions or contingencies of any kind to Buyer's obligations under this Agreement. There is NO contingency upon Buyer obtaining financing, review of title, or inspection of the Property.

6. EVIDENCE OF TITLE AND TITLE. A title commitment ("**Title Commitment**") was acquired from First American Title Company (the "**Title Company**") in order to demonstrate the status of title to each Property for purposes of auction. Buyer may acquire a title policy from Title Company at Buyer's sole cost and expense in the form of a standard owner's title insurance policy or any extended title policy available between Buyer and Title Company. Prior to signing this Agreement, Buyer has had the right to inspect the Property and the condition of title of the Property to determine if the condition of title is acceptable to Buyer and to determine, among other matters, if any third party(s) has any right in the Property not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy). The Buyer shall accept title to the Property "AS IS" and understands that Sellers (including their employees, agents, brokers, advisors and contractors) make no warranty or representation of any kind regarding the condition of title to the Property.

7. INSPECTION. Buyer acknowledges that Buyer was and is responsible for making a thorough inspection of the Property at its own expense, as well as thoroughly researching any information available about the Property and its surroundings, prior to the date of this Agreement. Prior to signing this Agreement, Buyer acknowledges that Buyer or any designee was afforded the right to have an inspection(s) of the physical condition of the Property, at Buyer's expense. This Agreement is NOT contingent upon any further inspections by Buyer. Sellers make no representations or warranties of any kind as to the completeness or accuracy of any information given to Buyer by Sellers or Sellers' agents.

8. TRANSFER OF TITLE. Subject to tender or payment of the Purchase Price at closing as required herein and compliance by Buyer with the other terms and provisions hereof, each Seller shall, at closing, execute and deliver a separate Grant Deed to Buyer conveying their respective portion of the Property (Red Hen shall execute and deliver Grant Deed as to Parcel 1 and McDevitt Trust shall execute and deliver Grant Deed as to Parcel 2) in the form attached hereto as **EXHIBIT "B"**.

9. PAYMENT OF ENCUMBRANCES. Any monetary lien or encumbrance, including delinquent taxes and assessments, if any, required to be paid shall be paid at or before closing by Sellers from the proceeds of this transaction or from any other source.

10. DISCLAIMER. BUYER ACKNOWLEDGES AND AGREES THAT THEY HAVE BEEN INFORMED AND UNDERSTAND THAT SELLERS MAKE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO ANY ASPECT, FIXTURE OR CONDITION OF THE PROPERTY INCLUDING, WITHOUT LIMITATION, THE EXISTENCE OF HAZARDOUS WASTE OR MATERIALS THEREON, OR THE SUITABILITY OF THE PROPERTY FOR BUYER'S INTENDED USE, TO BUYER BEYOND THOSE EXPRESSLY PROVIDED IN THIS AGREEMENT.

Buyer

Seller

Buyer acknowledges that Sellers have made no representations of any material fact concerning the Property beyond those expressly provided in this Agreement, that Buyer has had an adequate opportunity to inspect and investigate the Property; and, that Buyer has made a thorough independent examination and inspection of the Property, and is relying solely upon their own examination and inspection thereof. Buyer further acknowledges that Sellers have made no representations or warranties as to whether the boundary lines of the Property are accurate, nor any representation as to the number of acres or the number of square feet or frontage of the Property. Buyer has had an adequate opportunity to examine and inspect the boundaries of the Property and will make their own determination as to acreage, square footage, and/or frontage, and whether the location of improvements and boundaries are accurate, and is purchasing the Property in reliance upon their own determination thereof and regardless of whether or not said location of improvements and boundaries are accurate. Sellers make no warranty or representation with respect to the legal description as may be used herein. Buyer acknowledges further that Sellers are not responsible or liable to obtain or provide a survey of or any other information relating to the Property to Buyer. Sellers make no representation or warranties as to the accuracy or adequacy of any information regarding the Property provided by Sellers or Sellers' agents. Accordingly, Buyer is purchasing the Property "AS IS, WHERE IS."

11. CLOSING COSTS, DOCUMENTS AND SERVICES. Buyer shall pay all escrow, title insurance and other closing costs and all other items required to be paid at closing. Buyer and Sellers shall sign and complete all customary or reasonably required documents at or before closing. Any sales and use tax that may accrue because of this transaction shall be paid when due by Buyer.

12. TAX DEFERRED EXCHANGE. Either party may assign its rights under this Agreement in conjunction with, and each party agrees to reasonably cooperate with each other in effecting, an exchange that qualifies for tax deferred treatment pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended, and corresponding provisions of applicable state law. The cooperation will include executing and delivering to each other or the applicable exchange company, any consents and acknowledgements that are reasonably necessary to effect the tax-deferred exchange; provided, that (a) such cooperation does not result in a delay of the applicable closing; (b) the consents and acknowledgements do not modify the terms of this Agreement nor impose any liability or obligations on the party signing such consent or acknowledgment; and (c) neither party is required to take title to any other real property. Such tax-deferred exchange will be effected at the requesting party's sole cost, expense and liability.

13. PRORATIONS. The following shall be prorated to the Closing Date, except as otherwise provided:

(a) **Taxes.** Personal property taxes and general real estate taxes if any.

(b) **Other.** Water, sewer and any other utility charges associated with the Property.

(c) **Final Settlement.** Unless otherwise agreed in writing by Sellers and Buyer, the prorations set forth herein shall be final.

14. RECOMMENDATION OF LEGAL AND TAX COUNSEL. By signing this Agreement, Sellers and Buyer acknowledge that their respective brokers have advised each of them that this Agreement has important legal consequences and has recommended the examination of title and consultation with legal and tax or other counsel before signing this Agreement.

Buyer

Seller

15. TIME OF ESSENCE, DEFAULT AND REMEDIES. Time is of the essence hereof. If any payment due, including the Purchase Price, hereunder is not paid, honored or tendered when due, or if any other obligation hereunder is not performed or waived as herein provided, there shall be the following remedies:

(a) If Buyer is in Default: The Earnest Money and all payments and things of value received hereunder shall be released and relinquished by Buyer and retained on behalf of Sellers and both parties shall thereafter be released from all obligations hereunder and this Agreement shall be terminated and of no further force and effect. It is agreed that such payments and things of value are **LIQUIDATED DAMAGES** and are SELLER'S SOLE AND EXCLUSIVE REMEDY for Buyer's failure to perform its obligations under this Agreement. If Buyer challenges or otherwise disputes the payment of liquidated damages, then Seller, at its election, shall be entitled to all remedies available to Sellers at law or in equity.

(b) If Seller(s) is in Default: If one or more of the Sellers is in default, Buyer's sole remedy shall be to treat this Agreement as canceled, in which case all payments and things of value received hereunder by Sellers or the Closing Agent shall be returned to Buyer.

16. NOTICES. Any notice under this Agreement shall be in writing and be delivered in person or by public or private courier service (including U.S. Postal Service Express Mail) or certified mail, or by email or facsimile. Any notice given by certified mail shall be sent with return receipt requested. Any notice given by email or facsimile shall be verified by telephone or, if unable to verify by telephone, shall be sent via certified mail. All notices shall be addressed to the parties at the addresses set forth in this Agreement, or at such other addresses as the parties may from time to time direct in writing. Any notice shall be deemed to have been given on the earlier of: (a) actual delivery or refusal, (b) three (3) days after mailing by certified mail, or (c) the day email or facsimile delivery is verified.

17. ATTORNEYS' FEES. In the event either party initiates or defends any legal action or proceeding in any way connected with this Agreement, the prevailing party in any such action or proceeding (in addition to any other relief which may be granted, whether legal or equitable), shall be entitled to recover from the losing party in any such action its reasonable costs and attorneys' fees (including, without limitation, its reasonable costs and attorneys' fees on any appeal). All such costs and attorneys' fees shall be deemed to have accrued on commencement of any legal action or proceeding and shall be enforceable whether or not such legal action or proceeding is prosecuted to judgment.

18. ADDITIONAL PROVISIONS. This Agreement contains the entire agreement of the parties regarding the subject matter hereof.

19. MODIFICATION, SURVIVAL. No subsequent modification of any of the terms of this Agreement shall be valid, binding upon the parties, or enforceable unless made in writing and signed by the parties. Any obligation in this Agreement that, by its terms, is intended to be performed after termination or closing shall survive the same.

20. BROKER. Sellers and Buyer each represent and warrant to the other that except for Corbett Bottles Real Estate Marketing, LLC, which is representing Sellers ("**Sellers' Broker**"), and _____ ("**Buyer's Agent**"), which is representing Buyer, that neither of them have employed nor associated with any other broker or agent in connection with this transaction. Sellers and Buyer each hereby agree to indemnify and defend the other against any

Buyer

Seller

and all commissions, finder's fees or other fees or any claim therefore by any broker in connection with this transaction claiming through the indemnifying party.

21. CONSTRUCTION. In construing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

22. AGENCY REPRESENTATION. Buyer and Sellers understand and agree that _____ is involved in this transaction on behalf of Buyer and that Corbett Bottles Real Estate Marketing, LLC, an Idaho limited liability company, is involved in this transaction on behalf of Seller, and that no other broker or agent was the procuring cause of the transaction contemplated by this Agreement.

REPRESENTATION CONFIRMATION: Check one (1) box in Section 1 below and one (1) box in Section 2 below to confirm that in this transaction, the brokerage(s) involved had the following relationship(s) with the BUYER(S) and SELLER(S):

Section 1:

- A. The brokerage working with the BUYER(S) is acting as an AGENT for the BUYER(S).
- B. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S), without an ASSIGNED AGENT.
- C. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT NONAGENT for the BUYER(S), and has an ASSIGNED AGENT acting solely on behalf of the BUYER(S).
- D. The broker working with the BUYER(S) is acting as a NONAGENT for the BUYER(S).

Section 2:

- A. The brokerage working with the SELLER(S) is acting as an AGENT for the SELLER(S).
- B. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S), without an ASSIGNED AGENT.
- C. The brokerage working with the SELLER(S) is acting as LIMITED DUAL AGENT for the SELLER(S), and has an ASSIGNED AGENT acting solely on behalf of SELLER(S).
- D. The brokerage working with the SELLER(S) is acting as a NONAGENT for the SELLER(S).

Each party signing this document confirms that he or she has received, read and understood the Agency Disclosure brochure and has elected the relationship confirmed above. In addition, each party confirms that the brokerage's agency office policy was made available for inspection and review.

EACH PARTY UNDERSTANDS THAT HE OR SHE IS A "CUSTOMER" AND IS NOT REPRESENTED BY A BROKERAGE UNLESS THERE IS A SIGNED WRITTEN AGREEMENT FOR AGENCY REPRESENTATION.

Responsible and Listing Broker: Corbett Bottles Real Estate Marketing, LLC

Selling Broker: _____

[End of Text, Signature Page Follows]

Buyer

Seller

IN WITNESS WHEREOF, Buyer and Sellers have executed this Agreement dated as of the Effective Date.

BUYER: _____

By: _____

Name (if applicable): _____

Title (if applicable): _____

Date: _____

Address: _____

Phone No.: _____

Fax No.: _____

Email: _____

SELLER: Little Red Hen, Inc.
an Idaho corporation

SELLER: Thomas J. McDevitt Family Trust

By: _____

Name: _____

Title: _____

Date: _____

Address: _____

Phone No.: _____

Email: _____

By: _____

Name: _____

Title: _____

Date: _____

Address: _____

Phone No.: _____

Email: _____

EXHIBIT "A"

DESCRIPTION OF THE PROPERTY

Parcel 1

TOWNSHIP 7 SOUTH, RANGE 34 EAST, BOISE MERIDIAN, BANNOCK COUNTY, IDAHO:

SECTION 13: SOUTH $\frac{1}{2}$

SECTION 14: SOUTH $\frac{1}{2}$ SOUTHEAST $\frac{1}{4}$

SECTION 23: GOVT. LOTS 1 AND 2, SOUTHWEST $\frac{1}{4}$ NORTHEAST $\frac{1}{4}$, NORTHWEST $\frac{1}{4}$ SOUTHEAST $\frac{1}{4}$

SECTION 24: NORTH $\frac{1}{2}$, NORTHWEST $\frac{1}{4}$ SOUTHEAST $\frac{1}{4}$

TOWNSHIP 7 SOUTH, RANGE 35 EAST, BOISE MERIDIAN, BANNOCK COUNTY, IDAHO:

SECTION 18: GOVT. LOTS 3 AND 4

Parcel 2

TOWNSHIP 7 SOUTH, RANGE 34 EAST, BOISE MERIDIAN, BANNOCK COUNTY, IDAHO:

SECTION 23: SOUTHEAST $\frac{1}{4}$ NORTHEAST $\frac{1}{4}$; NORTHEAST $\frac{1}{4}$ SOUTHEAST $\frac{1}{4}$

SECTION 24: NORTH $\frac{1}{2}$ SOUTHWEST $\frac{1}{4}$

EXHIBIT "B"
FORM OF DEED

When recorded, please return to:

_____.

GRANT DEED

FOR VALUE RECEIVED, the sufficiency of which is hereby acknowledged, [_____] (the "**Grantor**"), does hereby grant unto [_____] having an address of [_____] (the "**Grantee**"), all of Grantor's right, title, and interest in and to that certain real property more particularly described in Exhibit 1 hereto (the "**Property**").

TOGETHER WITH all and singular the tenements, hereditaments, improvements, and appurtenances thereunto belonging, or in any way appertaining, to the Property, including, but not limited to, any and all water rights associated therewith.

TO HAVE AND TO HOLD the Property, together with the appurtenances, unto Grantee, and to its successors and assigns forever.

SUBJECT TO any and all taxes not yet due and payable, assessments not yet due and payable, all matters of record, and any of the following that appear on the land: liens, encumbrances, reservations, restrictions, zoning restrictions, building restrictions and/or codes, dedications, encroachments, parties in possession, easements, rights-of-way, gaps, overlaps, and agreements.

[end of text; signature and notary page follow]

Buyer
Seller

IN WITNESS WHEREOF, the undersigned has caused Grantor's name to be hereunto subscribed this ____ day of _____, 2021.

By: _____
Name: _____
Its: _____

STATE OF IDAHO)
 : ss.
County of _____)

On this _____ day of _____, 2021, before me, a Notary Public in and for the State of Idaho, personally appeared _____, known or identified to me to be the _____ of _____ and who subscribed said name to the foregoing instrument, and acknowledged to me that he executed the same in said _____ name.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public for Idaho
Residing at: _____
My commission expires: _____

_____ *Buyer*
_____ *Seller*

EXHIBIT 1
LEGAL DESCRIPTION OF THE PROPERTY

[to be added]