

## REAL ESTATE SALE AGREEMENT

THIS AGREEMENT (this "**Agreement**"), made this \_\_\_\_\_ day of \_\_\_\_\_ 2009 by and between Orscheln Farm and Home Holding Co., a Delaware corporation, formerly Orscheln Farm and Home Supply Inc. ("**Seller**") and \_\_\_\_\_

\_\_\_\_\_  
 ("**Buyer**").

WITNESSETH:

NOW, THEREFORE, in consideration of the mutual promises, representations and covenants set forth below, the parties hereby agree as follows:

1. Sale. Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller certain real estate commonly known as the former Orscheln Farm and Home Store, 1707 Frontage Road, Nebraska City, Otoe County, Nebraska, and legally described in **Exhibit A**, attached hereto and incorporated herein by reference, together with all improvements thereon and appurtenances thereto (the "**Property**") in an "as is, where is" condition. Legal description in the Deed and the Commitment, satisfactory to Seller, shall govern.
2. Matters of Record. This sale is subject, however, to any recorded restrictions, rights-of-way, reservations, easements, party wall agreements, community contracts, and zoning laws, and all matters ascertainable by an accurate survey.
3. Purchase Price. The purchase price (the "**Purchase Price**") is \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) (being [a] \_\_\_\_\_ Dollars [\$ \_\_\_\_\_], the bid amount by Buyer at an auction sale of the Property held on November 10, 2009 [the "**Auction**"], and [b] ten percent [10%] of the bid amount as Broker's Commission [as defined below]) on the sale of the Property), which Buyer agrees to pay as follows:
  - a. Buyer shall deposit the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) in the escrow account of the Title Company (as defined below) at the time of the execution and delivery of this Agreement, as part of the consideration of the sale (the "**Earnest Money**") and will be credited to the purchase price upon Closing or handled otherwise as herein provided; and
  - b. The balance of the Purchase Price, subject to prorations and adjustments as provided herein, shall be paid by Buyer at Closing in the form of cash or cash equivalent satisfactory to Seller.
4. Taxes. Seller shall pay all taxes, general and special, and all assessments, which are a lien on the Property and can be paid at the date of this Agreement, except that all general, state, county, school and municipal taxes payable during

the calendar year in which the Deed is delivered shall be prorated between Seller and Buyer on the basis of the said calendar year, as of the date of Closing. If the amount of any such tax to be prorated cannot then be ascertained, proration shall be computed on the amount thereof for the preceding year.

5. Title Insurance. Seller shall furnish to Buyer a commitment for an owner's policy of title insurance within seven (7) days of the date of this Agreement (the "**Commitment**") covering the Property, in the amount of the Purchase Price, issued on behalf of a title insurance company (the "**Title Company**") which is satisfactory to Seller and authorized to insure titles in the state where the Property is located, by and through First Nebraska Title, the Title Company's authorized agent or other title agent which is satisfactory to Seller and authorized to issue titles in the state where the Property is located (the "**Title Agent**"), insuring a marketable fee simple title in the Buyer as of the date of recording the Deed. All costs of owner's title insurance shall be shared equally by Seller and Buyer. Buyer shall have five (5) days from receipt of the Commitment to make any objections to title as set forth in the Commitment, consistent with this Agreement, but shall not object to standard exceptions or any matters listed in paragraph 2 hereof that will not materially affect Buyer's intended use of the Property. If Buyer makes any such permitted objections, Seller shall have ten (10) days to cure any title defect or decline to do so; provided, however, if any such title defect is not cured within such ten (10) days, then, unless Buyer waives any such objections within five (5) days thereafter, this Agreement shall become null and void and the Earnest Money shall be returned to Buyer and the parties shall have no further rights or obligations under this Agreement, except as otherwise specified herein.

6. Closing Date. Closing shall occur through an escrowed closing arrangement with the Title Agent on or before the later to occur of (1) \_\_\_\_\_, 2009, or (2) within ten (10) days after the satisfaction or waiver of all conditions set forth in paragraphs 5 and 9 of this Agreement; provided, however, in any event, closing shall occur no later than \_\_\_\_\_, 2009, except by subsequent written agreement of the parties; provided, however, Seller reserves the right to have its representative attend Closing for the purpose of receiving from the Title Agent a certified check or other cash equivalent in the amount of the net proceeds due Seller from the Closing ("**Seller's Net Proceeds**").

At Closing (the "**Closing**"), Seller or Buyer, respectively, shall duly execute, in the case of any document requiring execution, and, in any event, deliver to the Title Agent the following:

- a. by Seller:
- i) Seller's special warranty deed (the "**Deed**"), properly executed and conveying the Property free and clear of all liens and encumbrances caused by Seller as therein provided and except for

any matters (1) which could be ascertained by an accurate survey or (2) otherwise consistent with this Agreement;

ii) A Closing Statement in form and content satisfactory to Seller.

b. by Buyer:

i) Cash or cash equivalent in the amount of the Purchase Price, adjusted for all credits, debits and prorations required by this Agreement. Seller reserves the right to require Buyer to provide separate bank wirings, cashier's or certified checks, or other cash equivalents in respective appropriate amounts for any separate payee according to any closing statement including, but not limited to, Seller (for Seller's Net Proceeds), Seller's mortgagee (if any, in the amount of any payoff figure) and any other such separate payee. Any minor discrepancy between any such cash equivalent and the amount actually due such respective payee may be adjusted by good personal check.

ii) Any Closing Statement or other document reasonably required by the Title Company for Closing.

Seller shall be entitled to receive from the Title Company a closing protection letter for Seller's protection in form and substance satisfactory to Seller; provided, however, if the Title Company is unwilling to provide such a closing protection letter to Seller, then (a) the Deed shall not be deemed delivered, even if recorded, until Seller actually receives Seller's Net Proceeds; (b) Seller shall not be deemed to have received Seller's Net Proceeds merely because the Title Agent, as escrow agent for Buyer and/or Seller, has received such funds, but Seller must actually receive Seller's Net Proceeds from the Title Agent (or other escrow agent, if applicable); (c) the Title Agent shall not be authorized to record the Deed until and unless Seller notifies the Title Agent that Seller has actually received such funds and (d) until such funds are actually delivered to Seller by the Title Agent (or other escrow agent, if applicable), such funds shall be deemed to be Buyer's funds.

7. Closing Costs. Seller and Buyer shall share equally any reasonable closing fee or escrow fee, if any, charged by the Title Agent. Seller shall prepare the Deed; Buyer shall pay the recording fee for the Deed and all financing, if any. The parties shall pay their own respective attorney fees. Seller and Buyer shall share equally the documentary stamp tax for the Deed.
8. Insurance. Seller shall keep the improvements on the Property fully insured until Closing. If the improvements are substantially damaged or destroyed by fire or other casualty prior to Closing, then Buyer shall have the option of accepting all of the insurance proceeds and proceeding with its performance under this Agreement or canceling this Agreement. If Buyer so chooses to cancel this Agreement, all earnest money, if any, shall be returned to Buyer and the parties



time, to change their respective addresses for notices by giving the other party hereto written notice thereof.

11. Default. If Seller has kept Seller's part of this Agreement, and Buyer fails to comply with this Agreement on Buyer's part as herein provided, within five (5) days thereafter, then this Agreement may or may not be operative thereafter, at the option of Seller, and, in the event Seller shall declare this Agreement inoperative, one-half of the Earnest Money shall be paid to Seller as liquidated damages, and one-half of the Earnest Money shall be paid to Broker as liquidated damages (not to exceed the compensation to which Broker would have been otherwise entitled to receive) as its compensation due for its services.
12. Miscellaneous. This Agreement may be simultaneously executed in more than one counterpart, each of which shall be an original and all of which shall constitute but one and the same instrument. This Agreement shall be governed by the laws of the State of Nebraska. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, personal representatives, guardians, conservators, attorneys-in-fact, successors and assigns. Time is of the essence in this Agreement. This Agreement sets forth the entire agreement of the parties and no promise, representation or agreement has been made or relied upon except as is specified in writing in this Agreement. Any change to this Agreement shall be made only in writing executed by both parties.
13. No Presumption Against Drafter. This Agreement has been freely negotiated by both parties. In any controversy, dispute, or contrast over the meaning, interpretation, validity, or enforceability of this Agreement or any of its terms or conditions, there shall be no inference, presumption, or conclusion drawn whatsoever against either party by virtue of that party having drafted this Agreement or any portion thereof.
14. Brokers. The parties agree that they have not dealt with any real estate broker in this transaction except for Pagel Inc., d/b/a United Country Pagel Inc. Realty and Auction (the "**Seller's Broker**") and \_\_\_\_\_ (the "**Buyer's Broker**"), and that, upon closing of this Agreement, Seller agrees to pay Seller's Broker a commission ("**Seller's Broker's Commission**") pursuant to a listing agreement between Seller and Broker, and Buyer agrees to pay Buyer's Broker, if any, a commission ("**Buyer's Broker's Commission**") pursuant to a listing agreement between Buyer and Broker, if any.
15. Restrictive Covenant. Any sale of the PROPERTY shall be restricted and conditioned under Nebraska law so that except for use by Orscheln Farm and Home LLC, its successors or assigns, the Property will not be used as a retail farm and home store (such as Tractor Supply Company) or retail hardware store (such as Westlake's or any ACE hardware store), as long as Orscheln Farm and Home LLC, its successors or assigns, operate any such store within a 30-mile radius of Nebraska City, Nebraska. The aforesaid covenant shall run with and

bind the Property and shall inure to the benefit of and be enforceable by Seller or an affiliated company of Seller or its successors, by any appropriate proceedings at law or in equity to prevent violations of such aforesaid covenant or to recover damages for such violations. Upon acceptance of this conveyance, Buyer agrees, on behalf of Buyer and Buyer's successors and assigns, that the covenant set forth in this Section shall be inserted in every deed to be delivered by Buyer and Buyer's successors and assigns conveying the Property and lots or plots or other portions of the Property and that such insertions of such covenant in such deed shall be deemed a part of the consideration of this Agreement.

IN WITNESS WHEREOF, the parties hereby execute this Agreement effective as of the date first mentioned above.

Seller:

Buyer:

Orscheln Farm and Home Holding Co.

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Exhibit A  
(to Real Estate Sale Agreement)

Seller's property commonly known as the former Orscheln Farm and Home Store, 1707 Frontage Road, Nebraska City, Otoe County, Nebraska, and believed to be as described as follows:

Part of the East half of Lot 8 and part of Lots 9, 10, 11 and 12 of Block 11; together with all of Lots 1, 2, 3, 4, 9, 10, 11 and 12, and the East half of Lots 5 and 8 in Block 14; inclusive of vacated alleys in said Blocks 11 and 14, and vacated 11<sup>th</sup> Avenue all as vacated by Nebraska City Ordinance Numbers: 1367-72 and 1469-74; all located in Elmwood Addition to Nebraska City, Nebraska, more fully described as follows:

Commencing at a point on the Southwesterly Right of Way line of the Nebraska Department of Roads as said Right of Way was conveyed by warranty deed filed February 13, 1968 in Book 116 at page 115, in the Office of the Register of Deeds, Otoe County Courthouse, Nebraska City, Nebraska, said point is located 9.00 feet North of the Northwest Corner of the East half of Lot 8, Block 11 of said Elmwood Addition and is the Point of Beginning; thence South along the West line of the East half of Lot 8 of said Block 11 and along the West line of the East half of Lots 5 and 8 in Block 14 of said Elmwood Addition a distance of 451.50 feet to the Southwest corner of the East half of Lot 8 of said Block 14; thence East along the South line of said Block 14 a distance of 216.78 feet to the Southeast corner of said Block 14; thence North along the East line of said Blocks 11 and 14 a distance of 335.52 feet to the said Southwesterly Right of Way line of the Nebraska Department of Roads; thence Northwesterly along said Right of Way line a distance of 246.00 feet to the Point of Beginning.

Subject to easements, rights-of-way, reservations and restrictions of record, local zoning ordinances and regulations.

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