

ORDINANCE NO. 1-2005

AN ORDINANCE APPROVING A REAL ESTATE PURCHASE CONTRACT
AND AUTHORIZING THE SALE AND CONVEYANCE OF PROPERTY
OWNED BY THE TOWN OF FLEMING

WHEREAS, the Town of Fleming is the owner of certain real property, the legal description of which is set forth in Exhibit A of the Real Estate Purchase Contract attached hereto, which property is located in the County of Logan, State of Colorado (hereinafter "the Property"); and

WHEREAS, the Property was previously used by the Town as a site for solid waste disposal, but has not been used for this purpose since 2000; and

WHEREAS, by Resolution No. 2004-12 of the Logan County Board of Commissioners adopted on May 25, 2004 and recorded in the Logan County real property records at Reception No. 664643, the Town received approval of a Special Use Permit to operate a sanitary landfill to be used by the Town of Fleming for the disposal of pavement materials removed from the Town's streets; and

WHEREAS, the Town is no longer using, and has no plans to use in the future, the Property in accordance with this Special Use Permit, and the Board of Trustees finds the Town's authorization pursuant to this Special Use Permit should be terminated; and

WHEREAS, the Town Board of Trustees has determined that the Property is not and will not be needed for any public purposes, and is not being used or held for park purposes; and

WHEREAS, pursuant to C.R.S. § 31-15-713(b), the Town Board of Trustees desires to sell and convey the Property upon the terms and conditions as set forth in the Real Estate Purchase Contract attached hereto and the terms and conditions set forth herein; and

WHEREAS, the Town Board of Trustees has determined it is in the best interest of the Town and its citizens to sell and convey the Property upon the terms and conditions of the Real Estate Purchase Contract and as set forth herein.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF FLEMING,
COLORADO:

Section 1. The Board of Trustees hereby approves the sale and conveyance from the Town to Jeffery D. and Sandra Nichols that certain real property described in Exhibit A of the Real Estate Purchase Contract attached hereto and incorporated herein by this reference, and further approves the Real Estate Purchase Contract.

Section 2. Such sale shall be for a purchase price of not less than one hundred forty-four dollars and twenty cents (\$144.20), paid to the Town in cash or certified funds at the time of delivery of the deed, which is to occur not later than May 20, 2005. If the sale and conveyance is not accomplished by May 20, 2005, this Ordinance shall be void and of no further force or effect.

Section 3. The Mayor is authorized to execute the Real Estate Purchase Contract on behalf of the Town, and is further authorized to negotiate and approve on behalf of the Town such revisions to the Contract as the Mayor determines are necessary or desirable for the protection of the Town, so long as the essential terms and conditions of the Contract are not altered.

Section 4. The Mayor is authorized to execute on behalf of the Town a Quit Claim Deed for the conveyance of the Property, which deed shall be delivered upon receipt of the purchase price. The Mayor and Town staff are further authorized to execute and deliver such additional documents as may reasonably be required with respect to the sale and conveyance of the Property.

Section 5. The Mayor and Town staff are further authorized and directed to take such steps as may be required to terminate the Town's authorization to dispose of pavement materials on the Property pursuant to the Special Use Permit granted by Resolution No. 2004-12 of the Logan County Board of Commissioners.

Section 6. If any article, section, paragraph, sentence, clause, or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The Board of Trustees hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.


Section 7. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 8. Upon completion of the sale and conveyance of the Property, this ordinance shall be recorded in the real property records of Logan County, Colorado.

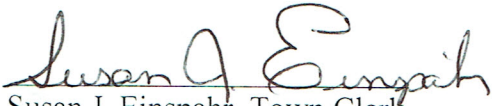
INTRODUCED, READ, PASSED, ADOPTED, AND ORDERED POSTED IN FULL IN
THE FOLLOWING THREE PLACES THIS 5 day of April, 2005:

Fleming Town Hall
First National Bank of Fleming
Fleming Post Office

TOWN OF FLEMING, COLORADO


Tom Gardiner, Mayor

ATTEST:



Susan J. Einspahr, Town Clerk

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REAL ESTATE PURCHASE CONTRACT

THIS REAL ESTATE PURCHASE CONTRACT ("Agreement"), made by and between the **TOWN OF FLEMING**, a Colorado municipal corporation, hereinafter "**Seller**," and **JEFFERY D. NICHOLS AND SANDRA NICHOLS**, hereinafter collectively "**Buyer**," constitutes a contract for the purchase of the described property, as follows:

1. **Property.** Subject to the terms and conditions hereinafter set forth, Buyer hereby agrees to purchase, and Seller agrees to sell, on the terms and conditions set forth in this Agreement, the following described real property and interests in real estate, hereinafter collectively referred to as the "Property", located in the County of Logan, Colorado, to wit:

A tract of land containing approximately 14.42 acres, more or less,
and more particularly described in Exhibit A, consisting of one page,
attached hereto and made a part hereof

Together with all easements, rights-of-way, and vacated roads, streets and alleys of record that benefit the Property.

2. **Purchase Price.** The purchase price for the Property shall be one hundred forty-four dollars and twenty cents (\$144.20), which sum (the "**Purchase Price**") shall be paid in cash at the time of delivery of the Deed by the Town.

3. **Effective Date.** Except as may be otherwise agreed in writing, this Agreement shall become effective upon the date of final execution hereof by all necessary parties hereto (the "**Effective Date**").

4. **Deed to be Delivered.** Seller agrees to convey fee simple title in the Property, together with all easements, tenements, hereditaments, and appurtenances belonging thereto, to Purchaser by quit claim deed (the "Deed"). Buyer shall take title to the property as Joint Tenants.

5. **Feasibility Period.** Seller agrees that Buyer shall have to and including May 18, 2005 ("**Feasibility Period**") to determine the suitability of the Property for Buyer's intended use. In the event that Buyer, in its sole discretion, concludes its inspection of the Property has revealed unsatisfactory conditions, including any unsatisfactory conditions revealed by any environmental testing or survey, Buyer shall notify Seller in writing on or before May 18, 2005, and thereupon this Agreement shall terminate and both parties shall be released from all further obligation hereunder.

6. **Assignment.** Buyer shall not assign this Agreement nor any of its rights and obligations hereunder without the prior written consent of Seller which may be withheld in its sole discretion. An approved Assignee shall be considered as the "Buyer" hereunder. In the event of any assignment of Buyer of its rights hereunder, Buyer shall not be relieved of any of its obligations and duties as set forth within the Agreement.

7. **Remedies.** Time is of the essence hereof. Accordingly:

(A) If Buyer should fail to perform according to the terms and conditions of this Agreement, Seller may in writing declare this Agreement terminated.

(B) If Seller should fail to perform according to the terms and conditions of this Agreement, Buyer may in writing declare this Agreement terminated. Buyer acknowledges that sale of the Property must be approved by ordinance of the Town of Fleming, which ordinance is subject to referendum. In the event Seller is unable to complete the sale contemplated in this Agreement, for any reason, Buyer shall not be entitled to specific performance or to recover any damages, direct, indirect, consequential or punitive.

8. **Delivery and Recording of the Deed and Other Documents.**

(A) **Deed.** The conveyance of the Property to Buyer shall be accomplished by delivery of the Deed by Seller on May 20, 2005, or such earlier date and time as may be set by mutual written agreement of the Parties. The Deed shall be recorded in the real property records by the Seller.

(B) **Recording of Agreement.** Buyer acquires no property interest in the Property by the execution of this Agreement. Buyer's rights vest only upon payment of the purchase price and delivery of the Deed. Upon delivery and recording of the Deed, Seller shall have the right to record this Agreement or a memorandum thereof in the real property records.

(C) **Authority to Convey the Property.** Seller shall record a certified copy of the Town of Fleming Ordinance authorizing Seller to execute and deliver to Buyer the Deed.

9. **Real Estate Commissions.** Seller and Buyer represent and warrant to each other that they have not engaged the services of any broker in connection with the sale and purchase contemplated by this Agreement. Each party hereby agrees to indemnify, defend and hold harmless the other party for any claim (including reasonable expenses incurred in defending such claim) made by a broker, sales agent or similar party claiming to be entitled to a commission in connection with this transaction by reason of the acts of the indemnifying party.

10. **Captions.** The headings and captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Agreement nor of any provision herein contained.

11. **Notices.** Any notice or designation to be given hereunder shall be given by placing the notice or designation in the United States mail, certified or registered, properly stamped and addressed to the address shown below or such other address as the respective party may direct in writing to the other, or by personal delivery to such address by a party, or by a delivery service which documents delivery, and such notice or designation shall be deemed to be received upon such placing in the mails or upon such delivery:

To Seller: TOWN OF FLEMING
c/o Town Clerk
P.O. Box 468
Fleming, CO 80728

To Buyer: JEFFERY D. AND SANDRA NICHOLS
505 N. Logan
Fleming, CO 80728

12. **No Representations by Seller; Buyer's General Release.**

(A) BUYER ACKNOWLEDGES THE PROPERTY HAS BEEN USED BY THE TOWN AS A SOLID WASTE LANDFILL. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, IT IS UNDERSTOOD AND AGREED THAT SELLER IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESSED OR IMPLIED, WITH RESPECT TO THE PREMISES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, ZONING, TAX CONSEQUENCES, LATENT OR PATENT PHYSICAL OR ENVIRONMENTAL CONDITIONS, UTILITIES, ACCESS, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, THE COMPLIANCE OF THE PREMISES WITH GOVERNMENTAL LAWS, THE TRUTH, ACCURACY OR COMPLETENESS OF ANY PROPERTY DATA OR OTHER INFORMATION PERTAINING TO THE PREMISES DELIVERED TO BUYER BY SELLER, OR ANY OTHER MATTER REGARDING THE PREMISES. BUYER ACKNOWLEDGES AND AGREES THAT UPON DELIVERY OF THE QUIT CLAIM DEED AS CONTEMPLATED BY THIS AGREEMENT, SELLER SHALL SELL AND BUYER SHALL ACCEPT THE PHYSICAL CONDITION OF PREMISES "**AS IS, WHERE IS, WITH ALL FAULTS.**" BUYER HAS NOT RELIED AND WILL NOT RELY ON, AND SELLER IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESSED OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PREMISES OR RELATING THERETO (INCLUDING SPECIFICALLY, WITHOUT LIMITATION, PROPERTY INFORMATION DISTRIBUTED WITH RESPECT TO THE PREMISES) MADE OR FURNISHED BY SELLER OR ANY AGENT REPRESENTING SELLER, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, UNLESS SPECIFICALLY SET FORTH IN THIS AGREEMENT.

(B) BUYER REPRESENTS TO SELLER THAT BUYER HAS CONDUCTED, OR WILL HAVE HAD THE OPPORTUNITY TO CONDUCT PRIOR TO DELIVERY OF THE DEED, SUCH INVESTIGATIONS OF THE PREMISES, INCLUDING BUT NOT LIMITED TO, THE PHYSICAL, ENVIRONMENTAL AND GEOTECHNICAL CONDITIONS THEREOF, AS BUYER DEEMS NECESSARY TO SATISFY ITSELF OF THE CONDITION OF THE PREMISES AND THE EXISTENCE OR NONEXISTENCE OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY HAZARDOUS OR TOXIC SUBSTANCES OR MATERIALS ON, WITHIN, UNDER OR DISCHARGED FROM THE PREMISES, AND WILL RELY SOLELY UPON SAME AND NOT UPON ANY

INFORMATION PROVIDED BY OR ON BEHALF OF SELLER OR ITS AGENTS, OFFICERS, DIRECTORS, SHAREHOLDERS OR EMPLOYEES WITH RESPECT THERETO. UPON DELIVERY OF THE DEED, BUYER SHALL ASSUME THE RISK THAT ADVERSE PHYSICAL, ENVIRONMENTAL, GOVERNMENTAL COMPLIANCE AND GEOTECHNICAL CONDITIONS MAY HAVE BEEN REVEALED BY BUYER'S INVESTIGATIONS

(C) BUYER, ON BEHALF OF ITSELF AND ALL PERSONS THAT MAY HEREAFTER ACQUIRE OR SUCCEED TO ANY INTEREST IN THE PROPERTY OR ANY PORTION THEREOF, HEREBY:

(1) WAIVES AND RELEASES SELLER AND EACH OF ITS AFFILIATES, OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES FROM ANY AND ALL PAST, PRESENT AND FUTURE CLAIMS, CAUSES OF ACTION, DEMANDS, COSTS, FEES, DAMAGES, LOSSES AND LIABILITIES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR PERSONAL INJURY, PROPERTY DAMAGE, NATURAL RESOURCE DAMAGE OR VIOLATION, CIVIL PENALTIES AND COSTS OF ENVIRONMENTAL INVESTIGATION AND CLEANUP, DIRECT OR INDIRECT, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, RELATING TO OR ARISING FROM ANY ALLEGED TOXIC OR HAZARDOUS MATERIALS WHICH MAY BE DEFINED OR REGULATED BY STATE, FEDERAL OR LOCAL GOVERNMENTAL BODIES, LAWS, STATUTES OR REGULATIONS ("HAZARDOUS MATERIALS") OF ANY SORT AT ANY TIME IN THE SOILS OR GROUNDWATER ON, BENEATH, OR NEARBY THE PROPERTY; AND

(2) AGREES TO DEFEND, HOLD HARMLESS AND INDEMNIFY SELLER AND EACH OF ITS AFFILIATES, OFFICERS, DIRECTORS, AND AGENTS AND EMPLOYEES FROM AND AGAINST ANY CLAIMS, CAUSES OF ACTION, DEMANDS, COSTS, FEES, DAMAGES, LIABILITIES AND LOSSES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR PERSONAL INJURY, PROPERTY DAMAGE, NATURAL RESOURCE DAMAGE OR VIOLATION, CIVIL PENALTIES, AND COSTS OF ENVIRONMENTAL INVESTIGATION AND CLEANUP, DIRECT OR INDIRECT, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, RELATING TO OR ARISING FROM ANY ALLEGED HAZARDOUS MATERIALS OF ANY SORT WHICH ARE RELEASED, PLACED, USED, MANUFACTURED, HANDLED, GENERATED, STORED, DISCHARGED OR DISPOSED OF IN THE SOILS OR GROUNDWATER ON OR BENEATH THE PROPERTY.

(D) SELLER AND BUYER AGREE THAT THE PROVISIONS OF THIS SECTION 12 SHALL SURVIVE DELIVERY OF THE DEED.

BY INITIALING IN THE SPACE BELOW, BUYER SPECIFICALLY AFFIRMS ITS AGREEMENTS CONTAINED IN THIS SECTION 12.

J.D.N.
Jeffery D. Nichols – initials

SSN
Sandra Nichols – initials

13. **Compliance with all Laws and Permit Provisions.** Buyers have applied for and received approval from Logan County of a Special Use Permit to operate a scrap metal and recycling business on the Property, as set forth in Resolution No. 2005-9 of the Logan County Board of Commissioners, which Resolution has been recorded in the real property records of Logan County at Reception Number 669224. Buyers agree and represent the Property shall be used only in compliance with this Special Use Permit, as the same may be extended or renewed, including all conditions now or hereafter imposed on the use of the Property by the Logan County Board of Commissioners or other governmental body or agency having jurisdiction over the Property or the use thereof by Buyers. Buyers further agree no activities associated with the scrap metal and recycling business, including the parking of trucks or trailers, parking or storage of salvage items or vehicles, or repair of any vehicles or salvage items, shall be conducted within the municipal limits of the Town of Fleming, Colorado.

14. **Governing Law.** The laws of the State of Colorado shall govern the validity, performance, and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be in Logan County, Colorado.

Executed by Seller on this 5 day of April, 2005.

TOWN OF FLEMING, a municipal corporation.

By: Tom Gardiner
Tom Gardiner, Mayor

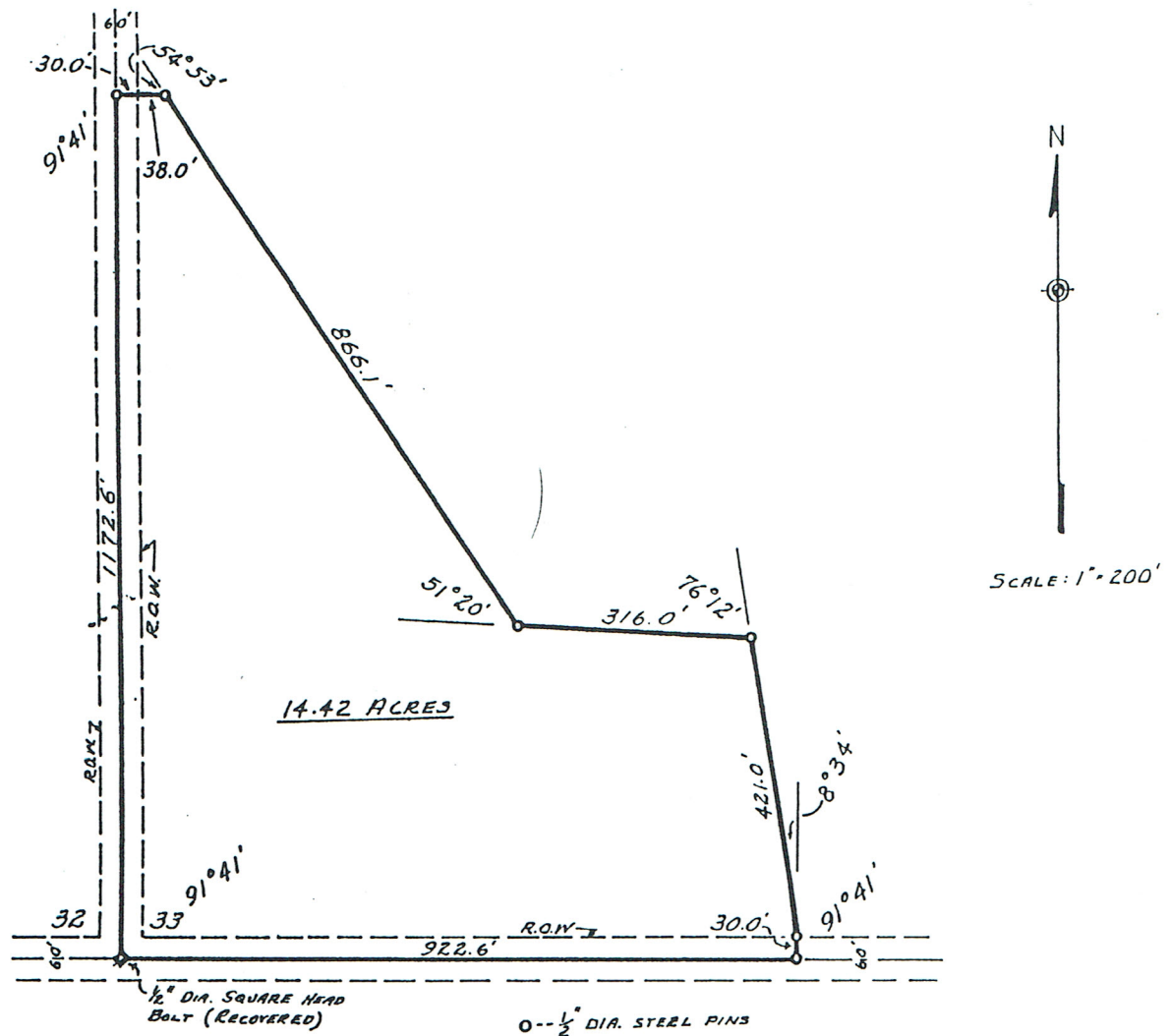
ATTEST:

Susan J. Einspahr
Susan J. Einspahr, Town Clerk

Executed by Buyer on this 5 day of April, 2005.

Jeffery D. Nichols
Jeffery D. Nichols

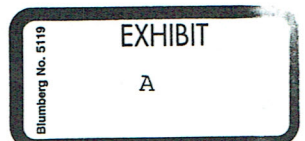
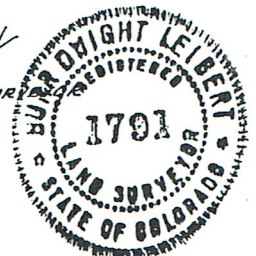
Sandra Nichols
Sandra Nichols



A TRACT OF LAND LYING IN THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION THIRTY-THREE (33), TOWNSHIP NINE (9) NORTH, RANGE FORTY-NINE (49) WEST, SIXTH PRINCIPAL MERIDIAN, LOGAN COUNTY COLORADO, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SECTION 33; THENCE EASTERLY ALONG THE SOUTH LINE OF SAID SECTION 33, SAID SOUTH SECTION LINE BEING THE CENTER LINE OF A COUNTY ROAD, A DISTANCE OF 922.6 FEET; THENCE AN ANGLE OF 91°41' LEFT FROM THE LAST DESCRIBED COURSE A DISTANCE OF 30.0 FEET; THENCE AN ANGLE OF 8°34' LEFT FROM THE LAST DESCRIBED COURSE A DISTANCE OF 421.0 FEET; THENCE AN ANGLE OF 76°12' LEFT FROM THE LAST DESCRIBED COURSE A DISTANCE OF 316.0 FEET; THENCE AN ANGLE OF 51°20' RIGHT FROM THE LAST DESCRIBED COURSE A DISTANCE OF 866.1 FEET; THENCE AN ANGLE OF 54°53' LEFT FROM THE LAST DESCRIBED COURSE A DISTANCE OF 68.0 FEET TO THE WEST LINE OF SAID SECTION 33, SAID WEST SECTION LINE BEING THE CENTERLINE OF A COUNTY ROAD; THENCE AN ANGLE OF 91°41' LEFT FROM THE LAST DESCRIBED COURSE AND ALONG THE WEST LINE OF SAID SECTION 33 A DISTANCE OF 1172.6 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED TRACT OF LAND CONTAINS FOURTEEN AND FORTY-TWO ONE HUNDREDTHS ACRES SUBJECT TO COUNTY ROAD RIGHTS-OF-WAY ALONG THE SOUTH LINE AND THE WEST LINE OF SAID SECTION 33.

Burr Leibert
BURR LEIBERT
REGISTERED LAND SURVEYOR
COLORADO #1791



ATTACH EXECUTED COPY OF REAL ESTATE PURCHASE CONTRACT
(with legal description attached as Exhibit A to the contract)