REAL ESTATE CONTRACT - INSTALLMENTS

IT IS AGREED this 26 day of Feb, 1993, by and between JAMES K. CRAMER and VIVIAN I. CRAMER, husband and wife, of the County of Delaware, State of Iowa, (hereinafter referred to as "Sellers") and EDWARD D. TSCHIGGFRIE of the County of Dubuque, State of Iowa, (hereinafter referred to as "Buyer").

That the Sellers, as in this contract provided, agree to sell to the Buyer and the Buyer, in consideration of the premises, hereby agrees with the Sellers to purchase the following described real estate situated in the County of Delaware, State of Iowa, to-wit:

> Lots One (1), Two (2), Six (6) and Nine (9) of State's Subdivision of Part of Section Nine (9), Township Eighty Eight (88) North, Range Five (5), West of the Fifth Principal Meridian in Delaware County, Iowa, according to plat recorded in Book 3 Plats, Page 228,

together with any easements and servient estates appurtenant thereto, but with such reservations and exceptions of title as may be below stated, all upon the terms and conditions following:

1. **TOTAL PURCHASE PRICE.** The Buyer agrees to pay for said property the total of One Hundred Seventy-four Thousand Seventy-eight Dollars ($174,078.00) as follows:

(a) Down payment of $30,000.00, receipt of which is hereby acknowledged; and

(b) Balance of the purchase price in the sum of $144,078.00 shall be due and payable in annual installments of $19,575.58 each due March 1, 1994, and on each succeeding March 1 until March 1, 2003, at which time the entire unpaid principal balance, plus accrued interest, shall be due and payable in full. The unpaid principal balance shall draw and accrue interest at the rate of 6% per annum from and after the March 1, 1993 possession date. The annual payments of $19,575.58 each shall first be applied toward payment of interest and the balance applied on principal. Buyer shall have the right to prepay all or any portion of the unpaid principal balance at any time without penalty and without Sellers' consent.

2. **POSSESSION.** Buyer, concurrently with due performance on his part, shall be entitled to possession of said premises on the 1st day of March, 1993, and thereafter so long as he shall perform the obligations of this contract. Sellers represent that Buyer is not taking subject to the rights of any lessees or tenants and that Sellers have, through timely written notice, previously cancelled the preexisting farm lease.

3. **TAXES.** Sellers shall pay real estate taxes for the July 1, 1991 - June 30, 1992 fiscal year and any unpaid taxes thereon payable in prior years. Real estate taxes for the July 1, 1992 - June 30, 1993 fiscal year shall be prorated to the date of possession. Buyer shall pay taxes for all subsequent years.

4. **SPECIAL ASSESSMENTS.** Sellers shall pay any special assessments against this property which are a lien thereon as of the date of this contract, including all sewage disposal assessments for overage charge heretofore assessed by any municipality having jurisdiction as of date of possession. Buyer, except as above stated, shall pay all subsequent special assessments and charges before they become delinquent.

5. **MORTGAGE.** Any mortgage or encumbrance of a similar nature against the said property shall be timely paid by Sellers so as not to prejudice the Buyer's equity herein. Should Sellers fail to pay, Buyer may pay any such sums in default and shall receive credit on this contract for such sums so paid. MORTGAGE BY SELLERS. Sellers, their successors in interest or assigns, may and hereby reserve the right to at any time mortgage their right, title or interest in such premises or to renew or extend any existing mortgage for any amount not exceeding 75% of the then unpaid balance of the purchase price herein provided. The interest rate and amortization thereof shall be no more onerous than the installment requirements of this contract. Buyer hereby expressly consents to such a mortgage and agrees to execute and deliver all necessary papers to aid Sellers in securing such a mortgage which shall be prior and paramount to any of Buyer's then rights in said property. DEED FOR BUYER SUBJECT TO MORTGAGE. If Buyer has reduced the balance of this contract to the amount of any existing mortgage balance on said premises, he may at his option, assume and agree to pay said mortgage according to its terms, and subject to such mortgage shall receive a deed to said premises; or Sellers, at their option, any time before Buyer has made such a mortgage commitment, may reduce or pay off such mortgage. ALLOCATED PAYMENTS. Buyer, in the event of acquiring this property from an equity holder instead of a holder of the fee title, or in the event of a mortgage against said premises, reserves the right, if reasonably necessary for her protection to divide or allocate the payments to the interested parties as their interests may appear. SELLERS AS TRUSTEES. Sellers agree that they will collect no money hereunder in excess of the amount of the unpaid balance under the terms of this contract less the total amount of the encumbrance on the interest of Sellers or

Subordination For Release, See Book 1999 Page 1698 5-14-99

FILE No. 263-2523
RECORDING FEE $ 20.00
TRANSFER FEE $

FILED FOR RECORD THE 26 DAY OF Feb, 1993 AT 2:09 O'CLOCK P. M. BOOK 131 PAGE 43

STATE OF IOWA, DELAWARE COUNTY
Deborah L. Peyton, Recorder
LD

their assigns in said real estate; and if Sellers shall hereafter collect or receive any moneys hereunder beyond such amount, they shall be considered and held as collecting and receiving said money as the agent and trustee of the Buyer for the use and benefit of the Buyer.

Any acreage released from this contract and deeded to Buyer by Sellers pursuant to the provisions of paragraph 24 herein shall be transferred to Buyer free and clear of all liens and encumbrances, and Sellers will obtain the necessary mortgage releases with respect to any such acreage.

6. **CARE AND USE OF PROPERTY.** Buyer shall take good care of this property; shall keep any buildings and other improvements now or hereafter placed on the said premises in good and reasonable repair; and shall not injure, destroy or remove the same during the life of this contract. Buyer shall not make any material alteration in said premises without the written consent of the Sellers. Buyer shall not use or permit said premises to be used for any illegal purpose. Notwithstanding the foregoing, it is expressly agreed that Buyer, and Buyer's lessees and assignees, shall have the right to use the real estate for any and all business purposes which Buyer, or Buyer's lessees and assignees, deem appropriate, including, without limitation, the right to:

(a) carry on rock quarry operations, including the removal of sand and related quarry products;

(b) construct building improvements upon the real estate;

(c) construct private roads;

(d) plat and subdivide the real estate, in which event Sellers shall join in the execution of any such plat; and

(e) carry on any other business or operations upon the real estate, subject to applicable laws.

7. **LIENS.** No mechanic's lien shall be imposed upon or foreclosed against the real estate described herein.

8. **ADVANCEMENT BY SELLERS.** If Buyer fails to pay such taxes, special assessments and insurance and effect necessary repairs, as above agreed, Sellers may but need not pay such taxes, special assessments, insurance and make necessary repairs, and all sums so advanced shall be due and payable on demand or such sums so advanced may, at the election of Sellers, be added to the principal amount due hereunder and so secured. (For Buyer's rights to make advancements, see paragraph 5 above.)

9. **JOINT TENANCY IN PROCEEDS AND SECURITY RIGHTS IN REAL ESTATE.** If and only if the Sellers, immediately preceding this sale, hold the title to the above described property in joint tenancy and such joint tenancy has not later been destroyed by operation of law or by acts of the Sellers, this sale shall not constitute such destruction and the proceeds of this contract, and any continuing and/or recaptured rights of Sellers in said real estate, shall be and continue in Sellers as joint tenants with rights of survivorship and not as tenants in common; and Buyer, in the event of the death of one of such joint tenants, agrees to pay any balance of the proceeds of this contract to the surviving Seller (or Sellers) and to accept deed solely from him or them consistent with paragraph 13 below unless and except this paragraph is stricken from this agreement.

10. **"SELLERS."** Spouse, if not titleholder immediately preceding this sale, shall be presumed to have executed this instrument only for the purpose of relinquishing all rights of dower, homestead and distributive share and/or in compliance with Section 561.13, Code of Iowa; and the use of the word "Sellers" in the printed portion of this contract, without more, shall not rebut such presumption nor in any way enlarge or extend the previous interest of such spouse in said property or in the sale proceeds, nor bind such spouse except as aforesaid, to the terms and provisions of this contract.

11. **TIME IS OF THE ESSENCE.** Time is of the essence in this agreement. Failure to promptly assert rights of Sellers herein shall not, however, be a waiver of such rights or a waiver of any existing or subsequent default.

12. **EXCEPTIONS TO WARRANTIES OF TITLE.** The warranties of title in any deed made pursuant to this contract (See paragraph 13) shall be without reservation or qualification **EXCEPT:** (a) zoning ordinances; (b) such restrictive covenants as may be shown of record; (c) easements of record, if any; (d) as limited by paragraphs 1, 2, 3 and 4 of this contract; (e) Sellers shall give special warranty as to the period after equitable title passes to Buyer.

13. **DEED AND ABSTRACT.** If all said sums of money and interest are paid to Sellers during the life of this contract, and all other agreements for performance by Buyer have been complied with, Sellers will execute and deliver to Buyer a Special Warranty Deed conveying said premises in fee simple pursuant to and in conformity with this contract; and Sellers will at this time deliver to Buyer an abstract showing merchantable title, in conformity with this contract. Such abstract shall begin with the government patent (unless pursuant to the Iowa State Bar Association title standards there is a lesser requirement as to period of abstracting) to said premises and shall show title thereto in

Sellers. Sellers shall also pay the cost of any abstracting due to any act or change in the personal affairs of Sellers resulting in a change of title by operation of law or otherwise.

14. **APPROVAL OF ABSTRACT.** Buyer has examined the abstract of title to this property certified to January 11, 1993, at 8:00 a.m. and such abstract is accepted, subject to the requirements of paragraph 12 above.

15. **FORFEITURE.** If Buyer (a) fails to make the payments aforesaid, or any part thereof, as same become due; or (b) fails to pay the taxes or special assessments or charges, or any part thereof, levied upon said property, or assessed against it, by any taxing body before any of such items become delinquent; or (c) fails to keep the property insured; or (d) fails to keep it in reasonable repair as herein required; or (e) fails to perform any of the agreements as herein made or required; then Sellers, in addition to any and all other legal and equitable remedies which they may have, at their option, may proceed to forfeit and cancel this contract as provided by law (Chapter 656, Code of Iowa). Upon completion of such forfeiture Buyer shall have no right of reclamation or compensation for money paid or improvements made; but such payments and/or improvements if any shall be retained and kept by Sellers as compensation for the use of said property, and/or as liquidated damages for breach of this contract; and upon completion of such forfeiture, if the Buyer, or any other person or persons, shall be in possession of said real estate or any part thereof, such party or parties in possession shall at once peacefully remove therefrom, or failing to do so may be treated as tenants holding over, unlawfully after the expiration of a lease, and may accordingly be ousted and removed as such as provided by law.

16. **FORECLOSURE AND REDEMPTION.** If Buyer fails to timely perform this contract, Sellers, at their option, may elect to declare the entire balance immediately due and payable after such notice, if any, as may be required by Chapter 654, The Code. Thereafter this contract may be foreclosed in equity and the court may appoint a receiver to take immediate possession of the property and of the revenues and income accruing therefrom and to rent or cultivate the same as the receiver may deem best for the interest of all parties concerned, and such receiver shall be liable to account to Buyer only for the net profits, after application of rents, issues and profits from the costs and expenses of the receivership and foreclosure and upon the contract obligation.

It is agreed that if this contract covers less than ten (10) acres of land, and in the event of the foreclosure of this contract and sale of the property by sheriff's sale in such foreclosure proceedings, the time of one year for redemption from said sale provided by the statutes of the State of Iowa shall be reduced to six (6) months provided the Sellers, in such action file an election to waive any deficiency judgment against Buyer which may arise out of the foreclosure proceedings; all to be consistent with the provisions of Chapter 628 of the Iowa Code. If the redemption period is so reduced, for the first three (3) months after sale such right of redemption shall be exclusive to the Buyer, and the time periods in Sections 628.5, 628.15 and 628.16 of the Iowa Code shall be reduced to four (4) months.

It is further agreed that the period of redemption after a foreclosure of this contract shall be reduced to sixty (60) days if all of the three following contingencies develop: (1) The real estate is less than ten (10) acres in size; (2) the Court finds affirmatively that the said real estate has been abandoned by the owners and those persons personally liable under this contract at the time of such foreclosure; and (3) Sellers in such action file an election to waive any deficiency judgment against Buyer or his successor in interest in such action. If the redemption period is so reduced, Buyer or his successors in interest or the owner shall have the exclusive right to redeem for the first thirty (30) days after such sale, and the time provided for redemption by creditors as provided in Sections 628.5, 628.15 and 628.16 of the Iowa Code shall be reduced to forty (40) days. Entry of appearance by pleading or docket entry by or on behalf of Buyer shall be presumption that the property is not abandoned. Any such redemption period shall be consistent with all of the provisions of Chapter 628 of the Iowa Code. This paragraph shall not be construed to limit or otherwise affect any other redemption provisions contained in Chapter 628 of the Iowa Code.

17. **ATTORNEY'S FEES.** In case of any action, or in any proceedings in any court to collect any sums payable or secured herein, or to protect the lien or title herein of Sellers, or in any other case permitted by law in which attorney's fees may be collected from Buyer, or imposed upon him, or upon the above described property, Buyer agrees to pay reasonable attorney's fees.

18. **INTEREST ON DELINQUENT AMOUNTS.** Either party will pay interest at the highest legal contract rate applicable to a natural person to the other on all amounts herein as and after they become delinquent, and/or on cash reasonably advanced by either party pursuant to the terms of this contract as protective disbursements.

19. **ASSIGNMENT.** In case of the assignment of this contract by either of the parties, prompt notice shall be given to the other party, who shall at the time of such notice be furnished with a duplicate of such assignment by such assignors. Any such assignment shall not terminate the liability of the assignor to perform, unless a specific release in writing is given and signed by the other party to this contract.

20. CONSTRUCTION. Words and phrases herein, including acknowledgments hereof, shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context.

22. CANCELLATION OF LEASE. As of the March 1, 1993 possession date, the existing Quarry Lease between Sellers, as lessors, and Buyer or any corporation owned in whole or in part by Buyer, as lessee, shall terminate.

23. SUCCESSORS AND ASSIGNS. This contract shall be binding upon and inure to the benefit of the parties and their respective heirs, successors and assigns.

24. DEEDS TO BUYER. Notwithstanding the provisions of paragraph 13 above, it is agreed that for each $3,600.00 principal paid on the total purchase price of $174,078.00 Sellers will release from the contract and deed to Buyer one acre, free and clear of all liens and encumbrances. Under this provision, Buyer shall have the right to specify the acreage to be deeded to Buyer, and Buyer shall pay any and all costs of surveying and platting which may be necessary in order to establish an ascertainable legal description for the acreage to be conveyed. Pursuant to this provision, it is mutually acknowledged and intended that as of the date of this contract Buyer has paid the total sum of $30,000.00 of the purchase price and Buyer is presently entitled, upon request, to a warranty deed conveying 8 1/3 acres. Buyer's right to receive a deed to one acre for each $3,600.00 in principal paid shall apply only in the event that Buyer is not in default under the terms of this contract.

James K. Cramer, Seller

Vivian I. Cramer, Seller

Edward D. Tschiggfrie, Buyer

STATE OF IOWA, DELAWARE COUNTY, ss:

On this 26th day of February, 1993, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared James K. Cramer and Vivian I. Cramer, husband and wife, known to be the identical persons named in and who executed the within and foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.

NOTARIAL SEAL IOWA
TERESA J. GREVE
MY COMMISSION EXPIRES
2-19-96

Teresa J. Greve
Notary Public in and for State of Iowa

STATE OF IOWA, Delaware COUNTY, ss:

On this 26 day of February, 1993, before me, the undersigned, a Public in and for the State of Iowa, personally appeared Edward D. Tschiggfrie, to me known to be the identical person named in and who executed the within and foregoing instrument and acknowledged that he executed the same as his voluntary act and deed.

Sharon McCrabb
Notary Public in and for State of Iowa
Sharon McCrabb

SHARON MCCRABB
NOTARIAL SEAL
IOWA

263-2523
DELAWARE COUNTY IOWA
FILED
'93 FEB 26 PM 2 09
BOOK 131 PAGE 43
RECORDER
$20.00

James K. Cramer & Wife
To
Edward D. Tschiggfrie

Ed Tschiggfrie
425 Julian Dubuque Dr
Dubuque, IA 52003