REAL ESTATE CONTRACT - INSTALLMENTS

IT IS AGREED this 15th day of November, 1993, by and between Cletus B. & Grace M. Burkle of the County of Dubuque, State of Iowa, Sellers; and Michael & Katherine A. Burkle of the County of Delaware, State of Iowa, Buyers:

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

See Exhibit "A" attached hereto and by this reference made a part hereof,

together with any easements and servient estates appurtenant thereto, but with such reservations and exceptions of title as may be below stated, and certain personal property if and as may be herein described or if and as an itemized list is attached hereto and marked Exhibit "B" all upon the terms and conditions following:

1. **TOTAL PURCHASE PRICE.** The buyer agrees to pay for said property the total of $200,000 due and payable at Dubuque County, Iowa as follows:

(a) **DOWN PAYMENT** of $35,000 RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED: and

(b) **BALANCE OF PURCHASE PRICE** 165,000 as follows: $1,000 principal plus interest on or before December 1, 1994, and $1,000 principal plus interest on December 1, 1995, and $1,000 principal plus interest on each and every December 1, thereafter until all sums due under this contract are paid in full including interest on unpaid balance thereof at the rate of 6% per annum, payable annually from Dec. 1, 1993, date of possession until fully paid. Said payment to be applied first to the interest then unpaid and next upon the balance of the principal. All sums both principal and interest shall be paid in full on or before Dec. 1, 2013. Parties agree that all first principal monies received by Seller shall be applied to the sale of Section 1245 assets as defined by the Internal Revenue Code and the balance of the principal to the reminder of the farm.

(c) Buyers may prepay any and all amounts due under this contract at any time without penalty.

2. **POSSESSION.**

Buyers, concurrently with due performance on their part shall be entitled to possession of said premises on the 1st day of December, 1993; and thereafter so long as they shall perform the obligations of this contract.

Buyers are taking subject to the rights of lessees and are entitled to rentals therefrom on and after date of possession.

3. **TAXES.** All regular taxes due and payable in the fiscal year ending June 30, 1993, are to be paid by SELLERS. All regular taxes for the current fiscal year ending June 30, 1993, are to be pro-rated between the BUYERS and SELLERS as of the date of possession. The basis of such pro-ration shall be the last known actual taxes payable. In addition, SELLER shall pay any unpaid taxes thereon payable in prior years. BUYERS shall pay any taxes not assumed by SELLERS and all subsequent taxes before same become delinquent. Whoever may be responsible for the payment of said taxes and the special assessments, if any, each year, shall furnish to the other parties evidence of payment of such items not later than July 15, of each year.

4. **SPECIAL ASSESSMENTS.** Sellers shall pay the special assessments against this property:

FILE No. 335-1553
RECORDING FEE $ 41.00
TRANSFER FEE $
FILED FOR RECORD THE 18 DAY OF November, 19 93 AT 9:11 O'CLOCK A M. BOOK 132 PAGE 141
STATE OF IOWA, DELAWARE COUNTY
Deborah L. Peyton, Recorder
LD

(a) Which are a lien thereon as of date of possession.

(b) Including all sewage disposal assessments for overage charge heretofore assessed by any municipality having jurisdiction as of date of possession. Buyers, except as above stated, shall pay all subsequent 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 Buyers' equity herein. Should Sellers fail to pay, Buyers 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 80% 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. Buyers hereby expressly consent to such a mortgage and agree to execute and deliver all necessary papers to aid Sellers in securing such a mortgage which shall be prior and paramount to any of the Buyers' then rights in said property. DEED FOR BUYERS SUBJECT TO MORTGAGE. If Buyers have reduced the balance of this contract to the amount of any existing mortgage balance on said premises, they may at their 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 Buyers have made such a mortgage commitment, may reduce or pay off such mortgage. ALLOCATED PAYMENTS. Buyers, 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, reserve the right, if reasonably necessary for their protection to divide or allocate the payments to the interested parties as their interest 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 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 Buyers for the use and benefit of the Buyers.

6. **INSURANCE.** Except as may be otherwise included in the last sentence of paragraph 1(b) above, Buyers as and from said date of possession, shall constantly keep in force, insurance premiums therefore to be prepaid by Buyers (without notice or demand) against loss by fire, tornado and other hazards, casualties and contingencies as Seller may reasonably require on all buildings and improvements, now on or hereafter placed on said premises and any personal property which may be the subject of this contract, in companies to be reasonably approved by Sellers in an amount not less than the full insurable replacement value of such improvements and personal property or not less than the unpaid purchase price herein whichever amount is smaller with such insurance payable to Sellers and Buyers as their interests may appear. BUYERS SHALL PROMPTLY DEPOSIT SUCH POLICY WITH PROPER RIDERS WITH SELLERS for the further security for the payment of the sums herein mentioned. In the event of any such casualty loss, the insurance proceeds may be used under the supervision of the Sellers to replace or repair the loss if the proceeds be adequate; if not, then some other reasonable application of such funds shall be made; but in any event such proceeds shall stand as security for the payment of the obligations herein.

7. **CARE OF PROPERTY.** Buyers shall take good care of this property; shall keep the 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. Buyers shall not make any material alterations in said premises without the written consent of the Sellers. Buyers shall not use or permit said premises to be used for any illegal purpose.

8. **IMPROVEMENTS AND LIENS.** Buyers shall be permitted to make improvements to the property herein and may in good faith contest the claims and liens of third persons furnishing labor or materials for such improvements, but Buyers agree to promptly pay any such claim or lien within sixty (60) days after the entry of final judgment thereon against Buyers by a court of competent jurisdiction. The mere filing of a mechanic's lien against the property herein shall not constitute grounds for forfeiture of the contract by Buyers so long as said lien is being contested in good faith by Buyers. Subject to the foregoing, Buyers hereby agree to pay in full all mechanic's liens now or hereafter filed against the property described herein for materials or services provided to Buyers. Buyers hereby agree to indemnify and hold harmless Sellers from and against any and all such liens, costs and expenses relating thereto and to fully pay to and reimburse Sellers for any costs which they may be required to incur arising out of or relating to the filing of any mechanic's liens against the property described herein, including the amount of any such lien, court costs, interest and attorney's fees. Additionally, the vendor's lien underlying this contract with respect to the property herein contemplated to be sold shall be prior and superior to any claims made pursuant to a mechanic's lien.

9. **ADVANCEMENT BY SELLERS.** If Buyers fail 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.

10. **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 or 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 Buyers, in the event of the death of one of such joint tenants, agree 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.

10-1/2. **"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** of 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 shall be without

reservation or qualification EXCEPT; (a) Zoning Ordinance; (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 Buyers; (f) Spouse if not a titleholder, need not join in any warranties of the deed unless otherwise stipulated.

13. **DEED AND ABSTRACT, BILL OF SALE.** 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 Buyers have been complied with, Sellers will execute and deliver to Buyers 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 Buyers 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 as of the date of this contract; or as of such earlier date if and as designated in the next sentence. This contract supersedes the previous written offer of Buyers to buy the above described property which was accepted by 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. If any personal property is a part of this agreement, then upon due performance by Buyers, Sellers shall execute and deliver a Bill of Sale consistent with the terms of this contract. Sellers shall pay all taxes on any such personal property and all taxes thereon payable prior thereof, in same manner as payment of taxes as provided in Paragraph 3 herein.

14. **APPROVAL OF ABSTRACT.** Buyers have not examined the abstract of title to this property and such abstract is not accepted. Seller shall pay for one abstract continuation only.

15.1 **FORFEITURE.** If Buyers (a) fail to make the payments aforesaid, or any part thereof, as same become due; or (b) fail 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) fail to keep the property insured; or (d) fail to keep it in reasonable repair as herein required; or (e) fail 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 Buyers 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 Buyers, 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.

15.2 **FORECLOSURE.** If Buyers fail, in any one or more of the specified ways to comply with this contract, as in (a), (b), (c), (d), or (e) of numbered paragraph 15.1 above provided, Sellers may upon thirty (30) days written notice of intention to accelerate the payment of the entire balance, during which thirty days such default or defaults are not removed, declare the entire balance hereunder immediately due and payable; and thereafter at the option of the Sellers this contract may then be foreclosed in equity and a receiver may be appointed to take charge of said premises and collect the rents and profits thereof to be applied as may be directed by the Court.

16. **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 reasonable attorney's fees

may be collected from Buyers, or imposed upon them, or upon the above described property, Buyers agree to pay reasonable attorney's fees.

17. **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.

18. **ASSIGNMENT.** In case of the assignment of this Contract by either of the parties, prompt notice shall be given to the other parties, 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.

In the event that Buyers sell, convey, assign or transfer their interest by any means, form, or manner in the real estate purchased herein, or any portion thereof, then at the option of the Sellers, all sums due under this contract shall be due and payable in full.

19. **PERSONAL PROPERTY.** If this contract includes the sale of any personal property, then in the event of the forfeiture or foreclosure of this contract, such personalty shall be considered indivisible with the real estate above described; and any such termination of Buyers' rights in said real estate shall concurrently operate as the forfeiture or foreclosure hereof against all such personal property.

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. See paragraph 10-1/2 above, for construction of the word "Sellers".

21. **PARTIAL INVALIDITY.** If any provision of this contract or any specific application shall be invalid or unenforceable, the remainder of this contract, or the application of the provision in other circumstances, shall not be affected, and each provision of this contract shall be valid and enforceable to the fullest extent permitted by law.

22. **HOMESTEAD EXEMPTION. I UNDERSTAND THAT HOMESTEAD PROPERTY IS IN MANY CASES PROTECTED FROM THE CLAIMS OF CREDITORS AND EXEMPT FROM JUDICIAL SALE; AND THAT BY SIGNING THIS CONTRACT, I VOLUNTARILY GIVE UP MY RIGHT TO THIS PROTECTION FOR THIS PROPERTY WITH RESPECT TO CLAIMS BASED UPON THIS CONTRACT.**

Dated 11-15-93

Michael Burkle
MICHAEL BURKLE

Katherine A Burkle
KATHERINE A. BURKLE

23. **CONDITION OF PROPERTY.** As to the present and continuing habitability, the Buyer has inspected the property and fixtures and acknowledges that they are in a reasonable and acceptable condition of habitability or for their intended use and that the price agreed

upon is fair and reasonable in this community for premises in their condition. The entire premises and improvements are sold "As Is".

24. **PERSONAL PROPERTY.** Also included in this sale are the following items of personal property: No personal property is being sold.

THESE ITEMS ARE SOLD "AS IS", AND THE SELLER MAKES NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EITHER EXPRESS OR IMPLIED.

25. **COMPLETE AGREEMENT.** This contract constitutes the full and complete agreement of the parties. The buyers are purchasing the above described property on the terms and conditions stated herein and are not relying on any statements made by the sellers or their agents that are not contained in this contract.

26. Seller represents and warrants the following:

a) The above mentioned parcel of property is in compliance with all Environmental Laws.

b) There is no known condition within the parcel of property that will require clean-up, removal or repair pursuant to environmental ordinances.

c) There are no known existing, pending or threatened government action that could impair the value of the property.

The term "Environmental Laws" shall mean all federal, state and local laws including statutes, regulations, ordinances, codes, rules and other governmental restrictions and requirements relating to the environment or hazardous substances including but not limited to the Toxic Substance Act, the Clean Air Act, the Clean Water Act, the regulations of the Environmental Protection Agency and regulations of any state department of natural resources or state environmental protection agency now or at any time hereafter in effect.

Within 30 days, upon Buyer's request, Seller shall furnish Buyer with a water and septic system report from the County Health Department. The report shall conclude that there is no apparent or likely contamination of the water; and the septic system conforms to County Health standards, or

In the event of an ordinance violation or County Health Department inspection failure, of any Environmental Law in existence prior to the signing of this contract the Buyer shall retain the option to one of the following;

a) Seller shall clean-up, remove or repair the said violation within a reasonable period of time at the Seller's expense.

b) Buyer shall proceed with the contract and thereby become entitled to an abatement of the purchase price to the extent of the clean-up, removal or repair costs.

c) Buyer may rescind the contract and Seller shall repay the deposit and all other payments without interest, costs or compensation to the Buyer who shall accept the same in full satisfaction of all claims under the contract or otherwise and the Buyer shall thereupon return to Seller the abstract and all other papers in his possession in connection with this sale.

Cletus B. Burkle

Michael Burkle

Grace M. Burkle

Katherine A. Burkle

Cletus & Grace Burkle
133 13th Avenue, SW
Dyersville, IA 52040

Seller's Address

Michael & Katherine Burkle
RFD 2 Box 38
Dyersville, IA 52040

Buyer's Address

STATE OF IOWA)
) SS:
COUNTY OF DUBUQUE)

On this 15th day of November, A.D., 1993, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Cletus & Grace Burkle, husband and wife, and Michael & Katherine Burkle, husband and wife, to me 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.

Sharleen S. Lockenstedt
Notary Public
In and for said County & State

EXHIBIT "A"

LEGAL DESCRIPTION:

East one-half (E 1/2) of the Southeast Quarter (SE 1/4) and East 30 acres of the Northwest Quarter (NW 1/4) of the Southeast Quarter (SE 1/4), ~~East 30 acres of the Northwest Quarter (NW 1/4) of the Southeast Quarter (SE 1/4)~~, except railroad right of way, containing 110 acres, more or less, and the East 27.675 acres, more or less, of the Southwest Quarter (SW 1/4) of Southeast Quarter (SE 1/4), all in Section Twenty-One (21) Township Eighty-Nine (89) North, Range Three (3), West of the 5th P.M., except railroad right of way, situated in Delaware County, Iowa. MB