THE IOWA STATE BAR ASSOCIATION
OFFICIAL FORM NO. 142

FOR THE LEGAL EFFECT OF THE USE OF THIS FORM, CONSULT YOUR LAWYER

Prepared by Attorney Tom Jenk, P.O. Box 304, Dyersville, IA 52040 (319) 875-7191

# REAL ESTATE CONTRACT-INSTALLMENTS

IT IS AGREED this 1ST day of DECEMBER, 19 95, by and between Gilbert B. Willenborg and Mary Ann Willenborg, husband and wife,

of the County Delaware, State of Iowa, Sellers; and IOWA AGRICULTURAL DEVELOPMENT AUTHORITY

of the County of Polk, 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:

E½ of the SW¼ and the N½ of the NW¼ of the SW¼, all in Section 32, Township 90 North, Range 3 West of the 5th P.M., Delaware County, Iowa, subject to easements of record, EXCEPT (see attached sheet for exception).

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 of if and as an itemized list is attached hereto and marked "Exhibit A" all upon the terms and conditions following:

1. TOTAL PURCHASE PRICE. The buyer agrees to pay for said property the total of $ 195,000.00 due and payable at Sellers' residence, R.R. #2, Box 128, Dyersville, Delaware County, Iowa, as follows:

(a) DOWN PAYMENT of $ 2,500.00 RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED: and

(b) BALANCE OF PURCHASE PRICE. $ 192,500.00, as follows $ 22,500.00 due on February 15, 1996, and the balance of $170,000.00 to be amortized on a semi-annual basis with even payments over a 25 year period. Interest to be at the rate of 7% per annum on the unpaid balance beginning February 15, 1996. That the payments shall include both interest and principal, with the first payment due August 15, 1996, and each February 15th and August 15th thereafter in the amount of $7,250.47, with the balance due on February 15, 2011. That the Buyer shall have the option to accelerate the payments up to $25,000.00 annually on any pay date. That any amount in excess of the regular payment and the $25,000.00 additional will necessitate a written agreement by the Seller to accept the additional amount.

2. POSSESSION. Buyers, concurrently with due performance on their part shall be entitled to possession of said premises on the 15th day of February, 19 96; and thereafter so long as they shall perform the obligations of this contract.

3. TAXES. Sellers shall pay 100% of the 1994-1995 taxes, and a pro rata share of the 1995-1996 taxes figured to 2/15/96.

and 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. **Any proration of taxes shall be based upon the taxes for the year currently payable unless the parties state otherwise.**

4. SPECIAL ASSESSMENTS.

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 – 60 – % 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 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 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 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 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 alteration 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.

Q&D & Assmts. 136
For Return to Box Book 2/29/96
Page 112

FILE No. 194-2237
RECORDING FEE $ 26.00
TRANSFER FEE $

FILED FOR RECORD THE 16 DAY OF February, 19 96 AT 11:17 O'CLOCK A M. BOOK 136 PAGE 87

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

**8. LIENS.** No mechanics' lien shall be imposed upon or foreclosed against the real estate described herein.

**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. (For Buyers' rights to make advancements, see paragraph 5 above.)

**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 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 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 14 below unless and except this paragraph is stricken from this agreement.

**11. 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.

**12. 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.

**13. EXCEPTIONS TO WARRANTIES OF TITLE.** The warranties of title in any Deed made pursuant to this contract (See paragraph 14) 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 Buyers; (f) Spouse if not titleholder, need not join in any warranties of the deed unless otherwise stipulated:

(g) none
(Mineral reservations of record?)

(h) none (Liens?) none (Easements not recorded?) none (Interests of other parties?) none (Lessees?)

**14. 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 prior written offer of Buyers to buy the above described property which was recorded by Sellers on the~~ . 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 payable in 19 95 , and all taxes thereon payable prior thereto.

**15. APPROVAL OF ABSTRACT.** Buyers have not examined the abstract of title to this property and such abstract is not accepted.

**16. 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.

**17. FORECLOSURE AND REDEMPTION.** If Buyers fail 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 Buyers 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 files an election to waive any deficiency judgment against Buyers 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 Buyers, 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 Buyers or their successor in interest in such action. If the redemption period is so reduced, Buyers or their 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 Buyers 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.

**18. 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 Buyers, or imposed upon them, or upon the above described property, Buyers agree to pay reasonable attorneys' fees.

**19. 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.

**20. 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.

**21. 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.

**22. CONSTRUCTION.** Words and phrases herein, including acknowledgements hereof, shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context. See paragraph 11 above, for construction of the word "Sellers."

**23. SPECIAL PROVISIONS.** (A) Included with this sale is the milkhouse water softener, all dairy equipment (milk pump, pipeline, units, bulk tank, milk house heating washer, etc.), sweep augers for bins, 1p White heater, (2) 550 gal. fuel tanks and pumps, and all bulk bins. (B) That the following appliances and items stay with the house: all floor coverings, rugs, drapes, window shades, water heater, furnace, stove, dishwasher, ceiling fan, old refrigerator, freezer, stove hood, and water softener.

Gilbert B. Willenborg
Gilbert B. Willenborg

Mary Ann Willenborg
Mary Ann Willenborg — SELLERS

R.R. #2, Box 128

Dyersville, Iowa 52040
Sellers' Address

IOWA AGRICULTURAL DEVELOPMENT AUTHORITY

By: Steven K. Ferguson
By: Steve Ferguson, Executive Director — BUYERS

Henry A. Wallace Building

Des Moines, Iowa 50319
Buyers' Address

STATE OF IOWA, DUBUQUE COUNTY, ss:

On this 1st day of December A.D. 19 95 before me, the undersigned, a Notary Public in and for said State, personally appeared Gilbert B. Willenborg and Mary Ann Willenborg, husband and wife, Sellers

to me known to be the identical persons named in and who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.

THOMAS H. JENK
MY COMMISSION EXPIRES
SEPTEMBER 15, 1997

Thomas H. Jenk
Thomas H. Jenk, Notary Public in and for said State

EXCEPT that part of the Northwest Quarter (NW¼) of the Southwest Quarter (SW¼) of said section described as commencing at a point on the West line of said Northwest Quarter (NW¼) of the Southwest Quarter (SW¼) that is One hundred thirty (130) feet South of the Northwest Corner of the Southwest Quarter (SW¼), running thence South along the section line a distance of Six hundred nineteen (619.0) feet, thence East Forty-five (45) feet, thence North Six hundred nineteen (619.0) feet, thence West Forty-five (45.0) feet to the point of beginning.

EXHIBIT A

(_____) This contract will be assigned by the Buyer (Iowa Agricultural Development Authority) to Mark Kruse, single (Beginning Farmer(s)) and may not be reassigned by Beginning Farmer(s) without the written consent of Seller(s) and the Iowa Agricultural Development Authority which consent, if given, shall not operate as a waiver of the requirement of written consent on any subsequent assignment. Any attempt by Beginning Farmer(s) to reassign this contract without written consent shall entitle Seller(s) to declare all amounts due hereunder immediately due and payable.

(_____) To evidence its payment obligations under this contract, the Iowa Agricultural Development Authority will issue its tax exempt bond (the "Bond") in an amount equal to the unpaid balance of the purchase price contained herein and bearing interest at the rate of seven (7%) per annum (the "Tax Exempt Rate") with payment terms identical to those contained herein. Beginning Farmer(s) have expressly warranted to Seller(s) that the interest payments received pursuant to the terms contained herein will come to the Seller(s) in the form that will make it not includable in gross income for federal income tax purposes. Seller(s) are relying on the representations made by the Beginning Farmer(s) in this regard and in the event the interest payments are determined to be includable in gross income for federal income tax purposes, then all interest payments will be computed on the basis of interest at the rate of seven (7%) per annum (the "Taxable Rate") and Beginning Farmer(s) shall be responsible to make payment to the Seller(s) for the difference between interest paid at the Tax Exempt Rate and the amount calculated on the basis of interest at the Taxable Rate. This provision shall not apply in the event the Bond is held by a Related Person (as defined by the Internal Revenue Code) to the Beginning Farmer(s).

(_____) The Seller(s) acknowledge that this contract will be assigned by the Iowa Agricultural Development Authority by separate instrument, the Guarantee, Assignment and Assumption Agreement (the "Guarantee") to the Beginning Farmer(s) who will assume the rights, duties, obligations and liabilities of the Iowa Agricultural Development Authority hereunder and guarantee the payment of principal of and interest on the Bond. Seller(s) approves such assignment and assumption and acknowledges that the principal of, premium, if any, and interest on the Bond, the installment payments under this contract and other amounts due and owing to the Seller(s) as holder of the Bond and seller under this contract are special limited obligations of the Iowa Agricultural Development Authority and payable solely and only from the obligations of the Beginning Farmer(s) under the Guarantee and are not general obligations of the State of Iowa or any political subdivision or agency thereof, including the Iowa Agricultural Development Authority, within the meaning of any constitutional or statutory limitation and do not constitute or give rise to a pecuniary liability of the State of Iowa or any political subdivision or agency thereof, including the Iowa Agricultural Development Authority, or a charge against their general credit or general funds.

STATE OF IOWA )
)
SS:
COUNTY OF POLK )

On this 9th day of February, 19 96, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Steven K. Ferguson, to me personally known, who, being by me duly sworn, did say that he is the Executive Director of the Iowa Agricultural Development Authority, the state agency executing the within and foregoing Contract to which this is attached, that the seal affixed thereto is the seal of said agency; that said instrument was signed and sealed on behalf of said agency by authority of its Board and that the said Steven K. Ferguson, as such officer, acknowledges the execution of said instrument to be the voluntary act and deed of said agency, by it and by him voluntarily executed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 9th day of February, 19 96.

Mary C Nieland
Notary Public

MARY C. NIELAND
MY COMMISSION EXPIRES
6/13/98

(Seal)

194-2237
DELAWARE COUNTY IOWA
FILED

'96 FEB 16 AM 11 17

BOOK 136 PAGE 87
DEBORAH L. PEYTON
DELAWARE CO. RECORDER
$26.00

Gilbert B. Willenborg
& Wife

To

Iowa Ag Dev. Authority

Jenk & Goen ✓ ENV.