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DELAWARE COUNTY IOWA
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BERNARD L. PEYTON
RECORDER
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Prepared by , Attorney at Law, , James G. Schilling 1890 JFK Road Dubuque, IA 52002 (319) 556-4032

REAL ESTATE CONTRACT - INSTALLMENTS

THIS CONTRACT ("Contract") is made this 28th day of February, 1997, by and between Wayne F. Oberbroeckling and Earl Oberbroeckling, Co-Conservators for Jeanne Oberbroeckling, and Mercantile Bank of Dubuque, Conservator for Henry B. Oberbroeckling, Sellers; and Cedar Hill, Inc., Buyer;

THE PARTIES AGREE AS FOLLOWS:

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 Seller to purchase the following described real estate situated in the Counties of Dubuque and Delaware, State of Iowa, to wit:

The NW1/4 of the NW1/4, Lot 1 of the SW 1/4 of the NW1/4, the NW1/4 of the SW1/4, and the SW1/4 of the SW 1/4, all in Section 19, Township 88 North, Range 2 West of the 5th P.M., in Dubuque County, Iowa;

The South ½ of the NE1/4 of the SE1/4, the NW1/4 of the NE1/4 of the SE1/4 tract, and the SE1/4 of the SE1/4, all in Section 13, Township 88 North, Range 3 West of the 5th P.M., in Delaware County, Iowa;

The North ½ of the NE1/4 of the NE1/4, in Section 24, Township 88 North, Range 3 West of the 5th P.M., in Delaware County, Iowa.

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

1. **TOTAL PURCHASE PRICE.** The Buyer agrees to pay for said property the total of $360,000.00 due and payable at Dubuque, Iowa as follows:

a) **Down Payment** of $5,000.00 the receipt of which is hereby acknowledged; and
b) **An additional down payment** of $67,000.00 to be paid on or before date of possession;
c) **Balance of purchase price.** $288,000.00 as follows $60,000.00 plus interest (or more at the option of the Buyer) on or before the 1st day of March, 1998, and $60,000.00 plus interest (or more at the option of the Buyer) on or before the 1st day of March of every year thereafter until all sums due under this Contract are paid in full, plus interest on unpaid balances thereof at the rate of 8% per annum, payable annually from date of possession until fully paid; said payments to be applied first to the interest then unpaid and next upon the balance of the principal. No prepayment will be allowed prior to January 1, 1998.

2. **POSSESSION.** Buyer, concurrently with due performance on its part shall be entitled to possession of said premises on the first day of March, 1997; and thereafter so long as it shall perform the obligations of this Contract.

3. **TAXES.** Seller shall pay when due, a pro rata portion up to date of possession of the 1996-1997 fiscal year real estate taxes, and any unpaid taxes thereon payable in prior years. Buyer shall pay any taxes not assumed by Seller 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.** All special assessments constituting a lien as of date of possession, are to be paid by Seller. Buyer, except as above stated, shall pay all subsequent special assessments and charges, before they become delinquent.

5. **INSURANCE.** Buyer as and from said date of possession, shall constantly keep in force insurance, premiums therefor to be prepaid by Buyer (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 in companies to be reasonably approved by Seller in an amount not less than the full insurable value of such improvements, with such insurance payable to Seller and Buyer as their interests may appear. BUYER SHALL PROMPTLY DEPOSIT SUCH POLICY WITH PROPER RIDERS WITH SELLER 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 Seller 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.

6. **CARE OF PROPERTY.** Buyer shall take good care of this property; shall keep the buildings and other improvements now or hereafter placed on 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 Seller. Buyer shall not use or permit said premises to be used for any illegal purpose.

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

Quantities Also Kept Electronically
For Quantities, See Book 138 8/4/97
Page 330

8. **ADVANCEMENT BY SELLER.** If Buyer fails to pay such taxes, special assessments or insurance or effect necessary repairs, as above agreed, Seller may, but need not, pay such taxes, special assessments and/or insurance and/or 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 Seller, be added to the principal amount due hereunder and so secured.

9. **JOINT TENANCY IN PROCEEDS AND SECURITY RIGHTS IN REAL ESTATE.** If, and only if, Jeanne Oberbroeckling and Henry B. Oberbroeckling immediately preceding this sale, hold the title to part or all the above described property in joint tenancy, and any such joint tenancy has not later been destroyed by operation of law or by acts of the Seller, this sale shall not constitute such destruction and the proceeds of this Contract, and any continuing and/or recaptured right of Seller in said property, shall be and continue in Sellers as Joint Tenants with Full 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 the survivor.

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 Iowa Code Section 561.13; and the use of the word "Sellers" or "Seller" 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 Contract. Failure to promptly assert rights of Seller 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 the 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 the Contract; (e) If Seller is required to give a Warranty Deed Seller shall only be required to give Special Warranty as to the period after equitable title passes to Buyer; (f) Spouse, if not 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 Seller during the life of the Contract, and all other agreements for performance by Buyer have been complied with, Seller shall execute and deliver to Buyer a Special Warranty Deed conveying said premises in fee simple pursuant to and in conformity with the Contract; and Seller shall without delay deliver to Buyer an abstract showing marketable title in conformity with the Contract. Such abstract shall begin with the government patent (unless pursuant to The Iowa State Bar Association's title standards there is a lesser requirement as to period of abstraction) to said premises and shall show title thereto in Seller as of the date of the Contract; or as of the earlier date shown in the next sentence if an earlier date is shown in the next sentence. The Contract supersedes the previous written offer of Buyer to buy the above described property which was accepted by Seller on the 15th day of October, 1996. Seller shall pay the cost of any abstracting due to any act or change in the personal affairs of the Seller resulting in a change of title by operation of law or otherwise. If any personal property is a part of the Contract, then upon due performance by Buyer, Seller shall execute and deliver to Buyer a Bill of Sale consistent with the terms of the Contract.

14. **APPROVAL OF ABSTRACT.** Buyer has_examined ~~has not~~_examined the abstract to said property and such abstract is_accepted ~~is not~~_accepted.

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 said property, by any taxing body before any of such items become delinquent; or © fails to keep the property insured as herein required; or (d) fails to keep said property in reasonable repair as herein required; or (e) fails to perform any of the agreements as herein made or required; then Seller, in addition to any and all other legal and equitable remedies which Seller may have, at Seller's option, may proceed to forfeit and cancel the Contract as provided by law (Iowa Code Chapter 656). 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 the Seller as compensation for the use of said property, and/or as liquidated damages for breach of the Contract; and upon completion of the forfeiture, if the Buyer, or any other person or persons shall be in possession of said property 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 the Contract, Seller, at Seller's option, may elect to declare the entire balance immediately due and payable after such notice, if any, as may be required by Iowa Code Chapter 654. Thereafter, the 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 and 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 the Contract covers less than ten (10) acres of land, and in the event of the foreclosure of the Contract and sale of said property by sheriff's sale in such foreclosure proceedings, the time of one year for redemption from said sale provided by the **IOWA CODE** shall be reduced to six (6) months provided the Seller, in such action files 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 Iowa Code Chapter 628. 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 Iowa Code Sections 628.5, 628.15 and 628.16 shall be reduced to four (4) months.

It is further agreed that the period of redemption after a foreclosure of the Contract shall be reduced to sixty (60) days if all of the three following contingencies develop: (a) The real estate is less than ten (10) acres in size; (b) the court finds affirmatively that the real estate has been abandoned by the owners and those persons liable under the Contract at the time of such foreclosure; and (c) Seller in such action files an election to waive any deficiency judgment against Buyer or Buyer's successor in interest in such action. If the redemption period is so reduced, Buyer or Buyer's 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 Iowa Code Sections 628.5, 628.15 and 628.16 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 period shall be consistent with all of the provisions of Iowa Code Chapter 628. All of this paragraph 16 shall not be construed to limit or otherwise affect any other redemption provisions contained in Iowa Code Chapter 628.

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 Seller, or in any other case permitted by law in which attorney's fees may be collected from Buyer, or imposed upon Buyer, or upon said 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 on all amounts herein as and after they become delinquent, and/or on cash reasonably advanced by either party pursuant to the terms of the Contract, as protective disbursements.

19. **ASSIGNMENT.** In case of the assignment of the 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 copy of such assignment by the 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 the Contract.

20. **PERSONAL PROPERTY.** If the Contract includes the sale of any personal property, then in the event of the forfeiture or foreclosure of the Contract, such personal property shall be considered indivisible with said real estate; and any such termination of Buyer's rights in said real estate shall concurrently operate as the forfeiture or foreclosure hereof against all such personal property.

21. **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 for construction of the words "Sellers" and "Seller".

22. **ADDITIONAL PROVISIONS.** Buyer may sell off parcels of the above-described property only with the prior approval of the Seller and providing that the net proceeds from said sale shall be paid so as to reduce the unpaid balance on this Contract.

SELLER:

MERCANTILE BANK OF DUBUQUE as
Conservator for Henry B. Oberbroeckling

By: _____
Kim J. Keuter, Vice President and
Trust Officer

By: _____
Shirley A. Christensen, Vice President
and Trust Officer

_____
Wayne F. Oberbroeckling, Conservator
for Jeanne Oberbroeckling

_____
Earl Oberbroeckling, Conservator
for Jeanne Oberbroeckling

BUYER:

CEDAR HILL, INC

By: _____
Raymond J. Schlarmann, Jr.

By: _____
Marlene M. Schlarmann

Prepared by , Attorney at Law, ,

STATE OF IOWA, DUBUQUE COUNTY, ss:
On this 27th day of February, 1997, before me the undersigned, a Notary Public in and for said State, personally appeared Wayne F. Oberbroeckling to me known to be the identical person named in and who executed the foregoing instrument and acknowledged that he executed the same as his voluntary act and deed of the person and of the fiduciary.

BETTY A WEILAND
10-8-99

Betty A. Weiland
Notary Public in and for said State

STATE OF IOWA, DUBUQUE COUNTY, SS:
On this 28 day of February, 1997, before me the undersigned, a Notary Public in and for said State, personally appeared Earl Oberbroeckling to me known to be the identical person named in and who executed the foregoing instrument and acknowledged that he executed the same as his voluntary act and deed of the person and of the fiduciary.

08-24-98

Shirley A Christensen
Notary Public in and for said State

STATE OF IOWA, DUBUQUE COUNTY, ss:
On this 28th day of Feb., 1997, before me, the undersigned, a notary public in and for the above county and state, personally appeared Kim J. Keuter and Shirley A. Christensen, to me personally known, who being by me duly sworn, did say that they are both Vice Presidents and Trust Officers of the above corporation, executing the within and foregoing instrument; that ~~(no seal has been procured by the corporation)~~(the seal affixed to this instrument is the seal of the corporation); that this instrument was signed (and sealed) on behalf of the corporation by authority of its board of directors; and that Kim J. Keuter and Shirley A. Christensen acknowledged the execution of this instrument to be the voluntary act and deed of the corporation and of the fiduciary, by it, by them and as such fiduciary voluntarily executed.

NOTARIAL SEAL IOWA — SUSAN K. VALANT

Susan K. Valant
Notary Public in and for said State.

STATE OF IOWA, DUBUQUE COUNTY ss:
On this 28 day of February, 1997, before me the undersigned, a Notary Public in and for said County and State, personally appeared Raymond J. Schlarmann, Jr. and Marlene M. Schlarmann to be me personally known, who being by me duly sworn, did say that they are the President and Secretary of Cedar Hill, Inc.; executing the within and foregoing instrument; that (no seal has been procured by the corporation)~~(the seal affixed to this instrument is the seal of the corporation)~~; that this instrument was signed ~~(and sealed)~~ on behalf of the corporation by authority of its board of directors; and that Raymond J. Schlarmann, Jr. and Marlene M. Schlarmann as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.

08-24-98

Shirley A Christensen
Notary Public in and for said State.