Parr + Carr

DELAWARE COUNTY IOWA
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BOOK 100 PAGE 304
DEBORAH L. PEYTON
DELAWARE CO. RECORDER
40.00

Preparer
Information Gary L. Mick, 318 South River Park Drive, Guttenberg, (319) 252-1733
Individual's Name Street Address City Phone

GARY L. MICK ISBA # 000003665
Address Tax Statement: Eastern Iowa Pumping, Inc.
1625 220th Street, Manchester, IA 52057

SPACE ABOVE THIS LINE FOR RECORDER

REAL ESTATE CONTRACT (SHORT FORM)

(Real estate described on attached sheet marked Exhibit "A")

IT IS AGREED between ROGER W. FULLER and BETTY LOU FULLER, husband and wife ("Sellers"); and EASTERN IOWA PUMPING, INC. ("Buyers").

Sellers agree to sell and Buyers agree to buy real estate in DELAWARE County, Iowa, described as:

(LEGAL DESCRIPTION OF REAL ESTATE)

with any easements and appurtenant servient estates, but subject to the following: a. any zoning and other ordinances; b. any covenants of record; c. any easements of record for public utilities, roads and highways; and d. (consider: liens; mineral rights; other easements; interest of others.) (the "Real Estate"), upon the following terms:

1. **PRICE.** The total purchase price for the Real Estate is Eighty Thousand and 0/100 Dollars ($ 80,000.00) of which Five Thousand and 0/100 Dollars ($ 5,000.00) has been paid. Buyers shall pay the balance to Sellers at Manchester, Iowa or as directed by Sellers, as follows:

$25,000.00 at Closing.
$20,000.00 shall be paid on or before December 31, 2001
$20,000.00 shall be paid on or before December 31, 2002
The balance of $10,000.00 shall be on or before July 1st, 2003.

2. **INTEREST.** Buyers shall pay interest from the date of closing on the unpaid balance, at the rate of 6.5 percent per annum, payable QUARTERLY, on March 31st, June 31st, September 31st and December 31st of each year during the term of this contract. Buyers shall also pay interest at the rate of 8.5 percent per annum on all delinquent amounts and any sum reasonably advanced by Sellers to protect their interest in this contract, computed from the date of the delinquency or advance.

3. **REAL ESTATE TAXES.** Sellers shall pay real estate taxes pro-rated to the date of possession and any unpaid real estate taxes payable in prior years. Buyers shall pay all subsequent real estate taxes. Any pro-ration of real estate taxes on the Real Estate shall be based upon such taxes for the year currently payable unless the parties state otherwise.

4. **SPECIAL ASSESSMENTS.** Sellers shall pay all special assessments which are a lien on the Real Estate as of the date of this contract. All other special assessments shall be paid by Buyers.

5. **POSSESSION CLOSING.** Sellers shall give Buyers possession of the Real Estate on February 15, 2001, provided Buyers are not in default under this contract. Closing shall be on February 15, 2001.

6. **INSURANCE.** Sellers shall maintain existing insurance upon the Real Estate until the date of possession. Buyers shall accept insurance proceeds instead of Sellers replacing or repairing damaged improvements. After possession and until full payment of the purchase price, Buyers shall keep the improvements on the Real Estate insured against loss by fire, tornado, and

extended coverage for a sum not less than 80 percent of full insurable value payable to the Sellers and Buyers as their interests may appear. Buyers shall provide Sellers with evidence of such insurance.

7. **ABSTRACT AND TITLE.** Sellers, at Sellers' expense, shall promptly obtain an abstract of title to the Real Estate continued through the date of this contract and deliver it to Buyers for examination. It shall show merchantable title in Sellers in or conformity with this contract, Iowa law and the Title Standards of the Iowa State Bar Association. The abstract shall become the property of the Buyers when the purchase price is paid in full, however, Buyers reserve the right to occasionally use the abstract prior to full payment of the purchase price. Sellers shall pay the costs of any additional abstracting and title work due to any act or omission of Sellers, including transfers by or the death of Sellers or their assignees.

8. **FIXTURES.** All property that integrally belongs to or is part of the Real Estate, whether attached or detached, such as light fixtures, shades, rods, blinds, awnings, windows, storm doors, screens, plumbing fixtures, water heaters, water softeners, automatic heating equipment, air conditioning equipment, wall to wall carpeting, built-in items and electrical service cable, outside television towers and antenna, fencing, gates and landscaping shall be considered a part of Real Estate and included in the sale except: (consider: rental items.)

9. **CARE OF PROPERTY.** Buyers shall take good care of the property; shall keep the buildings and other improvements now or later placed on the Real Estate in good and reasonable repair and shall not injure, destroy or remove the property during the term of this contract. Buyers shall not make any material alteration to the Real Estate without the written consent of the Sellers.

10. **DEED.** Upon payment of purchase price, Sellers shall convey the Real Estate to Buyers or their assignees, by WARRANTY deed, free and clear of all liens, restrictions, and encumbrances except as provided herein. Any general warranties of title shall extend only to the date of this contract, with special warranties as to acts of Sellers continuing up to time of delivery of the deed.

11. **REMEDIES OF THE PARTIES.** a. If Buyers fail to timely perform this contract, Sellers may, at Sellers' option, forfeit Buyers rights in this contract as provided in the Iowa Code, and all payments made by Buyers shall be forfeited. 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 file 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.

b. If Sellers fail to timely perform their obligations under this contract, Buyers shall have the right to terminate this contract and have all payments made returned to them.

c. Buyers and Sellers are also entitled to utilize any and all other remedies or actions at law or in equity available to them.

d. In any action or proceeding relating to this contract the successful party shall be entitled to receive reasonable attorney's fees and costs as permitted by law.

12. **JOINT TENANCY IN PROCEEDS AND IN REAL ESTATE.** If Sellers, immediately preceding this contract, hold title to the Real Estate in joint tenancy with full right of survivorship, and the joint tenancy is not later destroyed by operation of law or by acts of Sellers, then the proceeds of this sale, and any continuing or recaptured rights of Sellers in the Real Estate, shall belong to Sellers as joint tenants with full right of survivorship and not as tenants in common; and Buyers, in the event of the death of either Seller, agree to pay any balance of the price due Sellers under this contract to the surviving Seller and to accept a deed from the surviving Seller consistent with paragraph 10.

13. **JOINDER BY SELLER'S SPOUSE.** Seller's spouse, if not a titleholder immediately preceding acceptance of this offer, executes this contract only for the purpose of relinquishing all rights of dower, homestead and distributive shares or in compliance with Section 561.13 of the Iowa Code and agrees to execute the deed for this purpose.

14. **TIME IS OF THE ESSENCE.** Time is of the essence in this contract.

15. **PERSONAL PROPERTY.** If this contract includes the sale of any personal property, Buyers grant the Sellers a security interest in the personal property and Buyers shall execute the necessary financing statements and deliver them to Sellers.

16. **CONSTRUCTION.** Words and phrases in this contract shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context.

17. **RELEASE OF RIGHTS.** Each of the Buyers hereby relinquishes all rights of dower, homestead and distributive share in and to the property and waives all rights of exemption as to any of the property.

18. **ADDITIONAL PROVISIONS.**

a. This contract is subject to the City of Manchester approving a Subdivision Plat for this property, to be prepared and presented by the Buyer, at Buyer's expense, on or before February 15, 2001. In the event the City of Manchester fails to approve that Plat, this contract shall be null and void, and the $5,000.00 down payment shall be returned to this Buyer.

b. Buyers have prepared a preliminary Plat for use in said Subdivision, a copy of which is attached hereto. Upon request of Buyer on or after closing date, Seller shall transfer by Warranty Deed, Lots Eight (8) and Seven (7) as per the preliminary Plat attached hereto. Buyers shall have the right to make pre-payments under this contract, and upon payment of an additional $5,000.00 towards the principal due, Seller shall transfer by Warranty Deed an additional Lot to Buyer. Seller shall continue to transfer Lots in descending order only (i.e. Buyer may not acquire Lot 2 until Lots 8,7,6,5,4 and 3 have been paid for and transferred) by Warranty Deed to Buyer on payment of $10,000.00 towards the next Lot to be transferred so that the Buyer is always prorata $5,000.00 ahead of the subsequent Lot transfer.

c. Buyer agrees to pay for all survey fees and individual lot abstracts pursuant to this agreement.

d. Buyer shall be allowed to stock pile dirt on unpaid Lots, but shall not be allowed to dig a foundation on any Lot for which Buyer has not received a Warranty Deed from Seller.

e. Sellers herein acknowledge Buyers intention to prepare a Subdivision Plat and sell these Lots as residential Lots. The parties further agree that this Development adjoins real estate used for agricultural purposes. Seller agrees that no liquid manure shall be spread within 1,000 feet of the Lot lines of this property on land owned by Seller. The Seller and the Buyer further agree that the above-described property is located with an area where land is used for commercial agricultural production. Owners, residence and other users of the above described real estate may be subject to inconvenience, discomfort and the possibility of injury arising from agricultural operations, included but not limited to noise, odors, fumes, dust, and the operation of machinery of any kind, the storage and disposal of manure, the application of chemical fertilizers, herbicides and pesticides. Owners residents and other users of the above described real estate should be prepared to accept such inconvenience, discomfort and possibility of injury from agricultural operations, and are hereby put on official notice that Section _____ of the Delaware County Right To Farm Ordinance may bar them from bringing legal action against such agricultural operations if injuries should occur. The described agricultural use and disclosure thereof shall constitute a covenant binding upon the Buyers and their respective heirs, assigns, personal representatives, and purchasers. The foregoing statement shall constitute notice to the Buyer, and all subsequent owners of the above-described real estate, and shall be binding upon them as though such statement was given directly to them.

This restriction for the spreading of manure within 1,000 feet of the Lot lines, and Notice of Agricultural Use shall be included in a separate document to be recorded as part of this Subdivision, binding upon the parties hereto, their successors and assigns.

f. As Noted above, Buyers and Sellers acknowledge that Buyer shall be developing this property for a residential subdivision. Because Seller shall continue to reside in this area and be affected by this residential subdivision, Seller requires that the Subdivision to be recorded by Buyer, include certain restrictions to protect the Seller's interest. Those restrictions at a minimum include:

1. Land use (single family residential). The Lots shall be used only as dwelling Lots for single family residences, with no business establishments allowed except for such limited home office businesses as are allowed pursuant to a R-1 zoning classification, pursuant to the zoning ordinance of the City of Manchester.

2. No dwelling shall be erected or permitted having a ground floor square foot area (exclusive of open porches, porticos, entrance-ways, areaways, and garages) of less than 1,450 square feet in case of a one story structure nor less than 1,100 square feet in the case of a one and a half or two story structure.

3. No structures other than a residence and one detached garage shall be erected on any Lot.

4. Said Lots may be divided into smaller parcels for the purpose of conveyance to a contiguous property owner, however, no subdivision of an existing Lot shall be allowed to facilitate the construction of more than eight (8) single family residences in this subdivision.

5. No sign of any kind shall be displayed to the public view on any lot except one sign of not more than five square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sale.

6. Radio and television transmission or receiving towers, antennas, receivers or other reception dishes are permitted within the interior portion of a dwelling. One exterior satellite dish permitted per dwelling. One exterior satellite dish, no larger than 18 inches in diameter, shall be permitted per dwelling.

7. Dogs, cats, or other household pets may be kept provided they are not bred nor maintained for any commercial purposes, and provided further, that all such domestic animals kept as pets must be restrained and confined and kept off the premises of other Lot owners. No free standing dog kennels or other freestanding animal housing shall be allowed. One dog run may be attached to a detached garage on the West side with the North and South sends being enclosed. No other animals, livestock, poultry or bees, shall be raised bred or kept on any Lot.

8. TEMPORARY STRUCTURE. No trailer, camper, mobile home, basement, tent, shack, garage, barn or other out-building erected in the tract shall at any time be used as a residence temporarily or permanently, nor shall any residence of a temporary character be permitted.

9. LOT APPEARANCE. No owner shall accumulate, or allow to accumulate, on his or her Lot, junked vehicles, litter, refuse or other unsightly materials. Firewood shall be stacked and ranked adjacent to the rear of the residence in an orderly fashion. Storage of automobiles, recreational vehicles, trailers of all types, machinery, or equipment, shall be within a permanent appurtenant structure. Said permanent structure shall be no taller than 16 feet at the peak of the roofline. Excluding pools and gazeboes, appurtenant structures shall be limited to one per Lot and shall be no larger than a total of 1400 square feet in ground floor area, and no less than a total of 400 square feet in ground floor area. Said appurtenant structure shall be constructed of the same material, and have siding of the same material and color as the residence on the Lot. Each Lot shall maintain an appealing appearance from all public roadways.

10. Installed dwellings and structures shall comply with applicable State and County building requirements.

11. Once excavation has commenced on a Lot for the purpose of building a structure, the structure shall be fully completed within one (1) year. Sodding or final landscaping must be completed within two (2) years of the commencement of the initial excavation. In any event soil erosion shall be kept to a minimum and within the limits as provided by law.

12. All natural drainage areas shall not be altered in any way that interferes with any other Lot in the subdivision or Sellers remaining Real Estate.

13. No vehicles shall be parked on any area on a developed lot other than in the driveway. Parking on the street or any portion thereof is prohibited except for guest parking not to exceed 72 hours in length. Further, at no time shall any commercial vehicles and/or agricultural equipment (including trailers) be parked in any part of the development.

14. No privacy fencing shall be built except to house an in-ground pool or attached patio and, such privacy fending shall not exceed six (6) feet in height. A child's restraining fence is permitted with the restriction that said fence shall be no more than four (4) feet high and shall be placed on the Lot line only with the permission of the adjoining Lot owner. No fence of any kind shall be built between the front line of the home and the front Lot line on any particular Lot

15. Garbage shall be placed in receptacles, and if outside they shall be property screened. Tarpaulins and similar covering materials are prohibited.

These restrictions shall be placed within the Restrictive Covenants for this subdivision, and approved by Sellers. In case the parties hereto, or their heirs, successors or assigns shall violate, or attempt to violate, any of the covenants and restrictions herein, Seller, as an interested party, shall have the right to prosecute and proceed at law or in equity against the person or persons violating or attempting to violate any such covenants or restrictions to either prevent them from so doing or recover damages for such violation, or both. These covenants and restrictions shall be perpetual and shall be binding on the parties hereto and their heirs and assigns for a period of twenty-five (25) years from the date these covenants are recorded, at which time the covenants and restrictions shall be automatically extended for successive ten (10) year periods unless by a vote of the majority of the then owners of the Lots and Seller, it is agreed to change said covenants in part or in whole.

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: February 1, 2001

Dated: February 14, 2001

Roger W. Fuller, Seller

Betty Lou Fuller, Seller

EASTERN IOWA PUMPING, INC., Buyer

By: Joseph G. Hildebrand Trea.
Joseph G. Hildebrand, President

By: Joseph G. Hildebrand Sec.
Joseph G. Hildebrand, Secretary

STATE OF IOWA, Delaware COUNTY, ss;

This instrument was acknowledged before me on the 14 day of February, 2001, by Roger W. Fuller and Betty Lou Fuller, husband and wife.

JOHN M. CARR Iowa NOTARIAL SEAL

John M. Carr, Notary Public

My commission expires: 10-07-03

STATE OF IOWA)
) ss:
COUNTY OF Delaware)

On this 1 day of February, 2001, before me, the undersigned, a Notary Public in and for said State and County, personally appeared JOSEPH G. HILDEBRAND , to me personally known, who being by me duly sworn, did say that he is the President and Secretary of the corporation executing the within and foregoing instrument to which this is attached, that no seal has been procured by the corporation; that said instrument was signed on behalf of the corporation by authority of its Board of Directors; and that JOSEPH G. HILDEBRAND as said President and Secretary, acknowledged the execution of the foregoing instrument to be the voluntary act and deed of the corporation, by it and by him voluntarily executed.

Notary Public

My commission expires: 10-07-03

EXHIBIT "A"

LEGAL DESCRIPTION:

QUAKER MILL RIDGE, *A SUBDIVISION OF PART OF THE SOUTHWEST QUARTER (SW ¼) OF THE NORTHWEST QUARTER (NW ¼) AND PART OF THE NORTH ONE HALF (N ½) OF THE NORTHWEST QUARTER (NW ¼) OF THE SOUTHWEST QUARTER (SW ¼), ALL OF SECTION NINETEEN (19), TOWNSHIP EIGHTY-NINE NORTH (T89N), RANGE FIVE WEST (R5W) OF THE FIFTH PRINCIPAL MERIDIAN, DELAWARE COUNTY, IOWA,* containing a total of 9.700 acres, including 1.306 acres of public road right of way, divided into eight (8) lots numbered Lot 1 through Lot 8, subject to easements of record, and more specifically described by metes and bounds as follows;

BEGINNING at the Northeast Corner of the Northwest Quarter (NW ¼) of the Southwest Quarter (SW ¼) of Section Nineteen (19), Township Eighty-nine North (T89N), Range Five West (R5W) of the Fifth Principal Meridian, Delaware County, Iowa;

THENCE along the Easterly Line of the Northwest Quarter (NW ¼) of said Southwest Quarter, South 00° 33' 48" West, to the Northerly Line of the South One Half (S ½) of the Northwest Quarter (NW ¼) of said Southwest Quarter (SW ¼), 614.05 feet;

THENCE along the said Northerly Line, North 88° 53' 15" West, 330.02 feet;

THENCE North 00° 33' 48" East, 610.86 feet;

THENCE North 00° 33' 12" East, 667.97 feet;

THENCE South 89° 26' 48" East, to the Easterly Line of the Southwest Quarter (SW ¼) of the Northwest Quarter (NW ¼), 330.00 feet;

THENCE along said Easterly Line, South 00° 33' 12" West, 668.00 feet to the **POINT OF BEGINNING**;

Containing a total of 9.700 acres, including 1.306 acres of public road right of way, divided into eight (8) lots numbered Lot 1 through Lot 8, and subject to easements of record.

The Easterly Line of the Northwest Quarter (NW ¼) of the Southwest Quarter (SW ¼) of Section Nineteen (19), Township Eighty-nine North (T89N), Range Five West (R5W) of the Fifth Principal Meridian, Delaware County, Iowa is assumed to bear South 00° 33' 48" West.

Plat recorded in Book 2001 Page 570 in the Delaware County Recorders Office, Delaware County, Iowa.