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DEBORAH L. PEYTON, RECORDER/REGISTRA
DELAWARE COUNTY IOWA

# REAL ESTATE CONTRACT INSTALLMENTS

THE IOWA STATE BAR ASSOCIATION
Official Form No. 142
Recorder's Cover Sheet

**Preparer Information:** (Name, address and phone number)
Thomas J. Hanson, 401 East Main Street, Manchester, Iowa 52057

**Taxpayer Information:** (Name and complete address)
Duane A. Elgin
22383 - 210th Street
Manchester, Iowa 52057

**Return Document To:** (Name and complete address)
Thomas J. Hanson
401 East Main Street
Manchester, Iowa 52057

**Grantors:**
Carol A. Raithel
Arthur Raithel

**Grantees:**
Duane A. Elgin
Tina M. Elgin

**Legal description:** See Page 2

**Document or instrument number of previously recorded documents:**

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# REAL ESTATE CONTRACT- INSTALLMENTS

IT IS AGREED this 28th day of November, 2005, by and between
Carol A. Raithel (f/k/a Carol A. Klaren and f/k/a Carol A. Sellner) and Arthur Raithel, wife and husband
of the County of Delaware, State of Iowa, Sellers; and
Duane A. Elgin and Tina M. Elgin, husband and wife as joint tenants of full rights survivorship, and not as tenants in common
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 Attached Legal Description

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 A" all upon the terms and conditions following:

**1. TOTAL PURCHASE PRICE.** The Buyers agree to pay for said property the total of $50,980.00 due and payable at Seller's residence, Delaware County, Iowa, as follows:

(a) **DOWN PAYMENT** of $2,000.00 **RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED:** and

(b) **BALANCE OF PURCHASE PRICE.** $48,980.00 as follows:
$3,000.00 on November 1, 2005 with the balance to be paid as follows: $510.48 (including principal and interest) on December 1, 2005 and a like payment of $510.48 (including principal and interest) on the 1st day of each and every month thereafter to and including November 1, 2015 when the entire remaining balance including principal and any accrued interest shall be due and payable in full.

(c) Sellers agree to pay interest on the unpaid principal balance at the rate of 6% per annum from and after November 1, 2005. All payments should be applied first against interest accrued and the balance on principal.

(d) Buyers shall be prohibited from making advanced payments on the Contract without the written consent of the Sellers.

**2. POSSESSION.** Buyers, concurrently with due performance on their part shall be entitled to possession of said premises on the 1st day of November, 2005; and thereafter so long as they shall perform the obligations of this contract. If Buyers are taking subject to the rights of lessees and are entitled to rentals therefrom on and after date of possession, so indicate by "yes" in the space following _____.

**3. TAXES.** Sellers shall pay
all the 2004-2005 fiscal year real estate taxes plus a portion of the 2005-2006 fiscal year real estate taxes prorated to the date of possession

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.**
(Decide, for yourself, if that formula is fair if Buyers are purchasing a lot with newly built improvements).

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

(a) Which, if not paid, in the year _____, would become delinquent and all assessments payable prior thereto.

(b) Which are a lien thereon as of _____ (Date).

(c) 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 special assessments and charges before they become delinquent.

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**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 _____% 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 Sellers 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.

**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, Seller 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 the 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)_____
(Mineral reservations of record?)

(h)_____
(Liens?) (Easements not recorded?) (Interests of other parties?) (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 _____ 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 on the ____ day of _____, _____. 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 _____, and all taxes thereon payable prior thereto.

**15. APPROVAL OF ABSTRACT.** Buyers have _____ examined the abstract of title to this property and such abstract is _____ 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 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 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 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 successor 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 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 property 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. 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.

**24. LEAD-BASED PAINT NOTICE.** If applicable, see attached Disclosure of Information on Lead-Based and/or Lead-Based Paint Hazards.

**25. SPECIAL PROVISIONS.**

See Attachment 1

**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: 11-28-05, 2005

Dated: 11-28-05, 2005

Executed in duplicate or triplicate

Carol A. Raithel

Carol A. Raithel

Arthur Raithel

SELLERS

27171 - 217th Street

Earlville, Iowa 52041

SELLERS' ADDRESS

Duane A. Elgin

Duane A. Elgin

Tina M. Elgin

BUYERS

22383 - 210th Street

Manchester, Iowa 52057

BUYERS' ADDRESS

STATE OF IOWA, Delaware COUNTY, ss

This instrument was acknowledged before me on November 28th, 2005

by, Carol A. Raithel and Arthur Raithel, wife and husband

THOMAS J. HANSON
Commission Number 115040
My Commission Expires
September 22, 2007

,Notary Public

STATE OF IOWA , COUNTY OF DELAWARE , ss:

On this 7th day of November , 2005 , before me, the undersigned, a Notary Public in and for said State, personally appeared Duane A. Elgin and Tina M. Elgin , to me known to be the person named in and who executed the foregoing instrument, and acknowledged that (he) (she) executed the same as (his) (her) voluntary act and deed.

Thomas J. Hanson , Notary Public in and for said State.

THOMAS J. HANSON
Commission Number 115040
My Commission Expires
September 22, 2007

(Section 558.39, Code of Iowa)

Acknowledgment: For use in the case of natural persons acting in their own right

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# Addendum

1. a) In the event of the death of Carol A. Raithel during the term of this Contract the remaining payment shall be paid to Arthur Raithel. If both the said Carol A. Raithel and Arthur Raithel shall die before the end of the contract term then the Buyers agree to pay the entire remaining balance to including principal and any accrued interest within four months of the date of the second of the Sellers to die.
b) The Sellers retain the right for a period of 10 years from the date of possession to use the 24x36 morton machine shed located on the premises, rent free. The Sellers retain an easement for ingree and egress to said machine shed during the term of such use. Said usage shall not be assignable.
c) The Title is given subject to an easement in favor of the Sellers, their heirs, successors and assigns, for a septic drainage field located located on the herein described premises and adjacent to the following described real estate:

   Lot 26 of the Subdivision of Lot 1 of Timbergate Subdivision part of the S½ SW¼ and W½ SE¼ 36-89-4 according to plat recorded in Book 4, Plats Page 39 of the records of the Delaware County Recorder.

   Said easement shall include the right to enter onto the premises for the purpose of and inspection of the septic drainage field and to make repairs as necessary.

# LEGAL DESCRIPTION

CONTINUATION NO. 169

CONTINUATION OF AN ABSTRACT OF TITLE TO: That part of the Northwest quarter of the Southwest quarter of Section Thirty Six (36), Township Eighty Nine (89) North, Range Four (4), West of the Fifth P.M., described as commencing at the Southwest corner of Northwest quarter of Southwest quarter of said Section Thirty Six (36) and running North to the Northwest corner of said Northwest quarter of Southwest quarter of said Section Thirty Six (36) and running thence East about thirty five (35) rods to a point nine (9) rods West of Southwest corner of Lot Five (5), Block Twenty Four (24), in said town of Earlville, Iowa, thence South 26 rods, thence South 61° East forty three (43) rods one (1) link, thence North twenty six (26) rods, thence East eight (8) rods to East line of said forty, thence South to Southeast corner of said forty, thence West to place of beginning, except that portion lying West of the Earlville and Plum Creek Road and except Lot One (1) of the Northwest quarter of the Southwest quarter of Section Thirty Six (36), Township Eighty Nine (89) North, Range Four (4), West of the Fifth P.M. in Delaware County, Iowa, as recorded in Book 2 of Plats on Page 24 of the records of Delaware County, Iowa,; except Lot 2 of the Subdivision recorded in Book 5, Page 155 of the records of the Delaware County Recorder.