Book 2018 Page 450

Document 2018 450 Type 04 002 Pages 5
Date 2/27/2018 Time 10:18:05AM
Rec Amt $27.00 Aud Amt $5.00

DOV# 57

Daneen Schindler, RECORDER/REGISTRAR
DELAWARE COUNTY IOWA

Entered for taxation 28th day
of February AD 2018
Carla K. Bachar Auditor
By P. Hildebrand Deputy

WW/B Prepared by and return to:
Jeffrey E. Clements #AT0001531,117½ S. Vine Street, PO Box 164, West Union, IA 52175-0164, (563)422-3545
Tax Statement: Briggs Highway Advisors IA, LLC, P.O. 190170, Brooklyn NY 11219

REAL ESTATE CONTRACT-INSTALLMENTS

IT IS AGREED, by and between **MANCHESTER LODGING, LLC,** an Iowa limited liability company, Seller; and **BRIGGS HIGHWAY ADVISORS IA, LLC**, an Iowa limited liability company, Buyer;

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

> LOT 2 OF FRIEDLEIN SUBDIVISION, A SUBDIVISION OF LOT 4, EXCEPT THE EAST 200 FEET THEREOF, OF WEST COMMERCIAL SUBDIVISION OF PART OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 31, TOWNSHIP 89 NORTH, RANGE 5 WEST OF THE FIFTH P.M., IN THE CITY OF MANCHESTER, DELAWARE COUNTY, IOWA, ACCORDING TO PLAT RECORDED IN BOOK 8 PLATS, PAGE 147; ALSO LOT 3A OF THE SUBDIVISION OF LOT 3 OF FRIEDLEIN SUBDIVISION, SECTION 31, TOWNSHIP 89 NORTH, RANGE 5 WEST OF THE FIFTH P.M., CITY OF MANCHESTER, DELAWARE COUNTY, IOWA, ACCORDING TO PLAT RECORDED IN BOOK 2001, PAGE 1918;

together with any easements and servient estates appurtenant thereto, and subject to easements of record, all upon the terms and conditions following:

1. **TOTAL PURCHASE PRICE.** The Buyer agrees to pay for said property the total of Eight Hundred Thousand and 00/100 Dollars ($800,000.00), due and payable, as follows:

By monthly installments of $7,724.86 including interest or more at Buyer's option, beginning the 23rd day of March, 2018, and on or before the 23rd day of each month thereafter until all accrued interest and the entire principal balance is paid in full.

2. **INTEREST.** All unpaid balances shall accrue interest at the rate of 3.0% per annum from and after the 23rd day of February, 2018.

3. **POSSESSION.** Buyer, concurrently with due performance on its part, shall be entitled to possession of said premises at the time of closing of this contract, and thereafter so long as Buyer shall perform the obligations of this contract.

4. **TAXES.** Sellers shall pay: All taxes having accrued as of 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. Any proration of taxes shall be based upon the taxes for the year currently payable unless parties state otherwise.

5. **SPECIAL ASSESSMENTS.** Seller shall pay the special assessments against this property which are a lien thereon as of the date of this contract. Buyer, except as above stated, shall pay all subsequent special assessments and charges, before they become delinquent.

6. **MORTGAGE.** Any mortgage or encumbrance of a similar nature against the said property shall be timely paid by Seller so as not to prejudice the Buyer's equity herein. Should Seller fail to pay, Buyer may pay any such sums in default and shall receive credit on this contract for such sums so paid. MORTGAGE BY SELLER. Seller, 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 50% 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. Buyer hereby expressly consents to such a mortgage and agrees to execute and deliver all necessary papers to said Seller in securing such a mortgage which shall be prior and paramount to any of Buyer's then rights in said property.

7. **INSURANCE.** Buyer shall constantly keep in force insurance, premiums therefore 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 and any personal property which may be the subject of this contract, in companies to be reasonably approved by Seller 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 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.

8. **CARE OF PROPERTY.** Buyer 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. Buyer shall not make any material alteration in said premises without the written consent of the Sellers. Buyer shall not use or permit said premises to be used for any illegal purpose.

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

10. **ADVANCEMENT BY SELLER.** If Buyer fails 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 Seller, be added to the principal amount due hereunder and so secured.

11. **JOINT TENANCY IN PROCEEDS AND SECURITY RIGHTS IN REAL ESTATE.** If and only if, the Seller 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 Seller, this

sale shall not constitute such destruction and the proceeds of this contract, and any continuing and/or recaptured rights of Seller in said real estate, shall be and continue in Seller as joint tenants with 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 him or them consistent with paragraph 14 below unless and except this paragraph is stricken from this agreement.

12. **SELLER.** 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.

13. **TIME IS OF THE ESSENCE.** Time is of the essence in this Agreement. 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.

14. **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) Seller shall 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.

15. **DEED AND ABSTRACT.** If all said sums of money and interest are paid to Seller during the life of this contract, and all other agreements for performance by Buyer has been complied with, Seller will execute and deliver to Buyer a company Warranty Deed conveying said premises in fee simple pursuant to and in conformity with this contract upon full payment of the purchase price. Seller, at their expense, has delivered to Buyer an abstract of title to the real estate showing merchantable title in conformity with this contract, Iowa law and the Title Standards of the Iowa State Bar Association. The abstract shall become the property of the Buyer when the purchase price is paid in full; however, Buyer reserves the right to occasionally use the abstract prior to full payment of the purchase price. Seller shall pay the costs of any additional abstracting and title work due to any act or omission of Seller, including transfers by or the death of Seller or its assignees.

16. **FORFEITURE.** If Buyer (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) fails to keep it in reasonable repair as herein required; or (e) fail 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 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 Buyer shall have no right of reclamation or compensation for money paid, or improvements made; but such payments and for improvements if any shall be retained and kept by Seller 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 Buyer, 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 Buyer fails to timely perform this contract, Seller,

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 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 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 Seller, in such action file 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 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 Buyer, 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) Seller in such action file an election to waive any deficiency judgment against Buyer or their successor in interest in such action. If the redemption period is so reduced, Buyer 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 Buyer 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 brought in connection with this real estate contract, the prevailing party shall be entitled to collect reasonable attorneys fees from the other party.

19. **DELINQUENT AMOUNTS.** Either party will pay a late charge of an additional ten per cent (10%) on all amounts herein as and after they become delinquent, and/or on amounts reasonably advanced by either party pursuant to the terms of this contract, as protective disbursements.

20. **ASSIGNMENT/SALE.** 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 case of assignment.

21. **PERSONAL PROPERTY.** If Seller and Buyer have also entered into an agreement for the sale and purchase of personal property, in the event of the forfeiture or foreclosure of this contract, such personality shall be considered indivisible with the real estate above described; and such termination of Buyer's rights in said real estate shall concurrently operate as the forfeiture or foreclosure hereto against all such personal property.

22. **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 11 above, for construction of the word "Sellers."

23. **RELEASE OF RIGHTS.** The Buyer 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. **CERTIFICATION.** Buyer and Seller each certify that they are not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person" or any other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and are not engaged in this transaction, directly or indirectly, on behalf of, any such person, group, entity or nation. Each party hereby agrees to defend, indemnify and hold harmless the other party from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorney's fees and costs) arising from or related to any breach of the foregoing certification.

IN WITNESS THEREOF the parties have signed this agreement on the dates stated below.

SELLER

Manchester Lodging, LLC

By: Nirmala D Upadhyay
Nirmala D. Upadhyay, Executor of the Estate of Sushil Upadhyay, Sole Member

BUYER

Briggs Highway Advisors IA, LLC

By: _____
Jonathan Malinas, Managing Member

STATE OF IOWA,

ss:

COUNTY OF Buchanan.

This instrument was acknowledged before me on the 23rd day of February, 2018, by Nirmala D. Upadhyay, Executor of the Estate of Sushil Upadhyay, as Sole Member of Manchester Lodging, LLC.

BRIAN C. EDDY
Commission Number 737709
My Commission Expires
November 16, 2020

_____
Notary Public

STATE OF IOWA,

ss:

COUNTY OF Buchanan.

This instrument was acknowledged before me on the 23rd day of February, 2018, by Jonathan Malinas, as Managing Member of Briggs Highway Advisors IA, LLC.

_____
Notary Public

BRIAN C. EDDY
Commission Number 737709
My Commission Expires
November 16, 2020