



Document 2009 3238

Book 2009 Page 3238 Type 03 010 Pages 10
Date 10/29/2009 Time 9:51 AM
Rec Amt \$54.00 Aud Amt \$5.00

INDX ✓
ANNO
SCAN
CHEK

DOV# 287

LISA SMITH, COUNTY RECORDER
MADISON COUNTY IOWA

REAL ESTATE CONTRACT-INSTALLMENTS
THE IOWA STATE BAR ASSOCIATION
Official Form No. 141
Recorder's Cover Sheet

Preparer Information: (name, address and phone number)

Jane E. Rosien, 223 E. Court Avenue, P.O. Box 67, Winterset, Iowa 50273
Phone: (515) 462-4912

Taxpayer Information: (name and complete address)

Karl Gakle, 116 W. North Street, Apt. #15, Winterset, Iowa 50273

✓ **Return Document To:** (name and complete address)

Jane E. Rosien, 223 E. Court Avenue, P.O. Box 67, Winterset, Iowa 50273
Phone: (515) 462-4912

Grantors:

Gertrude J. Weeks a/k/a June Weeks

Grantees:

Karl Gakle

Legal Description: See Page 2

Document or instrument number of previously recorded documents: N/A

Jane E. Rosien, ICIS# AT0006681

REAL ESTATE CONTRACT-INSTALLMENTS

IT IS AGREED this 27th day of October, 2009, by and between Gertrude J. Weeks a/k/a June Weeks of the County Madison, State of Iowa, Seller; and Karl Gakle of the County of Madison, State of Iowa, Buyer;

That the Seller, as in this contract provided, agrees 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 County of Madison, State of Iowa, to-wit:

The South Half (½) of Lot Four (4), Block Twenty-eight (28) of the Original Town of Winterset, Madison County, Iowa,

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 Buyer agrees to pay for said property the total of \$80,000.00 due and payable at 304 S. Eldorado Avenue, Macksburg, Iowa 50155, Madison County, Iowa, as follows:

(a) **DOWN PAYMENT** of \$6,000.00 **AT THE TIME TAX CREDIT IS RECEIVED BY BUYER BUT IN NO EVENT LATER THAN MAY 1, 2010;** and,

(b) **BALANCE OF PURCHASE PRICE.** \$74,000.00, as follows \$480.00 on or before November 10, 2009, and \$480.00 on or before the 10th day of each and every month thereafter until November 10, 2012 when all sums due under this contract are due and payable in full, **PLUS** interest on unpaid balances thereof at the rate of 6% per annum, said payments to be applied first to the interest then unpaid and next upon the balance of the principal.

2. **POSSESSION.** Buyer, concurrently with due performance on their part shall be entitled to possession of said premises on the 10th day of November, 2009; and thereafter so long as they shall perform the obligations of this contract.

3. **TAXES.** Seller shall pay property taxes prorated to the date of possession 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.** Seller shall pay the special assessments against this property which are a lien thereon as of October 10, 2009, including all sewage disposal assessments for overage charge heretofore assessed by any municipality having jurisdiction as of date of possession.

Buyer, except as above stated, shall pay all subsequent special assessments and charges, before they become delinquent.

5. **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 100% 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 aid Seller in securing such a mortgage which shall be prior and paramount to any of Buyer's then rights in said property. **DEED FOR BUYER SUBJECT TO MORTGAGE.** If Buyer has 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 Seller, at their option, any time before Buyer has made such a mortgage commitment, may reduce or pay off such mortgage. **ALLOCATED PAYMENTS.** Buyer, 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. **SELLER AS TRUSTEE.** Seller agrees 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 Seller or their assigns in said real estate; and if Seller 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 Buyer for the use and benefit of the Buyer.

6. **INSURANCE.** Except as may be otherwise included in the last sentence of paragraph 1(b) above, Buyer as and from said date of possession, 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. Seller's interest shall be protected in accordance with a standard or union-type loss payable clause. **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.

7. **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 has the right to construct improvements on the property however, Buyer shall not make any material alterations that could diminish the value of the property without the written consent of the Seller. Buyer 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 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. (For Buyer's rights to make advancements, see paragraph 5 above.)

10. **JOINT TENANCY IN PROCEEDS AND SECURITY RIGHTS IN REAL ESTATE.** If and only if, the Seller immediately preceding this sale, holds 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.

11. **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.

12. **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.

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) 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.

14. **DEED AND ABSTRACT, BILL OF SALE.** 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 have been complied with, Seller will execute and deliver to Buyer a Warranty Deed conveying said premises in fee simple pursuant to and in conformity with this contract and Seller will at this time deliver to Buyer 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 Seller as of the date of this contract. Seller shall also pay the cost of any abstracting due to any act or change in the personal affairs of Seller 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 Buyer, Seller shall execute and deliver a Bill of Sale consistent with the terms of this contract. Seller shall pay all taxes on any such personal property payable in 2010, and all taxes thereon payable prior thereto.

15. **APPROVAL OF ABSTRACT.** Buyer has not examined abstract of title to this property and such abstract has not been accepted by the Buyer.

16. **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 it, by any taxing body before any of such items become delinquent; or (c) fails to keep the property insured; or (d) fails to keep it 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 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 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 them, or upon the above described property, Buyer agrees to pay reasonable attorney's 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. **DUE ON SALE OR TRANSFER.** The Seller may, at Seller's option, declare the entire balance due under this Sales Contract to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer, assignment or sale of all or any part of the real estate subject to this Sales Contract. This right is subject to the restrictions, if any, imposed by federal law, as applicable. This covenant shall run with the real estate subject to this Sales Contract and shall remain in effect until the balances due the Seller under this Sales Contract are paid in full and the Deed in fulfillment of this Sales Contract is tendered to the

Buyer.

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 personal property shall be considered indivisible with the real estate above described; and any 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 "Seller."

23. **RELEASE OF RIGHTS.** The Seller 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 CONTINGENCY.** This contract is **not** contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards. (Intact lead-based paint that is in good condition is not necessarily a hazard. See the EPA pamphlet Protect Your Family from Lead in Your Home for more information). The Buyer acknowledges receipt of the EPA pamphlet from the Seller; agrees that a risk assessment is not necessary for this transaction; and, waives any right to such assessment or inspection.

25. **SPECIAL PROVISIONS.**

A. **"AS IS".** The parties agree the premises are sold in its "AS IS" condition; the Seller make no representations or warranties, express or implied, as to the habitability, structural and/or mechanical quality or usability of the premises including the well system; and, the Buyer acknowledges full opportunity to inspect the structural, electrical, plumbing, sewer and other conditions of the premises.

B. **TERMITE INSPECTION WAIVER.** The parties agree the Seller shall not have the property inspected for termites and other wood destroying insects by a licensed termite inspector prior to the Buyer's possession and the Buyer waives the right to have the Seller perform any such inspection. This provision does not prohibit or limit the Buyer's right to have such inspection performed prior to the Buyer's possession and the Buyer shall have the right of access to the property for such inspection purposes.

C. **ENVIRONMENTAL MATTERS.** Seller make no warranty or representation of any kind whatsoever about abandoned wells, solid waste disposal sites, hazardous wastes or substances, or underground storage tanks located on the Property, or the Property containing levels of radon gas, asbestos or urea-formaldehyde foam insulation which may require remediation under current governmental standards.

Buyer waives any right or opportunity at their expense to obtain a report from a qualified

engineer or other person qualified to analyze the existence or nature of any hazardous materials, substances, conditions or wastes located on the Property.


D. 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 my breach of the foregoing certification.

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: 10/27/09


Karl Gakle, Buyer

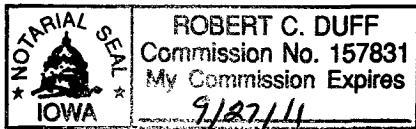
Executed in duplicate or triplicate.


Gertrude J. Weeks a/k/a June Weeks, Seller,
by Mark J. Brown, attorney-in-fact under
power of attorney dated January 8, 2004.


Karl Gakle, Buyer

STATE OF IOWA, COUNTY OF MADISON

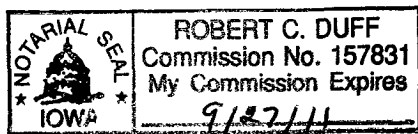
This instrument was acknowledged before me on October 27th, 2009 , by Mark J. Brown as Power of Attorney for Gertrude J. Weeks.



Robert C Duff
Notary Public in and for the State of Iowa

STATE OF IOWA, COUNTY OF MADISON

This instrument was acknowledged before me on October 27th, 2009 , by Karl Gakle.



Robert C Duff
Notary Public in and for the State of Iowa

EXHIBIT "A"

Included with the property shall be all fixtures that integrally belong to, are specifically adapted to or part of the real estate, whether attached or detached, such as: attached wall-to-wall carpeting, built-in appliances, light fixtures (including light bulbs), water softeners, water purification systems (except rentals), shutters, shades, rods, blinds, awnings, storm windows, storm doors, television antennas, air conditioning equipment (except window units), door chimes, automatic garage door openers, electrical service cables, bathroom mirrors, attached mirrors, fencing, shelving, all storage buildings, gates, bushes, trees shrubs, and plants. Also included shall be the following: stove, refrigerator, washer and dryer.