

LISA SMITH, COUNTY RECORDER
MADISON IOWA

✓ Return to and
Prepared by: City of St Charles
PO Box 118
St Charles, IA 50340

OPTION AGREEMENT

This Option Agreement is entered into this 9th day of October, 2008, by and between City of St. Charles, Iowa ("Buyer") and Janet Christensen ("Seller").

- 1. SUBJECT PROPERTY.** Seller hereby grants to Buyer an exclusive right and option (the "Option") to purchase certain real estate in Madison County, Iowa, described as follows:

The Southwest Quarter (SW 1/4) of the Southeast Quarter (SE 1/4) of Section Twenty-three (23), Township Seventy-five (75) North, Range Twenty-six (26) West of the 5th P.M., Madison County, Iowa.

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 (the "Real Estate"), as set forth herein.

2. TERM OF OPTION. In consideration of the sum of \$ 1,000.00, receipt and adequacy of which is hereby acknowledged by Seller, Seller hereby grants Buyer the exclusive right to purchase the Real Estate as set forth herein on or before December 31st, 2008.

3. PURCHASE PRICE.

- a. If Buyer exercises this Option, the purchase price shall be **\$6,000** per acre, payable in cash at closing. The payment set forth in paragraph 2 above does not apply to the purchase price.

- b. The payment set forth in paragraph 2 above is non-refundable unless Buyer exercises the Option, and:
 1. Seller refuses to sell the Real Estate as set forth herein; or
 2. Seller is unable to provide marketable title to the Buyer within 30 days of the exercise of the option by Buyer.

4. **BUYER'S DISCRETION TO EXERCISE OPTION.** Buyer reserves the sole and absolute right to determine whether to exercise the Option. Without limiting the generality of the foregoing, Buyer reserves the right to determine whether the Real Estate is suitable for use as a controlled discharge lagoon. Factors to be considered by Buyer may include, but are not limited to:

- a. whether geotechnical borings reveal unexpected or difficult to overcome soil conditions; and
- b. the presence or absence of environmental or archaeological issues or problems relating to the Real Estate; and
- c. the Buyer's determination whether construction of a controlled discharge lagoon on the Real Estate is economical; and
- d. whether funding for Buyer's construction of the project on the Real Estate is received; and
- e. whether the DNR approves the construction of a controlled discharge lagoon on the Real Estate; and

5. **ACCESS FOR TESTING.** Beginning on the date of this Agreement, and continuing until closing or the expiration of this Option, whichever occurs first, Seller hereby grants Buyer access to the Real Estate for purposes of testing and otherwise assessing the suitability of the Real Estate for use as a controlled discharge lagoon. Buyer agrees to pay Seller a reasonable amount for any crops damaged or destroyed in connection with such testing and assessment.

6. **REAL ESTATE TAXES.** In the event that Buyer exercises the Option, Seller shall pay all real estate taxes due on or before the date of closing, and shall give Buyer a credit at closing for the pro-rated real estate taxes through the date of closing. Such pro-ration shall be based upon the last known actual real estate taxes payable according to public record.

7. **SPECIAL ASSESSMENTS.** In the event that Buyer exercises the Option, Seller shall pay all special assessments which are a lien on the Real Estate and, if not paid, would become delinquent on or before the date of closing, and all prior installments thereof.

8. **RISK OF LOSS AND INSURANCE.** Risk of loss prior to Seller's delivery of possession of the Real Estate to Buyer shall be with Seller.

9. **CARE AND MAINTENANCE.** The Real Estate shall be preserved in its present condition and, in the event that Buyer exercises the Option, shall be delivered intact at the time possession is delivered to Buyer.

10. **POSSESSION.** Possession of the Real Estate shall be delivered to Buyer at closing, which shall be within 30 days of the date the Option is exercised, unless a later date is agreed to in writing by Buyer.

11. **USE OF PURCHASE PRICE.** In the event that Buyer exercises the Option, at time of settlement, funds of the Purchase Price may be used to pay taxes and other liens and to acquire outstanding interests, if any, of others.

12. **ABSTRACT AND TITLE.** Seller, at Seller's expense, shall promptly after receiving notification from Buyer of Buyer's exercise of the Option, obtain an abstract of title to the Real Estate, continued through the date Buyer exercised the Option, and deliver it to Buyer for examination. It shall show merchantable title in Seller in conformity with this agreement, Iowa law and Title Standards of the Iowa State Bar Association. The abstract shall become the property of Buyer when the Purchase Price is paid in full. 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 their assignees.

13. **DEED.** In the event that Buyer exercises the Option and upon payment of the Purchase Price, Seller shall convey the Real Estate to Buyer or its assignees, by general warranty deed, free and clear of all liens, restrictions, and encumbrances except as provided in Section 1(a) through 1(c), of this Agreement.

14. **JOINT TENANCY IN PROCEEDS AND IN REAL ESTATE.** If Seller, as of the date of this Agreement, holds 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 the Seller, then the proceeds of the sale of the Real Estate upon exercise of the Option, and any continuing or recaptured rights of Seller in the Real Estate, shall belong to Sellers as joint tenants with full rights of survivorship and not as tenants in common; and Buyer, in the event of the death of either Seller, agrees to pay any balance of the price due Sellers under this Agreement to the surviving Seller and to accept a deed and easement from the surviving Seller.

15. **JOINDER BY SELLER'S SPOUSE.** Seller's spouse, if not a titleholder immediately preceding Buyer's exercise of the Option, shall execute the deed 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.

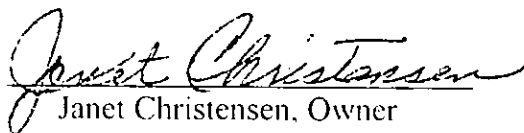
16. **TIME IS OF THE ESSENCE.** Time is of the essence in this Agreement.

17. **REMEDIES OF THE PARTIES.** In addition to the provisions of paragraph 3.b above, Buyer and Seller are entitled to utilize any and all remedies or actions at law or in equity available to them, including specific performance, and the prevailing party in an action to enforce the obligations created by this Option Agreement shall be entitled to obtain judgment for costs and attorney fees.

18. **APPROVAL OF COURT.** If the sale of the Real Estate is subject to Court approval, the fiduciary shall promptly submit this Agreement for such approval. If this Agreement is not so approved, it shall be void.

19. **AGREEMENT BINDING ON SUCCESSORS IN INTEREST.** This Agreement shall apply to and bind the successors in interest of the parties.

20. **CONSTRUCTION.** Words and phrases shall be construed as in the singular or plural number, and as masculine, feminine, or neuter gender, according to the context. This agreement shall be governed by the laws of the State of Iowa.


Janet Christensen, Owner


Robert Christensen, Spouse

CITY OF ST. CHARLES

Joan Brown

By: 
Mayor

STATE OF IOWA)
)SS:
COUNTY OF CERRO GORDO)

On this 9th day of October, 2008, before me, the undersigned Notary Public in and for the aforesaid County and State, personally appeared Janet Christensen and Robert Christensen, wife and husband, to me known to be the same and identical people who executed the within and foregoing instrument, and acknowledge that they executed the same as their voluntary act and deed.



Marilyn D Merfeld
Notary Public in and for the Said County and State

STATE OF IOWA)
)SS:
COUNTY OF MADISON)

On this 29th day of September, 2008, before me, the undersigned, a Notary Public in and for the said State, personally appeared Joan Brown, to me personally known, who being by me duly sworn, did say that she is the Mayor, of the City of St. Charles executing the within and foregoing instrument to which this is attached. that the instrument was signed on behalf of the City by authority of its City Council; and that Joan Brown, as Mayor acknowledged the execution of the foregoing instrument to be the voluntary act and deed of the City, by it and by her voluntarily executed.

Sharon James
Notary Public in and for said State

