

Document 2008 3226

Book 2008 Page 3226 Type 03 010 Pages 7

Date 10/31/2008 Time 4:02 PM

Rec Amt \$37.00 Aud Amt \$5.00

DOV# 341

LISA SMITH, COUNTY RECORDER  
MADISON IOWA

INDX ✓  
ANNO  
SCAN  
CHEK

**REAL ESTATE CONTRACT**  
Recorder's Cover Sheet

**Preparer Information:** (name, address and phone number)

John E. Casper, 223 E. Court Avenue, PO Box 67, Winterset, Iowa 50273 515-462-4912

**Taxpayer Information:** (name and complete address)

Tina M. Cooper-Lyman  
2629 225<sup>th</sup> Trail  
Winterset, Iowa 50273

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

John E. Casper  
P.O. Box 67  
Winterset, Iowa 50273

**Grantors:**

Lanny L. Wenck  
Sandra L. Wenck

**Grantees:**

Tina M. Cooper-Lyman

**Legal Description:** See page 2.

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

## REAL ESTATE CONTRACT

IT IS AGREED by and between Lanny L. Wenck and Sandra L. Wenck, husband and wife, of the County of Madison, State of Iowa, Sellers; and Tina M. Cooper-Lyman of the County of Madison, State of Iowa, Buyer:

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

**Parcel "A" located in the Northeast Quarter (¼) of the Southwest Quarter (¼) of Section Thirty-five (35), Township Seventy-six (76) North, Range Twenty-seven (27) West of the 5th P.M., Madison County, Iowa, containing 3.000 acres, as shown in Plat of Survey filed in Book 2008, Page 3000 on October 8, 2008, in the Office of the Recorder of 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 as described herein all upon the terms and conditions following:

1. **TOTAL PURCHASE PRICE.** The Buyer agrees to pay for said property the total of Ninety-Five Thousand Dollars (\$95,000.00) payable at Winterset, Iowa, or as directed by the Sellers, as follows:

- (a) The Buyer makes a down payment of \$853.89 due on November 5, 2008; and,
- (b) \$853.89, or more, due on or before December 5, 2008; and, \$853.89, or more, due on or before the fifth day of each month thereafter until November 5, 2023 when all remaining balances due under this sales contract shall become due and payable in full. The Buyer shall pay Sellers interest upon the unpaid balances from November 5, 2008 at the rate of Seven percent (7.0 %) per annum payable monthly as provided herein. The monthly payments include principal and interest. All payments shall be first credited towards the interest accrued to the date of the payment and the balance towards the reduction in principal. Buyer shall also pay interest at the rate provided under paragraph eighteen (18) of this contract on all delinquent amounts and any sums reasonably advanced by Sellers to protect their interest in this Contract, computed from the date of the delinquency or advance.

2. **POSSESSION.** Buyer, concurrently with due performance on their part, shall be entitled to possession of the property on November 5, 2008. The parties will attempt to close on this transaction on or about November 5, 2008.

3. **TAXES.** Sellers shall pay the property taxes accrued to the date of Buyer's possession and payable during the fiscal year commencing on July 1, 2009, and any unpaid taxes thereon payable in prior fiscal years. Buyer shall timely pay any taxes not assumed by Sellers and all

subsequent taxes before same become delinquent. **The parties agree the property tax proration shall be based upon the fiscal year currently payable.**

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

5. **INSURANCE.** Sellers shall maintain existing insurance upon the premises until the date of Buyer's possession. Buyer shall accept insurance proceeds instead of Sellers replacing or repairing damaged improvements. After possession and until full payment of the purchase price, Buyer shall keep the improvements on the premises insured against loss by fire, tornado, and extended coverage for a sum not less than the balances remaining due the Sellers on this Sales Contract payable to the Sellers and Buyer as their interests may appear. Buyer shall provide Sellers with evidence of such insurance.

6. **CARE OF PROPERTY.** Until delivery of possession to the Buyer, the Sellers shall maintain the premises in its existing condition. Until final payment of the purchase price to the Sellers, Buyer after their possession shall not make any material alteration in said premises without the prior, written consent of the Sellers and Buyer shall not use or permit said premises to be used for any illegal purpose.

7. **LIENS.** Until final payment of the purchase price to the Sellers, the Buyer shall not allow any mechanics' lien to be imposed upon or foreclosed against the real estate described herein.

8. **ADVANCEMENT BY SELLERS.** If Buyer fails to pay such taxes, special assessments and insurance and effect necessary repairs, as above agreed, Sellers 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 with interest thereon as provided by this Contract.

9. **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 Buyer, 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 them consistent with paragraph 13 below unless and except this paragraph is stricken from this agreement.

10. **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.

11. **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.

12. **EXCEPTIONS TO WARRANTIES OF TITLE.** The warranties of title in any Deed made pursuant to this contract (See paragraph 13) 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 Buyer; (f) Spouse if not titleholder, need not join in any warranties of the deed unless otherwise stipulated.

13. **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 Buyer have been complied with, Sellers will execute and deliver to Buyer 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 Buyer an abstract showing merchantable title, in conformity with this contract and the land title standards of the Iowa State Bar Association. 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. 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 Buyer, Sellers shall execute and deliver a Bill of Sale consistent with the terms of this contract.

14. **APPROVAL OF ABSTRACT.** Buyer has not yet examined the abstract of title to this property and such abstract is not yet accepted.

15. **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 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 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 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 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.

16. **FORECLOSURE AND REDEMPTION.** If Buyer fails 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 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 Sellers, 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) Sellers 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.

17. **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 Buyer, or imposed upon them, or upon the above described property, Buyer agrees to pay reasonable attorneys fees.

18. **INTEREST ON DELINQUENT AMOUNTS.** All delinquent 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 shall draw the interest provided in paragraph one above until paid in full. In addition, if the Sellers have not received the full amount of any periodic

payment due under this Contract by the end of three (3) calendar days after the date such payment is due, then the Buyer shall pay Sellers a late charge equal to five percent (5%) of the overdue payment of principal and interest. The Buyer will pay this late charge promptly but only once on each late payment.

19. **ASSIGNMENT.** The Buyer shall not assign, sell or convey their interest in this contract without the prior approval of the Sellers. 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.

20. **PERSONAL PROPERTY.** In the event this contract includes 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. Paragraph 24(A) of this Sales Contract shall fully apply to the personal property included with this contract.

21. **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 10 above, for construction of the word "Sellers."

22. **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.

23. **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. The Buyer agrees that a risk assessment is not necessary for this transaction; and, waive any right to such assessment or inspection.

24. **SPECIAL PROVISIONS.**

A. **"AS IS".** The parties agree the premises is sold in its "AS IS" condition; the Sellers make no representations or warranties, express or implied, as to the habitability, structural and/or mechanical quality or usability of the premises; and, the Buyer acknowledges full opportunity to inspect the structural, electrical, plumbing, septic sewer system and other conditions of the premises. The Sellers at Sellers' cost shall install a new septic system to the residence which is compliant with the Madison County Board of Health Rules and Regulations.

B. **TERMITE INSPECTION WAIVER.** The parties agree the Sellers 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 Sellers 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.** Sellers 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 Sellers 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.

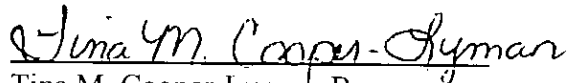
Dated: October 28, 2008.

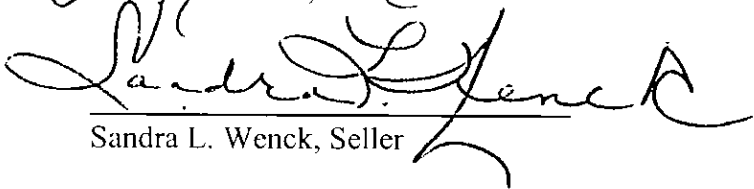
Executed in duplicate or triplicate.

SELLERS

  
\_\_\_\_\_  
Lanny L. Wenck, Seller

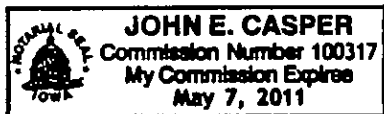
BUYER

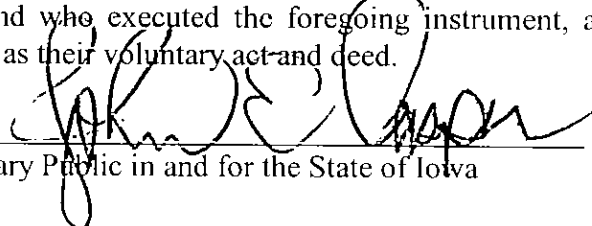
  
\_\_\_\_\_  
Tina M. Cooper-Lyman, Buyer

  
\_\_\_\_\_  
Sandra L. Wenck, Seller

STATE OF IOWA, MADISON COUNTY, ss;

On this 28th of October, 2008, before me, the undersigned, a Notary Public in and for said State, personally appeared Lanny L. Wenck, Sandra L. Wenck and Tina M. Cooper-Lyman to me known to be the identical persons named in and who executed the foregoing instrument, and acknowledged to me that they executed the same as their voluntary act and deed.



  
\_\_\_\_\_  
Notary Public in and for the State of Iowa