

RECS 15^{EX}
AUGS
FEB 7

FILED 1902942
BOOK 142 PAGE 248

FEB -7 PM 1:02

SHARLETT UTSLER
RECORDER

Preparer Information

Samuel H. Braland
Individual's Name

P.O. Box 370
Street Address

Earlham, IA 50072 (515) 758-2267
City Phone

Address, tax statement: Scott J. Cutting, 1328 160th St., Earlham, IA 50072
SPACE ABOVE THIS LINE FOR RECORDER



REAL ESTATE CONTRACT (SHORT FORM)

IT IS AGREED between
John Paul Marston, a single person,

("Sellers"); and
Scott J. Cutting

("Buyers").

Sellers agree to sell and Buyers agree to buy real estate in Madison County,
Iowa, described as:

Parcel "A", located in the Northeast Fractional Quarter of the Northwest Quarter of Section 3, Township 76 North, Range 29 West of the 5th P.M., Madison County, Iowa, more particularly described as follows:

Beginning at the Northwest Corner of the Northeast Fractional Quarter of the Northwest Quarter of Section 3, Township 76 North, Range 29 West of the 5th P.M., Madison County, Iowa; thence South 1°24'51" East along the West line of the Northeast Fractional Quarter of the Northwest Quarter of said Section 3 which is an existing fenceline, 601.59 feet; thence North 90°00'00" East, 281.61 feet; thence North 1°24'51" West, 601.59 feet to a point on the North line of the Northeast Fractional Quarter of the Northwest Quarter of said Section 3; thence South 90°00'00" West along the North line of the Northeast Fractional Quarter of the Northwest Quarter of said Section 3, 281.61 feet to the point of beginning. Said parcel contains 3.888 Acres, including 0.213 Acres of county road right-of-way.

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; and d. (consider: liens; mineral rights; other easements; interest of others.)

(the "Real Estate"), upon the following terms:

1. PRICE. The total purchase price for the Real Estate is ---Thirteen Thousand Dollars (\$ 13,000.00) of which ---Zero Dollars (\$ -0-) has been paid. Buyers shall pay the balance to Sellers at Earlham, Iowa, or as directed by Sellers, as follows: \$246.33 on the 1st day of November, 1996, and \$246.33 on the first day of each and every month thereafter until the unpaid balance of principal plus accrued interest thereon is paid in full. Said monthly payments include both interest and principal, and shall be applied first toward accrued interest, and then principal. Buyer may prepay principal in any amount at any time without penalty. Accrued interest shall be paid with and in addition to any prepayment of principal.

2. INTEREST. Buyers shall pay interest from October 1, 1996, on the unpaid balance, at the rate of 5 percent per annum, payable monthly commencing November 1, 1996. Buyers shall also pay interest at the rate of 5 percent per annum on all delinquent amounts and any sum reasonably advanced by Sellers to protect their interest in this contract, computed from the date of the delinquency or advance.

3. REAL ESTATE TAXES. Sellers shall pay 3/12ths of the real estate taxes due and payable at the County Treasurer's Office in the fiscal year commencing July 1, 1997,

and any unpaid real estate taxes payable in prior years. Buyers shall pay all subsequent real estate taxes. Any proration of real estate taxes on the Real Estate shall be based upon such taxes for the year currently payable unless the parties state otherwise.

4. SPECIAL ASSESSMENTS. Sellers shall pay all special assessments which are a lien on the Real Estate as of the date of this contract ~~XXX~~. All other special assessments shall be paid by Buyers.

5. POSSESSION. Sellers shall give Buyers possession of the Real Estate on October 1, 1996, provided Buyers are not in default under this contract.

6. INSURANCE. Sellers shall maintain existing insurance upon the Real Estate until the date of possession. Buyers shall accept insurance proceeds instead of Sellers replacing or repairing damaged improvements. After possession and until full payment of the purchase price, Buyers shall keep the improvements on the Real Estate insured against loss by fire, tornado, and extended coverage for a sum not less than 80 percent of full insurable value payable to the Sellers and Buyers as their interests may appear. Buyers shall provide Sellers with evidence of such insurance.

7. **ABSTRACT AND TITLE.** Sellers, at their expense, shall promptly obtain an abstract of title to the Real Estate continued through the date of this contract _____, and deliver it to Buyers for examination. It shall show merchantable title in Sellers in or conformity with this contract, Iowa law and the Title Standards of the Iowa State Bar Association. The abstract shall become the property of the Buyers when the purchase price is paid in full, however, Buyers reserve the right to occasionally use the abstract prior to full payment of the purchase price. Sellers shall pay the costs of any additional abstracting and title work due to any act or omission of Sellers, including transfers by or the death of Sellers or their assignees.

8. **FIXTURES.** All property that integrally belongs to or is part of the Real Estate, whether attached or detached, such as light fixtures, shades, rods, blinds, awnings, windows, storm doors, screens, plumbing fixtures, water heaters, water softeners, automatic heating equipment, air conditioning equipment, wall to wall carpeting, built-in items and electrical service cable, outside television towers and antenna, fencing, gates and landscaping shall be considered a part of Real Estate and included in the sale except: (consider: rental items.) _____

9. **CARE OF PROPERTY.** Buyers shall take good care of the property; shall keep the buildings and other improvements now or later placed on the Real Estate in good and reasonable repair and shall not injure, destroy or remove the property during the term of this contract. Buyers shall not make any material alteration to the Real Estate without the written consent of the Sellers.

10. **DEED.** Upon payment of purchase price, Sellers shall convey the Real Estate to Buyers or their assignees, by _____ warranty deed, free and clear of all liens, restrictions, and encumbrances except as provided herein. Any general warranties of title shall extend only to the date of this contract, with special warranties as to acts of Sellers continuing up to time of delivery of the deed.

11. **REMEDIES OF THE PARTIES.** a. If Buyers fail to timely perform this contract, Sellers may, at Sellers' option, forfeit Buyers' rights in this contract as provided in the Iowa Code, and all payments made by Buyers shall be forfeited. 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 successors 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.

b. If Sellers fail to timely perform their obligations under this contract, Buyers shall have the right to terminate this contract and have all payments made returned to them.

c. Buyers and Sellers are also entitled to utilize any and all other remedies or actions at law or in equity available to them.

d. In any action or proceeding relating to this contract the successful party shall be entitled to receive reasonable attorney's fees and costs as permitted by law.

12. **JOINT TENANCY IN PROCEEDS AND IN REAL ESTATE.** If Sellers, immediately preceding this contract, hold 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 Sellers, then the proceeds of this sale, and any continuing or recaptured rights of Sellers in the Real Estate, shall belong to Sellers as joint tenants with full right of survivorship and not as tenants in common; and Buyers, in the event of the death of either Seller, agree to pay any balance of the price due Sellers under this contract to the surviving Seller and to accept a deed from the surviving Seller consistent with paragraph 10.

13. **JOINDER BY SELLER'S SPOUSE.** Seller's spouse, if not a titleholder immediately preceding acceptance of this offer, executes this contract 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.

14. **TIME IS OF THE ESSENCE.** Time is of the essence in this contract.

15. **PERSONAL PROPERTY.** If this contract includes the sale of any personal property, Buyers grant the Sellers a security interest in the personal property and Buyers shall execute the necessary financing statements and deliver them to Sellers.

16. **CONSTRUCTION.** Words and phrases in this contract shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context.

17. **ADDITIONAL PROVISIONS.**

See Addendum to Real Estate Contract attached hereto and by this reference incorporated herein.

Date: January 31, 2000
Scott J. Cutting
(Scott J. Cutting)

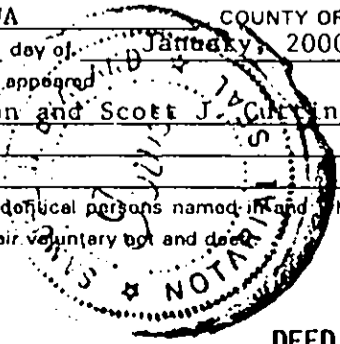
John Paul Marston
(John Paul Marston)

BUYERS

SELLERS

STATE OF IOWA COUNTY OF MADISON, ss:
On this 31st day of January, 2000, _____, before me, the undersigned, a Notary Public in and for said State, personally appeared John Paul Marston and Scott J. Cutting

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.



Samuel H. Braland
Notary Public in and for said State.

ADDENDUM TO REAL ESTATE CONTRACT

THIS ADDENDUM, is made a part of that certain Real Estate Contract by and between John Paul Marston as Seller, and Scott J. Cutting as Buyer, to-wit:

a. Due on Sale or Assignment. If Buyer at any time during the term of this contract sells all or any portion of the real estate or assigns this contract to a third party without the written consent of the Seller, then the full unpaid balance of principal and all interest accrued thereon shall at that time become immediately due and payable.

b. Perimeter Fence. Seller, at his expense, shall promptly erect a boundary fence on the east and south boundary lines of the real estate. Thereafter, Buyer shall maintain at his expense all fences situated on the east, south, and west boundary lines of the real estate. This provision constitutes a fence agreement under Iowa law, and this condition shall survive delivery of the deed given in fulfillment of this contract.

c. Covenants. The following provisions shall be deemed to be covenants and restrictions running with and binding on the real estate sold under this contract:

(i) Swine and Hogs. Swine and/or hogs of any age, sex, variety or kind are not permitted on the real estate. They shall not be maintained, housed, raised or fed anywhere on the real estate.

(ii) Junk and Junk Vehicles. Junk and junk vehicles of any variety or kind are not permitted on the real estate. They shall not be deposited or maintained anywhere on the real estate. "Junk" means all old or scrap non-ferrous metal; old or discarded rope, rags, batteries, paper, trash, rubber, debris, waste or used lumber, or salvaged wood; dismantled vehicles, machinery and appliances or parts of such vehicles, machinery or appliances; iron, steel or other old or scrap ferrous materials; old or discarded glass, tin-ware, plastic or old or discarded household goods or hardware. "Junk Vehicle" means any vehicle or truck located on the real estate not capable of being driven from the place of its location under its own power without the addition of parts or repair thereon.

The above covenants and restrictions shall survive delivery of the deed given in fulfillment of this contract. The above covenants and restrictions are binding on each and every owner of the real estate sold under this contract. Seller, his successors in interest, and Seller as owner of adjacent land described as the E $\frac{1}{4}$ NW $\frac{1}{4}$ (except Parcel "A" sold under this contract) and the NE $\frac{1}{4}$ of Section 3, T76N, R29W, and Seller's successors in ownership of said adjacent land, shall have the right and power to enforce the restrictions and covenants contained above, and to institute and prosecute any proceeding at law or in equity against any person or persons violating or threatening to violate said restrictions and covenants, and shall have the right to recover any damages suffered from any violation thereof.