

REC \$ 50⁰⁰
AUD \$ 1⁰⁰
R.M.F. \$ 5⁰⁰

FILED NO. 1032
BOOK 2004 PAGE 1032

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COMPUTER	<input checked="" type="checkbox"/>
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COMPARED	<input checked="" type="checkbox"/>

MICKI UTSLER
RECORDER
WADSWORTH COUNTY, IOWA

Return to: Curtis G. McCormick, Neiman Stone & McCormick, 7405 University #10, Des Moines, IA 50325

AFFIDAVIT

State of Iowa)
(ss
County of Polk)

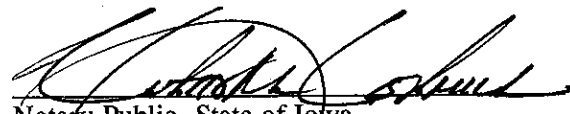
I, Ted Torstenson, being first duly sworn on oath, depose and state that I am a managing member of Tierra Linda, L.L.C.; that the attached offer to purchase was accepted by the record title holder of the real estate described herein; that the Buyer identified therein has performed all acts required of it under the terms of the Purchase Agreement and is prepared, willing and able to proceed to closing as called for therein; that the Buyer seems to be reluctant to close as required by the agreement; that this affidavit is made for the purpose of putting all on notice of the interest claimed by Tierra Linda, L.L.C. in that property described on the attached Exhibit "A".



Ted Torstenson

Subscribed and sworn to before me this 9th day of MARCH, 2004.





Notary Public, State of Iowa

Return To:
Ted Torstenson
3242 Ute Ave
Waukeese Iowa
50263

Iowa's Largest

THIS IS A LEGALLY BINDING CONTRACT. IF NOT UNDERSTOOD, SEEK COMPETENT LEGAL ADVICE.

Date of Agreement 2-13-04, 2004

Agency Agreement. In this offer to purchase it is clearly understood and agreed by the parties hereto, that Iowa Realty Co., Inc. (herein called "Iowa Realty"), Appointed Buyer's agent(s), exclusively represents the Buyers in this transaction. The listing agent(s) exclusively represents Sellers in this transaction. If the same agent represents both Buyers and Sellers a detailed explanation of consensual dual agency must be attached to this Agreement. Further, Buyers and Sellers acknowledge that prior to signing this Agreement that their respective agents have made a written disclosure of the type of representation being provided.

TO: New Beginnings Development Group, LLC. (Sellers)

The undersigned Buyers hereby offer to buy the real property situated in Winterset Iowa, locally known as: 16th Ave + US Hwy 169 + 92 and legally described as: As per abstract

subject to and together with any reasonable easements, zoning restrictions, restrictive covenants, and mineral reservations of record, if any, and agree as follows:

1. Purchase Price: The Purchase Price shall be \$ 700,000, and the method of payment as follows: \$ _____ with this offer; and \$ 2500 upon acceptance of this offer and unless otherwise agreed to in writing, both amounts to be held in trust by listing broker and the balance of the purchase price as designated below.

A. New Mortgage: This Agreement is contingent upon Buyers obtaining a commitment in writing for a Purchase/Construction mortgage for not more than 62.5 % of the purchase price with note interest at 8 % or less with a term no less than 5 yr. balloon years. Buyers agree to pay all customary loan costs. Buyers agree upon acceptance of this offer to immediately make application for such mortgage with a lender and to make their best effort to obtain a mortgage commitment as above provided. Sellers agree to pay a discount and/or origination fee, if required, of _____ % of the new mortgage obtained by Buyers. If Buyers have not obtained a written commitment or loan denial on or before 2-27, 2004, Sellers may rescind this Agreement by giving written notice to the Buyers, or Buyer's Agent, stating that if a mortgage commitment has not been obtained within 5 business days of receipt of such notice then this Agreement shall be null and void. If Sellers do not choose to give such written notice, then this Agreement shall remain valid until the Buyers have obtained a mortgage commitment or denial. In addition to the proceeds of aforementioned mortgage, Buyers shall pay the balance of purchase price in cash at the time of closing with an adjustment for closing costs to be added or deducted from this amount.

Sellers acknowledge and agree that the property will be taken off the market until Sellers receive notice of a mortgage commitment or denial from Buyers.

- B. Contract: See Attached Addendum.
- C. Assumption of Mortgage or Contract: See Attached Addendum.
- D. Cash: Buyers will pay the balance of the purchase price in cash at the time of closing with adjustment for closing costs to be added or deducted from this amount. This Agreement is not contingent upon the Buyers obtaining such funds. Sellers shall have the right to receive a verification of such funds.
- E. Appraisal: This Agreement is contingent upon the property appraising by the Buyers or the lender's appraiser at or above the purchase price.
- F. Subject to Sale: See attached Addendum
- G. Other Terms of Purchase: see attached Addendum

2. This offer is contingent upon Buyers closing and obtaining proceeds from the pending sale of their home located at _____

3. Possession and Closing: Closing shall take place on or about 3-15, 2004. Possession shall take place on 3-15, 2004. Adjustment of interest, rents and all charges attributable to the Sellers' possession are to be made of like date. Closing shall occur after approval of title and Prior to Possession. If for any reason possession is before or after the day of closing, the parties shall sign an occupancy agreement and make a separate agreement with adjustments as of the date of possession. This transaction shall be considered closed upon delivery of documents required to convey marketable title and receipt of all funds by the listing broker.

4. Taxes:
- A. Sellers shall pay all real estate taxes that are liens for prior years and all those that are due and payable in the fiscal year in which possession is given.
 - B. Sellers shall pay their pro-rated share, based upon date of closing, of the real estate taxes for the fiscal year in which closing occurs due and payable in the subsequent fiscal year. Buyers shall be given credit for such pro-ration at closing based upon the last known actual real estate taxes according to public record. However, if such taxes are not based upon the full assessment of the present property improvements or the tax classification as of closing, such pro-rations shall be based on the current millage and the assessed value as shown by the Assessor's Records on the date of closing. In the event of such partial assessment, it shall be the duty of Sellers to so notify Buyers and the listing agent.
 - C. If this Agreement is for a real estate installment contract, the tax adjustment (provided for in Paragraph B above) shall be as set forth on the Attached Addendum.

Buyer(s) Initials [Signature]

Seller(s) Initials KCS RJ

ADDRESS OF PROPERTY: 16th Ave + US Hwy 169 + 22

5. **Special Assessments:** Sellers shall pay in full all special assessments that are certified as liens on the public record at closing. Any preliminary or deficiency assessments which cannot be discharged by payment shall be paid through an escrow account with sufficient funds to pay such liens when payable with any unused funds to be returned to Sellers. All charges for solid waste removal, sewage, and assessments for maintenance that are attributable to Sellers' possession shall be paid by Sellers.

6. **Duties of Parties:**

- A. Neither Iowa Realty nor the listing broker, if different, its agents, employees, and associates make any representations or warranties as to the physical condition of the property, its size, future value, or income potential.
- B. Sellers and Buyers acknowledge that Sellers of real property have a legal duty to disclose Material Defects of which Sellers have actual knowledge and which a reasonable inspection by Buyers would not reveal.

7. **Condition of Property: Federal law (known as Title X) requires notification of potentially dangerous levels of lead-based paint in properties built prior to 1978 (See Lead-Based Paint Disclosure). If applicable, SELLERS will provide BUYERS with copies of any records or prior test results pertaining to lead-based paint.**

A. The property as of the date of this Agreement including buildings, grounds, and all improvements will be preserved by Sellers in its present condition until possession, ordinary wear and tear excepted. Buyers shall be permitted to make inspection of the property prior to possession or closing, whichever is sooner, in order to determine that there has been no change in the condition of the property.

B. Buyers may choose one of the following alternatives relative to the condition and quality of the property:

1. On or before _____, 20_____, (not to exceed 10 days after the final acceptance date), Buyers may, at their sole expense, have the property inspected by a person or persons of their choice to determine if there are any structural, mechanical, plumbing, electrical, environmental, lead-based paint or other material deficiencies. (This is not to be construed as an inspection to bring an older home into compliance with the current building codes.) Within this inspection period, Buyers must notify in writing Sellers' Agent, as shown herein, of any deficiency or any such deficiencies will be waived. Sellers shall immediately notify Buyers in writing of what steps, if any, Sellers will take to correct any deficiencies before closing. The Buyers shall then immediately in writing notify Seller's Agent that (1) such steps are acceptable, in which case this Agreement, as so modified, shall be binding upon all parties; or (2) that such steps are not acceptable, in which case this Agreement shall be null and void.

Buyer's Initials _____

Seller's Initials _____

2. Buyers acknowledge that they have made a satisfactory inspection of the property, have been advised and encouraged by their agent to obtain an inspection and understand the importance of an inspection and are purchasing the property in its existing condition, and voluntarily waive their right to an inspection.

C. Sellers to provide home warranty for Buyer? Yes No Cost of Warranty \$_____ Warranty Provider _____

D. If the improvements on the subject property are under construction, already constructed or are to be constructed, this Agreement shall be subject to approval of plans and specifications by the parties within _____ days of final acceptance of this Agreement. New construction shall have the warranties specifically made by suppliers of materials/appliances, or specifically tendered by the contractor. Neither Iowa Realty nor the listing broker, if different, nor their agents make warranties as to the quality of construction or materials. Other than the express warranties specifically made by suppliers of materials and/or appliances, or specifically tendered by the contractor, there are no implied or express warranties with regard to such construction.

8. **Wood Destroying Pest Inspection:** If the subject property is a one to four family residential dwelling, Sellers at their expense shall have the property, including fences, trees, shrubs, outbuildings and garages, inspected for termites and other wood destroying insects by a licensed termite inspector prior to closing. If active wood-destroying infestation or damage, due to prior infestation is discovered, Sellers shall have the option of either having the property treated for infestation by a licensed pest exterminator and having any damage repaired to Buyers' satisfaction, or declaring this Agreement void. Provided, however, Buyers may accept the property in writing in its existing condition without such treatment or repairs.

9. **Included Property:** Included with the property shall be all fixtures that integrally belong to, are specifically adapted to or are 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, venetian blinds, awnings, storm windows, storm doors, screens, television antennas, air conditioning equipment (except window type), 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: _____

The following items shall not be included: _____

10. **Survey:** Buyers may, have the property surveyed at their expense not to exceed ten days after the final acceptance of this agreement. If the survey, certified by a Registered Land Surveyor, shows any encroachment on said property or if any improvements located on the subject property encroach on the land of others, such encroachments shall be treated as a title defect.

11. **Insurance:** Sellers shall bear the risk of loss or damage to the property prior to closing or possession, whichever occurs first. Sellers agree to maintain existing insurance and Buyers may purchase additional insurance. In the event of substantial damage or destruction prior to closing, this Agreement shall be null and void, unless otherwise agreed by the parties. The property shall be deemed substantially damaged or destroyed if it cannot be restored to its present condition on or before the closing date, provided, however, Buyers have the right to complete the closing and receive insurance proceeds regardless of the extent of damages.

Buyer(s) Initials _____

Seller(s) Initials _____

ADDRESS OF PROPERTY: 16th Ave & US Hwy 169+92

12. **Deed/Joint Tenancy:** Upon full payment of the purchase price, Seller shall deliver to Buyer a general warranty deed to this property. If Sellers' title is held in joint tenancy, this Agreement shall not sever such joint tenancy. If Buyers are husband and wife, their interest hereunder shall be held in joint tenancy unless otherwise specifically indicated.

13. **Abstract and Title:** Sellers shall promptly provide an abstract of title continued to and including the date of acceptance of this Agreement. Such abstract shall be delivered to an attorney for a title opinion for the Buyers, such attorney to be selected by the Buyers or their mortgagee. In lieu of the foregoing, Sellers may give evidence of title by the purchase of an owner's title insurance policy for Buyers or lender may purchase, or require Buyer to purchase, a title insurance policy to protect the lender's interest in the property. Sellers agree to make every reasonable effort to promptly perfect the title in accordance with such opinion or title policy so that upon conveyance, title shall be deemed marketable in compliance with this Agreement and the land title laws of the State of Iowa or the title policy. If closing is delayed due to Sellers' inability to provide marketable title, this Agreement shall continue in full force and effect until either party rescinds the Agreement after giving 10 days written notice to the other party and the brokers. Sellers shall not be entitled to rescind unless they have made a reasonable effort to produce marketable title.

14. **Remedies of the Parties:** If Sellers fail to fulfill this Agreement, Buyers shall have the right to have all payments returned, and/or to proceed by any action at law or in equity, and if Buyers prevail, then Sellers agree to pay costs and reasonable attorney fees. Listing broker may maintain an action at law against Sellers for the collection of listing broker's commission. If Buyers fail to fulfill this Agreement, Sellers may, but are not required to, forfeit the same as provided in Chapter 656 of the Code of Iowa, and all payments made herein shall be forfeited, or Sellers may proceed by an action at law or in equity and, if Sellers prevail, then Buyers agree to pay costs and reasonable attorney fees. Although broker is not a party to this Agreement, broker shall be deemed a third party beneficiary to this Agreement and may maintain an action at law against Buyers for the collection of broker's commission. Closing of this Agreement is contingent upon payment in full of listing broker's commission.

15. **Court Approval:** If the property is an asset of any estate, trust or conservatorship, this Agreement is contingent upon Court approval unless declared unnecessary by Buyers' attorney. If necessary, the appropriate fiduciary shall promptly obtain Court approval and conveyance shall be made by Court Officer's Deed.

16. **Funds:** It is agreed that at time of closing, funds of the purchase price received from Buyers and/or Buyers' lender may be used to apply to the purchase price and to pay taxes, other liens and closing costs including the broker's commission, same to be handled under supervision of listing broker and subject to approval of Buyers' attorney on title questions needed to produce marketable title. If needed, Sellers hereby appoint listing broker to receive such funds and direct such payments and disbursements.

17. **General Provisions:** In the performance of each part of this Agreement, time shall be of the essence. This Agreement shall be binding on and is for the benefit of the heirs, executors, administrators, assigns and successors in interest of the respective parties. This Agreement shall survive the closing. Paragraph headings are for the convenience of reference and shall not limit nor affect the meaning of this Agreement.

18. **Mediation:** If initiated, Buyers and Sellers agree that in the event of a dispute or claim arising out of or relating to this Agreement, the dispute or claim shall, before exercising any other legal remedies, be submitted to mediation in accordance with the Rules and Procedures of the Des Moines Area Association of REALTORS@Homesellers/Homebuyers Dispute Resolution System which rules have been delivered to the parties hereto.

Buyers' _____ Sellers' _____ (Initialing or not initialing does not constitute a counteroffer.)

19. **Other Provisions:** _____

bx
5 PM

20. **Acceptance:** When accepted, this Agreement shall become a binding contract. If this offer is not accepted on or before 2-14, 2004, it shall become null and void and all payments shall be repaid to Buyers without liability on the part of any broker to either party. If accepted by Sellers on a later date and such acceptance is ratified in written or other form by Buyers, then this Agreement shall be valid and binding.

We, the Sellers, hereby accept this offer this _____ day of _____, 20____.

See Counteroffer.

21. **Notice:** Any notice required under this Agreement shall be deemed given when it is received in writing either by hand delivery, by facsimile or by certified mail return receipt requested. Persons designated for receipt of any notice for the purpose of this Agreement shall be Sellers and Buyers at the addresses set forth below or their agents.

22. **Broker's Administrative Commission:** If this agreement is accepted, Buyers agree to pay Iowa Realty at closing an administrative commission of \$70.

Tiedj Linden Development Group, LLC
Buyer _____ Social Security # _____
Buyer _____ Social Security # _____
113 N John Wayne Dr
Address _____
Winterset IA 50273
Telephone # _____ Fax # _____
Brett Smith
Selling Agent Name _____ Listing Agent Name _____

NEW BEGINNINGS DEVELOPMENT GROUP LLC
Seller _____ Social Security # _____
Kevin Shuman
Seller _____ Social Security # _____
Kim Zofaris
Address _____ Telephone # _____ Fax # _____
Iowa Realty CO, INC.
Listing Broker Name _____

Seller: New Beginnings Development Group, LLC

Buyer: Tiercalinda Development Group, LLC

Address of Property: 16th Ave + US Hwy 169+92

Date of Purchase Agreement: 2-13-, 2004

The undersigned parties agree to the above-described Purchase Agreement (a copy of which is attached hereto) with the following changes:

- 1. Change of Purchase Price: _____
- 2. Change of Closing Date: _____
- 3. Change of Possession Date: _____
- 4. Other Changes: 1. Seller to be given title to 1 lot of buyers choice in phase 2 of development.
2. Seller to be given title to 1 lot of buyers choice in phase 3 of development.

In all other respects, the attached Purchase Agreement is accepted. If this Counter Offer is not executed by both Buyer and Seller by 5 o'clock P.M. on 2-17, 2004 it shall be deemed null and void and all payments shall be returned to Buyer.

Executed at 4:03 o'clock P.M. on February 16, 2004.
Tiercalinda Development Group, LLC

by <u>[Signature]</u>	<u>2-16-04</u>	Buyer	by _____	_____	Seller
Buyer	Date	Buyer	by _____	_____	Date

Executed at _____ o'clock _____M. on _____, 20____.
New Beginnings Development Group, LLC

by _____	_____	Seller	by _____	_____	Seller
Manager	Date	Manager	by _____	_____	Date

Seller: New Beginnings Development Group, LLC.

Buyer: Tiercalinda Development Group, LLC.

Address of Property: 16th Ave + US Hwy 169 + 92

Date of Purchase Agreement: 2-13-04

The following additional terms and conditions are hereby incorporated into the above-described Purchase Agreement:

1. Seller to pay off First Mortgage.
2. Buyer to negotiate + pay all other liens of record to buyer's satisfaction at or before closing.
3. Buyer will also pay + obtain release from Shyock excavating.
4. Buyer to obtain letter from City of Winterset stating TIF Funds will go to new purchaser.
5. All drawings, plans, permits + material provided to + for property will transfer ownership to buyer.
6. Letter of Intent from City of Winterset to purchase outlot 3 at \$107,000 by 4-1-04.

Tiercalinda Development Group, LLC

[Signature]
Buyer Date 2-13-04

NEW BEGINNINGS DEVELOPMENT GROUP LLC
Seller Date 2-14-04

1
Buyer Date

[Signature]
Seller Date 2-14-04
[Signature]
Date 2-14-04

Seller: New Beginnings Development Group, LLC

Buyer: Tiesalinda Development Group, LLC

Address of Property: 16th Ave + US Hwy 169+92

Date of Purchase Agreement: 2-13-04, 2004

The undersigned parties agree to the above-described Purchase Agreement (a copy of which is attached hereto) with the following changes:

1. Change of Purchase Price: _____
2. Change of Closing Date: _____
3. Change of Possession Date: _____
4. Other Changes: 1. Seller to be given title to 1 lot of buyers choice in phase 1 of development.
2. Seller to be given title to 1 lot in phase 2 + 2 lots in phase 3 of development. Lots to be chosen by buyer.

In all other respects, the attached Purchase Agreement is accepted. If this Counter Offer is not executed by both Buyer and Seller by 5 o'clock P.M. on 2-16, 2004, it shall be deemed null and void and all payments shall be returned to Buyer.

Executed at _____ o'clock _____ M. on _____, 20____.

Buyer _____ Date _____ Buyer _____ Date _____

New Beginnings Development Group, LLC,
Executed at 10:20 o'clock P.M. on 2-14-, 2004.

by Kevin Johnson _____
Seller Date 2-14-04
Manager

by Kim Johnson _____
Seller Date 2-14-04
Manager

Seller: New Beginning Development Group, LLC

Buyer: Tiercalinda Development Group, LLC

Address of Property: 16th Ave & US Hwy 169 & 92

Date of Purchase Agreement: 2-16-04, 2004

The undersigned parties agree to the above-described Purchase Agreement (a copy of which is attached hereto) with the following changes:

1. Change of Purchase Price: _____
 2. Change of Closing Date: _____
 3. Change of Possession Date: _____
 4. Other Changes: Seller to receive title to no lots in development
- _____

In all other respects, the attached Purchase Agreement is accepted. If this Counter Offer is not executed by both Buyer and Seller by 5 o'clock P.M. on 2-16, 2004 it shall be deemed null and void and all payments shall be returned to Buyer.

Executed at 9:00 o'clock A.M. on 2-16, 2004.

Tiercalinda Development Group, LLC

[Signature] 2-16-04 Buyer Date Buyer Date

Executed at _____ o'clock _____ M. on _____, 20_____.

Seller Date Seller Date

FROM :

FAX NO. :5159992027

Feb. 16 2004 11:35AM P2

FEB-16-2004 MON 08:11 AM

FAX NO.

P. 02

IOWA Realty

Counter Offer

1. The Property Development Group, LLC
2. The Property Development Group, LLC
3. 15th Avenue SE, Unit 169+92
4. 2-16-04

The undersigned parties agree to the above described Purchase Agreement (a copy of which is attached hereto) with the following changes:

1. Change of Purchase Price _____
2. Change of Closing Date: _____
3. Change of Possession Date: _____
4. Other Changes: 1. Seller to be given title on Lot #2
Buyers choice in Phase 2 of development
2. Seller to be given title to Lot of Buyers
Choice in Phase 3 of development

In all other respects, the ATTACHED Purchase Agreement is accepted. If this Counter Offer is not accepted by both Buyer and Seller by _____ at _____, it shall be deemed null and void and all payments shall be returned to Buyer.

Executed at 4:03 o'clock PM on February 16, 2004

by [Signature] Date 2-16-04 Buyer
 Date _____ Seller

Executed at _____ o'clock PM on _____, _____
 by [Signature] Date 2-16-04 Buyer
 by [Signature] Date 2-16-04 Seller

PLEASE SIGN & DATE

EXHIBIT A
Legal Description of Property

A part of Parcel "N" in the Northwest Quarter and the Northeast Quarter of the Southwest Quarter of Section 36, Township 76 North, Range 28 West of the 5th P.M., City of Winterset, Madison County, Iowa more particularly described as follows:

Commencing at the West Quarter Corner of Section 36, Township 78 North, Range 28 West of the 5th P.M., City of Winterset, Madison County, Iowa thence North $00^{\circ}09'54''$ West 1421.94 feet along the West line of the Northwest Quarter of said Section 36 to the Point of Beginning; thence continuing North $00^{\circ}09'54''$ West 1078.61 feet along said West line to a Point on the South right-of-way line of Iowa Highway No. 92; thence South $71^{\circ}46'07''$ East 34.93 feet along said right-of-way line; thence North $27^{\circ}05'26''$ East 98.95 feet along said right-of-way line; thence North $86^{\circ}24'29''$ East 227.66 feet along said right-of-way line; thence North $85^{\circ}43'23''$ East 125.67 feet along said right-of-way line; thence South $76^{\circ}48'36''$ East 11.35 feet along said right-of-way line; thence South $85^{\circ}23'28''$ East 600.97 feet along said right-of-way line; thence South $89^{\circ}56'28''$ East 778.70 feet along said right-of-way line thence South $00^{\circ}16'34''$ East 1344.34 feet; thence South $89^{\circ}53'24''$ West 758.20 feet; thence South $00^{\circ}16'34''$ East 200.00 feet to the North right-of-way line of proposed Benton Street; thence South $89^{\circ}53'24''$ West 407.00 feet along said North right-of-way line; thence North $00^{\circ}16'34''$ West 420.00 feet; thence South $89^{\circ}53'24''$ West 656.66 feet to the Point of Beginning containing 55.441 acres. The area is divided into 38 building lots, Outlot 1, Outlot 2, Lot L-1 which is to be deeded to the Home Owners Associations for Loop I, and the following lots to be dedicated to the City of Winterset; (1) Lot "A" which is a portion of the 16th Avenue right-of-way; (2) Lots "B", "D" and "E" to be used for greenbelt, bike trails, and public utilities; (3) Lot "C" which is all of the new street right-of-way; and (4) Lot "F" which is a sewage pumping station site.