

TAXATION
3
June 2004
Debbie Corleau
DEPUTY RECORDER

DOV# 228

MICHELLE "MICKI" UTSLER, COUNTY RECORDER
MADISON IOWA

✓ This instrument prepared by:
ROSS F. BARNETT, ABENDROTH & RUSSELL, P.C., 2536 - 73rd Street, Urbandale, Iowa 50322
Mail tax statements to:
MARY and DWAYNE SHRUNK, 809 - 16th Street, Ames, Iowa 50010

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RECORDED
COMPARED

PH # (515) 278-0623

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File #WT

REAL ESTATE CONTRACT - INSTALLMENTS

IT IS AGREED this 27 day of May, 2004, by and between **Mary E. Schrunk, formerly known as Mary Klingaman, and Dwayne Schrunk, wife and husband**, of Story County, State of Iowa, Sellers; and **David F. Avery and Diane M. Avery, husband and wife**, of Madison County, State of Iowa, Buyers;

That the Sellers, as in the contract provided, agree to sell to the Buyers, and the Buyers in consideration of the premises, hereby agree with the Sellers to purchase the following-described real estate:

Parcel "A" located in the Southwest Quarter (SW 1/4) of the Southwest Quarter (SW 1/4) of Section One (1), Township Seventy-five (75) North, Range Twenty-nine (29) West of the 5th P.M., Madison County, Iowa, containing 11.775 acres, as shown in Plat of Survey filed in Book 2004, Page 1668 on April 16, 2004, in the Office of the Recorder of Madison County

together with any easements and servient estates appurtenant thereto, but with such reservations and exceptions of title as may be below stated, upon the terms and conditions following:

1. **TOTAL PURCHASE PRICE.** The Buyers agree to pay for said property the total of **\$16,485.00**, due and payable as directed by Sellers, as follows:
 - a. **DOWN PAYMENT** of **\$2,000.00**, receipt of which is hereby acknowledged.
 - b. **BALANCE OF PURCHASE PRICE. \$14,485.00**, as follows:
\$286.82 due and payable on or before **July 1, 2004**, with interest thereon at the rate of **7.0%** per annum; and **\$286.82** due and payable on or before the **1st** day of each and every month thereafter, with interest thereon at the rate of **7.0%** per annum, until the entire unpaid balance of the contract, including principal and accrued interest, is paid in full.
 - c. **ESCROWS.** In addition to the principal and interest payment, the Buyers shall pay **1/12th** of the annual real estate taxes to be paid to the Sellers with the monthly payments into an escrow fund established by the Sellers. Sellers shall use these funds to pay real estate taxes prior to their delinquency, as the same shall come due. The parties shall review and make adjustments in the escrow account during the term of the contract.
 - d. **PREPAYMENT.** This contract shall allow the Buyers to prepay all or any part of the principal without penalty.
 - e. **DUE ON SALE OR ASSIGNMENT.** This contract shall become due and payable in full upon sale or assignment by the Buyers.
 - f. **ACCELERATION.** In the event of default by the Buyers, the Sellers, at their sole option, may accelerate the balance of the contract and require that the entire unpaid balance of the contract, including principal and accrued interest, be immediately due and payable by the Buyers. If the Sellers elect to accelerate the contract, the Sellers may not forfeit the contract, but must proceed with a foreclosure action, as set forth below.
 - g. **BALLOON PAYMENT.** The entire unpaid balance of the contract, including principal and accrued interest, shall become due and payable in full on **June 1, 2005**.

Buyers' Initials

DA
DMA

Sellers' Initials

MS
DA

2. **POSSESSION AND CLOSING.** If Buyers timely perform all obligations, possession of the property shall be delivered to Buyers on or before **May _____, 2004** and any adjustments of rent, insurance, taxes, interest, and all charges attributable to the Sellers' possession shall be made as of the date of possession.
3. **TAXES.** Sellers shall pay real estate taxes prorated to the date of closing and any unpaid taxes thereon payable in prior years. Buyers shall pay any taxes not assumed by Sellers 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 15th 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.** Sellers shall pay the special assessments against this property which are a lien thereon as of the date of closing. Buyers, except as above stated, shall pay all subsequent special assessments and charges, before the same become delinquent.
5. **CONDITION OF PROPERTY.** Sellers are selling this property in "as-is" condition. Buyers acknowledge that they have inspected the property, have examined all official plat documents, including easements of record, and applicable restrictive covenants, and are familiar with all aspects and conditions of the property. Buyers accept the property in its current condition and acknowledge that the property satisfies their need, intent, and plans for use.
5. **CARE OF PROPERTY.** Buyers 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. **Buyers shall not make any material alteration in said premises without the written consent of the Sellers,** which consent shall not be unreasonably withheld. Buyers shall not use or permit the premises to be used for any illegal purpose.
6. **INSURANCE.** Except as may be otherwise included above, Buyers as and from said date of possession, shall constantly keep in force insurance, premiums for which shall be prepaid by Buyers (without notice or demand) against loss by fire, tornado and other hazards, casualties and contingencies as Sellers 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 Sellers 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 Sellers and Buyers as their interests may appear. **BUYERS SHALL PROMPTLY DEPOSIT SUCH POLICY WITH PROPER RIDERS WITH SELLERS** 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 Sellers 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. **LIENS.** No mechanics' liens shall be imposed upon or foreclosed against the real estate described herein. The imposition of a mechanic's lien against the property shall be considered a default event.
8. **ADVANCEMENT BY SELLERS.** If Buyers fail 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 as advanced may, at the election of Sellers, be added to the principal amount due hereunder and so secured.
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 note as tenants in common; and Buyers, 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 him or them consistent with paragraph 14 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 Iowa Code Section 581.13; and the use of the word "Sellers" in the printed portion of this 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.

Buyers' Initials

Sellers' Initials

11. **TIME IS OF THE ESSENCE.** Time is of the essence in this contract. 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. **Sellers and Buyers agree that the provisions of the balloon payment, above, shall be strictly enforced.**
12. **EXCEPTIONS TO WARRANTIES OF TITLE.** The warranties of title in any Deed made pursuant to this contract 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 prior paragraphs of this contract; (e) Sellers shall give Special Warranty as to the period after equitable title passes to the Buyers; (f) Spouse if not titleholder, need not join in any warranties of the Deed unless otherwise stipulated.
13. **DEED AND ABSTRACT.** 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 Buyers have been complied with, Sellers will execute and deliver to Buyers a **General Warranty Deed** conveying said premises in fee simple pursuant to and in conformity with this contract and Sellers will at this time deliver to Buyers 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 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. This contract supersedes the previous written Offer to Buy. 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.
14. **APPROVAL OF ABSTRACT.** Buyers have examined the abstract of title to this property and such abstract is accepted.
15. **REMEDY ON DEFAULT – BUYERS.** If the Sellers fail to perform under the terms of this contract, including but not limited to failing to convey as provided in the contract or failing to provide marketable title at the time of the conveyance, the Buyers may elect from the following remedies:
 - a. Buyers may maintain an action for specific performance against the Sellers and may bring an action for damages along with an action for specific performance.
 - b. Buyers may rescind the contract and recover restitution from the Sellers. The parties acknowledge that the Buyers may be entitled to a lien upon the subject property for the amount of payment, plus interest, and improvements.
 - c. Buyers may maintain an action at law for money damages against the Sellers.

The Buyers may have other legal or equitable remedies for the Sellers' default of this contract.

16. **DEFAULT BY BUYERS.** If the Buyers fail to perform under the terms of this contract, the Sellers may have remedies against the Buyers. Such default by the Buyers includes, but is not limited to the following:
 - a. failing to make the payments aforesaid, or any part thereof, as the same shall become due;
 - b. failing to pay the real estate taxes or special assessments and charges, or any part thereof, levied upon the subject property, or assessed against it, by any taking body, as the same shall become due and before the same shall become delinquent
 - c. failing to keep the property insured with homeowner's (hazard) insurance in the amounts required by the Seller, or failing to provide written evidence to the Sellers of the payment of such hazard insurance premiums;
 - d. failing to keep the property in reasonable repair as herein required;
 - e. failing to perform any of the agreements as herein made or required.
17. **REMEDY ON DEFAULT – SELLERS.** If the Buyers fail to perform under the terms of this contract, including but not limited to the above-referenced default events, the Sellers may elect from the following remedies:
 - a. Sellers may foreclose on the contract in the same manner as a mortgage, pursuant to Iowa Code §§654.11 and 654.12. The Sellers, at their sole option, may accelerate the unpaid balance of the contract, as set forth above.
 - b. Sellers may terminate the contract and sue the Buyers for breach of contract. The Sellers may be entitled to recover special or consequential damages as a result of the Buyers' breach.

Buyers' Initials

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DMA

Sellers' Initials

MS
DS

- c. Sellers may maintain an action for specific performance against the Buyers and may bring an action for damages along with an action for specific performance.
- d. Sellers may rescind the contract and return all payments to the Buyers. The parties acknowledge that the Buyers may be entitled to a lien upon the subject property for the amount of payment, plus interest, and improvements.
- e. 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 (Iowa Code Chapter 656). Upon completion of such forfeiture, Buyers shall have no right of reclamation or compensation for money paid, or improvements made; but such payments and/or 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.

18. **STATUS OF BUYERS UPON FORFEITURE.** Upon default being made in the payment of the purchase money by the Buyers, and upon the forfeiture of this contract by the Sellers, the parties expressly agree that this contract shall be treated as a lease. Upon the completion of the forfeiture, the Buyers shall at once peacefully remove themselves from possession of the subject property and, upon the Buyers' failure to do so, the Buyers may be treated as tenants holding over unlawfully after the expiration of the lease and may be ousted or removed as such.

The parties expressly agree that, upon the giving of a written three-day notice to quit, as provided in Iowa Code §648.3, the Buyers shall at once peacefully remove themselves from possession of the subject property. If the Buyers fail to do so, the Sellers may proceed with a Forcible Entry and Detainer Action, as provided in Iowa Code Chapter 648. **Because the Buyers are treated as tenants holding over, the parties expressly acknowledge that the District Court sitting in small claims shall have concurrent jurisdiction over any Forcible Entry and Detainer action, under the provisions of Iowa Code Chapter 631.**

19. **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 Buyers, or imposed upon them, or upon the above-described property, buyers agree to pay reasonable attorneys' fees.
20. **CONSTRUCTION.** Words and phrases here, including acknowledgments hereof, shall be construed as in the singular or plural number, and as masculine, feminine, or neuter gender, according to the context.
21. **ENTIRE AGREEMENT.** This contract constitutes the entire agreement between the Sellers and the Buyers.
22. **SPECIAL PROVISIONS.**
- a. Buyers shall maintain the fence on the West boundary of the property.
 - b. Sellers reserve two gates on the farm. These gates shall not be included in the purchase.

Buyers' Initials

Sellers' Initials

STATE OF IOWA)
) SS:
COUNTY OF Madison)

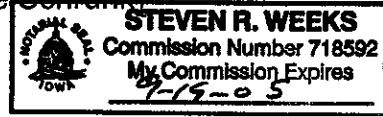
Dated: 5/27/04

On this 27 day of May, 2004,
before me the undersigned, a Notary Public in
and for said State, personally appeared **Mary E.
Schrunk, formerly known as Mary
Klingaman, and Dwayne Schrunk, wife and
husband**, to me known to be the identical
persons named in and who executed the
foregoing instrument and acknowledged that
they executed the same as their voluntary act
and deed.

Mary E. Schrunk
Mary E. Schrunk, formerly known as
Mary Klingaman

Dwayne Schrunk
Dwayne Schrunk

Steven R. Weeks
Notary Public in and for the State of Iowa



STATE OF IOWA)
) SS:
COUNTY OF Iowa)

Dated: June 1, 2004

On this 1st day of June, 2004,
before me the undersigned, a Notary Public in
and for said State, personally appeared **David
F. Avery and Diane M. Avery, husband and
wife**, to me known to be the identical persons
named in and who executed the foregoing
instrument and acknowledged that they
executed the same as their voluntary act and
deed.

David F. Avery
David F. Avery

Diane M. Avery
Diane M. Avery

Connie Harvey
Notary Public in and for the State of Iowa



Buyers' Initials

DS
DMA

Sellers' Initials

MS
DS