

FILED NO. **000040**

BOOK **2002** PAGE **40**

2002 JAN -4 AM 10:06

COMPUTER
RECORDED
COMPARED

REC \$ **25⁰⁰**
AUD \$ **5⁰⁰**
R.M.F. \$ **1⁰⁰**

MICKI UTSLER
RECORDER
MADISON COUNTY, IOWA

Preparer Information: Douglas D. Daggett, P.C., 501 W. Taylor, Creston, IA 50801-0404; 641-782-3170
Individual's Name Street Address City Phone

REAL ESTATE CONTRACT-INSTALLMENTS

IT IS AGREED this 29th day of November, 2001, by and between:

Dennis G. Daggett and Cynthia R. Daggett, husband and wife, as joint tenants with full rights of survivorship, **Sellers**; and

Greg Livingston and Darcy Livingston, husband and wife, as joint tenants with full rights of survivorship, **Buyers**.

That the Sellers, as in this 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 situated in Madison County, Iowa, to-wit:

Parcel B in the Southeast Quarter of the Northwest Quarter of Section Twenty-five (25), Township Seventy-six (76) North, Range Twenty-seven (27) West of the Fifth P.M., Madison County, Iowa as shown by Plat of Survey dated February 26, 1998 and recorded by the Madison County Recorder on February 26, 1998 in Plat Book 3 at Page 189. (ten acres m/l)

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 if and as may be herein described or if and as an itemized list is attached hereto and marked "Exhibit A" all upon the terms and conditions following:

1. **TOTAL PURCHASE PRICE.** The Buyers agree to pay for said property the total of \$10,000.00 due and payable at 2262 Carver Road, Winterset, Iowa, or such other place as designated by Sellers as follows:

(a) **DOWN PAYMENT of \$0.00. RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED:** and

(b) **BALANCE OF PURCHASE PRICE.** \$10,000.00, as follows:

The balance of the purchase price shall be paid by in kind payments as valued by the formula set forth below in sub-paragraph 1(c) and shall not accrue interest.

Each installment shall be used first to pay any expense due Sellers hereunder, and the remainder of each installment shall be applied to reduce the principal balance of the purchase price.

Provided, however, Buyers may prepay the remaining unpaid balance in cash at any time after January 1, 2007. Buyers may not make unscheduled partial payments without the prior written consent of Sellers.

(c) **PAYMENT TERMS.** The initial payment due to Sellers on or before December 31, 2001 is delivery of one market size hog.

Subsequent payments shall be the annual delivery of one market size steer between August 15 and October 15 beginning in the calendar year 2002 and in each year thereafter provided that all sums due hereunder shall be paid not later than December 31, 2021. Buyers and Sellers shall mutually agree upon the date of delivery and the identity of the meat processor not less than fourteen days prior to the date of delivery each year. Sellers shall pay for all meat processing costs.

The value of each in-kind, installment payment above-described will be determined by weighing the animal immediately prior to delivery to a meat processor and multiplying the weight by the daily high market price for that animal as published by the *Des Moines Register* for Iowa delivery points on the date of delivery. Sellers shall provide Buyers a receipt verifying credit for each installment payment and identifying the balance due within thirty days after delivery.

Buyers shall pay all transaction costs related to this transaction at the time of closing and at the time of final payment.

2. **POSSESSION.** Buyers, concurrently with due performance on their part shall be entitled to possession of said premises on the date of closing, and thereafter so long as they shall perform the obligations of this contract. If Buyers are taking subject to the rights of lessees and are entitled to rentals therefrom on and after date of possession, so indicate by 'yes' in the space following:

yes

3. **TAXES.** Buyers shall pay all property taxes assessed against the property at the time of closing and all future taxes that are unpaid but not yet delinquent.

4. **SPECIAL ASSESSMENTS.** Buyers shall pay the special assessments against this property:

~~(a) Which if not paid, in the year 2001, would become delinquent and all assessments payable prior thereto.~~

(b) Which are liens thereon as of January 1, 2001.

(c) Including all sewage disposal assessments for overage charge heretofore assessed by any municipality having jurisdiction as of date of possession.

Buyers, except as above stated, shall pay all subsequent special assessments and charges, before they become delinquent.

5. **MORTGAGE.** Any mortgage or encumbrance of a similar nature against the said property shall be timely paid by Sellers so as not to prejudice the Buyers' equity herein. Should Sellers fail to pay, Buyers may pay any such sums in default and shall receive credit on this contract for such sums so paid. **MORTGAGE BY SELLERS.** Sellers, their successors in interest or assigns may, and hereby reserve the right to at any time mortgage their right, title or interest in such premises or to renew or extend any existing mortgage for any amount not exceeding 100% of the then unpaid balance of the purchase price herein provided. The interest rate and amortization thereof shall be no more onerous than the installment requirements of this contract. Buyers hereby expressly consent to such a mortgage and agree to execute and deliver all necessary papers to aid Sellers in securing such a mortgage which shall be prior and paramount to any of Buyers' then rights in said property. **DEED FOR BUYERSS SUBJECT TO MORTGAGE.** If Buyers have reduced the balance of this contract to the amount of any existing mortgage balance on said premises, they may at their option, assume and agree to pay said mortgage according to its terms, and subject to such mortgage shall receive a deed to said premises; or Sellers, at their option, any time before Buyers have made such a mortgage commitment, may reduce or pay off such mortgage. **ALLOCATED PAYMENTS.** Buyers, in the event of acquiring this property from an equity holder instead of a holder of the fee title, or in the event of a mortgage against said premises, reserve the right, if reasonably necessary for their protection to divide or allocate the payments to the interested parties as their interests may appear. **SELLERS AS TRUSTEES.** Sellers agree that they will collect no money hereunder in excess of the amount of the unpaid balance under the terms of this contract less the total amount of the encumbrance on the interest of Sellers or their assigns in said real estate; and if Sellers shall hereafter collect or receive any moneys hereunder beyond such amount, they shall be considered and held as collecting and receiving said money as the agent and trustee of the Buyers for the use and benefit of the Buyers.

6. **INSURANCE.** Except as may be otherwise included in the last sentence of paragraph 1(b) above, Buyers as and from said date of possession, shall constantly keep in force insurance, premiums therefore to 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. **BUYERSS 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. **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. Buyers shall not use or permit said premises to be used for any illegal purpose.

8. **LIENS.** No mechanics' lien shall be imposed upon or foreclosed against the real estate described herein.

9. **ADVANCEMENT BY SELLERS.** If Buyers fail to pay such taxes, special assessments and insurance and effect necessary repairs, as above agreed, Seller 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. (For Buyers' rights to make advancements, see paragraph 5.)

10. 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 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.

11. 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.

12. 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.

13. EXCEPTIONS TO WARRANTIES OF TITLE. The warranties of title in any Deed made pursuant to this contract (See paragraph 14) 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 Buyers; (f) Spouse if not titleholder, need not join in any warranties of the deed unless otherwise stipulated:

14. 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 Buyers have been complied with, Sellers will execute and deliver to Buyers a Warranty Deed conveying said premises in fee simple pursuant to and in conformity with this contract and Sellers will at that 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 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. 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 Buyers, Sellers shall execute and deliver a Bill of Sale consistent with the terms of this contract. Sellers shall pay all taxes on any such personal property payable in 1998 and all taxes thereon-payable prior thereto.

15. APPROVAL OF ABSTRACT. Sellers have created a root of title abstract for this parcel on September 5, 2001, which abstract shows merchantable title in Sellers. Buyers have not examined the abstract of title to this property, and Buyers have not accepted said abstract. Seller will deliver the abstract and deed to Buyers upon payment in full of all sums due hereunder. Any future abstracting will be the responsibility of Buyers.

16. FORFEITURE. If Buyers (a) fail to make the payments aforesaid, or any part thereof, as same become due; or (b) fail 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) fail to keep the property insured; or (d) fail to keep it in reasonable repair as herein required; or (e) fail 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 Buyers 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 Buyers, 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.

17. FORECLOSURE AND REDEMPTION. 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 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 Buyers shall be presumption that the property is not abandoned. Any such redemption period shall be consistent with all of the provisions of Iowa Code Chapter 628. This paragraph shall not be construed to limit or otherwise affect any other redemption provisions contained in Iowa Code Chapter 628

18. 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 attorney's fees.

19. INTEREST ON DELINQUENT AMOUNTS. Either party will pay interest at the highest legal contract rate applicable to a natural person to the other on all 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.

20. ASSIGNMENT. In case of the assignment of this contract by either of the parties, prompt notice shall be given to the other parties, who shall at the time of such notice be furnished with a duplicate of such assignment by such assignors. 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.

21. PERSONAL PROPERTY. If this contract includes the sale of any personal property, then in the event of the forfeiture or foreclosure of this contract, such personalty shall be considered indivisible with the real estate above described; and any such termination of Buyers' rights in said real estate shall concurrently operate as the forfeiture or foreclosure hereto against all such personal property.

22. 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 11 above, for construction of the word "Sellers."

23. RELEASE OF RIGHTS. Each of the Buyers 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.

24. SPECIAL PROVISIONS. ACCELERATION. Buyers hereby agrees that the remaining balance of the purchase price and any other amounts then due and owing shall be paid in full if he in any way sells, assigns, or otherwise conveys any part or all of the interest which he may have acquired in the afore-described real estate unless the sellers consent in writing thereto.

Furthermore, Buyers expressly agree that they will not place any mortgage, judgment, or lien against this real estate without the prior written consent of the Sellers.

Sellers will purchase the materials necessary to put in a line fence constructed with five barbwire to be placed upon a wood/steel/steel post pattern. If Buyers elect to erect a fence using woven wire, Buyers will be responsible for the cost of fencing materials above the barbwire materials described heretofore.

WAIVER OF HOMESTEAD EXEMPTION

I UNDERSTAND THAT HOMESTEAD PROPERTY IS IN MANY CASES PROTECTED FROM THE CLAIMS OF CREDITORS AND EXEMPT FROM JUDICIAL SALE; AND THAT BY SIGNING THIS CONTRACT, I VOLUNTARILY GIVE UP MY RIGHT TO THIS PROTECTION FOR THIS PROPERTY WITH RESPECT TO CLAIMS BASED UPON THIS CONTRACT.


Greg Livingston


Darcy Livingston

DATED this 14 day of December, 2001.

Dennis G. Daggett
Dennis G. Daggett
2262 Carver Road
Winterset, IA 50273

Greg Livingston
Greg Livingston
2054 Rustic Lane
Winterset, IA 50273

Cynthia R. Daggett
Cynthia R. Daggett
2262 Carver Road
Winterset, IA 50273

Darcy Livingston
Darcy Livingston
2054 Rustic Lane
Winterset, IA 50273

STATE OF IOWA, Pack COUNTY) ss:

On this 29 day of November, 2001, before me, the undersigned, a Notary Public in and for said State, personally **Dennis G. Daggett and Cynthia R. Daggett, 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.

Doris Boot
Notary Public

STATE OF IOWA, Pack COUNTY) ss:

On this 29th day of December, 2001, before me, the undersigned, a Notary Public in and for said State, personally appeared **Greg Livingston and Darcy Livingston, 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.

Nancy Strasburg
Notary Public

DDD:a3552

