



FILED NO. **6118**
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 MICKI UTSLER
 RECORDER
 MADISON COUNTY, IOWA

REC \$ **25.00**
 AUD \$ **51.00**
 R.M.F. \$ **51.00**

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

✓ **Prepared by and Return to:**
 Schemmel Law Offices, P.C., 1163 24th Street Ste 200, Des Moines, IA 50311; 515-255-1444
 Dennis Schemmel ISBA # PK#0004916 SPACE ABOVE THIS LINE FOR RECORDER
Address Tax Statement: David Ross, 1083 Belle Mar Drive, West Des Moines, IA 50266

REAL ESTATE CONTRACT (SHORT FORM)

IT IS AGREED between Robert Trausch and Esther Trausch, husband and wife ("Sellers"); and David Ross, a married person ("Buyers").

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

Lot Twenty-three (23) of Walnut Cove Estates Subdivision, Plat No. 2, located in the Northwest Quarter (1/4) of Section Twenty-five (25), Township Seventy-seven (77) North, Range Twenty-six (26) West of the 5th P.M., Madison County, Iowa



with any easements and appurtenant servient estates, but subject to the following: a. any zoning and other ordinances; b. any covenants, declarations and restrictions of record; and c. any easements of record for public utilities, roads and highways, (the "Real Estate"), upon the following terms:

1. **PRICE.** The total "Purchase Price" for the subject Real Estate is Fifty-Seven Thousand and 00/100 Dollars (\$57,000.00) of which Five Hundred and 00/100 Dollars (\$500.00) has been paid as earnest money and is being held by ReMax Real Estate Group and shall be turned over to the Closing Agent prior to Closing. In addition, BUYERS and SELLERS agree that this real estate installment contract shall carry an initial balance of \$44,900.00 and BUYERS agree to pay monthly payments thereon of \$283.14, (including principal and interest) at the rate of 6.5% per annum with the first monthly payment on November 1, 2003, and continuing monthly thereafter on the first day of each month until March 1, 2005, at which time the entire principal and interest payment shall become due and payable. Buyers shall pay the Sellers at 2225 Fairway Heights, Carroll IA 51401 or as directed by Sellers. Buyers can prepay at any time without penalty. All payments shall first be applied to outstanding interest. The balance of the purchase price, as adjusted, shall be due and payable in cash or certified funds at Closing. Finally, BUYERS will receive a credit from the SELLERS, at closing, for the amount of the transfer tax on this transaction and BUYERS shall then be responsible for the transfer tax when the Special Warranty Deed is filed.

2. **INTEREST.** Buyers shall pay interest from date of possession on the unpaid balance, at the rate of six and a half percent (6.5%) per annum. Buyers shall also pay interest at the rate of ten percent (10.00%) 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 all real estate taxes currently due (09/01/03 installment) and all real estate taxes prorated to the date of possession as well as any unpaid real estate taxes payable in prior years. Sellers shall give Buyers a credit for such proration at Closing and Buyers shall pay all subsequent real estate taxes as they become due and prior to delinquency, the first being the installment due on 03/01/04. Any pro-ration 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 date of execution of this contract. All other special assessments shall be paid by Buyers.

5. POSSESSION AND CLOSING. Sellers shall give Buyers possession of the Real Estate on the date of Closing provided Buyers are not in default under this contract. Closing shall be on or about October 10, 2003.

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 any 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, have promptly obtained an abstract of title to the Real Estate continued through the time of the initial Purchase Agreement and delivered 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. The abstract has been reviewed by Buyers and is accepted, except that all of Sellers' mortgage liens need to be removed at or before the time the balloon payment is made by Buyer hereunder, or upon prepayment of this Contract in full.

8. 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. Notwithstanding the foregoing, Sellers agree to maintain mowing the subject real estate, which is a vacant lot, until and only until Buyers make any kind of improvement to the property or start construction of any improvement, at which time Sellers' obligation is immediately and automatically terminated in full. In addition, the parties agree that this mowing requirement shall

also immediately terminate upon the occurrence of any default by Buyers under this Agreement, and shall not be resurrected by Buyers curing said default(s).

9. **DEED.** Upon payment of purchase price, Sellers shall convey the Real Estate to Buyers or their assignees, by Special Warranty deed, free and clear of all liens, restrictions, and encumbrances except as otherwise noted and except 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.

10. **REMEDIES OF THE PARTIES.** a. 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/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; 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 lease, and may accordingly be ousted and removed as such as provided by law.

b. 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. Upon completion of such 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 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.

c. 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.

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

e. 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.

11. 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 9.

12. 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.

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

14. 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.

15. 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.

16. ADDITIONAL PROVISIONS.

- (A) The Homeowners Association for this development will not assess BUYERS for any monthly dues until June 1, 2004.
- (B) SELLER warrants that the Balloon payment designated hereunder shall not be required by Seller until the electrical utility service and telephone utility service is installed to the lot demarcation at which time the balloon payment requirement specified herein is fully enforceable.
- (C) This Contract shall not be due and payable in full upon sale or assignment by the BUYERS, however BUYERS are not released from liability under this Contract upon a sale or assignment, unless released by Seller in writing.
- (D) Buyers and Sellers agree that once this contract is executed, an exact reproduction of same with the original Abstract of Title together with the original Special Warranty Deed and Escrow Agreement, shall be forwarded to Dennis Schemmel, Schemmel Law Offices, P.C., 1163 24th Street to be held in escrow until Buyers have performed under this Contract. Upon completion of said performance, Sellers, their assignees or representatives, shall advise said Escrow Agent to deliver the Special Warranty Deed and abstract to Buyers for filing at their cost.

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.

Dated: 10-8-03

[Signature]
DAVID ROSS, Buyer

This Agreement executed as of the date first written above.

[Signature]
ROBERT TRAUSCH, Seller

[Signature]
DAVID ROSS, Buyer

[Signature]
ESTHER TRAUSCH, Seller

STATE OF IOWA COUNTY OF POLK :ss

On this 10-8 day of October, 2003, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared **DAVID ROSS, a married person**, to me known to be the identical person(s) named in and who executed the within and foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.

[Signature]
Notary Public

STATE OF IOWA COUNTY OF POLK :ss

On this 8th day of October, 2003, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared **ROBERT TRAUSCH and ESTHER TRAUSCH, husband and wife**, to me known to be the identical persons named in and who executed the within and foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.

[Signature]
Notary Public

