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BOOK 44 PAGE 618

REC \$ 15.00
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MICHELLE UTSLER
RECORDER
MADISON COUNTY, IOWA

When recorded return to: ✓ James C. Johnson,
313 34th St. West Des Moines, Iowa
Prepared by Mark V. Hanson, Attorney at Law, 317 Sixth Ave. Ste. 1200, Des
Moines, Iowa 50311-4110, (515) 288-6041

AFFIDAVIT OF EQUITABLE TITLE TO REAL ESTATE

This affidavit is made for the purpose of explaining title to the following described real estate, located in Madison County, Iowa to wit:

The East Half (1/2) of the West Half (1/2) of the Northwest Fractional Quarter (1/4) of the Southeast Fractional Quarter (1/4) and the South 64 rods of the West 20 rods of the East 40 rods of said Northwest Fractional Quarter (1/4) of the Southeast Fractional Quarter (1/4) of Section Thirty-six (36) in Township Seventy-six (76) North, Range Twenty-six (26) West of the 5th E.M., Madison County, Iowa

STATE OF IOWA, COUNTY OF POLK, ss:

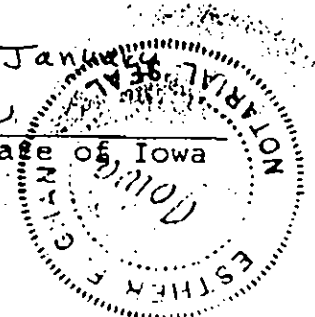
I, James C. Johnson being first duly sworn upon oath, depose and state that am the James C. Johnson that along with my wife, Phyllis A. Johnson, as the Purchasers entered into an Offer to Buy Real Estate and Acceptance Contract with Lester C. Malotcki and Diane J. Malotcki, husband and wife, as Sellers, dated April 24, 1996, a true and accurate copy of which is attached hereto and by this reference incorporated herein. The full and entire purchase price has been paid to Sellers. A warranty deed has not yet been delivered by the Malotcki's to me to record for public record and evidence the transfer of title, but will be as soon as Sellers can be mailed a deed and deliver it to me. I am recording this Affidavit and copy of the Offer to Buy Real Estate and Acceptance Contract to show of public record that James C. Johnson and Phyllis A. Johnson are the equitable title holders to the above described real estate.
Further Affiant sayeth not.

James C. Johnson
James C. Johnson

Subscribed and sworn to before me on this 30 day of January 1998.

Esther E. Ghan
Notary Public in the State of Iowa

ESTHER E. GHAN
MY COMMISSION EXPIRES
May 4, 1998



OFFER TO BUY REAL ESTATE AND ACCEPTANCE CONTRACT

TO: Lester C. Malottki and Diane J. Malottki, Sellers:

1. **REAL ESTATE DESCRIPTION.** The Buyers offer to buy real estate in Madison County, Iowa, described as follows:

The East Half (½) of the West Half (½) of the Northwest Fractional Quarter (¼) and the South 64 rods of the West 20 rods of the East 40 rods of said Northwest Fractional Quarter (¼) of the Southeast Fractional Quarter (¼) of Section Thirty-six (36) in Township Seventy-six (76) North, Range Twenty-six (26) West of the 5th P.M., Madison County, Iowa.

SUBJECT TO RESTRICTIVE COVENANTS, ORDINANCES, AND LIMITED ACCESS PROVISIONS OF RECORD, IF ANY, AND TO EXISTING EASEMENTS, IF ANY. The premises intended to be covered by the terms hereof shall include all buildings, land, rights, easements, and access necessary or appurtenant thereto and owned by Sellers.

FOR the total sum of Fifty Four Thousand Dollars (\$54,000), payable at Des Moines, Iowa, by payment of:

(i) A certified check in the amount of Twenty-Seven Thousand Dollars (\$27,000) sent to Sellers at 8825 Primrose Lane, Clive, Iowa 50325, at any time during the period from January 1, 1997, through January 15, 1997;

(ii) A check in the amount of Twenty-Seven Thousand Dollars (\$27,000) sent to Sellers at 8825 Primrose Lane, Clive, Iowa 50325, at any time during the period from January 1, 1998, through January 15, 1998.

Sellers may notify Buyers in writing of any change in the address to which either of the above payments are to be made. Such notice shall be deemed effective when received by Buyers.

2. **REAL ESTATE TAXES.** Sellers shall pay (i) all real estate taxes due and payable on September 30, 1996; and (ii) all real estate taxes due and payable March 31, 1997. Buyer shall pay all subsequent real estate taxes.

3. **SPECIAL ASSESSMENTS.** Sellers shall pay all installments of special assessments which are a lien on the Real Estate and, if not paid, would become delinquent during the calendar year this offer is accepted, and all prior installments thereof. All other special assessments shall be paid by Buyers.

4. **RISK OF LOSS AND INSURANCE.** Risk of loss shall remain with Sellers, and Sellers shall maintain adequate casualty and liability insurance, until the deed required by paragraph 9 below shall be delivered to Buyers.

5. **CARE AND MAINTENANCE.** The Real Estate shall be preserved in its present condition and delivered intact at the time possession is delivered to Buyers, provided, however, if there is loss or destruction of all or any part of the Real Estate from causes covered by the insurance maintained by Sellers, Buyers agree to accept such damaged or destroyed Real Estate together with such insurance proceeds in lieu of the Real Estate in its present condition and Sellers shall not be required to repair or replace same.

6. **POSSESSION.** If Buyers timely perform all obligations, possession of the Real Estate shall be delivered to Buyers on January 15, 1998; provided, however, that Buyers and/or agents acting on behalf of Buyers shall be permitted to have access to the Real Estate for the purpose of conducting a survey and for any other purpose approved by Sellers. On each occasion when Buyers desire to exercise their right of access pursuant to this paragraph, Buyers shall notify Seller at least 48 hours prior to the anticipated time of entry. Sellers may not unreasonably prohibit Buyers' access.

7. **USE OF PURCHASE PRICE.** At time of settlement, funds of the purchase price may be used to pay taxes and other liens and to acquire outstanding interest, if any, of others.

8. **ABSTRACT AND TITLE.** Sellers, at their expense, shall promptly obtain an abstract of title to the Real Estate continued through the date of acceptance of this offer, and deliver it to Buyers for examination. It shall show merchantable title in Sellers in conformity with this agreement, Iowa law and 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. 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.

9. **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 above provided. Any general warranties of title shall extend only to the time of acceptance of this offer, with special warranties as to acts of Sellers continuing up to time of delivery of the deed.

10. **JOINT TENANCY IN PROCEEDS AND IN REAL ESTATE.** If Sellers, immediately preceding acceptance of this offer, 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 the 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 rights 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 8.

11. 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 share or in compliance with Section 561.13, The Code and agrees to execute the deed or real estate contract for this purpose.

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

13. REMEDIES OF THE PARTIES:

a. If Buyers fail to timely perform this contract, the Sellers may forfeit it as provided in The Code, and all payments made shall be forfeited or, at Sellers option, upon thirty days written notice of intention to accelerate the payment of the entire balance because of such failure (during which thirty days such failure is not corrected), Sellers may declare the entire balance immediately due and payable. Thereafter this contract may be foreclosed in equity and the Court may appoint a receiver.

b. If Sellers fail to timely perform this contract, Buyers have the right to have all payments made returned to them.

c. Buyers and Sellers also are entitled to utilize any and all other remedies or actions at law or in equity available to them and shall be entitled to obtain judgment for costs and attorney fees as permitted by law.

14. CONTRACT BINDING ON SUCCESSORS IN INTEREST. This contract shall apply to and bind the successors in interest of the parties.

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

16. OTHER PROVISIONS. Sellers warrant and represent that to the best of their knowledge and belief the real estate subject to this Offer does not contain any hazardous substances or hazardous conditions within the meaning of any applicable state and/or federal environmental laws and/or regulations. Sellers further warrant and represent that there are no underground storage tanks on the real estate and that no such tanks have been removed from the real estate at any time during Sellers' ownership thereof. In the event any material adverse condition or restriction affecting the real estate should become known to Buyers, this Offer may be voided by them at any time prior to January 1, 1997.

17. ACCEPTANCE DATE. When accepted by the Sellers, this offer shall become a binding contract for the sale and purchase of the above described property.

DATED: April 22, 1996

Phyllis A. Johnson
Phyllis A. Johnson

James C. Johnson
James C. Johnson

Sellers hereby accept the above this ²²24 day of *April*, 1996.

Lester C. Malottki
Lester C. Malottki

Diane J. Malottki
Diane J. Malottki

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