

2052

REAL ESTATE CONTRACT - INSTALLMENTS

IT IS AGREED this 12<sup>th</sup> day of April, 1990, by and between FARM CREDIT BANK OF OMAHA, a corporation, of the County of Douglas, State of Nebraska, Sellers; and LESTER L. BIGELOW AND MARY KATHRYN BIGELOW, husband and wife, as joint tenants with full rights of survivorship and not as tenants in common, of the County of Madison, State of Iowa, 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 the County of Madison, State of Iowa, to-wit:

The Northwest Quarter of the Northwest Fractional Quarter (NW 1/4 NW Frl 1/4) and the South Half of the Northwest Fractional Quarter (S 1/2 NW Frl 1/4), and the North Fractional Half of the Northeast Quarter (N Frl 1/2 NE 1/4) and the Southwest Quarter of the Northeast Quarter (SW 1/4 NE 1/4) of Section Five (5) in Township Seventy-four (74) North, Range Twenty-eight (28) West of the 5th P.M., Madison County, Iowa,

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

1. **TOTAL PURCHASE PRICE.** Buyers agree to pay for said property the total of \$120,000.00 due and payable at Farm Credit Services, Hwy 34 and Cherry Street, Box 466, Creston, Union County, Iowa 50801, as follows:

a. Down payment of \$60,000.00, receipt of which is hereby acknowledged; Balance of purchase price, \$60,000.00 will be payable in equal annual principal payments of \$6,000.00; plus accrued interest on the unpaid principal balance with the first payment due the 1st day of March, 1991, and subsequent payments due the 1st day of each and every March thereafter until the 1st day of March, 1995, at which time the entire remaining balance of principal and accrued interest shall be due and payable in full.

b. Interest will accrue on unpaid principal at a fixed rate of 10.0% per annum from date of this contract until paid in full. Default interest will accrue on all past due installments of principal and interest at a rate which is 2% per annum higher than the above-stated fixed rate.

2. **POSSESSION.** Buyers, concurrently with due performance on their part shall be entitled to possession of said premises on the date of this contract, and thereafter so long as they shall perform the obligations of this contract.

3. **TAXES.** Sellers shall pay all fiscal 1988-89 and current year property taxes prorated to date of this contract 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 15 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 date of this contract, 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. **INSURANCE.** Buyers, as and from said date of this contract shall constantly keep in force insurance, premiums therefor to be prepaid by Buyers (without notice of demand) against loss by fire, tornado, lightning, explosion, riot, aircraft and vehicle damage, smoke, windstorm, hail, and other hazards, casualties and contingencies as Seller 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 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.

**6. CARE OF PROPERTY.** Buyers shall take good care of the 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.

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

**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 so advanced may, at the election of Sellers, be added to the principal amount due hereunder and so secured.

**9. TIME IS OF THE ESSENCE** of 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.

**10. EXCEPTIONS TO WARRANTIES OF TITLE.** The warranties of title in any Deed made pursuant to this contract (see paragraph 11) 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.

**11. 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 Special 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 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. This contract supersedes any previous purchase agreement between Buyers and Sellers as to the above described property. 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.

**12. APPROVAL OF ABSTRACT.** Buyers have examined the abstract of title to this property and such abstract is accepted.

**13. 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/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 a lease, and may accordingly be ousted and removed as such as provided by law.

**14. FORECLOSURE.** If Buyers fail, in any one or more of the specified ways to comply with this contract, as in (a),(b),(c),(d), or (e) of numbered paragraph 13 above provided, Sellers may upon thirty (30) days written notice of intention to accelerate the payment of the entire balance, during which thirty days such default or defaults are not removed, declare the entire balance hereunder immediately due and payable; and thereafter at the option of the Sellers this contract may then be foreclosed in equity and a receiver may be appointed to take charge of said premises and collect the rents and profits thereof to be applied as may be directed by the Court.

**15. 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.

**16. SECURITY INTEREST.** Buyer hereby grants to Seller as further security for Buyers' performance hereunder, a security interest in the above described premises, including all buildings, fixtures, crops and improvements now or hereafter placed upon said real property; and including also all rents, issues, uses, income, profits, and rights to possession; all oil, gas, gravel, rock or other minerals of whatever nature, including geothermal resources; and all personal property that may integrally belong to or hereafter become an integral part of said real estate whether attached or disattached, including any appurtenances and accoutrements of any residence secured hereby, and all above and below ground irrigation equipment and accessories.

**17. ASSIGNMENT.** Should Buyers sell, transfer or convey the property described herein, or assign this contract without prior written consent of the Seller, Seller may, at its option, declare the entire indebtedness immediately due and payable and may proceed in the enforcement of its rights as on any other default. In case of 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.

**18. ANNUAL FINANCIAL INFORMATION.** Buyers agree to provide current financial information including balance sheets and income statements annually during the course of this contract to be submitted to Seller at the time of the contract payment described herein.

**19. PREPAYMENT AUTHORIZATION.** Up to \$6,000.00 may be paid in addition to the scheduled contract payment in any one year without a service charge. Payments of greater than \$6,000.00 will be charged a prepayment service charge as follows:

- a. 3% of the principal balance before payment if the payment is made in the first year following the date of this contract.
- b. 2% of the principal balance before payment if the payment is made within the second year following the date of this contract.
- c. 1% of the principal balance before payment if payment is made within the third year following the date of this contract.
- d. No charge if the payment is made after three years from the date of this contract.
- e. No charge if the payment is the result of the contract being converted to a Farm Credit System loan.

Any additional payments shall be applied to reduce the unmatured principal indebtedness but shall not postpone or defer the obligation to make payments provided for in this contract. Buyers' obligation to make payments as specified herein shall remain in force until the indebtedness is fully paid.

20. **HOMESTEAD WAIVER.** Each of the undersigned Buyers hereby relinquish all rights of dower, homestead and distributive share in and to any real property which is described in this contract and waive all rights of exemption as to any of said property.

I/WE 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/WE VOLUNTARILY GIVE UP MY/OUR RIGHT TO THIS PROTECTION FOR THIS PROPERTY WITH RESPECT TO CLAIMS BASED ON THIS CONTRACT

Lester L. Bigelow  
Lester L. Bigelow  
Mary Kathryn Bigelow  
Mary Kathryn Bigelow

Date: 4/12/90  
Date: 4/12/90

21. **CONSTRUCTION.** Words and phrases herein, including acknowledgements hereof, shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context.

22. **SPECIAL PROVISIONS.** none

(corporate seal)  
SELLERS:  
FARM CREDIT BANK OF OMAHA  
By Federal Land Bank Association  
of the Midlands  
Its agent and attorney-in-fact.  
By: Kevin W. Kerns  
Kevin W. Kerns  
Assistant Vice President



BUYERS:  
Lester L. Bigelow  
Lester L. Bigelow  
Mary Kathryn Bigelow  
Mary Kathryn Bigelow

206 S. 19th Street  
Omaha, NE 68102

RR 3, Box 113  
Winterset, IA 50273

STATE OF IOWA, Madison COUNTY, SS:

On this 17th day of April, 1990, before me, a Notary Public, personally appeared Lester L. Bigelow and Mary Kathryn Bigelow, husband and wife, to me known to be the persons named in and who executed the foregoing instrument and acknowledged that they executed the same as their voluntary act and deed.

Sherry J. Jusk  
Notary Public - State of Iowa

STATE OF IOWA, JASPER COUNTY, SS:

On this 11th day of April, 1990, before me, a Notary Public, personally appeared Kevin W. Kerns, to me known to be the person named in and who executed the foregoing instrument, who did say that he is the Assistant Vice President of the above named corporation; that the seal affixed to the instrument is the seal of the corporation; that the instrument was signed and sealed on behalf of the corporation by authority of its board of directors; and acknowledged the execution of the instrument to be the voluntary act and deed of the corporation and of the agent, by it and the agent voluntarily executed.

Chonda C. Rose  
Notary Public - State of Iowa.

