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LISA SMITH, COUNTY RECORDER

MADISON COUNTY IOWA

CHEK

## REAL ESTATE CONTRACT-INSTALLMENTS

THE IOWA STATE BAR ASSOCIATION

Official Form No. 141

Recorder's Cover Sheet

**Preparer Information:** (name, address and phone number)

Jane E. Rosien, 223 E. Court Avenue, P.O. Box 67, Winterset, Iowa 50273

Phone: (515) 462-4912

**Taxpayer Information:** (name and complete address)

Donald W. Waller and Connie S. Waller, 2973 105th Street, Van Meter, Iowa 50261

✓ **Return Document To:** (name and complete address)

Jane E. Rosien, 223 E. Court Avenue, P.O. Box 67, Winterset, Iowa 50273

**Grantors:**

Patricia A. Custer

Raymond H. Custer

**Grantees:**

Connie S. Waller

Donald W. Waller

**Legal Description:** See Page 2

**Document or instrument number of previously recorded documents:** N/A

Jane E. Rosien, ICIS# AT0006681

**REAL ESTATE CONTRACT-INSTALLMENTS**

IT IS AGREED this 31 day of October, 2013, by and between Patricia A. Custer and Raymond H. Custer, Wife and Husband, of the County of Johnson, State of Kansas, Sellers; and Connie S. Waller and Donald W. Waller, Wife and Husband, 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 and Dallas, State of Iowa, to-wit:

**An undivided one-half interest in and to:**

**Government Lots One (1), Two (2), and Three (3), Section Six (6), Township Seventy-seven (77) North, Range Twenty-six (26) West of the 5th P.M., Madison County, Iowa,**

**AND**

**An undivided one-half interest in and to:**

**The East Half (1/2) of the Southeast Quarter (1/4) of the Southeast Quarter (1/4) of Section Thirty-one (31), Township Seventy-eight (78) North, Range Twenty-six (26) West of the 5th P.M., Dallas 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.** The Buyers agree to pay for said property the total of \$462,000.00 due and payable at 14321 Benson Street, Overland Park, Kansas 66221, as follows:

- (a) The Buyers make no down payment; and,
- (b) \$255,000.00, due on or before October 31, 2013; \$90,000.00 due on or before October 31, 2014, but in no event shall such installment be paid before January 1, 2014; and all remaining balances due under this sales contract shall become due and payable in full on or before March 31, 2015, but in no event shall such payment be made before January 1, 2015.

The Buyers shall pay Sellers interest upon the unpaid balances from October 31, 2013 at the rate of three percent (3.0 %) per annum payable annually as provided herein. The payments include principal and interest. All payments shall be first credited towards the interest accrued to the date of the payment and the balance towards the reduction in principal. Buyers shall also pay interest at the rate

provided under paragraph nineteen (19) of this contract on all delinquent amounts and any sums reasonably advanced by Sellers to protect their interest in this Contract, computed from the date of the delinquency or advance. Buyers shall have the right to prepay any and all amounts due and owing according to this Contract provided that said prepayment is made within the same tax year as the payment due date.

2. **POSSESSION.** Buyers, concurrently with due performance on their part shall be entitled to possession of said premises on the 31st day of October, 2013; and thereafter so long as they shall perform the obligations of this contract.

3. **TAXES.** Sellers shall pay property taxes prorated to the date of possession 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 October 31, 2013. 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.

6. **INSURANCE.** 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. Sellers' interest shall be protected in accordance with a standard or union-type loss payable clause. **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. **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, 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. (For Buyers' rights to make advancements, see paragraph 5 above.)

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 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; or as of such earlier date if and as designated in the next sentence. 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 2013, and all taxes thereon payable prior thereto.

15. **APPROVAL OF ABSTRACT.** Buyers have not examined the abstract of title to this property and such abstract is not accepted.

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(s) in interest or the owner(s) 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.

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 rate of three percent (3%) per annum 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 personal property 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 Sellers 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. **CERTIFICATION.** Buyers and Sellers each certify that they are not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person" or any other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and are not engaged in this transaction, directly or indirectly on behalf of, any such person, group, entity or nation. Each party hereby agrees to defend, indemnify and hold harmless the other party from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorney's fees and costs) arising from or related to my breach of the foregoing certification.

25. **INSPECTION OF PRIVATE SEWAGE DISPOSAL SYSTEM.** Sellers represent and warrant to Buyers that the Property is not served by a private sewage disposal system, and there are no known private sewage disposal systems on the property.

26. **SPECIAL PROVISIONS.**

A. **"AS IS".** The parties agree the premises are sold in its "AS IS" condition; the Sellers makes no representations or warranties, express or implied, as to the quality or usability of the premises; and, the Buyers acknowledge full opportunity to inspect the conditions of the premises.

B. **ENVIRONMENTAL MATTERS.** Sellers makes no warranty or representation of any kind whatsoever about abandoned wells, solid waste disposal sites, hazardous wastes or substances, or underground storage tanks located on the property, or the property containing levels of radon gas, asbestos or urea-formaldehyde foam insulation which may require remediation under current governmental standards.

Buyers waive any right or opportunity at their expense to obtain a report from a qualified engineer or other person qualified to analyze the existence or nature of any hazardous materials, substances, conditions or wastes located on the property.

C. **U.S. DEPARTMENT OF AGRICULTURE PROGRAMS AND CONTRACTS.** Buyers may participate in any offered program by the U.S. Department of

Agriculture or any state for crop production control or soil conservation and Sellers shall cooperate in any manner necessary for such participation. Payments from participation in these programs shall be divided 0.00% to Sellers and 100% to Buyers.


**D. RENTAL PAYMENTS.** Buyers shall have no further obligation for rental payments to Sellers. Sellers acknowledge that all amounts due and owing from Buyers as and for rent are paid in full.


**E. ESCROW FOR DEED.** The Sellers at their cost agree to execute and keep in escrow in the manner provided by law a Warranty Deed to be delivered by the escrow agent to the Buyers upon Buyers' fulfillment of this Contract. The escrow agent is to be designated by the Sellers.


Executed in duplicate or triplicate

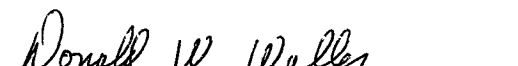
SELLERS

BUYERS

  
Patricia A. Custer

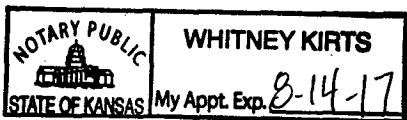
  
Connie S. Waller

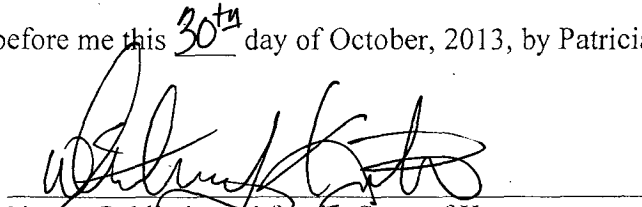
  
Raymond H. Custer

  
Donald W. Waller

STATE OF KANSAS, COUNTY OF JOHNSON:

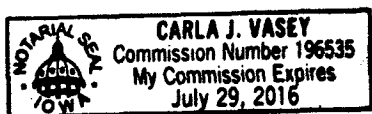
This instrument was acknowledged before me this 30<sup>th</sup> day of October, 2013, by Patricia A. Custer and Raymond H. Custer.

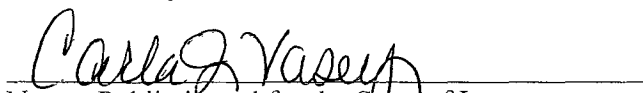


  
Notary Public in and for the State of Kansas

STATE OF IOWA, COUNTY OF MADISON:

This record was acknowledged before me this 31 day of October, 2013, by Connie S. Waller and Donald W. Waller.



  
Notary Public in and for the State of Iowa