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DEBORAH L PETTON
DELAWARE CO RECORDER
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Prepared by: Lisa A. Maiers for Community Savings Bank
Earlville, Iowa 52041

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## COMMERCIAL REAL ESTATE MORTGAGE

This Commercial Real Estate Mortgage (Security Instrument) is made on October 18, 2004 by
Tom B. Burcham, Jr. and Tina M. Burcham
as husband and wife whose address is
PO Box 255 Earlville, Iowa 52041
("Mortgagor"), and COMMUNITY SAVINGS BANK
whose address is
PO BOX 77 EDGEWOOD, Iowa 52042
"Lender"), which is organized and existing under the laws of
Iowa
Mortgagor in consideration of the principal amount of
Sixteen Thousand Three Hundred Forty Five Dollars And 00/100
Dollars ($ $16,345.00 ) ("Maximum Principal Indebtedness"), and for other valuable consideration, the receipt of which is acknowledged, hereby imortgages and grants to Lender, its successors and assigns, forever, the land and property described below:
Lot Three (3), Block Thirty Three (33), Earlville, Formerly Nottingham, Iowa, According to Plat Recorded in Book I L.D., Pages 346-347

2002-4356

☐ **NOTICE:** This is a purchase Money Mortgage as defined by Iowa statute 654.12B which states "a recorded purchase money mortgage takes priority over other liens that exist against the purchaser."

☒ **NOTICE:** This mortgage secures credit in the amount of $ 16,345.00 . Loans and advances up to this amount, together with interest, are senior to indebtedness to other creditors under subsequently recorded or filed mortgages and liens. (Only applicable if box is marked)

TOGETHER WITH all easements, appurtenances, improvements, buildings, fixtures, tenements, hereditaments, equipment, rents, income, profits, and personal property of every description and all other rights and privileges including all minerals, oil, gas, and timber that is now or later located, situated, or affixed on or used in connection with it (hereinafter called the Property).

MORTGAGOR COVENANTS that Mortgagor is lawfully seised of the estate conveyed and has the right to mortgage, grant, convey, and assign the Property (and, if this Instrument is given on a leasehold, that the ground lease is in full force and effect without modification except as noted above and without default on the part of either the lessor or lessee), that the Property is unencumbered, and that Mortgagor will warrant and defend generally the title to the Property against all claims and demands, subject to the easements and restrictions listed in the schedule of exceptions to coverage in any title insurance policy insuring Lender's interest in the Property.

**RELATED DOCUMENTS.** The words "Related Documents" mean all promissory notes, security agreements, prior mortgages, business loan agreements, construction loan agreements, resolutions, guaranties, environmental agreements, subordination agreements, assignments of leases and rents and all other documents and agreements executed in connection with this Mortgage, whether now or later existing. The Related Documents are made a part of this Mortgage, with the same force and effect as if they were fully set forth herein.

**INDEBTEDNESS.** This Mortgage secures the principal amount shown above as may be evidenced by a promissory note or notes of even, prior, or subsequent date hereto, including future advances and every other Indebtedness of every kind now and or later owing from Mortgagor to Lender however created or arising, whether primary, secondary, or contingent, together with all interest or charges provided in or arising out of such indebtedness, as well as the agreements and covenants of this Mortgage and all Related Documents (all referred to in this Mortgage as the Indebtedness).

**FUTURE ADVANCES.** To the extent permitted by law, this Mortgage will secure future advances as if such advances were made on the date of this Mortgage, regardless of the fact that from time to time there may be no balance due under the note and regardless of whether the Lender is obligated to make such future advances.

| By initialing, I acknowledge this is page 1 of 6 of the Commercial Real Estate Mortgage. | TB Initials | JMB Initials | _____ Initials | _____ Initials |
|---|---|---|---|---|

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**CROSS COLLATERALIZATION.** It is the express intent of the Mortgagor to cross collateralize all of Mortgagor's indebtedness and obligations to the Lender however arising and whenever incurred.

**MORTGAGOR'S WARRANTIES.** Mortgagor represents, warrants, covenants, and agrees with Lender as follows:

**1. Payment.** Mortgagor promises to pay the Indebtedness in accordance with the terms thereof and to perform all of the obligations from which the Indebtedness may arise. Lender may apply all payments received from the Mortgagor in any order Lender deems appropriate, to the extent permitted by law.

**2. Condition of Property.** Mortgagor promises at all times to preserve and maintain the Property and every part thereof in good repair, working order, and condition, and will from time to time make all proper repairs so that the value of the Property is not in any way impaired.

**3. Removal of any Part of the Property.** Mortgagor promises not to remove any part of the Property from its present location, except for replacement, maintenance and relocation in the ordinary course of business.

**4. Alterations to the Property.** Mortgagor promises not to allow the commission of any waste on the Property. Mortgagor will make no material alterations, additions, or improvements of any type to the Property, even if such alterations, additions, or improvements would increase the value of the Property, nor will Mortgagor permit anyone else to do so except for tenant improvements and the completion of items pursuant to approved plans and specifications, without Lender's prior written consent, which consent may be withheld by Lender in its sole discretion. Mortgagor will comply with all laws and regulations of all public authorities having jurisdiction over the Property relating to the use, occupancy or maintenance thereof and shall upon request promptly submit to Lender evidence of such compliance.

**5. Ground Lease.** Mortgagor agrees to comply with the provisions of any ground lease related to the Property and will give Lender notice of any default on the part of the Lessor. If an option to renew or extend the ground lease occurs during the duration of the Indebtedness, Mortgagor agrees to exercise such option and to submit evidence of the extension to Lender. Mortgagor hereby assigns its rights in any such ground lease to Lender; however, Lender shall not be liable or responsible for any of the obligations stated therein. Mortgagor promises not to alter or amend any such ground lease or to cancel, terminate, or surrender its interest in such ground lease without first obtaining the written consent of the Lender.

**6. Due on Sale - Lender's Consent.** Mortgagor will not sell, further encumber, or otherwise dispose of, except as herein provided, any or all of Mortgagor's interest in any part of or all of the Property without first obtaining Lender's written consent. If any encumbrance, lien, transfer, sale, or agreement for these is created, Lender may declare the Indebtedness immediately due and payable.

**7. Insurance.** Mortgagor promises to keep the Property insured against such risks, in such form, and with such carriers as may within the sole discretion of the Lender be acceptable, causing the Lender to be named as loss payee, or alternatively, if requested by Lender, Mortgagee, in such form and manner as prescribed by the Lender. The insurance company shall be chosen by Mortgagor subject to Lender's reasonable approval. All insurance policies must provide that Lender will get a minimum of 10 days notice prior to cancellation. At Lender's discretion, Mortgagor may be required to produce receipts of paid premiums and renewal policies. If Mortgagor fails to obtain the required coverage, Lender may do so at Mortgagor's expense. Mortgagor hereby directs each and every insurer of the Property to make payment of loss to the Lender with the proceeds to be applied, only at the Lender's option, to the repair and replacement of the damage or loss or to be applied to the Indebtedness with the surplus, if any, to be paid by the Lender to Mortgagor. If applicable, Mortgagor will provide Lender with photocopies of any insurance policy(ies) pertaining to Mortgagor's ground lease.

**8. Payment of Taxes and Other Applicable Charges.** Mortgagor promises to pay and to discharge liens, encumbrances, taxes, assessments, and governmental charges at any time levied or assessed against Mortgagor or the Property and Mortgagor will not do or allow to be done any act that would impair the value of the lien of this Mortgage; provided, however, that Mortgagor shall not be required to pay any tax, assessment, or governmental charge so long as Mortgagor in good faith disputes the validity thereof and provides for payment in a manner satisfactory to Lender in the event Mortgagor fails in the dispute.

**9. Environmental Laws and Hazardous or Toxic Materials.** Mortgagor certifies that as to any real estate that was, is, or will be owned or occupied by Mortgagor, such real estate has not and will not be allowed in any manner to be exposed to or contain hazardous or environmentally harmful substances as may be defined or regulated by any state or federal law or regulation, except to the extent the existence of such substances has been presently disclosed in writing to Lender, and Borrower will immediately notify Lender in writing of any assertion made by any party to the contrary. Mortgagor indemnifies and holds Lender and Lender's directors, officers, employees, and agents harmless from all liability and expense of every nature, including reasonable attorneys' fees, incurred directly or indirectly as a result of Mortgagor's involvement with any such hazardous or environmentally harmful substances.

**10. Financial Information.** Mortgagor agrees to supply Lender such financial and other information concerning Mortgagor's affairs and the status of any of its assets as the Lender, from time to time, may reasonably request. Mortgagor further agrees to permit the Lender to verify accounts as well as to inspect, copy, and examine Mortgagor's books, records, and files.

**11. Lender's Right to Enter.** Lender or Lender's agents will have the right to access to the Property at all reasonable times to attend to Lender's interest and ensure compliance with the terms of this Mortgage. If the Property, or any part of it requires inspection, repair, or maintenance, Lender, after reasonable notice, may enter upon the Property to effect the inspection, repair, or maintenance; and the cost will be added to the Indebtedness and paid by Mortgagor on Lender's demand.

**12. Rules of Construction.** Mortgagor will comply with the provisions of all construction loan agreements, which, if one exists, is incorporated by reference and is a part of this Mortgage.

All advances and other disbursements made by Lender under any construction loan agreement will become a part of the Indebtedness and will bear interest at the rate provided for in the Note from the date of advance or disbursement, provided such calculation of interest shall not be in conflict with applicable law, in which case, Lender shall calculate interest at the highest allowable rate.

Default under the terms of any construction loan agreement will be a default under this Mortgage and Lender will be entitled to the rights and remedies as provided in this Mortgage and as provided by law.

**MORTGAGOR'S ASSURANCES.** At any time upon Lender's request, Mortgagor will execute and deliver to Lender, and if appropriate, cause to be recorded, such further mortgages, assignments, assignments of leases and rents, security agreements, pledges, financing




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statements, and other document as Lender may require, in the Lender's sole discretion, to effectuate, complete, and to perfect, as well as to continue to preserve the Indebtedness, or the lien or security interest created by this Mortgage. If the Mortgagor fails or refuses to execute and deliver any such document to the Lender, Mortgagor hereby irrevocably constitutes and appoints Lender, and Lender's officers and employees, as Mortgagor's true and lawful attorney-in-fact to do so, and the expenses thereof will be added to the Indebtedness and paid by Mortgagor upon Lender's demand. This power of attorney shall not be affected by the disability of the Mortgagor.

**CONDEMNATION.** Mortgagor hereby assigns to Lender all judgments, decrees, and awards for injury, damage, or condemnation of or to the Property and authorizes Lender, at Lender's option, to apply the proceeds thereof to the payment of the Indebtedness as Lender elects.

**ASSIGNMENT OF LEASES AND RENTS.** As additional security for the payment of the Indebtedness contained herein, Mortgagor:

(a) hereby grants to Lender a security interest in all personal property and fixtures that may now or later constitute any part of the Property, in all personal property in Lender's possession, and in the balance of every deposit account of Mortgagor with Lender, which may be applied by Lender to the Indebtedness upon default hereunder; this interest is in addition to Lender's right of setoff; and

(b) hereby sells, assigns, transfers, and sets over to Lender all the rents, profits, and income under every lease or leases of the Property, including all extensions, amendments, and renewals, whether due now or to become due, including all leases in existence or coming into existence during the period this Mortgage is in effect. This assignment of rents shall run with the land and be good and valid as against Mortgagor and those claiming by, under, or through Mortgagor, from the date of the recording of this Mortgage. Mortgagor agrees to perform its obligations as Landlord under any lease in the Property and will not terminate or modify the terms of any lease without Lender's written consent. Mortgagor will provide Lender with copies of all such leases now or hereafter in existence, upon Lender's request. This assignment will continue to be operative during any foreclosure and other action enforcing this Mortgage, during any receivership created hereunder, and during the period of redemption, including the period of deficiency in the repayment of the Indebtedness. Mortgagor acknowledges that this assignment is given as collateral security only and shall not be construed as obligating Lender to perform any of Mortgagor's covenants or undertakings contained in any such assigned leases, although Lender may, at its sole option, do so. In the event of surrender or the taking of possession of the Property by Lender upon Mortgagor's default, Lender may thereafter collect the rents and income therefrom, rent or lease the Property or any portion thereof upon such terms as the Lender may deem advisable, in its sole discretion, and apply all proceeds derived therefrom to (i) preservation of the Property; (ii) payment of taxes; (iii) payment of insurance premiums; (iv) payment of the Indebtedness.

**EVENTS OF DEFAULT.** The following events shall constitute default of this Mortgage and all notes and other agreements it secures:

(a) failure to make payments on the Indebtedness when due;

(b) failure to perform or keep any of the covenants of this agreement or any agreement, oral or written, out of which the Indebtedness arises or that governs any of the terms of the Indebtedness;

(c) Mortgagor's insolvency;

(d) the filing by or against Mortgagor of any insolvency, bankruptcy or receivership proceeding;

(e) the institution of any assignment by Mortgagor for the benefit of Borrower's creditors;

(f) the insolvency or death of any guarantor of the Indebtedness;

(g) the death of Mortgagor, if a natural person, or of any partner if Mortgagor is a partnership;

(h) the dissolution, merger, and consolidation or transfer of a substantial part of the ownership of Mortgagor or any guarantor of the Indebtedness if Borrower or such guarantor is a corporation;

(i) the non-payment of taxes or insurance, which shall also constitute waste and entitle Lender to the appointment of a receiver under applicable law;

(j) the sale or transfer by Mortgagor of any interest in the Property, whether by deed, land contract, contract of sale, or the like;

(k) Lender deems itself insecure for any reason whatsoever.

**REMEDIES ON DEFAULT.** Upon default, Lender may, without demand or notice, pay any or all taxes, assessments, premiums, and liens required to be paid by the Mortgagor; effect any insurance provided for herein; make such repairs; cause the abstracts of title or title insurance policy and tax histories of the Property to be certified to date, or procure new abstracts of title or title insurance and tax histories in case none were furnished to it; and procure title reports covering the Property, including surveys. The amounts paid for any such purposes will be added to the Indebtedness and will bear interest at the rate of interest otherwise accruing on the Indebtedness until paid. In the event of foreclosure, the abstracts of title or title insurance shall become the property of the Lender. All abstracts of title, title insurance, tax histories, surveys, and other documents pertaining to the Indebtedness will remain in Lender's possession until the Indebtedness is paid in full.

In the event of default, Lender may, without notice unless required by law, and at its option, declare the entire Indebtedness due and payable, as it may elect, regardless of the date or dates of maturity thereof and, if permitted by state law, is authorized and empowered to sell or to cause the Property to be sold at public auction, and to execute and deliver to the purchaser or purchasers at such sale any deeds of conveyance good and sufficient at law, pursuant to the statute in such case made and provided, and out of the proceeds of the sale to retain the sums then due hereunder and all costs and charges of the sale, including attorneys' fees, rendering any surplus to the party or parties entitled to it. Any such sale or a sale made pursuant to a judgment or a decree for the foreclosure hereof may, at the option of Lender, be made en masse. The commencement of proceedings to foreclose this Mortgage in any manner authorized by law shall be deemed as exercise of the above option. In the event of default or the commission of waste, Lender shall immediately be entitled to the appointment of a receiver for the Property and of the earnings, income, issue, and profits of it, with the powers as the court making the appointments confers. Mortgagor hereby irrevocably consents to such appointment and waives notice of any application therefor.



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**Redemption.** If the Property is less than ten acres in size and this Mortgage is foreclosed, Mortgagor agrees that Lender may reduce or extend the period of redemption after sale on foreclosure to such time as may be permitted under Chapter 628, Iowa Code or any other section of the Iowa Code, now in effect or as amended from time to time.

**No Waiver.** No delay or failure of Lender to exercise any right, remedy, power, or privilege hereunder shall affect that right, remedy, power, or privilege, nor shall any single or partial exercise preclude the later exercise of any right, remedy, power, or privilege. No Lender delay or failure to demand strict adherence to the terms of this Mortgage will be deemed to constitute a course of conduct inconsistent with Lender's right at any time, before or after an event of default, to demand strict adherence to the terms of this Mortgage and the Related Documents.

**APPLICATION OF PROCEEDS.** Lender shall have the exclusive right to determine the order in which the Property securing this Mortgage shall be sold and the proceeds applied to the Indebtedness in the event Lender exercises its remedies.

**SALE OF NOTE.** The Note or a partial interest in the Note together with this Mortgage and Related Documents, may be sold one or more times without notice to Mortgagor.

**MORTGAGOR NOT RELEASED; FORBEARANCE BY LENDER NOT A WAIVER.** Extension of the time given by the Lender for payment of any of the Indebtedness will not operate to release, discharge, modify, or otherwise affect the original liability of Mortgagor herein or of Mortgagor's continued obligation to the covenants herein contained or the covenants and terms of any portion of the Related Documents.

Mortgagor expressly acknowledges that it is the intent of both itself and Lender to have Mortgagor's default of any of the provisions of this Mortgage constitute a default of all other agreements existing or later arising between them and that, likewise, a Mortgagor's default under any such agreement will be a default of this Mortgage.

Mortgagor warrants that no provision, warranty, or promise made by Mortgagor in any of the Related Documents causes any conflict with the terms of any document related to any other transaction involving Mortgagor with any other person or entity.

It is further agreed that:

(a) Upon Lender's request, Mortgagor agrees to pay Lender, in addition to payment of the Indebtedness, a pro rata portion of the taxes, assessments, mortgage guarantee insurance premiums (so long as this Mortgage is insured by a mortgage guarantee insurance policy), and hazard insurance premiums next to become due, as estimated by Lender so Lender will have sufficient funds on hand to pay taxes, assessments, and insurance premiums within thirty days before their due date, and to pay Lender, immediately, any deficit, the amount so held not to bear any interest and, upon default, to be applied by Lender to the Indebtedness at Lender's discretion;

(b) all rights and remedies granted to Lender hereunder are cumulative and not exclusive of one another or of any other remedy provided for by law or agreement, and may be exercised either successively or concurrently;

(c) if any provision of this Mortgage is prohibited by state law, such prohibitions shall apply only to that provision and all other provisions of the Mortgage shall remain in full force and effect;

(d) Lender may, at its option, reduce, release, or modify: the Indebtedness; the persons liable for the Indebtedness; or the Property that is subject to this Mortgage. Any such action shall not affect Mortgagor's remaining obligations under this Mortgage or the Related Documents;

(e) Mortgagor waives the right to assert the statute of limitations so as to preclude Lender from enforcement of the lien conferred upon it by this Mortgage.

**JOINT AND SEVERAL LIABILITY.** If this Mortgage is signed by more than one person, all persons signing it agree that they are jointly and severally bound, where permitted by law.

**SURVIVAL.** Lender's rights in this Mortgage will continue in its successors and assigns. This Mortgage is binding on all heirs, executors, administrators, assigns, and successors of Mortgagor.

**NOTICES AND WAIVER OF NOTICE.** Unless otherwise required by applicable law, any notice or demand given by Lender to any party is considered effective when it is deposited in the United States Mail with the appropriate postage, mailed to the address of the party given at the beginning of this Mortgage, unless an alternative address has been provided to Lender in writing. To the extent permitted by law, Mortgagor waives notice of Lender's acceptance of this Mortgage, defenses based on suretyship, all defenses arising from: any election by Lender under the United States Bankruptcy Code; the Uniform Commercial Code as enacted in the state where the Lender is located; and other applicable law, and also waives all rights of enquiry, demand, notice of acceleration, notice of nonpayment, presentment, protest, dishonor, and all other notice.

**TO THE EXTENT PERMITTED BY LAW, MORTGAGOR WAIVES ALL RIGHTS TO NOTICE OTHER THAN THE NOTICE PROVIDED ABOVE, AND WAIVES ALL RIGHTS TO ANY HEARING, JUDICIAL OR OTHERWISE, PRIOR TO LENDER EXERCISING ITS RIGHTS UNDER THIS MORTGAGE.**




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**WAIVER OF HOMESTEAD EXEMPTION RIGHT.**

☐ Not Applicable

**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 THE RIGHT TO THIS PROTECTION FOR THIS PROPERTY WITH RESPECT TO CLAIMS BASED UPON THE CONTRACT.**

X Tom Burcham JR 10-18-04
Tom B. Burcham, Jr. Date

X Tina M. Burcham 10-18-04
Tina M. Burcham Date

X _____ Date

X _____ Date

**WAIVER OF APPRAISEMENT RIGHTS.** Mortgagor waives all appraisement rights relating to the Property to the extent permitted by law.

**LENDER'S EXPENSE.** Mortgagor agrees to pay all expenses incurred by Lender in connection with enforcement of its rights under the Indebtedness, this Mortgage, and in the event Lender is made party to any litigation because of the existence of the Indebtedness or this Mortgage, as well as court costs, collection charges, and reasonable attorneys' fees and disbursements.

**ASSIGNABILITY.** Lender may assign or otherwise transfer this Mortgage or any of Lender's rights under this Mortgage without notice to Mortgagor. Mortgagor may not assign this Mortgage or any part of it without Lender's express written consent.

**GOVERNING LAW AND JURISDICTION.** This Mortgage will be governed by the laws of the state of Iowa. Mortgagor waives any plea of jurisdiction or venue on the ground that Borrower is not a resident of Delaware County, state of Iowa and hereby specifically authorizes any action brought to enforce the Indebtedness to be instituted and prosecuted in the appropriate court of Delaware County, or in the United States District Court for the district containing said county.

**SEVERABILITY.** If a court of competent jurisdiction determines any term or provision of this Mortgage is invalid or prohibited by applicable law, that term or provision will be severed from the rest of the Mortgage without invalidating the remainder of either the affected provision or this Mortgage.

**WAIVER OF JURY TRIAL.** All parties to this Mortgage waive all right to trial by jury to the extent permitted by law. This jury trial waiver applies to all claims and disputes related or incidental to the relationship established between the parties to this Mortgage.

**ORAL AGREEMENTS. IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.**

**ADDITIONAL PROVISIONS.**

**UNIFORM COMMERCIAL CODE (U.C.C.)** Mortgagor grants to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property. Mortgagor grants to Lender a security interest in all timber to be cut and as-extracted collateral situated on the Property including all rents, income, and profits relating to them. Mortgagor agrees that this Mortgage shall suffice as a financing statement and may therefore be filed of record as a financing statement for the purposes of Article 9 of the Uniform Commercial Code. Mortgagor authorizes Lender to file any financing statements required under the Uniform Commercial Code.




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**In WITNESS WHEREOF, this Security Instrument has been executed by the Mortgagor(s) on the date written below.**

Borrower(s)

X Tom Burcham Jr 10-18-04
Tom B. Burcham, Jr. Date

X Tina M. Burcham 10-18-04
Date

Tina M. Burcham

X _____
Date

X _____
Date

**INDIVIDUAL ACKNOWLEDGMENT**

STATE OF Iowa )
) ss
COUNTY OF Delaware )

On this 18th day of October ,2004 , before me, a Notary Public in the State of Iowa, personally appeared Tom B. Burcham Jr. and Tina M. Burcham as husband and wife , to me personally known to be the person(s) named in and who executed the foregoing instrument, and acknowledged that Tom B. Burcham Jr. and Tina M. Burcham as husband and wife executed the same as Their voluntary act and deed.

My Commission expires:

(Official Seal) LISA ANNE MAIERS
Commission Number 177511
My Commission Expires
1-14-07

Lisa Anne Maiers
Notary Public

**BUSINESS ENTITY ACKNOWLEDGMENT**

STATE OF )
) ss
COUNTY OF )

This instrument was acknowledged before me on , by
as
of

My commission expires:

(Official Seal)

Notary Public

WHEN RECORDED RETURN TO:

COMMUNITY SAVINGS BANK
EARLVILLE
PO BOX 77

EDGEWOOD, IA 52042

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