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Rec Amt \$44.00 Aud Amt \$5.00

Rev Transfer Tax \$101.60

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LISA SMITH, COUNTY RECORDER

MADISON COUNTY IOWA

INDX ✓

ANNO

SCAN

CHEK

~~WCA~~

AFTER RECORDING RETURN TO:

Bryan S. Witherwax

Witherwax & Spellman

4150 Westown Parkway, Suite 205

West Des Moines, IA 50266

Prepared by: Bryan S. Witherwax, 4150 Westown Parkway, Suite 205, West Des Moines, Iowa 50266 Phone: (515) 224-5377

Tax Statement Address: Elizabeth Foss, 1117 Walnut Street, Webster City, Iowa 50595

### REAL ESTATE CONTRACT

IT IS AGREED this 16 day of April, 2009, by and between Elizabeth Foss, of the County of Hamilton, City of Webster City, State of Iowa, Seller; and Mike Amelia and Candace Amelia, of the County of Madison, City of Winterset, State of Iowa, Buyer;

That the Seller, as in this contract provided, agree to sell to the Buyer, and the Buyer in consideration of the premises, hereby agree with the Seller to Purchase the following described real estate situated in the County of Polk, State of Iowa, to wit:

Lot Five (5) in Block One (1) of Rail Road Addition to the Town of Winterset, 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.

1. TOTAL PURCHASE PRICE. The buyer agrees to pay for said property the total of Sixty-Four Thousand Dollars (\$64,000.00) due and payable at Seller's residence, Polk County, Iowa as follows:

(a) DOWNPAYMENT of Five Thousand Dollars (\$5,000.00) RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED; and

(b) BALANCE OF PURCHASE PRICE. Fifty-Seven Thousand and One Hundred and Fifty Dollars (\$57,150.00), as follows: Four Hundred Nineteen Dollars and Thirty-Five Cents (\$419.35) including interest and One Hundred and Fifty Dollars (\$150.00) which is allocated toward real estate taxes and Forty-Five Dollar (\$45.00) which is allocated toward homeowners insurance premium, (or more at the option of Buyer), (or more at the option of Buyer) on or before the 1st day of each beginning June 1, 2009, and every month thereafter until October 1, 2010, when the entire principal balance and interest shall become fully due and payable. Buyer shall have the right to pay the full balance of principal and interest at any time. Waiver by the Seller of any balloon payment shall be in writing executed by both parties. Any payment made after the fifth (5<sup>th</sup>) day of the month shall incur a Thirty-Five Dollar (\$35.00) late fee.

2. POSSESSION. Buyer, concurrently with due performance on their part shall be entitled to possession of said premises on the 1<sup>st</sup> day of April, 2009; and thereafter so long as they shall perform the obligations of this contract.



3. ESCROWS. The escrow payment collected monthly for real estate taxes and homeowners insurance will be reviewed on an annual basis. Any increase in annual real estate taxes and or homeowners insurance premium will result in an adjustment accordingly.

4. TAXES. Seller shall pay all real estate taxes becoming due and any unpaid taxes thereon payable in prior years. Buyer shall pay any taxes not assumed by Seller and all subsequent taxes before same became 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.

5. SPECIAL ASSESSMENTS. Buyer shall pay the special assessments against this property. Including all sewage disposal assessments for overage charge heretofore assessed by any municipality having jurisdiction as of date of possession.

Buyer, except as above stated, shall pay all subsequent special assessments and charges, before they become delinquent.

6. MORTGAGE. Any mortgage or encumbrance of a similar nature against the said property shall be timely paid by Seller so as not to prejudice the Buyer's equity herein. Should Seller fail to pay, Buyer may pay any such sums in default and shall receive credit on this contract for such sums so paid. MORTGAGE BY SELLER. Seller, their successors in interest or assigns may, and hereby reserve the right to at any time mortgage their right, title, or interest in such premises or to renew or extend any existing mortgage for any amount not exceeding 90% of the then unpaid balance of the purchase price herein provided. The interest rate and amortization thereof shall be no more onerous than the installment requirements of this contract. Buyer hereby expressly consent to such a mortgage and agree to execute and deliver all necessary papers to aid Seller in securing such a mortgage which shall be prior and paramount to any of Buyer's then rights in said property. DEED FOR BUYER SUBJECT TO MORTGAGE. If Buyer has reduced the balance of this contract to the amount of any existing mortgage balance on said premises, they may at their option, assume and agree to pay said mortgage according to its terms, and subject to such mortgage shall receive a deed to said premises; or Seller, at his option, any time before Buyer has made such a mortgage commitment, may reduce or pay off such mortgage. ALLOCATED PAYMENTS. Buyer, in the event of acquiring this property from an equity holder instead of a holder of the fee title or in the event of a mortgage against said premises, reserve the right, if reasonably necessary for their protection to divide or allocate the payments to the interested parties as their interests may appear. SELLER AS TRUSTEE. Seller agrees that he will collect no money thereunder in excess of the amount of the unpaid balance under the terms of this contract less the total amount of the encumbrance on the interest of Seller, or his assigns in said real estate, and if Seller shall hereafter collect or receive any moneys thereunder beyond such amount, he shall be considered and held as collecting and receiving said money as the agent and trustee of the Buyer for the use and benefit of the Buyer.

7. INSURANCE. Except as may be otherwise included in the last sentence of paragraph 1(b) above, Buyer as and from said date of possessions, shall constantly keep in force insurance, premiums therefore to be prepaid by Buyer (without notice or demand) against loss by fire, tornado and other hazards, casualties and contingencies as Seller may reasonable 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 Seller 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 Seller and Buyer as their interests may appear. BUYER SHALL PROMPTLY DEPOSIT SUCH POLICY WITH PROPERTY RIDERS WITH SELLER 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 Seller 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.

8. CARE OF PROPERTY. Buyer shall take good care of this property, shall keep the buildings and other improvements now or hereafter replaced on the said premises in good and reasonable repair and shall not injure, destroy or remove the same during the life of this contract. Buyer shall not make any material alteration in said premises without the written consent of the Seller. Buyer shall not use or permit said premises to be used for any illegal purpose. Buyers may paint interior, stain deck, make electrical upgrades through a licensed electrician as needed.

9. LIENS. No mechanic's lien shall be imposed upon or foreclosed against the real estate described herein.

10. ADVANCEMENT BY SELLER. If Buyer fail to pay such taxes, special assessments and insurance and effect necessary repairs, as above agreed, Seller 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 Seller, be added to the principal amount due hereunder and so secured. (For Buyer's rights to make advancements, see paragraph 5 above.)

11. JOINT TENANCY IN PROCEEDS AND SECURITY RIGHTS IN REAL ESTATE. If and only if, the Seller, immediately preceding this sale, hold title to the above described Real Estate in joint tenancy and such joint tenancy has not later been destroyed by operation of law or by acts of the Seller, this sale shall not constitute such destruction and the proceeds of this contract, and any continuing and/or recaptured rights of Seller in said real Estate, shall be and continue in Seller as joint tenants with rights of survivorship and not as tenants in common; and Buyer, 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 Seller) and to accept deed solely from him or them consistent with paragraph 14 below unless and except this paragraph is stricken from this agreement.

12. SELLER. 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 "Seller": in the printed portion of this 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.

13. TIME IS OF THE ESSENCE. Time is of the essence in this Agreement. Failure to promptly assert rights of Seller herein shall not, however, be a waiver of such rights or a waiver of any existing or subsequent default.

14. EXCEPTION 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; (d) As limited by paragraphs 1, 2, 3, and 4 of this contract; (e) Seller shall give Special Warranty as to the period after equitable title passes to Buyer; (f) Spouse if not titleholder, need not join any warranties of the deed unless otherwise stipulated:

15. DEED AND ABSTRACT, BILL OF SALE. If all said sums of money and interest are paid to Seller during the life of this contract, and all other agreements for performance by Buyer has been complied with, Seller will execute and deliver to Buyer a Warranty Deed conveying said premises in fee and simple pursuant to and in conformity with this contract; and Seller will at this time deliver to Buyer 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 Seller as of the date of this contract; or Seller 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 Buyer, Seller shall execute and deliver a Bill of Sale consistent

with the terms of this contract. Seller shall pay all taxes on any such personal property payable in 2007-2008, and all taxes thereon payable prior thereto.

16. APPROVAL OF ABSTRACT. Buyer has not examined the abstract of title to this property and such abstract is not yet accepted.

17. FORFEITURE. If Buyer (a) fail to make payments aforesaid, or any part thereof, as same become due; or (b) fail to pay the taxes or special assessments or changes, 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 Seller, 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 Buyer 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 Seller 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 Buyer, 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 maybe 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.

18. FORECLOSURE AND REDEMPTION. If Buyer fails to timely perform this contract, Seller, 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 inequity 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 Buyer 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 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 Seller, in such action files an election to waive any deficiency judgment against Buyer 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 of such right of redemption shall be exclusive to the Buyer, and the time periods in Sections 628.5, 628.15 and 628.16 of the Iowa Code shall be reduced to (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 he 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) Seller in such action file an election to waive any deficiency judgment against Buyer or their successor in interest in such action. If the redemption period is so reduced, Buyer 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 Buyer 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.

19. 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 Seller, or in any other case permitted by law in which attorney's fees may be collected from Buyer, or imposed upon them, or upon the above described property, Buyer agree to pay reasonable attorneys' fees.

20. INTEREST ON DELINQUENT AMOUNTS. Either party will pay interest at the highest legal contract rate applicable to a natural person 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.

21. ASSIGNMENT. This contract may be assigned by Buyer only upon the written approval of Seller. 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.

22. PLACE OF CLOSING. Closing shall be held at the office of the Seller's attorney or as otherwise agreed upon.

23. LEASES. Seller, not less than 15 days before closing, shall furnish to Buyer copies of all written leases and estoppels letters from each tenant specifying the nature and duration of the tenant's occupancy, rental rates and advanced rent and security deposits paid by tenant. If Seller is unable to obtain such letters from tenants, Seller shall furnish the same information to Buyer within said time period in the form of a seller's affidavit, and Buyer may contact tenants thereafter to confirm such information. At closing, seller shall deliver and assign all original leases to Buyer. Rent prorated to date of closing.

24. 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 personalty shall be considered indivisible with the real estate above described; and any such termination of Buyer; rights in said real estate shall concurrently operate as the forfeiture or foreclosure hereof against all such personal property.

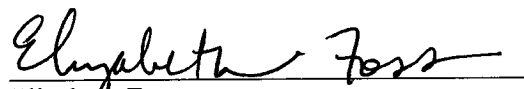
25. CLOSING DATE. The contract shall be closed and the deed and possession shall be delivered on or before the 13<sup>th</sup> day of April, 2009, unless extended by other provisions of this contract.

26. 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 "Seller".


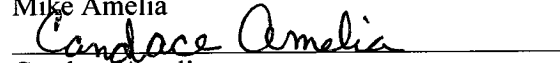
27. SPECIAL PROVISIONS. Seller to pay ordinary seller closing costs. Seller to pay for document preparation and closing fees. Taxes prorated to closing date.

28. SPECIAL CLAUSES.

SELLER

  
Elizabeth Foss

BUYER

  
Mike Amelia  
  
Candace Amelia

STATE OF IOWA,

SS:

COUNTY OF HAMILTON

On this 30<sup>th</sup> day of April, 2009, before me, the undersigned, a Notary Public in and for said State, personally appeared Elizabeth Foss, to me personally 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.

Diane M. Doering  
Notary Public



DIANE M. DOERING  
COMMISSION NUMBER 189564  
MY COMMISSION EXPIRES 4/9/12

STATE OF IOWA,

SS:

COUNTY OF MADISON

On this 14<sup>th</sup> day of May, 2009, before me, the undersigned, a Notary Public in and for said State, personally appeared Mike Amelia and Candace Amelia, to me personally 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.

Donna J. Jackson  
Notary Public

