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LISA SMITH, COUNTY RECORDER

MADISON COUNTY IOWA

CHEK

**AMENDED**

**REAL ESTATE INSTALLMENT CONTRACT**

**THE IOWA STATE BAR ASSOCIATION**

**Official Form No. 142**

**Recorder's Cover Sheet**

**Preparer Information:**

Nathan J. Barber  
Belin Lamson McCormick Zumbach Flynn  
666 Walnut Street, Suite 2000  
Des Moines, Iowa 50309-3989  
Phone: 515-243-7100

**Taxpayer Information:**

T & S Property Services, LLC  
1459 White Pole Road  
Adair, Iowa 50002

**Return Document To:**

Preparer (See above)

**Grantor:**

Exchange State Bank

**Grantee:**

T & S Property Services, LLC

**Legal Descriptions:**

See Exhibit A at Page 10

**Document or instrument number of previously recorded documents:** Real Estate Installment Contract recorded in Book 2009, Page 3067 of the Madison County, Iowa records. This contract is being re-recorded to amend, modify, and supplement certain terms and to change the legal description of the properties conveyed hereby.

NOTE: THIS COVER PAGE IS PREPARED IN COMPLIANCE WITH IOWA CODE SECTION 331.606B, (2009). THIS COVER PAGE IS PROVIDED FOR INFORMATION PURPOSES ONLY.

**AMENDED**  
**REAL ESTATE INSTALLMENT CONTRACT**

THIS REAL ESTATE INSTALLMENT CONTRACT ("Agreement") is made and entered into this 30th day of September, 2009, as amended on December 1, 2009, by and between EXCHANGE STATE BANK ("Seller"), and T & S PROPERTY SERVICES, LLC ("Buyer").

1. Property; Sale. Seller hereby agrees to sell to Buyer, and Buyer hereby agrees to purchase from Seller, upon and subject to the terms and conditions of this Agreement, the real estate situated in Madison County, Iowa and described in **Exhibit A** attached hereto (collectively, the "Property"), upon and subject to the terms and conditions set forth in this Agreement.

2. Purchase Price. Buyer agrees to pay to Seller as the Purchase Price for the Property the amount of **\$171,600.00** (the "Purchase Price"), payable as follows:

(a) Buyer shall make equal monthly installments of principal and interest using an interest rate of 5.75% per annum, a thirty (30) year amortization schedule, and a balloon payment at the end of year five (5). The sixty (60) monthly installments of \$1,001.41 shall commence on December 30, 2009 and continue on the 30th day of each month thereafter. Each monthly installment shall be applied first to accrued interest and then to the outstanding balance of the purchase price. The entire unpaid balance of the purchase price and all accrued interest but unpaid interest shall be due in full on November 30, 2014.

(b) Any payment not made at its due date shall bear interest at a rate of twelve percent (12%) per annum, from the due date until paid in full.

(c) Buyer may prepay the balance of the purchase price, in whole or in part, at any time without penalty, except as stated in Section 22 and except that a 5% prepayment penalty shall apply to any pre-payments originating from a lender other than Exchange State Bank.

(d) The Purchase Price shall be allocated among the individual properties as shown on **Exhibit B** attached hereto.

3. Real Estate Taxes, Special Assessments and Charges.

(a) At Closing, Seller shall pay all real estate taxes prorated to the date of Closing and any unpaid real estate taxes payable in prior years, such payment to be deposited in escrow with Exchange State Bank for the payment of said taxes. Buyer shall pay all subsequent real estate taxes. Buyer shall pay to Seller, to be held in escrow with Seller pending fulfillment of the Contract, one-twelfth (1/12<sup>th</sup>) of the real estate taxes to become due and payable with respect to the Property, with such escrow payments to be made at the same time as the monthly installments of principal and interest pursuant to Section 2 hereof. Such payments shall be payable to Exchange State Bank at the address set forth in Section 11 hereof. Buyer shall pay the transfer tax associated with the recording of the warranty deeds.

(b) Seller shall pay any special assessments that are a lien on the Property at the time of delivery of possession of the Property to Buyer.

(c) All charges for solid waste, sewage, other utilities, and assessments for weed cutting or property maintenance imposed by any governmental body or utility attributable to Seller's possession shall be paid by Seller.

(d) All subsequent real estate taxes, special assessments and charges are to be paid by Buyer.

4. Possession. Seller shall give Buyer possession of the Property from and after the date of this Agreement and thereafter for so long as Buyer is not in default under this Agreement. However, Buyer may not, without the prior written consent of Seller, demolish any portion of the existing improvements or make any alterations to the Property or construct any improvements to the Property until Buyer has paid the Purchase Price in full. Seller hereby assigns to Buyer all leases for the Property, and Buyer hereby accepts assignment and agrees to be fully responsible for compliance with the leases after the date hereof.

5. Mortgages. Neither party shall mortgage its respective interest without the prior written consent of the other party.

6. Condition and Care of the Property; Restrictions.

(a) Buyer shall take good care of the Property and shall keep the improvements now or hereafter placed on the Property in good and reasonable condition and repair, and shall not injure, destroy or remove the same during the life of this Agreement.

(b) If Buyer fails to pay such taxes, special assessments, effect necessary repairs or take necessary actions to otherwise comply with the requirements of this section, as above agreed, Seller may, but is not obligated to, pay such taxes, special assessments, and make such necessary repairs or otherwise effect compliance with the requirements of this section, 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 secured by this Agreement.

(c) **Buyer is aware that Seller acquired the Property through judicial foreclosure, and that Seller is selling and Buyer is purchasing the Property in an "AS IS PHYSICAL CONDITION WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE". Buyer acknowledges, on behalf of itself, its opportunity to inspect and investigate the Property and all improvements thereon, either independently or through agents of Buyer's choosing, and that in purchasing the Property Buyer is not relying on any statements or representations made by Seller or Seller's agents as to the condition of the Property and/or any improvements thereon, including BUT NOT LIMITED TO, heating, sewage, roof, foundations, soils and geology, septic, lot size or suitability of the Property and/or its improvements for particular purposes, or that any appliances, if any, plumbing and/or utilities are in working order, and/or that the improvements are structurally sound and/or in compliance with any local, city, county, state and/or federal statutes, codes or ordinances. Buyer agrees to pay the fees for inspections of Buyer's choice at the time of the physical inspections including termite**

Two handwritten signatures are present in the bottom right corner of the page. The top signature is a stylized, cursive 'A' or 'B' followed by a flourish. The bottom signature is a more complex, cursive signature with multiple loops and a long tail.

inspection and report. If it is determined that there is mold in the Property, Buyer shall not hold Seller liable for removal of, or exposure to, the mold. The closing of this transaction shall constitute an acknowledgement by Buyer that **THE PHYSICAL CONDITION OF THE PROPERTY WAS ACCEPTED WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND OR NATURE AND IN AN "AS-IS" CONDITION BASED SOLELY ON BUYER'S OWNER INSPECTION AND THAT SELLER SHALL HAVE NO FURTHER OBLIGATIONS, LIABILITIES OR RESPONSIBILITIES UNDER THE AGREEMENT OR ANY ADDENDUM THERETO.** Buyer releases any and all claims, of any nature (whether direct, indirect, or derivative, and whether known or unknown, mature or immature, liquidated or unliquidated, contingent or fixed) that it may have against Seller (including, but not limited to Seller's employees, agents, contractors, heirs, assigns, officers, directors, and shareholders) to the extent that such claim arise out of or relates to any actions that occurred prior to the execution of this Agreement.

7. Mechanic's Liens. Buyer shall not suffer or permit any materialmen's, mechanics', artisans' or other liens to be filed or placed or exist against the land or any improvements on the Property, or Buyer's interest in the Property, by reason of work, services or materials supplied or claimed to have been supplied to Buyer or anyone holding the Property or any part thereof through or under the Buyer; and nothing contained in this Agreement shall be deemed or construed in any way as constituting the consent or request of Seller, expressed or implied, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any improvements, alterations or repairs of or to the Property or any part thereof, nor as giving Buyer any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of a materialmen's, mechanics' or other lien against the Seller's interest in the Property. If any such lien should, at any time, be filed, Buyer shall cause the same to be discharged of record within thirty (30) days after date of filing the same or, if Buyer in good faith determines that such lien should be contested, Buyer shall furnish such security, by surety bond or otherwise, as is prescribed by law to release the same as a lien against the Property, or any part thereof, and to prevent any foreclosure of such lien during the pendency of such contest. If Buyer shall fail to discharge such lien within such period, then, in addition to any other right or remedy of Seller, Seller may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by a deposit in court or by posting a bond. Any amount paid by Seller for any of the aforesaid purposes, or for the satisfaction of any other lien not caused by Seller, and all reasonable expenses of Seller in defending any such action or in procuring the discharge of such lien, including, but not limited to, reasonable attorney's fees, shall be deemed additional principal due hereunder and shall be paid by Buyer to Seller on demand.

8. Deeds and Abstracts. Upon payment of all amounts due with respect to the Property, Seller shall convey title to Property by special warranty deeds, free and clear of all liens and encumbrances whatsoever, except as described in this Agreement and except that Seller shall only provide special warranties as to anyone claiming by, through or under Seller from and after the date of this Agreement. Buyer agrees that upon payment in full it shall be responsible for obtaining at its cost abstracts of title to the Property.

The image shows two handwritten signatures in black ink. The signature on the left is a stylized, cursive 'S' followed by a few loops. The signature on the right is a more complex cursive signature, possibly starting with 'S' and ending with a long horizontal stroke.

9. Remedies. (a) Forfeiture. If Buyer (a) fails to make the payments required by this Agreement as the same become due, or (b) fails to pay the taxes or special assessments or charges upon any part of the Property, or (c) fails to keep the property in good condition and reasonable repair, or (d) fails to perform any of the agreements as herein made or required, then Seller, in addition to any and all other remedies that it may have, at its option, may proceed to forfeit and cancel this Agreement as to the Property as provided by Chapter 656 of the 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 shall be retained and kept by Seller as compensation for the use of the Property and/or liquidated damages for breach of this Agreement; and upon completion of such forfeiture, if Buyer or any other person or persons shall be in possession of the Property or any portion thereof, such party or parties shall at once remove therefrom, or failing to do so may be treated as tenants holding over, unlawfully under a lease, and may accordingly be ousted and removed as provided by law.

(b) Foreclosure. If Buyer (a) fails to make the payments required by this Agreement as the same become due, or (b) fails to pay the taxes or special assessments or charges upon any part of the Property, or (c) fails to keep the property in good condition and reasonable repair, or (d) fails to perform any of the agreements as herein made or required, then Seller, in addition to any and all other remedies that it may have, at its option, may declare the entire balance hereunder immediately due and payable; and thereafter at the option of Seller, this Agreement may be foreclosed in equity and a receiver may be appointed to take charge of the Property and to collect the rents and profits thereof to be applied as may be directed by the Court. In such foreclosure action, Seller shall be entitled to pursue, at its election, a deficiency judgment against Buyer and Guarantors.

10. Attorney's Fees. In the case of any action by either party against the other party to collect moneys due under or secured by this Agreement or to enforce compliance with this Agreement or any rights or remedies available under this Agreement or in the Property, or to protect the lien or title herein provided, the prevailing party shall be entitled to collect attorney's fees from the other party.

11. Notices. Whenever any notice is required or permitted under this Agreement, it shall be in writing and shall be delivered personally or by U.S. Certified Mail, receipt return requested, postage prepaid. Until further notification by written notice in the manner required by this Section, notices to the parties shall be delivered as follows:

SELLER:

Exchange State Bank  
113 S. John Wayne Drive  
Winterset, Iowa 50273  
Attn: Kendall Kerns

BUYER:

T & S Property Services, LLC

A handwritten signature in black ink, appearing to be 'SLS', located in the bottom right corner of the page.

1459 White Pole Road  
Adair, Iowa 50002

If notice is given by mailing, then the notice shall be deemed to have been given on the first date of mail delivery after the date the envelope containing the notice is deposited in the United States mail, properly addressed to party to whom it is directed, postage prepaid.

12. Agreement Binding Upon Successors. This Agreement shall inure to the benefit of and be binding upon the parties and their heirs, legal representatives, successors and assigns. Buyer may not assign its interest under this Agreement, in whole or in part, without the prior written consent of Seller, which consent shall be in Seller's sole discretion.

13. Time. Time is of the essence in the performance of this Agreement.

14. Entire Agreement. This Agreement contains the entire agreement between Seller and Buyer, and all prior communications or agreements between the parties to this Agreement or their representatives, whether oral or written, are merged into this Agreement and extinguished. No agreement, representation or inducement shall be effective to change, modify or terminate this Agreement, in whole or in part, unless in writing and signed by the party or parties to this Agreement to be bound by such change, modification or termination.

15. Waivers. No party may waive any condition or breach of any term, covenant or condition of this Agreement, except in a writing specifically describing the condition or breach waived. The waiver by either party to this Agreement of any condition of, or breach of any term, condition or covenant contained in, this Agreement shall not be deemed to be a waiver of any other condition or of any subsequent breach of the same or of any other term, condition or covenant of this Agreement.

16. Construction Against the Party Drafting. The parties to this Agreement acknowledge and agree that this Agreement represents a negotiated agreement, having been drafted, negotiated and agreed upon by the parties with the advice of their legal counsel. Therefore, the parties agree that the fact that one party or the other may have been primarily responsible for drafting or editing this Agreement shall not, in any dispute over the terms of this Agreement, cause such Agreement to be interpreted against such party.

17. Survival of Agreement. This Agreement shall terminate upon the transfer of title to the Property, except as expressly provided in this Agreement, and except for Seller's rights to enforce the remedies set forth in Section 9 of this Agreement.

18. Buyer Covenants. Within 30 days of each anniversary of this Agreement, Buyer agrees to provide Seller the following: (a) written summary of any improvements made to the Property; (b) certified rent roll for the Property, and (c) copies of any lease agreements entered into during the previous year. Buyer agrees that it shall not enter into any space leases for the Property without Seller's prior written consent, except that consent shall not be required for leases with a duration not exceeding one year. Buyer shall obtain one month's rental deposit from each tenant prior to tenant taking occupancy. All rental deposits shall be deposited in a separate account with Exchange State Bank. Buyer agrees to comply with all landlord-tenant regulations



governing the rental of residential properties in the State of Iowa. Buyer shall be responsible for obtaining and maintaining the certificates of occupancy for the Property.

19. Insurance. Buyer on and from said date of possession, 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 reasonably require on all buildings and improvements, now on or hereafter placed on the Property 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. Seller's interest shall be protected in accordance with a standard or union-type loss payable clause. **BUYER SHALL PROMPTLY DEPOSIT SUCH POLICY WITH PROPER 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. Buyer shall also keep in full force and effect a policy of public liability insurance for the Property in an amount acceptable to Seller.

20. Indemnification. Buyer shall indemnify, defend and hold Seller harmless from all claims, demands, causes of action, actions, damages, liability, judgments or expenses, including reasonable attorney's fees and expenses, in connection with any personal injury or damage to property arising from or out of any occurrence in, upon or at the Property, except if caused by the act or omission of Seller, its agents, employees, contractors, or assignees. This provision shall survive satisfaction, foreclosure, or forfeiture of the Property.

21. Approval of Title. Buyer has had an opportunity to examine the abstracts of title and or lien searches to the Property and hereby approves title to the Property.

22. Partial Releases; No Release in Default. Provided Seller determines that the portion of the Property which shall remain subject to this Agreement is sufficient to secure the balance owed under Section 2 above, and provided no Default which remains uncured has occurred with respect to this Agreement, and further provided no event has occurred and is continuing which, with notice or the passage of time or both, would constitute Default with respect to this Agreement, Seller, at the request and expense of Buyer, will promptly deliver a partial satisfaction of this Agreement for the properties referenced below, upon payment by Buyer of the amount set forth on **Exhibit B**. The sum paid to Seller for partial releases shall be applied at Seller's option either to accrued and unpaid interest, to the outstanding principal balance or to such other amounts as may be outstanding under this Agreement. Notwithstanding anything to the contrary in the foregoing, Buyer agrees that no release shall be granted unless Seller determines in its sole discretion that the principal balance remaining after release of a particular property would be below 80% of the appraised value of the remaining properties. Any appraisal required in connection with obtaining a release shall be obtained by Buyer at its cost.

IN WITNESS WHEREOF, Seller and Buyer have duly executed this Real Estate Installment Contract, in duplicate, as of the year and day first above written.



EXCHANGE STATE BANK

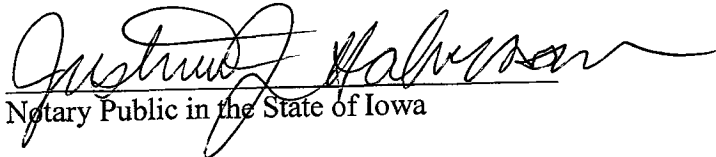


By: \_\_\_\_\_  
Name: Kendall S. Kerns  
Title: EVP

STATE OF IOWA            )  
                                          ) SS:  
COUNTY OF MADISON    )

This instrument was acknowledged before me on this 1 day of December, 2009 by Kendall S. Kerns as Executive Vice President of Exchange State Bank.



  
Notary Public in the State of Iowa



Signature Page Two (2)

T & S PROPERTY SERVICES, LLC

By Timothy A. Schaefer Susan B. Schaefer  
Name: Timothy A. Schaefer Susan B. Schaefer  
Title: Member member

STATE OF IOWA                    )  
                                          ) SS:  
COUNTY OF MADISON         )

This instrument was acknowledged before me on this 1 day of December, 2009 by  
Timothy A. Schaefer as Members of T & S Property Services, LLC.  
E. Susan B. Schaefer



Notary Public in the State of Iowa

(00534640-2)

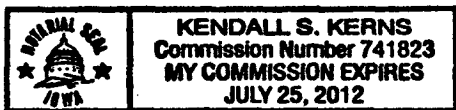


EXHIBIT "A"

LEGAL DESCRIPTIONS

1. The East 54 feet of Lot One (1), in Block Two (2), of Center Addition to Winterset, Madison County, Iowa, also known as 124 E. Filmore Street, Winterset, Iowa 50273;
2. Lot Two (2) in Block Six (6) of Pitzer & Knight's Addition to the Original Town of Winterset, Madison County, Iowa also known as 210 W Buchanan, Winterset, IA 50273;
3. The South Half (1/2) of Lots One (1) and Two (2) in Block Seven (7) of Pitzer & Knight's Addition to the Town of Winterset, Madison County, Iowa also known as 520 N 3<sup>rd</sup> Ave, Winterset, IA 50273.

T&S Property Services-  
Contract

EXHIBIT "B"  
PURCHASE PROPERTY ALLOCATIONS

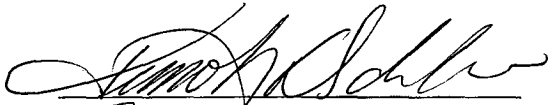
1. 124 E. Filmore Street, Winterset, Iowa 50273	\$51,000.00
2. 210 W Buchanan, Winterset, IA 50273	\$57,600.00
3. 520 N 3 <sup>rd</sup> Ave, Winterset, IA 50273	\$63,000.00
	\$171,600.00

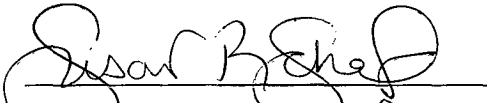
**GUARANTY OF CONTRACT**

The undersigned does hereby guaranty the full performance of this Real Estate Installment Contract (the "Contract") and do further expressly waive notice of non-performance or default under the Contract by or on behalf of Buyer, and further expressly hereby waives any legal obligations or necessity for Seller to proceed first against Buyer or to exhaust any remedy Seller may have against Buyer, it being understood that in the event of default or failure of performance under the Contract in any respect by Buyer, Seller may proceed and have right of action solely against either the undersigned or Buyer, or jointly against the undersigned and Buyer.

The liability of the undersigned pursuant to this Guaranty is expressly limited to the sum of amount due or damages relating to the event of default.

DATED this 1 day of Dec., 2009.

  
\_\_\_\_\_  
Timothy A. Schatz

  
\_\_\_\_\_  
Susan R. Schatz