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LISA SMITH, COUNTY RECORDER  
MADISON COUNTY IOWA

CHEK

**REAL ESTATE CONTRACT-INSTALLMENTS**

THE IOWA STATE BAR ASSOCIATION

Official Form No. 142

Recorder's Cover Sheet

\$58,500

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

Kyle Kruidenier, 6601 Westown Pkwy, Ste 200, West Des Moines, IA 50266, Phone: (515) 244-3500

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

Javaine C. Miller, 5166 Raintree Drive, West Des Moines, IA 50265

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

Kyle Kruidenier, 6601 Westown Pkwy, Ste 200, West Des Moines, IA 50266, Phone: (515) 244-3500

**Grantors:**

Jamie C. Miller a/k/a Javaine C. Miller and Terri L. Miller

**Grantees:**

Brayton T. Weber and Tereca D. Weber

**Legal Description:** See Page 2

**Document or instrument number of previously recorded documents:** none

**REAL ESTATE CONTRACT-INSTALLMENTS**

IT IS AGREED this 3<sup>rd</sup> day of May, 2011, by and between **Javaine C. Miller a/k/a Jamie Miller and Terri L. Miller**, individuals, residing at 5166 Raintree Drive, West Des Moines, Iowa 50265, **Sellers**; and **Brayton T. Weber and Tereca D. Weber**, individuals, residing at 1235 Watrous Ave., Des Moines, Iowa 50315, **Buyers**;

That the Sellers, as in this contract provided, agrees to sell to the Buyers, and the Buyers in consideration of the premises, hereby agrees with the Sellers to purchase the following described real estate situated in the County of Madison, State of Iowa, to-wit:

Lot Four (4) of St. Johns Woods Subdivision, a subdivision in the North Half (1/2) of the Southwest Quarter (1/4) of Section 22, Township 77 North, Range 26 West of 5th P.M., Madison County, Iowa.

together with any easements and servient estates appurtenant thereto, and subject to any (i) zoning restrictions, (ii) mineral reservations, if any, and (iii) reasonable easements and restrictive covenants, all upon the terms and conditions following:

**1. TOTAL PURCHASE PRICE.** The Buyer agrees to pay for said property the total of **\$ 58,500.00** due and payable at 5166 Raintree Drive, Iowa, 50265, as follows:

(a) **DOWN PAYMENT** of **\$1,500.00 plus \$400.00 in attorney fees**, receipt of which is hereby acknowledged; and

(b) **REMAINING \$57,000.00 OF THE PURCHASE PRICE** as follows:

18 equal interest only payments of \$200.00/month, commencing on the 15th of May, 2011, and continuing on the 15th day of each month thereafter through October 2012. A balloon payment equal to \$57,000.00 shall be due and payable on or before the 15th of November 2012.

Buyers shall also pay the homeowners association dues, affecting the subject property, in the amount of \$240.00. Payment is to be made every six (6) months, commencing July 1, 2011 and on the 1st of the sixth month thereafter. Payment of the homeowners association dues is to be made to Sellers. Sellers will then pay the homeowners association the required dues.

Any payments required to be made under this section shall be considered late if they are not paid within 10 days of the due date. A late payment penalty equal to 5% of the amount of the payment shall be assessed for any late payment.

**Buyer may prepay the outstanding principal balance in full at any time without penalty.**

2. **POSSESSION.** Buyer, concurrently with due performance on its part shall be entitled to possession of said property on May 15, 2011.

3. **TAXES.** Seller shall pay real estate taxes for all prior years and shall also be responsible for payment of the real estate taxes through October 2012 or the prepayment date, whichever should occur first. Whoever may be responsible for the payment of said taxes, and the special assessments, if any, each year, shall, at the other party's request, furnish to the other parties evidence of payment of such items not later than July 15 of each year.

4. **SPECIAL ASSESSMENTS.** Seller shall pay the special assessments against this property:

- (a) Which, if not paid, as of the possession date, would become delinquent and all assessments payable prior thereto.
- (b) Which are a lien or pending thereon as of the possession date.
- (c) 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.

5. **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, its successors in interest or assigns may, and hereby reserves the right to at any time mortgage its right, title or interest in such premises or to renew or extend any existing mortgage for any amount not exceeding 80% 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 consents to such a mortgage and agrees 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.

6. **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 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. 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 not stand as sole security for the payment of the obligations herein.

**7. CARE OF PROPERTY.** Buyer 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. Buyer shall not make any material alteration in said premises, including but not limited to the removal of any trees or the construction of any structures, without the written consent of the Seller, which consent shall not be unreasonably withheld. Buyer 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 SELLER.** If Buyer fails to pay such homeowners association dues, special assessments and insurance and effect necessary repairs, as above agreed, Seller may, but need not, pay such homeowners association dues, 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.)

**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 Seller 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) Seller shall give Special Warranty as to the period after equitable title passes to Buyer; (f) Spouse if not titleholder, need not join in any warranties of the deed unless otherwise stipulated:

(g) N/A

(h) N/A

**14. 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 have been complied with, Seller will execute and deliver to Buyer a Special Warranty Deed conveying said premises in fee 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 as of such earlier date if and as designated in the next sentence. Seller shall also pay the cost of any abstracting due to any act or change in the personal affairs of 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.

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

**16. FORFEITURE.** If Buyer (a) fails to make the payments aforesaid, or any part thereof, as same become due; or (b) fails to pay the homeowner association dues 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) fails to keep the property insured; or (d) fails to keep it in reasonable repair as herein required; or (e) fails 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 its 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 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 Buyer fails to timely perform this contract, Seller, at its 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 at all parties concerned, and such receiver shall be liable to account to Buyer only for the net profits, after application of rents, issues and profits from the costs and expenses of the receivership and foreclosure end 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 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 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 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) Seller in such action files an election to waive any deficiency judgment against Buyer or his successor in interest in such action. If the redemption period is so reduced, Buyer or his successor 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.

**18. ATTORNEY'S FEES.** In case of any action, or in any proceedings in any Court, arising out of the default of either Buyer or Seller, the prevailing party shall be entitled to recover reasonable attorneys' fees.

**19. 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 became 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 assignor. 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 personalty shall be considered indivisible with the real estate above described; and any such termination of Buyer's rights in said real estate shall concurrently operate as the forfeiture or foreclosure hereof 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.** Buyer 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. **LEAD-BASED PAINT NOTICE.** Not applicable.

25. **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.

26. **INSPECTION OF PRIVATE SEWAGE DISPOSAL SYSTEM.** Seller represents and warrants to Buyer that the Property is not served by a private sewage disposal system, and there are no known private sewage disposal systems on the property.

27. **SPECIAL PROVISIONS.**

**Commissions:** Neither Seller nor Buyer have been assisted in this transaction by a Realtor or Real Estate Broker.

**Included property:** Sellers to transfer the following property to Buyers at the conclusion of the contract.

1. A Craftsman riding lawn mower (19.5 HP with turbo twin cylinders and a 42" cutting deck);
2. An all-metal garden cart that attaches to the riding lawn mower;
3. A hydraulic log splitter with a 5HP Honda motor from Northern Tool and Equip.
4. A tilt-bed trailer, approximately 6'x10' (Seller shall maintain license).

**Seller is selling the subject property "AS IS", without any representations or warranties as to the condition of the property.**

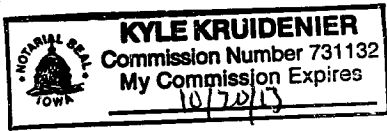
I UNDERSTAND THAT HOMESTEAD PROPERTY IS IN MANY CASES PROTECTED FROM THE CLAIMS OF CREDITORS AND EXEMPT FROM JUDICIAL SALE; AND THAT BY SIGNING THIS CONTRACT, I VOLUNTARILY GIVE UP MY RIGHT TO THIS PROTECTION FOR THIS PROPERTY WITH RESPECT TO CLAIMS BASED UPON THIS CONTRACT.

Executed in duplicate or triplicate

Javaine C. Miller 5/3/11  
Javaine C. Miller, Seller Date

Terri L. Miller  
Terri L. Miller, Seller Date

STATE OF IOWA, COUNTY OF Dallas  
This instrument was acknowledged before me on May 3, 2011, by Javaine C. Miller and Terri L. Miller, husband and wife.



Kyle Kruidenier, Notary Public

Brayton T. Weber 4/28/11  
Brayton T. Weber, Buyer Date

Tereca D. Weber 4/28/11  
Tereca D. Weber, Buyer Date

STATE OF IOWA, COUNTY OF Polk  
This instrument was acknowledged before me on 4/28/11, by Brayton T. Weber and Tereca D. Weber, husband and wife.

Craig Krouch, Notary Public

