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LISA SMITH, COUNTY RECORDER
MADISON COUNTY IOWA

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This instrument prepared by and return to:

JOSEPH F. WALLACE, ABENDROTH AND RUSSELL LAW FIRM, 2560 - 73rd Street, Urbandale, Iowa 50322

Phone # (515) 278-0623

Mail tax statements to:

CODY AND SANDY MILLER, 105 West South Street, Truro, Iowa 50251

A&R File #19529-11-JFW (mac)

\$35,000

REAL ESTATE CONTRACT

Legal: **Lots One (1) and Two (2), in Block One (1), of HULL'S ADDITION to the Town of Truro, Madison County, Iowa**



Address: 105 West South Street, Truro, Iowa 50251

IT IS AGREED this 25 day of October, 2011, by and between **Esther E. Neidt, a single person, by and through Kathy Weidner, as Attorney-in-Fact, Seller; and Cody Miller and Sandy Miller, a married couple, as Joint Tenants with full rights of survivorship and not as Tenants in Common, Buyers;**

That the Seller, as in the contract provided, agrees to sell to the Buyers, and the Buyers in consideration of the premises, hereby agree with the Seller to purchase the above-described real estate, together with any easements and servient estates appurtenant thereto, but with such reservations and exceptions of title as may be below stated, upon the terms and conditions following:

1. **TOTAL PURCHASE PRICE.** The Buyer agree to pay for said property the total of **\$35,000.00**, due and payable as directed by Seller, as follows:

a. **DOWN PAYMENT of \$3,500.00, receipt of which is hereby acknowledged.**

b. **BALANCE OF PURCHASE PRICE. \$31,500.00, as follows:**

\$595.00 due and payable on or before December 1, 2011, with interest thereon at the rate of **5.0%** per annum; and **\$595.00** due and payable on or before the 1st day of each and every month thereafter, with interest thereon at the rate of **5.0%** per annum, until the entire unpaid balance of the contract, including principal and accrued interest, is paid in full.

- c. **ESCROWS.** There shall be no escrows for the annual property taxes or homeowner's insurance. Buyers shall be responsible for payment of all property taxes and homeowner's insurance premiums.
 - d. **LATE FEE.** Buyer shall pay a late fee of **\$59.50 (10%)** after the 10th day of the month if the monthly contract payment is unpaid when due.
 - e. **PREPAYMENT.** This contract shall allow the Buyer to prepay all or any part of the principal without penalty.
 - f. **DUE ON SALE OR ASSIGNMENT.** This contract shall become due and payable in full upon sale or assignment by the Buyer.
 - g. **ACCELERATION.** In the event of default by the Buyer, the Seller, at the Seller's sole option, may accelerate the balance of the contract and require that the entire unpaid balance of the contract, including principal and accrued interest, be immediately due and payable by the Buyer. If the Seller elects to accelerate the contract, the Seller may not forfeit the contract, but must proceed with a foreclosure action, as set forth below.
 - h. **BALLOON PAYMENT.** The entire unpaid balance of the contract, including principal and accrued interest, shall become due and payable in full on **November 30, 2016.**
2. **POSSESSION AND CLOSING.** If Buyers timely perform all obligations, possession of the property shall be delivered to Buyers on or before **November 1, 2011** and any adjustments of rent, insurance, taxes, interest, and all charges attributable to the Seller's possession shall be made as of the date of possession.
 3. **TAXES.** Seller shall pay real estate taxes prorated to the date of closing and any unpaid taxes thereon payable in prior years. Buyers shall pay any taxes not assumed by Seller and all subsequent taxes before same become delinquent. Whoever may be responsible for the payment of said taxes, and the special assessments, if any, each year, shall furnish to the other parties evidence of payment of such items not later than fifteen (15) days after the due date of each tax installment and/or special assessment. **Any proration of taxes shall be based upon the taxes for the year currently payable, unless the parties state otherwise.**
 4. **SPECIAL ASSESSMENTS.** Seller shall pay the special assessments against this property which are a lien thereon as of the date of closing. Buyers, except as above stated, shall pay all subsequent special assessments and charges, before the same become delinquent.
 5. **CONDITION OF PROPERTY.** Seller is selling this property in "as-is" condition. Buyers acknowledge that they have inspected the property, have examined all official plat documents, including easements of record, and applicable restrictive covenants, and are familiar with all aspects and conditions of the property. Buyers accept the property in its current condition and acknowledge that the property satisfies their need, intent, and plans for use.
 6. **CARE OF PROPERTY.** Buyers shall take good care of this property; shall keep the buildings and other improvements now or hereafter placed on the said premises in good and reasonable repair; and shall not injure, destroy, or remove the same during the life of this contract. **Buyers shall not make any material alteration in said premises without the written consent of the Seller, which consent shall not be unreasonably withheld.** Buyers shall not use or permit the premises to be used for any illegal purpose.

7. **INSURANCE.** Except as may be otherwise included above, Buyers as and from said date of possession, shall constantly keep in force insurance, premiums for which shall be prepaid by Buyers (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 Buyers as their interests may appear. **BUYERS 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.
8. **LIENS.** No mechanics' liens shall be imposed upon or foreclosed against the real estate described herein. The imposition of a mechanic's lien against the property shall be considered a default event.
9. **ADVANCEMENT BY SELLER.** If Buyers 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 as advanced may, at the election of Seller, be added to the principal amount due hereunder and so secured. Failure of Buyer to repay seller for such advancement shall be considered a default event.
10. **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 Iowa Code Section 581.13; 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.
11. **TIME IS OF THE ESSENCE.** Time is of the essence in this contract. 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. **Seller and Buyers agree that the provisions of the balloon payment, above, shall be strictly enforced.**
12. **EXCEPTIONS TO WARRANTIES OF TITLE.** The warranties of title in any Deed made pursuant to this contract 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 prior paragraphs of this contract; (e) Seller shall give Special Warranty as to the period after equitable title passes to the Buyers; (f) Spouse if not titleholder, need not join in any warranties of the Deed unless otherwise stipulated.
13. **DEED AND ABSTRACT.** 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 Buyers have been complied with, Seller will execute and deliver to Buyers a **General Warranty Deed** conveying said premises in fee simple pursuant to and in conformity with this contract and Seller will at this time deliver to Buyers an abstract showing merchantable title, in conformity with this contract. Such abstract shall begin with the government patent (unless pursuant to the Iowa State Bar 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. This contract supersedes the previous written Offer to Buy. 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.

14. **APPROVAL OF ABSTRACT.** Buyers have examined the abstract of title to this property and such abstract is accepted.
15. **REMEDY ON DEFAULT – BUYERS.** If the Seller fails to perform under the terms of this contract, including but not limited to failing to convey as provided in the contract or failing to provide marketable title at the time of the conveyance, the Buyers may elect from the following remedies:
- a. Buyers may maintain an action for specific performance against the Seller and may bring an action for damages along with an action for specific performance.
 - b. Buyers may rescind the contract and recover restitution from the Seller. The parties acknowledge that the Buyers may be entitled to a lien upon the subject property for the amount of payment, plus interest, and improvements.
 - c. Buyers may maintain an action at law for money damages against the Seller.

The Buyers may have other legal or equitable remedies for the Seller' default of this contract.

16. **DEFAULT BY BUYERS.** If the Buyers fail to perform under the terms of this contract, the Seller may have remedies against the Buyers. Such default by the Buyers includes, but is not limited to the following:
- a. failing to make the payments aforesaid, or any part thereof, as the same shall become due;
 - b. failing to pay the real estate taxes or special assessments and charges, or any part thereof, levied upon the subject property, or assessed against it, by any taking body, as the same shall become due and before the same shall become delinquent
 - c. failing to keep the property insured with homeowner's (hazard) insurance in the amounts required by the Seller, or failing to provide written evidence to the Seller of the payment of such hazard insurance premiums;
 - d. failing to keep the property in reasonable repair as herein required;
 - e. failing to perform any of the agreements as herein made or required.
17. **REMEDY ON DEFAULT – SELLER.** If the Buyers fail to perform under the terms of this contract, including but not limited to the above-referenced default events, the Seller may elect from the following remedies:
- a. Seller may foreclose on the contract in the same manner as a mortgage, pursuant to Iowa Code §§654.11 and 654.12. The Seller, at their sole option, may accelerate the unpaid balance of the contract, as set forth above.
 - b. Seller may terminate the contract and sue the Buyers for breach of contract. The Seller may be entitled to recover special or consequential damages as a result of the Buyers' breach.
 - c. Seller may maintain an action for specific performance against the Buyers and may bring an action for damages along with an action for specific performance.

- d. Seller may rescind the contract and return all payments to the Buyers. The parties acknowledge that the Buyers may be entitled to a lien upon the subject property for the amount of payment, plus interest, and improvements.
- e. Seller, in addition to any and all other legal and equitable remedies which the Seller may have, at the Seller's option, may proceed to forfeit and cancel this contract as provided by law (Iowa Code Chapter 656). Upon completion of such forfeiture, Buyers 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.

18. **STATUS OF BUYERS UPON FORFEITURE.** Upon default being made in the payment of the purchase money by the Buyers, and upon the forfeiture of this contract by the Seller, the parties expressly agree that this contract shall be treated as a lease. Upon the completion of the forfeiture, the Buyers shall at once peacefully remove themselves from possession of the subject property and, upon the Buyers' failure to do so, the Buyers may be treated as tenants holding over unlawfully after the expiration of the lease and may be ousted or removed as such.

The parties expressly agree that, upon the giving of a written three-day notice to quit, as provided in Iowa Code §648.3, the Buyers shall at once peacefully remove themselves from possession of the subject property. If the Buyers fail to do so, the Seller may proceed with a Forcible Entry and Detainer Action, as provided in Iowa Code Chapter 648. **Because the Buyers are treated as tenants holding over, the parties expressly acknowledge that the District Court sitting in small claims shall have concurrent jurisdiction over any Forcible Entry and Detainer action, under the provisions of Iowa Code Chapter 631.**

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, or in any other case permitted by law in which attorney's fees may be collected or imposed, or upon the above-described property, the prevailing party shall be entitled to reasonable attorneys' fees.
20. **CONSTRUCTION.** Words and phrases here, including acknowledgments hereof, shall be construed as in the singular or plural number, and as masculine, feminine, or neuter gender, according to the context.
21. **ENTIRE AGREEMENT.** This contract constitutes the entire agreement between the Seller and the Buyers.
22. **SELLER-PAID CLOSING COSTS.** At the time of closing, seller shall credit \$1,000.00 as and for buyers' closing costs.

STATE OF Missouri)
)
COUNTY OF Clay) SS:

On this 25th day of October, 2011,
before me the undersigned, a Notary Public in and for
said State, personally appeared **Esther E. Neidt**, by
and through **Kathy Weidner, Attorney-in-Fact**, to
me known to be the identical person named in and
who executed the foregoing instrument and
acknowledged that the person executed the same as
that person's voluntary act and deed.

Miranda N Waltman 10/24/11
Notary Public in and for said State

Dated: 10/25/11, 2011

Kathy Weidner, POA
Esther E. Neidt, by and through
Kathy Weidner, Attorney-in-Fact

MIRANDA N WALTMAN

Notary Public- Notary Seal
Ray County, State of Missouri
My Commission Expires 06-24-2014
Commission # 10989194



STATE OF IOWA)
)
COUNTY OF Madison) SS:

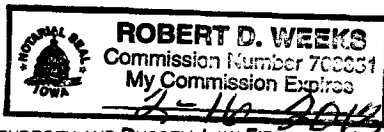
On this 27 day of Oct, 2011,
before me the undersigned, a Notary Public in and for
said State, personally appeared **Cody Miller and
Sandy Miller, a married couple**, to me known to be
the identical persons named in and who executed the
foregoing instrument and acknowledged that those
persons executed the same as their voluntary act and
deed.

[Signature]
Notary Public in and for said State

Dated: 10/27/11, 2011

[Signature]
Cody Miller

[Signature]
Sandy Miller



ABENDROTH AND RUSSELL LAW FIRM