



Document 2013 1872

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LISA SMITH, COUNTY RECORDER  
MADISON COUNTY IOWA

CHEK

✓ Prepared by and Return to:  
**Shannon N. Buban**  
**Community Bank**  
**1401 N. Jefferson, Indianola, IA 50125**  
**Phone: (515) 961-5880**

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### DEED OF TRUST

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This Deed of Trust is made between James Wesley Duncan and Abigail L Duncan, Husband and Wife, whose address is 2974 120<sup>th</sup> St, Van Meter, IA 50261, Grantor(s) (herein designated as "Debtors"), and the Community Bank whose address is 1401 N. Jefferson, Indianola, Iowa 50125, as Grantee (herein designated as "Lender").

1. This conveyance is made in trust for the following uses and purposes. Debtors have borrowed and received from Lender an amount of money and have agreed to repay it, with interest to Lender's or Lender's order, according to a promissory note of even date with this Deed of Trust executed and delivered by the Debtors. The Debtors, in consideration of the above indebtedness to the Lender, and for the purpose of securing the payment of the promissory note and of any sum or sums of money, with interest, that may be paid or advanced by, or may otherwise be due to the Lender, under the provisions of this instrument, and also such additional sums as may be borrowed and received by Debtors or Lender, whether or not evidenced by another promissory note of Debtors, hereby grant, bargain, sell, assign, grant a security interest in, and convey to Lender in trust the following-described Property:

a. **Property and Buildings.** All of Debtor's right, title and interest in and to the following described real estate situated in Madison County, Iowa (the "Property"):

Lot Two (2) of Arrowhead Estates, Plat 1, located in the North Half (1/2) of the Northeast Quarter (1/4) of Section Seventeen (17), Township Seventy-seven (77) North, Range Twenty-six (26) West of the 5<sup>th</sup> P.M., Madison County, Iowa



Locally known as: 3 Acres 120<sup>th</sup> St, Van Meter, IA 50261

and all buildings, structures and improvements now standing or at any time hereafter constructed or placed upon the Property (the "Buildings"), including all hereditaments, easements, appurtenances, riparian rights, mineral rights, water rights, rights in and to the Property lying in streets, alleys and roads adjoining the Property, estates and other rights and interests now or hereafter belonging to or in any way pertaining to the Property.

b. **Personal Property.** All fixtures and other personal property integrally belonging to, or hereafter becoming an integral part of the Land or Buildings, whether attached or detached, including but not limited to, light fixtures, shades, rods, blinds, Venetian blinds, awnings, storm windows, screens, linoleum, water softeners, automatic heating and air-conditioning equipment and all proceeds, products, increase, issue, accessions, attachments, accessories, parts, additions, repairs, replacements and substitutes of, to, and for the foregoing (the "Personal Property").

c. **Revenues and income.** All rents, issues, profits, leases condemnation awards and insurance proceeds now or hereafter arising from the ownership, occupancy or use of the Property, Buildings and Personal Property, or any party thereof ("Revenues and income"). TO HAVE AND TO HOLD for the purpose and upon the uses herein set forth, the Property, Buildings, Personal Property and Revenues and income (collectively called the "Deed of Trust Property").

2. **Representations and Warranties of Debtors.** Debtors represent, warrant and covenant to Lender that (i) Debtors hold clear title to the Deed of Trust Property and title in fee simple in the Property; (ii) Debtors have the right, power and authority to execute this Deed Of Trust and to mortgage, and grant a security interest in the Deed of Trust Property; (iii) the Deed of Trust Property is

free and clear of all liens and encumbrances, except for real estate taxes not yet delinquent and except as otherwise stated in subparagraph 1a. herein; (iv) Debtors will warrant and defend title to the Deed of Trust Property and the lien and priority of this Deed Of Trust against all claims and demands of all persons, whether now existing or hereafter arising; and (v) all buildings and improvements now or hereafter located on the Property are, or will be, located entirely within the boundaries of the Property.

3. **Payment and Performance of the Obligations.** Debtors will pay all amounts payable under the promissory notes and any other indebtedness referred to above (hereinafter collectively referred to as the "Obligations") in accordance with the terms of the Obligations when and as due and will timely perform all other duties of Debtors under the Obligations. The provisions of the Obligations are hereby incorporated by reference into this Deed of Trust as if fully set forth herein.

4. **Taxes.** Debtors shall pay each installment of all taxes and special assessments of every kind, now or hereafter levied against the Deed in Trust Property before the same become delinquent, without notice or demand, and shall deliver to Lender proof of such payment within fifteen (15) days after the date in which such tax or assessment becomes delinquent.

5. **Liens.** Debtors shall not create, incur or suffer to exist any lien, encumbrance, security interest or charge on the Deed of Trust Property or any part thereof which might or could be held to be equal or prior to the lien of this Deed of Trust, other than the lien of current real estate taxes and installments of special assessments with respect to which no penalty is yet payable. Debtors shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Mortgaged Property.

6. **Compliance with laws.** Debtors shall comply with all present and future statutes, laws, rules, orders, regulations and ordinances affecting the Deed of Trust Property, any part thereof or the use thereof.

7. **Permitted Contests.** Debtors shall not be required to (i) pay any tax, assessment or other charge referred to in paragraph 5 hereof, (ii) discharge or remove any lien, encumbrance or charge referred to in paragraph 6 hereof, or (iii) comply with any statute, law, rule, regulation or ordinance referred to in paragraph 7 hereof, so long as Debtors shall contest, in good faith, the existence, amount or validity thereof, the amount of damages caused thereby or the extent of Debtor's liability therefor, by appropriate proceedings which shall operate during the pendency thereof to prevent (A) the collection of, or other realization upon the tax, assessment, charge or lien, encumbrances or charge so contested, (B) the sale, forfeiture or loss of the Deed of Trust Property or any part thereof, and (C) any interference with the use or occupancy of the Deed of Trust Property or any part thereof. Debtors shall give prompt written notice to Lender of the commencement of any contest referred to in this paragraph 8.

8. **Care of Property.** Debtors shall take good care of the Deed of Trust Property; shall keep the Buildings and Personal Property now or later placed upon the Property in good and reasonable repair and shall not injure, destroy or remove either the Buildings or Personal Property during the term of this Deed of Trust. Debtors shall not make any material alteration to the Deed of Trust Property without the prior written consent of Lender.

9. **Insurance.**

a. **Risks to be Insured.** Debtors, at their sole cost and expense, shall maintain insurance on the Buildings and other improvement now existing or hereafter erected on the Property and on the Personal Property included in the Deed of Trust Property against loss by fire, extended coverage perils and such other hazards as Lender may from time to time require, such insurance to have a "Replacement Cost" endorsement attached thereto, with the amount of the insurance at least equal to the balance of the Obligations. At Debtors' option, such policy may have a coinsurance clause of not less than 100% of replacement cost provided the policy contains an appropriate form of cost escalation endorsement. Debtors will at their sole cost and expense, from time to time, and at any time at the request of Lender, provide Lender with evidence satisfactory to Lender of the replacement cost of Deed of Trust Property. Debtors will maintain such other insurance as Lender may reasonably require.

b. **Policy Provisions.** All insurance policies and renewals thereof maintained by Debtors pursuant to this Deed of Trust shall be written by an insurance carrier satisfactory to Lender, be payable to the parties as their interest may appear, contain a standard or union-type loss payable clause in favor of Lender, contain an agreement of the insurer that it will not amend, modify or cancel the policy except after thirty (30) days prior written notice to Lender, and be reasonably satisfactory to Lender in all other respects.

c. **Delivery of Policy or Certificate.** If requested by Lender, Debtors will deliver to Lender original policies satisfactory to Lender evidencing the insurance which is required under this Deed of Trust, and Debtors shall promptly furnish to Lender all renewal notices and, upon request of Lender, evidence of payment thereof. At least ten (10) days prior to the expiration date of a required policy, Debtors shall deliver to Lender a renewal policy in form satisfactory to Lender.

d. **Assignment of Policy.** If the Deed of Trust Property is sold at a foreclosure sale or if the Lender shall acquire title to the Deed of Trust Property, Lender shall have all of the right, title and interest of Debtors in and to any insurance policies required hereunder, and the unearned premiums

thereon, and in and to the proceeds thereof resulting from any damage to the mortgaged Property prior to such sale or acquisition.

**e. Notice of Damage or Destruction; Adjusting Loss.** If the Deed of Trust Property or any part thereof shall be damaged or destroyed by fire or other casualty, Debtors will, within five (5) calendar days after the occurrence of such damage or destruction, give written notice thereof to the insurance carrier and to the Lender and will not adjust any damage or loss which is estimated by Debtors in good faith to exceed \$25,000 unless Lender shall have joined in or concurred with such adjustment; but if there has been no adjustment of any such damage or loss within four (4) months from the date of occurrence thereof and if an Event of default shall exist at the end of such four (4) month period or at any time thereafter, Lender may alone make proof of loss, adjust and compromise any claim under the policies, and appear in and prosecute any action arising from such policies. In connection therewith, Debtors do hereby irrevocably authorize, empower and appoint Lender as attorney-in-fact for Debtor (which appointment is coupled with an interest) to do any and all of the foregoing in the name and on behalf of Debtors.

**f. Application of Insurance Proceeds.** All sums paid under any insurance policy required by this Mortgage shall be paid to Lender, which shall, at its option, apply the same (after first deducting therefrom Lender's expenses incurred in collecting the same including but not limited to reasonable attorney's fees) to the reduction of the Obligations or to the payment of the restoration, repair, replacement or rebuilding of Deed of Trust Property that is damaged or destroyed in such manner as Lender shall determine and secondly to the reduction of the Obligations. Any application of insurance proceeds to principal of the Obligations shall not extend or postpone the due date of the installments payable under the Obligations or change the amount of such installments.

**g. Reimbursement of Lender's Expenses.** Debtors shall promptly reimburse Lender upon demand for all of Lender's expenses incurred in connection with the collection of the insurance proceeds, including but not limited to reasonable attorney's fees, and all such expenses shall be additional amounts secured by this Deed of Trust.

**10. Inspection.** Lender, and its agents, shall have the right at all reasonable times, to enter upon the Deed of Trust Property for the purpose of inspecting the Deed of Trust Property or any part thereof. Lender shall, however, have no duty to make such inspection. Any inspection of the Deed of Trust Property by Lender shall be entirely for its benefit and Debtors shall in no way rely or claim reliance thereon.

**11. Protection of Lender's Security.** Subject to the rights of Debtors under paragraph 8 hereof, if Debtors fail to perform any of the covenants and agreements contained in this Deed of Trust or if any action or proceeding is commenced which affects the Deed of Trust Property or the interest of the Lender therein, or the title thereto, then Lender, at Lender's option, may perform such covenants and agreements, defend against or investigate such action or proceeding, and take such other action as Lender deems necessary to protect Lender's interest. Any amounts or expenses disbursed or incurred by Lender in good faith pursuant to this paragraph 12 with interest thereon at the rate of 21% per annum, shall become an Obligation of Debtors secured by this Deed of Trust. Such amounts advanced or disbursed by Lender hereunder shall be immediately due and payable by Debtors unless Debtors and Lender agree in writing to other terms of repayment. Lender shall, at its option, be subrogated to the lien of any mortgage or other lien discharged in whole or in part by the Obligations or by Lender under the provisions hereof, and any such subrogation rights shall be additional and cumulative security for this Mortgage. Nothing contained in this paragraph shall require Lender to incur any expense or do any act hereunder, and Lender shall not be liable to Debtors for any damage or claims arising out of action taken by Lender pursuant to this paragraph.

**12. Condemnation.** Debtors shall give Lender prompt notice of any action, actual or threatened, in condemnation or eminent domain and hereby assign, transfer and set over to Lender the entire proceeds of any award or claim for damages for all of or any part of the Deed of Trust Property taken or damaged under the power of eminent domain or condemnation. Lender is hereby authorized to intervene in any such action in the names of Debtors, to compromise and settle any such action or claim, and to collect and receive from condemning authorities and give proper receipts and acquittances for such proceeds. Any expenses incurred by Lender in intervening in such action or compromising and settling such action or claim, or collecting such proceeds shall be reimbursed to Lender first out of the proceeds. The remaining proceeds or any part thereof shall be applied to reduction of that portion of the Obligations then most remotely to be paid, whether due or not, or to the restoration or repair of the Trust of Deed Property, the choice of application to be solely at the discretion of Lender.

**13. Fixture Filing.** From the date of its recording, this Deed of Trust shall be effective as a financing statement file as a fixture filing with respect to the Personal Property and for this purpose the name and address of the debtor is the name and address of Debtors as set forth in paragraph 20 herein and the name and address of the secured party is the name and address of the Lender as set forth in paragraph 20 herein.

14. **Events of Default.** Each of the following occurrences shall constitute an event of default hereunder (“Event of Default”):

a. Debtors shall default in the due observance or performance of or breach its agreement contained in paragraph 4 hereof or shall default in the due observance or performance of or breach any other covenant, condition or agreement on its part to be observed or performed pursuant to the terms of this Deed of Trust.

b. Debtors shall make an assignment for the benefits of its creditors, or a petition shall be filed by or against Debtors under the United States Bankruptcy Code or Debtors shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of a material part of its properties or of the Deed of Trust Property or shall not, within thirty (30) days after the appointment of the trustee, receiver or liquidator of any material part of its properties or of the Deed of Trust Property, have such appointment vacated.

c. A judgment, writ or warrant of attachment or execution, or similar process shall be entered and become a lien on or be issued or levied against the Deed of Trust Property or any part thereto which is to release, vacated or fully bonded within thirty (30) days after its entry, issue or levy.

d. An event of default, however defined, shall occur under any other mortgage, assignment or other security document constituting a lien on the Deed of Trust Property or any part thereof.

15. **Acceleration; Foreclosure.** Upon the occurrence of any Event of Default and at any time thereafter while such Event of Default exists, Lender may, at its option, after such notice as may be required by law, exercise one or more of the following rights and remedies (and any other rights and remedies available to it):

a. Lender may declare immediately due and payable all Obligations secured by this Deed of Trust, and the same shall thereupon be immediately due and payable, without further notice or demand.

b. Lender shall have and may exercise with respect to the Personal Property, all the rights and remedies accorded upon default to a secured party under the Iowa Uniform Commercial Code. If notice to Debtors of intended disposition of such property is required by law in a particular instance, such notice shall be deemed commercially reasonable if given to Debtors at least ten (10) days prior to the date of intended disposition.

c. Lender may foreclose this Deed of Trust in accordance with the law of the State of Iowa, and at any time after the commencement of an action in foreclosure, or during the period of redemption, the court having jurisdiction of the case shall at the request of Lender appoint a receiver to take immediate possession of the Deed of Trust Property and of the Revenue and Income accruing therefrom, and to rent or cultivate the same as it may deem best for the interest of all parties concerned, and such receiver shall be liable to account to Debtors only for the net profits, after application of rents, issues and profits upon the costs and expenses of the receivership and foreclosure and upon the Obligations.

16. **Redemption.** It is agreed that if this Deed of Trust covers less than ten (10) acres of land, and in the event of the foreclosure of this Deed of Trust 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 Lender, in such action files an election to waive any deficiency judgment against Debtors 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 Debtor, 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 Deed of Trust 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 Deed of Trust at the time of such foreclosure; and (3) Lender in such action files an election to waive any deficiency judgment against Debtors or their successors in interest in such action. If the redemption period is so reduced, Debtors 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 Debtors shall be a 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.

17. **Attorneys’ Fees.** Debtors shall pay on demand all costs and expenses incurred by Lender in enforcing or protecting its rights and remedies hereunder, including, but not limited to, reasonable attorneys’ fees and legal expenses.

18. **Forbearance not a Waiver, Rights and Remedies Cumulative.** No delay by Lender in exercising any right or remedy provided herein or otherwise afforded by law or equity shall be deemed a

waiver of or preclude the exercise of such right or remedy, and no waiver by Lender of any particular provisions of this Deed of Trust shall be deemed effective unless in writing signed by Lender. All such rights and remedies provided for herein or which Lender or the holder of the Obligations may have otherwise, at law or in equity, shall be distinct, separate and cumulative and may be exercised concurrently, independently or successively in any order whatsoever, and as often as the occasion therefore arises.

19. **Notices.** All notices required to be given hereunder shall be in writing and deemed given when personally delivered or deposited in the United States mail, postage prepaid, sent certified or registered, addressed as follows:

a. If to Debtors, to:

James Wesley Duncan  
Abigail L. Duncan  
2974 120<sup>th</sup> St  
Van Meter, IA 50261

b. If to Lender, to:

Community Bank  
1401 North Jefferson  
Indianola, IA 50125

or to such other address or person as hereafter designated in writing by the applicable party in the manner provided in this paragraph for the giving of notices.

20. **Severability.** In the event any portion of the Deed of Trust shall, for any reason, be held to be invalid, illegal or unenforceable in whole or in part, the remaining provisions shall not be affected thereby and shall continue to be valid and enforceable and if, for any reason, a court finds that any provision of the Deed of Trust is invalid, illegal, or unenforceable as written, but that by limiting such provision it would become valid, legal and enforceable then such provision shall be deemed to be written, construed and enforced as so limited.

21. **Further Assurances.** At any time and from time to time until payment in full of the Obligations, Debtors will, at the request of Lender, promptly execute and deliver to Lender such additional instruments as may be reasonably required to further evidence the lien of this Deed of Trust and to further protect the security interest of Lender with respect to the Deed of Trust Property, including, but not limited to, additional security agreements, financing statements and continuation statements. Any expenses incurred by Lender in connection with the recordation of any such instruments shall become additional Obligations of Debtors secured by this Deed of Trust. Such amounts shall be immediately due and payable by Debtors to Lender.

22. **Successors and Assigns bound; Number; Gender; Agents; Captions.** The rights covenants and agreements contained herein shall be binding upon and inure to the benefit of the respective legal representatives, successors and assigns of the parties. Words and phrases contained herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender according to the contexts. The captions and headings of the paragraphs of this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

23. **Governing Law.** This Deed of Trust shall be governed by and construed in accordance with the laws of the State of Iowa.

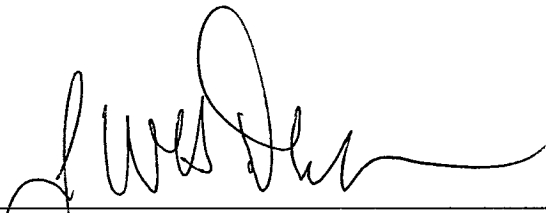
24. **Release of Rights of Dower, Homestead and Distributive Share.** Each of the undersigned hereby relinquishes all rights of dower, homestead and distributive share in and to the Deed of Trust Property and waives all rights of exemption as to any of the Deed of Trust Property.

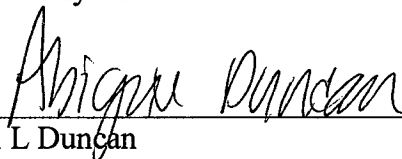
25. **Acknowledgment of Receipt of Copies of Debt Instrument.** Debtors hereby acknowledge the receipt of a copy of this Deed of Trust together with a copy of each promissory note secured hereby.

26. **Additional provisions.** Grantor waives acceptance of this trust by Grantee.

27. Whenever used, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.

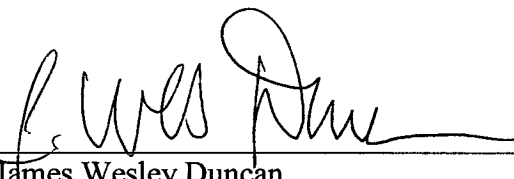
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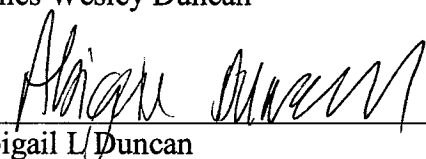
  
 \_\_\_\_\_  
 James Wesley Duncan

  
 \_\_\_\_\_  
 Abigail L Duncan

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 DEED OF TRUST, I VOLUNTARILY GIVE UP MY RIGHT TO THIS PROTECTION FOR THIS DEEDED PROPERTY WITH RESPECT TO CLAIMS BASED UPON THIS DEED OF TRUST.

Dated: June 20, 2013

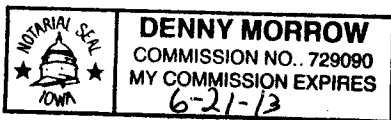
  
 \_\_\_\_\_  
 James Wesley Duncan

  
 \_\_\_\_\_  
 Abigail L Duncan

STATE OF IOWA            )  
                                   ) SS:  
 COUNTY OF WARREN    )

On this 20<sup>th</sup> day of June, 2013 before me, the undersigned, a Notary Public, personally appeared James Wesley Duncan and Abigail L Duncan, Husband and Wife, to me known to be the identical person(s) named in and who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.

  
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 Notary Public



**Note:** This Deed of Trust contains an open-end feature and an after-acquired property clause.