

**BK: 2021 PG: 1700**  
**Recorded: 4/27/2021 at 1:45:05.0 PM**  
**Pages 8**  
**County Recording Fee: \$42.00**  
**Iowa E-Filing Fee: \$3.00**  
**Combined Fee: \$45.00**  
**Revenue Tax:**  
**LISA SMITH RECORDER**  
**Madison County, Iowa**

**FIRST AMENDMENT TO MORTGAGE**

**Recorder's Cover Sheet**

**Preparer Information:**

Amy Lawrenson, Baird Holm LLP, 1700 Farnam St., Suite 1500, Omaha, NE 68102-2068, 402-344-0500

**Taxpayer Information:**

BENJAMIN MORGAN. KELLY, 16719 Waterford Rd., Waukee, Iowa, 50263

**Return Document To:**

MIDWEST BANK, 2655 Jamie Lane, Lincoln, NE 68512

**Mortgagor:**

BENJAMIN MORGAN KELLY, an unmarried person, 16719 Waterford Rd., Waukee, Iowa, 50263

BENJAMIN MATHEW KELLY and DENISE KAYE KELLY, husband and wife, 24403 250<sup>th</sup> Street, Dallas Center, Iowa

**Mortgagee:**

MIDWEST BANK, 2655 Jamie Lane, Lincoln, NE 68512

**Legal Description:** See Exhibit "A"

## **FIRST AMENDMENT TO MORTGAGE**

This First Amendment to Mortgage (the "Amendment") is effective as of April 16, 2021 by and between BENJAMIN MORGAN KELLY, an unmarried person, a/k/a Benjamin M. Kelly a/k/a Benjamin M. Kelly, Sr., BENJAMIN MATHEW KELLY, a/k/a Benjamin M. Kelly a/k/a Benjamin M. Kelly, Jr., and DENISE KAYE KELLY a/k/a Denise K. Kelly, husband and wife (collectively, "Mortgagor") and MIDWEST BANK, organized and existing under the laws of Nebraska ("Mortgagee").

Pursuant to that certain Mortgage dated May 28, 2014 from Benjamin M. Kelly and Frances A. Kelly, Husband and Wife, to Mortgagee, recorded on May 30, 2014 in Book 2014, Page 1264 in the real estate records of Madison County, Iowa (as the same may be amended, restated, supplemented, or otherwise modified, the "Mortgage"), which encumbers that certain real property of Mortgagor, as legally described on Exhibit "A" attached hereto (the "Land");

Frances A. Kelly is deceased, and her interest in the Land has been transferred to Mortgagor; and

As of the effective date of this Amendment, Mortgagor and Mortgagee have agreed to amend the promissory notes secured by the Mortgage, and Mortgagor and Mortgagee have also agreed to amend certain terms of the Mortgage. Mortgagor and Mortgagee have agreed to execute and deliver this Amendment to reflect such revised terms.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual agreements herein set forth, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Mortgagor and Mortgagee hereby agree, and amend the Mortgage, as follows:

1. Amendment to Background Clause. Section (1) of the Mortgage, titled "Background", is hereby amended and restated in its entirety as follows:

1. **BACKGROUND.** The Background is part of the Security Instrument. Borrower is justly indebted to Lender in the principal amount of \$1,500,000.00 (Loan) which principal amount with interest and other charges is to be paid to Lender in the manner and on the terms set forth in that certain Amended and Restated Promissory Note dated April 16, 2021 from KELLY CATTLE COMPANY (Borrower) to Lender (the Note). The Maturity Date of the Note is March 15, 2041.

Lender and BENJAMIN MATTHEW KELLY a/k/a Benjamin M. Kelly a/k/a Benjamin M. Kelly, Jr. entered into an Amended and Restated

Guaranty dated April 16, 2021 (Benjamin Jr. Guaranty), and this Security Instrument secures the obligations Borrower and BENJAMIN MATTHEW KELLY a/k/a Benjamin M. Kelly a/k/a Benjamin M. Kelly, Jr. (Guarantor) to Lender, as described in the Benjamin Jr. Guaranty.

Lender and DENISE KAYE KELLY a/k/a Denise K. Kelly entered into an Amended and Restated Guaranty dated April 16, 2021 (Denise Guaranty), and this Security Instrument secures the obligations of Borrower and DENISE KAYE KELLY a/k/a Denise K. Kelly to Lender, as described in the Denise Guaranty.

Lender and BENJAMIN MORGAN KELLY a/k/a Benjamin M. Kelly a/k/a Benjamin M. Kelly, Sr. entered into an Amended and Restated Guaranty dated April 16, 2021 (Benjamin Sr. Guaranty), and this Security Instrument secures the obligations of Borrower and BENJAMIN MORGAN KELLY a/k/a Benjamin M. Kelly a/k/a Benjamin M. Kelly, Sr. to Lender, as described in the Benjamin Sr. Guaranty.

2. Amendment to Notice. The final paragraph of Section 2 of the Mortgage is hereby amended and restated in its entirety as follows:

**NOTICE. THIS MORTGAGE SECURES CREDIT IN THE AMOUNT OF \$1,500,000.00. LOANS AND ADVANCES UP TO THIS AMOUNT, TOGETHER WITH INTEREST, ARE SENIOR TO INDEBTEDNESS TO OTHER CREDITORS UNDER SUBSEQUENTLY RECORDED OR FILED MORTGAGES AND LIENS. HOWEVER, THE PRIORITY OF A PRIOR RECORDED MORTGAGE UNDER THIS SECTION DOES NOT APPLY TO LOANS OR ADVANCES MADE AFTER RECEIPT OF NOTICE OF FORECLOSURE OR ACTION TO ENFORCE A SUBSEQUENTLY RECORDED MORTGAGE OR OTHER SUBSEQUENTLY RECORDED OR FILED LIEN.**

3. Mortgage Remains Effective. This Amendment is a modification only and not a novation of the Mortgage. Except as specifically provided herein, the Mortgage shall be and remains in full force and effect and not modified or further amended or changed hereby. The execution, delivery and effectiveness of this Amendment shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of Mortgagee under the Mortgage, nor constitute a waiver of any provision of the Mortgage. In all respects not inconsistent herewith, the Mortgage shall otherwise remain unaffected, unchanged and unimpaired.

4. Execution. All action on the part of Mortgagor necessary for the valid execution and delivery of this Amendment, has been duly and effectively taken and such Amendment in the hands of Mortgagee, its successors and assigns, will be legal, valid and binding obligation of the Mortgagor and enforceable according to the terms hereof and thereof.

5. Counterparts. This Amendment may be executed in any number of counterparts, each of which for all purposes shall be deemed to be an original and all of which shall constitute one agreement.

6. Certain Definitions. All statements or references within the text of the Mortgage to the "Mortgage" shall mean and be references to the Mortgage, as amended by this Amendment; all references to "Mortgagor" shall mean and be references to the Mortgagor as such term is defined in this Amendment; and all statements or references within the text of the Mortgage to the defined term "Note" shall mean and be references to the "Note" as defined in this Amendment.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

SIGNATURE PAGE OF MORTGAGOR

MORTGAGOR:



BENJAMIN MORGAN KELLY a/k/a Benjamin  
M. Kelly a/k/a Benjamin M. Kelly, Sr.



BENJAMIN MATTHEW KELLY a/k/a Benjamin  
M. Kelly a/k/a Benjamin M. Kelly, Jr.



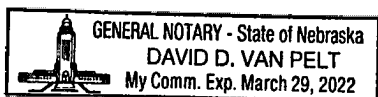
DENISE KAYE KELLY a/k/a Denise K. Kelly

[ACKNOWLEDGMENTS TO FOLLOW]

[ACKNOWLEDGMENTS OF MORTGAGOR]

STATE OF Nebraska )  
 )  
COUNTY OF Lancaster ) ss.

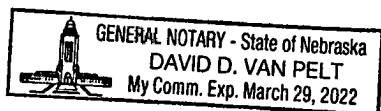
The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of April, 2021 by BENJAMIN MORGAN KELLY a/k/a Benjamin M. Kelly a/k/a Benjamin M. Kelly, Sr.



David D. Van Pelt  
Notary Public

STATE OF Nebraska )  
 )  
COUNTY OF Lancaster ) ss.

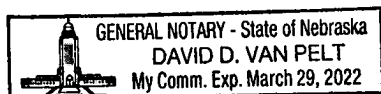
The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of April, 2021 by BENJAMIN MATTHEW KELLY a/k/a Benjamin M. Kelly a/k/a Benjamin M. Kelly, Jr.



David D. Van Pelt  
Notary Public

STATE OF Nebraska )  
 )  
COUNTY OF Lancaster ) ss.

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of April, 2021 by DENISE KAYE KELLY a/k/a Denise K. Kelly.



David D. Van Pelt  
Notary Public

SIGNATURE PAGE OF MORTGAGEE

MORTGAGEE:

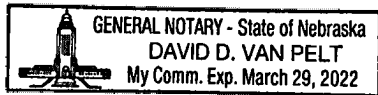
MIDWEST BANK

By: [Signature]  
Name: Brad Koehn  
Title: Regional President

STATE OF Nebraska  
COUNTY OF Lincoln

)  
) ss.  
)

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of April, 2021  
by Brad Koehn, the Regional  
President of Midwest Bank, on behalf of the bank.



[Signature]  
Notary Public

## EXHIBIT A

Madison County, Iowa

THE NORTHEAST QUARTER (1/4) OF SECTION TWENTY-TWO (22) AND THE WEST HALF (1/2) OF THE NORTHWEST QUARTER (1/4) OF SECTION TWENTY-THREE (23), AND PARCEL "A" LOCATED IN THE NORTHWEST QUARTER (1/4) OF THE SOUTHWEST QUARTER (1/4) OF SECTION TWENTY-THREE (23), CONTAINING 4.986 ACRES, AS SHOWN IN AMENDED PLAT OF SURVEY FILED IN BOOK 2003, PAGE 5596 ON SEPTEMBER 18, 2003, IN THE OFFICE OF THE RECORDER OF MADISON COUNTY, IOWA, ALL IN TOWNSHIP SEVENTY-SEVEN (77) NORTH, RANGE TWENTY.EIGHT (28) WEST OF THE 5TH P.M., MADISON COUNTY, IOWA

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