Book 2021 Page 2565
Document 2021 2565 Type 04 001 Pages 4
Date 7/19/2021 Time 8:04:13AM
Rec Amt $22.00

Daneen Schindler, RECORDER/REGISTRAR
DELAWARE COUNTY IOWA

LOAN ORIGINATOR NAME: Allan Lee Boge
NMLS COMPANY IDENTIFIER: 543887
NMLS ORIGINATOR IDENTIFIER: 1106379

Prepared By: **Ruth Bockenstedt, Citizens State Bank, PO Box 50 , New Vienna, Ia 52065 Ph: 563-921-2455**
Return to: **Citizens State Bank, PO Box 50, New Vienna, Ia 52065**

3008-3428

DEED OF TRUST

THIS INDENTURE, made and executed this **1st** day of **July, 2021** by and between **Nicholas P Kirby, a single person,** of **Delaware** County, Iowa, hereinafter referred to individually and collectively as "Grantors", and Citizens State Bank, with its principal office and place of business at 117 W. First Street, Monticello, Iowa, hereinafter referred to as "Grantee",

WITNESSETH:

That Grantors, for and in consideration of the indebtedness to the Grantee and of the Trust hereby created, and other valuable consideration receipt of which is hereby acknowledged, do by these presents grant, bargain, sell, assign, grant a security interest in, and convey unto Grantee, its successors and assigns forever, the following described real estate situated in the County of **Delaware** and the State of Iowa, to wit:

Parcel A in the Southeast Quarter (SE1/4) of Section Eight (8), Township Ninety (90) North, Range Three (3), West of the Fifth P.M., Delaware County, Iowa, according to plat recorded in Book 6 Plats, Page 133.

Subject to easements, restrictions, covenants, ordinances and limited access provisions of record.

The above described property is commonly known as **1167 295th Ave, Colesburg, Ia 52035**

Together with all buildings, appurtenances, structures, additions and improvements now or hereafter erected thereon and the rents, issues and profits thereof from the date of this Deed of Trust; and, all condemnation awards and insurance proceeds; and, all engines, boilers, elevators and machinery, timber, minerals, nil, and gas, and all heating apparatus, electrical equipment, air-conditioning equipment, water and gas fixtures, shades, awnings, screens, storm sash and blinds, and all fixtures of every description, belonging to said Grantors, which are or may be placed or used upon the premises above described, or appurtenant thereto, all of which, for the purpose of this Deed of Trust, shall be deemed fixtures and subject to the lien hereof, as to any such personal property, fixtures, or both, Grantors grant a security interest to Grantee; and, Grantors' interest as lessors in and to all leases of said premises, or any part thereof, heretofore made and entered into, and in and to all leases hereafter made and entered into by Grantors during the life of this Deed of Trust or any extension or renewal hereof, and the rents, issues and profits therefrom from the date of this Deed of Trust, reserving to Grantors their statutory equity and redemption rights therein; provided and hereby intending that in case of foreclosure sale the lessors' interest in any such leases then in force shall, upon expiration of Grantor's right of redemption, pass to the purchaser at such sale as a part of the mortgaged premises, subject to election by said purchaser to terminate or enforce any of such leases hereafter made; and, the hereditaments, tenements, privileges and appurtenances pertaining to the property above described; and, the revisions, remainders and benefits and all other revenues, rents, earnings, issues and income and profits arising or to arise out of or to be received or had of and from the properties hereby mortgaged or intended so to be or any part thereof and all the estate, right. title, interest and claims, at law or in equity which the Grantors now or may hereafter acquire or be or become entitled to in and to the aforesaid properties and any and every part thereof, all of which is referred to hereinafter as the "premises".

TO HAVE AND TO HOLD the same unto Grantee forever, for the purpose and upon the uses herein set forth free from all rights and benefits accruing in a surviving spouse under the laws of the State of Iowa, homestead and any other rights of exemption, which said rights and benefits Grantors do hereby expressly release and waive.

Provided always, that this conveyance is made in trust for the following uses and purposes:
To secure the performance of the covenants and agreements herein set forth and the payment of all indebtedness and liabilities now or hereafter owing by Grantors, or either or any of them, to Grantee, as may be evidenced by the promissory note(s), loan agreements, and other instruments or agreements now or hereafter executed by Grantors or either or any of them, either jointly or severally, to the order of, or for the benefit of, Grantee, together with all extensions, renewals and modifications thereof, incurred for whatever purpose, whether now existing or hereafter incurred, of every kind and character, direct or contingent, whether as maker, endorser, guarantor, surety or by way of overdrafts, and whether such indebtedness is from time to time reduced and thereafter increased or entirely extinguished and thereafter reincurred, including, without limitation, any additional or future advances made by Grantee to Grantors, or either or any of them, and any sums advanced by Grantee, at its option, in the performance of Grantors obligations hereunder, including the payment of any fees, insurance, repairs, taxes and amounts secured by encumbrances with respect to the premises, and any attorney fees

NK

and other charges and expenses incurred in the collection of the obligations secured hereby. It is the intention of Grantors to secure payment to Grantee of any indebtedness whatsoever now or hereafter owing by Grantors, or either or any of them, to Grantee and also to secure payment of any extensions or renewals of any such indebtedness or any part thereof, whether or not related to or of the same class as the initial indebtedness secured hereby. The security granted or to be granted hereby is and shall be continuing until specifically terminated in writing by the Grantee. THIS PARAGRAPH SHALL NOT CONSTITUTE A COMMITMENT TO MAKE FUTURE OR ADDITIONAL LOANS OR ADVANCES.
NOTE: This Deed of Trust contains an open-end feature and an after-acquired property clause.

IT IS MUTUALLY AGREED THAT:

1.Grantee shall be subrogated to the lien of any and all prior encumbrances, liens or charges paid and discharged from the proceeds of the notes, agreements, obligations and indebtedness hereby secured, and even though said prior liens have been released of record, the repayment of said notes, agreements, obligations and indebtedness shall be secured by such liens on the portions of said premises affected thereby to the extent of such payments, respectively.

2.Whenever by the terms of this instrument or of any note, agreement, obligation or indebtedness hereby secured, Grantee is given any option, such option may be exercised when the right accrues, or at any time thereafter.

3.All Grantors shall be jointly and severally liable for fulfillment of the covenants and agreements herein contained, and all provisions of this Deed of Trust shall inure to and be binding upon the heirs, executors, administrators, successors, grantees, lessees and assigns of the parties hereto, respectively.

4.In the event of the nonpayment of any note, agreement, obligation or indebtedness secured hereby in accordance with its terms or at maturity, whether such maturity be by acceleration or otherwise, or in the event of the failure of Grantors to keep and perform any of the conditions, stipulations and covenants herein contained or required to be kept by the terms of any obligation secured hereby, then the whole amount of principal and interest secured by this Deed of Trust and then unpaid shall immediately become due and payable without notice or demand, at the option of Grantee, its successors or assigns, and without notice to Grantors, suit may be brought for the collection thereof, and for the foreclosure of this Deed of Trust.

5.If the notes, agreements, obligations, indebtedness and the Deed of Trust, or any of them, shall be placed in the hands of an attorney for collection or foreclosure, or other legal proceedings, Grantors will pay reasonable attorney's fees, costs and expenses incurred in connection therewith, including expenses incurred in procuring evidence of title, and such attorney's fees, costs and expenses shall be considered as part of the indebtedness by this Deed of Trust and collectible accordingly.

6.Upon commencement of any proceeding to enforce or foreclose this Deed of Trust, or at any time thereafter until expiration of the period of redemption, the court having jurisdiction of the case shall, at the request of Grantee, appoint a receiver to take immediate possession of said premises to rent the same, to collect all rentals and profits accruing therefrom and to apply the receipts, as the court may order, in payment of receivership and foreclosure costs, taxes, insurance premiums, property maintenance and all indebtedness hereby secured.

7.Notwithstanding anything in this Deed of Trust or the notes, agreements, obligations, and indebtedness secured hereby to the contrary, neither this Deed of Trust nor said notes, agreements, obligations and indebtedness shall be deemed to impose on the Grantors any obligation of payment, except to the extent that the same may be legally enforceable; and any provision to the contrary shall be of no force or effect.

8.Any award of damages under condemnation for injury to, or taking of, any part of all of said property is hereby assigned to Grantee with authority at Grantee's option, to apply, or award any part thereof to the indebtedness secured hereby whether due or not, to restore the premises, or release the monies received.

9.As additional security for the repayment of the indebtedness hereby secured and the payment of taxes, special assessments, ground rents, and other charges and fire and other hazard insurance premiums, Grantors agree to deposit with Grantee, if requested by it, monthly or other periodic payments in amounts, which, as estimated by Grantee from time to time, shall be sufficient to meet, as they become due, such taxes, assessments, rents, charges and premiums. If at any time the funds so held by Grantee shall be insufficient to pay any tax, assessment, rent, charge or premium, Grantors shall, upon receipt of notice thereof, immediately deposit with Grantee such additional funds as may be necessary to remove the deficiency. It is agreed that all sums so deposited shall be irrevocably appropriated to Grantee in trust, to be applied to the payment of such taxes, assignments, rents, charges and premiums, and at the option of Grantee, after default, to be applied on the indebtedness hereby secured.

10. As additional security for the repayment of the indebtedness hereby secured, Grantors hereby assign to Grantees all their right, title and interest in and to all existing leases and all future leases upon or affecting the mortgaged premises, together with any extensions or renewals of such leases, and all rentals and income arising from said premises from the date of this Deed of Trust; provided that, so long as there is no default in any of the terms or conditions of this Deed of Trust or of the notes, agreements, obligations, and indebtedness hereby secured, or of any extension or renewal thereof, Grantors shall continue to manage said premises as owners and collect all income arising therefrom, but only as it accrues, rendering such reports as may be required by Grantee.

Grantee may from time to time waive its right hereunder to collect rents and other income but any such waiver shall not prejudice Grantee's right to make such collections thereafter so long as and whenever a default exists under this Deed of Trust or the notes, agreements, obligations, and indebtedness hereby secured. Grantee shall have the right, but shall not be required, to sue for collection of rents, possession of premises or other remedy, but shall not be liable for failure to collect rents or other income and shall be held accountable for only such amounts as are actually received. Funds received by the Grantee shall be applied at its discretion to expenses of collection, including reasonable attorney's fees, necessary repairs, taxes and insurance on the mortgaged premises, and on account of the indebtedness hereby secured.

In the event of any default in the performance of any agreement or covenant in any note, agreement, obligation or indebtedness hereby secured or this Deed of Trust, Grantors, upon demand, will immediately deliver to Grantee, or its appointee, all leases or agreements for occupancy of space in said premises, together with a separate and specific assignment of each of them to Grantee, or its appointee, in form approved by Grantee; and Grantee, with or without such specific assignment, may take possession and assume the management of said premises and collect the rentals and other income therefrom, execute all powers and authority reserved to the lessor under the lease terms, including any right or power therein to forfeit or cancel such lease, and modify the provisions of present leases and make new leases or rental contracts in the name of the owner of the property, or otherwise; and the lessees and other occupants of said premises are hereby authorized

NK

and directed, upon demand, to pay to Grantee, or any person designated by it for that purpose, all amounts due or to become due from them under said leases and any extensions or renewals thereof, or by reason of such occupancy; and such possession and management by Grantee shall not in any way affect its rights of foreclosure and the appointment of a receiver as hereinbefore provided.

11.It is understood and agreed that this Deed of Trust shall also secure any other indebtedness owing Grantee by Grantors, or any of them, including any additional or future advances made by Grantee to Grantors, or either or any of them, whether or not related to or of the same class as the initial indebtedness secured hereby. This paragraph shall not constitute a commitment to make future or additional loans or advances.

12. It is expressly agreed that if this tract consists of less than ten (10) acres in size, and if the Grantee in event of foreclosure action waives any rights to deficiency judgment against the Grantor which might arise out of the proceedings, the period of redemption after sale on foreclosure shall be reduced to the shortest of the following periods, six (6) months, ninety (90) days, sixty (60) days, or thirty (30) days, permitted by statute. This paragraph shall be interpreted as applying in circumstances where Sections 628.26, 628.27, and 628.28, Code of Iowa, is applicable and shall be construed in accordance with those sections and any amendments thereto.

13. It is expressly agreed by the parties hereto that the entire balance owing under this Deed of trust and the indebtedness it secures shall become due and payable immediately: (a) upon any sale or conveyance of the premises or any part thereof; or, (b) if Grantor is a corporation, partnership or trust, upon any sale or transfer of a beneficial interest in Grantor, unless the Grantor or Grantor's successor in interest, shall first have obtained the written consent from the Grantee to said sale or conveyance.

GRANTORS COVENANT AND AGREE:

1.That at the time of the execution and delivery of this Deed of Trust, Grantors are well seized of said premises in fee simple, have good right and authority to deed the same as herein provided, said premises are free from all encumbrances and charges whatever, except for those disclosed of public record, and that Grantors will forever warrant and defend the same against all lawful claims whatsoever.

2.To keep said premises insured for the protection of Grantee in such manner, for such risks, and in such amounts as Grantee shall require and in such companies as Grantee may from time to time approve, and to keep the policies therefor, properly endorsed with a standard mortgage clause with loss payable to the Grantee and Grantors as their respective interests appear, on deposit with Grantee; and that loss proceeds (less expenses of collection) shall, at Grantee's option, be applied on said indebtedness whether due or not, or to the restoration of said improvements.

3.To pay all taxes and special assessments of any kind that have been or may be levied or assessed within the State of Iowa upon said premises, or any part thereof, or upon the notes, agreements, obligations and indebtedness or debt secured hereby, or upon the interest of Grantee in said premises or in said notes, agreements, obligations and indebtedness or said debt, and procure and deliver to Grantee, at its home office, ten days before the day fixed by law for the first interest or penalty to accrue thereon, the official receipt of the proper officer showing payment of all such taxes and assessments.

4.To keep said premises free from all prior liens and upon demand of Grantee to pay and procure release of any lien which in any way may impair the security of this Deed of Trust.

5.In the event of default by Grantors under paragraphs 2, 3, or 4 above, Grantee, at its option (whether electing to declare the whole indebtedness hereby secured due and collectible or not), may (a) effect the insurance above provided for and pay the reasonable premiums and charges therefore; (b) pay all said taxes and assessments without determining the validity thereof (unless Grantors have instituted proper legal proceedings to test the validity of such taxes or assessments and have deposited with Grantee security therefore acceptable to it); and (c) pay such liens, and all costs, expenses and attorney's fees herein covenanted to be paid by Grantors; and all such payments, with interest thereon from the time of payment at the rate then payable in the notes, agreements, obligations or indebtedness, as the case may be, shall be deemed a part of the indebtedness secured by this Deed of Trust and shall be immediately due and payable by Grantors to Grantees.

6.That there is no assignment or pledge of any leases of, rentals or income from, said premises now in effect, and that, until the entire indebtedness secured hereby is fully paid, they will not make any such assignment or pledge to anyone except hereunder to the Grantee and will not, without the prior written approval of Grantee, consent to a cancellation of any of said leases having at the time an unexpired term of more than two years, or to a release or reduction of the liability of any lessee under such a lease. No change or modification of a lease or rental contract covering premises herein described shall be binding on the Grantee unless consented to in writing by the Grantee.

7. To keep the buildings and other improvements now or hereafter erected in good condition and repair, not to commit or suffer any waste or any use of said premises contrary to restrictions of record or contrary to laws, ordinances or regulations of proper public authority and to permit Grantee to enter at all reasonable times for the purpose of inspecting the premises.

8.That they will pay the indebtedness hereby secured promptly and in full compliance with the terms of the notes, agreements, obligations and indebtedness hereby secured and this Deed of Trust.

9.Without affecting the liability of Grantors or any other person (except any person expressly released in writing) for payment of any indebtedness secured hereby or for the performance of any obligation contained herein, and without affecting the rights of Grantee with respect to any security not expressly released in writing, Grantee may, at any time and from time to time, either before or after the maturity of any note, agreement, obligation or indebtedness hereby secured, and without notice or consent: (a) release any person liable for payment of all or any part of the indebtedness or for performance of any obligation; (b) make any agreement extending the time or otherwise altering the terms of payment of all or any part of the indebtedness, or modifying or waiving any obligation, or subordinating or
otherwise dealing with the lien or charge hereof; (c) exercise or refrain from exercising or waive any right Grantee may have; (d) accept additional security of any kind; and, (e) release or otherwise deal with any property, real or personal, securing the indebtedness, including all or any part of the property mortgaged hereby.

10.Grantors covenant and agree that if the loan secured hereby is obtained to assist in financing building construction or remodeling, or any other improvements to the property, then, (a) this Deed of Trust shall be deemed a "construction mortgage" within the meaning of Article IX of the Iowa Commercial Code, and (bi) if such improvements shall not, in accordance with plans and specifications approved by Grantee, be completed prior to the expiration date of the loan commitment, or (bii) if work on such improvement shall cease before completion and remain abandoned for a period of

NE

fifteen consecutive days, the existence of either circumstance shall constitute an event of default under the terms of this instrument, and at any time thereafter, the said notes, obligations and liabilities and the whole indebtedness secured hereby shall, at the option of the Grantee and without notice to Grantors (such notice being hereby expressly waived), become due and collectible at once by foreclosure or otherwise. In the event of such cessation or abandonment of work as aforesaid, Grantee may, at its option, also enter upon the property and complete the improvements and Grantors hereby give to Grantee full power and authority to make such entry and to enter into such contracts or arrangements as it may consider necessary to complete the same. All monies expended by Grantee in connection with completion of said improvements shall be included in the indebtedness hereby secured and shall be payable by Grantors immediately and without demand, with interest at the rate equal to the interest rate then payable in the notes, agreements, obligations or indebtedness, as the case may be. Until the loan shall have been fully disbursed, the agents of the Grantee shall have the right to enter upon the property at any and all times to inspect the improvement project that is under way.

11.Grantor will not, now or in the future, mortgage, pledge or encumber or place any lien or encumbrance (or permit same to exist) on the premises, or any thereof without the prior written consent of the Grantee.

12.Grantors waive acceptance of this trust by Grantee.

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

15. GRANTORS HEREBY STATE: 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.

Nicholas P Kirby

Grantor: **Nicholas P Kirby**

Dated this **1st** day of **July, 2021.**

Mailing Address of Grantor

1167 295th Ave
Colesburg, Ia 52035

Nicholas P Kirby

Grantor: **Nicholas P Kirby**

Mailing Address of Grantee

PO Box 50
New Vienna, Ia 52065

STATE OF IOWA, COUNTY OF **Dubuque,** SS:

On this **1st** day of **July, 2021**, before me, a Notary Public, personally appeared **Nicholas P Kirby, a single person,** to me known to be the person named in and who executed the foregoing instrument, and acknowledged that **Nicholas P Kirby** executed the same as their voluntary act and deed.

NOTARIAL SEAL IOWA

ALLAN L BOGE
Commission Number 784140
My Commission Expires
5-16-23

Allan L Boge

Notary Public: **Allan L Boge**