



Document 2008 3617

Book 2008 Page 3617 Type 04 002 Pages 9

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LISA SMITH, COUNTY RECORDER
MADISON IOWA

CHEK

FOR RECORDER'S USE ONLY

Prepared By: Martin Kalton, Wells Fargo Bank, National Association, 8301 Douglas Avenue, Des Moines, IA 50322, (515) 237-5950

ADDRESS TAX STATEMENT:

Wells Fargo Bank, National Association; Des Moines Ag; 8301 Douglas Avenue; Des Moines, IA 50322

RECORDATION REQUESTED BY:

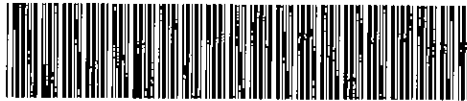
Wells Fargo Bank, National Association; Des Moines Ag; 8301 Douglas Avenue; Des Moines, IA 50322

✓ WHEN RECORDED MAIL TO:

Attn: Linda Fasse

Wells Fargo Bank, National Association; Des Moines Ag; 8301 Douglas Avenue; Des Moines, IA 50322

MODIFICATION OF MORTGAGE



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The names of all Grantors (sometimes "Grantor") can be found on page 1 of this Modification. The names of all Grantees (sometimes "Lender") can be found on page 1 of this Modification. The property address can be found on page 2 of this Modification. The legal description can be found on page 2 of this Modification. The related document or instrument number can be found on page 2 of this Modification.

THIS MODIFICATION OF MORTGAGE dated December 16, 2008, is made and executed between Danny J. Allen and Sonia B. Allen, husband and wife, and Allendan Seed Company, Inc., an Iowa Corporation, whose address is 1966 175th Lane, Winterset, IA 50273; (referred to below as "Grantor") and Wells Fargo Bank, National Association, whose address is 8301 Douglas Avenue, Des Moines, IA 50322 (referred to below as "Lender").

MODIFICATION OF MORTGAGE

Loan No: 0182574144

(Continued)

Page 2

MORTGAGE. Lender and Grantor have entered into a Mortgage dated May 15, 2003 (the "Mortgage") which has been recorded in Madison County, State of Iowa, as follows:

Original Mortgage in the amount of \$5,018,000.00 filed on May 15, 2003, as Document #002843, in Book 2003, at Page 2843 in the Office of the County Recorder, Madison County, Iowa, as may have been modified from time to time.

REAL PROPERTY DESCRIPTION. The Mortgage covers the following described real property located in Madison County, State of Iowa:

See Exhibit "A", which is attached to this Modification and made a part of this Modification as if fully set forth herein.

The Real Property or its address is commonly known as 1966 175th Lane, Winterset, IA 50273.

MODIFICATION. Lender and Grantor hereby modify the Mortgage as follows:

The Mortgage is hereby modified to reflect that in addition to the note described in the mortgage, it also secures that certain promissory note dated December 16, 2008 (the "Additional Note") made by the Grantor in the face amount of \$1,600,000.00 payable to the Lender, and having a maturity date of January 1, 2019. All references in the Mortgage to the "Note" shall henceforth be deemed to include the Additional Note and any extensions, renewals, modifications, refinancings, consolidations and substitutions thereof.

CONTINUING VALIDITY. Except as expressly modified above, the terms of the original Mortgage shall remain unchanged and in full force and effect and are legally valid, binding, and enforceable in accordance with their respective terms. Consent by Lender to this Modification does not waive Lender's right to require strict performance of the Mortgage as changed above nor obligate Lender to make any future modifications. Nothing in this Modification shall constitute a satisfaction of the promissory note or other credit agreement secured by the Mortgage (the "Note"). It is the intention of Lender to retain as liable all parties to the Mortgage and all parties, makers and endorsers to the Note, including accommodation parties, unless a party is expressly released by Lender in writing. Any maker or endorser, including accommodation makers, shall not be released by virtue of this Modification. If any person who signed the original Mortgage does not sign this Modification, then all persons signing below acknowledge that this Modification is given conditionally, based on the representation to Lender that the non-signing person consents to the changes and provisions of this Modification or otherwise will not be released by it. This waiver applies not only to any initial extension or modification, but also to all such subsequent actions.

FACSIMILE AND COUNTERPART. This document may be signed in any number of separate copies, each of which shall be effective as an original, but all of which taken together shall constitute a single document. An electronic transmission or other facsimile of this document or any related document shall be deemed an original and shall be admissible as evidence of the document and the signer's execution.

ARBITRATION AGREEMENT. Arbitration - Binding Arbitration. Lender and each party to this agreement hereby agree, upon demand by any party, to submit any Dispute to binding arbitration in accordance with the terms of this Arbitration Program. A "Dispute" shall include any dispute, claim or controversy of any kind, whether in contract or in tort, legal or equitable, now existing or hereafter arising, relating in any way to any aspect of this agreement, or any related agreement incorporating this Arbitration Program (the "Documents"), or any renewal, extension, modification or refinancing of any indebtedness or obligation relating thereto, including without limitation, their negotiation, execution, collateralization, administration, repayment, modification, extension, substitution, formation, inducement, enforcement, default or termination. DISPUTES SUBMITTED TO ARBITRATION ARE NOT RESOLVED IN COURT BY

**MODIFICATION OF MORTGAGE
(Continued)**

Loan No: 0182574144

Page 3

A JUDGE OR JURY.

A. Governing Rules. Any arbitration proceeding will (i) be governed by the Federal Arbitration Act (Title 9 of the United States Code), notwithstanding any conflicting choice of law provision in any of the documents between the parties; and (ii) be conducted by the American Arbitration Association ("AAA"), or such other administrator as the parties shall mutually agree upon, in accordance with the AAA's commercial dispute resolution procedures, unless the claim or counterclaim is at least \$1,000,000.00 exclusive of claimed interest, arbitration fees and costs in which case the arbitration shall be conducted in accordance with the AAA's optional procedures for large, complex commercial disputes (the commercial dispute resolution procedures or the optional procedures for large, complex commercial disputes to be referred to herein, as applicable, as the "Rules"). If there is any inconsistency between the terms hereof and the Rules, the terms and procedures set forth herein shall control. Arbitration proceedings hereunder shall be conducted at a location mutually agreeable to the parties, or if they cannot agree, then at a location selected by the AAA in the state of the applicable substantive law primarily governing the Note. Any party who fails or refuses to submit to arbitration following a demand by any other party shall bear all costs and expenses incurred by such other party in compelling arbitration of any Dispute. Arbitration may be demanded at any time, and may be compelled by summary proceedings in Court. The institution and maintenance of an action for judicial relief or pursuit of a provisional or ancillary remedy shall not constitute a waiver of the right of any party, including the plaintiff, to submit the controversy or claim to arbitration if any other party contests such action for judicial relief. The arbitrator shall award all costs and expenses of the arbitration proceeding. Nothing contained herein shall be deemed to be a waiver by any party that is a bank of the protections afforded to it under 12 U.S.C. Section 91 or any similar applicable state law.

B. No Waiver of Provisional Remedies, Self-Help and Foreclosure. The arbitration requirement does not limit the right of any party to (i) foreclose against real or personal property collateral; (ii) exercise self-help remedies relating to collateral or proceeds of collateral such as setoff or repossession; or (iii) obtain provisional or ancillary remedies such as replevin, injunctive relief, attachment or the appointment of a receiver, before during or after the pendency of any arbitration proceeding. This exclusion does not constitute a waiver of the right or obligation of any party to submit any Dispute to arbitration or reference hereunder, including those arising from the exercise of the actions detailed in sections (i), (ii) and (iii) of this paragraph.

C. Arbitrator Qualifications and Powers. Any arbitration proceeding in which the amount in controversy is \$5,000,000.00 or less will be decided by a single arbitrator selected according to the Rules, and who shall not render an award of greater than \$5,000,000.00. Any Dispute in which the amount in controversy exceeds \$5,000,000.00 shall be decided by majority vote of a panel of three arbitrators; provided however, that all three arbitrators must actively participate in all hearings and deliberations. Every arbitrator must be a neutral practicing attorney or a retired member of the state or federal judiciary, in either case with a minimum of ten years experience in the substantive law applicable to the subject matter of the Dispute. The arbitrator will determine whether or not an issue is arbitratable and will give effect to the statutes of limitation in determining any claim. In any arbitration proceeding the arbitrator will decide (by documents only or with a hearing at the arbitrator's discretion) any pre-hearing motions which are similar to motions to dismiss for failure to state a claim or motions for summary adjudication. The arbitrator shall resolve all Disputes in accordance with the applicable substantive law and may grant any remedy or relief that a court of such state could order or grant within the scope hereof and such ancillary relief as is necessary to make effective any award. The arbitrator shall also have the power to award recovery of all costs and fees, to impose sanctions and to take such other action as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the applicable state rules of civil procedure, or other applicable law. Judgment upon the award rendered by the arbitrator may be entered in any court having

MODIFICATION OF MORTGAGE

Loan No: 0182574144

(Continued)

Page 4

jurisdiction. The institution and maintenance of an action for judicial relief or pursuit of a provisional or ancillary remedy shall not constitute a waiver of the right of any party, including the plaintiff, to submit the controversy or claim to arbitration if any other party contests such action for judicial relief.

D. Discovery. In any arbitration proceeding discovery will be permitted in accordance with the Rules. All discovery shall be expressly limited to matters directly relevant to the Dispute being arbitrated and must be completed no later than 20 days before the hearing date. Any requests for an extension of the discovery periods, or any discovery disputes, will be subject to final determination by the arbitrator upon a showing that the request for discovery is essential for the party's presentation and that no alternative means for obtaining information is available.

E. Class Proceedings and Consolidations. No party shall be entitled to join or consolidate disputes by or against others who are not parties to this agreement or related Documents in any arbitration, or to include in any arbitration any dispute as a representative or member of a class, or to act in any arbitration in the interest of the general public or in a private attorney general capacity.

F. Miscellaneous. To the maximum extent practicable, the AAA, the arbitrators and the parties shall take all action required to conclude any arbitration proceeding within 180 days of the filing of the Dispute with the AAA. No arbitrator or other party to an arbitration proceeding may disclose the existence, content or results thereof, except for disclosures of information by a party required in the ordinary course of its business or by applicable law or regulation. If more than one agreement for arbitration by or between the parties potentially applies to a Dispute, the arbitration provision most directly related to the Documents between the parties or the subject matter of the Dispute shall control. This arbitration provision shall survive the repayment of the Note and the termination, amendment or expiration of any of the documents or any relationship between the parties.

G. State-Specific Provisions.

If California law governs the Dispute, the following provisions are included:

Real Property Collateral; Judicial Reference. Notwithstanding anything herein to the contrary, no Dispute shall be submitted to arbitration if the Dispute concerns indebtedness secured directly or indirectly, in whole or in part, by any real property unless (i) the holder of the mortgage, lien or security interest specifically elects in writing to proceed with the arbitration, or (ii) all parties to the arbitration waive any rights or benefits that might accrue to them by virtue of the single action rule statute of California, thereby agreeing that all indebtedness and obligations of the parties, and all mortgages, liens and security interests securing such indebtedness and obligations, shall remain fully valid and enforceable. If any such Dispute is not submitted to arbitration, the Dispute shall be referred to a referee in accordance with California Code of Civil Procedure Section 638 et seq., and this general reference agreement is intended to be specifically enforceable in accordance with said Section 638. A referee with the qualifications required herein for arbitrators shall be selected pursuant to the AAA's selection procedures. Judgment upon the decision rendered by a referee shall be entered in the court in which such proceeding was commenced in accordance with California Code of Civil Procedure Sections 644 and 645.

Small Claims Court. Any party may require that a Dispute be resolved in Small Claims Court if the Dispute and related claims are fully within that court's jurisdiction.

If Idaho law governs the Dispute, the following provision is included:

Real Property Collateral. Notwithstanding anything herein to the contrary, no Dispute shall be submitted to arbitration if the Dispute concerns indebtedness secured directly or indirectly, in whole or in part, by any real property unless (i) the holder of the mortgage, lien or security interest specifically elects in writing to proceed with the arbitration, or (ii) all parties to the arbitration waive any rights or benefits that might accrue to them by virtue of the single action rule statute of Idaho, thereby agreeing

MODIFICATION OF MORTGAGE

Loan No: 0182574144

(Continued)

Page 5

that all indebtedness and obligations of the parties, and all mortgages, liens and security interests securing such indebtedness and obligations, shall remain fully valid and enforceable.

If Montana law governs the Dispute, the following provision is included:

Real Property Collateral. Notwithstanding anything herein to the contrary, no Dispute shall be submitted to arbitration if the Dispute concerns indebtedness secured directly or indirectly, in whole or in part, by any real property unless (i) the holder of the mortgage, lien or security interest specifically elects in writing to proceed with the arbitration, or (ii) all parties to the arbitration waive any rights or benefits that might accrue to them by virtue of the single action rule statute of Montana, thereby agreeing that all indebtedness and obligations of the parties, and all mortgages, liens and security interests securing such indebtedness and obligations, shall remain fully valid and enforceable.

If Nevada law governs the Dispute, the following provision is included:

Real Property Collateral. Notwithstanding anything herein to the contrary, no Dispute shall be submitted to arbitration if the Dispute concerns indebtedness secured directly or indirectly, in whole or in part, by any real property unless (i) the holder of the mortgage, lien or security interest specifically elects in writing to proceed with the arbitration, or (ii) all parties to the arbitration waive any rights or benefits that might accrue to them by virtue of the single action rule statute of Nevada, thereby agreeing that all indebtedness and obligations of the parties, and all mortgages, liens and security interests securing such indebtedness and obligations, shall remain fully valid and enforceable.

If South Dakota law governs the Dispute, the following provision is included:

Real Property Collateral. Notwithstanding anything herein to the contrary, no Dispute shall be submitted to arbitration if the Dispute concerns indebtedness secured directly or indirectly, in whole or in part, by any real property unless (i) the holder of the mortgage, lien or security interest specifically elects in writing to proceed with the arbitration, or (ii) all parties to the arbitration waive any rights or benefits that might accrue to them by virtue of the single action rule statute of South Dakota, thereby agreeing that all indebtedness and obligations of the parties, and all mortgages, liens and security interests securing such indebtedness and obligations, shall remain fully valid and enforceable.

If Utah law governs the Dispute, the following provision is included:

Real Property Collateral; Judicial Reference. Notwithstanding anything herein to the contrary, no Dispute shall be submitted to arbitration if the Dispute concerns indebtedness secured directly or indirectly, in whole or in part, by any real property unless (i) the holder of the mortgage, lien or security interest specifically elects in writing to proceed with the arbitration, or (ii) all parties to the arbitration waive any rights or benefits that might accrue to them by virtue of the single action rule statute of Utah, thereby agreeing that all indebtedness and obligations of the parties, and all mortgages, liens and security interests securing such indebtedness and obligations, shall remain fully valid and enforceable. If any such Dispute is not submitted to arbitration, the Dispute shall be referred to a master in accordance with Utah Rule of Civil Procedure 53, and this general reference agreement is intended to be specifically enforceable. A master with the qualifications required herein for arbitrators shall be selected pursuant to the AAA's selection procedures. Judgment upon the decision rendered by a master shall be entered in the court in which such proceeding was commenced in accordance with Utah Rule of Civil Procedure 53(e).

MODIFICATION OF MORTGAGE

Loan No: 0182574144


(Continued)

Page 6


GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS MODIFICATION OF MORTGAGE AND GRANTOR AGREES TO ITS TERMS. THIS MODIFICATION OF MORTGAGE IS DATED DECEMBER 16, 2008.

GRANTOR ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS MODIFICATION OF MORTGAGE AND ALL OTHER DOCUMENTS RELATING TO THIS DEBT.

GRANTOR:

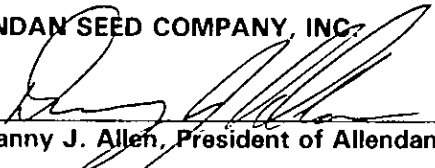
X 

Danny J. Allen, Individually

X 

Sonia B. Allen, Individually

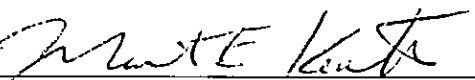
ALLENDAN SEED COMPANY, INC.

By: 

Danny J. Allen, President of Allendan Seed Company, Inc.

LENDER:

WELLS FARGO BANK, NATIONAL ASSOCIATION

X 

Authorized Signer

MODIFICATION OF MORTGAGE
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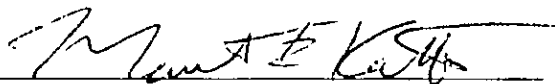
Loan No: 0182574144

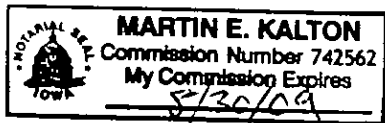
Page 7

INDIVIDUAL ACKNOWLEDGMENT

STATE OF Iowa)
) SS
COUNTY OF Polk)

On this 16 day of December, A.D., 2008, before me, a Notary Public in and for said County and State, personally appeared **Danny J. Allen**, to me known to be the person named in and who executed the foregoing instrument and acknowledged that he or she executed the same as his or her voluntary act and deed.

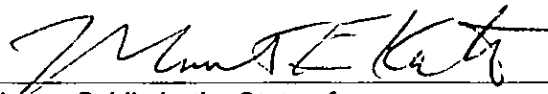

Notary Public in the State of
Iowa

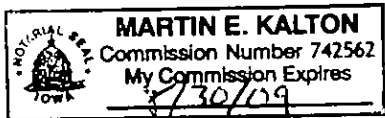


INDIVIDUAL ACKNOWLEDGMENT

STATE OF Iowa)
) SS
COUNTY OF Polk)

On this 16 day of December, A.D., 2008, before me, a Notary Public in and for said County and State, personally appeared **Sonia B. Allen**, to me known to be the person named in and who executed the foregoing instrument and acknowledged that he or she executed the same as his or her voluntary act and deed.


Notary Public in the State of
Iowa



MODIFICATION OF MORTGAGE

Loan No: 0182574144

(Continued)

Page 8

CORPORATE ACKNOWLEDGMENT

STATE OF Iowa)
) SS
 COUNTY OF Polk)

On this 16 day of December, A.D., 20 08, before me, the undersigned Notary Public in said County and State, personally appeared **Danny J. Allen, President of Allendan Seed Company, Inc.**, to me personally known, who, being by me duly sworn did say he or she is **authorized signer** of said corporation, that no seal has been procured by said corporation and that said instrument was signed on behalf of the said corporation by authority of its Board of directors and that said **Danny J. Allen** acknowledged the execution of said instrument to be the voluntary act and deed of said corporation by it voluntarily executed.

Martin E Kalton
 Notary Public in the State of
Iowa



MODIFICATION OF MORTGAGE
(Continued)

Loan No: 0182574144

Page 9

LENDER ACKNOWLEDGMENT

STATE OF Iowa)
)
) SS
COUNTY OF Madison)

On this 16 day of December, A.D., 2008, before me, the undersigned Notary Public in said County and State, personally appeared Mont E Kulter and known to me to be the lender, authorized agent for **Wells Fargo Bank, National Association** that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of **Wells Fargo Bank, National Association**, duly authorized by **Wells Fargo Bank, National Association** through its board of directors or otherwise, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this said instrument and in fact executed this said instrument on behalf of **Wells Fargo Bank, National Association**.

By Jerrold B. Cliven Residing at _____
Notary Public in and for the State of Iowa My commission expires _____

