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Cook County Recorder 39.00



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THIS INSTRUMENT WAS
PREPARED BY, AND AFTER
RECORDING, RETURN TO:

Paul Kelley, Esq.
Shefsky & Froelich Ltd.
444 N. Michigan Avenue
Suite 2500
Chicago, Illinois 60611

7830361 by da law

SECOND AMENDMENT TO MORTGAGE

104

THIS SECOND AMENDMENT TO MORTGAGE ("Second Amendment to Mortgage") is made and entered into as of the 29th day of December, 2000, by and among Elgin Dairy Foods, Inc., an Illinois corporation ("Borrower") and American National Bank and Trust Company of Chicago ("Lender").

RECITALS

WHEREAS, pursuant to the terms and conditions of that certain Loan and Security Agreement between Borrower and Lender dated as of August 31, 1999, as amended by that certain First Amendment to Loan and Security Agreement dated as of August 11, 2000 (as the same may be further amended, modified, supplemental or restated from time to time, the "Loan Agreement"), Lender has agreed to make loans to Borrower in the aggregate principal amount of Seven Million Four Hundred Seventy-Six Thousand and No/100 Dollars (\$7,476,000.00), as evidenced by the following promissory notes each made by Borrower payable to the order of Lender; (i) that certain Revolving Credit Note, dated August 31, 1999, as extended by the First Amendment to Mortgage (as hereafter defined), ("Old Revolving Credit Note") in the stated principal amount of Three Million and No/100 Dollars (\$3,000,000.00) bearing interest at a fluctuating interest rate and payable as set forth therein and due on August 31, 2001, (ii) that certain Term Note dated August 31, 1999 ("Term Note") in the stated principal amount of Two Million One Hundred Thousand and No/100 Dollars (\$2,100,000.00) bearing interest at a fluctuating interest rate and payable as set forth therein and due on August 31, 2006, (iii) that certain Line of Credit Note dated August 31, 1999 ("Line of Credit Note") in the stated principal amount of Two Million and No/100 Dollars (\$2,000,000.00) bearing interest at a fluctuating interest rate and payable as set forth therein and due on August 31, 2006; and (iv) that certain Equipment Term Loan Note dated August 11, 2000 ("Equipment Term Loan Note") in the stated principal amount of Three Hundred Seventy-Six Thousand and No/100 Dollars (\$376,000.00) bearing interest at a fluctuating interest rate and payable as set forth therein and due on August 11, 2003; and

BOX 333-CTI

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WHEREAS, Borrower's obligations under the Loan Agreement, the Revolving Credit Note, the Term Note, the Line of Credit Note and the Equipment Term Loan Note, together with other obligations of Borrower to Lender are secured by, among other documents, the following:

(i) Mortgage dated as of August 31, 1999, executed by Borrower in favor of Lender and recorded September 8, 1999 in the Office of the Cook County Recorder of Deeds ("Recorder's Office"), as **Document No. 9985113**, as amended by that certain Extension Agreement and Amendment to Mortgage dated as of August 11, 2000, by and among Borrower and Lender ("First Amendment to Mortgage"), recorded August 28, 2000 in the Recorder's Office as **Document No. 00665467** (as so amended, the "Mortgage," with capitalized terms used herein having the same meaning as set forth in said Mortgage unless otherwise defined herein);

(ii) Assignment of Leases and Rents dated as of August 31, 1999, executed by Borrower in favor of Lender and recorded September 8, 1999 in the Recorder's Office as **Document No. 99851140**, as amended by the First Amendment to Mortgage (as so amended, the "Assignment of Rents");

(iii) the Loan Agreement; and

(iv) such other documents securing the Indebtedness and identified on Exhibit B to the Mortgage as the "Loan Instruments;" and

WHEREAS, pursuant to that certain Second Amendment to Loan and Security Agreement between Borrower and Lender dated of even date herewith ("Second Amendment to Loan Agreement"), Borrower has requested and Lender has agreed, to increase the aggregate principal amount that may be outstanding at any one time under Lender's revolving loan commitment to Borrower from \$3,000,000.00 to \$3,500,000.00 and in connection therewith Borrower has issued that certain Replacement Revolving Credit Note in the stated principal amount of \$3,500,000.00 dated of even date herewith (together with any amendments, extensions, renewals, replacements or substitutions thereof, the "Replacement Revolving Credit Note") in substitution of, but not in payment of, the Old Revolving Credit Note; and

WHEREAS, pursuant to the Loan Agreement, as amended hereby, Borrower is required to spread the lien of the Mortgage to, and additionally encumber that certain parcel of real estate legally described on Exhibit B attached hereto and made part hereof (the "Additional Property"); and

WHEREAS, pursuant to the terms and conditions of that certain Loan and Security Agreement between Lender and M & E Distribution, LLC, an Illinois limited liability company ("M & E"), dated of even date herewith (as the same may be amended, modified, supplemented or restated from time to time, the "M & E Loan Agreement"), Lender has agreed to make a loan to M & E (the "M & E Loan") in the aggregate principal amount of One Million Two Hundred Thousand and NO/100 Dollars (\$1,200,000.00), which M & E Loan is evidenced by that certain Line of Credit Note dated of even date herewith executed by M & E ("M & E Note") in the principal amount of \$1,200,000.00, bearing interest at a fluctuating interest rate and payable as set forth therein and due on June 29, 2002; and

WHEREAS, M & E is a subsidiary of Borrower and Lender has required, as a condition precedent to making the M & E Loan, that Borrower execute and deliver that certain Guaranty of Payment dated of even date herewith from Borrower to Lender (the "Elgin Dairy Guaranty"), guarantying all sums due under the M & E Note and M & E Loan Agreement; and

WHEREAS, Lender has further required, as a condition precedent to making the M & E Loan, that Borrower secure and collateralize all sums due under the Elgin Dairy Guaranty, the M & E Note and M & E Loan Agreement with the Premises.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements hereinafter set forth, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender hereby mutually agree as follows:

1. Incorporation by Reference. The foregoing recitals are hereby incorporated herein by reference as if set forth in full in the body of this Second Amendment to Mortgage.
2. Additional Property. Exhibit A to the Mortgage is hereby replaced with Exhibit A attached to this Second Amendment to Mortgage. Borrower hereby acknowledges and agrees that the lien of the Mortgage is hereby spread to and shall encumber the Additional Property for purposes of securing the Indebtedness, as such term is amended herein.
3. Amendment to Indebtedness. All references in the Mortgage and Assignment of Rents to "Notes" are hereby amended to mean the Replacement Revolving Credit Note issued in connection with the Second Amendment to Loan Agreement, the Line of Credit Note, the Term Note and the Equipment Term Loan Note, together with any and all amendments, extensions, renewals, replacements, or substitutions thereof. To the fullest extent necessary to secure any advances or obligations not previously secured by the Mortgage and Assignment of Rents, Borrower does hereby MORTGAGE and CONVEY unto Lender, its successors and assigns, the Premises, including the Additional Property and the Improvements thereon, to secure in addition to any and all amounts previously secured by the Mortgage and Assignment of Rents the following, which shall be added to the definition of "Indebtedness" in the Mortgage and Assignment of Rents: (i) all indebtedness evidenced by the Replacement Revolving Credit Note bearing interest at a fluctuating interest rate and payable as set forth therein and due on August 31, 2001; (ii) all indebtedness evidenced by the Term Note, the Line of Credit Note and the Equipment Term Loan Note; (iii) all indebtedness, liabilities or obligations which may at any time be due or owing or be required to be paid under the Elgin Dairy Guaranty, the M & E Note and/or the M & E Loan Agreement; (iv) the aggregate principal amount of \$8,676,000.00, together with interest thereon, of which \$7,476,000.00 is evidenced by the Notes and \$1,200,000.00 is evidenced by the M & E Note, and (v) any and all other sums or obligations which may at any time be due or owing or be required to be paid under the Mortgage, as amended by this Second Amendment to Mortgage, the Loan Agreement, as

amended by the Second Amendment, the Notes, the M & E Note or the Elgin Guaranty. The Mortgage is hereby further amended to add to Exhibit B thereto, the Replacement Revolving Credit Note and the Elgin Dairy Guaranty as Loan Instruments.

4. Title Insurance and Recording. Borrower shall cause this Second Amendment to Mortgage to be promptly recorded with the Recorder's Office and provide Lender with an endorsement to Lender's policy of title insurance on the Property, which endorsement shall (i) insure that the Mortgage, as amended hereby, remains a first and prior lien on the Premises; (ii) add the Additional Property as an insured parcel, subject to only those exceptions acceptable to Lender; and (iii) increase the amount of insurance coverage to \$8,676,000.00. The endorsement shall be satisfactory to Lender in all other respects.
5. Expenses. Borrower shall be responsible for any and all costs, expenses, fees, charges, taxes, of whatever kind and nature, incurred by Lender in connection with this Second Amendment to Mortgage, including, without limitation, attorneys' fees, recording fees and the cost of any title insurance premium for issuing the endorsement.
6. Intent of Parties. The parties expressly agree that the liens evidenced by the Loan Instruments shall be in no way be deemed to have been subordinated, released, modified, terminated, or otherwise affected by this Second Amendment to Mortgage, it being understood by the parties hereto that the liens of said documents shall continue in full force and effect, and are to have the same validity, priority and effect that they had immediately prior to the execution of this Second Amendment to Mortgage and the documents and instruments executed and delivered pursuant to this Second Amendment to Mortgage; provided, however, that the respective liens shall be documented by, and all rights and privileges and obligations of the parties hereto, and the respective successors and assigns, shall be governed by the (i) Mortgage, as amended by this Second Amendment to Mortgage; (ii) Loan Instruments, as amended by this Second Mortgage to Mortgage; and (iii) all other documents and agreements executed in connection with the transactions described in this Second Amendment to Mortgage.
7. Release of Claims. Borrower acknowledges and agrees that Lender has fulfilled any and all of Lender's obligations under the Loan Instruments to date. Borrower hereby releases and holds Lender harmless from and against any and all claims, actions, lawsuits, damages, costs and expenses whatsoever which Borrower may have had or currently may have against Lender in connection with or related to the Loan Instruments.
8. No Third Party Beneficiaries. This Second Amendment to Mortgage is made and entered into for the sole protection and benefit of the Lender and Borrower. No other person, entity or entities shall have the right of action hereon, right to claim any right or benefit from the terms contained herein, or be deemed a third party beneficiary hereunder.
9. Effect of Second Amendment. Except as specifically amended or modified by the terms of this Second Amendment to Mortgage, all terms and provisions of each of the Loan Instruments shall remain in full force and effect. The Mortgage, as amended

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hereby, constitutes a valid lien on the real property described on Exhibit A attached hereto and made a part hereof.

10. Governing Law. This Second Amendment to Mortgage shall be governed by and be construed in accordance with the internal laws of the State of Illinois.

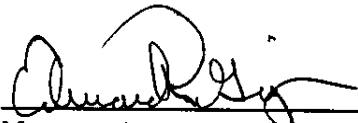
11. Further Assurances. Borrower agrees to execute from time to time, any and all documents reasonably requested by the Lender to carry out the intent of the Loan Instruments as modified by this Second Amendment to Mortgage.

12. Counterparts. This Second Amendment to Mortgage may be executed in counterparts, each of which shall constitute an original, but all together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment as of the day first above written.

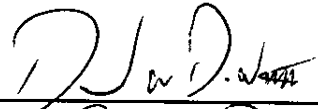
BORROWER:

ELGIN DAIRY FOODS, INC., an Illinois corporation

By: 
Name: EDWARD K. GIGNAC
Title: PRESIDENT

LENDER:

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO

By: 
Name: DAVID N. DEWITT
Title: OFFICER

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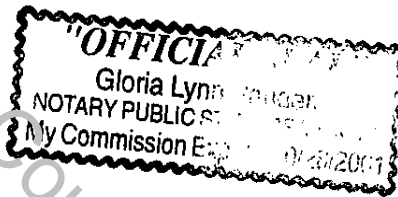
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that DAVID W. DEWITT, personally known to me to be the OFFICER of American National Bank and Trust Company of Chicago, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such officer and he signed and delivered the said instrument, pursuant to authority, given by the Board of Directors of said corporation as his free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal this 29th day of December, 2000.

Gloria Lynn Sender
Notary Public

Commission expires: 10/25/01

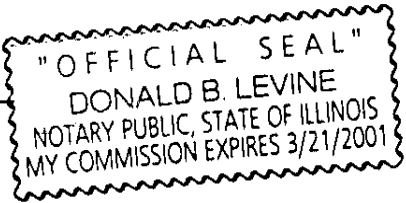


STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that EDUARDO K. GIGANTE personally known to me to be the President of **ELGIN DAIRY FOODS, INC.**, a Illinois corporation and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as such offices, as his free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal this 29th day of December, 2000.

Donald B. Levine
Notary Public



Commission expires: _____

Property of Cook County Clerk's Office

EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

LOTS 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 AND LOT 30 (EXCEPT THE EAST 5.83 FEET OF SAID LOT 30) IN BETSY BOILVIN'S SUBDIVISION OF THE NORTH ½ OF THE NORTHEAST ¼ OF THE NORTHEAST ¼ OF THE SOUTHWEST ¼ OF SECTION 14, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOTS 1, 2, 3, AND 4 IN HULL'S SUBDIVISION OF LOTS 14 THROUGH 18 IN BETSY BOILVIN'S SUBDIVISION OF THE NORTH ½ OF THE NORTHEAST ¼ OF THE NORTHEAST ¼ OF THE SOUTHWEST ¼ OF SECTION 14, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

THE EAST AND WEST 16 FOOT VACATED ALLEY LYING SOUTH OF THE SOUTH LINE OF LOTS 19 TO 24, BOTH INCLUSIVE, LYING NORTH OF THE NORTH LINE OF LOTS 25 TO 30, BOTH INCLUSIVE, LYING EAST OF A LINE DRAWN FROM THE SOUTHWEST CORNER OF LOT 24 TO THE NORTHWEST CORNER OF LOT 25 AND LYING WEST OF THE NORTHWARD EXTENSION OF THE WEST LINE OF THE EAST 5.83 FEET OF LOT 30 IN BETSY BOILVIN'S SUBDIVISION OF THE NORTH ½ OF THE NORTHEAST ¼ OF THE NORTHEAST ¼ OF THE SOUTHWEST ¼ OF SECTION 14, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 4:

LOT 13 (EXCEPT THE SOUTH 12.82 FEET THEREOF) IN BETSY BOILVIN'S SUBDIVISION OF THE NORTH ½ OF THE NORTHEAST ¼ OF THE NORTHEAST ¼ OF THE SOUTHWEST ¼ OF SECTION 14, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Index No.: 16-14-304-015, 16-14-304-016, 16-14-304-040, 16-14-304-041

PARCELS 1, 2, 3 AND 4 COMMONLY KNOWN AS: 3659 West Harrison Street
Chicago, Illinois

EXHIBIT A

CONTINUED

PARCEL 5:

LOT 67 THROUGH 74, BOTH INCLUSIVE, AND LOT 75 (EXCEPT THAT PART OF THE WEST 3 FEET OF SAID LOT 75 LYING NORTH OF THE SOUTH 16 FEET THEREOF), LOT 85 AND LOTS 81 THROUGH 83, BOTH INCLUSIVE, ALSO PART OF AN ABANDONED ALLEY RUNNING EAST AND WEST ADJACENT TO LOTS 67 THROUGH 75 AND SOUTH THEREOF AND LOTS 81 THROUGH 89, BOTH INCLUSIVE, AND NORTH THEREOF EAST OF A LINE DRAWN FOR THE MOST SOUTHWESTERLY CORNER OF LOTS 75 TO THE MOST NORTHWESTERLY CORNER OF LOT 81 IN GOLDY'S 3RD ADDITION TO CHICAGO IN THE SOUTHWEST 1/4 OF SECTION 14, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PERMANENT INDEX NOS.: 16-14-303-009, 16-14-303-010, 16-14-303-011, 16-14-303-014,
16-14-303-015, 16-14-303-016, 16-14-303-018, 16-14-303-023,
16-14-303-024, 16-14-500-049, 16-14-500-075

PARCEL 5 COMMONLY KNOWN AS: 3707 West Harrison Street
Chicago, IL 60624

EXHIBIT B

LEGAL DESCRIPTION OF ADDITIONAL PROPERTY

LOT 67 THROUGH 74, BOTH INCLUSIVE, AND LOT 75 (EXCEPT THAT PART OF THE WEST 3 FEET OF SAID LOT 75 LYING NORTH OF THE SOUTH 16 FEET THEREOF), LOT 85 AND LOTS 81 THROUGH 83, BOTH INCLUSIVE, ALSO PART OF AN ABANDONED ALLEY RUNNING EAST AND WEST ADJACENT TO LOTS 67 THROUGH 75 AND SOUTH THEREOF AND LOTS 81 THROUGH 89, BOTH INCLUSIVE, AND NORTH THEREOF EAST OF A LINE DRAWN FOR THE MOST SOUTHWESTERLY CORNER OF LOTS 75 TO THE MOST NORTHWESTERLY CORNER OF LOT 81 IN GOLDY'S 3RD ADDITION TO CHICAGO IN THE SOUTHWEST 1/4 OF SECTION 14, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN NOS.: 16-14-303-009, 16-14-303-010, 16-14-303-011, 16-14-303-014, 16-14-303-015,
16-14-303-016, 16-14-303-018, 16-14-303-023, 16-14-303-024, 16-14-500-049,
16-14-500-075

COMMONLY KNOWN AS: 3707 West Harrison Street
Chicago, IL 60624

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