



Document 2012 926

Book 2012 Page 926 Type 04 002 Pages 13

Date 4/02/2012 Time 1:18 PM

Rec Amt \$67.00

INDX ✓
ANNO ✓
SCAN
CHEK

LISA SMITH, COUNTY RECORDER
MADISON COUNTY IOWA

**FIRST AMENDMENT TO REAL ESTATE MORTGAGE, SECURITY AGREEMENT,
ASSIGNMENT OF RENTS AND FIXTURE FILING**

Recorder's Cover Sheet

Preparer Information:

Neal A. Coleman
Nyemaster Goode, P.C.
700 Walnut, Suite 1600
Des Moines, Iowa 50309
Telephone: 515-283-8193

Taxpayer Information:

Farmers Cooperative Company
2321 North Loop Drive, Suite 220
Ames, IA 50010
Attention: Mark W. Miner

✓ **Return Document To:**

First American Title Insurance Company
National Commercial Services
801 Nicollet Mall, Suite 1900
Minneapolis, MN 55402
NCS-518000-11-MPLS (tc)

Mortgagor:

Farmers Cooperative Company

Mortgagee:

CoBank, ACB, as Administrative Agent

Legal Description: See Exhibit "A"

Document or Instrument Number: 2009-2609 in Book 2009, Page 2609

**FIRST AMENDMENT TO REAL ESTATE MORTGAGE, SECURITY AGREEMENT,
ASSIGNMENT OF RENTS AND FIXTURE FILING**

THIS FIRST AMENDMENT TO REAL ESTATE MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND FIXTURE FILING ("First Amendment") is made as of March 30, 2012, by and between Farmers Cooperative Company, with an address of 2321 North Loop Drive, Suite 220, Ames, IA 50010 ("Mortgagor") and CoBank, ACB, as Administrative Agent, with an address of 5500 S. Quebec Street, Greenwood Village, CO 80111 ("Mortgagee").

WITNESSETH:

WHEREAS, Mortgagor has granted to Mortgagee a Real Estate Mortgage, Security Agreement, Assignment of Rents and Fixture Filing dated July 24, 2009, recorded as document number 2009-2609 at Book 2009, Page 2609 of the real estate records of Madison County, Iowa on August 18, 2009, covering the real estate described in "Exhibit A" to this First Amendment (the "Mortgage") that secures repayment of loans made by several banks and other financial institutions to Mortgagor pursuant to a Credit Agreement dated February 26, 2009 and amended and restated on December 30, 2010 (collectively, the "Prior Credit Agreement");

WHEREAS, the Mortgagor, Mortgagee and certain other financial institutions have agreed to amend and restate in its entirety the Prior Credit Agreement by execution and delivery of a Credit Agreement dated December 21, 2011 (the "Credit Agreement"); and

WHEREAS, all capitalized terms used in this First Amendment that are not defined herein shall have the meanings given to them in the Credit Agreement.

NOW, THEREFORE, as additional consideration for the Mortgagee agreeing to enter into the Credit Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The Recitals set forth above in this First Amendment are true and correct and are hereby made an integral part of this First Amendment.
2. The third unnumbered paragraph which appears on the first unnumbered page of the Mortgage following the Recorder's Cover Sheet is hereby deleted in its entirety and replaced with the following:

NOTICE: THIS MORTGAGE SECURES CREDIT IN THE AMOUNT OF \$1,005,398,630.14. LOANS AND ADVANCES UP TO THIS AMOUNT, TOGETHER WITH INTEREST, ARE SENIOR TO THE INDEBTEDNESS TO OTHER CREDITORS UNDER SUBSEQUENTLY RECORDED OR FILED MORTGAGES AND LIENS.

3. The definition of "Credit Agreement" in Section 1.01 of the Mortgage is hereby deleted in its entirety and replaced with the following:

Credit Agreement shall mean that certain Credit Agreement dated as of December 21, 2011, by and among Mortgagor, as Borrower, various lenders, and Mortgagee, as Administrative Agent, as the same may be amended, supplemented and restated from time to time.

4. The following definition of "Mortgage Proceeds" is hereby added to Section 1.01 of the Mortgage between the definitions of "Mortgage" and "Mortgaged Property":

Mortgage Proceeds shall have the meaning specified in Section 3.08 (G).

5. The following definition of "Taking Proceeds" is hereby added to the end of Section 1.01 of the Mortgage:

Taking Proceeds shall have the meaning specified in Section 3.11 (B).

6. The final unnumbered paragraph of Section 2.01 of the Mortgage is hereby deleted in its entirety and replaced with the following:

The total amount of principal secured by this Mortgage may be increased or decreased from time to time, but the total unpaid principal balance so secured at any one time shall not exceed the maximum principal amount of \$1,005,398,630.14 plus interest thereon at the applicable rate therefore and any disbursements made under the Credit Agreement or this Mortgage including, without limitation, the payment of taxes, assessments, levies, insurance premiums, attorneys' fees, costs incurred for the protection of the Mortgaged Property, or otherwise with interest on such disbursements at the rate specified in the Credit Agreement, from time to time. It is agreed that any additional sum or sums loaned, advanced, or readvanced by Mortgagee pursuant to the terms of this Mortgage or the Credit Agreement after the date of the execution hereof shall be equally secured with, and have the same priority as, the original principal loaned or advanced and shall be subject to all of the terms, provisions, and conditions of this Mortgage, whether or not, in the case of loans, advances, or readvances, such additional loans or advances or readvances are evidenced by Notes of Mortgagor and whether or not identified by a recital that it or they are secured by this Mortgage.

7. Section 3.08(F) of the Mortgage is hereby deleted in its entirety and replaced with the following:

(F) Application of Insurance Proceeds. All sums paid under any insurance policy required in Sections 3.08 (A)(1) through (A)(5) in excess of \$1,000,000 per any single casualty event shall be paid to the Mortgagee and applied to prepay the Obligations if and to the extent provided in

Section 2.16(h) of the Credit Agreement. Any application of insurance proceeds shall not extend or postpone the due dates of the monthly installments payable under the Credit Agreement or change the amount of such installments.

8. Section 3.08(G) of the Mortgage is hereby deleted in its entirety and replaced with the following:

(G) Application to Replacement. Mortgagee shall make all sums paid to it under any insurance policy required in Sections 3.08 (A)(1) through (A)(5) in an amount equal to or less than \$1,000,000 per any single casualty event (“**Mortgage Proceeds**”) (after first deducting therefrom Mortgagee’s reasonable expenses incurred in collecting the same, including reasonable attorneys’ fees and expenses) available to Mortgagor for the purpose of reimbursing Mortgagor for Mortgagor’s reasonable out-of-pocket costs of replacement of the improvements on the Land, in accordance with any and all procedures reasonably required by Mortgagee (and shall not be applied toward the payment of the Obligations until after replacement of the improvements on the Land) provided each of the following conditions shall be met:

1. There shall at the time of the casualty and at all times thereafter have occurred and be continuing no Event of Default or event which with notice, the passage of time, or both, would become an Event of Default;
2. The chief financial officer of Mortgagor shall notify Mortgagee of Mortgagor’s intention to perform such replacement promptly, and in any event within thirty (30) days of the adjusting of the loss or casualty;
3. Mortgagee shall receive, not later than one year after the relevant casualty event, evidence reasonably satisfactory to Mortgagee that the improvements on the Land have been fully replaced or that by application of the Mortgage Proceeds will be fully replaced (with such replacement property to be in a condition substantially similar to or better than that existing immediately prior to the damage or destruction (or as otherwise reasonably approved by Mortgagee)), free and clear of all liens other than the Permitted Liens, except as otherwise expressly permitted herein;
4. If, in the reasonable judgment of Mortgagee, the Mortgage Proceeds shall be insufficient to replace the improvements on the Land in a condition substantially similar to or better than that existing immediately prior to the damage or

destruction (or as otherwise reasonably approved by Mortgagee), Mortgagor shall demonstrate to Mortgagee the availability of funds which, together with the Mortgage Proceeds, shall be sufficient to replace the improvements on the Land in a condition substantially similar to that existing immediately prior to the damage or destruction (or as otherwise reasonably approved by Mortgagee);

5. There shall, in the reasonable judgment of Mortgagee, remain sufficient time to complete the replacement of the improvements on the Land prior to the earlier to occur of one year after the relevant casualty event and the Maturity Date of the Term C Facility (as defined in the Credit Agreement); and
6. The chief financial officer of Mortgagor shall have delivered to Mortgagee, on or prior to the one year anniversary of the relevant casualty event, a certificate stating that all Mortgage Proceeds made available to Mortgagor pursuant to this Section 3.08 (G) have in fact been applied to purchase replacements for the improvements on the Land that were the subject of the relevant casualty event.

Any proceeds remaining after reimbursement of Mortgagor for the cost of replacing the improvements on the Land, as described above, at Mortgagee's option, shall be applied to partial prepayment of the Obligations. Any such application of the Mortgage Proceeds to the payment of the Obligations shall be without prepayment premium or penalty, if any, otherwise applicable and shall not extend or postpone the due dates of the monthly installments payable under the Credit Agreement or change the amount of such installments. Any remaining Mortgage Proceeds not applied to the Obligations shall be paid to Mortgagor.

9. Section 3.11 of the Mortgage is hereby deleted in its entirety and replaced with the following:

Section 3.11 Condemnation.

(A) The Mortgagor hereby irrevocably assigns to the Mortgagee any award or payment which becomes payable to the Mortgagor by reason of any taking of the Mortgaged Property, or any part thereof, whether directly or indirectly or temporarily or permanently, in or by condemnation or other eminent domain proceedings (hereinafter called a "Taking"). Forthwith upon receipt by the Mortgagor of notice of the institution of any proceeding or negotiations for a Taking, the Mortgagor shall give notice thereof to the Mortgagee. The Mortgagee may appear in

any such proceedings and participate in any such negotiations and may be represented by counsel. The Mortgagor, notwithstanding that the Mortgagee may not be a party to any such proceeding, shall promptly give to the Mortgagee copies of all notices, pleadings, judgments, determinations and other papers received by the Mortgagor therein. The Mortgagor shall not enter into any agreement permitting or consenting to the taking of the Mortgaged Property, or any part thereof, or providing for the conveyance thereof in lieu of condemnation, with anyone authorized to acquire the same in condemnation or by eminent domain unless the Mortgagee shall first have consented thereto in writing. All Taking awards shall be adjusted jointly by the Mortgagor and the Mortgagee. All awards payable as a result of a Taking in excess of \$1,000,000 per any single Taking proceeding shall be paid to the Mortgagee and applied to prepay the Obligations if and to the extent provided in Section 2.16(h) of the Credit Agreement.

(B) **Application to Replacement.** If and to the extent provided in Section 2.16(h) of the Credit Agreement, a Mortgagee shall make all sums paid to it from any Taking (“**Taking Proceeds**”) (after first deducting therefrom Mortgagee’s reasonable expenses incurred in collecting the same, including reasonable attorneys’ fees and expenses) available to Mortgagor for the purpose of reimbursing Mortgagor for Mortgagor’s reasonable out-of-pocket costs of replacement of the improvements on the Land, in accordance with any and all procedures reasonably required by Mortgagee (and shall not be applied toward the payment of the Obligations until after replacement of the improvements on the Land) provided each of the following conditions shall be met:

- (1) There shall at the time of the Taking and at all times thereafter have occurred and be continuing no Event of Default or event which with notice, the passage of time, or both, would become an Event of Default;
- (2) The chief financial officer of Mortgagor shall notify Mortgagee of Mortgagor’s intention to perform such replacement promptly, and in any event within thirty (30) days of the Taking;
- (3) Mortgagee shall receive, not later than one year after the Taking, evidence reasonably satisfactory to Mortgagee that the improvements on the Land have been fully replaced or that by application of the Taking Proceeds will be fully replaced (with such replacement property to be in a condition substantially similar to or better than that existing immediately prior to the Taking (or as otherwise reasonably approved by Mortgagee)), free and clear of all liens other than the Permitted Liens, except as otherwise expressly permitted herein;

(4) If, in the reasonable judgment of Mortgagee, the Taking Proceeds shall be insufficient to replace the improvements on the Land in a condition substantially similar to or better than that existing immediately prior to the Taking (or as otherwise reasonably approved by Mortgagee), Mortgagor shall demonstrate to Mortgagee the availability of funds which, together with the Taking Proceeds, shall be sufficient to replace the improvements on the Land in a condition substantially similar to that existing immediately prior to the Taking (or as otherwise reasonably approved by Mortgagee);

(5) There shall, in the reasonable judgment of Mortgagee, remain sufficient time to complete the replacement of the improvements on the Land prior to the earlier to occur of one year after the relevant Taking and the Maturity Date of the Term C Facility (as defined in the Credit Agreement); and

(6) The chief financial officer of Mortgagor shall have delivered to Mortgagee, on or prior to the one year anniversary of the relevant Taking, a certificate stating that all Taking Proceeds made available to Mortgagor pursuant to this Section 3.11 (B) have in fact been applied to purchase replacements for the improvements on the Land that were the subject of the relevant Taking.

Any proceeds remaining after reimbursement of Mortgagor for the cost of replacing the improvements on the Land, as described above, at Mortgagee's option, shall be applied to partial prepayment of the Obligations. Any such application of the Taking Proceeds to the payment of the Obligations shall be without prepayment premium or penalty, if any, otherwise applicable and shall not extend or postpone the due dates of the monthly installments payable under the Credit Agreement or change the amount of such installments. Any remaining Taking Proceeds not applied to the Obligations shall be paid to Mortgagor.

10. Section 4.02 of the Mortgage is hereby deleted in its entirety and replaced with the following:

Section 4.02. Acceleration of Maturity. If an Event of Default shall have occurred and be continuing, the Mortgagee may declare the Obligations to be due and payable immediately by a notice in writing to the Mortgagor, and upon such declaration, all Obligations shall become due and payable immediately, notwithstanding anything contained herein or in the Credit Agreement to the contrary; provided that upon the occurrence of any "Event of Default" of the types described in Sections 7.1(e) or 7.1(f) of the Credit Agreement, all Obligations shall immediately

become due and payable, without presentment, demand, protest or any notice of any kind.

11. Section 4.04 of the Mortgage is hereby deleted in its entirety and replaced with the following:

Section 4.04. Application of Proceeds from Remedial Actions. Any proceeds or funds arising from the exercise of any rights or the enforcement of any remedies herein provided after the payment or provision for the payment of any and all costs and expenses in connection with the exercise of such rights or the enforcement of such remedies shall be applied to the Obligations as provided in the Credit Agreement.

12. The line in Section 6.03(c) of the Mortgage stating "Attention: Collateral Department" is hereby deleted and replaced with the following:

Attention: Syndications Coordinator, Corporate Finance Division

13. The addresses of the Mortgagor and the Mortgagee provided in Section 6.06 of the Mortgage are hereby deleted in their entirety and replaced with the following:

As to the Mortgagor: Farmers Cooperative Company
2321 North Loop Drive, Suite 220
Ames, IA 50010
Attention: Mark W. Miner
Fax No.: (515) 233-2473

As to the Mortgagee: CoBank, ACB, as Administrative Agent
5500 S. Quebec Street
Greenwood Village, CO 80111
Attention: Syndications Coordinator, Corporate
Finance Division
Fax No: (303) 694-5830

14. All of the terms and conditions of the Mortgage remain in full force and effect, as amended hereby.
15. The Mortgagor hereby acknowledges its receipt of a true and correct copy of this First Amendment.

[Signatures and acknowledgements follow on the next pages.]

IN WITNESS WHEREOF, the parties have executed this First Amendment as of the day and year first written above.

Mortgagor: FARMERS COOPERATIVE COMPANY

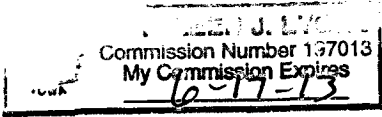
By: Mark W. Miner
Name: Mark W. Miner
Title: Chief Financial Officer

STATE OF IOWA)
COUNTY OF Story)

This instrument was acknowledged before me on this 16 day of January 2012, by Mark W. Miner, as Chief Financial Officer of FARMERS COOPERATIVE COMPANY, an Iowa cooperative association, on behalf of the cooperative association.

(SEAL)

By: Kathleen J. Lyons
Name: Kathleen J. Lyons
Title: Notary Public
My commission expires: 6-17-13



Earlham, Madison County

EXHIBIT A
Legal Description

PARCEL 1:

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, in Block 7, in the Original Town of Earlham, Madison County, Iowa.

PARCEL 2:

Lot 2 in Block 8, in the Original Town of Earlham, Madison County, Iowa.

PARCEL 3:

That part of Lot 1 in Block 16, in the Original Town of Earlham, Madison County, Iowa, described as follows: Beginning 28 feet north of the southeast corner of said Lot 1 in Block 16; thence South to said southeast corner; thence West to the southwest corner of said Lot 1; thence North 54.25 feet (54 ¼ feet); thence Easterly on a straight line to the point of beginning; and also beginning at the northwest corner of said Lot 1 in Block 16; thence South along the west line thereof 27 feet, more or less, to a point 25 feet southwesterly, measured at right angles, from the northerly line of said Lot 1; thence Southeasterly along a line 25 feet southwesterly from and parallel with the northerly line of said Lot 1, 150 feet, more or less to the west line of Chestnut Street; thence North to the northeast corner of said Lot 1; thence Northwesterly along the northerly line of said Lot 1 to the point of beginning; EXCEPT Parcel 3 and Parcel 4 as described in the Acquisition Plat attached to the Corporate Quit Claim Deed recorded August 3, 2004 in Book 2004, Page 3608 of the records of the Recorder for Madison County, Iowa.

PARCEL 4:

Lots 2, 3, 4 and 5, in Block 16, in the Original Town of Earlham, Madison County, Iowa.

PARCEL 5:

Lots 1 and 2 in Block 15, in the Original Town of Earlham, Madison County, Iowa.

PARCEL 6:

Lot 10 in Block 16, in the Original Town of Earlham, Madison County, Iowa; EXCEPT Parcel 1 as described in the Acquisition Plat attached to the Corporate Quit Claim Deed recorded August 3, 2004 in Book 2004, Page 3608 of the records of the Recorder for Madison County, Iowa.

PARCEL 7:

Lot 11 in Block 16, in the Original Town of Earlham, Madison County, Iowa; EXCEPT the South 45 feet thereof; AND ALSO EXCEPT Parcel 2 as described in the Acquisition Plat attached to the Corporate Quit Claim Deed recorded August 3, 2004 in Book 2004, Page 3608 of the records of the Recorder for Madison County, Iowa.

PARCEL 8:

Parcels A, B and C as shown on the Plat of Survey recorded May 12, 2004 in Book 2004, Page 2163 of the records of the Recorder for Madison County, Iowa; said Parcel A adjoins the northwest corner of Lot 11 in Block 16; said Parcel B lies within said Lot 11 in Block 16; and said Parcel C lies within Lot 1, Lot 11, and a portion of the vacated alley lying between said Lots 1 and 11, all in Block 16, in the Original Town of Earlham, Madison County, Iowa.

PARCEL 9:

All that part of the West Half of the Northwest Quarter of Section 2, Township 77 North, Range 29 West of the 5th Principal Meridian, Town of Earlham, Madison County, Iowa, lying South of the Chicago, Rock Island and Pacific Railway right of way as now located. Also described as Parcel D in the Plat of Survey recorded June 10, 2009 in Book 2009, page 1805 of the records of the Recorder for Madison County,

Iowa.

PARCEL 10:

The North Half of the Northwest Quarter of the Southeast Quarter of Section 7, Township 77 North, Range 28 West of the 5th Principal Meridian, Town of Earlham, Madison County, Iowa: EXCEPT Parcel B located in the Northwest Quarter of the Southeast Quarter of said Section 7, as shown and described on the Plat of Survey recorded June 18, 1998 in Book 3, Page 280 of the records of the Recorder for Madison County, Iowa. Also described as Parcel E in the Plat of Survey recorded June 10, 2009 in Book 2009, page 1806 of the records of the Recorder for Madison County, Iowa.

PARCEL 11:

The following 5 Tracts, formerly a part of the Chicago, Rock Island and Pacific Railroad Company, and the Heartland Rail Corporation, located in the Southwest Quarter of the Southwest Quarter of Section 6, Township 77 North, Range 28 West of the 5th Principal Meridian, in the City of Earlham, Madison County, Iowa, said tracts being more particularly described as follows:

TRACT 1: Beginning at the northwest corner of Lot 2 in Block 8 of the Original Town of Earlham, Madison County, Iowa; thence North along the east line of Elm Street in said town 105 feet, more or less, to a line being 50 feet southerly of and parallel with the center line of the Chicago, Rock Island and Pacific Railroad Company's station grounds in said town; thence Southeasterly along said parallel line 305 feet; thence South parallel with the west line of Locust Street in said town, 105 feet more or less, to the southerly line of said station grounds; thence Northeasterly along said southerly line of said station grounds 305 feet to the point of beginning; said tract being land conveyed by Quit Claim Deed recorded April 17, 1969 in Book 39 Town Lot Deeds, page 152 of the records of the Recorder for Madison County, Iowa.

TRACT 2: Beginning on the southerly line of the above mentioned right of way 55 feet east of the east line of said Locust Street; thence South to the northerly line of Block 16 in said Original Town of Earlham; thence Southeasterly along the northerly line of said Block 16 to the west line of Chestnut Street in said town; thence North along the west line of Chestnut Street to the southerly line of the above mentioned right of way; thence Northwesterly along said right of way line to the point of beginning; said tract being part of land conveyed as parcel 2 by Quit Claim Deed recorded April 17, 1969 in Book 39 Town Lot Deeds, page 137 of the records of the Recorder for Madison County, Iowa.

TRACT 3: Beginning on the southerly line of said right of way at its intersection with the east line of said Chestnut Street; thence South to the northwest corner of Block 15 in said Original Town of Earlham; thence Southeasterly along the northerly line of said Block 15 to the west line of Sycamore Street in said Town; thence North to the southerly line of said right of way; thence Northwesterly along said right of way line to the point of beginning; said tract being part of land conveyed as parcel 3 by Quit Claim Deed recorded April 17, 1969 in Book 39 Town Lot Deeds, page 137 of the records of the Recorder for Madison County, Iowa.

TRACT 4: Beginning on the southerly line of said right of way at its intersection with the east line of said Sycamore Street; thence South to the northwest corner of Block 14 in said Original Town of Earlham; thence Southeasterly along the northerly line of said Block 14 to the west line of Maple Street in said town; thence North to the southerly line of said right of way; thence Northwesterly along said right of way line to the point of beginning; said tract being land conveyed as parcel 4 by Quit Claim Deed recorded April 17, 1969 in Book 39 Town Lot Deeds, page 137 of the records of the Recorder for Madison County, Iowa.

TRACT 5: Beginning at the northwest corner of Parcel 2, as described in that certain Quit Claim Deed recorded in Book 39 Town Lot Deeds, page 137; thence Northwesterly on a line 8.5 feet perpendicularly distant southerly from the center line of stock track, as it existed on March 5, 1976, to a point 305 feet

East of the east line of Elm Street, as extended; thence South 115 feet, more or less, to the southerly line of the station grounds of the former Chicago, Rock Island and Pacific Railroad Company; thence Southeasterly on said southerly line of said station grounds 102 feet to the east line of Locust Street; thence continuing southerly on said southerly line 55 feet, more or less, to the westerly boundary of said parcel 2; thence Northerly along said Westerly boundary of said parcel 2, 100 feet, more or less, to the point of beginning; being land conveyed by Quit Claim Deed recorded May 28, 1993 in Book 58 Town Lot Deeds, page 342 of the records of the Recorder for Madison County, Iowa.