

IN THE COURT OF COMMON PLEAS OF FULTON COUNTY, OHIO

The Farmers & Merchants State Bank,) Case No.: 11CV000128
Plaintiff,) Judge James E. Barber
v.) **DEFENDANT FENSTERMAKER**
Archbold Elevator Inc., et al.,) **FARMS, INC.'S ANSWER, CROSS-**
Defendants.) **CLAIM AND COUNTERCLAIM**
) Michael S. Messenger (0016815)
) Mark A. Ozimek (0077978)
) Robison, Curphey & O'Connell
) Ninth Floor, Four SeaGate
) Toledo, OH 43604
) (419) 249-7900
) (419) 249-7911 – facsimile
) mozimek@rcolaw.com
)
) Attorneys for Defendant
) Fenstermaker Farms, Inc.

Defendant Fenstermaker Farms, Inc. (“Fenstermaker”), for its Answer to Plaintiff’s Verified Complaint, states as follows:

ANSWER


1. Fenstermaker admits the allegations in Paragraph 10 of the Verified Complaint that it has an interest in certain assets that are the subject of this action, pursuant to two (2) March 9, 2009 Security Agreements in which Defendant Archbold Elevator, Inc. (“Archbold Elevator”) granted security interests to Fenstermaker in all of the following: (1) all

breeding sow stock located at Fenstermaker Farms, Inc. in the farrowing barn on Road H, Leipsic, Ohio; (2) all un-weaned pigs located at Fenstermaker Farms, Inc. in the farrowing barn on Road H, Leipsic, Ohio; (3) all drug inventory and supplies located at Fenstermaker Farms, Inc. in the farrowing barn on Road H, Leipsic, Ohio; (4) any and all gilts located at Fenstermaker Farms, Inc. in farrowing barn and on 1799 Road H, Leipsic, Ohio; and (5) a certain 1999 GMC Bulk Feed Truck; all as more fully set forth in the Security Agreements, true and accurate copies of which are attached hereto as collective Exhibit A.

2. Fenstermaker denies all remaining allegations of the Verified Complaint for lack of knowledge and information sufficient to form a belief.

WHEREFORE, Fenstermaker prays that if this Court grants Plaintiff's request to sell all or any part of Archbold Elevator's assets described in the Verified Complaint, that all such assets be marshaled, that Plaintiff be required to exhaust its liens in accordance with such marshaling, that Fenstermaker be found to have a valid lien on its collateral as described in its Cross-claim, that the collateral be sold and from the proceeds thereof Fenstermaker be paid in order of priority and that Fenstermaker be awarded a judgment for any deficiency balance remaining.

Respectfully submitted,



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Attorneys for Defendant
Fenstermaker Farms, Inc.

Fenstermaker, for its Cross-claim against Archbold Elevator and all Defendants claiming an interest in the assets of Archbold Elevator, and for its Counterclaim against Plaintiff The Farmer & Merchants State Bank, states as follows:

CROSS-CLAIM AND COUNTERCLAIM

1. Fenstermaker is and was at all relevant times an Ohio corporation with its principal place of business in Putnam County, Ohio.
2. Archbold Elevator is and was at all relevant times an Ohio corporation with its principal place of business in Fulton County, Ohio.
3. The following additional parties may claim to have an interest in certain assets that are the subject of this Cross-claim and Counterclaim: Plaintiff The Farmer & Merchants State Bank, Defendants Kainos Operations, Ltd., O-MI-O, Inc., Henry Pig, Inc., William L. Fricke, Lynette K. Fricke, The Andersons, Inc., The Andersons Agriculture Group, L.P., The Receivables Exchange, LLC, D & D Ingredient Distributors, Inc., Toyota Motor Credit Corporation, and Ohio Department of Agriculture.

FIRST CLAIM FOR RELIEF

4. Fenstermaker incorporates by reference the allegations contained in paragraphs 1-3 as if fully rewritten herein.
5. On or about March 9, 2009, Archbold Elevator, for good and valuable consideration, executed and delivered to Fenstermaker an Installment Promissory Note, a true and accurate copy of which is attached hereto as **Exhibit B ("Note")**. The Note provides for the repayment of \$500,000.00, plus interest at a fixed rate of 5.0% per annum.
6. Archbold Elevator is in default of the terms of the Note for failure to make payment when payment was due.

7 Fenstermaker has elected, pursuant to the terms of the Note, to accelerate and declare fully due and payable all sums under the Note, together with accrued interest and any applicable fees and late charges.

8. There is currently due and owing to Fenstermaker from Archbold Elevator under the terms of the Note the principal sum of Two Hundred Fifty-Two Thousand Forty-Two and 56/100 dollars (\$252,042.56), plus continuing interest at the rate of 5.0% per annum from April 1, 2010 until paid in full, plus late fees and court costs.

SECOND CLAIM FOR RELIEF

9. Fenstermaker incorporates by reference the allegations contained in paragraphs 1-8 as if fully rewritten herein.

10. On or about March 9, 2009, to secure repayment of any and all indebtedness of Archbold Elevator under the Note to Fenstermaker, Archbold Elevator executed and delivered to Fenstermaker two (2) Security Agreements, granting security interests to Fenstermaker in all of the following: (1) all breeding sow stock located at Fenstermaker Farms, Inc. in the farrowing barn on Road H, Leipsic, Ohio; (2) all un-weaned pigs located at Fenstermaker Farms, Inc. in the farrowing barn on Road H, Leipsic, Ohio; (3) all drug inventory and supplies located at Fenstermaker Farms, Inc. in the farrowing barn on Road H, Leipsic, Ohio; (4) any and all gilts located at Fenstermaker Farms, Inc. in farrowing barn and on 1799 Road H, Leipsic, Ohio; and (5) a certain 1999 GMC Bulk Feed Truck; all as more fully set forth in the Security Agreements (hereinafter collectively referred to as the "**Fenstermaker Collateral**"). True and accurate copies of the Security Agreements are attached hereto and incorporated herein by this reference as collective **Exhibit A**.

11. The Security Agreements provide that in the event of a default under any instrument or agreement evidencing, guarantying or securing any of Archbold Elevator's

indebtedness to Fenstermaker, Fenstermaker may resort to the rights and remedies of a secured party under the laws of the State of Ohio.

12. By virtue of the defaults as set forth above, the conditions of the Security Agreements have been broken, the Security Agreements have become subject to foreclosure, and Fenstermaker is entitled to exercise any and all of its rights under the Security Agreements, including to have the Security Agreements foreclosed, the equity of redemption of all Defendants cut off and barred, said Fenstermaker Collateral sold, and the proceeds therefrom applied in payment of Fenstermaker's claims.

13. The following parties may claim to have an interest in the Fenstermaker Collateral: Plaintiff The Farmer & Merchants State Bank, Defendants Kainos Operations, Ltd., O-MI-O, Inc., Henry Pig, Inc., William L. Fricke, Lynette K. Fricke, The Andersons, Inc., The Andersons Agriculture Group, L.P., The Receivables Exchange, LLC, D & D Ingredient Distributors, Inc., Toyota Motor Credit Corporation, and Ohio Department of Agriculture.

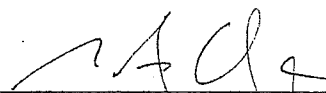
WHEREFORE, Defendant Fenstermaker Farms, Inc. prays for the following judgment:

(A) Judgment in Fenstermaker's favor against Defendant Archbold Elevator, Inc. under the terms of the Note in the principal sum of Two Hundred Fifty-Two Thousand Forty-Two and 56/100 dollars (\$252,042.56), plus continuing interest at the rate of 5.0% per annum from April 1, 2010 until paid in full, plus late fees and court costs;

(B) Judgment that the Fenstermaker Collateral described in the Security Agreements be foreclosed, the equity of redemption of all Defendants be forever cut off and barred, that Fenstermaker be found to have a good and valid lien on said Fenstermaker Collateral, that the Collateral be sold and from the proceeds thereof Fenstermaker's claims be paid in order of priority; and

(C) Judgment for such other and further relief as this Court deems just and equitable.

Respectfully submitted,



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Attorneys for Defendant
Fenstermaker Farms, Inc.

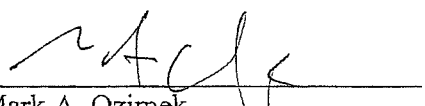
CERTIFICATE OF SERVICE

Toledo, OH
May 11, 2011

This is to certify that the following was sent this day by regular U.S. mail to:

| | |
|--|---|
| David Coyle Nathan A. Hall Shumaker, Loop & Kendrick, LLP 1000 Jackson Street Toledo, OH 43604 Attorney for Plaintiff | Steven L. Diller Dillon W. Staas Diller & Rice, LLC 124 E. Main Street Van Wert, OH 45891 Attorneys for Defendant D&D Ingredient Distributors, Inc. |
| Archbold Elevator, Inc. c/o Statutory Agent William Fricke 3265 Maple Avenue Pettisville, OH 43553 | The Receivables Exchange, LLC c/o Statutory Agent National Registered Agents, Inc. 1011 N. Causeway Boulevard Suite 3 Mandeville, LA 70471 |

| | |
|---|--|
| <p>Kainos Operations Ltd. c/o Statutory Agent William Fricke 3265 Maple Avenue Pettisville, OH 43553</p> | <p>Toyota Motor Credit Corporation c/o Statutory Agent CT Corporation System 1300 East Ninth Street Cleveland, OH 44114</p> |
| <p>O-MI-O Inc. c/o Statutory Agent William Fricke 3265 Maple Avenue Pettisville, OH 43553</p> | <p>James R. Patterson, Esq. Ohio Department of Agriculture 8995 East Main Street Reynoldsburg, OH 43068</p> |
| <p>Henry Pig Inc. c/o Statutory Agent William Fricke 3265 Maple Avenue Pettisville, OH 43553</p> | <p>Brian C. Kalas Lyden, Liebenthal & Chappell, Ltd. 5470 Main Street, Suite 300 Sylvania, OH 43560 Attorneys for Defendants William L. and Lynette K. Fricke</p> |
| <p>Elizabeth J. Hall 480 West Dussell Drive Maumee, OH 43537</p> <p>James R. Jeffery, Esq. Laurie J. Pangle James P. Silk, Jr. Spengler Nathanson P.L.L. Four Seagate, Suite 400 Toledo, OH 43604 Attorneys for Defendants The Andersons, Inc. and The Anderson Agriculture Group, L.P.</p> | |



Mark A. Ozimek
Attorneys for Defendant
Fenstermaker Farms, Inc.

SECURITY AGREEMENT

COPY
Date

Archbold Elevator, Inc. 3265 Cty Rd 24, Archbold, Fulton Co., OH
(Name) (No. and Street) (City or Town) (County) (State)

(hereinafter called the Debtor), does hereby grant, for a valuable consideration, receipt of which is hereby acknowledged, unto

Fenstermaker Farms, 1799 Rd H Leipsic Putnam Co. Ohio
(Name) (No. and Street) (City or Town) (County) (State)

(hereinafter called the Secured Party), a security interest in the following described property and any and all accessions thereto and the proceeds thereof (hereinafter called the Collateral)

DESCRIPTION OF COLLATERAL:

- 1) All breeding sow stock located at Fenstermaker Farms, Inc in the farrowing barn on Road H, Leipsic, Ohio.
- 2) All un-weaned pigs located at Fenstermaker Farms, Inc in the farrowing barn on Road H, Leipsic, Ohio.
- 3) All drug inventory and supplies located at Fenstermaker Farms, Inc in the farrowing barn on Road H, Leipsic, Ohio.
- 4) Any and all gilts located at Fenstermaker Farms, Inc in farrowing barn and on 1799 Road H, Leipsic, Ohio 45858.

to secure payment of indebtedness of \$ 500,000.00 as provided in the note or notes of even date herewith and also any and all liabilities now existing or hereafter arising, absolute or contingent, due or to become due including all costs and expenses incurred in the collection of the indebtedness and all future advances made by the Secured Party for taxes levied, insurance and repairs to or maintenance of the Collateral.

Debtor hereby warrants and agrees that:

1. The Collateral is or is to be used by the Debtor primarily for (check one):

- (a) Personal, family or household purposes _____
- (b) Farming operations X
- (c) Business use X

2. If the Collateral is or is to be attached to real estate, a description of the real estate is as follows: _____

_____ and the name of the record owner is _____

3. The Collateral will be kept at 1799 Road H Street, Leipsic Ohio, which is the Debtor's residence or place of business. Debtor will promptly notify Secured Party of any change in the location of the Collateral and Debtor will not remove the Collateral from the above address without the written consent of the Secured Party.

4. The Collateral is ~~not~~ being acquired with the proceeds of said note or notes which Secured Party may pay directly to the seller.

5. Except for the security interest granted herein, Debtor is the owner of the Collateral free from any prior lien, security interest or encumbrance, and Debtor will defend the Collateral against all claims and demands of any and all persons at any time claiming the same or any interest therein.

6. Debtor will not sell, exchange, lease or otherwise dispose of any interest in the Collateral without the written consent of the Secured Party and will not permit any lien, security interest or encumbrance to attach to the Collateral.

7. No financing statement covering the Collateral is on file in any public office and at the request of Secured Party, Debtor will join with Secured Party in executing one or more financing statements pursuant to the Ohio Uniform Commercial Code in form satisfactory to the Secured Party and Debtor will pay the cost of filing in all public offices wherever filing is deemed necessary by Secured Party. A carbon, photographic or other reproduction of this agreement or a financing statement will be sufficient as a financing statement.

8. Debtor will maintain the Collateral in good condition and repair; will maintain insurance on the Collateral against fire, theft, and such other hazards and in such form and amount as Secured Party may require and for the benefit of Debtor and Secured Party as their interest shall appear; and will pay and discharge all taxes imposed on the Collateral. Debtor assigns to Secured Party all right to proceeds of any insurance not exceeding the unpaid balance hereunder, and directs any insurer to pay all proceeds directly to Secured Party and authorizes Secured Party to indorse any draft for the proceeds. Such policy or policies shall be delivered to the Secured Party and shall be with a company or companies satisfactory to Secured Party.

At its option, Secured Party may discharge taxes, liens or other encumbrances at any time levied or placed on the Collateral, pay for insurance on the Collateral, and pay for the maintenance and preservation of the Collateral should Debtor fail to do so. Debtor agrees to reimburse Secured Party on demand for any payment so made and until such reimbursement, the amount so paid by Secured Party shall be added to the principal amount of the indebtedness.

Upon happening of any of the following events or conditions: (a) default in the payment or performance of any of the obligations or of any covenant or liability contained or referred to in any note or notes evidencing any of the obligations secured hereunder; (b) loss, theft, destruction, sale or encumbrance of or to the Collateral; (c) death, dissolution, termination of existence, insolvency, business failure, appointment of a receiver of any part of the property of, assignment for the benefit of creditors by or to the commencement of any proceedings under any bankruptcy or insolvency laws by or against Debtor; (d) any default under the terms hereunder; or (e) if Secured Party deems itself insecure, Secured Party may, at its election, declare the entire amount of the indebtedness then outstanding due and payable at once and Secured Party shall have the rights and remedies of a secured party under the Ohio Uniform Commercial Code including the right to enter any premises of the Debtor, without legal process and to take possession of and remove the Collateral. Debtor agrees, upon request of the Secured Party, to assemble the Collateral, and to make it available at the place designated by Secured Party. Any requirement of reasonable notice of any disposition of the Collateral shall be satisfied if such notice is mailed to the address of the Debtor shown in this Agreement at least ten days before the time of such disposition.

No waiver by Secured Party of any default shall be effective unless in writing nor shall operate as a waiver of any other default or of the same default on a subsequent occasion. Secured Party is hereby authorized to fill any blank spaces hereunder. All rights of Secured Party hereunder shall inure to the benefit of the heirs, executors, administrators, successors and assigns of Secured Party; and all obligations of Debtor shall bind the heirs, executors, administrators, successors and assigns of Debtor. If there is more than one Debtor, their obligations hereunder shall be joint and several. This Agreement constitutes the entire agreement between the parties.

Fenstermaker Farms Inc.

Archbold Elevator, Inc.

By: William L. Fricke
William L. Fricke Debtor

By: Steve Fenstermaker 3-9-03
Steve Fenstermaker Secured Party

SECURITY AGREEMENT

COPY

Date

Archbold Elevator, Inc., 3265 Cty Rd 24, Archbold, Fulton Co. Ohio
(Name) (No. and Street) (City or Town) (County) (State)

(hereinafter called "Debtor"), for valuable consideration, receipt whereof is hereby acknowledged, do hereby grant

unto Fenstermaker Farms, 1799 Rd H, Leipsic Putnam Co., Ohio
(Name) (No. and Street) (City or Town) (County) (State)

(hereinafter called "Secured Party"), a security interest in the property described below together with any additions and accretions thereto, and if farm crops, the products thereof, grown or growing, or planted on premises indicated below within one year from date hereof, (hereinafter called the collateral).

| Make of Vehicle | Year | Model | No. of Cyls. | H.P. | Motor No. | Serial No. | Type of Body |
|-----------------|------|-----------------|--------------|------|-----------|------------|--------------|
| GMC | 1999 | Bulk Feed Truck | | | VIN# | | |

"Other Collateral"

to secure the payment of Five Hundred Thousand and 00/100 (\$ 500,000.00) as provided in the note or notes of Debtor of even date herewith and also any and all other liabilities of Debtor to Secured Party, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising (all hereinafter called the "Obligations").

Debtor hereby warrants and covenants that:

(Warranties 1 to 7 are not applicable if collateral is a motor vehicle. If collateral is not a motor vehicle insert lines in spaces not used).

1. The collateral will be kept at 1799 Rd H, Leipsic, Putnam, Ohio
(Street) (City) (County) (State)

Debtor will notify Secured Party of any change in location of the Collateral within Ohio and will not remove the Collateral from Ohio without the written consent of Secured Party. The Secured Party may examine and inspect the property at any time, wherever located.

2. The collateral is or is to be used primarily in farming operations (insert one: (a) Personal, family or household purposes, (b) Farming operations, (c) Business use).

3. The collateral is ~~(type)~~ being acquired with U.S. proceeds of the note or notes, which Secured Party may disburse directly to the seller of the collateral.

4. Debtor's place of business in this state is 1799 Rd H, Leipsic, Putnam
(Street) (City) (County)

(if none, write "None") and all other places of business of Debtor in this state outside of said county are located as follows: 3265 Cty Rd 24, Archbold, Fulton Co., Ohio

5. If the collateral is used or bought primarily for personal, family or household purposes or for farming operations, or if Debtor has no place of business in this state, Debtor's residence is as above.

6. If the collateral is of a type normally used in more than one state (such as automotive equipment, rolling stock, air-planes, road building equipment, commercial harvesting equipment, construction machinery and the like) Debtor's chief place

of business is located at _____

7. If the collateral has been or is to be attached to real estate, or is growing, or is to be grown thereon, the name of the record owner of such real estate is _____

and said real estate is described as follows: _____
Reasonably identify. If farm property, at least county, township and acreage. If city property, at least street address, county, municipality.

and if the Collateral is attached to real estate prior to the perfection of the security interest hereby granted, Debtor will upon demand furnish Secured Party with a disclaimer signed by all persons having an interest in the real estate, of any interest in the Collateral which is prior to Secured Party's interest.

THIS AGREEMENT IS SUBJECT TO THE ADDITIONAL PROVISIONS SET FORTH ON THE REVERSE SIDE HEREOF. THE SAME BEING INCORPORATED HEREIN BY REFERENCE.

Signature (Sign full name in ink. Do not print)

Archbold Elevator, Inc.

By: William L. Fricke

William L. Fricke

Debtor

Fenstermaker Farms Inc.

By: Steve Fenstermaker 3 9 2019
Secured Party Steve Fenstermaker

(To be signed by secured party only if agreement is to be filed.)

Debtor further warrants and covenants:

8. Except for the security interest granted hereby, Debtor is the owner of the Collateral free from any prior lien, security interest or encumbrances, and Debtor will defend the Collateral against all claims and demands of all persons at any time claiming the same or any interest therein.

9. Debtor will not sell or offer to sell or otherwise transfer or encumber the property without written consent of Secured Party; will keep the collateral in good order and repair and will not waste or destroy the collateral.

10. No financing statement covering the collateral is on file in any public office, and at request of Secured Party, Debtor will join with Secured Party in executing one or more financing statements pursuant to the Uniform Commercial Code, as enacted in Ohio in form satisfactory to Secured Party and will pay the cost of filing the same in all public offices wherever filing is deemed necessary or desirable by Secured Party.

11. That the Debtor will effect adequate insurance against at least the perils of fire, theft, and collision, which insurance will include interest of the Debtor and placed with a company or companies satisfactory to the Secured Party and in amounts sufficient to protect Secured Party against loss or damage to said collateral; that such policy or policies of insurance will be delivered to the Secured Party, together with loss payable clauses in favor of the Secured Party as its interest may appear, in form satisfactory to the Secured Party.

12. At its option, Secured Party may discharge taxes, liens, or security interests or other encumbrances at any time levies are placed on the collateral, may pay for insurance on the collateral and may pay for the maintenance and preservation of the collateral. Debtor agrees to reimburse Secured Party on demand for any payment made, or any expense incurred by Secured Party pursuant to the foregoing authorization. Until default Debtor may have possession of the collateral and use it in any lawful manner not inconsistent with this agreement and not inconsistent with any policy of insurance thereon.

13. Upon the happening of any of the following events or conditions, namely: (I) default in the payment or performance of any of the Obligations or of any covenant or liability contained or referred to herein or in any note evidencing any of the Obligations; (II) any warranty, representation of statement made or furnished to Secured Party by or on behalf of Debtor in connection with this agreement or to induce Secured Party to make a loan to Debtor proving to have been false in any material respect when made or furnished; (III) loss, theft, substantial damage, destruction, sale or encumbrance to or of any of the Collateral, or the making of any levy, seizure or attachment thereof or thereon; (IV) death, dissolution, termination of existence, insolvency, business failure, appointment of a receiver of any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against, Debtor or any guarantor or surety for Debtor; thereupon, or at any time thereafter (such default not having previously been cured) Secured Party at its option may declare all of the Obligations to be immediately due and payable and shall then have the remedies for a secured party under the laws of the State of Ohio, including, without limitation thereto, the right to take possession of the Collateral, and for that purpose Secured Party may, so far as Debtor can give authority therefor, enter upon any premises on which the Collateral or any part thereof may be situated and remove the same therefrom. Secured Party may require Debtor to make the Collateral available to Secured Party at a place to be designated by Secured Party which is reasonably convenient to both parties. When notice is required by law, Secured Party will give Debtor at least ten days' prior written notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is to be made, and at any such public or private sale Secured Party may purchase the Collateral.

14. This agreement and the security interest in the Collateral created hereby shall terminate when the Obligations have been paid in full. No waiver by Secured Party of any default shall be effective unless in writing nor operate as a waiver of any other default or of the same default on a future occasion. Secured Party is authorized to fill in any blank spaces herein and to date this agreement the date the loan is made. All rights of Secured Party hereunder shall inure to the benefit of the heirs, executors, administrators, successors and assigns of Secured Party; and all obligations of Debtor shall bind the heirs, executors, administrators, successors and assigns of Debtor. If there be more than one Debtor, their obligations hereunder shall be joint and several. This Agreement shall take effect when signed by Debtor.

15. The Security Agreement contains the entire agreement between the parties, and no oral agreement shall be binding.

INSTALLMENT PROMISSORY NOTE

\$500,000.00

Leipsic, Ohio

Date: March 9, 2009

For value received, the undersigned promise to pay to the order of FENSTERMAKER FARMS, INC., 1799 Road H, Leipsic, Ohio, the sum of FIVE HUNDRED THOUSAND and 00/100 (\$500,000.00) dollars, together with interest at the rate of FIVE (5%) percent per annum.

Borrower is granted full prepayment privilege, and may repay any part or all of the principal of this note at any time, without penalty. Payments on this note shall be applied first to accrued interest and then to principal, unless otherwise agreed at the time the payment is made. If any installment of principal or interest on this note shall not be paid when due, then and on such default in whole or in part, the entire unpaid principal hereof shall at once become due and payable at the option of the holder hereof, and any failure to delay in exercising this option shall not be deemed a waiver thereof.

This note shall fall due and be payable in consecutive monthly installments, beginning April 1, 2009, of not less than \$11,514.65 each, including interest, for 47 months thereafter, and if not sooner paid the remaining balance shall fall due March 1, 2013. Payment shall be made by Borrower on said due date.

If borrower fails to make any installment of interest or principal within 10 days of its due date, a late charge of five (5%) percent of such payment shall be charged borrower.

Archbold Elevator, Inc.

By:



William L. Fricke