

THIS INSTRUMENT WAS PREPARED
BY AND AFTER RECORDING SHOULD
BE RETURNED TO:

Thomas A. Schnur
Vedder Price P.C.
222 North LaSalle Street, Suite 2500
Chicago, Illinois 60601-1003

THIRD AMENDMENT TO MORTGAGE, SECURITY AGREEMENT, AND ASSIGNMENT OF LEASES AND RENTS

(9555 Irving Park)

This THIRD AMENDMENT TO MORTGAGE, SECURITY AGREEMENT, AND ASSIGNMENT OF LEASES AND RENTS (this "Instrument") is made as of this 30th day of April, 2012, by ARPAC BUILDINGS COMPANY, L.L.C., a Delaware limited liability company f/k/a 9555 Irving Park, L.L.C. ("Mortgagor"), whose address is 9511 West River Road, Schiller Park, Illinois 60176, in favor of COLE TAYLOR BANK, having an office at 225 West Washington, 8th Floor, Chicago, Illinois 60606 ("Mortgagee"). Capitalized terms used but not defined herein shall have the same meanings herein as such terms have in the Mortgage (as defined below).

RECITALS

A. Mortgagor has executed in favor of Mortgagee that certain Amended and Restated Installment Note Secured by Mortgage dated May 31, 2005 in the original principal amount of \$1,500,000.00, as further amended and restated pursuant to that certain Second Amended and Restated Installment Note Secured by Mortgage dated May 31, 2008 in the original principal amount of \$1,106,250.00, and as further amended and restated pursuant to that certain Third Amended and Restated Installment Note Secured by Mortgage dated September 30, 2008 in the original principal amount of \$1,106,250.00 (the "Existing Note").

B. In order to secure the Existing Note, Mortgagor has previously executed and delivered in favor of Mortgagee a certain Mortgage, Security Agreement, and Assignment of Leases and Rents made as of March 17, 2003 and recorded with the Recorder of Deeds of Cook County, State of Illinois on March 26, 2003, as Document Number 0030409023 (the "Mortgage") as amended from time to time, which Mortgage encumbers the interest in the land located in Cook County, State of Illinois legally described on Exhibit A attached hereto (the "Mortgaged Property").

C. The Existing Note is being amended and restated by Mortgagor entering into that certain Fourth Amended and Restated Installment Note Secured by Mortgage dated as of the date hereof in the original principal amount of \$882,499.92 (as may be further amended, restated, supplemented or otherwise modified from time to time, the "Note").

UNOFFICIAL COPY

D. The Note replaces in its entirety and is in substitution for but not in payment of the Existing Note and does not and shall not be deemed to constitute a novation thereof. Such Existing Note shall be of no further force and effect upon the execution of the Note; provided, however, that all outstanding indebtedness, including, without limitation, principal and interest under the Existing Note as of the date of the Note, is hereby deemed indebtedness evidenced by the Note and is incorporated therein by reference.

E. In connection with Mortgagor entering into the Note, Mortgagor has agreed to execute this Instrument to reference the Note, as amended and restated, together with the obligations and liabilities of Mortgagor, its affiliates and subsidiaries or any one of them under certain Other Credit Agreements (as defined below).

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the mutual receipt and sufficiency of which are hereby acknowledged, Mortgagee and Mortgagor hereby agree as follows:

1. Recitals.

The Recitals set forth above are incorporated herein by this reference thereto as if fully set forth herein.

2. Amendments to Mortgage.

Effective as of the date hereof, the Mortgage is hereby amended and modified as hereinafter provided:

2.1 The "WHEREAS" clause of the Mortgage is hereby amended and restated to read as follows:

WHEREAS, Mortgagor executed and delivered to Mortgagee that certain Fourth Amended and Restated Installment Note Secured by Mortgage dated as of April 30, 2012 payable to the order of Mortgagee in the original principal amount of \$882,499.92, which note bears interest and is payable on the terms more fully described herein ("Note") along with the following other credit agreements executed by Mortgagor, its affiliates, subsidiaries or any one or more of them (collectively, the "Other Credit Agreements"): (i) that certain Loan and Security Agreement dated as of March 17, 2003 by and among ARPAC L.P., a Delaware limited partnership, INFRAPAK, L.L.C., an Illinois limited liability company and Lender, as amended from time to time; (ii) that certain Amended and Restated Installment Note Secured by Mortgage dated as of April 30, 2012 made by Borrower in favor of Lender in the original principal amount of \$1,960,000.00, as may be amended, restated or modified; (iii) that certain Fourth Amended and Restated Installment Note Secured by Mortgage dated as of April 30, 2012 made by Borrower in favor of Lender in the original principal amount of \$752,080.01, as may be further amended, restated or modified, and (iv) that certain Promissory Note dated December 12, 2007, as amended from time to time, made by Borrower in favor of Lender in the current principal amount of \$272,626.00, as may be amended, restated or modified from time to time.

UNOFFICIAL COPY

2.2 The Maturity Date of the Note is June 30, 2013 and the interest rate under the Note shall be variable determined, at the option of the Mortgagor, by reference to the Base Rate plus 2.75% or the LIBOR Rate plus 2.70%. For purposes of this Section 2.2:

(i) The "Bank Rate" shall mean the fixed rate of interest per annum from time to time announced by the Bank as its prevalent fixed rate of interest as of such day, as determined by the Bank in its sole discretion.

(ii) The "LIBOR Rate" means, with respect to any LIBOR Rate Loan for any Interest Period, a rate per annum equal to (a) the offered rate for deposits in United States dollars for a period equal to such Interest Period as displayed in the Bloomberg Financial Markets system (or such other authoritative source as selected by Lender in its sole discretion) as of 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period divided by (b) a number equal to 1.0 minus the maximum reserve percentages (expressed as a decimal fraction) including, without limitation, basic supplemental, marginal and emergency reserves under any regulations of the Board of Governors of the Federal Reserve System or other governmental authority having jurisdiction with respect thereto, as now and from time to time in effect, for Eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of such Board) which are required to be maintained by Lender by the Board of Governors of the Federal Reserve System. The LIBOR Rate shall be adjusted automatically on and as of the effective date of any change in such reserve percentage.

(iii) The "Interest Period" shall mean any continuous period of one (1), two (2) or three (3) months, as selected from time to time by the Mortgagor by irrevocable notice (in writing, by telecopy, telex, electronic mail or cable) given to the Mortgagee not less than three (3) Business Days prior to the first day of each respective Interest Period; provided that: (A) each such period occurring after such initial period shall commence on the day on which the immediately preceding period expires; (B) the final Interest Period shall be such that its expiration occurs on or before the end of the Maturity Date, as applicable; and (C) if for any reason the Borrower shall fail to timely select a period, then such Loans shall continue as, or revert to, a Bank Rate Loan.

3. No Further Amendment.

This Instrument is given solely to amend and modify the Mortgage as set forth herein. No further amendment or modification of the Mortgage is made or intended, and the respective terms and provisions thereof shall, as expressly amended and modified hereby, continue in full force and effect after the date hereof. The warranties, representations, covenants and agreements contained in the Mortgage as herein expressly amended, are hereby ratified, approved and confirmed in every respect.

4. No Release.

UNOFFICIAL COPY

The indebtedness, liabilities and other obligations secured by the Mortgage are continuing obligations and nothing contained herein shall be deemed to release, terminate or subordinate any lien, charge, security interest, assignment or other encumbrance created or evidenced thereby and all such liens, charges, security interests, assignments and encumbrances and the priority thereof shall relate back to the respective recordation dates for the Mortgage as referenced herein. This Instrument is not intended and shall not be deemed or construed to in any way effect the enforceability or priority of the Mortgage or constitute a novation, termination or replacement of all or any part of the indebtedness, liabilities or other obligations secured thereby.

5. Successors and Assigns; Agents; Captions.

The covenants and agreements contained herein shall bind, and the rights thereunder shall inure to, the respective successors and assigns of Mortgagor and Mortgagee, subject to the provisions of the Mortgage. The captions and headings of the paragraphs of this Instrument are for convenience only and are not to be used to interpret or define the provisions hereof.

6. Recordation; Expenses

Mortgagor shall cause this Instrument to be recorded in the recording office applicable to the Mortgage and/or such other places as reasonably requested by Mortgagee and Mortgagor shall pay to Mortgagee all reasonable expenses incurred by Mortgagee in connection with the preparation, execution, filing and recordation of this Instrument, including without limitation, reasonable attorneys' fees.

7. Counterparts.

This Instrument may be executed in any number of original counterparts, each of which when so executed shall be deemed to be an original for all purposes, and all counterparts shall together constitute one and the same instrument.

9. Governing Law; Severability.

Any provisions of this Instrument regarding the creation, perfection and enforcement of the liens and security interests granted in the Mortgage shall be governed by and construed under the laws of the state in which the Mortgaged Property is located. All other provisions of this Instrument shall be governed by the laws of the State of Illinois, without regard to conflicts of laws principles.

[SIGNATURE PAGE FOLLOWS]

UNOFFICIAL COPY

Second Amendment to First Mortgage Signature Page (9555)

IN WITNESS WHEREOF, this Instrument has been duly executed by Mortgagor and delivered to Mortgagee as of the day and year first above written.

ARPAC BUILDINGS COMPANY, L.L.C.,
a Delaware limited liability company

By:  _____

Name: Michael Levy

Title: Manager

Property of Cook County Clerk's Office

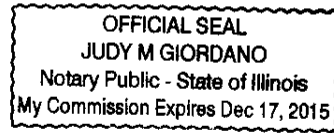
UNOFFICIAL COPY

STATE OF Illinois)
)
COUNTY OF Cook) SS.

I, Judy M. Giordano, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Michael Levy, Manager of ARPAC Buildings Company, L.L.C., 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/she signed, scaled and delivered the said instrument as his/her free and voluntary act and as the free and voluntary act of the company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 14 day of June, 2012.

Judy M. Giordano
Notary Public



Property of Cook County Clerk's Office

UNOFFICIAL COPY

Exhibit A

Legal Description

PARCEL 1

LOT 1 IN IRVING PARK ROAD SUBDIVISION BEING A SUBDIVISION OF PART OF SECTIONS 15 AND 16 IN TOWNSHIP 40 NORTH RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 25, 1995 AS DOCUMENT 95727017.

COMMON ADDRESS: 9555 IRVING PARK ROAD
SCHILLER PARK, ILLINOIS

P.I.N.: 12-16-415-042-0000