

UNOFFICIAL COPY



Doc#: 1306722080 Fee: \$60.00
Karen A. Yarbrough RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 03/08/2013 01:25 PM Pg: 1 of 12

This Document Prepared By
and After Recording Return To:

Sarah C. Thrasher, Esq.
Chapman and Cutler LLP
111 West Monroe Street
Chicago, Illinois 60603

280088031C

SPACE ABOVE THIS LINE RESERVED FOR
RECORDER'S USE ONLY

THIRD SUPPLEMENT TO MORTGAGE AND SECURITY AGREEMENT WITH ASSIGNMENT OF RENTS; AND FIRST SUPPLEMENT TO ASSIGNMENT OF LEASES AND RENTS

This Third Supplement to Mortgage and Security Agreement with Assignment of Rents; and First Supplement to Assignment of Leases and Rents (this "Supplement") is dated as of February 22, 2013 from MACKIN LAND COMPANY, LLC-193, an Illinois limited liability company, with its mailing address at 23978 N US Highway 45, Grayslake, Illinois 60030 (hereinafter referred to as "Mortgagor" and/or "Assignor") to BMO HARRIS BANK N.A., a national banking association formerly known as Harris N.A., with its mailing address at 111 West Monroe Street, Chicago, Illinois 60603 (hereinafter referred to as "Mortgagee" and/or "Assignee");

12

WITNESSETH THAT:

WHEREAS, (i) Mortgagor did heretofore execute and deliver to Mortgagee that certain Mortgage and Security Agreement with Assignment of Rents dated as of April 28, 2009, and recorded in the Office of the County Recorder of Cook County, Illinois on May 6, 2009, as Document No. 0912629070, as supplemented by that certain First Supplement to Mortgage and Security Agreement with Assignment of Rents dated as of December 28, 2010, and recorded in the Office of the County Recorder of Cook County, Illinois, on January 7, 2011 as Document No. 1100716010, as further supplemented by that certain Second Supplement to Mortgage and Security Agreement with Assignment of Rents dated as of October 31, 2011, and recorded in the Office of the County Recorder of Cook County, Illinois, on November 28, 2011, as Document No. 1133216035 (such Mortgage and Security Agreement with Assignment of Rents, as supplemented, hereinafter referred to as the "Mortgage"), and (ii) Assignor did heretofore execute and deliver to Assignee that certain Assignment of Leases and Rents dated as of April 28, 2009, and recorded in the Office of the County Recorder of Cook County, Illinois on May 6, 2009, as Document No. 0912629071 (the "Assignment"), in each case encumbering the property described on Schedule I attached hereto, in order to secure certain indebtedness of the Borrowers (as defined in the Mortgage and the Assignment) now or from time to time owing to Mortgagee; and

UNOFFICIAL COPY

WHEREAS, the Mortgage and the Assignment currently secure some or all of the following, among other things: (i) that certain Term A Note of the Borrowers dated as of April 28, 2009 and payable to the order of Mortgagee in the principal amount of \$8,131,000, whereby the Borrowers jointly and severally promise to pay said principal sum together with interest thereon at the rates and times specified in that certain Credit Agreement among the Borrowers and Mortgagee dated as of April 28, 2009 (such Credit Agreement, as amended from time to time, the "*Existing Credit Agreement*"), with a final maturity of all principal and interest to be paid on April 27, 2014 (such promissory note and any and all notes issued in renewal thereof or in substitution or replacement therefor being hereinafter referred to as the "*Term A Note*"), (ii) that certain Term B Note of the Borrowers dated as of April 28, 2009 and payable to the order of Mortgagee in the principal amount of \$3,788,000, whereby the Borrowers jointly and severally promise to pay said principal sum together with interest thereon at the rates and times specified in the Existing Credit Agreement, with a final maturity of all principal and interest to be paid on April 27, 2014 (such promissory note and any and all notes issued in renewal thereof or in substitution or replacement therefor being hereinafter referred to as the "*Term B Note*"), (iii) that certain Term C Note of the Borrowers dated as of April 28, 2009 and payable to the order of Mortgagee in the principal amount of \$543,767, whereby the Borrowers jointly and severally promise to pay said principal sum together with interest thereon at the rates and times specified in the Existing Credit Agreement with a final maturity of all principal and interest to be paid on April 27, 2014 (such promissory note and any and all notes issued in renewal thereof or in substitution or replacement therefor being hereinafter referred to as the "*Term C Note*"), and (iv) that certain Term D Note of the Borrowers dated as of October 31, 2011 and payable to the order of Mortgagee in the principal amount of \$624,000, whereby the Borrowers jointly and severally promise to pay said principal sum together with interest thereon at the rates and times specified in the Existing Credit Agreement, with a final maturity of all principal and interest to be paid on October 31, 2014 (such promissory note and any and all notes issued in renewal thereof or in substitution or replacement therefor being hereinafter referred to as the "*Term D Note*"); and

WHEREAS, concurrently herewith the Borrowers and Mortgagee have entered into that certain Amended and Restated Credit Agreement (herein, the "*Credit Agreement*") dated of even date herewith, whereby Mortgagee has agreed to, among other things, restate the Existing Credit Agreement in its entirety, to replace loans currently evidenced by the Term A Note, Term B Note, Term C Note and Term D Note with a new term loan in substitution of and replacement for such loans under the Existing Credit Agreement (the "*Term Loan*"), and make revolving loans and issue standby and commercial letters of credit to the Borrowers under a revolving credit facility (the "*Revolving Credit*"); and

WHEREAS, pursuant to the Credit Agreement, concurrently herewith the Borrowers have executed and delivered to Mortgagee (i) a Term Note dated as of even date herewith payable to the order of Mortgagee in the original principal sum of \$14,000,000 to evidence the Term Loan whereby the Borrowers jointly and severally promise to pay said principal sum together with interest thereon at the rates and times specified in the Credit Agreement, with a final maturity of all principal and interest to be paid on February 22, 2016 (such promissory note, issued in substitution of and replacement for the Term A Note, Term B Note, Term C Note and Term D Note, and any and all notes issued in renewal thereof or in substitution or replacement therefore being hereinafter referred to as the "*Term Note*"), and (ii) a Revolving Note dated as of even

UNOFFICIAL COPY

date herewith payable to the order of Mortgagee in the original principal sum of \$2,000,000 to evidence the Revolving Credit whereby the Borrowers jointly and severally promise to pay said principal sum together with interest thereon at the rates and times specified in the Credit Agreement, with a final maturity of all principal and interest to be paid on February 22, 2016 (such promissory note, and any and all notes issued in renewal thereof or in substitution or replacement therefore being hereinafter referred to as the "*Revolving Note*"; and together with the Term Note, collectively referred to herein as the "*Notes*"); and

WHEREAS, pursuant to the terms of the Credit Agreement, Mortgagee may from time to time issue standby and commercial letters of credit (the "*Letters of Credit*") for the account of Borrowers with expiry dates as referred to in the Credit Agreement in an aggregate face amount which, when combined with the principal amount of loans outstanding under the Revolving Credit from time to time, shall not at any one time exceed \$2,000,000; and

WHEREAS, the Borrowers may from time to time (i) enter into one or more agreements with respect to, among other things, interest rate, foreign currency and/or commodity exchange, swap, cap, collar, floor, forward, option or other similar agreements with Mortgagee or its affiliates, for the purpose of hedging or otherwise protecting against interest rate, foreign currency and/or commodity exposure (such agreements as the same may be amended or modified from time to time being hereinafter referred to as "*Hedging Agreements*" and the liability of the Borrowers in respect of such Hedging Agreements being hereinafter referred to as "*Hedging Liability*") and (ii) enter into one or more agreements with Mortgagee or its affiliates, with respect to each and any of the following bank products and services provided to any Borrower by Mortgagee or its affiliates: (a) credit cards for commercial customers (including, without limitation, "commercial credit cards" and purchasing cards), (b) stored value cards, and (c) treasury management services, including, without limitation, controlled disbursement, automated clearinghouse transactions, return items, overrafts and interstate depository network services (such agreements as the same may be amended or modified from time to time being hereinafter referred to as "*Bank Product Agreements*" and the liability of the Borrowers in respect of such Bank Product Agreements being hereinafter referred to as "*Bank Product Obligations*"); and

WHEREAS, as a condition precedent to the execution and delivery by Mortgagee of the Credit Agreement, making the Term Loan, extending the Revolving Credit, and making certain other financial accommodations to the Borrowers (collectively, the "*Supplement Consideration*"), Mortgagee requires Mortgagor and Assignor, and to accommodate that requirement Mortgagor and Assignor desire by this Supplement, to confirm and assure that all the real estate and other properties, rights, interests and privileges of Mortgagor and Assignor, respectively, including the Leases (as defined in the Assignment) which are currently subject to the lien of the Mortgage and the Assignment be and constitute security for the Term Loan, the Revolving Credit, the Hedging Liability, and the Bank Product Obligations which are evidenced or issued pursuant to the Term Note, the Revolving Note, the Hedging Agreements, and the Bank Product Agreements, respectively; and

UNOFFICIAL COPY

WHEREAS, the Mortgage and the Assignment shall continue to secure all the indebtedness now secured thereby, this Supplement being executed and delivered to confirm and assure the foregoing;

NOW, THEREFORE, for and in consideration of the Supplement Consideration and other good and valuable consideration, receipt whereof is hereby acknowledged, the Mortgage and the Assignment are hereby supplemented as follows, to wit:

To secure (i) the payment of the principal and premium, if any, of and interest on the Notes as and when the same become due and payable (whether by lapse of time, acceleration or otherwise) and all advances now or hereafter made thereon, (ii) the payment of all sums due or owing with respect to Hedging Liability and Bank Product Obligations, (iii) the payment and performance of all obligations arising under any applications executed by the Borrowers in connection with any of the Letters of Credit, including the obligation of the Borrowers to reimburse Mortgagee for any draws under the Letters of Credit, (iv) the payment of all other indebtedness, obligations and liabilities which the Mortgage and the Assignment each secures pursuant to any of its terms, and (v) the performance and observance of the covenants and agreements contained in the Mortgage (as supplemented and amended hereby), the Assignment (as supplemented and amended hereby), the Credit Agreement, the Notes, the Hedging Agreements, the Bank Product Obligations and any other instrument or document securing any of the foregoing or setting forth terms and conditions applicable thereto (all of such indebtedness, obligations, agreements and liabilities described in clauses (i), (ii), (iii), (iv) and (v) above being hereinafter collectively referred to as the "*indebtedness hereby secured*"): (a) Mortgagor does hereby grant, bargain, sell, convey, mortgage, warrant, assign, and pledge unto Mortgagee, its successors and assigns (for the benefit of itself and as representative for the benefit of its affiliates), and grant to Mortgagee, its successors and assigns (for the benefit of itself and as a representative for the benefit of its affiliates), a continuing security interest in, all and singular the properties, rights, interests and privileges owned by Mortgagor described in Granting Clauses I, II, III, IV, V, VI, and VII of the Mortgage, and (b) Assignor does hereby grant, convey, transfer, assign and set over unto Assignee, its successors and assigns (for the benefit of itself and as representative for the benefit of its affiliates), all right, title and interest of Assignor in, under or pursuant to any and all present or future Leases (as such term is defined in the Assignment), each and all of such granting clauses being hereby incorporated by reference herein with the same force and effect as though set forth herein in their entirety.

UNOFFICIAL COPY

The foregoing grant of a lien is in addition to and supplemental of and not in substitution for the grant of the lien created and provided for by the Mortgage and the Assignment, respectively, and nothing herein contained shall affect or impair the lien or priority of the Mortgage and the Assignment as to the indebtedness which would be secured thereby prior to giving effect to this Supplement.

As and for the Supplement Consideration, and to accept this Supplement, Mortgagor and Assignor hereby further covenant and agree with, and represent and warrant to, Mortgagee as follows:

1. Section 28 of the Mortgage shall be amended and restated in its entirety to read as follows:

28. *Revolving Credit Loans.* This Mortgage is given to secure, among other things, revolving credit loans and shall secure not only presently existing indebtedness under the Credit Agreement but also future advances, whether such advances are obligatory or to be made at the option of Mortgagee, or otherwise, as are made within twenty (20) years from the date hereof, to the same extent as if such future advances were made on the date of the execution of this Mortgage, although there may be no advance made at the time of execution of this Mortgage and although there may be no indebtedness hereby secured outstanding at the time any advance is made. The lien of this Mortgage shall be valid as to all indebtedness hereby secured, including future advances, from the time of its filing for record in the recorder's or registrar's office in the county in which the Mortgaged Premises are located. The total amount of indebtedness hereby secured may increase or decrease from time to time, but the total unpaid balance of indebtedness hereby secured (including disbursements which Mortgagee may make under this Mortgage, the Credit Agreement or any other documents related thereto) at any one time outstanding shall not exceed a maximum principal amount of Thirty-Two Million Dollars (\$32,000,000) plus interest thereon and any disbursements made for payment of taxes, special assessments or insurance on the Mortgaged Premises and interest on such disbursements (all such indebtedness being hereinafter referred to as the "*maximum amount secured hereby*"). This Mortgage shall be valid and have priority over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Mortgaged Premises, to the extent of the maximum amount secured hereby.

2. Mortgagor and Assignor hereby represent and warrant to Mortgagee that as of the date hereof each of the representations and warranties set forth in the Mortgage and the Assignment, respectively, as supplemented hereby are true and correct in all material respects and that no Event of Default (as such term is defined in the Mortgage), or any other event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, has occurred and is continuing or shall result after giving effect to this Supplement. Mortgagor and Assignor hereby repeat and reaffirm all covenants and agreements contained in the Mortgage and the Assignment, respectively, each and all of which shall be applicable to all of the

UNOFFICIAL COPY

indebtedness secured by the Mortgage and the Assignment as supplemented hereby. Each of Mortgagor and Assignor repeat and reaffirm its covenant that all the indebtedness secured by the Mortgage and the Assignment, respectively, as supplemented hereby will be promptly paid as and when the same becomes due and payable.

3. All capitalized terms used herein without definition shall have the same meanings herein as they have in the Mortgage and the Assignment. All references herein to the terms "*Mortgagor*" and "*Mortgagee*" shall, with respect to the Assignment, mean Assignor and Assignee, respectively, as such terms are defined in the Assignment. The definitions provided herein of any capitalized terms shall apply to such capitalized terms as the same appear in the Mortgage and the Assignment as supplemented hereby, all to the end that any capitalized terms defined herein and used in the Mortgage or the Assignment as supplemented hereby shall have the same meanings in the Mortgage and the Assignment as supplemented hereby as are given to such capitalized terms herein. Without limiting the foregoing, all references in the Mortgage and the Assignment to the term "*indebtedness hereby secured*" shall be deemed references to all the indebtedness, obligations and liabilities secured by the Mortgage and the Assignment as supplemented hereby; all references in the Mortgage and the Assignment to the term "*Credit Agreement*" shall be deemed references to the term Credit Agreement as defined herein, as the same may from time to time hereafter be amended, modified or restated; and all references in the Mortgage and the Assignment to the term "*Note*" or "*Notes*" shall be deemed references, collectively, to the Notes as defined herein and any and all notes issued in extension or renewal thereof or in substitution or replacement therefore.

4. All of the provisions, stipulations, covenants and covenants contained in the Mortgage and the Assignment shall stand and remain unchanged and in full force and effect except to the extent specifically modified hereby and shall be applicable to all of the indebtedness, obligations and liabilities secured by the Mortgage and the Assignment as supplemented hereby.

5. Mortgagor and Assignor acknowledge and agree that the Mortgage and the Assignment, respectively, as supplemented hereby are and shall remain in full force and effect, and that the Mortgaged Premises and the Leases are and shall remain subject to the lien and security interest granted and provided for by the Mortgage and the Assignment, respectively, for the benefit and security of all the indebtedness hereby secured, including without limitation, the Term Loan made by Mortgagee to the Borrowers under the Credit Agreement which is evidenced by the Term Note, the Revolving Credit in the form of loans and letters of credit made by Mortgagee to the Borrowers under the Credit Agreement which is evidenced by the Revolving Note, the Hedging Liability pursuant to the Hedging Agreements and the Bank Product Obligations pursuant to the Bank Product Agreements. Without limiting the foregoing, Mortgagor and Assignor hereby agree that, notwithstanding the execution and delivery hereof, (i) all rights and remedies of Mortgagee under the Mortgage and the Assignment, (ii) all obligations of Mortgagor and Assignor thereunder, and (iii) the lien and security interest granted and provided for thereby are and as amended hereby shall remain in full force and effect for the benefit and security of all the indebtedness hereby secured, it being specifically understood and agreed that this Supplement shall constitute and be, among other things, an acknowledgement and continuation of the rights, remedies, lien and security interest in favor of Mortgagee, and of

UNOFFICIAL COPY

the obligations of Mortgagor and Assignor to Mortgagee, which exist under the Mortgage and the Assignment as supplemented hereby.

6. This Supplement may be executed in any number of counterparts and by different parties hereto on separate counterpart signature pages, each of which when so executed shall be an original but all of which to constitute one and the same instrument.

7. No reference to this Supplement need be made in any note, instrument or other document making reference to the Mortgage or the Assignment, any reference to the Mortgage or the Assignment in any of such to be deemed to be a reference to the Mortgage or the Assignment as the case may be, as supplemented hereby. This instrument shall be construed and governed by and in accordance with the laws of the State of Illinois.


8. Wherever herein any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises and agreements by or on behalf of Mortgagor, or by or on behalf of Assignor, or by or on behalf of Mortgagee, or by or on behalf of the holder or holders of the indebtedness hereby secured contained in the Mortgage and the Assignment as supplemented hereby shall bind and inure to the benefit of the respective successors and assigns of such parties, whether so expressed or not.

[SIGNATURE PAGE TO FOLLOW]

UNOFFICIAL COPY

IN WITNESS WHEREOF, Mortgagor has caused these presents to be duly executed the day and year first above written.

MACKIN LAND COMPANY, LLC-193

By 
Name John O. Graham
Title Member

Accepted and agreed to.

BMO HARRIS BANK N.A.

By _____
Name Andrew Gagle
Title Vice President

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, Mortgagor has caused these presents to be duly executed the day and year first above written.

MACKIN LAND COMPANY, LLC-193

By _____
Name John O. Graham
Title Member

Accepted and agreed to.

BMO HARRIS BANK N.A.

By Andy Gagle
Name Andrew Gagle
Title Vice President

Property of Cook County Clerk's Office

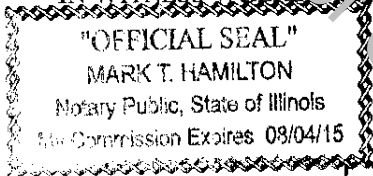
UNOFFICIAL COPY

ACKNOWLEDGMENT

STATE OF ILLINOIS)
) SS
COUNTY OF Yuk)

On this 22 day of February, 2013, before me, a Notary Public, the undersigned officer, personally appeared John O. Graham, who acknowledged himself/herself to be the Manager of Mackin Land Company, LLC-193, an Illinois limited liability company, and that he/she, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of said company by himself/herself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Mark T. Hamilton

Notary Public

My Commission Expires: 8/4/15

PROPERTY OF Cook County Clerk's Office

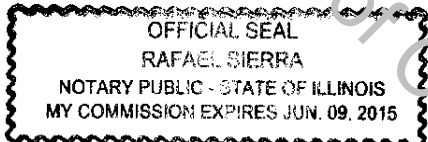
UNOFFICIAL COPY

ACKNOWLEDGMENT

STATE OF ILLINOIS)
) SS
 COUNTY OF COOK)

On this 22nd day of February, 2013, before me, a Notary Public, the undersigned officer, personally appeared Andrew Gagle, who acknowledged himself/herself to be the Vice President of BMO Harris Bank N.A., a national banking association, and that he/she, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of said association by himself/herself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Rafael Sierra
 Notary Public

My Commission Expires: 06/09/2015

Property of Cook County Clerk's Office


UNOFFICIAL COPY

SCHEDULE I

LEGAL DESCRIPTION

LOT 1 IN ARLINGTON INDUSTRIAL AND RESEARCH CENTER UNIT 3, BEING A SUBDIVISION OF PART OF THE SOUTHWEST 1/4 OF SECTION 6, TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office



Property Addresses: 1006 W. Dundee Road, Arlington Heights, Illinois
P.I.N. Nos. 03-06-302-003-0000