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RHSP Fee:\$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 09/12/2014 11:33 AM Pg: 1 of 12

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This instrument was prepared by and after recording should be returned to:

30546
Toshiii

Latham & Watkins LLP
330 North Wabash Avenue
Suite 2800
Chicago, Illinois 60611
Attention: Patrick Maloney

Permanent Tax Index Number:
06-32-300-017-0000

Property Address:
1500 W. Bartlett Road
(a/k/a 1800-1825 Schoen)
Elgin, Illinois 60123

FIRST AMENDMENT TO MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING AND FIRST AMENDMENT TO ASSIGNMENT OF RENTS AND LEASES

FROM

ACME REFINING COMPANY,
as Mortgagor,

TO

MB FINANCIAL BANK, N.A.,
as Mortgagee

Relating to Premises in:

Cook County, Illinois

Dated as of August 7, 2014

Box 400-CTCC

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FIRST AMENDMENT TO MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING AND FIRST AMENDMENT TO ASSIGNMENT OF RENTS AND LEASES

THIS FIRST AMENDMENT TO MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING AND FIRST AMENDMENT TO ASSIGNMENT OF RENTS AND LEASES (this "First Amendment") is dated as of August 7, 2014 (the "Effective Date"), by and between ACME REFINING COMPANY, an Illinois corporation (the "Mortgagor"), and MB FINANCIAL BANK, N.A., a national banking association (together with any successors or assigns in such capacity, the "Mortgagee"). Capitalized terms used but not defined in this First Amendment shall have the meaning ascribed to them in the Mortgage, Assignment or the Loan Agreement, as applicable.

RECITALS

A. Mortgagor owns certain real property (including improvements and fixtures located thereon), which real property is more particularly described in Exhibit A attached hereto.

B. Mortgagor previously executed and delivered to Mortgagee that certain Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing dated as of August 13, 2008 (the "Existing Mortgage"), recorded August 15, 2008, as Document Number 0822801166, in the official records of Cook County, Illinois, which Existing Mortgage encumbers the Premises (as defined therein).

C. Mortgagor previously executed and delivered to Mortgagee that certain Assignment of Rents and Leases dated August 13, 2008 (the "Existing Assignment of Rents and Leases"), recorded August 15, 2008, as Document Number 0822801167, in the official records of Cook County, Illinois, which Existing Assignment of Rents and Leases encumbers the Premises.

D. The Existing Mortgage and Existing Assignment of Rents and Leases secures the Indebtedness (as defined in the Existing Mortgage), which includes the indebtedness and obligations arising under that certain Loan and Security Agreement, dated as of August 13, 2008, by and between Mortgagor and Mortgagee, as amended, restated or replaced from time to time (the "Original Loan Agreement").

E. The Original Loan Agreement was amended by that certain (i) First Amendment to Loan and Security Agreement dated February 9, 2009, (ii) Second Amendment to Loan and Security Agreement dated June 13, 2009, (iii) Third Amendment to Loan and Security Agreement dated August 13, 2009, (iv) Fourth Amendment to Loan and Security Agreement dated November 5, 2009, (v) Fifth Amendment to Loan and Security Agreement dated October 15, 2010, (vi) Sixth Amendment to Loan and Security Agreement dated July 22, 2011, (vii)

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Seventh Amendment to Loan and Security Agreement dated October 15, 2011, (viii) Eighth Amendment to Loan and Security Agreement dated December 15, 2011, (ix) Ninth Amendment to Loan and Security Agreement dated February 15, 2012, (x) Tenth Amendment to Loan and Security Agreement dated July 15, 2012, (xi) Eleventh Amendment to Loan and Security Agreement dated February 15, 2013, (xii) Twelfth Amendment to Loan and Security Agreement dated June 15, 2013 (the "Loan Agreement Amendments").

F. Pursuant to the Original Loan Agreement and the Loan Agreement Amendments, Mortgagee has made Loans available to Borrower in a maximum aggregate principal amount of Thirty-Six Million Two Hundred Twenty-Two Thousand Five Hundred Twenty-Five and 90/100 Dollars (\$36,222,525.90), which Loans include (i) a Revolving Loan facility to Borrower in the maximum principal amount of \$20,000,000.00, with a scheduled maturity date of June 15, 2014; (ii) a Real Estate Loan facility in the principal amount of \$4,500,000.00, with a scheduled maturity date of December 31, 2013; (iii) an Equipment Term Loan in the original principal amount of \$3,758,125.90, with a scheduled maturity date of August 14, 2013, (iv) a 2010 Equipment Term Loan facility in the original principal amount of \$1,734,400.00, with a scheduled maturity date of July 15, 2016; (v) a 2011 Equipment Loan facility in the principal amount of \$3,000,000.00, with a scheduled maturity date of November 15, 2017; (vi) an Acquisition Term Loan facility in the original principal amount of \$2,750,000.00, with a scheduled maturity date of July 15, 2016 and (vii) a Mortgage Term Loan facility in the original principal amount of \$480,000.00, with a scheduled maturity date of August 5, 2016.

G. Mortgagor and Mortgagee desire to give notice of the Loan Agreement Amendments, the loans, extensions of credit and other financial accommodations made pursuant to the Original Loan Agreement and thereto (including as described in Recital F above and as more fully described in the Original Loan Agreement and Loan Agreement Amendments) and to confirm that the Existing Mortgage and Existing Assignment of Rents and Leases remain in full force and effect, except only to the extent expressly modified by this First Amendment.

H. The Indebtedness is continuing, is not being repaid or discharged in whole or in part, and no change has been made to the Indebtedness except pursuant to the Loan Agreement Amendments.

NOW, THEREFORE, Mortgagor and Mortgagee agree and give notice as follows:

1. Amendment.

The Existing Mortgage and Existing Assignment of Rents and Leases are hereby amended as follows:

1.1 *Definition of "Loan Agreement."* Whenever referred to in the Existing Mortgage or Existing Assignment of Rents and Leases, "Loan Agreement" shall mean the Original Loan Agreement, as amended by the Loan Agreement Amendments, and as may be further amended, restated, supplemented or otherwise modified from time

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to time, including any modification changing the amount, the interest rate or other terms of the Indebtedness or giving notice of any such changes.

1.2 *Definition of "Loan."* Whenever referred to in the Existing Mortgage or Existing Assignment of Rents and Leases, Loan shall mean the loans and other financial accommodations made to Borrower by the Bank, including, without limitation, the loans described in Recital F hereof, and such other loans as may be made pursuant to, or in connection with, the Loan Agreement from time to time.

1.3 *Definition of "Mortgage."* Whenever referred to in the Existing Mortgage, the Existing Assignment of Rents and Leases or this First Amendment, "Mortgage" shall mean the Existing Mortgage, as amended by this First Amendment, and as may be further amended, restated, supplemented or otherwise modified from time to time, including any modification changing the amount, the interest rate or other terms of the Indebtedness or giving notice of any such changes. Any future amendment, restatement, supplementation, or other modification of the Mortgage may or may not be recorded.

1.4 *Definition of "Assignment."* Whenever referred to in the Existing Assignment of Rents and Leases or this First Amendment, "Assignment" shall mean the Existing Assignment of Rents and Leases, as amended by this First Amendment, and as may be further amended, restated, supplemented or otherwise modified from time to time, including any modification changing the amount, the interest rate or other terms of the Indebtedness or giving notice of any such changes. Any future amendment, restatement, supplementation, or other modification of the Assignment may or may not be recorded.

1.5 *Definition of "Indebtedness."* Whenever referred to in the Existing Mortgage or this First Amendment, "Indebtedness" shall mean the Indebtedness, as defined in the Existing Mortgage, as amended by this First Amendment (which for the avoidance of doubt includes all indebtedness and obligations pursuant to the Loan Agreement Amendments), as such term may be amended, restated, supplemented or otherwise modified from time to time, if and when the Loan Agreement is amended, restated, supplemented or otherwise modified from time to time, including any modification changing the amount, the interest rate or other terms comprising the Indebtedness.

1.6 *Definition of "Notes" in the Existing Mortgage.* Whenever referred to in the Existing Mortgage, "Notes" shall mean the Notes, as defined in the Existing Mortgage, together with any and all notes issued in connection with or evidencing the indebtedness described in Recital F above, and any and all notes issued to evidence any indebtedness or obligations under the Loan Agreement.

1.7 *Definition of "Notes" in the Existing Assignment of Rents and Leases.* Whenever referred to in the Existing Assignment of Rents and Leases, "Notes" shall mean the Notes, as defined in the Existing Assignment of Rents and Leases, together with any and all notes issued in connection with or evidencing the indebtedness described

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in Recital F above, and any and all notes issued to evidence any indebtedness or obligations under the Loan Agreement.

1.8 *Other Defined Terms.* Wherever any defined term used in the Existing Mortgage or Existing Assignment of Rents and Leases is redefined in this First Amendment, such redefinition shall apply to such term as used in the Mortgage or Assignment, as applicable.

1.9 *Maximum Indebtedness.* The words "Fifty Million Dollars (\$50,000,000.00)" in Section 37(j) of the Mortgage are hereby deleted and the words "Seventy-Two Million Four Hundred Forty-Five Thousand Fifty-One and 80/100 Dollars (\$72,445,051.80)" are hereby substituted therefor.

1.10 *Permanent Tax Index Number:* The references in the Existing Mortgage to the Permanent Tax Index Number of "06-32-300-017-000" are hereby deleted and replaced with "06-32-300-017-0000".

2. Confirmation and Ratification of Mortgage.

Except as modified by this First Amendment, the Existing Mortgage and Existing Assignment of Rents and Leases shall continue in full force and effect. In all other respects Mortgagor and Mortgagee fully confirm and ratify the Existing Mortgage and Existing Assignment of Rents and Leases. Nothing in this First Amendment is intended to waive any rights or remedies of Mortgagee under the Mortgage or Assignment, or any defaults of Mortgagor under the Mortgage or Assignment. The Mortgage and Assignment shall continue to be a valid and subsisting lien on, and security interest in the Premises.

3. No Change in Priority.

3.1 *Definition: Junior Lien Claimant.* A "Junior Lien Claimant" means any holder of any interest or claim that affects the Premises or estate or interest therein, which interest or claim is recorded after the date the Existing Mortgage or the Existing Assignment of Rents and Leases were originally recorded or that is otherwise, or is intended to be, junior and subordinate to the lien of the Mortgage and the Assignment.

3.2 *Change to Indebtedness.* The Indebtedness may, from time to time, be amended, modified, extended, renewed, restated, increased, repledged, supplemented, or otherwise changed (any of the foregoing, a "Change"). Changes may include any or all of the following, none of which shall impair the priority of the lien of the Mortgage or the Assignment as against the liens of Junior Lien Claimants: (a) complete or partial amendment and restatement of any or all terms and conditions of the Indebtedness; (b) modifications of the required principal and/or interest payment dates, and/or deferring or accelerating such payment dates in whole or in part; (c) modifications, extensions or renewals at a different rate of interest; (d) increases in any amount in the principal or interest rate of the Indebtedness; and/or (e) modifications or additional amounts advanced with respect to the Indebtedness.

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3.3 *Effect of Change(s).* The Existing Mortgage and Existing Assignment of Rents and Leases (as amended by this First Amendment and as it may be further amended with or without record notice of such amendment) shall continue to secure the Indebtedness, with the same priority of lien as the Existing Mortgage and Existing Assignment of Rents and Leases, respectively, even if the Indebtedness is subject to Change, whether or not: (a) any notice is recorded with respect to such Change; (b) such Change increases the principal amount or the interest rate of the Indebtedness or otherwise adversely affects Junior Lien Claimants; or (c) the Mortgagor executes or delivers new or additional note(s) to evidence or confirm such Change. The execution and delivery of this First Amendment, or of any subsequent or prior (if any) amendment of the Mortgage or Assignment, shall not impair, reduce or subordinate, in whole or in part, the priority of the Mortgage or Assignment. The Indebtedness (taking into account the effect of any Change) shall continue to be secured by the Mortgage and Assignment, with the same priority of lien, even if any such Change occurs.

3.4 *Notice to Junior Lien Claimants.* The Mortgage and Assignment provided, and gave full record notice to all potential Junior Lien Claimants, that the Mortgage and Assignment were intended to secure the Indebtedness arising not only under the Existing Loan Agreement as originally executed and delivered, but also under any amendments, restatements, amendments and restatements, supplements, or other modifications of the Existing Loan Agreement. Any of the foregoing could potentially include modifications that could increase the amount of the Indebtedness, increase the interest rate of the Indebtedness, or otherwise adversely affect Junior Lien Claimants. All actual and potential Junior Lien Claimants are hereby placed on notice that the Indebtedness are subject to Change(s). By taking or accepting its interest in the Premises subject to the Mortgage and Assignment, every Junior Lien Claimant understands, acknowledges, and agrees that the priority and validity of the lien of the Mortgage and Assignment shall not be impaired or limited in any way by any Change. Notwithstanding the magnitude or nature of any Change, such Change shall under no circumstances be deemed to constitute a novation with respect to any Indebtedness or otherwise impair or reduce the priority of the lien of the Mortgage or Assignment.

3.5 *Interaction with Loan Documents.* The foregoing provisions relating to Junior Lien Claimants shall not be deemed to limit, or waive any restrictions or prohibitions on transfers (including restrictions or prohibitions on junior liens) set forth in the Loan Documents.

4. Notice of Amendment of Existing Loan Agreement.

The parties hereby give notice that the Existing Loan Agreement has been amended pursuant to the Loan Agreement Amendments, including to provide the loans, extensions of credit and other financial accommodations described in Recital F above and as more fully described in the Loan Agreement Amendments.

5. Future Amendments.

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The Existing Mortgage and Existing Assignment of Rents and Leases, as amended by this First Amendment, cannot be altered, amended, modified, terminated, waived, released, or discharged, except in a writing signed by the parties or their successors or assigns. All Junior Lien Claimants are hereby placed on notice of the possibility that the Loan Documents or the Indebtedness may be amended but any such amendment may or may not be placed of record. Any such amendment shall be fully effective whether or not recorded, without thereby impairing or reducing the priority of the lien of the Mortgage or Assignment or constituting a novation. Junior Lien Claimants should not assume that they will be notified of any amendment of the Loan Documents or of the Indebtedness that occurs before or after the recording of their lien. By accepting their interest in the Premises, Junior Lien Claimants acknowledge and consent to the foregoing.

6. Effect of Amendment.

Except as, and to the extent, specifically modified or amended by this First Amendment, the Existing Mortgage and Existing Assignment of Rents and Leases are and remain in full force and effect according to the terms thereof. This First Amendment does not constitute a repayment, satisfaction or novation with respect to the Indebtedness. If it is determined that any person or entity except Mortgagee has a lien, encumbrance, or claim of any type with priority over any term of this First Amendment, the original terms of any Note and the Existing Mortgage and Existing Assignment of Rents and Leases shall be severable from this First Amendment and separately enforceable from the terms hereof in accordance with their original terms, and Mortgagee shall maintain all legal or equitable priorities that existed before the Effective Date of this First Amendment. Any legal or equitable priorities of Mortgagee over any party that existed before the Effective Date shall remain in effect after the Effective Date.

7. Taxes.

Mortgagor shall pay all mortgage recording taxes, filing fees, recording fees, and other taxes imposed or assessed upon this First Amendment, including all taxes, penalties, and interest for the foregoing.

8. Counterparts.

This First Amendment may be executed in one or more counterparts, each of which shall constitute an original and all of which, taken together, shall constitute a single instrument.


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IN WITNESS WHEREOF, Mortgagor has executed this First Amendment as of the Effective Date.

MORTGAGOR:

ACME REFINING COMPANY, an Illinois corporation

By: 
Name: Larry Baron
Title: President

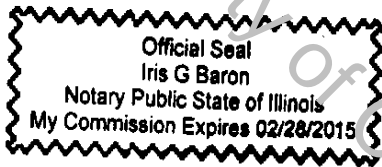
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STATE OF Illinois)
) SS
COUNTY OF Cook)

On August 7, 2014 , before me, the undersigned, a Notary Public in and for said State personally appeared Larry Baron known to me to be the President of Acme Refining Company, and acknowledged to me that such individual executed the within instrument on behalf of said corporation.

WITNESS my hand and official seal.



Iris G Baron
Notary Public in and for
said County and State

[SEAL]

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IN WITNESS WHEREOF, Mortgagee has executed this First Amendment as of the Effective Date.

MORTGAGEE:

MB FINANCIAL BANK, N.A., a national banking association

By: Mark J. Kosminskas

Name: MARK J. KOSMINSKAS

Title: SENIOR VICE PRESIDENT

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STATE OF Illinois)
) SS
COUNTY OF Cook)

On July 28th, 2014, before me, the undersigned, a Notary Public in and for said State personally appeared Mark Kocmytas known to me to be the Senior Vice President of MB Financial Bank, N.A., and acknowledged to me that such individual executed the within instrument on behalf of said national banking association.

WITNESS my hand and official seal.



Elizabeth Arias Ibarra
Notary Public in and for
said County and State

[SEAL]

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EXHIBIT A **Legal Description**

A PARCEL OF LAND SITUATED IN THE SOUTHWEST 1/4 OF SECTION 32, TOWNSHIP 41 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF THE SOUTHWEST 1/4 OF SAID SECTION 32; THENCE SOUTHERLY ALONG THE EAST LINE OF SAID SOUTHWEST 1/4, A DISTANCE OF 461.37 FEET; THENCE WESTERLY AT AN ANGLE OF 91 DEGREES 26 MINUTES 08 SECONDS AS MEASURED COUNTERCLOCKWISE FROM THE LAST DESCRIBED COURSE, A DISTANCE OF 1062.63 FEET TO THE EASTERLY RIGHT OF WAY LINE OF THE ELGIN, JOLIET AND EASTERN RAILWAY COMPANY; THENCE NORTHERLY ALONG SAID RIGHT OF WAY LINE AT AN ANGLE OF 88 DEGREES 05 MINUTES 32 SECONDS AS MEASURED COUNTERCLOCKWISE FROM THE LAST DESCRIBED COURSE, A DISTANCE OF 461.47 FEET TO A POINT ON THE NORTH LINE OF SAID SOUTHWEST 1/4; THENCE EASTERLY ALONG SAID NORTH LINE AT AN ANGLE OF 91 DEGREES 54 MINUTES 28 SECONDS AS MEASURED COUNTERCLOCKWISE FROM THE LAST DESCRIBED COURSE, A DISTANCE OF 1058.83 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PROPERTY ADDRESS OF REAL ESTATE:

1500 W. BARTLETT ROAD (A/K/A 1800-1825 W. SCHOEN), ELGIN, IL 60123

PERMANENT TAX IDENTIFICATION NUMBER:

06-32-300-017-0000