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Doc#: 1506516045 Fee: \$52.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 03/06/2015 02:44 PM Pg: 1 of 8

Recorder's use only

FIRST MODIFICATION OF MORTGAGE AND SECURITY AGREEMENT WITH ASSIGNMENT OF RENTS AND ASSIGNMENT OF LEASES AND RENTS

THIS FIRST MODIFICATION OF MORTGAGE AND SECURITY AGREEMENT WITH ASSIGNMENT OF RENTS AND ASSIGNMENT OF LEASES AND RENTS (this "*Agreement*") is dated as of February 28, 2015 by and between RACO STEEL COMPANY, an Illinois corporation ("*Mortgagor*"), and BMO HARRIS BANK N.A., a national banking association, its successors and assigns ("*Mortgagee*").

RECITALS:

A. Pursuant to the terms and conditions of that certain Credit Agreement dated as of March 27, 2014 executed by and between Mortgagor and Mortgagee (as amended, restated, modified or supplemented and in effect from time to time, the "*Credit Agreement*"), Mortgagee has heretofore extended to Mortgagor a revolving loan facility in the original maximum principal amount of Ten Million and No/100 Dollars (\$10,000,000.00) (the "*Loans*"). The Loans are evidenced by that certain Revolving Note dated as of March 27, 2014 executed by Mortgagor and made payable to the order of Mortgagee in the original maximum principal amount of \$10,000,000.00 (as amended, restated, modified or supplemented and in effect from time to time, the "*Existing Note*").

B. The Loans are secured by, among other things: (i) that certain Mortgage and Security Agreement with Assignment of Rents dated as of March 27, 2014 by Mortgagor to and for the benefit of Mortgagee recorded with the Recorder of Deeds of Cook County, Illinois (the "*Recorder's Office*") on April 1, 2014 as Document Number 1409147044 (as amended, restated, modified or supplemented and in effect from time to time, the "*Mortgage*"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A attached hereto (the "*Property*"), (ii) that certain Assignment of Leases and Rents dated as of March 27, 2014 by Mortgagor to Mortgagee recorded with the Recorder's Office on April 1,

**This document prepared by and
after recording return to:**

Stephen D. Sayre, Esq.
Dykema Gossett PLLC
10 S. Wacker Drive
Suite 2300
Chicago, Illinois 60606

Permanent Index Numbers:

12-01-476-001-0000, 12-01-476-002-0000

Address of Property:

See Exhibit A attached hereto

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2014 as Document Number 1409147045 (as amended, restated, modified or supplemented and in effect from time to time, the "*Assignment of Leases*"), (iii) that certain Hazardous Substance Certificate and Indemnity Agreement dated as of March 27, 2014 by Mortgagor and Dale R. Pinkert to and for the benefit of Mortgagee (as amended, restated, modified or supplemented and in effect from time to time, the "*Indemnity Agreement*"), and (iv) certain other loan documents (the Credit Agreement, the First Amendment, the Note (as hereinafter defined), the Mortgage, the Assignment of Leases, the Indemnity Agreement, this Agreement and the other documents evidencing and/or securing the Loans, in their original form and as amended, restated, modified or supplemented and in effect from time to time, are sometimes collectively referred to herein as the "*Loan Documents*").

C. Concurrently herewith, Mortgagor and Mortgagee are entering into that certain First Amendment to Credit Agreement and Other Loan Documents dated as of even date herewith (the "*First Amendment*"), pursuant to which (i) the maximum principal amount of the Loans is being increased from \$10,000,000.00 to (A) \$12,500,000.00 from the date hereof through and including May 31, 2015, and (B) \$10,000,000.00 from June 1, 2015 and thereafter, and (ii) the Loans are being evidenced by that certain Amended and Restated Revolving Note dated as of even date herewith executed by Mortgagor and made payable to the order of Mortgagee in the maximum principal amount of (A) \$12,500,000.00 from the date hereof through and including May 31, 2015 and (B) \$10,000,000.00 from June 1, 2015 and thereafter (the "*Note*"), which Note amends and restates the Existing Note in its entirety.

D. Mortgagor and Mortgagee desire to amend the Mortgage and the Assignment of Leases in order to, among other things, secure the Loans (as increased) and the Note. Mortgagee agrees to such amendments upon the terms and conditions herein contained.

AGREEMENTS:

NOW, THEREFORE, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreements by Mortgagee to modify the Mortgage and the Assignment of Leases as provided herein, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Mortgage and Assignment of Leases Secures Loans (as increased)** Each of the Mortgage and the Assignment of Leases is hereby modified to provide that the Mortgage and the Assignment of Leases secures the Loans (as increased). All references in the Mortgage to "Loan", "Loans" and "Notes" shall include the Loans (as increased) and the Note, respectively. All references to "Loan Agreement" or "Credit Agreement" in the Mortgage and the Assignment of Leases shall refer to the Credit Agreement, as amended by the First Amendment and as it may be further amended, restated, modified or supplemented and in effect from time to time. Without limitation of the foregoing, the reference to "\$10,000,000" in paragraph (a) is hereby replaced with the following: "\$12,500,000.00 from February 25, 2015 through and including May 31, 2015, and \$10,000,000.00 from June 1, 2015 and thereafter."

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2. **Representations and Warranties of Mortgagor.** Mortgagor hereby represents, covenants and warrants to Mortgagee as follows:

(a) The representations and warranties in the Mortgage, the Assignment of Leases and the other Loan Documents are true and correct as of the date hereof.

(b) There is currently no Event of Default (as defined in the Mortgage) under the Mortgage, the Assignment of Leases or the other Loan Documents and Mortgagor does not know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Mortgage, the Assignment of Leases or the other Loan Documents.

(c) The Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, they continue to be the legal, valid and binding obligations of Mortgagor enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

(d) There has been no material adverse change in the financial condition of Mortgagor or any other party whose financial statement has been delivered to Mortgagee in connection with the Loans from the date of the most recent financial statement received by Mortgagee.

(e) As of the date hereof, Mortgagor has no claims, counterclaims, defenses, or set-offs with respect to the Loans or the Loan Documents as modified herein.

(f) Mortgagor is validly existing under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Agreement and to perform the Loan Documents as modified herein. The execution and delivery of this Agreement and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Mortgagor. This Agreement has been duly executed and delivered on behalf of Mortgagor.

3. **Expenses.** As a condition precedent to the agreements contained herein, Mortgagor shall pay all out-of-pocket costs and expenses incurred by Mortgagee in connection with this Agreement, including, without limitation, recording fees, and reasonable attorneys' fees and expenses.

4. **Miscellaneous.**

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

(b) This Agreement shall not be construed more strictly against Mortgagee than against Mortgagor merely by virtue of the fact that the same has been prepared by counsel for Mortgagee, it being recognized that Mortgagor and Mortgagee have contributed substantially and materially to the preparation of this Agreement, and Mortgagor and Mortgagee each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the other in entering into this

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Agreement. Each of the parties to this Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering this Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The signatories hereto state that they have read and understand this Agreement, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

(c) Notwithstanding the execution of this Agreement by Mortgagee, the same shall not be deemed to constitute Mortgagee a venturer or partner of or in any way associated with Mortgagor nor shall privity of contract be presumed to have been established with any third party.

(d) Mortgagor and Mortgagee each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Mortgagor and Mortgagee; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(e) This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(f) Any references to the "Mortgage" contained in any of the Loan Documents shall be deemed to refer to Mortgage, as amended hereby. The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

(g) This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

(h) Time is of the essence of each of Mortgagor's obligations under this Agreement.

5. **Customer Identification - USA Patriot Act Notice.** Mortgagee (for itself and not on behalf of any other party) hereby notifies Mortgagor that, pursuant to the requirements of the USA Patriot Act, Title III of Pub. L. 107-56, signed into law October 26, 2001 (the "Act"), it is required to obtain, verify and record information that identifies Mortgagor, which information includes the name and address of Mortgagor and other information that will allow Mortgagee, as applicable, to identify Mortgagor in accordance with the Act.

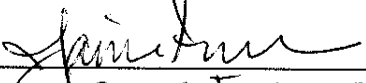
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement dated as of the day and year first above written.

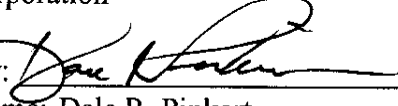
MORTGAGEE:

BMO HARRIS BANK N.A., a national banking association

By: 
Name: Jame Freeman
Title: Vice President

MORTGAGOR:

RACO STEEL COMPANY, an Illinois corporation

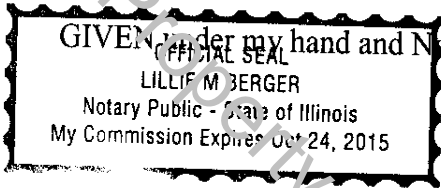
By: 
Name: Dale R. Pinkert
Title: Chairman and CEO

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STATE OF ILLINOIS)
) .ss
COUNTY OF COOK)

I LILLIE M. BERGER, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that JANIE FREEMAN, VICE PRESIDENT of **BMO HARRIS BANK N.A.**, a national banking association, is 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 or she signed and delivered said instrument as his or her own free and voluntary act, and as the free and voluntary act of said national banking association, for the uses and purposes therein set forth.



GIVEN under my hand and Notarial Seal this 3rd day of MARCH, 2015.
Lillie M. Berger
Notary Public

My Commission Expires: October 24, 2015

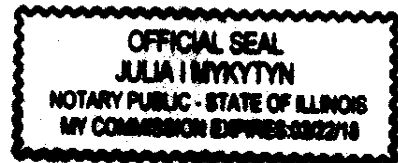
STATE OF ILLINOIS)
) .ss
COUNTY OF COOK)

I JULIA I. MYKYTYN, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Dale R. Pinkert, the Chairman and CEO of RACO STEEL COMPANY, an Illinois corporation, is 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 signed and delivered said instrument as his own free and voluntary act, and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 3 day of MARCH 2015.

Julia I. Mykytyyn
Notary Public

My Commission Expires: 2-22-18



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EXHIBIT A

THE PROPERTY

PARCEL 1:

THE WEST 295.96 FEET OF THE EAST 591.92 FEET OF THE NORTH 1/3 OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 19, TOWNSHIP 36 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPTING THEREFROM THE SOUTH 33 FEET DEDICATED FOR ROADWAY PURPOSES) IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THE EAST 295.96 FEET (EXCEPT THE SOUTH 33 FEET THEREOF) OF THE NORTH 1/3 OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 19, TOWNSHIP 36 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

THAT PART OF THE NORTH 1/3 OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 19, TOWNSHIP 36 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING NORTH OF THE NORTH LINE OF 163RD PLACE PER DOCUMENT NUMBER 20707433 AND LYING WEST OF THE WEST LINE OF DIXIE HIGHWAY (ALSO KNOWN AS VINCENNES ROAD, ROBEY STREET) AS OCCUPIED BY A LINE DESCRIBED AS: BEGINNING AT A POINT ON THE NORTH LINE OF SAID 163RD PLACE 51.13 FEET WEST OF THE EAST LINE OF THE SOUTHWEST 1/4, AFORESAID; THENCE NORTHERLY AN ARC DISTANCE OF 410.48 FEET ALONG A CURVED LINE CONVEX EASTERLY HAVING A RADIUS OF 2711.33 FEET, THE CHORD OF SAID ARC FORMING AN ANGLE OF 84 DEGREES 51 MINUTES 07 SECONDS WITH THE SAID NORTH LINE OF 163RD PLACE (AS MEASURED FROM THE WEST TO THE NORTH) TO THE NORTH LINE OF THE SOUTHWEST 1/4 OF SECTION 19, AFORESAID AND BEING THE SOUTH EXTENT OF 163RD STREET AS LAID OUT IN ANDERSON'S DIXIE HIGHWAY SUBDIVISION (BEING A SUBDIVISION IN THE EAST 1/2 OF THE NORTHWEST 1/4 OF SAID SECTION 19, SAID SUBDIVISION RECORDED AS DOCUMENT NUMBER 6772211) AND BEING THE TERMINUS POINT OF SAID WESTERLY LINE OF DIXIE HIGHWAY, SAID TERMINUS POINT BEING 88.06 FEET WEST OF THE AFORESAID EAST LINE OF THE SOUTHWEST 1/4 OF SECTION 19, ALL IN COOK COUNTY, ILLINOIS.

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Property Address: 2100 West 163rd Place
Markham, Illinois 60428

P.I.N. Nos.: 29-19-308-009; 29-19-308-002; 29-19-308-005

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