

# UNOFFICIAL COPY



Doc# 1915406194 Fee \$97.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 06/03/2019 03:11 PM PG: 1 OF 8

Document Number

Name and Return Address

Jon S. Herreman  
Mallery & Zimmerman, S.C.  
731 North Jackson Street  
Suite 900  
Milwaukee, Wisconsin 53202

## SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

See attached Exhibit A

Parcel Identification Number (PIN)

Recording Area

THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made effective as of May 30, 2019 among FIRST BUSINESS BANK ("Lender"), MLG/PF 1300 SCHAUMBURG INVESTMENT LLC, a Wisconsin limited liability company ("Borrower") and Mitsubishi Materials USA Corporation, a California corporation ("Tenant").

### RECITALS:

Lender, Borrower, and Tenant acknowledge the following:

A. Lender has made or will make one or more mortgage loans to Borrower (collectively, the "Loans"), which is or will be evidenced by one or more mortgage notes (collectively, the "Notes") and secured by a Construction Mortgage, Security Agreement and Fixture Financing Statement (the "Mortgage") executed by Borrower in favor of Lender that encumbers or will encumber the real property described on the attached Exhibit A (the "Property").

B. Tenant is party to a lease dated as of August 25, 2008, as amended (and as may be amended from time to time hereafter, the "Lease") with Borrower, by which Borrower leases the Property to Tenant.

C. As a condition precedent to the Loans, Lender has required that Lender, Borrower, and Tenant enter into this Agreement.

### AGREEMENT:

In consideration of the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, THE PARTIES AGREE:

1. Subordination. The Lease, and the rights of Tenant under the Lease and to the Property, are and shall remain subordinate to the lien created by the Mortgage, and to the rights and interests of Lender and its successors and assigns.

S N  
P 8  
S 1  
M —  
SC —  
E —  
INT JA

9225  
SS0095  
I746100611A00

# UNOFFICIAL COPY

2. Purchase Options. Any option or right contained in the Lease to acquire title to all or a portion of the Property is subordinate to the rights of Lender under the Mortgage, and any acquisition of title to the Property made by Tenant during the term of the Mortgage shall be made subordinate to the Mortgage.

3. Nondisturbance. For so long as Tenant is not in default under the Lease, beyond any applicable cure period, Lender shall not diminish or interfere with Tenant's possession, use, or occupancy of the Property pursuant to the Lease, or Tenant's rights and privileges under the Lease.

4. Joinder in Foreclosure. Lender will not join Tenant as a named party in a foreclosure of the Mortgage unless joinder is necessary to foreclose the Mortgage, and then only to foreclose the Mortgage, and not for the purpose of terminating the Lease unless Tenant is in default under the Lease beyond any cure period.

5. Attornment. If Lender forecloses the Mortgage, or succeeds to Borrower's interest under the Lease through a proceeding in lieu of foreclosure or pursuant to a foreclosure, or in any other manner, Lender shall have all of the rights of Borrower, and may rely on all of the provisions of the Lease for the balance of the term of the Lease, and any extension periods, with the same force and effect as if Lender were the landlord under the Lease. Tenant shall attorn to Lender as its landlord immediately on Lender succeeding to the interest of Borrower under the Lease, and such attornment shall occur without the execution of any further instruments by any of the parties to this Agreement. However, Tenant shall have no obligation to pay rent to Lender until Tenant receives written notice from Lender that Lender has succeeded to Borrower's interest under the Lease. Tenant shall have all of its rights and obligations under the Lease during any such period of attornment, and Lender shall have all of the rights and obligations of Borrower during any such period.

6. Acts of Prior Landlords. If Lender succeeds to the Borrower's interest under the Lease, Lender shall not be (a) subject to any offsets or defenses Tenant might have against any prior landlord, including Borrower; (b) bound by any rent or additional rent Tenant might have paid for any rental period, other than the rental period in effect at the time of Lender's succession; or (c) bound by any modification of the Lease made without Lender's consent. If Lender succeeds to Borrower's interest under the Lease, Lender shall cure continuing landlord defaults of which Lender had prior notice. However, in no case shall Lender be liable for damages, including consequential damages, caused by or resulting from the acts or omissions of any prior landlord, including Borrower. If Borrower defaults under the Lease, or if anything else occurs that would give rise to an offset against rent or a claim against Borrower under the Lease, Tenant shall (y) give Lender notice of the default or other occurrence in the manner provided in this Agreement; and (z) give Lender a reasonable time to cure the default or rectify the other occurrence. Notwithstanding any provision of the Lease or any other instrument to the contrary, Tenant may not cancel the Lease, claim an offset against rent, or exercise any right or remedy, until Lender has been given notice and an opportunity to cure the default.

# UNOFFICIAL COPY

7. Assignment of Lease. Borrower has, or will, by a separate Assignment of Rents and Leases (the "Assignment"), assign its interest in the rents and payments due under the Lease as security for the repayment of the Loans. Lender may, at its option, require that Tenant pay all rents and other payments due under the Lease directly to Lender. Borrower authorizes and directs Tenant, and Tenant agrees, to pay any payments due under the Lease to Lender on notice that Lender has exercised this option. Tenant shall have no obligation to verify any of the information in such notice. The Assignment does not diminish any obligation of Borrower under the Lease or impose any such obligation on Lender.

8. Successors and Assigns. This Agreement shall bind Lender, Borrower, and Tenant, and each of their heirs, administrators, representatives, successors, and assigns, and all parties having an interest in the Lease, and shall inure to the benefit of Lender and its successors and assigns.

9. Notices. Any notice that a party to this Agreement may desire, or may be required, to give to any other party shall be in writing, and shall be mailed by certified mail, or its equivalent, as follows:

If to Lender:	First Business Bank – Milwaukee 18500 West Corporate Drive Brookfield, Wisconsin 53045 Attention: Robert N. Bell II
If to Borrower:	MLG/PF 1700 Schaumburg Investment LLC 19000 W. Bluemound Road Brookfield, WI 53045 Attention: Timothy A. Wallen
If to Tenant:	Mitsubishi Materials USA Corporation 11250 Slater Avenue Fountain Valley, CA 92708 Attention: _____

A party may change its notice address by sending written notice to the other parties designating a new address to which the other parties may send notices.

10. Counterparts; Amendments. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original and all of which together shall constitute one instrument. This Agreement may only be amended by written agreement signed by all parties to this Agreement.

[Signatures on the following page.]

# UNOFFICIAL COPY

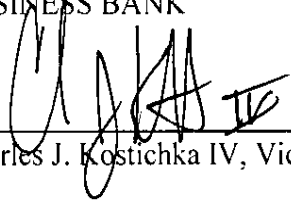
## LENDER SIGNATURE PAGE TO SUBORDINATION, NONDISTURBANCE AND ATTORNMENNT AGREEMENT

Dated as of the date first set forth above.

**LENDER:**

FIRST BUSINESS BANK

By:

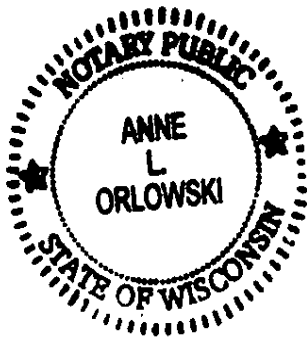


Charles J. Kostichka IV, Vice President

**ACKNOWLEDGEMENT**

STATE OF WISCONSIN )  
 ) SS  
COUNTY OF Waukesha )

This instrument was acknowledged before me on May 29<sup>th</sup>, 2019, Charles  
J. Kostichka IV, as Vice President of First Business Bank.



Anne L. Orłowski  
\* Anne L. Orłowski  
Notary Public, State of Wisconsin  
My commission expires 10/03/2021

# UNOFFICIAL COPY

## BORROWER SIGNATURE PAGE TO SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

Dated as of the date first set forth above.

### BORROWER:

MLG/PF 1300 SCHAUMBURG INVESTMENT  
LLC

By: MLG Private Fund IV Investments LLC, Sole  
Member

By: MLG Fund IV REIT LLC, Member

By: \_\_\_\_\_  
Name: Timothy J. Walker  
Title: President

By: MLG Private Fund IV LLC, Member

By: MLG PF IV Manager LLC, Managing  
Member

By: \_\_\_\_\_  
Name: Timothy J. Walker  
Title: President

### ACKNOWLEDGEMENT

STATE OF WISCONSIN                     )  
  ) SS  
COUNTY OF Waukeshua            )

This instrument was acknowledged before me on May 24<sup>th</sup>, 2019, by Timothy J. Walker as President of MLG PF IV Manager LLC, the Managing Member of MLG Private Fund IV LLC, a Member of MLG Private Fund IV Investments LLC, the Sole Member of MLG/PF 1300 Schaumburg Investment LLC, and by Timothy J. Walker as President of MLG Fund IV REIT LLC, a Member of MLG Private Fund IV Investments LLC, the Sole Member of MLG/PF 1300 Schaumburg Investment LLC.



\_\_\_\_\_  
\* Amy Herzog  
Notary Public, State of Wisconsin  
My commission is permanent/ expires \_\_\_\_\_.

# UNOFFICIAL COPY

## TENANT SIGNATURE PAGE TO SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

Dated as of the date first set forth above.

**TENANT:**

MITSUBISHI MATERIALS USA CORPORATION

By: Eiji Koga  
Name: EIJI KOGA  
Title: PRESIDENT & CEO

Property of Cook County, Illinois

**ACKNOWLEDGEMENT**

STATE OF California  
COUNTY OF Orange

This instrument was acknowledged before me on May 13, 2019, by Eiji Koga, President and CEO of Mitsubishi Materials USA Corporation

Teresa D. Lewis  
\*Teresa D. Lewis  
Notary Public, State of California  
My commission 10/03/2022

Drafted by:  
Jon S. Herreman  
Mallery & Zimmerman, S.C.  
731 North Jackson Street, Suite 900  
Milwaukee, Wisconsin 53202

SEE CALIFORNIA  
ACKNOWLEDGMENT  
DATE 05/13/19 INITI SK

# UNOFFICIAL COPY

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Orange

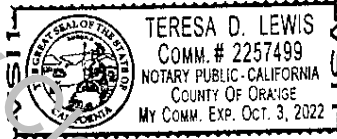
On May 10, 2019 before me, Teresa D. Lewis, Notary Public  
(insert name and title of the officer)

personally appeared Eiji Koga  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)



PROPERTY OF CLERK'S OFFICE

# UNOFFICIAL COPY

## EXHIBIT A

### LEGAL DESCRIPTION

Parcel 1:

Lot 1 in Golden Corridor Tech Center, being a subdivision, being a Resubdivision of Lots 10 and 11 in Woodfield Business Center Unit No. 4, in the Southwest Quarter of Section 11, Township 41 North, Range 10 East of the Third Principal Meridian, in Cook County, Illinois, except that part described as follows:

That part of Lot 1 in Golden Corridor Tech Center, being a subdivision in the Southwest Quarter of Section 11, Township 41 North, Range 10 East of the Third Principal Meridian, in Cook County, Illinois according to the plat thereof recorded October 29, 1984 as Document No. 27313313 in Cook County, Illinois, bearings and distances based on the Illinois State Plane Coordinate System, East Zone, NAD 83 (2011 Adjustment), with a combined scale factor of 0.999951216, being described as follows:

Commencing at the Southwest corner of said Lot 1; thence South 89 degrees 38 minutes 24 seconds East, a distance of 184.50 feet along the South line of said Lot 1 (also being the North Right-Of-Way line of Remington Road) to the point of beginning; thence North 76 degrees 29 minutes 34 seconds East, 88.81 feet; thence North 56 degrees 59 minutes 35 seconds East, 31.98 feet; thence North 28 degrees 32 minutes 27 seconds East, 31.91 feet to a point on the East line of said Lot 1 (also being the West Right-Of-Way line of Plum Grove Road); thence South 00 degrees 21 minutes 36 seconds West 37.00 feet along said east line to a point on a 30.00 feet radius curve, concave Northwesterly; thence Southwesterly along said curve 47.12 feet (the chord bears South 45 degrees 21 minutes 36 seconds West, 42.43 feet) to a point on said South line of Lot 1; thence North 89 degrees 38 minutes 24 seconds West, 98.00 feet along said south line to the point of beginning.

Parcel 2:

Non-Exclusive Driveway Easement for pedestrian and vehicular ingress and egress for the benefit of Parcel 1 as created by Declaration of Reciprocal Driveway Easements recorded May 3, 1985, as Document No. 85005864.

07-11-301-030-0000

1300-1320 Plum Grove Road  
Schaumburg, IL 60173