



MISC Inst. # 2019050027, Pg: 1 of 12 Rec Date: 07/03/2019 14:52:42.127

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Douglas County, NE Assessor/Register of Deeds DIANE L. BATTIATO

Execution Version

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Among

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, as Lender

NODDLE CENTER PIVOT, LLC, as Landlord

VALMONT INDUSTRIES, INC., as Tenant

Dated as of July 2, 2019

When recorded, return to:

Daniel J. Favero
Mayer Brown LLP
71 South Wacker Street
Chicago, Illinois 60606

Lot 1, West Farm Replat 4, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska.

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SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT

This SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT ("*Agreement*") is made and entered into as of the 2nd day of July, 2019, by and among U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, a national banking association ("*Lender*"), NODDLE CENTER PIVOT, LLC, a Delaware limited liability company ("*Landlord*"), and VALMONT INDUSTRIES, INC., a Delaware corporation ("*Tenant*").

WITNESSETH:

WHEREAS, Lender is now the owner and holder of that certain Senior Secured ("*Note*") dated as of the date hereof, in the principal sum of FIFTY FIVE MILLION AND 00/100 DOLLARS (\$55,000,000.00), secured by a first priority Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing Statement ("*Security Instrument*"), dated as of the date hereof, to or for the benefit of Lender, recorded on July __, 2019, in Volume ____, Page ____ of the Real Property Records, County of Douglas, State of Nebraska, which Security Instrument constitutes a lien or encumbrance on the real property described in Exhibit A attached hereto and incorporated herein for all purposes, together with all improvements, appurtenances, other properties (whether real or personal), rights and interests described in the Security Instrument ("*Property*"); and

WHEREAS, Tenant is the holder of a leasehold estate in and to the Property (the property which is the subject of such leasehold estate, together with Tenant's appurtenant easements in the Property, being referred to as the "*Demised Premises*"), pursuant to the terms of that certain Lease Agreement ("*Lease*") dated June 21, 2019, and between Tenant and Landlord; and

WHEREAS, Tenant, Landlord and Lender desire to confirm their understandings with respect to the Lease and the Security Instrument.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree and covenant as follows:

1. *Non-Disturbance by Lender.* So long as Tenant is not in default (beyond any period given Tenant to cure such default) in the payment of rent or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed as would entitle

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Landlord to terminate the Lease, Tenant's possession and occupancy of the Demised Premises shall not be interfered with or disturbed by Lender during the term of the Lease or any extension thereof duly exercised by Tenant. Lender shall not include Tenant in any foreclosure proceeding involving the Demised Premises, unless required by applicable state law for Lender to accomplish the foreclosure and then not to interfere with or diminish Tenant's rights under said Lease or disturb Tenant's possession.

2. *Attornment by Tenant.* If the interests of Landlord in and to the Demised Premises are owned by Lender by reason of judicial foreclosure, private trustee sale or other proceedings brought by it or by any other manner, including, but not limited to, Lender's exercise of its rights under any collateral assignment(s) of leases and rents, or deed-in-lieu of such foreclosure or such proceedings, and Lender succeeds to the interest of the Landlord under the Lease, Tenant shall be bound to Lender under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any extension thereof duly exercised by Tenant with the same force and effect as if Lender were the Landlord under the Lease. Tenant does hereby attorn to Lender, as its Landlord, said attornment to be effective and self-operative, without the execution of any further instruments on the part of any of the parties hereto, immediately upon Lender's succeeding to the interest of the Landlord under the Lease. Landlord hereby authorizes and directs Tenant to deliver payment to Lender upon receipt of written notice and shall indemnify and hold Tenant harmless from any loss, cost, expense or claim incurred by Tenant in connection with its compliance with this provision. The respective rights and obligations of Tenant and Lender upon such attornment, to the extent of the then remaining balance of the term of the Lease and any such extension, shall be and are the same as now set forth therein, it being the intention of the parties hereto for this purpose to incorporate the Lease in this Agreement by reference, with the same force and effect as if set forth at length herein.

3. *Lender Bound by Terms of Lease.* If Lender shall succeed to the interest of Landlord under the Lease, Lender shall be bound to Tenant under all of the terms, covenants and conditions of the Lease. Notwithstanding the foregoing, Lender shall not in any event have any liability for any default by Landlord under the Lease occurring prior to the date on which Lender shall have succeeded to the rights of Landlord under the Lease.

4. *Subordination of Lease.* Subject to the terms of this Agreement (including, but not limited to, those in Paragraph 2), the Lease and all of Tenant's right, title and interest in and to the Demised Premises, and any purchase or other options or rights thereunder, are and shall be subject and subordinate to the Security Instrument and the lien thereof, to all the terms, conditions and provisions of the Security Instrument and to each and every advance made or hereafter made under the Security Instrument, and to all renewals, modifications, consolidations,

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replacements, substitutions and extensions of the Security Instrument, so that at all times the Security Instrument shall be and remain a lien on the Demised Premises prior and superior to the Lease for all purposes.

5. *Notice.* Notwithstanding anything to the contrary contained in the Lease, Tenant hereby agrees that in the event of any act, omission or default by Landlord or Landlord's agents, employees, contractors, licensees or invitees which would give Tenant the right, either immediately or after the lapse of a period of time, to terminate the Lease, or to claim a partial or total eviction, or to reduce the rent payable thereunder or credit or offset any amounts against future rents payable thereunder or the exercise of any remedies thereunder, Tenant will not exercise any such right until it has given written notice of such act, omission or default to Lender by delivering notice of such act, omission or default, by certified or registered mail, addressed to Lender at Lender's address as given hereby or at the last address of Lender furnished to Tenant in writing, and (i) in the case of any such act, omission or default that can be cured by the payment of money, until thirty (30) days shall have elapsed following the giving of such notice or (ii) in the case of any other such act, omission or default, until a reasonable period for remedying such act, omission or default shall have elapsed following the giving of such notice and following the time when Lender shall have become entitled under the Security Instrument to remedy the same, including such time as may be necessary to acquire possession of the Demised Premises if possession is necessary to effect such cure, provided Lender, with reasonable diligence, shall (a) pursue such remedies as are available to it under the Security Instrument so as to be able to remedy the act, omission or default, and (b) thereafter shall have commenced and continued to remedy such act, omission or default or cause the same to be remedied. Tenant shall also give a copy of any such notice hereunder to any successor to Lender's interest under the Security Instrument, *provided* that Lender or such successor notifies Tenant of the name and address of the party Tenant is to notify. Lender's cure of Landlord's default shall not be considered an assumption by Lender of Landlord's other obligations under the Lease. If in curing any such act, omission or default, Lender requires access to the Demised Premises to effect such cure, Tenant shall provide access to the Demised Premises to Lender as required by Lender to effect such cure at all reasonable times. Unless Lender otherwise agrees in writing, Landlord shall remain solely liable to perform Landlord's obligations under the Lease (but only to the extent required by and subject to the limitation included with the Lease), both before and after Lender's exercise of any right or remedy under this Agreement. If Lender or any successor or assign becomes obligated to perform as Landlord under the Lease, such person or entity shall be released from those obligations when such person or entity assigns, sells or otherwise transfers its interest in the Demised Premises.

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6. *Successors of Lender Also Included.* The term "Lender" shall be deemed to include the Lender stated hereinabove and any of its successors and assigns, including anyone who shall have succeeded to Landlord's interest by, through or under judicial foreclosure or private trustee's sale or other proceedings brought pursuant to the Security Instrument, or deed in lieu of such foreclosure or proceedings, or otherwise.

7. *Lender Not Liable.* Tenant agrees that no prepayment of rent or additional rent due under the Lease of more than one month in advance, and no amendment, modification, surrender or cancellation of the Lease, and no waiver or consent by Landlord under the terms of the Lease, shall be binding upon or as against Lender, as holder of the Security Instrument and as Landlord under the Lease if it succeeds to that position, unless consented to in writing by Lender.

8. *Lender Consent.* Tenant agrees that, without the prior written consent of Lender: (a) the Lease cannot be amended or modified nor may any of its terms be waived or consented to by the Landlord, (b) Tenant and Landlord may not terminate, cancel or surrender the term of the Lease, except as expressly permitted by the provisions of the Lease, and (c) Tenant shall not pay any rent for more than the month in advance of the date when due.

9. *No Modification.* This Agreement may not be modified orally or in any manner other than by an agreement, in writing, signed by the parties hereto and their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective successors and assigns.

10. *Counterparts.* To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures and acknowledgment of, or on behalf of, each of the parties hereto. Any signature and acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures and acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature and acknowledgment pages.

11. *Notices.* All notices or other communications required or permitted to be given pursuant to the provisions hereof shall be in writing and shall be deemed served and given at the time of (i) deposit in a depository receptacle under the care and custody of the United States

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Postal Service, properly addressed to the designated address of the addressee as set forth below, postage prepaid, registered or certified mail with return receipt requested or (ii) delivery to the designated address of the addressee set forth below by a third party commercial delivery service. Notice given in any other manner shall be effective only if and when received by the addressee. For purposes of notices, the addresses of the parties shall be as follows:

If to the Lender:	U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE Global Corporate Trust 1349 W. Peachtree Street NW Suite 1050 Atlanta, Georgia 30309 Attention: Stephanie Cox
Tenant:	VALMONT INDUSTRIES, INC. One Valmont Plaza Omaha, Nebraska 68154 Attention: Chief Financial Officer
Landlord:	NODDLE CENTER PIVOT, LLC 2285 South 67th Street, Suite 250 Omaha, Nebraska 68106 Attention: Jay B. Noddle

Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by notice to the other parties of such new address at least thirty (30) days prior to the effective date of such new address.

12. *No Merger of Estates.* It is the express intention of Landlord and Tenant that the acquisition by either party of the right, title, interest and estate of the other party in and to the Leased Premises shall not result in termination or cancellation of the Lease by operation of the principle of merger of estates or otherwise, notwithstanding any applicable law to the contrary.

13. *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.

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

LENDER:

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE

By: Stephanie Cox
Name: Stephanie Cox
Title: Vice President

TENANT:

VALMONT INDUSTRIES, INC., a Delaware corporation

By: _____
Name: _____
Title: _____

LANDLORD:

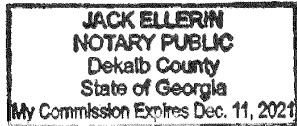
NODDLE CENTER PIVOT, LLC, a Delaware limited liability company

By: _____
Name: Jay B. Noddle
Title: Manager

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STATE OF Georgia)
)
COUNTY OF DeKalb)

This instrument was acknowledged before me on the 1st day of July, 2019, by Stephanie Cox, Vice President of U.S. Bank National Association, a national banking association, on behalf of said national banking association.



Jack Ellerin
Notary Public, State of Georgia

(SEAL)

STATE OF _____)
)
COUNTY OF _____)

This instrument was acknowledged before me on the ____ day of _____, 2019, by _____, the _____ of Valmont Industries, Inc., a Delaware corporation, on behalf of said corporation.

Notary Public, State of _____

(SEAL)

STATE OF _____)
)
COUNTY OF _____)

This instrument was acknowledged before me on the ____ day of _____, 2019, by Jay B. Noddle, the Manager of Noddle Center Pivot, LLC, a Delaware limited liability company, on behalf of said limited liability company.

Notary Public, State of _____

(SEAL)

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

LENDER:

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE

By: _____
Name: _____
Title: _____

TENANT:

VALMONT INDUSTRIES, INC., a Delaware corporation

By: Mark L. Jaskin
Name: MARK L. JASKIN
Title: EVP-CFO

LANDLORD:

NODDLE CENTER PIVOT, LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____

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STATE OF _____)
)
COUNTY OF _____)

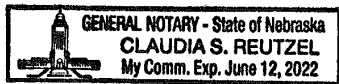
This instrument was acknowledged before me on the ___ day of _____, 2019, by _____, the _____ of U.S. Bank National Association, a national banking association, on behalf of said national banking association

Notary Public, State of _____

(SEAL)

STATE OF Nebraska)
)
COUNTY OF Douglas)

This instrument was acknowledged before me on the 21 day of June, 2019, by Mark Jaksich, the EVP- CFO of Valmont Industries, Inc., a Delaware corporation, on behalf of said corporation.



Claudia S Reutzel
Notary Public, State of Nebraska

(SEAL)

STATE OF _____)
)
COUNTY OF _____)

This instrument was acknowledged before me on the ___ day of _____, 2019, by _____, the _____ of Noddle Center Pivot, LLC, a Delaware limited liability company, on behalf of said limited liability company.

Notary Public, State of _____

(SEAL)

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

LENDER:

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE

By: _____
Name: Stephanie Cox
Title: Vice President

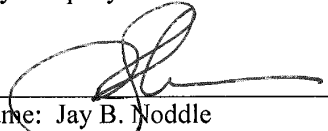
TENANT:

VALMONT INDUSTRIES, INC., a Delaware corporation

By: _____
Name: _____
Title: _____

LANDLORD:

NODDLE CENTER PIVOT, LLC, a Delaware limited liability company

By:  _____
Name: Jay B. Noddle
Title: Manager

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STATE OF _____)
)
COUNTY OF _____)

This instrument was acknowledged before me on the ___ day of _____, 2019, by Stephanie Cox, Vice President of U.S. Bank National Association, a national banking association, on behalf of said national banking association.

Notary Public, State of _____

(SEAL)

STATE OF _____)
)
COUNTY OF _____)

This instrument was acknowledged before me on the ___ day of _____, 2019, by _____, the _____ of Valmont Industries, Inc., a Delaware corporation, on behalf of said corporation.

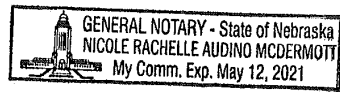
Notary Public, State of _____

(SEAL)

STATE OF Nebraska)
)
COUNTY OF Douglas)

This instrument was acknowledged before me on the 1 day of July, 2019, by Jay B. Noddle, the Manager of Noddle Center Pivot, LLC, a Delaware limited liability company, on behalf of said limited liability company.

Nicole Rachelle Audino McDermott
Notary Public, State of Nebraska
(SEAL)



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