



MISC 2013117047



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COMP: MS

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
11/22/2013 14:40:01.00



2013117047

After recording, return to:  
David R. Madden, Esq.  
McGrath, North, Mullin & Kratz, PC LLO  
Suite 3700, 1601 Dodge St.  
Omaha, NE 68102

### **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT (this "Agreement"), is made as of November 18, 2013, by and among **VALMONT INDUSTRIES, INC.**, a Delaware corporation ("Tenant"), **M & G PROPERTIES, L.L.C.**, a Nebraska limited liability company ("Landlord"), and **WELLS FARGO BANK, NATIONAL ASSOCIATION** ("Lender").

### **PRELIMINARY STATEMENT**

Landlord and Tenant are parties to that certain Lease Agreement dated November 15, 2013 (the "Lease"), pursuant to which Tenant leases from Landlord certain real property legally described on the attached Exhibit A (the "Premises"). The Premises is encumbered by that certain Deed of Trust and Assignment of Rents and Leases, dated February 19, 2008, as amended by that certain First Modification of Deed of Trust and Assignment of Rents and Leases dated February 19, 2013, made by Landlord for the benefit of Lender (the "Deed of Trust"), pursuant to which Lender has made a loan or loans to Landlord. Tenant has agreed to recognize the rights of Lender subject to and in accordance with the terms and provisions of this Agreement.

### **AGREEMENT**

In consideration of the mutual covenants and provisions of this Agreement, the parties agree as follows:

1. ***Subordination.*** Notwithstanding anything to the contrary contained in the Lease, the Lease and the leasehold estate created thereby are hereby declared to be, and hereafter shall continue at all times to be, junior, subject and subordinate, in each and every respect, to the Deed of Trust including, any and all renewals, modifications, extensions, substitutions or replacements of the Deed of Trust.

2. ***Attornment; Nondisturbance.*** (a) Notwithstanding the foregoing subordination, if the interest of Landlord under the Lease shall be transferred by reason of foreclosure or other proceedings (judicial or non-judicial) for enforcement of the Deed of Trust or by reason of a deed in lieu of foreclosure, Tenant, at the election of the transferee and its successors and assigns (the "Purchaser") acquiring said interests, shall be bound to the Purchaser pursuant to all of the terms, covenants and conditions of the Lease for the balance of the term of the Lease then remaining and

any extensions or renewals thereof which may be effected in accordance with any option therefor in the Lease, with the same force and effect as if the Purchaser were the original landlord under the Lease, and Tenant does hereby attorn to and agree to attorn to the Purchaser, as its landlord, said attornment to be effective and self-operative without the necessity for execution of any further instruments, upon Purchaser's election after succeeding to the interest of the Landlord under the Lease.

(b) Notwithstanding the provisions of Section 1 and provided that Tenant is not in default under the Lease, Purchaser shall be bound to Tenant and its successors and assigns pursuant to all of the terms, covenants and conditions of the Lease for the balance of the term of the Lease then remaining and any extensions or renewals thereof which may be effected in accordance with any option set forth in the Lease, with the same force and effect as if Purchaser were the original landlord under the Lease, and provided that Tenant is not in default under the Lease, the Lease shall not be terminated, nor shall Tenant's use, possession or enjoyment of the Premises be interfered with, nor shall the leasehold estate granted by the Lease be affected in any other manner, in any foreclosure or any action or proceeding instituted under or in connection with the Deed of Trust.

3. **Further Acts.** Notwithstanding any provisions contained in Sections 1 and 2 above which state that the attornment and subordination by Tenant to Purchaser are effective and self-operative without the execution of any further instrument, Tenant agrees that, upon request of Lender and/or Purchaser, it will execute such written agreement to evidence and affirm any and all of Tenant's obligations under this Agreement, and further, Tenant agrees that it will execute from time to time such further assurances and estoppel certificates as may reasonably be requested by Lender and Purchaser.

4. **Limitation.** Neither Lender nor any Purchaser shall be (a) liable for any act or omission of Landlord or any prior landlord (including the loss or misappropriation of any rental payments or security deposits); (b) subject to any credits, claims, setoffs, offsets or defenses which Tenant may have against Landlord or any prior landlord; (c) bound by (or responsible for) any advance payment of rent or any other monetary obligations under the Lease to Landlord in excess of one month's prepayment thereof in the case of rent, or in excess of one periodic payment in advance in the case of any other monetary obligations under the Lease; (d) responsible for any security deposit not actually received by Lender or any Purchaser; (e) liable for latent and/or patent defects in the construction of the Premises; (f) liable for any breach of any warranty in the Lease by Landlord or a prior landlord; (g) bound by any obligation to repair, replace, rebuild or restore the Premises, or any part thereof, in the event of damage by fire or other casualty, or in the event of partial condemnation, beyond such repair, replacement, rebuilding or restoration as may be required of the landlord under the Lease; or (h) required to remove any person occupying the Premises or any part thereof.

5. **Notice; Cure; Waivers.** If Lender, at Lender's sole option, commences to cure a default of Landlord under the Lease that is capable of being cured by Lender, or commences to pursue any other of its remedies under the Deed of Trust and thereafter diligently pursues such cure to completion, Tenant agrees not to terminate the Lease, reduce rent, credit or offset against future rents, consent or acquiesce in the termination of the Lease or surrender the Premises and agrees to continue to be bound by the terms of the Lease and this Agreement. As against Lender and its successors in interest, Tenant hereby waives any default by Landlord which is not capable of being cured by Lender in the exercise of reasonable diligence.

6. **Payments of Rent to Lender.** Landlord absolutely assigns to Lender all payments of rent as the same are due under the Lease (the "Rent") and Tenant agrees that, from and after any

default by Landlord under the Deed of Trust and until such time as all of Landlord's obligations to Lender pursuant to the Deed of Trust have been fully paid, Tenant will pay the Rent directly to Lender. Landlord, by its execution hereof, agrees that this Agreement does not constitute a waiver by Lender of any of Lender's rights under the Deed of Trust and any assignment of leases or rents contained therein, or in a separate instrument or in any way release the Landlord from any of the terms, conditions, obligations, covenants and agreements of the Deed of Trust.

7. **Governing Law.** All provisions of this Agreement shall be governed by and construed under the laws of the State of Nebraska.

8. **Notices.** All notices, consents, approvals or other instruments required or permitted to be given by either party pursuant to this Agreement shall be in writing and given by (i) hand delivery, (ii) express overnight delivery service or (iii) certified or registered mail, return receipt requested. Notices shall be provided to the parties and addresses specified below:

If to Landlord:	M & G PROPERTIES, L.L.C. 3919 S 147 <sup>th</sup> Street, Suite 124 Omaha, Nebraska 68144 Attn: <u>Donald D. Graham and/or Nancy Graham Cagle</u>
If to Tenant:	VALMONT INDUSTRIES INC. One Valmont Plaza Omaha, Nebraska 68144 Attn: Legal Department
If to Lender:	WELLS FARGO BANK, NATIONAL ASSOCIATION MAC N8069-020 13625 California Street, Suite 200 Omaha, Nebraska 68154 Attn: Manager

or to such other address or such other person as any party may from time to time hereafter specify to the other parties hereto in a notice delivered in the manner provided above.

10. **Waiver and Amendment.** No provisions of this Agreement shall be deemed waived or amended except by a written instrument unambiguously setting forth the matter waived or amended and signed by the party against which enforcement of such waiver or amendment is sought. Waiver of any matter shall not be deemed a waiver of the same or any other matter on any future occasion.

11. **Authority.** Tenant, Landlord and Lender covenant and agree that the persons signing on their behalf have full power, authority and authorization to execute this Agreement, without the necessity of any consents, authorizations or approvals, or if such consents, authorizations or approvals are required they have been obtained prior to the execution hereof.

*[Signature Pages Follow]*

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date set forth above.

TENANT:

VALMONT INDUSTRIES, INC.

By: Leonard Adams

Name: LEONARD ADAMS

Title: GLOBAL PRESIDENT-VALMONT EXPLORATION

STATE OF Nebraska )  
COUNTY OF Douglas ) SS.

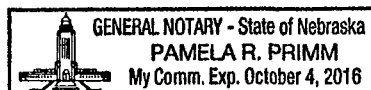
The foregoing instrument was acknowledged before me on November \_\_\_\_\_, 2013, by Leonard Adams of Valmont Industries, Inc., on behalf of the corporation.

Pamela R. Primm

Notary Public

My Commission Expires:

October 4, 2016



IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date set forth above.

LANDLORD:

M & G PROPERTIES, L.L.C.

By: *Donald D. Graham*  
Name: DONALD D. GRAHAM  
Title: MANAGING MEMBER

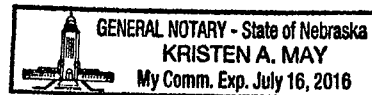
STATE OF Nebraska )  
COUNTY OF Douglas ) SS.

The foregoing instrument was acknowledged before me on November 19<sup>th</sup>, 2013, by *Donald D. Graham* managing member of M & G Properties, L.L.C., on behalf of the limited liability company.

*Kristen A. May*  
Notary Public

My Commission Expires:

07.16.2016




*[Signature Page 2 of 3 to the Subordination, Non-Disturbance and Attornment Agreement]*

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date set forth above.


LENDER:

WELLS FARGO BANK, NATIONAL  
ASSOCIATION

By:   
Name: Michael H Wheeler  
Title: Vice President

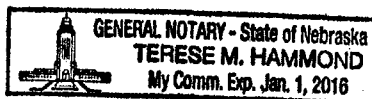
STATE OF NEBRASKA )  
                                  ) SS.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me on November 17, 2013, by Michael H. Wheeler, Vice President of Wells Fargo Bank, National Association, on behalf of Wells Fargo Bank, National Association.

  
Notary Public

My Commission Expires:

1-1-2016



[Signature Page 3 of 3 to the Subordination, Non-Disturbance and Attornment Agreement]

## EXHIBIT A

### Legal Description

Industrial Building  
Omaha, Nebraska

A TRACT OF LAND IN THE NORTHWEST QUARTER OF SECTION 1, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6<sup>TH</sup> P.M., DOUGLAS COUNTY, NEBRASKA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SECTION 1; THENCE ALONG THE CENTER LINE OF 72<sup>ND</sup> STREET DUE SOUTH 1,664.8 FEET; THENCE DUE EAST 33 FEET TO A POINT ON THE NORTH PROPERTY LINE OF "J" STREET THENCE ALONG THE NORTH PROPERTY LINE OF "J" STREET; SOUTH 88 DEGREES 56 MINUTES EAST 1,286.5 FEET; THENCE CONTINUING ALONG THE NORTH LINE OF "J" STREET SOUTH 89 DEGREES 50 MINUTES EAST 460.05 FEET; THENCE CONTINUING ALONG THE NORTH LINE OF "J" STREET SOUTH 81 DEGREES 57 MINUTES EAST 111.32 FEET TO THE POINT OF BEGINNING; THENCE NORTH 00 DEGREES 05 MINUTES WEST 397.0 FEET; THENCE SOUTH 89 DEGREES 54 MINUTES EAST 314.2 FEET TO A POINT ON THE WEST PROPERTY LINE OF 67<sup>TH</sup> STREET; THENCE SOUTH 06 DEGREES 20 MINUTES WEST 435.37 FEET ALONG THE WEST LINE OF 67<sup>TH</sup> STREET TO A POINT ON THE NORTH LINE OF "J" STREET; THENCE NORTH 81 DEGREES 57 MINUTES WEST 266.79 FEET ALONG THE NORTH LINE OF "J" STREET TO THE POINT OF BEGINNING,

KNOWN COMMONLY AS 4458 SOUTH 67<sup>TH</sup> STREET, OMAHA, DOUGLAS COUNTY, NEBRASKA