

MT RX 623031 PC

FIRST MORTGAGE AND ASSIGNMENT OF RENTS

THIS FIRST MORTGAGE, ("Mortgage") made this day on January 15, 2004 between OLETA PROPERTY INVESTMENTS, LLC, an Illinois limited liability company, ("Mortgagor") and MILLER CONSOLIDATED, INC., an Illinois corporation ("Mortgagee").

WHEREAS, Mortgagor is justly indebted to the Mortgagee in the principal sum of ONE HUNDRED SIXTY FIVE THOUSAND SEVEN HUNDRED SEVENTY TWO (\$165,772) DOLLARS as evidenced by a First Mortgage Installment Note dated of even date with this Mortgage made by the Mortgagor payable to the order of, and delivered to, the Mortgagee in such principal sum ("Note") together with interest thereon, from the date hereof, at the rate set forth in the Note with a final payment of the balance due not later than December 31, 2023, all of which payments shall be made at such place as the Mortgagee may, from time to time, in writing designate.

NOW THEREFORE, the Mortgagor, to secure the payment of said principal, interest and additional indebtedness according to the Note of even date herewith and the performance of the covenants and agreements in this Mortgage and Assignment of Rents all of which have been executed by Mortgagor, (collectively or severally, as the context requires, "Loan Documents") does by these presents GRANT, BARGAIN, SELL, CONVEY AND MORTGAGE unto the Mortgagee, and the Mortgagee's successors and assigns forever, the real estate and all of its estate, right, title and interest therein situated in the City of Matteson, County of Cook and State of Illinois, the legal description of which is described in Exhibit A attached to this Mortgage and made a part or it, which real estate, together with the following described property, is collectively herein called "Premises";

TOGETHER WITH (i) all of the Mortgagor's right, title and interest in all of the improvements, tenements, easements, fixtures, appurtenances and all other rights belonging thereto now or hereafter erected or placed on the Premises, (ii) all of Mortgagor's right and interest in all of the rents, issues and profits thereof for so long and during all such times as Mortgagor may be entitled thereto, which are pledged primarily and on a parity with Premises and not secondarily and (iii) all fixtures, machinery and equipment now or hereafter owned by Mortgagor and permanently attached to, contained in or used in connection with the Premises, including all machinery, motors, elevators, fittings, radiators, apparatus, equipment or articles now or hereafter therein or thereon used to supply heat, gas, air conditioning, water, light, power, whether single units or



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BOX 333-CT1

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centrally controlled and ventilation, screens, window shades, storm doors and windows, floor coverings, awnings, and water heaters.

**TOGETHER WITH** all judgments, awards of damages or settlements related to and all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including proceeds of insurance and/or condemnation, and all products, additions, accessions, attachments, parts, replacements and substitutes therefor.

It is agreed that all of the foregoing are deemed part of the Premises and for the purposes of this Mortgage, shall be real estate and covered by this Mortgage, and as to any of the aforesaid property which does not so form a part of the real estate or does not constitute a "Fixture" as defined in the Uniform Commercial Code of the State of Illinois ("Code"), this Mortgage is hereby deemed to be a Security Agreement under the Code for the purpose of creating a continuing security interest in such property, which Mortgagor hereby grants to Mortgagee as "Secured Party", as defined in the Code.

**TO HAVE AND TO HOLD** the Premises unto the Mortgagee, and the Mortgagee's successors and assigns forever, for the purposes, and upon the uses herein set forth, free from all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois, which said rights and benefits the Mortgagor expressly releases and waives.

## COVENANTS, CONDITIONS AND PROVISIONS

1. **Payment of Principal and Interest:** Mortgagor shall pay the principal, interest and additional indebtedness evidenced by the Note at the times and in such manner as not to cause an event of default in the Note.

2. **Preservation of the Premises:** Mortgagor shall do the following:

A. **Maintenance:** Keep the Premises in the same condition as when the Premises were conveyed to Mortgagor from the Mortgagee, ordinary wear and tear and loss or damage by casualty excepted.

B. **Discharge of Lien:** Mortgagor have no authority or power to cause or permit any lien or encumbrance, whether created by act of Mortgagor, operation of law or otherwise, to be attached to or be placed upon Mortgagee's title or interest in the Premises.

(1) Mortgagor shall not suffer or permit the Premises to become subject to any vendor's, mechanic's,

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laborer's, materialman's or other lien or encumbrance based upon the claims for the furnishing of materials, services or labor to or for the Mortgagor or the Premises. If all, or any part, of the Premises shall become subject to such lien or encumbrance, Mortgagor, at Mortgagor's cost and expense, shall cause the same to be discharged of record within 60 days after notice of lien is given to Mortgagor.

- (2) Mortgagor may contest, in good faith and with diligence, the validity of any such lien or claim for lien, subject to the conditions that (i) Mortgagor shall notify Mortgagee of the filing of any such lien or claim for lien and of the Mortgagor's intent to contest the same, (ii) Mortgagor shall give to Mortgagee such security as may be reasonably satisfactory to Mortgagee to prevent any sale, foreclosure or forfeiture of the Premises by reason of non-payment thereof and (iii) on final determination of the lien or claim for lien, Mortgagor shall promptly pay any judgment rendered, together with all costs and charges, and shall have the lien or claim for lien released and any judgment satisfied. The security given to the Mortgagee, if in the form of negotiable funds, may, at the election of Mortgagor, be used to make such payment. Mortgagee shall return the security, or remaining security, to Mortgagor promptly after Mortgagor delivers proof of such release or satisfaction and recordation thereof to Mortgagee.
- (3) Mortgagee may, but shall not have any obligation to, discharge any such lien on behalf of Mortgagor, if Mortgagor fails to comply with Section 2B(2). In such case, the costs of such discharge shall be payable by Mortgagor to Mortgagee on demand by Mortgagee.
- C. **Prior Lien:** Pay when due any indebtedness which may be secured by a lien or charge on the Premises superior to the lien hereof, and exhibit satisfactory evidence of the payment of such indebtedness.
- D. **Comply With Law:** Comply with all Federal, state and local laws, regulations and ordinances with respect to the Premises and the use thereof, the failure of which would impair the rights of Mortgagee hereunder.
- E. **No Alterations:** Make no material alterations, unless required by law or municipal ordinance, to the size or

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shape of the exterior of the improvements or the structural integrity of the building, other than the improvements thereto according to the Nissan building program, except with Mortgagee's consent, which consent shall not be unreasonably withheld or delayed. Material shall mean alterations in excess of \$50,000.

3. **Taxes and Assessments:** Mortgagor shall pay, before any penalty attaches, all general taxes, and shall pay special taxes, special assessments, water charges, sewer service charges, and other charges against the Premises when due, and shall, upon written request, furnish to the Mortgagee duplicate receipts therefor. To prevent default hereunder, Mortgagor shall pay in full under protest, in the manner provided by statute, any tax or assessment which Mortgagor may desire to contest.

4. **Laws Regarding Taxation:** In the event of the enactment after this date of any law of Illinois deducting from the value of land for the purpose of taxation any lien thereon, imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the holder thereof, Mortgagor, upon demand by the Mortgagee, shall pay such taxes or assessments, or reimburse the Mortgagee therefor.

5. **Prepayment of Note:** The Mortgagor may prepay the Note according to the terms set forth in Section 11 of the Note.

6. **Insurance:** Mortgagor shall maintain insurance covering the Premises and naming the Mortgagee as an additional insured, as its interest may appear, according to this Section.

A. **Liability Insurance:** Mortgagor shall maintain comprehensive general or public liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Premises, affording protection with respect to bodily injury or death of at least \$1,000,000 per person and \$3,000,000 per occurrence.

B. **Fire and Extended Coverage Insurance:** Mortgagor, at its cost and expense, shall procure and maintain in effect insurance on the improvements on the Premises ("Improvements") against loss or damage by fire and other casualty included in endorsements providing what is commonly known as extended coverage, vandalism and malicious mischief insurance in amounts not less than the actual cash value with not less than a 80%

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coinsurance clause.

C. **Other Insurance Requirements:** All insurance required hereunder shall be subject to the following general requirements.

(1) All such insurance shall be effected at Mortgagor's expense under policies issued by insurers reasonably acceptable to Mortgagee which are (i) qualified to do business in Illinois and (ii) rated by national rating organizations, which shall be at least an A. M. Best Co policyholders rating of A+.

(2) Such policies shall name Mortgagor and Mortgagee as insured, and shall contain an agreement by the insurer that such policies shall not be canceled or substantially modified without at least 30 days prior written notice to Mortgagee.

(3) If requested by Mortgagee in writing delivered to Mortgagor, (i) certificates of insurance for such policies made by a reputable broker reasonably satisfactory to the Mortgagee and evidence of paid premiums shall be delivered by Mortgagor to Mortgagee, (ii) originals or duplicate originals of such policies shall be delivered by Mortgagor to Mortgagee promptly upon their issue by the insurer, (iii) similar certificates and evidence of paid premiums shall be delivered by Mortgagor to Mortgagee at least 10 days prior to the expiration dates of expiring policies and (iv) originals or duplicate originals of such replacement policies shall be delivered by Mortgagor to Mortgagee after their issue by the insurer.

(4) All deductible amounts under each policy shall be payable by Mortgagor.

(5) If Mortgagor fails to insure, or fails to furnish to Mortgagee upon notice to do so, any such policy or certificate required by the terms of this Lease, Mortgagee shall have the right from time to time to secure said insurance and all premiums paid by Mortgagee shall be payable by Mortgagor to Mortgagee promptly after demand by Mortgagee.

D. **Proceeds of Insurance:** The fire and extended coverage policies of insurance shall provide that the proceeds thereof shall be payable to Mortgagee and Mortgagor. The proceeds of insurance shall, at the election of

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either Mortgagee or Mortgagor by notice delivered by one to the other within 10 days after Mortgagee learns that the proceeds of insurance have been paid by the insurer, be promptly after receipt deposited in an account under the joint control of Mortgagee and Mortgagor ("Restoration Account"), and in such later event, the proceeds shall be made available to Mortgagor to repair, restore and rebuild the Premises ("Restoration"), as provided in Section 7.

(1) In the case of damage to the Premises, if the proceeds of insurance shall be insufficient to pay the entire cost of the Restoration, Mortgagor shall pay the deficiency. If such proceeds of insurance shall exceed the entire cost of Restoration, the excess insurance proceeds shall be promptly paid to the Mortgagor.

E. **Mortgagee or Mortgagor as Attorney-in-Fact:** If either Mortgagee or Mortgagor refuses to endorse any proceeds of insurance checks payable individually or jointly to Mortgagee or Mortgagor, each of Mortgagee and Mortgagor hereby appoints the other, its successor or assignee, as Mortgagor's or Mortgagee's Attorney-in-Fact, respectively, to receive, possess, endorse, deposit and negotiate any and all checks or other negotiable instruments made payable to Mortgagee or Mortgagor, either jointly or individually, by any insurance carrier or other person or entity, if such payment is made in connection with any obligation under Section 7 of this Mortgage.

F. **Release and Waiver of Subrogation:** Mortgagee and Mortgagor each release the other Party, or anyone claiming through or under them by way of subrogation or otherwise, for loss or damage caused to their respective property to the extent that such loss or damage is covered by collectible insurance, notwithstanding that the other Party, or anyone for whom such other Party is responsible, may have negligently caused such loss or damage.

(1) Mortgagee and Mortgagor shall procure from each of the insurers under all policies of property, liability or other insurance now or hereafter carried by each of them, respectively, insuring or covering the Premises, or any portion or contents thereof, or any operations therein, a waiver of all rights of subrogation which the insurer might otherwise, if at all, have to any claims against the other Party according to this Section 6F.

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- (2) This section 6F shall be effective only so long as such releases are lawful at the time of the loss and the loss or damage occurs during a period that the releasor's insurance provides that such release shall not adversely offset the insurance or the right of the releasor to recover thereunder.

7. **Restoration:** If either Mortgagee or Mortgagor elected to have the proceeds of insurance deposited in the Restoration Account, Mortgagor shall restore the Improvements on the Premises according to the terms of this Section.

A. **Mortgagor's Duty to Restore:** Mortgagor shall complete the Restoration, at its cost and expense, as nearly as possible to the condition the Improvements were in immediately prior to such damage or destruction. The Restoration shall be prosecuted in a workmanlike manner and shall be substantially completed within 6 months after the date of such damage or destruction, subject, however, to delays occasioned by fires, explosions, strikes, lockouts, acts of God, inability to obtain labor or materials, governmental restrictions, or causes beyond the control of Mortgagor. The condition and value of the Improvements upon such completion shall be at least substantially equal to condition and value of the Improvements immediately prior to such damage or destruction.

B. **Authorization Required:** No Restoration shall be undertaken until the Mortgagor shall have procured and paid for, so far as the same may be required from time to time, all permits and authorizations of the various state and municipal departments or other governmental or quasi-governmental authorities having jurisdiction. Mortgagee shall promptly join in the application for such permits or authorizations whenever such action is necessary.

(1) No Restoration shall be undertaken, until detailed plans and specifications have first been submitted to, and approved in writing by, the Mortgagee, which approval shall not be unreasonably withheld or delayed.

(2) No Restoration shall be undertaken until the later of (i) the Mortgagor furnishing Mortgagee at the Mortgagor's expense, a bond in the form reasonably satisfactory to Mortgagee on which the Mortgagor shall be principal and a surety company that meets the requirements of Section 6C(1) shall be surety, and the bond shall be conditioned upon

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the completion of, and payment in full of, the Restoration or (ii) the proceeds of insurance or Mortgagor's certified funds are paid to the Restoration Account in an amount sufficient to pay the entire cost of the Restoration as estimated by the architect or engineer, approved by the Mortgagee, which approval shall not be unreasonably withheld or delayed, who shall supervise the work.

C. **Payment for Restoration Work:** Mortgagee and Mortgagor shall sign and deliver checks from time to time from the Restoration Account in payment of the Restoration work upon the written request of the Mortgagee or Mortgagor, which request shall be accompanied by proper affidavits, valid waivers of lien, and a certificate of the architect or engineer in charge of the work stating as follows:

- (1) The sum requested is (i) justly due to the contractors, subcontractors, materialmen, laborers, engineers, architects or other persons, or entities rendering services or materials for the Restoration, or justly required to reimburse the Mortgagor for expenditures made by the Mortgagor for the Restoration work, and (ii) when added to all of the prior amounts paid out of the Restoration Account, does not exceed the value of the Restoration work done to the date of such certificate.
- (2) The remaining funds deposited in the Restoration Account shall be sufficient to pay in full for the Restoration work upon its completion. If such funds are insufficient to pay the entire cost of the Restoration, Mortgagor shall immediately pay the deficiency to the Restoration Account from Mortgagor's own funds.
- (3) If the Premises shall be, or under the law may be, encumbered with any lien, as a result of the Restoration, Mortgagor shall comply with Section 2B and amounts sufficient to pay the lien claim and complete the Restoration work shall be retained in the Restoration Account. The lien claim may be satisfied by such funds in the Restoration Account. When the lien is discharged, any funds remaining in the Restoration Account for the lien claim shall be paid in to Mortgagor.
- (4) Either Mortgagee or Mortgagor may elect by notice from one to the other to require that all funds



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shall be paid through a construction escrow at Chicago Title and Trust Company, which escrow shall be on terms and conditions substantially consistent with this Section. The amount in the Restoration Account shall thereupon be transferred to the escrow. The escrow fees therefor shall be a cost of Restoration and paid one-half by Mortgagee and one-half by Mortgagor.

- (5) Any (i) surplus of insurance proceeds over the cost of Restoration and (ii) funds in the Restoration Account after full payment of the Restoration shall be the property of Mortgagor and promptly paid to Mortgagor.

D **Compliance with Law:** Mortgagor shall cause the Restoration to be done in compliance with the (i) building and zoning laws, ordinances and regulations of Matteson, Illinois, as the same may apply to the Improvements, (ii) any other governmental or any quasi-governmental authority having jurisdiction and (iii) all laws, ordinances, orders, rules, regulations, and requirements of all federal, state and local governments and the appropriate departments, commissions, boards and officers thereof.

8. **Performance of Defaulted Acts:** In case of an Event of Default by the Mortgagor, Mortgagee may, but need not, make any payment or perform any act hereinbefore required of Mortgagor in any form and manner deemed expedient, and may, but need not, (i) make full or partial payments of principal or interest on prior encumbrances, if any, (ii) purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, (iii) redeem from any tax sale or forfeiture affecting the Premises or (iv) contest any tax or assessment. All moneys paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, paralegal fees, computerized research fees, costs and any other expenses advanced by Mortgagee to protect the mortgaged Premises and the lien of this Mortgage, shall be so much additional indebtedness secured by this Mortgage and shall become payable by Mortgagor to Mortgagee promptly after demand by Mortgagee delivered to Mortgagor and with interest thereon at the rate in the Note. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to the Mortgagee on account of any default hereunder on the part of the Mortgagor.

- A. **Taxes or Assessments:** The Mortgagee making any payment hereby authorized relating to taxes or assessments may do so according to any bill, statement or estimate procured from the appropriate public office.

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B. **Acceleration of Debt:** Mortgagor shall pay each item of indebtedness herein mentioned, when due according to the terms hereof. At the option of the Mortgagee, all unpaid indebtedness secured by this Mortgage shall, notwithstanding anything in the Note or in this Mortgage to the contrary, become due and payable when an Event of Default shall occur.

9. **Condemnation:** Any and all awards made or to be made to the present and all subsequent owners of the Premises by any governmental or other lawful authority for taking, by condemnation or eminent domain, the whole, or any part, of the Premises or any improvement located thereon or any easement therein or appurtenant thereto are hereby assigned by Mortgagor to Mortgagee, except that Mortgagor shall be entitled to make a claim against the condemning authority and receive the award for the value of any Mortgagor equipment.

A. **Award:** Mortgagee is authorized to collect and receive the award, other than for Mortgagor equipment, from the condemning authorities and to give appropriate receipts and acquittances therefor. Mortgagee shall apply the proceeds of such awards in the same manner as set forth in Section 6D with regard to proceeds of insurance, if the Mortgagor determines that the Premises can be substantially used for the same purpose as before the condemnation. Otherwise, the Mortgagee shall retain up to an amount equal to, and in payment of, the indebtedness secured by this Mortgage and immediately pay the balance of the award to the Mortgagor.

B. **Notice of Condemnation:** Mortgagor or Mortgagee shall give immediate notice to the other of the actual or threatened commencement of any such proceedings under condemnation or eminent domain affecting all, or any part, of the Premises or any easement therein or appurtenance thereof, including severance, consequential damage and change in grade of streets.

C. **Delivery of Documents:** Mortgagor shall deliver to Mortgagee copies of any and all papers served in connection with any such proceedings. Mortgagor shall make, execute and deliver to Mortgagee, at any time or times at Mortgagee's request, any and all further assignments and/or instruments, free and clear of any encumbrances deemed reasonably necessary by Mortgagee for the purpose of validly and sufficiently assigning all awards and other compensation heretofore and hereafter to be made to Mortgagor for any permanent or temporary taking under any such proceeding.

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D. **Restoration of Premises:** If, after the condemnation, the Mortgagor determines that the Premises can be substantially used for the same purpose as before the condemnation and the Premises are damaged or destroyed as a result of the Condemnation, Mortgagor may, at Mortgagor's cost and expense repair, restore and rebuild the Premises as nearly as possible to their condition immediately prior to the date the Premises are Condemned using the compensation received by the Mortgagee from the condemning authority. Such repair, restoration or rebuilding shall be completed within 6 months after the date of such damage or destruction and payment to Mortgagee of the proceeds of Condemnation, subject, however, to delays occasioned by fires, explosions, strikes, lockouts, acts of God, inability to obtain labor or materials, governmental restrictions, or similar causes beyond the control of Mortgagor.

- (1) Promptly after the Mortgagor delivers notice to Mortgagee of Mortgagor's intention to repair, restore and rebuild the Premises aforesaid, or immediately after receipt by the Mortgagee from the condemning authority of the compensation for damage to the remainder, whichever event later occurs, Mortgagee shall deposit so much of such compensation that was paid for that portion of the damaged or destroyed Premises to be repaired, restored or rebuilt in a Restoration Account as described in, and subject to the terms of, Section 7 for the Restoration of Premises.
- (2) Mortgagee shall have no obligation to repair, restore or rebuild such damage to, or destruction of, the Premises, other than to deposit the compensation received from the condemning authority in a Restoration Account according to Section 7.

10. **Assignment of Rents:** All of the right, title and interest of the Mortgagor in and to all present leases affecting the Premises including and together with (i) any and all future leases upon all or any part of the Premises and (ii) all rents, income, receipts, revenues, issues and profits from or due or arising out of the Premises hereby transfers and assigns to the Mortgagee as further security for the payment of the indebtedness secured by this Mortgage provided that Mortgagor shall have the right to collect and retain such rents so long as an Event of Default has not occurred. Notwithstanding the foregoing, the assignment of rents and leases made by Mortgagor hereunder shall be deemed a present assignment.

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- A. **Mortgagee's Consent:** Mortgagor shall not, without Mortgagee's prior written consent, which shall not be unreasonably withheld or delayed, (i) accept any payment of any installment of rent more than 30 days in advance of the due date therefor, (ii) enter into any management agreement or assignment or sublease of any lease, license or concession pertain to the Premises or (iii) modify or amend any lease or cancel or terminate any lease except for the nonpayment of rent.
- B. **Mortgagor's Compliance:** Mortgagor shall, at its sole cost and expense: (i) promptly abide by, discharge and perform all of the covenants, conditions and agreements contained in all leases of the Premises, on the part of the landlord thereunder; (ii) enforce or secure the performance of all of the covenants, conditions and agreements contained in any lease of the Premises on the part of any tenant thereunder; and (iii) appear in and defend any action or proceeding arising out of or related to such leases or the obligations, duties or liabilities of the landlord or of any tenants thereunder.
- C. **Indemnification of Mortgagee:** Mortgagee shall not be obligated to perform or discharge any obligation, duty or liability under any of such leases, and Mortgagor hereby agrees to indemnify and hold Mortgagee harmless of and from all liability, loss or damage which it may incur under said leases or under or by reason of the assignment thereof and all claims and demands whatsoever which may be asserted against Mortgagee. Should Mortgagee incur any liability, loss or damage under said leases, or under or by reason of the assignment thereof, or in the defense of any claims or demands made in connection therewith, the amount thereof, including reasonable attorney's fees and expenses, shall be secured hereby, and shall become due and payable by Mortgagor to Mortgagee promptly after demand by Mortgagee delivered to Mortgagor with interest at the rate in the Note from the date of advancement until paid.
- D. **Priority of Leases:** All or any such leases shall, at the option of the Mortgagee, be paramount or subordinate, but not subordinate with respect to priority of entitlement to proceeds of insurance or any award in condemnation, to this Mortgage by the Mortgagee executing and filing in the Office of the Recorder of Deeds for Cook County, Illinois of a unilateral declaration to that effect.
11. **Event of Default:** An Event of Default of this Mortgage

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shall be deemed to have occurred upon the occurrence of any one or more of the following events:

- A. **Note:** An Event of Default described in Section 6 of the Note secured by this Mortgage shall occur.
- B. **Breach of Covenant:** Mortgagor fails to perform any covenant or condition or breaches any warranty in this Mortgage or the Note secured by this Mortgage, and such failure continues for 30 days after the Mortgagee delivers written notice of such failure to perform or breach to the Mortgagor. Provided however, if any such default described in this Section 11B cannot with due diligence be cured within such 30 day period and Mortgagor commences the cure within such period and diligently pursues its completion, then Mortgagor shall have such additional time to cure the default with diligence as may reasonably be required under the circumstances.

12. **Mortgagee's Right To Possession:** If an Event of Default occurs, Mortgagor, on demand by Mortgagee, shall forthwith surrender to Mortgagee, and Mortgagee shall be entitled to take, actual possession of the Premises, personally or by its agents or attorneys, as for condition broken. Mortgagee in its discretion may enter upon, take and maintain possession of the Premises. Mortgagee may exclude the Mortgagor, its agents and employees, wholly from the Premises, and Mortgagee, as attorney in fact or agent of the Mortgagor, or in its own name as Mortgagee and under the powers herein granted, may do any one or more of the following:

- A. **Manage the Premises:** Hold, operate, manage and control the Premises and conduct the business, if any, thereof, either personally or by Mortgagee's agents, with full power to use such legal or equitable measures as in Mortgagee's discretion may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues and profits of the Premises, including actions (i) for the recovery of rent, (ii) in forcible detainer and (iii) in distress for rent;
- B. **Terminate Leases:** Cancel or terminate any lease or sublease for any reason that would entitle the Mortgagor to do the same;
- C. **Disaffirm Leases:** Elect to disaffirm any lease or sublease made prior or subsequent to this Mortgage or subordinate to the lien hereof;
- D. **Modify Leases:** To the extent commercially reasonable, extend or modify any then existing lease or sublease

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and make new leases, which extensions, modifications and new leases may provide for terms to expire beyond the maturity date of the indebtedness secured by this Mortgage and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale. Any such leases, and the options or other such provisions to be contained in them, shall be binding upon (i) Mortgagor and all persons whose interests in the Premises are subject to the lien of this Mortgage and (ii) the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness secured by this Mortgage, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; and

- E. **Maintenance of Premises**: Make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Premises that seem to Mortgagee to be judicious, to insure and reinsure the Premises and all risks incidental to Mortgagee's possession, operation and management of the Premises and to receive all avails, rents, issues and profits therefrom.
13. **Foreclosure**: If an Event of Default occurs, Mortgagee shall have the right to foreclose the lien of this Mortgage.
- A. **Additional Indebtedness**: In any suit to foreclose the lien of this Mortgage, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee, including reasonable attorneys' fees, paralegal fees, computerized research fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs of procuring all such abstracts of title, title searches, and examinations, title insurance policies and similar data and assurances with respect to title as may be reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature mentioned in this Section 13A shall become so much additional indebtedness secured hereby and due and payable by Mortgagor to Mortgagee promptly after demand by Mortgagee delivered to Mortgagor, when paid or incurred by Mortgagee in connection with (i) any proceeding, including probate and bankruptcy proceedings, to which the Mortgagee shall be a party, either as plaintiff, claimant or defendant, by reason of this Mortgage or any

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indebtedness hereby secured, (ii) preparations for the commencement of any suit for the foreclosure hereof after accrual of such right to foreclose or (iii) preparations for the defense of any actual or threatened suit or proceeding which might affect the Premises or the security of this Mortgage.

B. **Proceeds of Foreclosure:** The proceeds of any foreclosure of sale of the Premises shall be distributed and applied in the following order of priority:

- (1) On account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Section 13A;
- (2) All other items which under the terms hereof constitute secured indebtedness additional to that evidenced by the Note;
- (3) All principal and interest remaining unpaid on the Note; and
- (4) Any surplus to Mortgagor, Mortgagor's successors, legal representatives or assigns, as their rights may appear.

C. **Appointment of Receiver:** Upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of said Premises. Such appointment may be made either before or after sale, (i) without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not and (ii) the Mortgagee may be appointed as such receiver.

- (1) Such receiver shall have the power to collect the rents, issues and profits of said Premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of such period.
- (2) The Court from time to time may authorize the receiver to apply all or any part of the net

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income in the receiver's hands (i) in payment of the indebtedness, secured hereby, (ii) according to any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien of this Mortgage or of such decree, provided such application is made prior to foreclosure sale or (iii) in payment of the deficiency in case of a sale and deficiency.

- D. **Waiver Of Rights Of Redemption:** Mortgagor waives any and all rights of redemption from sale under any order or decree of foreclosure, or pursuant to rights herein granted, on behalf of the Mortgagor, the trust estate and all persons beneficially interested therein, each and every person acquiring any interest in or title to the Premises subsequent to the date of this Mortgage and all other persons to the extent permitted by the provisions of 735 ILCS 5/15-1601(a) and (b).
14. **Inspection of Premises:** The Mortgagee shall have the right to inspect the Premises at all reasonable times and access thereto shall be permitted for such purpose, so long as the Mortgagee (i) gives the party in possession of the Premises reasonable prior written notice of intent to inspect and (ii) does not unreasonably interfere with the business of the party in possession of the Premises.
15. **Modification of Indebtedness:** If the payment of all or any part of the indebtedness be extended or varied or if any part of the security be released, all persons now or at any time hereafter liable therefor, or interested in said Premises, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions of this Mortgage shall continue in full force. The right of recourse against all such persons is expressly reserved by the Mortgagee, notwithstanding such extension, variation or release.
16. **Partial Payments:** Acceptance by Mortgagee of any payment which is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of Mortgagee's right to exercise Mortgagee's option to declare the whole of the principal sum then remaining unpaid, together with all accrued interest thereon, immediately due and payable, or any other rights of the Mortgagee at that time or any subsequent time, nor nullify any prior exercise of such option or such rights of Mortgagee without the Mortgagee's written consent, except and to the extent otherwise provided by law.
17. **Delays or Omissions:** No delay in the exercise of, or failure to, exercise any remedy or right accruing or any default under this Mortgage shall impair any such remedy or right or be construed to be a waiver of any such default or acquiescence



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therein, nor shall it affect any subsequent default of the same or of a different nature.

18. **Future Advances:** It is further covenanted and agreed by the parties hereto that this Mortgage also secures the payment of, and includes all, future advances as shall be made by Mortgagee or Mortgagee's successors or assigns, to and for the benefit of the Mortgagor, to the same extent as if such future advances were made on the date of the execution of this Mortgage ("Future Advances"). The total amount of indebtedness that may be secured by this Mortgage may decrease or increase from time to time and shall include any and all disbursements made by Mortgagee for the payment of taxes, levies or insurance on the Premises and for reasonable attorney's fees and court costs incurred in the collection of any or all of such sums. All Future Advances shall be wholly optional with Mortgagee, provided that any such Future Advances, exclusive of any and all disbursements made by Mortgagee as set forth above, shall not exceed \$250,000.00 and the same shall bear interest at the same rate as specified in the Note, unless said interest rate shall be modified by subsequent agreement.

19. **Time is of the Essence:** Time is of the essence of this Mortgage. The waiver of the options or obligations secured by this Mortgage shall not at any time thereafter be held to be abandonment of such rights.

20. **Covenants to Run with the Land:** All of the covenants of this Mortgage shall run with the land.

21. **Release of Mortgage:** Mortgagee shall release this Mortgage and lien thereof by proper instrument upon payment and discharge of all indebtedness secured by this Mortgage. Mortgagee shall deliver to Mortgagor such additional instruments and documents with respect to such release as may be reasonably requested by Mortgagor's or Mortgagor's attorney.

22. **Notice:** Any notice or other communication in this Agreement to be given by either party to the other party must be in writing and shall be given by (i) depositing the same in the United States mail, postpaid by certified mail with return receipt requested, whether or not received or rejected by the addressee, (ii) prepared telegram, and addressed to the party to be notified, (iii) prepared delivery to a delivery service designated by the Internal Revenue Service under Code Section 7502(f) or (iv) delivering the same in person to the other party, or to an officer of the other party, to be notified. Said notice shall be effective on its deposit in the mail, entry on the wire, recorded pickup or collection by the designated delivery service or personal delivery, respectively. In addition to any notice requirement in this Agreement, a copy of all notices shall be given to the other parties and their attorneys. For purposes of

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notice, the address of the attorneys of the parties shall be as follows:

It to Mortgagor: Mr. ROBERT HAWKINSON & Mr.  
JAMES HAWKINSON  
OLETA PROPERTY INVESTMENTS, LLC  
5513 Miller Circle Drive  
Matteson, IL 60443

a Copy To: Mr. JOHN J. GRIFFIN  
GRIFFIN & GRIFFIN, LLC  
39 S LaSalle Street  
Chicago, IL 60603

If to Mortgagee: Mr. David Miller  
MILLER CONSOLIDATED, INC.  
5355 Miller Circle Drive  
Matteson, IL 60443

a copy to Mr. RICHARD L. TREICHEL  
20000 Governors Dr., #102  
Olympia Fields, IL 60461

The Parties may change their respective attorneys and/or addresses for the purpose of notice under this Agreement by delivery of written notice of change of attorney or address to the other Parties.

23. Other Mutual Covenants: The Parties agree to other mutual covenants, as follows:

- A. Binding Effect: This Mortgage and all provisions hereof shall extend to and be binding upon Mortgagor and all successors and assigns claiming under or through Mortgagor. The word "Mortgagor" when used herein shall include such persons and all persons liable for the payment of all or any part of the indebtedness, whether or not such successor or assigns shall have executed the Note or this Mortgage and all persons who may claim any rights through the Mortgagor. The word "Mortgagee" when used herein shall include the successors and assigns of the Mortgagee named herein and the Holder, from time to time, of the Note secured by this Mortgage. References to the singular or plural and to pronouns of male, female or neuter gender shall be deemed to include the other, where the context requires it.
- B. Severability: In the event any terms of this Mortgage shall be held invalid, illegal or unenforceable in whole or in part, neither the validity of the remaining part of such term, nor the validity of any other terms

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of this Mortgage shall in any way be affected thereby.

- C. **Section and Other Headings:** Section or other headings contained in this Mortgage are for reference purposes only and shall not affect in any way the meaning or interpretation of this Mortgage.
- D. **Governing Law:** This instrument shall be governed by, and construed in accordance with, the laws of the State of Illinois.
- E. **Construction:** This Mortgage is deemed, and shall be construed, to have been mutually prepared by all of the Parties and any uncertainty or ambiguity in it shall not be construed more strictly against one Party as against any other Party. In this Mortgage the word "including" indicates examples of a foregoing general statement and not a limitation on that general statement.
- F. **Further Assurances:** Mortgagor shall execute, acknowledge and deliver to Mortgagee and any subsequent holder from time to time upon their reasonable demand any further instrument or instruments, which are necessary to re-affirm, correct and perfect the evidence of the obligation secured by this Mortgage and the lien of Mortgagee to all or any part of the

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Premises. Mortgagor will do or cause to be done all such further acts and things reasonably necessary to carry out the intent of this Mortgage.

IN WITNESS WHEREOF, Mortgagor and Mortgagee have caused this Mortgage to be signed the day and year first above written.


MORTGAGOR:

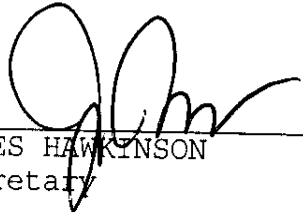
MORTGAGEE:

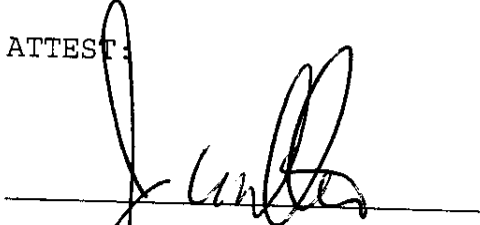
OLETA PROPERTY INVESTMENTS, LLC

MILLER CONSOLIDATED, INC.

By:   
ROBERT HAWKINSON  
President

By:   
DAVID MILLER  
President

ATTEST:  
  
JAMES HAWKINSON  
Secretary

ATTEST:  
  
Secretary

Property of Cook County Clerk's Office

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## LEGAL DESCRIPTION

LOT 4 IN MATTESON AUTO MALL UNIT 2, BEING A SUBDIVISION OF THE  
SOUTHWEST 1/4 OF SECTION 21, TOWNSHIP 35 NORTH, RANGE 13 EAST OF  
THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

Property of Cook County Clerk's Office

EXHIBIT A

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State of Illinois )  
                          )SS  
County of Cook    )

I, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that ROBERT HAWKINSON, President of OLETA PROPERTY INVESTMENTS, LLC, and JAMES HAWKINSON Secretary of said limited liability company, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and severally acknowledged that they signed, sealed and delivered the said instrument as such officers of said limited liability company as their free and voluntary act, and the free and voluntary act of said limited liability company, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and official seal  
this day on December 15<sup>th</sup>, 2007.  
JAN. 4

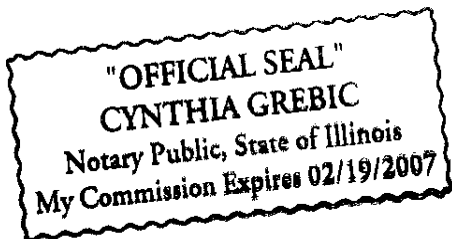
Cynthia Grebic  
Notary Public

Prepared by:

My commission expires:

2-19-07

GRIFFIN & GRIFFIN, LLC  
39 South LaSalle Street  
Suite 1005  
Chicago, IL 60603  
(312) 236-2954



Mail TO:

Richard Treichel  
2000 Generators Dr.  
Olympia Fields, IL 60461