



Doc#: 0925908038 Fee: \$46.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 09/16/2009 07:42 AM Pg: 1 of 6

CTIC-HE

Prepared by and Return to:
Old Second National Bank
37 South River Street
Aurora, IL 60506-4173
(630) 892-0202

H 25209756

MORTGAGE SUBORDINATION AGREEMENT

The parties herein enter into this Mortgage Subordination Agreement ("Agreement") for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, as **MILLER CONSOLIDATED, INC., an Illinois corporation** located at 5343 Miller Circle Drive, Matteson, IL 60443 and **FIRST BANK, as successor by merger to CIB Bank** located at **101 N. WABLER, STE. 160, CHICAGO, IL.** ("Creditor") and **OLD SECOND NATIONAL BANK, as successor by merger to Heritage Bank** located at 37 South River Street, Aurora, IL 60506-4173 ("Lender") to resolve the priority of their respective debts and security interests and agree as follows:

1. **CREDITOR'S SECURITY INTEREST**: Creditor owns and holds a Second Mortgage Note and Second Mortgage Trust Deed ("Creditor's Mortgage"), which said mortgage was recorded in the office of the recorder of Cook County, Illinois on May 11, 2000 as Document No. 00338781 and assigned to CIB Bank as an Assignment of Land Sale Contract ("Creditor's Assignment"), which said assignment was recorded in the office of the recorder of Cook County, Illinois on August 22, 2003 as Document No. 0323417246, encumbering the following described real property, all present and future improvements and fixtures located herein (the "Property"):

LEGAL DESCRIPTION

Parcel 1:

Lot 2 in Matteson Automall Unit 1, a subdivision of the Southwest 1/4 of Section 21, Township 35 North, Range 13 East of the Third Principal Meridian, according to the plat thereof recorded in the office of the Recorder of Deeds, Cook County, Illinois, on December 17, 1997 as Number 97948887.

Parcel 2:

A Non-exclusive easement for the benefit of Parcel 1 as created by access right-of-way and easement grant dated May 9, 2000 and recorded May 11, 2000 as Document 00338780 from Suburban Bank, Successor to St. Paul Trust Company, Successor Trustee to Beverly Bank and Trust Company as Trustee under Trust Agreement dated May 22, 1997 known as Trust Number 74-2569 to Sheri & Brad Postma Real Estate Corp. for the purpose of access over the following described land:

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That part of Lot 3 lying West of a line 290.0 feet East of and parallel to the West line of the Southwest ¼.

Address of Real Property: 5540 Auto Court, Matteson, IL 60443-1486

Permanent Index Number(s): 31-21-302-001-0000

2. LENDER'S SECURITY INTEREST AND CONDITION PRECEDENT. Sheri and Brad Postma Real Estate Corporation, an Illinois corporation ("**Borrower**") has requested a renewal of a loan from Lender secured by a mortgage on the Property in favor of Lender, which said mortgage was recorded in the office of the recorder of Cook County, Illinois on August 8, 2000 as Document No. 00600955, including all amendments thereto ("**Lender's Mortgage**"), along with an assignment of rents recorded in the office of the recorder of Cook County, Illinois on August 8, 2000 as Document No. 00600956 ("**Lender's Assignment**"). Lender is only willing to extend the loan on condition that the security interest created by Creditor's Mortgage and Creditor's Assignment as described in Paragraph 1 above is subordinated to Lender's Mortgage and Lender's Assignment.

Further, in connection with Borrower's request to Lender to extend the loan secured by Lender's Mortgage and Lender's Assignment, said mortgage and assignment shall be amended such that each shall additionally secure and include all obligations, indebtedness and liabilities arising pursuant to or in connection with any interest rate swap transaction, basis swap, forward rate transaction, interest option, price risk hedging transaction or any similar transaction between Borrower and Lender, including without limitation, that certain ISDA Master Agreement with all related Schedule(s) thereto, and all transactions and confirmation thereunder. Unless expressly modified herein, all terms and conditions of Lender's Mortgage and Lender's Assignment are hereby affirmed and ratified and Borrower, Mortgagors and Grantor have no claims, offsets, or defenses to them.

Lender's Mortgage also secures, without limitation, such additional sums as Lender may advance under the provisions of Lender's Mortgage as to future advances, additional sums for the purpose of curing any of Borrower's defaults, interest on principal, any interest rate derivative hedge exposure and attorneys' fees and costs incurred by Lender in any proceedings arising out of or in connection with Lender's Mortgage, including proceedings to enforce or foreclose it.

3. SUBORDINATION OF CREDITOR'S SECURITY INTEREST. Creditor agrees that its security interest and all of Creditor's rights thereunder shall at all times be inferior and subordinate to Lender's Mortgage and rights in the Property.

4. PRIORITY OF SECURITY INTERESTS. The priority of the mortgages belonging to Creditor and Lender in the Property will be governed by this Agreement and not by the time or order in which the mortgages were recorded.

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5. WAIVER OF LIMITATIONS. Creditor waives any obligation of Lender to provide Creditor with notice of additional advances or loans, notice of default, notice of acceleration of debt, notice of demand for payment or notice of repossession and the right of Creditor to require Lender to marshal any collateral. In addition, Lender may take or refrain from taking any action (including, but not limited to, making additional advances or loans) with respect to Borrower, any guarantor, or any collateral without notice to or the consent of Creditor and without affecting any of Lender's rights under this Agreement. Notwithstanding the above and except for protective advances by Lender (if any), Lender shall not make any additional advances or loans that would exceed the sum of \$2,000,000 as the total amount outstanding under Lender's Mortgage without the prior approval of Creditor.

6. DOCUMENTATION AND NON-INTERFERENCE. Creditor will not prevent, hinder or delay Lender from enforcing Lender's Mortgage. Creditor will execute and deliver to Lender such additional documents or other instruments as the Lender may deem necessary to carry out this Agreement.

7. TERMINATION. This Agreement will remain in full force and effect now and forever, despite the commencement of any federal or state bankruptcy, insolvency, receivership, liquidation or reorganization proceeding.

8. EFFECT ON BORROWER AND THIRD PARTIES. This Agreement will not affect the enforceability and priority of Creditor's and Lender's security interests in the Property and rights against the Borrower, Grantor, or any third party except as set forth herein.

9. REPRESENTATIONS AND WARRANTIES. Creditor represents and warrants to Lender:

- a. Creditor has not assigned any of its rights or interest in the Property prior to the execution of this Agreement. Creditor shall not assign or transfer to others any claim that Creditor has or may have in the Property while any indebtedness of Borrower to Lender remains unpaid without the express written consent of the Lender;
- b. Creditor has obtained all consents and approvals needed to execute and perform its obligations under this Agreement;
- c. Creditor's execution and performance of its obligations under this Agreement will not violate any court order, administrative order or ruling, or agreement binding on Creditor in any manner; and
- d. Creditor has conducted an independent investigation of Borrower's business affairs and was not induced to lend money or extend other financial accommodations to Borrower or execute this Agreement by any oral or written representation by Lender.

10. ASSIGNMENT. Lender shall be entitled to assign its security interest and its rights and remedies described in this Agreement without notice to Creditor.

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11. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding on and inure to the benefit of Creditor and Lender and their respective successors, permitted assigns, trustees, receivers, administrators, personal representatives, legatees, and devisees.

12. **SEVERABILITY.** If any provision of this Agreement violates the law or is unenforceable, the rest of the Agreement shall remain valid.

13. **NOTICE.** Any notice or other communication to be provided under this Agreement shall be in writing and sent to the parties at the addresses described in this Agreement or such other address as the parties may designate in writing from time to time.

14. **APPLICABLE LAW.** This Agreement shall be governed by the laws of the state of Illinois. In the event of any legal proceeding under this Agreement, Creditor consents to the jurisdiction and venue of any court located in the state of Illinois.

15. **ATTORNEYS' FEES.** Lender will be entitled to collect its attorneys' fees, legal expenses, and other costs in the event of any litigation pertaining to this Agreement.

16. **JOINT AND SEVERAL.** If there is more than one Creditor, their obligations shall be joint and several under this Agreement. Wherever the context requires, the singular form of any word shall include the plural.

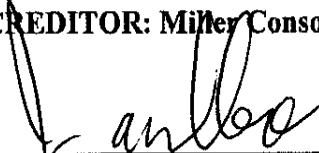
17. **INTEGRATION.** This Agreement and any related documents represent the complete and integrated understanding between Creditor and Lender pertaining to the terms and conditions of this Agreement.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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Creditor acknowledges that Creditor has read, understands, and agrees to the terms and conditions of this Agreement.

CREDITOR: Miller Consolidated, Inc., an Illinois corporation



James Miller, President

Dated: 8/24/09



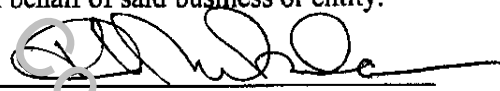
Cynthia S. Dykstra, Secretary

Dated: 8-24-09

State of Illinois
County of Cook

This instrument was acknowledged before me this 24th day of August, 2009 by James Miller and Cynthia S. Dykstra, as President and Secretary, respectively, of Miller Consolidated, Inc., an Illinois Corporation on behalf of said business or entity.





Notary Public

CREDITOR: First Bank, as successor by merger to CIB Bank

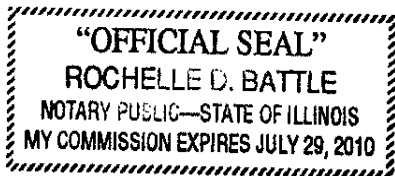


Jeff Nicholson, Sr. Vice President

Dated: 8-27-09

State of Illinois
County of COOK

This instrument was acknowledged before me this 27th day of AUGUST, 2009 by Jeff Nicholson as Sr. Vice President of First Bank on behalf of said business or entity.





Notary Public

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CREDITOR: First Bank, as successor by merger to CIB Bank

Jeff Nicholson, Sr. Vice President

Dated: _____

State of Illinois)
County of _____)

This instrument was acknowledged before me this _____ day of _____, 2009 by Jeff Nicholson as Sr. Vice President of First Bank on behalf of said business or entity.

Notary Public

LENDER: Old Second National Bank, as successor by merger to Heritage Bank

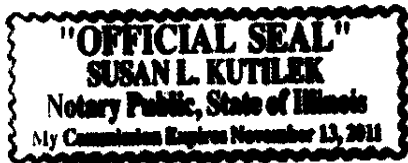
Robert J. Kennedy

Robert Kennedy, Sr. Vice President

Dated: 8-31-09

State of Illinois)
County of KOAO)

This instrument was acknowledged before me this 31st day of AUGUST, 2009 by Robert Kennedy as Sr. Vice President of Old Second National Bank, a national banking association on behalf of said business or entity.



Susan L. Kutilek

Notary Public