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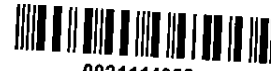
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2002-10-10 11:57:49  
Cook County Recorder 62.00

Recording Requested By and  
When Recorded, Mail To:

Fremont Investment & Loan  
303 W. Madison Street, Suite 900  
Chicago, IL 60606  
Attention: Todd Finnelly  
Loan No.: 950114310



002114055

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**INTERCREDITOR AGREEMENT**

**THIS INTERCREDITOR AGREEMENT** (this "Agreement") is entered into as of September 30, 2002, between OLIVERMCMILLAN GLENVIEW, LLC, a California limited liability company (including its various affiliates and principals, "Borrower"), VILLAGE OF GLENVIEW, an Illinois home-rule municipal corporation ("Junior Lender") and FREMONT INVESTMENT & LOAN, a California industrial loan association ("Fremont").

RECITALS

A. Junior Lender has agreed to issue a letter of credit (the "Letter of Credit") in the amount of Eight Million Dollars (\$8,000,000.00) (the "Junior Loan") evidenced by that certain Letter of Credit Note dated as of September 30, 2002 from Borrower to Junior Lender and secured by, among other things, that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of September 30, 2002 executed by Borrower, as grantor, to Junior Lender, as grantee, recorded on October 2002 as Document No. 21114054 in the Official Records of Cook County, Illinois (the "Official Records") and encumbering the real property described on Exhibit A attached hereto and incorporated herein by reference (the "Property"). The documents evidencing, securing or relating to the Junior Loan are hereafter referred to collectively as the "Junior Loan Documents."

B. Fremont is making or has made a loan to Borrower in the original principal amount of Fifty-Six Million Five Hundred Thousand Dollars (\$56,500,000.00) (the "Senior Loan") evidenced by that certain Secured Promissory Note of even date herewith from Borrower to Fremont and secured by, among other things, that certain Mortgage and Fixture Filing of even date herewith executed by Borrower, as grantor, to Fremont, as grantee, recorded concurrently herewith in the Official Records and encumbering the Property. The documents evidencing, securing or relating to the Senior Loan are hereafter referred to collectively as the "Senior Loan Documents."

C. Fremont and Junior Lender have indicated that they will not extend credit to Borrower unless this Agreement is executed.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each party hereto, the parties hereby agree:

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TO SEE X08

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1. **DEFINITIONS.** As used herein,

a. **"Indebtedness"** shall mean all advances, debts, obligations and liabilities of Borrower heretofore, now or hereafter made, incurred, suffered or created, whether voluntary or involuntary and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, of any kind or nature, whether related to the Property or otherwise, and whether Borrower may be liable individually or jointly or in its capacity as a general partner of a borrower, including without limitation obligations and liabilities arising after the commencement of any bankruptcy or insolvency proceeding by or against Borrower;

b. **"Junior Indebtedness"** shall mean all Indebtedness now or hereafter owing from Borrower to Junior Lender under the Junior Loan Documents; and

c. **"Senior Indebtedness"** shall mean all Indebtedness now or hereafter owing from Borrower to Fremont under the Senior Loan Documents.

2. **SUBORDINATION.** Junior Lender hereby unconditionally subordinates all Junior Indebtedness, and the lien or charge of all Junior Loan Documents, to all Senior Indebtedness, and the lien or charge of all Senior Loan Documents.

3. **RESTRICTIONS UPON PAYMENT OF INDEBTEDNESS, DISPOSITION OF PAYMENTS RECEIVED BY JUNIOR LENDER, RESTRICTIONS UPON TAKING OF COLLATERAL, AND RESTRICTIONS UPON ACCELERATION AND EXERCISE OF REMEDIES.** Junior Lender irrevocably consents, agrees and directs that all Senior Indebtedness indefeasibly shall be paid in full prior to any payment to Junior Lender, except that Junior Lender may accept reimbursement from the Borrower as provided in the Junior Loan Documents, so long as Senior Lender has not notified Junior Lender in writing of the occurrence of an "Event of Default" under the Senior Loan Documents (as "Event of Default" is defined therein). No payments shall be made by or on behalf of Borrower to Junior Lender if Borrower would be in breach of a covenant of Borrower contained in any agreement between Borrower and Senior Lender upon giving effect to any such payment. Upon notification by Senior Lender to Junior Lender in writing of the occurrence of an "Event of Default" under any of the Senior Loan Documents now or hereafter in effect between Borrower and Senior Lender, then such limited right of Junior Lender to receive payments as specified above immediately shall cease until such time, if any, as all "Events of Default" under any of the Senior Loan Documents now or hereafter in effect between Borrower and Senior Lender have been fully cured or waived by Senior Lender in writing or until such time, if any, as all Senior Indebtedness is paid in full. Except to the limited extent that payments are permitted pursuant to this Section 3, Borrower will not make, directly or indirectly (including any indirect payment by means of repurchase or redemption by Borrower of subordinated Indebtedness), and Junior Lender will not accept or receive from Borrower or any guarantor of all or any portion of the Junior Indebtedness, directly or indirectly (including any indirect receipt of payment by means of any redemption or repurchase by Borrower of subordinated Indebtedness), any payment or benefit, in cash, property or otherwise, on account of principal of or interest on or any other amounts payable with respect to any Junior Indebtedness. If any such payment is made or received Junior Lender shall immediately deliver the same to Senior Lender in the form received, with any endorsement or assignment necessary for the transfer of such payment from Junior Lender to Senior Lender, and, until so delivered, Junior Lender shall hold such payment in trust as the property of Senior Lender. Except for the security interests in favor of Junior Lender in effect as of the date hereof, all of which have been disclosed by Junior Lender and Borrower to Senior Lender and all of which are subordinated pursuant to the terms of this Agreement, Junior Lender shall not take or hold any liens, security or collateral from Borrower for the Junior Indebtedness so long as any Senior Indebtedness remains outstanding. Notwithstanding any default or event of default with respect to the Junior Indebtedness, Junior Lender shall not exercise any of its rights or remedies under the Junior Loan Documents (including, without limitation, the imposition of any late charges, default interest or other fees or penalties), shall not accelerate the maturity of the Junior Indebtedness, shall not take any legal or equitable actions to collect or enforce such Junior Indebtedness or any guaranty of all or any portion of such Junior Indebtedness (including, without limitation, the commencement of any judicial or nonjudicial foreclosure proceedings), shall not seek to attach or levy upon any assets or properties of

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Borrower, and shall not instigate or join in the instigation of any involuntary bankruptcy or insolvency proceeding against Borrower or any guarantor of all or any portion of the Senior Indebtedness, without in each case obtaining the prior written consent of Senior Lender, which Senior Lender may grant or withhold in its sole discretion; provided, however, that if Senior Lender has accelerated and commenced foreclosure proceedings Junior Lender may simultaneously pursue similar remedies unless and until Senior Lender notifies Junior Lender that it has ceased its foreclosure proceedings for any reason. Notwithstanding anything to the contrary herein, Junior Lender shall have the right to assume the Senior Loan and take title to the Property, pursuant and subject to the terms of the "Assumption Remedies" described in Exhibit B attached hereto (all terms capitalized therein shall be deemed used as defined in the Senior Loan Documents). In addition, Borrower shall be entitled to satisfy the appropriate portion of the Senior Indebtedness and obtain a release of the lien of the Senior Indebtedness in connection with certain retail facilities pursuant and subject to the terms of the "Partial Release" described in Exhibit C attached hereto (all terms capitalized therein shall be deemed used as defined in and for purposes of the Senior Loan Documents). Notwithstanding the exercise of such Assumption Remedies or the exercise of any other remedies by Junior Lender with the consent of Senior Lender, the Junior Indebtedness of Borrower shall continue to be subordinated in right of payment to the Senior Indebtedness upon the terms hereof. Senior Lender acknowledges that notwithstanding the subordination otherwise provided in this Agreement, Junior Lender shall establish an escrow in the maximum amount of Two Million Five Hundred Thousand Dollars (\$2,500,000) for collateral purposes in connection with the Letter of Credit facility described in Section 6 below, which shall not be subject to the subordination provisions provided herein.

**4. DISPOSITION OF EVIDENCE OF JUNIOR INDEBTEDNESS.** Fremont and Junior Lender warrant to each other that each has not heretofore assigned, transferred, hypothecated or disposed of the Senior Indebtedness or the Junior Indebtedness to any third party and Junior Lender shall not assign, transfer, hypothecate or dispose of any claim it has or may have against Borrower while any Senior Indebtedness remains outstanding.

**5. AGREEMENT TO BE CONTINUING, APPLIES TO BORROWER'S EXISTING SENIOR INDEBTEDNESS AND ANY SENIOR INDEBTEDNESS HEREAFTER ARISING.** This Agreement shall be a continuing agreement and shall apply to any and all Senior Indebtedness of Borrower to Fremont now existing or hereafter arising as part of the Senior Loan or relating to the protection of the security therefore including any Senior Indebtedness as part of the Senior Loan or relating to the protection of the security therefore of any receiver, trustee, debtor-in-possession or the similar person or entity that is a successor in interest of Borrower in the event of Borrower's insolvency.

**6. LETTER OF CREDIT FACILITY.** In connection with the Junior Loan, Junior Lender has caused the Letter of Credit to be issued to Fremont, a copy of which is attached hereto as Exhibit D and made a part hereof. Fremont shall have the right to use the proceeds of the Letter of Credit to offset any liabilities or losses, following a Drawing Event as defined in and pursuant to the Senior Loan Documents, other than matters related solely to cost overruns with regard to the Luxury Apartments (as defined in the Senior Loan Documents). The parties hereto agree that the face amount of the Letter of Credit shall be reduced following completion of the Renovations of the Retail Space as defined in and required in accordance with the Senior Loan Documents (i) by Two Million Dollars (\$2,000,000.00) upon Fremont's receipt of evidence satisfactory to Fremont that the Net Operating Income from the Retail Space for the one (1) calendar month prior to the date of determination was equal to or greater than Two Million Dollars (\$2,000,000.00), (ii) by an additional Two Million Dollars (\$2,000,000.00) upon Fremont's receipt of evidence satisfactory to Fremont that the Net Operating Income from the Retail Space for the one (1) calendar month prior to the date of determination was equal to or greater than Two Million Five Hundred Thousand Dollars (\$2,500,000.00), (iii) provided reductions described in (i) and (ii) of this Section 6 have occurred, by an additional Two Million Dollars (\$2,000,000.00) upon Fremont's receipt of evidence satisfactory to Fremont that the Net Operating Income from the Retail Space, based on signed, Approved Leases, will be equal to or greater than Two Million Seven Hundred Thousand Dollars (\$2,700,000.00), and (iv) provided reductions described in (i) and (ii) of this Section 6 have occurred, by an additional Two Million Dollars (\$2,000,000.00) upon Fremont's receipt of evidence satisfactory to Fremont that the Net Operating Income from the Retail Space, based on signed, Approved Leases, will be equal to or greater than Two Million Nine Hundred Thousand Dollars (\$2,900,000.00). "Net Operating Income" is hereby

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defined as all actual revenues and income received by Borrower from the operation of the Project in the ordinary course, based upon annualized effective rent (net of all concessions, credits and other inducements), excluding extraordinary income and receipts (including, without limitation, insurance/Condemnation Proceeds), and excluding all revenues and income paid by or on behalf of any tenant which Fremont, in its good faith sole discretion, determines is not reasonably likely to continue paying such amounts to Borrower, less the greater of (a) all Project expenses actually incurred by Borrower in connection therewith in the ordinary course (calculated as though management fees equal four percent (4%) of gross revenues and reserves for the Retail Space equal to \$0.20 per net rentable square foot and reserves for the luxury apartment units of Two Hundred Dollars (\$200.00) per unit), excluding noncash expenses (including, without limitation, depreciation and amortization) and travel and entertainment expenses, or (b) Twelve and 61/100 Dollars (\$12.61) per net rentable square foot per year for the Retail Space and Seven and 58/100 Dollars (\$7.58) per net rentable square foot per year for the luxury apartment units, annualized on a line item basis, all as determined by Fremont in its good faith sole discretion. Unless otherwise defined in this Agreement, capitalized terms used in this Paragraph 6 shall have the meanings ascribed therefore in the Senior Loan Documents.

**7. NOTICE OF DEFAULT, MODIFICATIONS.** Junior Lender hereby agrees to send to Fremont a copy of any default notice sent by Junior Lender to Borrower under or in connection with any of the Junior Indebtedness or any of the Junior Loan Documents concurrently with the delivery of such notice to Borrower. Fremont hereby agrees to send to Junior Lender a copy of any default notice sent by Fremont to Borrower under or in connection with any of the Senior Indebtedness or any of the Senior Loan Documents concurrently with the delivery of such notice to Borrower when and if required pursuant to Exhibit B. Junior Lender hereby agrees that it shall not, without Fremont's prior written consent, which Fremont may grant or withhold in its sole discretion, modify any of the Junior Loan Documents to shorten the maturity thereof, increase the amount secured by the Property, or increase the interest rate thereunder. Fremont hereby agrees that it shall not, without Junior Lender's prior written consent, which Junior Lender may grant or withhold in its sole discretion, modify any of the Senior Loan Documents to shorten the maturity thereof, increase the amount secured by the Property or increase the interest rate(s) provided thereunder.

**8. INFORMATION, OTHER AGREEMENTS.** Fremont and Junior Lender agree that neither shall have any obligation to inform the other or keep the other informed of the financial and other information pertaining to Borrower's financial condition. Both Fremont and Junior Lender assume the responsibility to keep themselves adequately informed by such means of any facts, events or circumstances which might in any way affect its respective risks hereunder, and Fremont and Junior Lender agree that neither shall have any obligation to disclose to the other any information or material acquired in the course of its relationship with Borrower. Should Fremont or Junior Lender elect to provide information to the other as a courtesy, the parties understand that, by providing such information, neither shall be deemed to have warranted the accuracy, completeness or value of the information so provided, and the parties shall not have any liability for providing inaccurate, incomplete, erroneous or outdated information. Junior Lender understands that the Senior Loan Documents include various agreements between Fremont and Borrower evidencing and governing the Senior Indebtedness, and Junior Lender acknowledges and agrees that such agreements are not intended to confer any benefits on Junior Lender and that Fremont shall have no obligation to Junior Lender or any other person to exercise any rights, enforce any remedies, or take any other actions which may be available to them under such agreements. Fremont understands that the Junior Loan Documents include various agreements between Junior Lender and Borrower evidencing and governing the Junior Indebtedness, and Fremont acknowledges and agrees that such agreements are not intended to confer any benefits on Fremont and that Junior Lender shall have no obligation to Fremont or any other person to exercise any rights, enforce any remedies, or take any other actions which may be available to them under such agreements.

**9. TRANSFER OF ASSETS OR REORGANIZATION OF BORROWER.** As a material inducement to Fremont to make the Senior Loan to Borrower, and for so long as any of the Senior Indebtedness remains unpaid or any of Borrower's obligations under the Senior Loan Documents remain unperformed, Junior Lender hereby agrees that it shall not file or consent (unless Fremont has so consented and continues to consent) to an involuntary bankruptcy proceeding with respect to Borrower or



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any of its members or other equity holders, or join in any such filing, without the prior written consent of Fremont, which Fremont may grant or withhold in its sole discretion. In the event Borrower enters into or is the subject of any bankruptcy proceeding, receivership, insolvency, assignment for the benefit of creditors, reorganization, whether or not pursuant to bankruptcy laws, sale of all or substantially all of its assets, dissolution, liquidation or any other marshaling of the assets and liabilities of Borrower, then in any such event Junior Lender shall be permitted to file a "proof of claim" but any payment or distribution of any of Borrower's assets, whether in cash, securities or other property, shall be paid or delivered first to Fremont until all Senior Indebtedness is paid in full. In the event Junior Lender receives any such payment or distribution that is payable to Fremont pursuant to the terms of this Agreement, Junior Lender shall hold such payment or distribution and forthwith deliver same in kind to Fremont.

**10. DEVELOPER FEES.** Fremont hereby agrees that so long as the Junior Loan is outstanding, no portion of the Senior Loan shall be disbursed to Borrower for developer fees, supervisory services or other like soft costs other than those amounts described in and budgeted for purposes of the Senior Loan Documents.

**11. NO WAIVER.** No delay or failure of Fremont in exercising any right or remedy hereunder shall be deemed a waiver of such right or remedy. Any waiver, permit, consent or approval of any kind by Fremont must be in writing and shall be effective only to the extent set forth in such writing. No delay or failure of Village in exercising any right or remedy hereunder shall be deemed a waiver of such right or remedy. Any waiver, permit, consent or approval of any kind by Village must be in writing and shall be effective only to the extent set forth in such writing.

**12. WAIVERS AND CONSENTS.** All of the Junior Indebtedness and Senior Indebtedness shall be deemed to have been made or incurred in reliance upon this Agreement.

Junior Lender and Fremont agree (a) that neither Fremont nor Junior Lender have made any warranties or representations to the other with respect to the due execution, legality, validity, completeness or enforceability of the Senior Loan Documents or the Junior Loan Documents, or the collectibility of the Senior Indebtedness or the Junior Indebtedness, and (b) that, absent fraud or intentional misconduct, neither Fremont nor Junior Lender shall have any liability to the other for, and Fremont and Junior Lender waive any claim or defense which either may now or hereafter have against the other arising out of (i) any and all actions which Fremont or Junior Lender takes or omits to take (including, without limitation, actions with respect to the creation, perfection or continuation of liens or security interests in any collateral, actions with respect to the occurrence of any default or event of default, actions with respect to the foreclosure upon, sale, release of, depreciation of or failure to realize upon, any collateral and actions with respect to the collection of any claim for all or any part of the Senior Indebtedness or Junior Indebtedness from any account debtor, guarantor or any other party) with respect to the Senior Loan Documents or Junior Loan Documents in effect from time to time, (ii) Fremont's election, in any proceeding instituted under Chapter 11 of Title 11 of the United States Code (11 U.S.C. §101 et seq.) (the "Bankruptcy Code"), of the application or nonapplication of Section 1111(b)(2) of the Bankruptcy Code, and/or (iii) any borrowing or grant of a security interest by Borrower, as debtor-in-possession, under Section 364 of the Bankruptcy Code.

Fremont and Junior Lender, at any time and from time to time, may enter into such agreements with Borrower as Fremont or Junior Lender may deem proper, extending the time for payment of, or renewing or otherwise altering the terms of all or any of the Senior Indebtedness or Junior Indebtedness (other than increasing the principal amount or interest rate(s) of the Senior Loan or Junior Loan) or affecting any security underlying any or all of such Senior Indebtedness or Junior Indebtedness, or may exchange, sell, release, surrender or otherwise deal with any such security, without in any way impairing or affecting this Agreement thereby. Fremont and Junior Lender shall not be required to proceed against Borrower or any surety or guarantor or against any collateral heretofore or hereafter provided by Borrower or any surety or guarantor prior to or as a condition of exercising or enforcing its respective rights thereunder.

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In the event that all or any part of the Senior Indebtedness at any time is secured by any deeds of trust or mortgages or other instruments creating or granting liens on any interest in real property (which event has occurred and is contemplated to occur), Junior Lender authorizes Fremont, upon the occurrence of and during the continuance of any Event of Default, at its sole option, without notice or demand and without affecting any obligations of Junior Lender hereunder, the enforceability of this Agreement, or the validity or enforceability of any liens of Fremont on any collateral, to foreclose any and all of such deeds of trust or mortgages or other instruments by judicial or nonjudicial sale. Except to the extent required by applicable law relating to such foreclosure or sale, Junior Lender expressly waives any right to receive notice of any judicial or (if permitted by law) nonjudicial foreclosure or sale of any real property or interest therein subject to any such deeds of trust or mortgages or other instruments and Junior Lender's failure to receive any such notice shall not impair or affect Junior Lender's obligations to Fremont or the enforceability of this Agreement or any liens created or granted hereby.

**13. APPLICATION OF PAYMENTS.** Subject to the limitation on payments to Junior Lender in Section 3 above, Fremont and Junior Lender agree that Fremont and Junior Lender may apply payments received from Borrower in such manner or fashion as each in its discretion deems appropriate, and neither party shall have the right to direct the manner or fashion in which the other applies such payments.

**14. MISCELLANEOUS.** This Agreement binds and inures to the benefit of the successors and assigns of the parties, including without limitation the holders of any participation interests purchased from Fremont, provided that Junior Lender may not assign the Junior Indebtedness. This Agreement may not be amended, modified or terminated except by a written instrument signed by the party or parties to be charged.

**15. APPLICABLE LAW.** This Agreement shall be governed by and construed in accordance with the local laws of the State of Illinois, without reference to choice of law rules.

**16. COUNTERPART EXECUTION.** This Agreement may be executed in counterparts and shall become effective as of the date first set forth above when each party shall have delivered executed counterparts hereof to the other parties, whereupon all such counterparts shall be deemed originals and, when taken together, shall constitute but one agreement.

**17. AUTHORITY.** Fremont and Junior Lender hereby certify to the other that each has all necessary authority to execute this Agreement and perform its respective obligations hereunder.

**18. REMEDIES; COSTS AND EXPENSES OF PROCEEDINGS.** Each party shall have all rights and remedies available at law or in equity in the event of a breach of its obligations by the other party. In the event of any litigation, arbitration, hearing or other proceeding relating to this Agreement, the prevailing party shall be entitled to recover its reasonable costs and expenses, including attorneys' fees. As used in this Agreement, the term "attorneys' fees" or "attorneys' fees and costs" shall mean the fees and expenses of counsel to the parties hereto, which may include printing, photostating, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The terms "attorneys' fees" or "attorneys' fees and costs" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, arbitrations, bankruptcy proceedings and any post-judgment proceedings to collect any judgment, and whether or not any action or proceeding is brought with respect to the matter for which said fees and expenses were incurred. The provisions allowing for the recovery of post-judgment fees, costs and expenses are separate and several and shall survive the merger of this Agreement into any judgment.

**19. WAIVER OF RIGHT TO TRIAL BY JURY.** EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING UNDER THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR (B) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES

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HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. AS BETWEEN JUNIOR LENDER AND BORROWER ONLY, THE FOREGOING WAIVER SHALL NOT BE DEEMED TO APPLY TO ANY OF THE JUNIOR LOAN DOCUMENTS OTHER THAN THIS AGREEMENT, UNLESS SET FORTH IN SUCH DOCUMENTS.

**20. NOTICES.** Any notice, or other document or demand required or permitted under this Agreement shall be in writing addressed to the appropriate address set forth below and shall be deemed delivered upon the earliest of (a) actual receipt, (b) the next business day after the date when sent by recognized overnight courier, or (c) the second business day after the date when sent by registered or certified mail, postage prepaid. Any party may, from time to time, change the address at which such written notice or other documents or demands are to be sent, by giving the other party written notice of such change in the manner hereinabove provided.

To Fremont: Fremont Investment & Loan  
175 North Riverview Drive  
Anaheim, California 92808  
Attention: Commercial Real Estate Asset Management  
Loan No. 950114310

To Borrower: OliverMcMillan Glenview, LLC  
733 8<sup>th</sup> Avenue  
San Diego, California 92101  
Attention: Dene Oliver

To Junior Lender: Village of Glenview  
1225 Waukegan Road  
Glenview, Illinois 60025-3071  
Attention: Village Manager

**21. FURTHER ASSURANCES.** Fremont and Junior Lender shall, at any time and from time to time, upon the request of the other, execute, acknowledge and deliver all such further documents and instruments, and take all such further actions, as shall be necessary or reasonable to give effect to the agreements set forth herein.



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

FREMONT:

FREMONT INVESTMENT & LOAN,  
a California industrial loan association

By: \_\_\_\_\_  
Its: **Vice President**

BORROWER:

OLIVERMCMILLAN GLENVIEW, LLC,  
a California limited liability company

By: \_\_\_\_\_  
Its: **CHIEF EXECUTIVE OFFICER**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

JUNIOR LENDER:

VILLAGE OF GLENVIEW,  
an Illinois home-rule municipal corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Property of Cook County Clerk's Office

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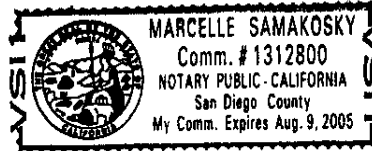
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STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF SAN DIEGO )

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of SEPTEMBER, 2002  
by MORGAN DENF OLIVER, the CEO of DIVERMILLAN CALIFORNIA GREENVIEW LLC, a LLC, on behalf of the company.

Marcelle Samakosky  
Notary Public

SAN DIEGO County, CALIFORNIA  
My commission expires: 8/9/05



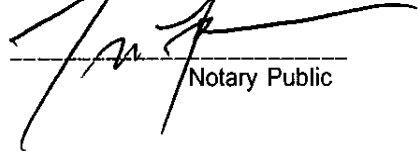
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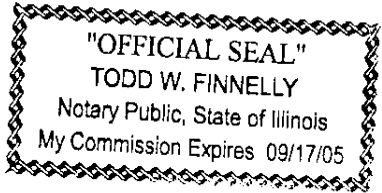
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STATE OF ILLINOIS            )  
  ) ss.  
COUNTY OF COOK            )

The foregoing instrument was acknowledged before me this 30<sup>TH</sup> day of SEPTEMBER, 2002  
by SCOTT MANLIN, the VICE PRESIDENT of FREMONT INVESTMENT, a CALIFORNIA, on behalf of the company.  
ILCAN INDUSTRIAL BANK

  
\_\_\_\_\_  
Notary Public

Cook County, Illinois  
My commission expires: 9-17-05



Property of Cook County Clerk's Office

21114055

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

FREMONT:

FREMONT INVESTMENT & LOAN,  
a California industrial loan association

By: \_\_\_\_\_  
Its: \_\_\_\_\_

BORROWER:

OLIVERMCMILLAN GLENVIEW, LLC,  
a California limited liability company

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

JUNIOR LENDER:

VILLAGE OF GLENVIEW,  
an Illinois home-rule municipal corporation

By: [Signature]  
Its: Village President

By: [Signature]  
Its: Village Clerk

Property of Cook County Clerk's Office

21114055

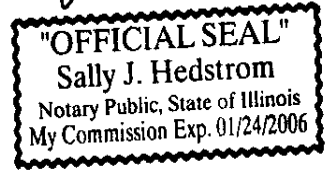
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STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF COOK )

The foregoing instrument was acknowledged before me this 30th day of Sept, 2002  
by the Pres of the Village Club of Villa Park, and Dick Hume, on behalf of the company,  
Rock Mvmt Corp.

Sally Hedstrom  
Notary Public

Cook County, Illinois  
My commission expires: 1/24/2006



Property of Cook County Clerk's Office

21114055



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## EXHIBIT A

### Legal Description

That certain real property located in the City of Glenview, County of Cook, State of Illinois, having a street address of NWC Chestnut Ave. & Patriot Blvd., more particularly described as follows:

PARCEL 1: LOTS 2, 4, 6, 8, 10, 12 THROUGH 15, AND 17 THROUGH 22, IN GLEN TOWN CENTER, A RESUBDIVISION OF LOT 3 IN GNAS MIXED USE RETAIL CENTER, IN THE WEST ½ OF SECTION 27, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT NUMBER 0020733381, IN COOK COUNTY, ILLINOIS.

PARCEL 2: EASEMENTS FOR THE BENEFIT OF PARCEL 1 FOR PARKING, ACCESS, UTILITY, AND CONSTRUCTION, AS SET FORTH IN DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED JULY 2, 2002, AS DOCUMENT 0020733382 BY THE VILLAGE OF GLENVIEW AND OLIVER MCMILLAN GLENVIEW, LLC.

PARCEL 3: BLANKET PEDESTRIAN EASEMENT FOR THE BENEFIT OF PARCEL 1 AND OTHER PROPERTY OVER AND ACROSS LOT 1 IN GNAS MIXED USE SUBDIVISION, AS CONTAINED IN PLAT RECORDED SEPTEMBER 27, 2001 AS DOCUMENT NO. 0010905146.

PARCEL 4: VEHICULAR INGRESS AND EGRESS EASEMENT FOR THE BENEFIT OF PARCEL 1 OVER AND ACROSS PART OF LOT 4 IN GNAS MIXED USE SUBDIVISION, AS CONTAINED IN PLAT RECORDED SEPTEMBER 27, 2001 AS DOCUMENT NO. 0010905146.

*Appt Location - Patriot Blvd West Side Ave*

*04-27-103-002*

*04-27-103-003*

*04-27-103-004*

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## EXHIBIT B

### ASSUMPTION REMEDIES

Prior to the foreclosure by Fremont of the Security Instrument (and nothing herein shall affect or delay the exercise of any of Fremont's other rights and remedies following an Event of Default under the Loan Documents) Fremont shall provide written notice of the default which would permit Fremont to commence such enforcement action to the Village of Glenview (the "Village"), whether or not Fremont is obligated to give notice thereof to Borrower (each, a "Loan Default Notice") and shall permit the Village an opportunity to cure such default in accordance with the provisions of this paragraph. If the default is a monetary default relating to a liquidated sum of money, the Village shall have until five (5) Business Days after delivery to the Village of notice of the occurrence of a monetary Event of Default as defined in the Loan Documents (a "Monetary Cure Period") to cure such monetary default. If the Event of Default is of a non-monetary nature, the Village shall have the same period of time as the Borrower under the Loan Documents to cure such non-monetary Event of Default; provided, however, if such non-monetary Event of Default is susceptible of cure but cannot reasonably be cured within such period and if curative action was promptly commenced and is being continuously and diligently pursued by the Village, the Village shall be given an additional period of time as is reasonably necessary for the Village in the exercise of due diligence to cure such non-monetary Event of Default for so long as (i) The Village makes or causes to be made timely payment of Borrower's regularly scheduled monthly principal and/or interest payments under the Loan and any other amounts due under the Loan Documents, (ii) such additional period of time does not exceed one hundred twenty (120) days after delivery to the Village of notice of the occurrence of such non-monetary Event of Default (a "Non-Monetary Cure Period") as is reasonably necessary to cure such non-monetary default provided the Village is diligently and continuously pursuing the cure of such default. In addition, following any cure by the Village of a monetary Event of Default during the Monetary Cure Period and during any Non-Monetary Cure Period, Fremont agrees to consider a request from the Village, to be made within one hundred twenty (120) days after delivery to the Village of notice of the occurrence of such Event of Default, for Fremont's consent to a transfer of the Project and an assumption of the Loan by a purchaser of the Project designated by the Village, and without any obligation to consider any such request, Fremont may impose certain conditions in connection with its consideration of and/or its granting of such consent (which consent may be withheld in Fremont's good faith sole discretion), including, without limitation, the following conditions: (A) no Event of Default shall have occurred, and no uncured Potential Default shall exist, under any of the Loan Documents, which cannot be cured by such purchaser; (B) Fremont shall have approved in its good faith sole discretion the creditworthiness of the proposed purchaser (which shall be a single purpose entity meeting the requirements of the Loan Documents) and of any guarantors and/or indemnitors required by Fremont, in light of Fremont's then current underwriting criteria for similar properties and loans, the particular requirements of the Project, and the managerial, financial and operational ability of the proposed purchaser and any required guarantors and/or indemnitors, and Fremont shall have received and approved in its good faith sole discretion financial statements for such purchaser, guarantors and/or indemnitors; (C) the purchaser shall have hired at its expense, and Fremont shall have approved in its good faith sole discretion, a professional, third party property, leasing and sales managers for the Project having experience managing, leasing and selling properties similar to the Project in the metropolitan area in which the Project is located; (D) the purchaser shall deliver to Fremont a fully executed assumption agreement in form acceptable to Fremont in its good faith sole discretion pursuant to which, among other things, such purchaser shall deliver to Fremont such documents as Fremont may reasonably require to evidence (i) the authority of such purchaser to assume the Loan, (ii) the satisfaction of these assumption conditions, and (iii) the assumption by such purchaser of personal liability under the Loan Documents and the Environmental Indemnity; (E) the Issuer, the Village, and any other third parties designated by Fremont shall have consent to the transfer of the Project and shall have reaffirmed their obligations under the Letter of Credit and under any subordination agreements affecting the Project; (F) guarantors and/or indemnitors, acceptable to Fremont in its good faith sole discretion, shall have delivered to Fremont a guaranty or guaranties and environmental indemnity, in form satisfactory to Fremont in its good faith sole discretion, covering all matters guaranteed or indemnified by Guarantor(s) under the Loan Documents and

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Environmental Indemnity; (G) Fremont shall have received (x) a non-refundable assumption fee of 1% of the sum of the then outstanding principal balance of the Loan plus the amount of all undisbursed advances, if any, under the Note, and (y) a non-refundable processing fee of \$5,000; (H) Fremont shall have received, at the Village's expense, and approved in its good faith sole discretion such environmental building inspection and seismic reports, investigations and assurances as may be reasonably required by Fremont; (I) Fremont shall have received counsel opinion(s), formation documents, evidences of authority, title endorsements, and all other items reasonably required by Fremont in connection with the proposed assumption, each of which shall be in form and substance satisfactory to Fremont in its good faith sole discretion; (J) the Project's loan to value ratio as of such assumption, as determined by Fremont in its good faith sole discretion, shall not be more than 77% and Fremont may elect to have the Project re-appraised at the Village's expense in connection with the assumption; and (K) Fremont shall have received reimbursement of all reasonable costs incurred by Fremont in connection with the request for such assumption including, without limitation, reasonable appraisal fees, reasonable consultants' fees and reasonable attorneys' fees and costs. Any such assumption shall not, however, release Borrower, Guarantors or any other party from any liability under the Loan Documents without Fremont's prior written consent, which may be withheld in Fremont's good faith sole discretion.

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## EXHIBIT C

### POTENTIAL PARTIAL RELEASE

In the event of any draw by Fremont under the Letter of Credit, then, thereafter, Fremont will partially release its interest under the Security Instrument with respect to the Retail Parcel (i.e., the land underlying the Retail Space and the Restaurant Space), upon the satisfaction of all of the following conditions:

**A.** Those Renovations that pertain to the Retail Parcel shall have been completed in accordance with the Loan Documents so that no other improvements in or related to those areas are necessary in connection with the development of the Remaining Property (as determined by Fremont in its good faith sole discretion);

**B.** There shall be no Event of Default or Potential Default hereunder or under any of the other Loan Documents and no Event of Default shall have occurred under any of the Loan Documents;

**C.** Borrower or the Village has given Fremont at least 15 business days' prior written notice of Borrower's or the Village's request for the release of the Retail Parcel;

**D.** Title to the Retail Parcel shall be transferred to a separate entity, and Borrower shall provide Fremont with copies of any and all escrow closing statements and related documentation and information pertinent to the release and transfer of the Retail Parcel;

**E.** Fremont has received evidence satisfactory to Fremont that the portion of the Property remaining subject to the Security Instrument (the "**Remaining Property**") (i) is a legally subdivided condominium unit or other satisfactory separate legal descriptions under all applicable Laws, (ii) will have the benefit of such easements and rights of way in, over and through the Retail Parcel as provided in the CC&Rs to provide or assure access to and from utility service to, parking for and common wall maintenance and support to the Remaining Property, as applicable, (iii) complies, either by virtue of the location of the improvements or with a duly issued variance, with all applicable setback requirements, and (iv) will constitute separately assessed parcel(s) for tax and assessment purposes under the procedures of the applicable governmental agency;

**F.** The Title Company has issued, at Borrower's or the Village's expense, appropriate endorsements to the Title Policy which provide that, notwithstanding the release of the Security Instrument from the Retail Parcel, the lien of the Security Instrument will remain unaffected thereby and will continue to be a first lien upon the Remaining Property, subject to no exceptions to title other than those shown on the Title Policy;

**G.** Borrower or the Village has satisfied such other terms and conditions to such release and reconveyance as Fremont may reasonably require;

**H.** Borrower or the Village has paid all costs associated with the release of Fremont's interest in the Retail Parcel, including, without limitation, the cost of Fremont's title policy endorsements referred to above, escrow costs, demand and reconveyance fees customarily charged by Fremont in similar transactions, and Fremont's actual legal fees and costs incurred in connection therewith; and

**I.** Fremont shall have received payment, in immediately available funds, of the release price constituting that portion of the proceeds of the Senior Indebtedness (as determined by Fremont in its good faith sole discretion) that has been disbursed in connection with the Retail Parcel, not to exceed Twenty-Five Million Dollars (\$25,000,000.00) plus so much of Fremont's reserve for

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contingencies (as identified in the Senior Loan Documents) as has been disbursed in connection with the Retail Parcel, not to exceed Two Million Five Hundred Thousand Dollars (\$2,500,000.00), which amount shall be applied to the outstanding principal balance of the Loan and which payment shall be in addition to all other payments required to be made by Borrower under the Loan Documents.

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## American National Bank

and Trust Company of Chicago

C/O BANK ONE, NA

1 BANK ONE PLAZA

MAIL CODE IL1-0809

CHICAGO, IL 60670-0809

ATTN: STANDBY LETTER OF CREDIT UNIT

TELEPHONE: (312) 954-5983 FAX: (312) 954-5986

TELEX NO: 6733816 ANB CGO

SWIFT ADDRESS: ANBTUS44A

IRREVOCABLE STANDBY LETTER OF CREDIT – NO. 00326965

DATE: SEPTEMBER 30, 2007

**BENEFICIARY:**

FREMONT INVESTMENT & LOAN

175 N. RIVERVIEW DRIVE

ANAHEIM, CA 92808

ATTN: COMMERCIAL REAL ESTATE ASSET MANAGEMENT

**APPLICANT:**

VILLAGE OF GLENVIEW

1225 WAUKEGAN ROAD

GLENVIEW, IL 60025

ATTN: DANIEL P. WIERSMA, FINANCE DIRECTOR

WE HEREBY ISSUE TO BENEFICIARY OUR IRREVOCABLE LETTER OF CREDIT NO. 00326965 FOR THE ACCOUNT OF OUR CLIENT FOR AN AMOUNT OF USD 8,000,000.00 (EIGHT MILLION AND NO/100 U.S. DOLLARS) AVAILABLE WITH AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, CHICAGO, IL, BY SIGHT PAYMENT OF YOUR DRAFTS DRAWN ON AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, CHICAGO, IL, EFFECTIVE IMMEDIATELY AND EXPIRING AT OUR COUNTERS AT 5:00 P.M. LOCAL TIME ON SEPTEMBER 30, 2007.

THE DOCUMENT(S) REQUIRED MUST BE PRESENTED ON OR BEFORE THE EXPIRY DATE ON THIS INSTRUMENT IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT.

(CONTINUED)

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LETTER OF CREDIT NO. 00326965

DATE: SEPTEMBER 30, 2002

**REQUIRED DOCUMENTATION:**

1. DATED STATEMENT SIGNED BY A DULY AUTHORIZED OFFICER OF BENEFICIARY, CERTIFYING THAT:

"THE DRAW IS PURSUANT TO THE TERMS OF THE SENIOR LOAN DOCUMENTS (LOAN NO. 950114310) REFERRED TO UNDER THAT CERTAIN INTERCREDITOR AGREEMENT DATED SEPTEMBER 30, 2002 BETWEEN OLIVER MCMILLAN GLENVIEW, LLC, THE VILLAGE OF GLENVIEW AND FREMONT INVESTMENT & LOAN."

2. SIGHT DRAFT MENTIONED ABOVE BEARING THE CLAUSE: "DRAWN UNDER AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, CHICAGO, IL, LETTER OF CREDIT NO. 00326965, DATED SEPTEMBER 30, 2002."

**OTHER TERMS/INSTRUCTIONS:**

NO PAYMENT HEREUNDER SHALL EXCEED AN AMOUNT EQUAL TO (I) THE STATED AMOUNT AVAILABLE ON THE DATE OF RECEIPT OF SUCH DEMAND, MINUS (II) THE AGGREGATE AMOUNT OF ANY DEMAND PREVIOUSLY HONORED AND (III) AGREED REDUCTIONS IN THE STATED AMOUNT, AS DIRECTED BY BENEFICIARY AND APPLICANT IN WRITING, REFERENCING THIS LETTER OF CREDIT NO. 00326965.

WE HEREBY AGREE TO HONOR EACH OF YOUR DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT, IF DULY PRESENTED TOGETHER WITH THE DOCUMENTS SPECIFIED AT THIS OFFICE DURING REGULAR BUSINESS HOURS ON OR BEFORE THE EXPIRATION DATE.

**ORIGINAL OF THIS LETTER OF CREDIT AND AMENDMENT(S) MUST ACCOMPANY DRAWING(S).**

THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS, INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 500.

PLEASE ADDRESS ALL CORRESPONDENCE REGARDING THIS LETTER OF CREDIT TO AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, C/O BANK ONE, NA, 1 BANK ONE PLAZA, MAIL SUITE IL1-0809, CHICAGO, IL 60670-0809, ATTENTION: STANDBY LETTER OF CREDIT UNIT, MENTIONING OUR REFERENCE NUMBER AS IT APPEARS ABOVE.

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO

  
AUTHORIZED SIGNATURES

21114055