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Cook County Recorder of Deeds
Date: 05/12/2004 03:30 PM Pg: 1 of 13

Fremont Investment & Loan
1065 N. Pacific Center Drive
Anaheim, CA 92806
Attn: Ms. Norma Rincand
Loan No.: 950114310

8034222 A2MS

MEMORANDUM OF AMENDMENT TO MORTGAGE AND OTHER LOAN DOCUMENTS

THIS MEMORANDUM OF AMENDMENT TO MORTGAGE AND OTHER LOAN DOCUMENTS (this "Memorandum") is made as of April 29, 2004, by and among OLIVERMCMILLAN GLENVIEW, LLC, a California limited liability company ("Borrower"), MORGAN DENE OLIVER, an individual, and JAMES L. MCMILLAN, an individual (and jointly and severally with Morgan Dene Oliver, the "OM Guarantors"), ELM INVESTORS, L.P., a California limited partnership ("Elm"), OMH III, LLC, a California limited liability company ("OMH III"), OMH I, LLC, a California limited liability company ("OMH I"), and OLIVERMCMILLAN GASLAMP BUCA, LLC, a California limited liability company ("Gaslamp", and jointly and severally with Elm, OMH III and OMH I, the "Entity Guarantors"; the OM Guarantors and the Entity Guarantors individually, a "Guarantor" and collectively, the "Guarantors") and FREMONT INVESTMENT & LOAN, a California industrial bank ("Lender"), with respect to the following Recitals:

RECITALS

A. Pursuant to the terms of that certain Loan and Security Agreement dated as of September 30, 2002, by and between Borrower and Lender, as amended by the Letter Agreements (as amended, the "Loan Agreement"), Lender made a loan (the "Original Loan") to Borrower in the maximum principal amount of Fifty-Six Million Five Hundred Thousand Dollars Dollars (\$56,500,000). The Original Loan is evidenced by that certain Secured Promissory Note dated as of September 30, 2002, in the original principal amount of the Original Loan, executed by Borrower to the order of Lender, as amended by the Letter Agreements (as amended, the "Original Note"). As used herein, "Letter Agreements" means those certain letter agreements among Borrower, Lender and Guarantors relating to the Loan. All initially-capitalized terms not otherwise defined herein shall have the meanings given such terms in the Loan Agreement.

B. The repayment of the Original Loan and Borrower's performance of its obligations under the Original Note are secured by, among other things, that certain (i) Construction Mortgage and Fixture Filing dated as of September 30, 2002, executed by Borrower, as mortgagor, for the benefit of Lender, as mortgagee, recorded on October 10, 2002 as Instrument No. 0021114050 with the Cook County Recorder (the "Official Records"), and encumbering that certain real property described in Exhibit A attached hereto and incorporated herein by this reference (the "Premises"), as amended by the Letter Agreements (as amended, the "Mortgage"); and (ii) Assignment of Rents (and Leases) dated as of September 30, 2002, executed by Borrower recorded on September 30, 2002 as Instrument No. 0021114051 in the Official Records, as amended by the Letter Agreements (as amended, the "Assignment of Rents").

C. In connection with the Original Loan, OM Guarantors executed that certain Guaranty dated as of September 30, 2002, as amended by the Letter Agreements (as amended, the "OM Guaranty") and Entity Guarantors executed that certain Guaranty dated as of September 30, 2002, as amended by the Letter Agreements (as amended, the "Entity Guaranty"), wherein the Guarantors guaranteed the payment and performance of certain obligations of Borrower under the Loan Documents.

D. Borrower has requested that Lender, among other things, (i) increase the principal amount of the Original Loan by Five Million One Hundred Sixty Five Thousand Six Hundred Twenty-

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Seven Dollars (\$5,165,627) (the "**Additional Loan**," and together with the Original Loan, the "**Loan**") to Sixty-One Million Six Hundred Sixty-Five Thousand Six Hundred Twenty-Seven Dollars (\$61,665,627); (ii) increase the Holdback for Leasing (as defined in the Original Note), (iii) increase the Holdback for Construction (as defined in the Original Note), and (iv) decrease the Holdback for Interest Reserve (as defined in the Original Note), and Lender has agreed to do each of the foregoing subject to the terms and on the conditions set forth in that certain First Amendment to Mortgage and Other Loan Documents of even date herewith executed by the parties hereto (the "**Modification Agreement**").

E. As used herein, "**Loan Documents**" shall mean the Original Note as amended by the Amended Note (as defined in the Modification Agreement) (as amended, the "**Note**"), the Mortgage, the Assignment of Rents and all other documents securing, or executed in connection with, the Loan but shall exclude the Environmental Indemnity.

NOW THEREFORE, in consideration of the foregoing Recitals, the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender, Borrower and Guarantors agree as follows:

1. **Loan Modification.** The Loan is amended on the terms and subject to the conditions set forth in the Modification Agreement.

2. **Incorporation of Modification Agreement.** The Modification Agreement is incorporated in this Memorandum by this reference as if set forth in full herein. Among other things, the Modification Agreement provides that the Loan Documents are modified to provide that: (a) the Original Loan has been increased by the Additional Loan, (b) each of the Loan Documents and the Environmental Indemnity have been modified by the applicable Modification Documents, and (c) the Modification Documents constitute "Loan Documents" (as "Loan Documents" is used therein).

3. **Counterparts.** This Memorandum may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this Memorandum to physically form one document, which may be recorded.


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IN WITNESS WHEREOF, the parties have caused this Memorandum to be duly executed and delivered as of the date first above written.

"Borrower"

OLIVERMCMILLAN GLENVIEW, LLC,
a California limited liability company

By: **OLIVERMCMILLAN GROUP, LLC,**
a California limited liability company,
Managing Member

By: 
Its: PRESIDENT

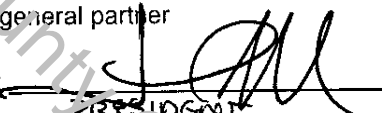
"Guarantors"


Morgan Dene Oliver


James L. McMillan

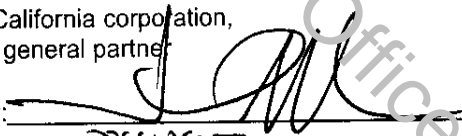
ELM INVESTORS, LLC,
a California limited partnership

By: **JAMOR, INC.,**
a California corporation,
its general partner

By: 
Its: PRESIDENT

OMH III, LLC,
a California limited liability company

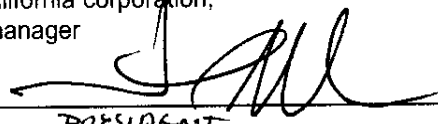
By: **JAMOR, INC.,**
a California corporation,
its general partner

By: 
Its: PRESIDENT

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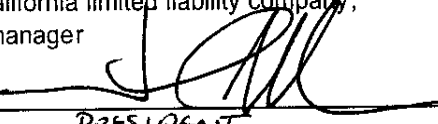
OMH I, LLC,
a California limited liability company

By: JAMOR, Inc.,
a California corporation,
its manager

By: 
Its: PRESIDENT

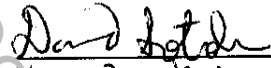
OLIVERMCMILLAN GASLAMP BUCA, LLC,
a California limited liability company

By: OLIVERMCMILLAN GROUP, LLC,
a California limited liability company,
its manager

By: 
Its: PRESIDENT

"Lender"

FREMONT INVESTMENT & LOAN,
a California industrial bank

By: 
Its: Vice President

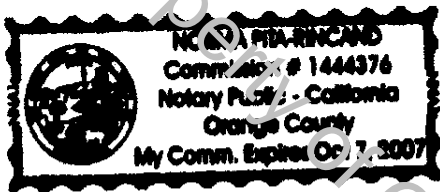
Property of Cook County Clerk's Office

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STATE OF California)
) SS
COUNTY OF Orange)

On MAY 11, 2004 before me, NORMA PITA RINCAUD personally appeared David Sobelov personally known to me ~~or proved to me on the basis of satisfactory evidence~~ to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.



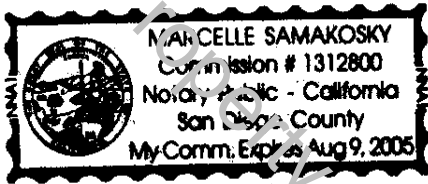
Norma Pita Rincaud
Signature of Notary

UNOFFICIAL COPY

STATE OF CALIFORNIA)
)
COUNTY OF SAN DIEGO) SS

On MAY 6, 2004 before me, MARCELLE SAMAKOSKY personally appeared MORGAN DENE OLIVER personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the persons(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.



Marcelle Samakosky
Signature of Notary

Notary of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF CALIFORNIA)
)
COUNTY OF SAN DIEGO) SS

On MAY 6, 2004 before me, MARCELLE SAMAKOSKY personally appeared
JAMES L. McMILLAN personally known to me or proved to me on the basis of
satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and
acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity(ies), and
that by his/~~her~~/~~their~~ signatures(s) on the instrument the persons(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

Witness my hand and official seal.



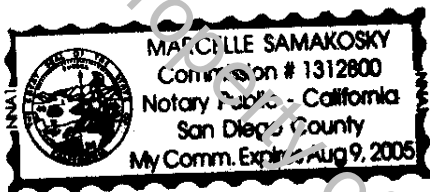
Marcelle Samakosky
Signature of Notary

UNOFFICIAL COPY

STATE OF CALIFORNIA)
)
COUNTY OF SAN DIEGO) SS

On MAY 6, 2004 before me, MARCELLE SAMAKOSKY personally appeared JAMES L. McMILLAN personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the persons(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.



Marcelle Samakosky
Signature of Notary

UNOFFICIAL COPY

STATE OF CALIFORNIA)
)
) SS
COUNTY OF SAN DIEGO)

 MARCELLE SAMAKOSKY
On MAY 6, 2004 before me, _____ personally appeared
JAMES L. McMILLAN personally known to me or proved to me on the basis of
satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and
acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and
that by his/~~her/their~~ signatures(s) on the instrument the persons(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

Witness my hand and official seal.



Marcelle Samakosky
Signature of Notary

PROPERTY of Cook County Clerk's Office

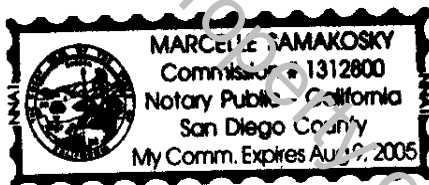
UNOFFICIAL COPY

STATE OF CALIFORNIA)
)
 COUNTY OF SAN DIEGO)

SS

On MAY 6, 2004 before me, MARCELLE SAMAKOSKY personally appeared JAMES C. McMILLAN personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the persons(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.



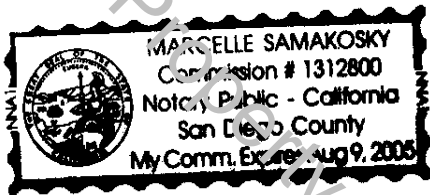
Marcelle Samakosky
 Signature of Notary

UNOFFICIAL COPY

STATE OF CALIFORNIA)
) SS
COUNTY OF SAN DIEGO)

On MAY 6, 2004 before me, MARCELLE SAMAKOSKY personally appeared
JAMES L. MEMILLAP personally known to me or proved to me on the basis of
satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and
acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and
that by his/~~her/their~~ signatures(s) on the instrument the persons(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

Witness my hand and official seal.



Marcelle Samakosky
Signature of Notary

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EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

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/MC MILLAN 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.

04-27-103-013-0000
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