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Doc#: 0413334088
Eugene "Gene" Moore Fee: \$36.00
Cook County Recorder of Deeds
Date: 05/12/2004 03:30 PM Pg: 1 of 7

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

FREMONT INVESTMENT & LOAN
1065 North Pacific Center Drive
Anaheim, California 92806
Attention: Ms. Norma Rincand
Loan No.: 950114310

8034222 DZMS

REAFFIRMATION OF INTERCREDITOR AGREEMENT

NOTICE: THIS REAFFIRMATION OF INTERCREDITOR AGREEMENT RESULTS IN THE PROPERTY BECOMING SUBJECT TO THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

THIS REAFFIRMATION OF INTERCREDITOR AGREEMENT (this "Agreement") is made as of February 21, 2004 by and among FREMONT INVESTMENT & LOAN, a California industrial bank ("Fremont"), VILLAGE OF GLENVIEW, an Illinois home-rule municipal corporation ("Junior Lender") and OLIVERMCMILLAN GLENVIEW, LLC, a California limited liability company ("Borrower").

RECITALS

A. Junior Lender has issued 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 (the "Junior Mortgage") dated as of September 30, 2002 executed by Borrower, as grantor, to Junior Lender, as grantee, recorded on October 10, 2002 as Document No. 21114053 with the Cook County Recorder (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. Pursuant to that certain Loan and Security Agreement dated as of September 30, 2002 between Borrower and Fremont, as amended by the Letter Agreements (as amended, the "Fremont Loan Agreement"), Fremont has made a loan to Borrower in the original principal amount of Fifty-Six Million Five Hundred Thousand Dollars (\$56,500,000) (the "Fremont Original Loan") evidenced by that certain Secured Promissory Note dated as of September 30, 2002, from Borrower to Fremont in the amount of the Fremont Original Loan, as amended by the Letter Agreements. The Fremont Original Loan is secured by, among other things, that certain Construction Mortgage and Fixture Filing dated as of September 30, 2002, executed by Borrower, as mortgagor, and naming Fremont, as mortgagee, recorded on October 10, 2002, as Instrument No. 0021114050 in the Official Records and encumbering the Property, as amended by the Letter Agreements (as amended, the "Fremont Mortgage"). The documents evidencing, securing or relating to the Fremont Original Loan, together with all supplements, amendments and modifications thereto, and all renewals, replacements or extensions thereof, are hereafter referred to collectively as the "Fremont Loan Documents." As used herein, "Letter Agreements" means those certain letter agreements among Borrower, Fremont and certain other parties dated as of February 4, 2003, July 22, 2003, October 31, 2003, and two separate letter agreements dated August 7, 2003, and various other dates.

C. The Junior Loan has been subordinated to the Fremont Original Loan pursuant to that certain Intercreditor Agreement dated as of September 30, 2002, executed by Borrower, Junior Lender and Fremont, recorded on October 10, 2002 as Instrument Number 0021114055 in the Official Records.

D. Borrower has requested that Fremont modify the Fremont Loan to, among other things increase the principal amount of the Fremont Original Loan by Five Million One Hundred Sixty Five

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Thousand Six Hundred Twenty-Seven Dollars (\$5,165,627) (the "**Fremont Additional Loan**," and together with the Original Loan, the "**Fremont Loan**") to Sixty-One Million Six Hundred Sixty-Five Thousand Six Hundred Twenty-Seven Dollars (\$61,665,627), all as more particularly described in that certain First Amendment to Mortgage and Other Loan Documents dated as of ~~February~~, 2004, executed by Borrower, Fremont and the other parties named therein, and recorded concurrently herewith in the Official Records (the "**Fremont Amendment**"). All initially-capitalized terms used herein and not otherwise defined herein shall have the same meaning ascribed to them in the Fremont Amendment.

E. Fremont has required the execution and delivery of this Agreement as a condition precedent to granting its consent to the modifications of the Fremont Original Loan more particularly described in the Fremont Amendment.

NOW THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby covenant and agree as follows:

1. Junior Lender hereby consents to the modifications referenced in the Letter Agreements, the Fremont Amendment and the Modification Documents (including, without limitation, the increase of the amount of the Fremont Original Loan and the changes to the Sources and Uses Schedule (as defined in the Fremont Loan Agreement)), agrees to remain fully bound by the Intercreditor Agreement, notwithstanding the modifications evidenced by the Letter Agreements, the Fremont Amendment and the Modification Documents, and agrees that any reference made in the Intercreditor Agreement to the "**Senior Loan**" or "**Senior Loan Documents**" shall mean the same, as amended by the Letter Agreements, the Fremont Amendment and the Modification Documents, together with all supplements, amendments and modifications thereto, and all renewals, replacements and extensions thereof. Junior Lender further agrees that the Fremont Loan Documents (and each of them) and all supplements, amendments, and modifications thereto and all renewals, replacements or extensions thereof, shall unconditionally be and remain at all times a lien or charge on the Property prior and superior to the Junior Mortgage, notwithstanding the modifications evidenced by the Letter Agreements, the Fremont Amendment and the Modification Documents. Nothing contained in this Agreement, including, without limitation, this Section 1, shall be deemed or construed to grant Junior Lender any right to consent, or require Borrower or Fremont to obtain Junior Lender's consent, to any supplements, amendments, modifications, renewals, replacements or extensions of any of the Fremont Loan Documents.

2. This Agreement and the Intercreditor Agreement shall be the whole and only agreement with regard to the subjection and subordination of the Junior Loan and the Junior Mortgage, together with all rights and privileges of Junior Lender thereunder, to the lien or charge of the Fremont Loan Documents (and each of them) and shall supersede and cancel, but only insofar as would affect the priority between the Junior Loan and the Fremont Loan Documents (and each of them), any prior agreements as to such subjection or subordination, including, but not limited to, those provisions contained in the Junior Loan which provide for the subjection or subordination of the Junior Loan and the lien created thereby to deed(s) of trust or mortgage(s).

3. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

4. This Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one agreement, binding on all of the parties hereto notwithstanding that all of the parties hereto are not signatories to the same counterpart. Signature and notary acknowledgment pages may be detached from the counterparts and attached to a signed copy of this Agreement which may be recorded.

5. The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the laws of the State of Illinois.

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IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date first above written.

FREMONT:

FREMONT INVESTMENT & LOAN,
a California industrial bank

By: David F. Toloh
Its: Vice President

BORROWER:

OLIVERMCMILLAN GLENVIEW, LLC,
a California limited liability company

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

By: [Signature]
Its: president

JUNIOR LENDER:

VILLAGE OF GLENVIEW,
an Illinois home-rule municipal corporation

By: [Signature]
Its: Village President

By: Mary A. Beutel
Its: Village Clerk

Deputy

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ALL-PURPOSE ACKNOWLEDGMENT

State of California

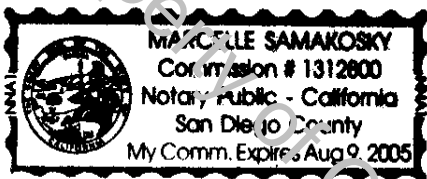
County of SAN DIEGO }

SS.

On APRIL 27, 2004 before me, MARCELLE SAMAKOSKY,
(DATE) (NOTARY)

personally appeared JAMES L. McMILLAN
SIGNER(S)

- 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.

Marcelle Samakosky
NOTARY'S SIGNATURE

OPTIONAL INFORMATION

The information below is not required by law. However, it could prevent fraudulent attachment of this acknowledgment to an unauthorized document.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

- INDIVIDUAL
 CORPORATE OFFICER

TITLE(S)

- PARTNER(S)
 ATTORNEY-IN-FACT
 TRUSTEE(S)
 GUARDIAN/CONSERVATOR
 OTHER: _____

DESCRIPTION OF ATTACHED DOCUMENT

REAFFIRMATION OF INTERCREDITOR AGREEMENT

TITLE OR TYPE OF DOCUMENT

4
NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

OTHER

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STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

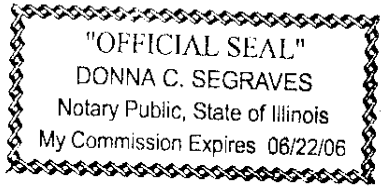
[Junior Lender]

The foregoing instrument was acknowledged before me this 20th day of APRIL, 2004 by L. CARLSON, the PRESIDENT and by M. DEWIL, the VP. VILLAGE CLERK of Village of Glenview, an Illinois home-rule municipal corporation, on behalf of the company.

Donna C. SeGRAVES

 Notary Public

Cook County, Illinois
 My commission expires: 6/22/06



Property of Cook County Clerk's Office

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STATE OF CALIFORNIA)
) SS.
COUNTY OF ORANGE)

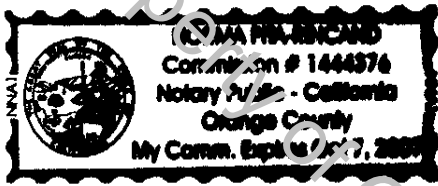
[Fremont]

On May 11, 2004, before me, Noema Pita Rincand, a Notary Public, personally appeared David Sotolov, and _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Noema Pita Rincand

Notary Public



Cook County Clerk's Office

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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/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.

04-27-103-013-0000
 04-27-103-015-0000
 04-27-103-017-0000
 04-27-103-019-0000
 04-27-103-021-0000
 04-27-103-023-0000
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