

3/3

UNOFFICIAL COPY



RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Doc#: 0413334089
Eugene "Gene" Moore Fee: \$40.00
Cook County Recorder of Deeds
Date: 05/12/2004 03:31 PM Pg: 1 of 9

Fremont Investment & Loan
1065 North Pacific Center Drive
Anaheim, California 92806
Attention: Ms. Norma Rincand
Loan No. 950114310

8034 222 DZMS

REAFFIRMATION OF SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS REAFFIRMATION OF SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made as of February 27, 2004, by GALYAN'S TRADING COMPANY, INC., an Indiana Corporation ("Tenant"), and FREMONT INVESTMENT & LOAN, a California industrial bank ("Lender").

RECITALS

A. Pursuant to that certain Loan and Security Agreement dated as of September 30, 2002 between Borrower and Lender, as amended by the Letter Agreements (as amended, the "Loan Agreement"), Lender has made a loan to Borrower in the original principal amount of Fifty-Six Million Five Hundred Thousand Dollars (\$56,500,000) (the "Original Loan") evidenced by that certain Secured Promissory Note dated as of September 30, 2002, from Borrower to Lender in the amount of the Original Loan, as amended by the Letter Agreements. The 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 Lender, as mortgagee, recorded on October 10, 2002, as Instrument No. 0021114050 with the Cook County Recorder (the "Official Records") and encumbering the real property described therein (the "Property"), as amended by the Letter Agreements (as amended, the "Mortgage"). The documents evidencing, securing or relating to the Original Loan, together with all supplements, amendments and modifications thereto, and all renewals, replacements or extensions thereof, are hereafter referred to collectively as the "Loan Documents." As used herein, "Letter Agreements" means those certain letter agreements among Landlord, 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. *Land various other notes*

9

B. Tenant and OliverMcMillan Glenview, LLC, a California limited liability company ("Landlord") have entered into that certain lease dated as of May 31, 2002 (the "Lease"), pursuant to which Landlord is leasing to Tenant a portion of the improvements located on the Property and more particularly described in the Lease (the "Leased Premises").

C. Tenant and Lender are the parties to that certain Subordination, Non-Disturbance and Attornment Agreement dated as of September 30, 2002 (the "SNDA"), recorded on October 10, 2002, as Instrument No. 0021114056 in the Official Records, which sets forth the rights and obligations of the parties with respect to the Lease as it relates to the Loan.

D. Borrower has requested that Lender modify the Original Loan to, among other things increase the principal amount of the Original Loan by Five Million One Hundred Sixty-Five Thousand Six Hundred Twenty-Seven Dollars (\$5,165,627) (the "Additional Loan," and together with the Original Loan, the "Lender 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 ~~of even date herewith~~ *as of April 29, 2004* executed by Borrower, Lender and the other parties named therein, and recorded concurrently herewith in the Official Records (the "Modification Agreement"). The modifications contemplated by the Modification Agreement and all other Modification Documents (as defined in the Modification Agreement) are collectively referred to as the "Modification".

Box 333

UNOFFICIAL COPY

All initially-capitalized terms used herein and not otherwise defined herein shall have the same meaning ascribed to them in the Modification Agreement.

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

F. As used herein, "**Security Documents**" shall mean the Loan Agreement, the Note, the Deed of Trust, the Assignment of Rents and all other documents and instruments evidencing or securing the Loan, each as modified by the Modification Documents (as defined in the Modification Agreement).

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. Tenant hereby consents to the Letter Agreements and the Modification referenced in the Modification Agreement and the other Modification Documents and reaffirms all of its obligations under the Lease and the SNDA. Tenant further agrees to remain fully bound by the Lease and the SNDA, notwithstanding the Modification and other modifications evidenced by the Letter Agreements, the Modification Agreement and the other Modification Documents. Tenant agrees that any reference made in the SNDA to the Loan and the documents and instruments evidencing or securing the Loan shall mean such Loan and documents and instruments as amended by the Letter Agreements and the Modification Documents, together with all supplements, amendments and modifications thereto, and all renewals, replacements and extensions thereof. Nothing contained in this Agreement, including, without limitation, this Section 1, shall be deemed or construed to grant Tenant any right to consent, or to require Landlord or Lender to obtain Tenant's consent, to any supplements, amendments, modifications, renewals, replacements or extensions of any of the Loan Documents.

2. Tenant hereby certifies that as of the date hereof (a) no rent or other amounts under the Lease have been prepaid more than one (1) month in advance, (b) Tenant has no existing defenses or offsets or credits to the payment of rent or other amounts under the Lease or to the enforcement of the Lease, (c) there are no known defaults on the part of Landlord under the Lease, (d) the Lease is a complete statement of the agreement of the parties thereto with respect to the leasing of the Leased Premises, (e) Tenant has no option to extend or renew the Lease or to expand the Leased Premises or any right of first refusal or first offer to lease except as expressly set forth in the Lease, (f) Tenant has no option or right of first refusal or first offer with respect to the purchase of the Leased Premises or the Property, (g) the Lease is in full force and effect, and the term of the Lease has commenced, and Tenant has accepted delivery of the Leased Premises, and (h) all conditions (including, without limitation, any payments to be made by Landlord and Tenant) to the effectiveness or continuing effectiveness of the Lease required to be satisfied as of the date hereof have been satisfied.

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. In the event any legal action or proceeding is commenced to interpret or enforce the terms of, or obligations arising out of, this Agreement, or to recover damages for the breach thereof, the party prevailing in any such action or proceeding shall be entitled to recover from the non-prevailing party all reasonable attorneys' fees, costs and expenses incurred by the prevailing party.

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

UNOFFICIAL COPY

6. THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

Property of Cook County Clerk's Office

UNOFFICIAL COPY

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

"Lender"

FREMONT INVESTMENT & LOAN,
a California industrial bank

By: David John
Its: Vice President

"Tenant"

GALYAN'S TRADING COMPANY, INC.,
an Indiana corporation

By: C. David Zoba
Its: Executive Vice President

Property of Cook County Clerk's Office

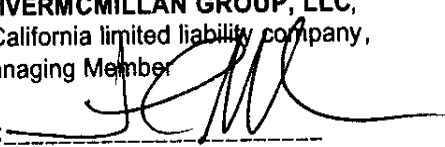
UNOFFICIAL COPY

Landlord hereby consents and agrees to be bound by the foregoing terms and conditions of the foregoing Reaffirmation of Subordination, Non-Disturbance and Attornment Agreement.

Dated: February ____, 2004

OLIVERMCMILLAN GLENVIEW, LLC,
a California limited liability company

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

By: 
Its: _____

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF INDIANA)
) SS.
 COUNTY OF HENDRICKS)

[Tenant]

On this 30th day of March, 2004, before me appeared C. David Zoba personally known, who, being sworn, did say that he is the Executive V.P. of Galyan's Trading Company, Inc., an Indiana corporation, and that said instrument was signed on behalf of said corporation pursuant to due authority, validly exercised.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written

Roberta L. Aust
 Notary Public

Roberta L. Aust, Notary Public
 State of Residence: Indiana
 Commission Expires: 7-3-2003

PROPERTY OF COOK COUNTY CLERK'S OFFICE

UNOFFICIAL COPY

ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of SAN DIEGO } SS.

On MARCH 31 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 SUBORDINATION
NON-DISTURBANCE AND ATTORNMENT
AGREEMENT

TITLE OR TYPE OF DOCUMENT

5
NUMBER OF PAGES

DATE OF DOCUMENT

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

OTHER

UNOFFICIAL COPY

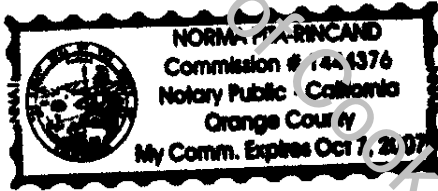
STATE OF CALIFORNIA)
) SS.
COUNTY OF Orange)

[Fremont]

On May 11, 2004, before me, Norma Rita Rincand, a Notary Public, personally appeared David Sotolero, 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.

Norma Rita Rincand
Notary Public



UNOFFICIAL COPY

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: LOT 6 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.

04-27-103-017-0000