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Eugene "Gene" Moore Fee: \$48.00  
Cook County Recorder of Deeds  
Date: 11/03/2004 01:08 PM Pg: 1 of 13

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:  
Fremont Investment & Loan  
2727 E. Imperial Highway  
Brea, California 92821-6713  
Attn: Ms. Norma Rincand  
Loan No.: 950114310

SECOND AMENDMENT TO MORTGAGE AND OTHER LOAN DOCUMENTS

THIS SECOND AMENDMENT TO MORTGAGE AND OTHER LOAN DOCUMENTS (this "Agreement") is dated as of October 13, 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 and the Amendment Agreement (as hereinafter defined) (as amended, the "Loan Agreement"), Lender made a loan (the "Loan") to Borrower in the maximum principal amount of Sixty-One Million Six Hundred Sixty-Five Thousand Six Hundred Twenty-Seven Dollars (61,665,627). The Loan is evidenced by, among other things, that certain Amended and Restated Secured Promissory Note dated as of April 29, 2004, in the original principal amount of the Loan (the "Note"). As used herein, "Letter Agreements" means those certain letter agreements among Borrower, Lender and Guarantors relating to the Loan, and "Amendment Agreement" means that certain First Amendment to Mortgage and Other Loan Documents dated as of April 29, 2004, executed by Borrower, Guarantors and Lender, a memorandum of which was recorded in the Official Records of Cook County, Illinois (the "Official Records") on May 12, 2004 as Instrument No. 0413334087. All initially-capitalized terms not otherwise defined herein shall have the meanings given such terms in the Loan Agreement.

B. The repayment of the Loan and Borrower's performance of its obligations under the 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 in 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 and the Amendment Agreement (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 and the Amendment Agreement (as amended, the "Assignment of Rents").

C. In connection with the Loan, OM Guarantors executed that certain Guaranty dated as of September 30, 2002, as amended by the Letter Agreements and the Amendment Agreement and that certain Guaranty dated as of April 29, 2004 (collectively, the "OM Guaranty") and Entity Guarantors executed that certain Guaranty dated as of September 30, 2002, as amended by the Letter Agreements and the Amendment Agreement (as amended, the "Entity Guaranty" and together with the OM

Ms. Norma Rincand  
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Guaranty, the "**Guaranties**", each a "**Guaranty**"), wherein the Guarantors guaranteed the payment and performance of certain obligations of Borrower under the Loan Documents.

**D.** Borrower has requested that Lender extend the Initial Maturity Date under the Note, and Lender has agreed to do so subject to the terms and on the conditions set forth in this Agreement.

**E.** As used herein, "**Loan Documents**" shall mean 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, the parties hereto agree as follows:

**1.** Note. The definition of Initial Maturity Date set forth in Article 1 of the Note shall be, and hereby is, deleted in its entirety and replaced with the following:

"**Initial Maturity Date**" means December 1, 2004.

**2.** Loan Documents and Environmental Indemnity. All of the Loan Documents (whether or not specifically described herein) and the Environmental Indemnity are hereby amended (a) to reflect all of the modifications set forth in this Agreement, and (b) to provide that the Modification Documents constitute "Loan Documents" (as "Loan Documents" is used therein).

**3.** Representations and Warranties

(a) As a material inducement for Lender to enter into this Agreement, Borrower hereby represents and warrants to Lender that:

(i) Borrower has full power and authority to execute, deliver and perform its obligations under this Agreement and the other Modification Documents. This Agreement and all such other Modification Documents are binding upon and enforceable against Borrower in accordance with their respective terms.

(ii) There is no Potential Default or Event of Default under the Note, any of the Loan Documents or the Environmental Indemnity.

(iii) The representations and warranties made by Borrower in the Note, the other Loan Documents and the Environmental Indemnity are as of the date hereof, and on the Effective Date will be, true, correct and complete in all material respects.

(iv) Borrower does not have any (a) offsets or defenses against the payment of the Note, or any other amounts payable under the Loan Documents or the Environmental Indemnity, or (b) claims against Lender or any employee, officer, director, or attorney of Lender in connection with the Note, any of the other Loan Documents or the Environmental Indemnity.

(b) As a material inducement for Lender to enter into this Agreement, each Guarantor hereby represents and warrants to Lender that:

(i) Each Guarantor has full power and authority to execute, deliver and perform its obligations under this Agreement and the other Modification Documents. This Agreement and the other Modification Documents are binding upon and enforceable against each Guarantor in accordance with their respective terms.

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(ii) There is no Potential Default or Event of Default by any Guarantor under any Guaranty or any of the other Loan Documents.

(iii) The representations and warranties made by each Guarantor in each Guaranty and the other Loan Documents are as of the date hereof, and on the Effective Date will be, true, correct and complete in all material respects.

(iv) Each Guarantor does not have any (a) offsets or defenses against the payment of any Guaranty, or any other amounts payable under the other Loan Documents, or (b) claims against Lender or any employee, officer, director, or attorney of Lender in connection with any Guaranty, any of the other Loan Documents or the Environmental Indemnity.

**4. Reaffirmation of Obligations.** Borrower and each Guarantor each hereby acknowledges and reaffirms its respective obligations under the Note, each Guaranty and the other Loan Documents and the Environmental Indemnity, as such documents have been amended by the Letter Agreements and the Modification Documents, and agrees that any reference made in the Note, each Guaranty or in any of the other Loan Documents or in the Environmental Indemnity to such documents shall mean such Loan Documents and Environmental Indemnity as amended by the Letter Agreements and the Modification Documents. Neither this Agreement nor any of the other Modification Documents or the Letter Agreements constitutes a satisfaction, termination, novation or discharge of any of the Loan Documents or the Environmental Indemnity.

**5. Waiver of Certain Protections.** As a material inducement for Lender to enter into this Agreement, Borrower agrees that, in the event that Borrower (a) files with any bankruptcy court of competent jurisdiction or is the subject of any petition under Title 7 or 11 of the U.S. Code, as amended, (b) is the subject of any order of relief under such Title 7 or 11 of the U.S. Code, as amended, (c) files or is the subject of any petition, order, judgment or decree petition seeking, or relating to, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or other relief for debtors, or (d) seeks, consents or agrees to, the appointment of any trustee, receiver, conservator, or liquidator, then in such event Lender shall be entitled to relief from any automatic stay imposed by Section 362 of Title 11 of the U.S. Code, as amended, or otherwise, on or against the exercise of its rights and remedies under the Loan Documents or as otherwise provided by law or in equity. Borrower hereby irrevocably waives any benefits or protections that may be afforded by such automatic stay and further waives any benefits or protections that may be afforded by relief similar to such automatic stay under Section 105 of Title 11 of the U.S. Code, as amended, or otherwise.

**6. Closing Conditions.**

Lender shall have no obligation to modify the Loan as set forth herein unless Borrower delivers or causes to be delivered to Lender the following items on or before October 22, 2004 (the "**Termination Date**"), all of which shall be in form and substance satisfactory to Lender in its sole discretion and, if applicable, duly executed (and acknowledged where necessary) by the appropriate parties thereto:

- (a) This Agreement executed by Borrower and Guarantors;
- (b) A release executed by Borrower and Guarantors in the form of Exhibit B attached hereto (the "**Release**", and together with item (a) above, the "**Modification Documents**").
- (c) At Borrower's expense, CLTA Endorsement 110.5 (modified for maturity date extension only) to the Title Policy insuring the continued priority of the lien of the Mortgage;

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(d) Reimbursement to Lender of Lender's attorneys' fees and costs and all other actual, out-of-pocket costs incurred by Lender in connection with this Agreement and the other documents required by this Section (the "**Modification Closings Costs**"); and

(e) Such other documents and instruments as may be reasonably required by Lender.

7. **Events of Default.** In addition to all other matters constituting a Potential Default or Event of Default under the Loan Documents, the breach or default by Borrower or any Guarantor of any term or covenant contained herein, and the expiration of any applicable cure period set forth in the Loan Documents, or the inaccuracy of any representation or warranty contained herein, shall also be a Potential Default or Event of Default, as applicable, under the Loan Documents.

8. **Amendment to Loan Documents.** Upon satisfaction of the closing conditions set forth herein on or before the Termination Date and at Lender's election recordation of this Agreement in the Official Records (the "**Effective Date**"), the parties hereto agree that the Loan Documents and the Environmental Indemnity shall be amended as provided herein and in the other Modification Documents. Except as specifically amended pursuant to the terms of the Modification Documents, the Loan Documents and the Environmental Indemnity shall remain unmodified and in full force and effect.

9. **Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Illinois.

10. **Counterparts.** This Agreement 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 Agreement to physically form one document, which may be recorded.

11. **Submission of Agreement.** The submission of this Agreement or any of the documents referenced herein to Borrower or any Guarantor or their respective agents or attorneys for review or signature does not constitute a commitment or agreement by Lender to make the modifications to the Loan Documents described herein, and this Agreement and the other Modification Documents shall have no binding force or effect unless the Effective Date has occurred on or before the Termination Date.

12. **Time of Essence.** Time is of the essence with respect to each provision of this Agreement.

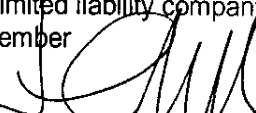
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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the date first above written.

**"Borrower"**

**OLIVERMCMILLAN GLENVIEW, LLC,**  
a California limited liability company

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

By:   
Its: JAMES L. MCMILLAN, PRESIDENT

**"Guarantors"**

  
Morgan Dene Oliver

  
James L. McMillan

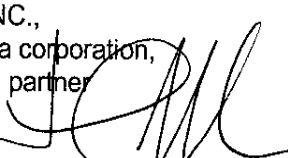
**EI M INVESTORS, L.P.,**  
a California limited partnership

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

By:   
Its: JAMES L. MCMILLAN, PRESIDENT

**OMH III, LLC,**  
a California limited liability company

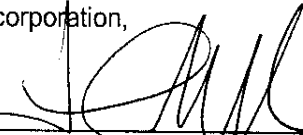
By: **JAMOR, INC.,**  
a California corporation,  
its general partner

By:   
Its: JAMES L. MCMILLAN, PRESIDENT

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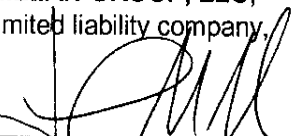
**OMH I, LLC,**  
a California limited liability company

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

By:   
Its: JAMES L. McMILLAN, PRESIDENT

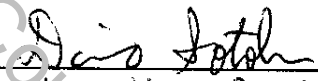
**OLIVERMCMILLAN GASLAMP BUCA, LLC,**  
a California limited liability company

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

By:   
Its: JAMES L. McMILLAN, PRESIDENT

"Lender"

**FREMONT INVESTMENT & LOAN,**  
a California industrial bank

By:   
Its: Vice President

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## EXHIBIT A TO THE SECOND AMENDMENT TO MORTGAGE AND OTHER LOAN DOCUMENTS

### 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.

Assessor's Parcel Nos.

~~461-560-02-00~~

~~461-560-03-00~~

461-560-04-00

~~461-220-13-00~~

~~461-220-14-00~~

~~461-220-25-00~~

~~461-220-41-00~~

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

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04-27-103-029-0000

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04-27-103-033-0000

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## EXHIBIT B TO THE SECOND AMENDMENT TO MORTGAGE AND OTHER LOAN DOCUMENTS

### Form of Release

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the undersigned (jointly and severally, "**Releasor**"), for itself, its members, partners (if any) and their respective successors and assigns, does hereby forever release, discharge and acquit Fremont Investment & Loan, a California industrial bank ("**Fremont**"), its parent, and each of their respective affiliates, subsidiaries, successors and assigns, and the officers, directors, employees and agents of each (collectively with Fremont, the "**Fremont Parties**"), of and from any and all claims, demands, obligations, liabilities, indebtedness, breaches of contract, breaches of duty or any relationship, acts, omissions, misfeasance, malfeasance, cause or causes of action, judgments, debts, controversies, damages, costs, losses and expenses, of every type, kind, nature, description or character existing as of the date hereof and irrespective of how, why, or by reason of what facts, whether heretofore or now existing, or which could, might or may now or hereafter be claimed to exist, of whatever kind, name or nature, whether known or unknown, past or present, latent or patent, suspected or unsuspected, anticipated or unanticipated, liquidated or unliquidated, each as though fully set forth herein at length, which arise on or before the date hereof and which in any way arise out of, are connected with or relate to the loan (the "**Loan**") described in that certain Second Amendment to Mortgage and Other Loan Documents dated as of October 13, 2004, by and among Releasor and Fremont (the "**Modification Agreement**"). Nothing contained herein shall be deemed or construed to be a release of any party's rights or obligations under the Modification Agreement or any of the Modification Documents (as defined in the Modification Agreement).

Releasor hereby agrees, represents and warrants that it realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and it further agrees, represents and warrants that this Release has been negotiated and agreed upon in light of that realization and that it nevertheless hereby intends to release, discharge and acquit the Fremont Parties, and each of them, from any and all such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which in any way arise out of, are connected with, or relate to, the Loan.

IT IS HEREBY FURTHER UNDERSTOOD AND AGREED that the acceptance of delivery of this Release by the Fremont Parties shall not be deemed or construed as an admission of liability by any party released by the terms hereof, and each such party hereby expressly denies liability of any nature whatsoever arising from or related to the subject of this Release.

Releasor hereby represents and warrants that (a) it owns all of the purported claims, rights, demands and causes of action that it is releasing by this Release and that no other person or entity has any interest in said claims, rights, demands or causes of action by reason of any contract or dealing with Releasor, and (b) Releasor has not assigned to any other person or entity all or any part of such claims, rights, demands or causes of action.

Releasor hereby acknowledges, represents and warrants that it has had advice of counsel of its own choosing in negotiations for and the preparation of this Release, that it has read this Release or has had the same read to it by its counsel, that it has had the within Release fully explained by such counsel, and that it is fully aware of its contents and legal effect.

This Release 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 pages may be detached from the counterparts and attached to a single copy of this Release to physically form one document.

[Signatures appear on next page]

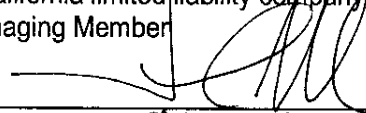
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Where the identity of the parties hereto or the circumstances make it appropriate, the neuter gender includes the masculine and/or feminine, and the singular number includes the plural.

Dated: October 18, 2004

**OLIVERMCMILLAN GLENVIEW, LLC,**  
a California limited liability company

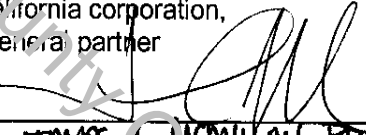
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Managing Member

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Its: JAMES L. MCMULLAN, PRESIDENT

  
Morgan Dene Oliver  
  
James L. McMullan

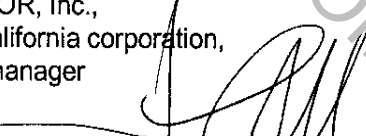
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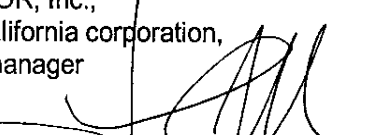
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Its manager

By:   
Its: JAMES L. MCMULLAN, PRESIDENT

**OMH I, LLC,**  
a California limited liability company

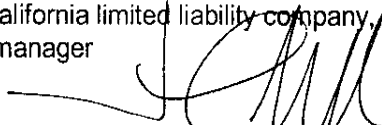
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Its manager

By:   
Its: JAMES L. MCMULLAN, PRESIDENT

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**OLIVERMCMILLAN GASLAMP BUCA, LLC,**  
a California limited liability company

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

By:   
Its: JAMES L. MCMILLAN, PRESIDENT

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