

# UNOFFICIAL COPY

This document was prepared by,  
and after recording, return to:

Joan T. Berg, Esq.  
Dykema Gossett PLLC  
180 North LaSalle Street  
Suite 2700  
Chicago, Illinois 60601

**Permanent Tax Index Number:**

27-03-300-021-0000



Doc#: 0828939039 Fee: \$50.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 10/15/2008 03:03 PM Pg: 1 of 8

## SECOND MODIFICATION OF LOAN DOCUMENTS

THIS MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made as of August 31, 2008, by and among MORRISON ORLAND PARK, LLC, an Illinois limited liability company ("Borrower"), JAMES C. MORRISON, individually and MORRISON FURNITURE, INC., an Illinois corporation (collectively, the "Guarantor") and NEW CENTURY BANK, an Illinois banking corporation, its successors and assigns ("Lender").

### RECITALS:

A. Lender has heretofore made a loan ("Loan") to Borrower in the principal amount of EIGHT HUNDRED THOUSAND and 00/100 DOLLARS (\$800,000.00) as evidenced by a Promissory Note dated November 5, 2007, in the principal amount of the Loan made payable by Borrower to the order of Lender ("Note").

B. The Loan is secured by a Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of November 5, 2007 from Borrower to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on November 6, 2007, as Document No. 0731003135, as modified by a Modification of Loan Documents recorded with the Recorder's Office on June 30, 2008 as Document No. 0818231113 (collectively, the "Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto ("Property"), (i) that certain Assignment of Rents and Leases dated as of November 5, 2007, from Borrower to Lender and recorded in the Recorder's Office on November 6, 2007, as Document No. 0731003135 (the "Assignment of Leases"); (ii) that certain Environmental Indemnity Agreement dated as of November 5, 2007 from Borrower and Guarantor to Lender (the "Indemnity Agreement"); and (iv) certain other loan documents (the Note, the Mortgage, the Assignment of Leases, the Indemnity Agreement, the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

C. The Loan is further secured by a Guaranty of Payment dated as of November 5, 2007 from Guarantor to Lender (the "Guaranty").



# UNOFFICIAL COPY

D. Borrower desires to amend the Loan Documents in order to extend the Maturity Date of the Note to November 5, 2008.

## AGREEMENTS:

NOW, THEREFORE, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreements by Lender to modify the Loan Documents, as provided herein, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Maturity Date. The Maturity Date of the Note is extended to November 5, 2008. Any reference in the Note, the Mortgage or any other Loan Document to the Maturity Date shall mean November 5, 2008.

2. Representations and Warranties of Borrower. Borrower hereby represents, covenants and warrants to Lender as follows:

(a) The representations and warranties in the Mortgage and the other Loan Documents are true and correct as of the date hereof.

(b) There is currently no Event of Default (as defined in the Mortgage) under the Note, the Mortgage or the other Loan Documents and Borrower does not know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Note, the Mortgage or the other Loan Documents.

(c) The Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, they continue to be the legal, valid and binding obligations of Borrower enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

(d) There has been no material adverse change in the financial condition of Borrower, Guarantor or any other party whose financial statement has been delivered to Lender in connection with the Loan from the date of the most recent financial statement received by Lender.

(e) As of the date hereof, Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

(f) Borrower is validly existing under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Agreement and to perform the Loan Documents as modified herein. The execution and delivery of this Agreement and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Borrower. This Agreement has been duly executed and delivered on behalf of Borrower.

# UNOFFICIAL COPY

3. **Title Policy.** As a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause Lawyers Title Insurance Corporation to issue an endorsement to Lender's Title Insurance Policy Case No. 11020972 (the "**Title Policy**"), as of the date this Agreement is recorded, reflecting the recording of this Agreement and insuring the first priority of the lien of the Mortgage, subject only to the exceptions set forth in the Title Policy as of its date of issuance and any other encumbrances expressly agreed to by Lender.

4. **Reaffirmation of Guaranty.** Guarantor ratifies and affirms the Guaranty and agrees that the Guaranty is in full force and effect following the execution and delivery of this Agreement. The representations and warranties of Guarantor in the Guaranty are, as of the date hereof, true and correct and Guarantor does not know of any default thereunder. The Guaranty continues to be the valid and binding obligation of Guarantor, enforceable in accordance with its terms and Guarantor has no claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in the Guaranty.

5. **Expenses.** As a condition precedent to the agreements contained herein, Borrower shall pay all out-of-pocket costs and expenses incurred by Lender in connection with this Agreement, including, without limitation, title charges, recording fees, appraisal fees and attorneys' fees and expenses.

6. **Miscellaneous.**

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

(b) This Agreement shall not be construed more strictly against Lender than against Borrower or Guarantor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, Guarantor and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, Guarantor and Lender each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Agreement. Each of the parties to this Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering this Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The signatories hereto state that they have read and understand this Agreement, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

(c) Notwithstanding the execution of this Agreement by Lender, the same shall not be deemed to constitute Lender a venturer or partner of or in any way associated with Borrower or Guarantor nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower, Guarantor and Lender each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or

# UNOFFICIAL COPY

implied, that are not embodied in the Loan Documents and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower, Guarantor and Lender; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(e) This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(f) Any references to the "Note", the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Note, the Mortgage and the other Loan Documents as amended hereby. The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

(g) This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

(h) Time is of the essence of each of Borrower's obligations under this Agreement.

7. **Customer Identification - USA Patriot Act Notice; OFAC and Bank Secrecy Act.** Lender hereby notifies Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56, signed into law October 26, 2001) (the "Act"), and Lender's policies and practices, Lender is required to obtain, verify and record certain information and documentation that identifies Borrower, which information includes the name and address of Borrower and such other information that will allow Lender to identify Borrower in accordance with the Act. In addition, Borrower shall (a) ensure that no person who owns a controlling interest in or otherwise controls Borrower or any subsidiary of Borrower is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control ("OFAC"), the Department of the Treasury or included in any Executive Orders, (b) not use or permit the use of the proceeds of the Loan to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, and (c) comply, and cause any of its subsidiaries to comply, with all applicable Bank Secrecy Act ("BSA") laws and regulations, as amended.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have executed this Agreement dated as of the day and year first above written.

**MORTGAGOR:**

**MORRISON ORLAND PARK, LLC,**  
an Illinois limited liability company

By: James C. Morrison  
Name: James C. Morrison  
Title: Manager

By: Marc Morrison  
Name: Marc Morrison  
Title: Manager

**COBYPANTORS:**

**MORRISON FURNITURE, INC.**  
An Illinois corporation

By: James C. Morrison  
Name: James C. Morrison  
Title: President

James C. Morrison  
JAMES C. MORRISON, individually

**LENDER:**

**NEW CENTURY BANK,**  
an Illinois banking corporation

By: JoAnn Wang  
Name: JoAnn Wang  
Title: SVP

# UNOFFICIAL COPY

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that James Morrison, individually and as a Manager of Morrison Orland Park, LLC, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, and individually appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 26<sup>th</sup> day of September, 2008.

My Commission Expires: 7/23/10

*Linda M Busch*  
\_\_\_\_\_  
Notary Public



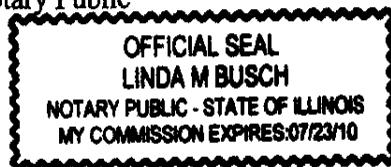
STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Marc Morrison, a Manager of Morrison Orland Park, LLC, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 26<sup>th</sup> day of September, 2008.

My Commission Expires: 7/23/10

*Linda M Busch*  
\_\_\_\_\_  
Notary Public



# UNOFFICIAL COPY

STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF COOK     )

The undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that James Morrison the President of Morrison Furniture, Inc., an Illinois corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 26<sup>th</sup> day of September, 2008.

Linda M Busch  
NOTARY PUBLIC  
OFFICIAL SEAL  
LINDA M BUSCH  
NOTARY PUBLIC - STATE OF ILLINOIS  
MY COMMISSION EXPIRES 07/10/10

STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF COOK     )

The undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that JOANN WONG, the SENIOR VICE PRESIDENT of New Century Bank, an Illinois banking corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 26<sup>th</sup> day of September, 2008

Lady McGuire  
NOTARY PUBLIC

(SEAL)

OFFICIAL SEAL  
LADY MCGUIRE  
NOTARY PUBLIC - STATE OF ILLINOIS  
MY COMMISSION EXPIRES 07/10/12

# UNOFFICIAL COPY

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF REAL ESTATE**

Lot 7 in Orland Park Crossing, being a subdivision of part of Section 3, Township 36 North, Range 12 East of the Third Principal Meridian, according to the plat thereof recorded September 15, 2005 as Document Number 0525845136, in Cook County, Illinois.

Permanent Tax Index Number: 27-03-300-021-0000