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Cook County Recorder 39.00



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RECORDING REQUESTED BY, AND  
WHEN RECORDED RETURN TO:

HOLLYWOOD ENTERTAINMENT CORPORATION  
9275 S.W. Peyton Lane  
Wilsonville, Oregon 97070  
Attn: Donald J. Ekman, Esq.

Loan No. 324393

SUBORDINATION, NONDISTURBANCE,  
AND ATTORNMENT AGREEMENT

THIS AGREEMENT (the "Agreement") made and entered into <sup>effective</sup> this 20<sup>th</sup> day of MARCH, 2002, by and between HOLLYWOOD ENTERTAINMENT CORPORATION, an Oregon corporation ("Tenant"), whose address is 9275 S.W. Peyton Lane, Wilsonville, Oregon 97070, ARLINGTON, LLC, an Illinois limited liability company ("Borrower") whose address is 180 North Michigan Avenue, Suite 200, Chicago, Illinois 60601 and COLUMN FINANCIAL, INC., a Delaware corporation, its successors and assigns ("Lender"), whose address is 3414 Peachtree Road, N.E., Suite 1140, Atlanta, Georgia 30326-1113

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CE

RECITALS:

- A. Lender has agreed to make or has made a mortgage loan ("loan") to Borrower in the amount of EIGHTEEN MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS (\$18,250,000.00), to be secured by a Deed to Secure Debt (the "Deed of Trust") on the real property (the "Premises") legally described in Exhibit A attached hereto; and
- B. Tenant is the present lessee under a lease dated July 17, 1999, of which a Memorandum of Lease was recorded on 3/29/00 in Cook County under Document No. 00219793, a portion of the Premises (said lease including amendments, if any, being referred to as the "Lease"); and
- C. Lender requires that Tenant subordinate the Lease and its interest in the Premises in all respects to the lien of the Deed of Trust and that Tenant attorn to Lender, and acknowledge that the Lease is in full force and effect; and

BOX 333-CTI

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D. In return, Lender is agreeable to not disturbing Tenant's possession of the portion of the Premises covered by the Lease (the "Demised Premises"), so long as Tenant is not in default under the Lease.

NOW, THEREFORE, the parties hereby agree as follows:

1. Subordination. So long as Tenant's occupancy is not disturbed as provided in Section 2 below, the rights of Tenant in, to, and under the Lease, and the Demised Premises are hereby subjected and subordinated, and shall remain in all respects and for all purposes subject and subordinate, to the lien of the Deed of Trust, and to any and all renewals, modifications, and extensions thereof, and any and all other instruments held by Lender as security for the loan.

2. Tenant Not to be Disturbed. So long as Tenant is not in default (beyond any period given Tenant by the terms of the Lease to cure such default) in the payment of rent or additional rent or in the performance of any of the terms, covenants, or conditions of the Lease on Tenant's part to be performed, (a) Tenant's possession of the Demised Premises, or any extension or renewal rights therefor in the Lease, shall not be diminished or interfered with by Lender, and Tenant's occupancy of the Demised Premises shall not be disturbed by Lender during the term of the Lease or any such extensions or renewals thereof, and (b) Lender will not join Tenant as a party defendant in any action or proceeding foreclosing the Deed of Trust unless such joinder is necessary to foreclose the Deed of Trust and then only for such purpose and not for the purpose of terminating the Lease.

3. Tenant to Attorn to Lender. If Lender shall become the owner of the Demised Premises, or the Demised Premises shall be sold by reason of foreclosure or other proceedings brought to enforce the Deed of Trust, or the Demised Premises shall be transferred by deed in lieu of foreclosure, the Lease shall continue in full force and effect as a direct lease between the then owner of the Demised Premises and Tenant, and Tenant hereby attorns to Lender or any other such owner as its lessor, said attornment to be effective and self-operative without the execution of any further instruments; provided, however, that Lender or such other owner shall not be

(a) liable for any act or omission of any prior lessor (including Borrower as lessor), except to the extent Lender continues such act or omission, provided, however, that nothing herein shall limit Borrower's or Lender's responsibility during the time they hold title to, or have possession of, the Demised Premises for Borrower's maintenance and repair responsibilities or for breach of the covenant of quiet enjoyment under the Lease; or

(b) subject to any offsets or defenses which Tenant might have against any such prior lessor, unless Tenant shall have delivered to Lender written notice of the default which gave rise to such offset or defense and permitted Lender the same right to cure such default as permitted Borrower under the Lease; or

(c) bound by any prepayment of rent or additional rent which Tenant might have paid, except as otherwise expressly required by the terms of the Lease; or

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- (d) bound to return any security deposit unless Lender has actually received that security deposit.

Notwithstanding anything to the contrary in this Agreement or the Lease, if Lender acquires Borrower's interest in the Demised Premises, then Lender's liability for its obligations under the Lease and this Agreement shall be limited to Lender's interest in the Premises and the rents, income and profits therefrom. Tenant shall not look to any other property or assets of Lender or the property or assets of any of the partners, shareholders, directors, officers and principals, direct and indirect, of Lender in seeking either to enforce Lender's obligations under the Lease and this Agreement or to satisfy a judgment for Lender's failure to perform such obligations.

4. Purchase Option. Any option or rights contained in the Lease, or otherwise, to acquire any or all of the Demised Premises are hereby made subject and subordinate to the rights of Lender under the Deed of Trust and any acquisition of any or all of the Demised Premises made by Tenant during the term of the Deed of Trust shall be made subordinate and subject to the Deed of Trust.

5. Lender's Option to Cure Borrower's Default. Tenant agrees that Borrower shall not be in default under the Lease unless written notice specifying such default is given to Lender. Tenant agrees that Lender shall have the right to cure such default on behalf of Borrower within thirty (30) days after the receipt of such notice. Tenant further agrees not to invoke any of its remedies under the Lease until said thirty (30) days have elapsed, or during any period that Lender is proceeding to cure such default with due diligence, or is diligently taking steps to obtain the right to enter the Demised Premises and cure the default. Notwithstanding the foregoing, nothing herein shall preclude Tenant from maintaining or repairing the Demised Premises pursuant to Sections 6.1(d) and 7.2 of the Lease.

6. Assignment of Lease. Tenant acknowledges that Borrower's interest has been assigned to Lender as security under the Deed of Trust. Neither this assignment nor any receipt or collection of rents pursuant to this assignment shall cause Lender to have any duty, liability, or obligation under the Lease, or any extension or renewal thereof, unless and until Lender becomes owner of the Demised Premises and then subject to the limitations set forth in Section 7 above.

7. Rental Payment. Until such time as Tenant is otherwise notified in writing by Lender, it shall make all rental payments under the Lease to Borrower as provided therein. Borrower hereby releases and discharges Tenant of and from any liability to Borrower resulting from Tenant's payment to Lender in accordance with this Agreement.

8. Successors and Assigns. This Agreement and each and every covenant, agreement, and other provision hereof shall be binding upon and shall inure to the benefit of the parties hereto, and their heirs, administrators, representatives, successors, and assigns.

9. Effective Date. This Agreement shall become effective upon execution and delivery by and to each party hereto and recordation of the Agreement in the real property records of the county in which the Premises are located.


[Signature Page(s) to follow]

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

LENDER:


**COLUMN FINANCIAL, INC.,**  
a Delaware corporation

By:   
Name: Timothy J. Meyer  
Title: Senior Vice President

BORROWER:

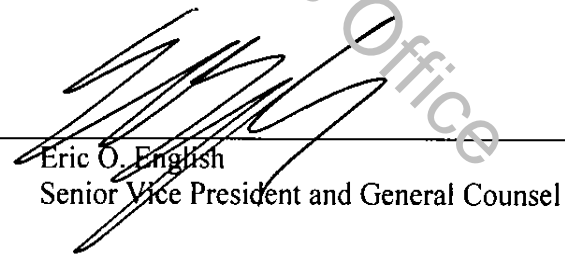
**ARLINGTON, LLC,**  
an Illinois limited liability company

By: M&J/Retail Operations-GP Inc.,  
an Illinois corporation, its managing member

By:   
Its: Per

TENANT:

**HOLLYWOOD ENTERTAINMENT CORPORATION,** an Oregon corporation

By:   
Eric O. English  
Senior Vice President and General Counsel

[Acknowledgment Page(s) Follow(s)]

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## [Acknowledgment of Lender]

STATE OF ILLINOIS )  
 )  
COUNTY OF COOK ) SS.

On 26, 2002, before me, JANE E. PRICE, a Notary Public in and for said County and State, personally appeared TIMOTHY J. MURPHY, 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 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.

Signature: Jane E. Price



## [Acknowledgment of Borrower]

STATE OF IL )  
 )  
COUNTY OF COOK ) SS.

On March 8, 2002, 2002, before me, JENNIFER L. HARSHBARGER, a Notary Public in and for said County and State, personally appeared MARC R. WICKOW, 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 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.

Signature: Jennifer L. Harshbarger

(seal)



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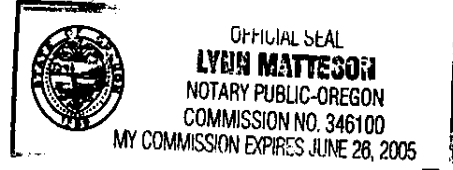
## [Acknowledgment of Tenant]

STATE OF OREGON )  
 )  
COUNTY OF CLACKAMAS ) ss.

On March 5<sup>th</sup>, 2002, before me, Lynn Matteson, a Notary Public in and for said County and State, personally appeared Eric O. English, 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 executed same in his authorized capacity, and that by his 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.

Signature: *Lynn Matteson*



(seal)

Property of Cook County Clerk's Office

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## EXHIBIT A

### Legal Description

Street Address: 1-115 West Rand Road, Arlington Heights, Illinois 60004

Permanent Tax Identification Numbers: 03-17-302-074-000  
03-17-302-075-000  
03-17-302-077-000

#### **PARCEL 1:**

That part of Lot 2 in Hardee's Rand Road Subdivision, being a subdivision of parts of the West 1/2 of the Southwest 1/4 of Section 17, and the East 1/2 of the Southeast 1/4 of Section 18, lying southwesterly of the center line of Rand Road, all in Township 42 North, Range 11, East of the Third Principal Meridian, according to the plat thereof recorded July 16, 1986 as Document 86297345, and a 0.019 acre parcel south of said Lot 2, described as follows:

Beginning at the easterly most corner of said Lot 2; thence South 42 degrees 02 minutes 44 seconds West, 568.13 feet to a Southerly line of said Lot 2; thence North 89 degrees 47 minutes 42 seconds West, 28.95 feet along the said Southerly line of said Lot 2, to a point 96.40 feet, as measured along said Southerly line, east of a corner of said Lot 2; thence North 47 degrees 49 minutes 39 seconds West, 186.71 feet to a South line of said Lot 2; thence North 89 degrees 47 minutes 42 seconds West, 27.62 feet along the last described South line to a point 373.47 feet, as measured on said South line, east of the West line of the Southwest 1/4 of Section 17, aforesaid; thence North 47 degrees 57 minutes 52 seconds West, 194.53 feet; thence North 31 degrees 32 minutes 09 seconds West, 157.43 feet to a Westerly line of said Lot 2; thence North 42 degrees 00 minutes 35 seconds East along said Westerly line, 10.81 feet to a Southwesterly line of said Lot 2; thence North 47 degrees 59 minutes 25 seconds West along said Southwesterly line, 325 feet to a Northwest line of said Lot 2; thence North 42 degrees 00 minutes 35 seconds East along said Northwest line, 550.00 feet to the South line of Rand Road (said South line also being the northeasterly line of said Lot 2); thence South 47 degrees 59 minutes 25 seconds East along said South line, 246.30 feet to a corner of Lot 1 in Hardee's Rand Road Subdivision, aforesaid; thence South 42 degrees 00 minutes 35 seconds West, 230.00 feet; thence South 47 degrees 59 minutes 25 seconds East, 175 feet; thence North 42 degrees 00 minutes 35 seconds East, 230 feet to the South line of Rand Road; thence South 47 degrees 59 minutes 25 seconds East, 478.67 feet to the place of beginning, all in Cook County, Illinois.

#### **PARCEL 2:**

A perpetual non-exclusive easement established pursuant to a grant of easement dated July 10, 1990 and recorded July 26, 1990 as Document 90359319 over, across and upon the following described property for use and maintenance of a storm water retention pond for the benefit of Parcel 1:

#### **PARCEL 2A: (Arlington Grove Portion)**

That part of the West 1/2 of the Southwest 1/4 of Section 17 and the East 1/2 of the Southeast 1/4 of Section 18, lying southwesterly of the center line of Rand Road, all in Township 42 North, Range 11, East of the Third Principal Meridian described as follows:

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Commencing at the most southwesterly corner of Lot 2 in Hardee's Subdivision, being a subdivision of parts of the West 1/2 of the Southwest 1/4 of said Section 17 and the East 1/2 of the Southeast 1/4 of said Section 18, lying southwesterly of the center line of Rand Road, according to the plat thereof recorded July 16, 1986 as Document 86297345, said point being on a line 900 feet north of and parallel with the South line of the East 1/2 of the Southeast 1/4 of said Section 18, a distance of 90.69 feet West of the East line of the Southeast 1/4 of said Section 18; thence North 42 degrees 02 minutes 18 seconds East along the West line of said Lot 2, a distance of 120 feet for a point of beginning; thence North 03 degrees 44 minutes 40 seconds West, 142 feet; thence North 02 degrees 08 minutes 16 seconds East, 127.88 feet; thence North 42 degrees 02 minutes 18 seconds East, 48 feet to a point on the West line of said Lot 2; thence South 47 degrees 57 minutes 42 seconds East along the West line of Lot 2 for a distance of 183.80 feet to a bend point of said Lot 2; thence South 42 degrees 02 minutes 18 seconds West along the West line of said Lot 2 for a distance of 245.13 feet to the point of beginning, in Cook County, Illinois; and

## **PARCEL 2B: (Southeast Portion)**

That part of the Lot 2 in Hardee's Rand Road Subdivision, being a subdivision of parts of the West 1/2 of the Southwest 1/4 of Section 17 and the East 1/2 of the Southeast 1/4 of Section 18 lying southwesterly of the center line of Rand Road, all in Township 42 North, Range 11, East of the Third Principal Meridian, according to the plat thereof recorded July 16, 1986 as Document 86297345, described as follows:

Beginning at the most southwesterly corner of said Lot 2, said point being on a line 900 feet north of and parallel with the South line of the East 1/2 of the Southeast 1/4 of said Section 18, 90.69 feet West of the East line of the Southeast 1/4 of said Section 18; thence North 42 degrees 02 minutes 18 seconds East along the Westerly line of said Lot 2 for a distance of 354.43 feet; thence South 31 degrees 32 minutes 09 seconds East, 157.43 feet; thence South 47 degrees 57 minutes 52 seconds East, 194.53 feet to a point on the Southerly line of said Lot 2; thence North 89 degrees 46 minutes 28 seconds West along the Southerly line of said Lot 2 for a distance of 373.47 feet to a bend point on the Southerly line of said Lot 2, said point being on the West line of the Southwest 1/4 of said Section 17; thence South 89 degrees 49 minutes 58 seconds West along the Southerly line of said Lot 2 for a distance of 90.69 feet to the point of beginning, in Cook County, Illinois.

## **PARCEL 3:**

Lot 1 in the Annex of Arlington Phase II, being a subdivision in the West 1/2 of the Southwest 1/4 of Section 17, Township 42 North, Range 11, East of the Third Principal Meridian, according to the plat thereof recorded June 23, 1999 as Document 99569378, in Cook County, Illinois (excepting therefrom that part conveyed to the State of Illinois, Department of Transportation by Warranty Deed dated December 13, 1999 and recorded January 25, 2000 as Document 00062458 and more particularly described as follows:

## **PARCEL A:**

That part of Lot 1 in the Annex of Arlington Phase II, being a subdivision in the West 1/2 of the Southwest 1/4 of Section 17, Township 42 North, Range 11, East of the Third Principal Meridian, according to the plat thereof recorded June 23, 1999 as Document 99569378, described as follows: Beginning at the most northerly corner of said Lot 1; thence South 47 degrees 57 minutes 52 seconds East along the Northeasterly line of said Lot 1, being also the Southwesterly line of Rand Road per Document 12592035, 428.04 feet to the northeast corner of



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said Lot 1; thence South 00 degrees 01 minutes 28 seconds West along the East line of said Lot 1, being also the West line of Arlington Heights Road, 20.19 feet to an intersection with a line 15.00 feet, as measured at right angles, southwesterly of and parallel with the Northeasterly line of said Lot 1; thence North 47 degrees 57 minutes 52 seconds West along said last described parallel line, 441.56 feet to the Northwesterly line of said Lot 1; thence North 42 degrees 03 minutes 40 seconds East along the Northwesterly line of said Lot 1, 15.00 feet to the point of beginning, in Cook County, Illinois.

## **PARCEL B:**

That part of Lot 1 in the Annex of Arlington Phase II, being a subdivision in the West 1/2 of the Southwest 1/4 of Section 17, Township 42 North, Range 11, East of the Third Principal Meridian, according to the plat thereof recorded June 23, 1999 as Document 99569378, described as follows: Commencing at the northeast corner of said Lot 1; thence South 00 degrees 01 minutes 28 seconds West along the East line of said Lot 1, being also the West line of Arlington Heights Road, 20.19 feet to an intersection with a line 15.00 feet, as measured at right angles, southwesterly of and parallel with the Northeasterly line of said Lot 1; thence North 47 degrees 57 minutes 52 seconds West along said last described parallel line, 13.46 feet to a point of beginning at the intersection of said last described parallel line with a line 10.00 feet, as measured at right angles, west of and parallel with the East line of said Lot 1; thence continuing North 47 degrees 57 minutes 52 seconds West parallel with the Northeasterly line of said Lot 1, 40.00 feet; thence South 23 degrees 58 minutes 12 seconds East, 73.09 feet to a point on a line 10.00 feet, as measured at right angles, west of and parallel with the East line of said Lot 1, said point being 40.00 feet south of the point of beginning; thence North 00 degrees 01 minutes 28 seconds East parallel with the East line of said Lot 1, 40.00 feet to the point of beginning, in Cook County, Illinois.

## **PARCEL 4:**

An easement for the benefit of Parcel 1 as created by Easement Agreement dated April 1, 1999 and recorded April 5, 1999 as Document 99322489 from Cosmopolitan Bank and Trust Company, as Successor Trustee to First Bank of Oak Park, as Trustee under Trust Agreement dated June 19, 1973 and known as Trust Number 10095, to American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated July 20, 1994 and known as Trust Number 118561-01, and Arlington, LLC, an Illinois limited liability company, for the purpose of parking and for ingress and egress over the following described land:

The North 88 feet of the South 738.33 feet of the East 155.00 feet (except that part thereof taken for widening of Arlington Heights Road) of that part of the West 1/2 of the Southwest 1/4 of Section 17, Township 42 North, Range 11, East of the Third Principal Meridian, lying south of the center of Rand Road, in Cook County, Illinois.

## **PARCEL 5:**

An easement for the benefit of Parcels 1 and 3 as created by Easement Agreement dated March 31, 1999, and recorded April 5, 1999, as Document 99322488 from American National Bank and Trust Company of Chicago as Trustee under Trust Agreement dated July 20, 1004, and known as Trust Number 118561-01 and Arlington, LLC., an Illinois limited liability company for the purpose of parking and for ingress and egress, over the property fully described therein.

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**PARCEL 6:**

An easement for Parcels 1 and 3 as created by Easement Agreement dated June 3, 1999, and recorded June 14, 1999, as Document 99569377 from American National Bank and Trust Company of Chicago as Trustee under Trust Agreement dated July 20, 1994, and known as Trust Number 118561-01 and Arlington, LLC, an Illinois limited liability company for the purpose of utility easements over the property fully described therein.

**PARCEL 7:**

Easements for the benefit of Parcels 1 and 3 as created by Declaration of Grant of Driveway, Utility and Cross Access Easements recorded July 7, 1994, as Document 94592544, made by the Travelers Insurance Company, a Corporation of Connecticut, to the owners of record of those certain adjoining parcels, and the terms, provisions and conditions contained therein.

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