

TERMINATION AGREEMENT

(Lincoln Village 7-9 #526)



0020431326

THIS TERMINATION AGREEMENT (this "Agreement") made as of the 12th day of November, 2001 ("Execution Date") by and between BGP LINCOLN VILLAGE, L.L.C., an Illinois limited liability company ("Landlord") and PLITT THEATRES, INC., a Delaware corporation ("Tenant").

Recitals

A. On June 12, 1981, Lincoln Village Theatre, Ltd. ("Original Landlord") entered into a Theatre Sublease (the "Sublease") pursuant to which Original Landlord sub-leased to Essaness Theatres Corporation of Illinois ("Original Lessee") and Original Lessee subleased from Original Landlord certain property in Chicago, Illinois, more particularly described therein and on Exhibit A hereto.

B. On September 1, 2001, Landlord herein acquired the interest of Original Landlord in the Sublease.

C. Tenant is successor by merger to Original Lessee.

D. The term of the Sublease is scheduled to expire on December 31, 2002.

E. The parties desire to provide for the early termination of the Sublease as herein provided.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. **Recitals.** The Recitals are incorporated herein as though fully set forth. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Sublease.

2. **Early Termination.** Subject to the conditions hereafter set forth, the Sublease shall terminate and Tenant shall vacate the Leased Premises on January 7, 2002 (the "Closing Date") as if the Closing Date were the scheduled expiration date set forth in the Sublease. On the Closing Date, Tenant will leave the Demised Premises in its then as-is condition, without representation or warranty of any kind or nature whatsoever about the condition thereof (subject to paragraph 6 hereof). Tenant may elect to "go dark" at any time after the Settlement Date (as hereafter defined) without prejudice to any of the parties' rights and obligations under this Agreement. Tenant represents that it has no knowledge (without independent inquiry) of any condition existing on the Leased Premises in violation of any environmental statutes, rules, regulations or order of any federal, state or municipal government.

DEC ACCUM 10F1

9

3. **Termination Fee.** In consideration of the early termination of the Sublease as provided herein, Landlord agrees to pay to Tenant \$147,880.63 by certified funds or wire transfer (the "**Termination Fee**") on November 30, 2001 (the "**Settlement Date**"). On the Execution Date, Landlord shall pay to Tenant Twenty-Five Thousand Dollars (\$25,000.00) as a deposit (the "**Deposit**"), which Deposit (and interest accrued thereon) shall be credited against the Termination Fee on the Settlement Date.

4. **Intentionally deleted.**

5. **Letter of Credit.** The parties acknowledge that the letter of credit which was forwarded as security for Tenant's obligations under the Sublease has been drawn by Original Landlord, and Tenant is under no obligation to replenish the same.

6. **FF&E.** Landlord confirms that upon expiration or earlier termination of the Sublease, Tenant shall have the right to remove all furniture, fixtures, equipment and other personal property owned, leased or licensed by Tenant (the "**FF&E**"), and Landlord hereby grants Tenant a license for five (5) business days after the Closing Date to remove such FF&E. Tenant shall repair damage to the Leased Premises caused by the removal of the FF&E, provided, that Tenant shall be under no obligation to remove bolts or repair bolt holes left from the removal of the auditoria seats.

7. **Landlord Representations.** Landlord represents and warrants that (i) Landlord has all requisite power and authority to execute, deliver and perform this Agreement and has taken any action required by law to authorize the execution and delivery of this Agreement; (ii) this Agreement constitutes a legal, valid and binding obligation of Landlord enforceable against Landlord in accordance with its terms; (iii) no consent is required of the holder of any mortgage or other lien superior to the Sublease or by the holder of the lessor's interest under the underlying ground lease to which the Sublease is subject, prior to Landlord's taking any action required hereby (including without limitation, the holder of any mortgage encumbering Landlord's interest in the Leased Premises) other than that of First Bank & Trust Company of Illinois ("**Mortgagee**"); (iv) Landlord is the holder of the Sublessor's interest under the Sublease; (v) it acknowledges that Tenant has paid or prepaid all rent and other sums due under the Sublease through October 31, 2001, other than common area maintenance expenses and real estate taxes, which are to be reconciled in accordance with Section 10 hereof and Landlord is not aware of any breach of any representation, covenant or warranty by Tenant under the Sublease; and (vi) Landlord is the owner of the fee interest in the Leased Premises, and the provisions hereof shall run with the land notwithstanding the termination of the ground lease to which this Sublease is subject or any merger of estates in the land.

8. **Tenant Representations.** Tenant represents and warrants that (i) subject to the provisions of Paragraph 13 hereof, Tenant has all requisite power and authority to execute, deliver and perform this Agreement and has taken any action required by law to authorize the execution and delivery of this Agreement, (ii) subject to the provisions of Paragraph 13 hereof, this Agreement constitutes a legal, valid and binding obligation of Tenant enforceable against Tenant in accordance with its terms; (iii) Tenant is the holder of the Sublessee's interest under the Sublease; (iv) Tenant is not aware of any breach of any representation, covenant or warranty by Landlord under the Sublease; (v) the Sublease and the FF&E are not the sole assets of Tenant

in the State of Illinois, and no bulk sales certificate is required as a result of this Agreement; (vi) prior to the Settlement Date Tenant shall have paid rent for September and October, 2001 in the amount of \$12,143.00 to Landlord; and (vii) Tenant shall be responsible for its share of real estate taxes and common area maintenance charges through the Closing Date.

9. **Tenant Release.** Effective as of the Closing Date, Tenant hereby releases and discharges Landlord and its officers, directors and employees, their heirs, executors, administrators, successors and assigns and its related entities (collectively, "**Landlord Releasees**") from all actions, causes of action, suits, debts, sums of money, accounts, reckonings, bonds, bills (from parties other than Tenant Releasees {as hereinafter defined}) with respect to periods prior to the Closing Date, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, admiralty or equity, which Tenant or its successors and assigns ever had, now have or hereafter can, shall or may, have against the Landlord Releasees for, upon, or by reason of any matter, cause or thing whatsoever insofar as it relates to the Sublease or any agreements ancillary thereto, except with respect to (i) any breach of the Sublease (as modified by this Agreement) by Landlord arising or accruing after the date hereof or (ii) any breach by Landlord of its representations, covenants and warranties under this Agreement.

10. **Landlord Release.** Effective as of the Closing Date, Landlord hereby releases and discharges Tenant its officers, directors and employees, their heirs, executors, administrators, successors and assigns and their respective related entities (collectively, "**Tenant Releasees**") from all actions, causes of action, suits, debts, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, admiralty or equity (from parties other than Landlord Releasees) which Landlord or its successors and assigns ever had, now have or hereafter can, shall or may, have against the Tenant Releasees, for, upon, or by reason of any matter, cause or thing whatsoever insofar as it relates to the Sublease or any agreements ancillary thereto, including without limitation with respect to pre-petition rents or other expenses, except with respect to (i) any breach of the Sublease (as modified by this Agreement) by Tenant arising or accruing after the date hereof or (ii) any breach by Tenant of its representations, covenants and warranties under this Agreement. Notwithstanding the foregoing, the parties agree that Tenant's obligation to pay common area maintenance expenses, if any, and real estate taxes in accordance with the Sublease through the Closing Date will survive the Closing Date. Landlord will perform such reconciliation as is reasonably appropriate for such charges as soon as is practicable after the end of the applicable measuring year in which the Closing Date occurs.

11. **Exclusive/Right of First Refusal.** Landlord agrees that for ten (10) years after the Closing Date, it will not lease, sublease, sell or otherwise permit the Leased Premises to be used as a motion picture theatre exhibiting so-called "first-run" motion pictures (or their equivalent). In addition (and without limiting the restriction contained in the preceding sentence), Landlord (including without limitation its successors and assigns) shall not enter into an agreement (a "**Competitor Agreement**") with any other motion picture theatre chain (i.e., a company which by itself or through its affiliates owns or operates in excess of ten (10) motion picture screens, such entity hereafter call a "**Competitive Chain**") with respect to the Leased Premises, unless Landlord first grants Tenant a right of first refusal in accordance with this

Paragraph 11. Prior to entering into any Competitor Agreement, Landlord shall provide Tenant with notice of the Competitor Agreement (the "Offer Notice"), which shall be in the form of a letter of intent or term sheet executed by Landlord and such Competitive Chain outlining in detail the principal business terms thereof. It is the express understanding of the parties that the Offer Notice shall only contain terms and conditions which are reasonably capable of being satisfied by Tenant. Tenant may exercise such right of first refusal within fifteen (15) days after receipt of the Offer Notice by giving notice to Landlord that Tenant desires to enter into an agreement with Landlord upon substantially the same terms and conditions as contained in the Competitor Agreement. In such event, Landlord and Tenant shall execute an agreement for the space covered by the Competitor Agreement on terms and conditions consistent with the Offer Notice and such other terms and conditions reasonably satisfactory to the parties consistent with the Offer Notice. If Tenant fails to give timely notice of its exercise of such right of first refusal, it will be deemed to have refused the Offer Notice. In such event, Landlord shall promptly notify Tenant if, as and when the Competitor Agreement is executed by Landlord and the Competitive Chain, which notice shall be accompanied by a copy of the Competitor Agreement. If Landlord and the Competitive Chain do not execute the Competitor Agreement on terms and conditions substantially consistent with those set forth in the Offer Notice within six (6) month after the date the Offer Notice is given, then this right of first refusal will remain in full force and effect as to future offers and Landlord shall not enter into any Competitor Agreement unless and until Landlord again follows the procedures set forth in this Paragraph 11.

12. **Notice.** Any notice, request, consent, approval, waiver or other communication under this Agreement or the Sublease ("Notice"), except as otherwise specifically provided, shall only be deemed to have been given if the same is in writing and is served personally or is mailed by certified mail, postage prepaid or sent prepaid by a nationally recognized overnight courier service, and sent to Landlord at:

BGP Lincoln Village, L.L.C.
8707 North Skokie Boulevard
Suite 230
Skokie, IL 60077

And to Tenant at:

c/o Loews Cineplex United States
711 Fifth Avenue
New York, New York 10022
Attn: President

with a copy to:

LOEWS THEATRE MANAGEMENT CORP.
Attention: General Counsel
711 Fifth Avenue
New York, New York 10022
Attn: General Counsel

Or at such other addresses that the parties may designate in accordance with this Section 12.

13. **Bankruptcy Code Matters.**

Tenant has advised Landlord that on February 15, 2001, Tenant filed a voluntary petition for relief under Title 11 of the U. S. Bankruptcy Code (the "**Code**") in the United States Bankruptcy Court for the Southern District of New York (the "**Court**"). The effectiveness of this Agreement is contingent upon approval hereby by the Court. It is the express understanding of the parties that Tenant shall not be required to seek any approvals unless and until the consent of Landlord's lender required in paragraph 17 has been procured.

14. **Successors and Assigns.** This Agreement shall run with the land and inure to the benefit of and be binding upon Landlord and Tenant and their respective successors and assigns. Nothing in this Agreement, express or implied, is intended to confer on any person other than the parties hereto and their respective successors and assigns any rights, remedies or obligations or liabilities under or by reason of this Agreement.

15. **Survival.** All representations, warranties and agreements contained in this Agreement shall survive the Closing Date.

16. **Entire Agreement.** This Agreement constitutes the entire agreement between Landlord and Tenant relative to the subject matter hereof and this Agreement may only be altered, amended or revoked by an instrument in writing signed by both Landlord and Tenant. It is understood that there are no oral agreements or representations between the parties hereto affecting this Agreement, and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements or representations and understandings, if any, between the parties hereto with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Agreement. There are no other representations or warranties between the parties or the parties and their agents or representatives and all reliance with respect to representations is solely upon the representations and agreements contained in this Agreement.

UNOFFICIAL COPY

0020431326

17. **Landlord Contingency.** It shall be a condition precedent to the effectiveness of this Agreement that Mortgagee execute the Consent attached hereto within fifteen (15) days of the Execution Date. If Mortgagee fails to do so within such period, this Agreement shall be null and void and of no further force or effect.

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

Prepared by, and when Recorded,
Return to :

Fran Glushakow Smith
Fran Glushakow-Smith, Esq.
Ballard Spahr Andrews & Ingersoll, LLP
300 E. Lombard Street
Baltimore, Md. 21202-3268

BGP LINCOLN VILLAGE, L.L.C.

By: Scott H. Gentill
Name: SCOTT H. GENTILL
Title: Member

PLITT THEATRES, INC.

By: John C. McBride, Jr.
Name: John C. McBride, Jr.
Title: Senior Vice President & General Counsel

CONSENT

The Undersigned, holder of a Note secured by the Leased Premises, consents to the terms of the Termination Agreement.

LENDER

FIRST BANK & TRUST COMPANY OF ILLINOIS

By: [Signature]
Its: President

UNOFFICIAL COPY

EXHIBIT A

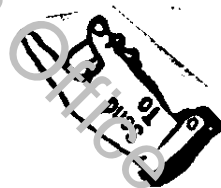
0020431326

The following is the legal description of the real estate upon which the Lincoln Village Theatre was constructed:

That part of the fractional North East Quarter of Section 2, Township 40 North, Range 13, East of the Third P.M., described as follows: Beginning at the intersection of the Westerly line of the right of way of the Sanitary District of Chicago and the center line of N. Lincoln Ave., thence Northerly along the Westerly line of the right of way of the Sanitary District of Chicago a distance of 495.55 feet to the point of beginning of the herein described tract; thence Westerly on a line at 90° to the last described line a distance of 154.0 feet; thence Southerly on a line 90° to the last described line a distance of 102.33 feet; thence Easterly on a line of 90° to the last described line a distance of 154.0 feet to the Westerly line of the right of way of the Sanitary District at Chicago; thence Northerly along said Westerly right of way line, a distance of 102.33 feet to the place of beginning, all in the City of Chicago, Cook County, Illinois;

Parcel #13-02-220-027, known as 6100 N. Lincoln Ave., Chicago, IL.

Return to CARSON MORRIS
First American Title Insurance Co.
NATIONAL Commercial Services
Two Penn Center PLAZA
Suite 1910
Philadelphia, PA 19102



UNOFFICIAL COPY

Property of Cook County Clerk's Office



UNOFFICIAL COPY

ACKNOWLEDGMENT

0020431326

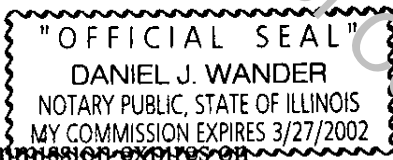
City of Skokie

SS:

State of Illinois

BEFORE ME, the undersigned Notary Public in and for said City and State, this 22 day of August, 2001, personally appeared Scott H. Gordell, known to me individually as the Manager / member of BGP Lincoln Village, L.L.C., an Illinois limited liability company, who, being duly sworn, acknowledged that the statements therein are true and that he/she did sign the foregoing instrument as his/her free act and deed, and in his/her capacity as Manager / member of BGP Lincoln Village, L.L.C., and that the same is the duly authorized act and deed of said company.

WITNESS my hand and official seal this 22 day of August, 2001



[Signature]
Notary Public

My commission expires on _____.

City of New York

SS:

State of New York

BEFORE ME, the undersigned Notary Public in and for said City and State, this 12th day of March, 2001, personally appeared John C. McBride, Jr., known to me individually as the S.V.P. / Lead Guard of Plitt Theatres, Inc., a Delaware corporation, who, being duly sworn, acknowledged that the statements therein are true and that he did sign the foregoing instrument as his/her free act and deed, and in his/her capacity as S.V.P. / Lead Guard of Plitt Theatres, and that the same is the duly authorized act and deed of said company.

WITNESS my hand and official seal this 12th day of March, 2001.

[Signature]
Notary Public

My commission expires on 4/12/2001.

DAVID L. BADAIN
NOTARY PUBLIC, State of New York
No. 02BA04-5010956
Qualified in Westchester County
Commission Expires Apr. 12, 2002

UNOFFICIAL COPY

City of Palatine

SS:

State of Illinois

0020431326

BEFORE ME, the undersigned Notary Public in and for said City and State, this 21 day of Nov., 2001, personally appeared C. Richard Shuler known to me individually as the President/CEO of First Bank Illinois, a _____, who, being duly sworn, acknowledged that the statements therein are true and that he/she did sign the foregoing instrument as his/her free act and deed, and in his/her capacity as Pres./CEO of First Bank Illinois, and that the same is the duly authorized act and deed of said company.

WITNESS my hand and official seal this 21 day of Nov, 2001.

Dana L. Dack
Notary Public

My commission expires on _____

