

UNOFFICIAL COPY

2

210552



Eugene "Gene" Moore Fee: \$44.00
Cook County Recorder of Deeds
Date: 07/01/2003 01:58 PM Pg: 1 of 11

RECORDING REQUESTED BY, AND
WHEN RECORDED RETURN TO:

PEDERSEN & HOUFF
161 North Clark Street, Suite 3100
Chicago, Illinois 60601
Attn: Mary C. Muehlstein, Esq.

Loan No. _____

SUBORDINATION, NONDISTURBANCE, AND ATTACHMENT AGREEMENT

THIS AGREEMENT (the "Agreement") made and entered into this 25th day of May, 2003, by and among HOLLYWOOD ENTERTAINMENT CORPORATION, an Oregon corporation ("Tenant"), whose address is 9275 S.W. Peyton Lane, Wilsonville, Oregon 97070, FIFTH THIRD BANK (Chicago), a Michigan banking corporation ("Lender"), whose address is 233 S. Wacker Drive, Suite 400, Chicago, Illinois 60609, Attention: Jason McMeen, and RYAN GARFIELD LIMITED PARTNERSHIP, an Illinois limited partnership ("Borrower"), whose address is 5401 S. Wentworth Avenue, Chicago, Illinois 60609.

RECITALS:

A. Lender has agreed to make or has made a Mortgage loan ("Loan") to Borrower in the amount of Four Million Five Hundred Thousand and No/Dollars (\$ 4,500,000.00), to be secured by a Mortgage (the "Mortgage") 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 22, 1997, of 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 Mortgage and that Tenant attorn to Lender, and acknowledge that the Lease is in full force and effect; and

BOX 430

UNOFFICIAL COPY

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 Mortgage, 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 Mortgage unless such joinder is necessary to foreclose the Mortgage 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 Mortgage, 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 that Tenant shall retain all rights and remedies available to Tenant at law or pursuant to the Lease; or
 - (b) subject to any offsets or defenses which Tenant might have against any such prior lessor except to the extent such offsets or defenses arise out of acts or omissions of Lender or such other owner, and provided further, that nothing herein shall limit Tenant's offsets or defenses for Lender's or such other owner's responsibilities under the Lease during the time Lender or such other owner holds title to, or has possession of, the Demised Premises, for breach of the maintenance and repair responsibilities or for breach of the covenant of quiet enjoyment under the Lease, or for any offsets or defenses which arise therefrom; 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

UNOFFICIAL COPY

(d) except as expressly provided by the terms of the Lease, bound by any material amendment or modification of the Lease or by any waiver or forbearance on the part of any such prior lessor made or given without the written consent of Lender or any subsequent holder of the Deed of Trust, which consent shall not be unduly withheld or delayed, provided that Lender shall be deemed to have consented to an amendment or modification in the event Lender or such other owner fails to respond within thirty (30) days after receipt of a written request for consent to such modification or amendment, which request shall contain a written warning that Lender's consent will be deemed to have been provided upon failure of Lender to respond within such thirty (30) day period;

or

(e) bound to return or otherwise account to any security deposit unless Lender or such other owner has actually received that security deposit.

(f) bound by, or liable for any breach of, any representation or warranty or indemnity agreement contained in the Lease or otherwise made by any prior landlord (including Landlord); or

(g) personally liable or obligated to perform any such term, covenant or provision, such new owner's liability being limited in all cases to its interest in the Real Estate.

Tenant shall be under no obligation to pay rent to Lender or any such other owner until Tenant receives written notice from Lender or any such other owner that it has succeeded to Borrower's interest under the Lease.

4. Purchase Option. Intentionally Omitted.

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 Mortgage. 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 3 above. In addition, except as expressly provided in the Lease, unless the written consent of Lender is first obtained, no cancellation, surrender, or modification may be made of the Lease and no rental shall be paid other than as now provided in the Lease.

UNOFFICIAL COPY

7. Mortgage, Condemnation, Casualty. Lender agrees that the Mortgage shall not cover or encumber and shall not be construed as subjecting in any manner to the lien thereof any of Tenant's improvements or trade fixtures, furniture, equipment or other personal property at any time placed or installed in the Property.

8. 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 any such written notice.

9. 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.

10. Tenant acknowledges that Landlord has collaterally assigned to Mortgagee all leases affecting the Real Estate, including the Lease, and the rents and other amounts, including without limitation, lease termination fees, if any, due and payable under the leases. In connection therewith, Tenant agrees that, upon receipt of a notice of default by Landlord under such assignment and a demand by Mortgagee for direct payment to Mortgagee of the rents due under the Lease, Tenant will honor such demand and make all subsequent rent payments directly to Mortgagee. Tenant further agrees that any Lease termination fees payable under the Lease shall be paid jointly to Landlord and Mortgagee.

11. Notices. All notices or other communications required or permitted to be given pursuant to the provisions hereof shall be deemed served upon delivery or, by express courier, or if mailed, upon the first to occur of receipt of certified mail, return receipt requested and addressed to the address of Tenant or Lender appearing below:

"BORROWER"

Ryan Garfield Limited Partnership
5491 S. Wentworth Avenue
Chicago, Illinois 60609
Attn: Yarell Green

With a copy to:

Marshall Dean
Attorney at Law
616 E. Roosevelt Rd #100
Wheaton, IL 60187

"LENDER"

Fifth Third Bank (Chicago)
233 S. Wacker Drive, Suite 400
Chicago, Illinois 60606
Attn: Jason McMeel

With a copy to:

Pederson & Houpt
161 North Clark Street, Suite 3100
Chicago, Illinois 60601
Attn: Mary C. Muehlstein, Esq.

With a copy to:

"TENANT"

Hollywood Entertainment Corporation
9275 SW Peyton Lane
Wilsonville, Oregon 97070
Attention: Director, Lease Compliance

UNOFFICIAL COPY

provided, however, any party shall have the right to change its address for notice hereunder by the giving of written notice thereof to the other party in the manner set forth in this Agreement.

12. Effectiveness of Agreement. This Agreement shall become effective upon the execution and delivery by and to each party hereto.

[Signature page(s) follow(s)]

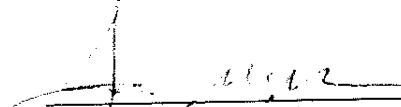
Property of Cook County Clerk's Office

UNOFFICIAL COPY

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

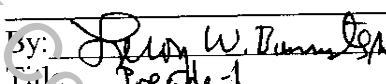
LENDER:

FIFTH THIRD BANK (Chicago),
a Michigan banking corporation


By: _____
Title: _____

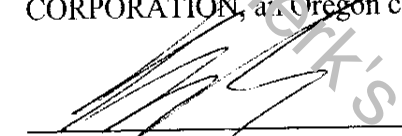
BORROWER:

RYAN GARFIELD LIMITED PARTNERSHIP,
an Illinois limited partnership


By: _____
Title: _____

TENANT:

HOLLYWOOD ENTERTAINMENT
CORPORATION, an Oregon corporation


By: Eric O. English
Title: Senior Vice President,
Legal Affairs

[Acknowledgment page(s) follow(s)]

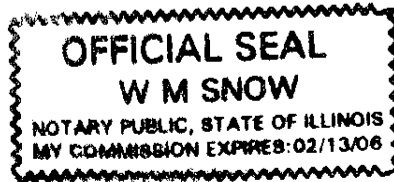
UNOFFICIAL COPY

[Acknowledgment of Lender]

STATE OF ILLINOIS)
)
COUNTY OF COOK) ss.

On June 10, 2003, before me, W. M. SNOW, a Notary Public in and for said County and State, personally appeared JASON BUCHHEIN, A.V.P.E., 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. *(Fifth Third Bank Chicago)*

WITNESS my hand and official seal.



Signature: [Handwritten Signature] (seal)

[Acknowledgment of Borrower]

STATE OF Illinois)
)
COUNTY OF Cook) ss.

On June 10, 2003, before me, Gloria J. Lendino, a Notary Public in and for said County and State, personally appeared George Bonnetto, 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: [Handwritten Signature] (seal)

UNOFFICIAL COPY**EXHIBIT A****LEGAL DESCRIPTION OF THE PREMISES**

LOTS 1 TO 20, BOTH INCLUSIVE, IN BLOCK 8 IN PETER SHIMP'S SUBDIVISION OF THAT PART OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 9, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF THE CHICAGO ROCK ISLAND & PACIFIC RAILROAD, ALSO THE VACATED ALLEY LYING EAST OF AND ADJOINING THE EAST LINE OF SAID BLOCK 8 AND SAID EAST LINE EXTENDED NORTH TO THE SOUTHEAST CORNER OF BLOCK 5, IN PETER SHIMP'S SUBDIVISION AFORESAID, ALSO THE VACATED ALLEY RUNNING NORTH AND SOUTH LYING WEST OF AND ADJOINING LOTS 1,4,5,8,9,12,13,16,17, AND 20 IN BLOCK 8 AND LYING EAST OF AND ADJOINING LOTS 2,3,6,7,10,11,14,15,18 AND 19 IN BLOCK 8 BETWEEN LASALLE STREET AND THE CHICAGO ROCK ISLAND AND PACIFIC RAILROAD IN SAID BLOCK 8, ALL IN COOK COUNTY, ILLINOIS.

LOTS 1 TO 20, BOTH INCLUSIVE, IN BLOCK 8 IN PETER SHIMP'S SUBDIVISION OF THAT PART OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 9, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF THE RAILROAD,

THE STRIP OF LAND 290.28 FEET LONG AND NORTH AND SOUTH, BY 12 FEET EAST AND WEST, LYING EAST OF AND ADJOINING THE EAST LINE OF THE SAID BLOCK 5 BEING A STRIP OF LAND FORMERLY AN ALLEY WHICH ALLEY HAS BEEN VACATED, ALL IN COOK COUNTY, ILLINOIS.

THE VACATED EAST AND WEST ALLEY LYING BETWEEN SAID BLOCKS 5 AND 8 IN PETER SHIMP'S AFORESAID.

LOTS 1 TO 18, BOTH INCLUSIVE (EXCEPT THE WEST 7 FEET OF LOTS 2,3,6,7,10,11,14,15 AND 18) IN BLOCK 3, ALL IN PETER SHIMP'S SUBDIVISION OF THAT PART OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 9, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF THE ROCK ISLAND RAILROAD.

ALSO

THE SOUTH 1/2 OF THE 16 FOOT ALLEY LYING NORTH OF AND ADJOINING THE NORTH LINE AND THE NORTH LINE EXTENDED OF LOTS 1 AND 2 (EXCEPT THE WEST 7 FEET OF LOT 2) IN BLOCK 3 IN PETER SHIMP'S SUBDIVISION, AFORESAID.

ALSO

ALL OF THE NORTH-SOUTH 12 FOOT ALLEY EXTENDING THROUGH SAID BLOCK 3, ALL IN PETER SHIMP'S SUBDIVISION AFORESAID.

UNOFFICIAL COPY

LOTS 1 THROUGH 20 IN BLOCK 4 TOGETHER WITH THE VACATED 12 FOOT NORTH-SOUTH ALLEYS (2) EXTENDING THROUGH SAID BLOCK 4 AND EAST AND ADJOINING SAID BLOCK 4 (EXCEPTING RESPECTIVELY, THE SOUTH ONE FOOT OF LOT 19, THE SOUTH ONE FOOT OF THE WEST 1.46 FEET OF LOT 20 AND THE SOUTH ONE FOOT OF THE 12-FOOT ALLEY ADJACENT TO SAID LOTS 19 AND 20) ALL IN PETER SHIMP'S SUBDIVISION OF THAT PART OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 9, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF THE ROCK ISLAND RAILROAD.

ALSO

THE VACATED PORTION OF WEST 54TH STREET, DESCRIBED AS THE EAST 112 FEET OF WEST 54TH STREET (EXCEPT THE WEST ONE FOOT OF THE NORTH 1/2 OF SAID E. 112 FEET OF WEST 54TH STREET) LYING BETWEEN THE EAST LINE OF S. LASALLE STREET AND THE CHICAGO ROCK ISLAND AND PACIFIC RAILROAD RIGHT-OF-WAY AS VACATED BY ORDINANCE PASSED FEBRUARY 5, 1912 AND RECORDED MARCH 25, 1912 AS DOCUMENT 4934289.

THE 1 FOOT ABUTTING THE WEST LINE OF LASALLE STREET OF THE FOLLOWING PARCELS:

(A) LOTS 1 AND 4 IN BLOCK 6 IN PETER SHIMP'S SUBDIVISION OF THAT PART OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 9, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF THE ROCK ISLAND RAILROAD.

(B) LOT 6 THROUGH 12 BOTH INCLUSIVE IN BOWE'S RESUBDIVISION OF LOT 5, THE SOUTH 6 FEET OF LOT 6, LOTS 7,8,9,10,11,12,13,16, AND 17 IN BLOCK 6 IN PETER SHIMP'S SUBDIVISION AFORESAID.

(C) THE ALLEY SOUTH AND ABUTTING BLOCK 6 AND NORTH ABUTTING BLOCK 7 AFORESAID.
(D) LOTS 1,4,5,8, AND 9 (EXCEPT THE SOUTH 1 FOOT OF LOT 5) IN BLOCK 7 IN PETER SHIMP'S SUBDIVISION AFORESAID.

(E) LOT 1 AND THE PRIVATE ALLEY NORTH OF AND ABUTTING LOT 1, IN BOWES AND CRUIKSHANK'S SUBDIVISION OF LOTS 12, 13,16,17 AND THE SOUTH 1 FOOT OF LOT 9 IN BLOCK 7 IN PETER SHIMP'S SUBDIVISION AS AFORESAID.

THE WEST HALF OF VACATED LASALLE STREET LYING SOUTH OF THE SOUTH LINE OF 54TH STREET EXTENDED EAST AND LYING NORTH OF THE NORTH LINE OF GARFIELD BOULEVARD EXTENDED EAST, IN COOK COUNTY, ILLINOIS.

LOTS 1,2,3,4,14,15,18 AND LOT 6 (EXCEPT THE SOUTH 6 FEET OF SAID LOT 6 AND EXCEPT THE WEST 7 FEET OF SAID LOTS 2,3,14,15,18 AND LOT 6 AS DESCRIBED) ALL IN BLOCK 6 IN PETER SHIMP'S SUBDIVISION OF THAT PART OF THE SOUTHEAST 1/4 OF SECTION 9, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF THE ROCK ISLAND RAILROAD.

LOTS 1 THROUGH 12 (EXCEPT THE WEST 7 FEET OF LOTS 1,2,3, AND 4) IN BOWES'

UNOFFICIAL COPY

SUBDIVISION AS AFORESAID, ABUTTING THE WEST LINE OF LASALLE STREET AND LOTS 5 TO 12 IN BOWES' RESUBDIVISION OF THE PART OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 9, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF THE ROCK ISLAND RAILROAD.

ALSO

LOTS 1, 2, AND 3 AND THE PRIVATE ALLEY NORTH OF AND ADJOINING SAID LOTS 1, 2, AND 3 IN BOWES AND CRUIKSHANK'S SUBDIVISION OF LOTS 12, 13, 16, AND 17 AND THE SOUTH 1 FOOT OF LOT 9 IN BLOCK 7 IN PETER SHIMP'S SUBDIVISION, AFORESAID.

ALLEYS: ALL OF THE 12 FOOT ALLEY EXTENDING NORTH AND SOUTH THROUGH BLOCKS 6 AND 7 IN PETER SHIMP'S SUBDIVISION, AFORESAID, ALSO THE EAST AND WEST 16 FOOT ALLEY LYING SOUTH OF AND ADJOINING BLOCK 6 AND NORTH OF AND ADJOINING BLOCK 7 IN PETER SHIMP'S SUBDIVISION, AFORESAID.

EXCEPT THE EAST ONE FOOT ABUTTING THE WEST LINE OF LASALLE STREET OF LOTS 1, 4, 5, 8, AND 9 IN BLOCK 7, AS AFORESAID AND EXCEPT THE EAST ONE FOOT ABUTTING THE WEST LINE OF LASALLE STREET OF LOTS 1, 2, AND 3 AND THE PRIVATE ALLEY NORTH AND ABUTTING IS BOWES AND CRUIKSHANK'S SUBDIVISION AS AFORESAID.

ALSO

THE SOUTH 1 FOOT OF LOT 19 AND THE SOUTH 1 FOOT OF THE WEST 1.46 FEET OF LOT 20, ALSO THE SOUTH 1 FOOT OF THE 12-FOOT VACATED ALLEY ADJACENT SAID LOTS 19 AND 20 IN BLOCK 4 IN PETER SHIMP'S SUBDIVISION OF THAT PART OF THE SOUTHEAST 1/4 TO THE SOUTHEAST 1/4 OF SECTION 9, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF THE ROCK ISLAND RAILROAD.

THE VACATED PORTION OF WEST SOUTH STREET DESCRIBED AS THE WEST 1 FOOT OF THE NORTH 1/2 OF THE EAST 112 FEET OF SAID WEST SOUTH STREET LYING BETWEEN THE EAST LINE OF S. LASALLE STREET AND THE C.R.I. & P. RAILROAD RIGHT OF WAY AS SAID STREET WAS VACATED BY ORDINANCE PASSED FEBRUARY 15, 1912 AS DOCUMENT NO. 4934289.

THE NORTH 1/2 OF WEST 54TH STREET LYING BETWEEN THE EAST LINE OF S. LASALLE STREET AND THE WEST LINE OF THE C.R.I. & P. RAILROAD RIGHT OF WAY (EXCEPT THE EAST 112 FEET OF WEST 54TH STREET AS DESCRIBED).

Address: 5401 S. WENTWORTH AVENUE, CHICAGO, ILLINOIS 60609

| | | |
|------|--------------------|--------------------|
| PIN: | 20-09-419-032-0000 | 20-09-420-039-0000 |
| | 20-09-420-035-0000 | 20-09-421-027-0000 |
| | 20-09-420-036-0000 | 20-09-421-033-0000 |
| | 20-09-420-037-0000 | 20-09-421-037-0000 |
| | 20-09-420-038-0000 | 20-09-421-038-0000 |