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Doc#: 0513733206
Eugene "Gene" Moore Fee: \$40.00
Cook County Recorder of Deeds
Date: 05/17/2005 11:36 AM Pg: 1 of 9

SUBORDINATION, NON-DISTRUBANCE AND ATTORNMENT AGREEMENT

Property Owner: 58 E. Oak LLC
Manager: Loews Chicago Cinemas, Inc.
Tenant: Esquire Theater Chicago, LLC
Mortgagee: Suburban Bank and Trust
Agreement Date: March 24, 2005
Property Address: 58 E. Oak Street
Chicago, IL
PIN's: 17-03-204-043-0000
17-03-204-044-0000

After Recording Return To:

Suburban Bank & Trust Co.
Loan Operations Center
372 N. Wood Dale Road
Wood Dale, IL
60191

Attn: Marta Rozycki

Box 400-CTCC

9/10
8250574 DA CB

Property of Cook County Clerk's Office

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SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement") is made and entered as of the 24th day of March 2005, by and between Loews Chicago Cinemas, Inc. ("Manager"), Esquire Theater Chicago, LLC ("Tenant"), 58 E. Oak, LLC ("Owner"), and Suburban Bank and Trust ("Mortgagee").

RECITALS:

- A. Mortgagee is the holder of a certain Mortgage, dated 3/24/05 ("Mortgage"), as from time to time modified, encumbering the Real Estate (hereinafter defined) and securing a principal indebtedness in an amount equal to \$ 12,400,000.00
- B. Manager's predecessor in interest has entered into a Management Agreement (such management agreement, together with all amendments and modifications thereof, hereinafter being referred to as the "Management Agreement") dated August 13, 1987 with Tenant's predecessor-in-interest, pursuant to which Manager is the supervisor and manager of certain premises ("Premises") consisting of Theater space in the building ("Building") on the parcel of land ("Land") legally described in Exhibit A attached hereto (the Land and Building herein being collectively referred to as the "Real Estate").
- C. Tenant leases from Owner the Theater space in the Building pursuant to a lease dated January 15, 1990.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

1. Manager represents and warrants to Mortgagee that the Management Agreement (including the amendments, supplements and other agreements described on Exhibit B) constitutes the entire agreement between Manager and Tenant with respect to the Premises and there are no other agreements, written or verbal, governing the Manager with respect to the Premises.
2. Manager and Tenant have executed and delivered to Mortgagee a certain Estoppel Certificate (the "Estoppel Certificate") dated on or about the date hereof. The provisions of the Estoppel Certificate are hereby incorporated into this Agreement as if fully set forth in the Agreement in their entirety, and Manager acknowledges that Mortgagee will be relying on the statements made in the Estoppel Certificate in determining whether to disburse the proceeds of the loan secured by the Mortgage and whether to enter into this Agreement.
3. Prior to pursuing any remedy available to Manager under the Management Agreement, at law or in equity as a result of any failure of Tenant to perform or observe any covenant, condition, provision or obligation to be performed or observed by Tenant under the Management Agreement (any such failure hereinafter referred to as a "Tenant's Default"), Manager shall (a) provide Mortgagee with written notice of Tenant's Default specifying the nature thereof, the section of the Management Agreement under which the default arose and (b) allow Mortgagee not less than thirty (30) days following receipt of such notice of Tenant's Default to cure the same; provided, however, that, if such Tenant's Default is not readily curable within such thirty (30) day period, Manager shall not pursue any remedy available to it as a result of any Tenant's Default unless Mortgagee fails to notify Manager within such thirty (30) day period that

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Mortgagee has elected to cure such Tenant's Default, commences to cure the same within such period and thereafter diligently proceeds with such cure to completion. For purposes of this Paragraph 3, an Tenant's Default shall not be deemed to have occurred until all grace and/or cure periods applicable thereto under the Management Agreement have lapsed without Tenant having effectuated a cure thereof.

4. Subject to the terms of this Agreement, Manager covenants with Mortgagee that the Management Agreement shall be subject and subordinate to the lien and all other provisions of the Mortgage and to all modifications and extensions thereof (provided that nothing contained in said Mortgage as so modified or extended shall affect the rights and obligations of Manager hereunder or under the Management Agreement), to the full extent of all principal, interest and all other amounts now or hereafter secured thereby and with the same force and effect as if the Mortgage had been executed and delivered prior to the execution and delivery of the Management Agreement. Without limiting the generality of the foregoing subordination provision, Manager hereby agrees that any of its right, title and interest in and to insurance proceeds and condemnation awards (or other similar awards arising from eminent domain proceedings) with respect to damage to or the condemnation (or similar taking) of any of the Real Estate, shall be subject and subordinate to Mortgagee's right, title, and interest in and to such proceeds and awards.
5. Manager acknowledges that Owner and Tenant have collaterally assigned to Mortgagee all management agreements affecting the Real Estate, including the Management Agreement, and all amounts, including, without limitation, Management Agreement fees, if any, due and payable under such management agreements. In connection therewith, Manager agrees that, upon receipt of a notice of a default by Owner under such assignment and a demand by Mortgagee for direct payment to Mortgagee of the Net Cash Flow due under the Management Agreement (a "Payment Notice"), Manager will honor such demand and make all subsequent payments directly to Mortgagee. Owner and Tenant agree that Manager shall have the right to rely on any purported Payment Notice without further inquiry concerning the validity thereof and that any payments made pursuant to a Payment Notice shall be deemed payments made to Tenant in the manner required by the Management Agreement.
6. Mortgagee agrees that so long as Manager is not in default under the Management Agreement, subject to the notice and cure periods provided to Manager thereunder:
 - a. Manager shall not be named or joined as a party in any suit, action or proceeding for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage (unless Manager is a necessary party under applicable law); and
 - b. The possession by Manager of the Premises and Manager's rights thereto shall not be disturbed, affected or impaired by, nor will the Management Agreement or the term thereof be terminated or otherwise materially adversely affected by (i) any suit, action or proceeding for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage, or by any judicial sale or execution or other sale of the Premises, or any deed given in lieu of foreclosure, or (ii) any default under the Mortgage.
7. If Mortgagee or any future holder of the Mortgage shall become the owner of the Real Estate by reason of foreclosure of the Mortgage or other exercise of its remedies thereunder, or if the Real Estate shall be sold as a result of any action or proceeding to foreclose the Mortgage or transfer of ownership by deed given in

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lieu of foreclosure (any a "Foreclosure Event"), the Management Agreement shall continue in full force and effect, without necessity for executing any new Management Agreement, as a direct Management Agreement between Manager and the new owner of the Real Estate as "Owner" upon all the same terms, covenants and provisions contained in the Management Agreement (subject to the exclusions set forth in subparagraph (b) below), and in such event:

- a. Manager shall be bound to such new owner under all of the terms, covenants and provisions of the Management Agreement for the remainder of the term thereof (including the extension periods, if Manager elects or has elected to exercise its options to extend the term), the Manager hereby agrees to attorn to such new owner and to recognize such new owner as "Owner" under the Management Agreement without any additional documentation to effect such attornment (provided, however, if applicable law shall require additional documents evidencing such attornment);
 - b. Such new owner shall be bound to Manager under all of the terms, covenants and provisions of the Management Agreement for the remainder of the term thereof (including the extension periods, if Manager elects or has elected to exercise its options to extend the term); provided, however, that such new owner shall not be:
 - (i) liable for any act or omission of any prior owner (including Tenant) that is not then continuing under the Management Agreement;
 - (ii) subject to any offsets or defenses which Manager has against any prior owner (including Tenant) unless Manager shall have provided Mortgagee with (A) notice of the Tenant's Default that gave rise to such offset or defense and (B) the opportunity to cure the same, all in accordance with the terms of Section 4 above;
 - (iii) bound by payment of Net Cash Flow or any other amounts payable under the Management Agreement which Manager might have paid more than thirty days prior to the date the before the date such payment was first due under the Management Agreement with respect to periods after the succession date ;
 - (iv) bound by any future amendment or modification of the Management Agreement governing amounts due from Manager to Tenant thereunder made without Mortgagee's consent; or
 - (v) bound by, or liable for any breach of, any representation or warranty or indemnity agreement contained in the Management Agreement or otherwise made by any prior owner (including Tenant) with respect to events occurring prior to succession.
8. In the event Mortgagee succeeds to the interest of Tenant under the Management Agreement as a result of a Foreclosure Event, Mortgagee's obligations and liabilities under the Management Agreement shall never extend beyond Mortgagee's (or its successors or assigns) interest in the Real Estate (including insurance and condemnation awards), Mortgagee's (or its successors or assigns) interest in the Management Agreement and the proceeds from any sale or other disposition of the Real Estate by Mortgagee (or such successor or assign).
9. Any notices, communications and waivers under this Agreement shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) sent by overnight express carrier, addressed in each case as follows:

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To Mortgagee: Suburban Bank and Trust
150 Butterfield Road
Elmhurst, Illinois 60126
Attention:

To Manager: Loews Chicago Cinemas, Inc.
c/o Loews Cineplex Theatres
711 Fifth Avenue
New York, New York 10022
Attn: President

Loews Theatre Management Corp.
711 Fifth Avenue
New York, New York 10022
Attn: Real Estate Counsel

To Owner: 58 E. Oak LLC
412 North Paulina
Chicago, Illinois 60622
Attention: Mark Hunt

To Tenant: Esquire Theater Chicago, LLC
412 North Paulina
Chicago, Illinois 60622
Attention: Mark Hunt

With a copy to: Jeffrey L. Richman, Esq.
Jenner & Block LLP
One IBM Plaza
Chicago, Illinois 60611

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other parties hereto. All notices sent pursuant to the terms of this Paragraph shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then upon receipt or the inability to deliver on account of a change of address with respect to which no notice was given or refusal to accept delivery thereof.

10. Manager acknowledges and agrees that Mortgagee will be relying on the representations, warranties, covenants and agreement of Manager contained herein. By executing this Agreement, Owner and Tenant hereby represent and warrant to Manager that the Collateral Assignment of Owners Interest in Theatre Management Agreement made by Tenant, North Community Bank and consented to by Manager dated August 7, 2002 has been released and is no longer in effect.
11. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors and assigns and any nominees of Mortgagee, all of whom are entitled to rely upon the provisions hereof. This Agreement shall be governed by the laws of the State of Illinois.
12. This Agreement may be executed in multiple counterparts and all of such counterparts together shall constitute one and the same Agreement.

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- 13. The execution of this Agreement by Manager shall be null and void unless a duplicate original hereof executed and acknowledged by Owner , Tenant and Mortgagee is delivered to Manager on or before May 15, 2005

IN WITNESS WHEREOF, the parties have executed this Agreement on the respective dates set forth below and effective as of the date Executed by Owner.

Manager: LOEWS CHICAGO CINEMAS, INC.

By: [Signature]
 Print Name: Seymour H Smith
 Title: Senior Vice President

Owner: 58 E. Oak LLC

By: [Signature]
 Print Name: Mark Hunt
 Title: Manager

Tenant: Esquire Theater Chicago, LLC

By: 58 E. Oak LLC, its Manager
 By: [Signature]
 Print Name: Mark Hunt
 Title: Manager

Mortgagee: Suburban Bank and Trust

By: [Signature]
 Print Name: Mark Hunt Dan Van Rooyen
 Title: Manager Vice President

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STATE OF NEW YORK)
) SS.
COUNTY OF NEW YORK)

I, Patricia Giardina, a Notary Public in and for the State and County aforesaid, DO
HEREBY CERTIFY that Seymour H. Smith, personally appeared before me and acknowledged that he executed the
foregoing instrument as his own free and voluntary act.

GIVEN under my hand and Notarial Seal, this 24th day of March, 2005.

PATRICIA GIARDINA
Notary Public, State of New York
No. 01G15031601
Qualified in Kings County
Cert. Filed in New York County
Commission Expires 5/1/2006

Patricia Giardina
Notary Public

My Commission Expires: 8/8/2006

STATE OF IL)
) SS.
COUNTY OF DUPAGE)

I, Carol B. Meyer, a Notary Public in and for the State and County aforesaid, DO
HEREBY CERTIFY that MARK HUNT, personally appeared before me and acknowledged that he executed the
foregoing instrument as his own free and voluntary act.

GIVEN under my hand and Notarial Seal, this 24th day of Mar, 2005.

NOTARIAL SEAL
Carol B. Meyer
Notary Public, State of Illinois
My Commission Exp. 08/28/2006

Carol B. Meyer
Notary Public

My Commission Expires: 8/28/06

STATE OF IL)
) SS.
COUNTY OF DUPAGE)

I, Carol B. Meyer, a Notary Public in and for the State and County aforesaid, DO
HEREBY CERTIFY that DAN VAN PROOYEN, personally appeared before me and acknowledged that he executed the
foregoing instrument as his own free and voluntary act.

GIVEN under my hand and Notarial Seal, this 24 day of Mar, 2005.

NOTARIAL SEAL
Carol B. Meyer
Notary Public, State of Illinois
My Commission Exp. 08/28/2006

Carol B. Meyer
Notary Public

My Commission Expires: 8/28/06

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Exhibit B—Amendments and Modifications of Management Agreement

1. Agreement dated 8/13/87 between M&R Management Corporation (“Original Manager”) and 58 E. Oak Building (“Original Owner”)
2. Owner’s Estoppel Certificate made by Original Owner dated 11/3/88
3. Termination of Guaranty of M & R Theatres, Inc. by Original Owner (undated)
4. Assignment and Assumption of Management Agreement between Original Manager and Manager dated 11/3/88
5. Amendment to Theatre Management Agreement between Original Owner and Manager dated 11/3/88
6. Guaranty made by Loews Theatre Management Corp. dated 11/3/88
7. Notice of Assignment of Management Agreement from Original Manager to Original Owner dated 11/3/88
8. Second Amendment to Theatre Management Agreement between 58 East Oak Street Limited Partnership (“58LP”) and Manager dated 2/15/90
9. Assignment by 58LP to Esquire Theatre Limited Partnership (“Esquire”) dated 2/16/90
10. Designation of Representatives by 58LP dated 3/27/90
11. Non-Disturbance Agreement between 58LP, Esquire and Managing Agent dated 2/16/91
12. Letter Agreement between Manager and Esquire dated 12/1/95
13. Third Amendment to Management Agreement between Esquire and Manager dated 3/_/99
14. Order of Bankruptcy Court, Southern District of New York Authorizing Assumption of Contract dated 5/23/02
15. Agreement and Assumption of Theater Management Agreement and Consent of Theatre Manager between Esquire, Esquire Theater Chicago LLC (“Esquire LLC”) and Manager, dated 7/12/02
16. Certification of Working Capital by Esquire and Manager dated 8/12/02
17. Notice of Sale of Theatre from Esquire dated 9/12/02
18. Collateral Assignment of Owners Interest in Theatre Management Agreement between Esquire LLC and North Community Bank, consented to by Manager dated 8/7/02
19. Letter re: Addresses for Notices from M Development dated 11/7/03
20. Designations of Authorized Representatives from Esquire LLC dated 1/28/04 and 12/3/04

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STREET ADDRESS: 58 EAST OAK STREET

CITY: CHICAGO

COUNTY: COOK

TAX NUMBER: 17-03-204-043-0000

LEGAL DESCRIPTION:

LOTS 13, 14, 15, AND 16 (EXCEPT THOSE PARTS THEREOF TAKEN FOR ALLEY) IN COLLIN'S SUBDIVISION OF THE SOUTH 1/2 OF BLOCK 7 IN CANAL TRUSTEES' SUBDIVISION OF THE SOUTH FRACTIONAL 1/2 OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PERMANENT INDEX NUMBERS:

17-03-204-043-0000

17-03-204-044-0000

COMMONLY KNOWN AS:

58 E. OAK

CHICAGO, ILLINOIS

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