



Doc#: 1025218028 Fee: \$54.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 09/09/2010 01:06 PM Pg: 1 of 10

WHEN RECORDED  
RETURN TO:

Mark D. Eisemann  
Lewis, Rice & Fingersh, L.C.  
1010 Walnut, Suite 500  
Kansas City, Missouri 64106

**SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT**

This **SUBORDINATION, NONDISTURBANCE, AND ATTORNMENT AGREEMENT** (this "**Agreement**") is entered into as of July 14, 2010 (the "**Effective Date**"), between **BANK OF AMERICA, N.A.**, a national banking association, in its capacity as Administrative Agent under the Credit Agreement referenced below and for the benefit of Secured Parties, as such term is defined in the Credit Agreement (the "**Mortgagee**"), and **AMERICAN MULTI-CINEMA, INC.**, a Missouri corporation, whose address is 920 Main Street, Kansas City Missouri 64105 ("**Tenant**").

**RECITALS:**

A. Randhurst Shopping Center LLC, a Delaware limited liability company, whose address is c/o J.P. Morgan Investment Management Inc., 245 Park Avenue, New York, New York 10167 ("**Landlord**"), owns the land more particularly described in the attached Schedule A (such real property, including all buildings and improvements located thereon, is herein referred to as the "**Property**").

B. Mortgagee is Administrative Agent for the Secured Parties referenced in that certain Construction Loan Agreement dated as of July 14, 2010 among the Landlord, the Lenders party thereto and the Mortgagee (as the same may have been or may be from time to time amended, restated, supplemented or otherwise modified, the "**Credit Agreement**").

C. The Obligations (as defined in the Credit Agreement) are secured by, among other things, a Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing (herein, as it may have been or may be from time to time renewed, extended, amended or supplemented, called the "**Mortgage**"), recorded or to be recorded in the land records of Cook County, Illinois, covering the Property.

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D. Pursuant to an Amended and Restated Lease dated as of September 25, 2009 (the "Lease"), Landlord demised to Tenant a portion of the Property ("Tenant's Premises"), as more particularly described in the Lease.

E. Tenant and Mortgagee desire to agree upon the relative priorities of their interests in the Property and their rights and obligations if certain events occur.

NOW, THEREFORE, for good and sufficient consideration, Tenant and Mortgagee agree:

1) Definitions

The following terms shall have the following meanings for purposes of this Agreement.

- a) **Foreclosure Event.** A "Foreclosure Event" means: (a) foreclosure under the Mortgage; (b) any other exercise by Mortgagee of rights and remedies (whether under the Mortgage or under applicable law, including bankruptcy law) as holder of the Credit Agreement and/or the Mortgage, as a result of which Successor Landlord becomes owner of the Property; or (c) delivery by Landlord to Mortgagee (or its designee or nominee) of a deed or other conveyance of Landlord's interest in the Property in lieu of any of the foregoing.
- b) **Former Landlord.** A "Former Landlord" means Landlord and any other party that was landlord under the Lease at any time before the occurrence of any attornment under this Agreement.
- c) **Offset Right.** An "Offset Right" means any right or alleged right of Tenant to any offset, defense (other than one arising from actual payment and performance, which payment and performance would bind a Successor Landlord pursuant to this Agreement) or counterclaim against Tenant's payment of Rent or performance of Tenant's other obligations under the Lease, arising (whether under the Lease or other applicable law) from Landlord's breach or default under the Lease.
- d) **Rent.** The "Rent" means any fixed rent or additional rent under the Lease.
- e) **Successor Landlord.** A "Successor Landlord" means any party that becomes owner of the Property as the result of a Foreclosure Event.
- f) **Termination Right.** A "Termination Right" means any right of Tenant to cancel or terminate the Lease or to claim a partial or total eviction arising (whether under the Lease or under applicable law) from Landlord's breach or default under the Lease; however, Tenant's right to terminate the Lease pursuant to that Section of the Lease captioned "Tenant's Covenant to Operate" shall not be deemed a Termination

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Right for purposes of this Agreement, and may be effected by Tenant without complying with the provisions of Section 5 below.

2) **Subordination**

The Lease shall be, and shall at all times remain, subject and subordinate to the Mortgage, the lien imposed by the Mortgage, and all advances made under the Mortgage; however, (i) nothing set forth in this Agreement is intended to subject or subordinate "Tenant's Property" (as defined in the Lease) to the lien of the Mortgage, and (ii) insurance and condemnation proceeds shall be applied in the manner described in the Lease.

3) **Nondisturbance, Recognition and Attornment**

a) ***No Exercise of Mortgage Remedies Against Tenant.*** So long as Tenant is not in default under the Lease beyond any applicable notice and cure periods (an "**Event of Default**"), Mortgagee shall not name or joint Tenant as a defendant in any exercise of Mortgagee's rights and remedies arising upon a default under the Mortgage unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or prosecuting such rights and remedies. In the latter case, (i) Mortgagee may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant's rights under the Lease or this Agreement in such action, and (ii) Successor Landlord shall reimburse Tenant for Tenant's reasonable attorneys' fees incurred in connection with such Foreclosure Event, and if Successor Landlord fails to do so, Tenant may effect an Offset Right to recover such reasonable attorneys' fees from the Rent.

b) ***Nondisturbance and Attornment.*** If Tenant has not committed an Event of Default by Tenant, then, when Successor Landlord takes title to the Property: (a) Successor Landlord shall not terminate or disturb Tenant's possession of Tenant's Premises under the Lease, except in accordance with the terms of the Lease and this Agreement; (b) Successor Landlord shall be bound to Tenant under all the terms and conditions of the Lease (except as provided in this Agreement) (Successor Landlord and Tenant being deemed to have automatically entered into a new lease on the same terms and provisions of the Lease for the remaining balance of the term of the Lease, except as otherwise provided in this Agreement); (c) Tenant shall recognize and attorn to Successor Landlord as Tenant's direct Landlord under the Lease as affected by this Agreement; and (d) the Lease shall continue in full force and effect as a direct lease, in accordance with its terms (except as provided in this Agreement), between Successor Landlord and Tenant.

c) ***Further Documentation.*** The provisions of this Article shall be effective and self-operative without any need for Successor Landlord or Tenant to execute any further documents. Tenant and Successor Landlord shall, however, confirm the provisions of this Article in writing upon request by either of them.

4) **Limitation on Obligations of Successor Landlord**

Notwithstanding anything to the contrary in the Lease or the Mortgage, Successor Landlord shall not be liable for or bound by any of the following matters:

- a) **Claims Against Former Landlord.** Any claim for damages of any kind whatsoever as the result of any breach by Former Landlord that occurred before the date of attornment, unless Tenant shall have given Mortgagee a "Default Notice" and opportunity to cure with respect to such event or occurrence as provided in Section 5 below. Nothing set forth in this Section shall limit (a) Tenant's right to exercise against Successor Landlord any Offset Right otherwise available to Tenant in accordance with the terms of the Lease because of events occurring before or after the date of attornment, or (b) Successor Landlord's obligation to correct any conditions that existed as of the date of attornment and which violate Successor Landlord's obligations as landlord under the Lease, or (c) Tenant's right to exercise self-help to cure Landlord's default and to exercise Offset Rights as permitted by Section 32(C) of the Lease.
- b) **Prepayments.** Any payment of Rent that Tenant may have made to Former Landlord more than 30 days before the date such Rent was first due and payable under the Lease with respect to any period after the date of attornment other than, and only to the extent that, the Lease expressly required such a prepayment.
- c) **Security Deposit.** Any obligation with respect to any security deposited with Former Landlord, unless such security was actually delivered to Mortgagee.
- d) **Modification, Amendment, or Waiver.** Any modification or amendment of the Lease, or any waiver of any terms of the Lease, made without Mortgagee's written consent.
- e) **Surrender, Etc.** Any consensual or negotiated surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant, unless effected unilaterally by Tenant pursuant to the express terms of the Lease.
- f) **Liability.** Any act, omission, default, misrepresentation, or breach of warranty by Former Landlord that occurred before the date of attornment, unless Tenant shall have given Mortgagee a "Default Notice" and opportunity to cure with respect to such event or occurrence as provided in Section 5 below. Nothing set forth in this Section shall limit (a) Tenant's right to exercise against Successor Landlord any Offset Right otherwise available to Tenant in accordance with the terms of the Lease because of events occurring before or after the date of attornment, or (b) Successor Landlord's obligation to correct any conditions that existed as of the date of attornment and which violate Successor Landlord's obligations as landlord under the Lease, or (c) Tenant's right to exercise self-help to cure Landlord's default and to exercise Offset Rights as permitted by Section 32(C) of the Lease.

g) **Construction.** Any obligation to perform any "Construction-Related Obligation" (defined below) under the Lease; provided, however, (i) Successor Landlord agrees that it will fund to Tenant (in accordance with the terms of the Credit Agreement) any tenant improvement funds remaining in the Budget which have been allocated to Tenant's improvements to the extent that the funds have not been previously provided to Landlord, and (ii) the foregoing shall not limit Tenant's right to exercise any Offset Right, abatement right or Termination Right granted Tenant under the Lease for a failure of Landlord to perform any Construction-Related Obligation. As used herein, a "**Construction-Related Obligation**" means any obligation of Landlord under the Lease to make, pay for, or reimburse Tenant for any alterations, demolition, or other improvements or work at the Property, including the Tenant's Premises, but the term shall not be deemed to include (x) any reconstruction obligations of Landlord under the Lease following damage, destruction or condemnation, nor (y) any regular maintenance, repair or replacement obligations of Landlord under the Lease, nor (z) Landlord's obligation under certain circumstances to pay to Tenant Out of Pocket Expenses (as defined in the Lease).

Tenant further acknowledges and agrees that, in the event Mortgagee or any Successor Landlord shall acquire title to the Tenant's Premises or the Property, Tenant agrees that Tenant shall look exclusively to the estate of Mortgagee or Successor Landlord in the Property for the collection of any judgment from Mortgagee or any Successor Landlord, and in no event shall Mortgagee, Successor Landlord, nor any of their respective officers, directors, shareholders, agents, representatives, servants, employees or partners ever be personally liable for such judgment. For purposes of this Agreement, Mortgagee's or Successor Landlord's estate in the Property shall include Mortgagee's or Successor Landlord's equity interest in the Property, interest in all rents and profits from the Property, casualty insurance proceeds related to the Property, and the proceeds of any sales or financings of the Property received by Mortgagee or Successor Landlord.

5) **Mortgagee's Right to Cure**

a) **Notice to Mortgagee.** Notwithstanding anything to the contrary in the Lease or this Agreement, before exercising any Termination Right, Tenant shall provide Mortgagee with notice of the breach or default by Landlord giving rise to same (the "**Default Notice**") and, thereafter, the opportunity to cure such breach or default as provided for below; PROVIDED, HOWEVER, a failure by Tenant to provide a Default Notice to Mortgagee shall not be deemed to impose any liability on Tenant, but the time within which Mortgagee shall be entitled to cure a breach or default by Landlord pursuant to this Agreement shall not commence until such Default Notice is received by Mortgagee.

b) **Mortgagee's Cure Period.** After Mortgagee receives a Default Notice, Mortgagee shall have the same period of time as is available to Landlord under the Lease in which to cure the breach or default by Landlord. Mortgagee shall have no obligation to cure (and shall have no liability or obligation for not curing) any breach or default by Landlord, except to the extent that Mortgagee agrees or undertakes otherwise in writing.



6) **Miscellaneous**

a) **Notices.** All notices or other communications required or permitted under this Agreement shall be in writing and given by certified mail (return receipt requested) or by nationally recognized overnight courier service that regularly maintains records of items delivered. Each party's address is as set forth in the opening paragraph of this Agreement, subject to change by notice under this paragraph. Notices shall be effective the next business day after being sent by overnight courier service, and 3 business days after being sent by certified mail (return receipt requested).

b) **Successors and Assigns.** This Agreement shall bind and benefit the parties, their successors and assigns, any Successor Landlord, and its successors and assigns. If Mortgagee assigns the Mortgage, then upon delivery to Tenant of written notice thereof accompanied by the assignee's written assumption of all obligations under this Agreement, all liability of the assignor shall terminate.

c) **Entire Agreement.** This Agreement constitutes the entire agreement between Mortgagee and Tenant regarding the subordination of the Lease to the Mortgage and the rights and obligations of Tenant and Mortgagee as to the subject matter of this Agreement.

d) **Interpretation; Governing Law.** The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the laws of the state in which the Property is located.

e) **Amendments.** This Agreement may be amended, discharged or terminated, or any of its provisions waived, only by a written instrument executed by the party to be charged.

f) **Execution.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

g) **Mortgagee's Representation.** Mortgagee represents that Mortgagee has full authority to enter into this Agreement, and Mortgagee's entry into this Agreement has been duly authorized by all necessary actions.

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TENANT:

**AMERICAN MULTI-CINEMA, INC.**

By: Ronald Herman  
Ronald Herman, Vice-President

STATE OF MISSOURI    )  
                                  ) SS  
COUNTY OF JACKSON    )

On this 8<sup>th</sup> day of July, 2010, before me, a Notary Public in and for such County and State, personally appeared Ronald Herman, to me known to be a Vice-President of **AMERICAN MULTI-CINEMA, INC.**, a Missouri corporation, and who executed as such officer the foregoing instrument on behalf of such corporation, and such person duly acknowledged the execution of the same to be the act and deed of such corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year last above written.

Debra K. Stokes  
Notary Public

My Commission Expires:

June 13, 2013

**DEBRA K. STOKES**  
Notary Public - Notary Seal  
STATE OF MISSOURI  
Clay County  
My Commission Expires: June 13, 2013  
Commission # 09727280



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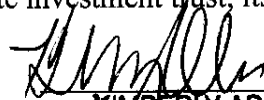
## CONSENT

Landlord consents and agrees to the foregoing Agreement, which was entered into at Landlord's request. The foregoing Agreement shall not alter, waive or diminish any of Landlord's obligations under the Mortgage or the Lease.

### LANDLORD:

**RANDHURST SHOPPING CENTER LLC**, a Delaware limited liability company

By: CLP/SPF Randhurst Trust, a Maryland real estate investment trust, its sole member

By:   
Name: KIMBERLY ADAMS  
Title: Vice President

STATE OF New York )  
 ) ss:  
COUNTY OF New York )

On this 15<sup>th</sup> day of July, 2010, before me, a Notary Public in and for such County and State, personally appeared (Name:) Kimberly Adams, to me personally known, who, being by me duly sworn, did say that she is the (Title:) Vice President of CLP/SPF Randhurst Trust, a Maryland real estate investment trust, the sole member of Randhurst Shopping Center LLC, a Delaware limited liability company, and that such instrument was signed in behalf of such entity by authority of its members and such person acknowledged such instrument to be the free act and deed of such entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year last above written.

  
Notary Public

My Commission Expires:  
8/7/10

TARA M. NYACK  
Notary Public, State of New York  
No. 01NY6046181 Qualified in Suffolk County  
Certificate Filed in New York County  
Commission Expires 8-7-2010

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## SCHEDULE A DESCRIPTION OF THE PROPERTY

PARCEL 1: LOTS 1 AND 2 (EXCEPTING FROM SAID LOT ONE THAT PART TAKEN BY DEPARTMENT OF TRANSPORTATION STATE OF ILLINOIS IN CASE NO. 87L51078 AND ALSO EXCEPTING FROM SAID LOT ONE THAT PART CONVEYED TO THE PEOPLE OF THE STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION PURSUANT TO THAT CERTAIN QUIT CLAIM DEED RECORDED SEPTEMBER 29, 1995 AS DOCUMENT NO. 95664230) IN RANDHURST CENTER RESUBDIVISION - NO. 1, BEING A RESUBDIVISION OF LOT ONE IN RANDHURST CENTER, BEING A SUBDIVISION OF PART OF THE SOUTHEAST 1/4 OF SECTION 27, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT OF SAID RANDHURST CENTER RESUBDIVISION - NO. 1 RECORDED JULY 24, 1987 IN THE OFFICE OF THE RECORDER OF DEEDS OF COOK COUNTY, ILLINOIS AS DOCUMENT NO. 87408581 AND REGISTERED IN THE OFFICE OF THE REGISTRAR OF TITLES OF SAID COUNTY AS DOCUMENT NO. LR3637429.

PARCEL 2: NORTH 70 FEET OF THE WEST 70 FEET OF THE SOUTH 120 FEET OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 27, TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

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