

# UNOFFICIAL COPY

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

Bank of America, N.A.  
135 South LaSalle Street  
Chicago, Illinois 60603  
Attn: Steve Ahrenholz

5/1 Honor SDS  
8866688

THIS DOCUMENT PREPARED BY:

Dykema Gossatt PLLC  
10 South Wacker Drive  
Suite 2300  
Chicago, Illinois 60606  
Attn: Gary P. Segal



Doc#: 1202033082 Fee: \$60.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 01/20/2012 11:46 AM Pg: 1 of 12

Space above for Recorder's Use

## SUBORDINATION, NONDISTURBANCE AND ATTORNMEN AGREEMENT

This Subordination, Nondisturbance and Attornment Agreement ("Agreement") is entered into as of January 17, 2012, by **BANK OF AMERICA, N.A.** ("Bank"), **STEPHENWOLF THEATRE COMPANY** ("Landlord") and **ETHAN ALLEN RETAIL, INC.**, f/k/a **ETHAN ALLEN INC.** ("Tenant").

### RECITALS

A. Landlord's predecessor in interest and Tenant have entered into a lease agreement dated as of July 16, 2002 ("Lease"), covering certain premises located at 1700-1710 N. Halsted Street, Chicago, Illinois 60614 ("Property"). The Property is more particularly described in Exhibit A attached hereto and incorporated herein.

B. Bank is the mortgagee under a Mortgage, Assignment of Rents, Security Agreement and Fixture Filing ("Mortgage"), dated as of January 17, 2012, which Mortgage will be recorded concurrently herewith in the Official Records of Cook County, Illinois, encumbering the Property. The Mortgage secures certain obligations to Bank as more particularly described therein.

C. On the terms and conditions in this Agreement, the parties desire to subordinate Tenant's leasehold interest in the Property to the lien of the Mortgage and to assure Tenant possession of the Property for the entire term of the Lease, even though Bank may foreclose the lien of the Mortgage before expiration of the Lease.

Therefore, in consideration of the mutual covenants and agreements contained in this Agreement, the parties agree as follows:

Box 400-CTCC

C Y  
P 12  
S N  
SC Y  
INT C.F.

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## Section 1. Subordination.

The Lease, the leasehold estate created thereby, and all rights and privileges of Tenant thereunder shall be subject and subordinate to the lien of the Mortgage and to any renewals, modifications, consolidations, replacements and extensions of the Mortgage to the full extent of the obligations now or hereafter secured by the Mortgage.

## Section 2. Nondisturbance.

So long as Tenant is not in default, beyond any period given to Tenant to cure a default, in the payment of rent or in the performance of any of the terms, covenants, or conditions of the Lease, Tenant's possession of the Property and Tenant's rights and privileges under the Lease, including any extensions or renewals, shall not be diminished or interfered with by Bank during the term of the Lease or any extensions or renewals. So long as Tenant is not in default, beyond any period given Tenant to cure such default, in the payment of rent or in the performance of any of the terms, covenants, or conditions of the Lease, Bank will not join Tenant as a party for the purpose of terminating or otherwise affecting Tenant's interest under the Lease, in any action of foreclosure or other proceeding brought by Bank to enforce any rights arising because of any default under the Mortgage. Bank may, however, join Tenant as a party if joinder is necessary under any statute or law to secure the remedies available to Bank under the Mortgage, but joinder shall be for that purpose only and not for the purpose of terminating the Lease or affecting Tenant's right to possession of the Property.

## Section 3. Attornment.

If the Landlord's interest is transferred to and owned by Bank or any successor of Bank ("Acquiring Party") because of foreclosure or other proceedings brought by Bank, or by any other manner, and Bank succeeds to Landlord's interest under the Lease, Tenant shall be bound to the Acquiring Party, and Acquiring Party shall be bound to Tenant under all of the terms, covenants and conditions of the Lease for the balance of the remaining term, including any extensions or renewals, with the same effect as if Acquiring Party were Landlord under the Lease. Tenant agrees to attorn to Acquiring Party as the Landlord, with the attornment being effective and self-operable immediately upon Acquiring Party succeeding to the interest of Landlord under the Lease, all without the execution by the parties of any further instruments. However, Tenant shall not be obligated to pay rent to Acquiring Party until Tenant receives written notice from Acquiring Party, together with evidence satisfactory to Tenant, demonstrating that Acquiring Party has succeeded to Landlord's interest under the Lease and directing where rent should be mailed. The respective rights and obligations of Tenant and Acquiring Party upon attornment, to the extent of the then-remaining balance of the term of the Lease, shall be the same as in the Lease, which is incorporated by reference in this Agreement. If Acquiring Party succeeds to Landlord's interest in the Lease, Acquiring Party shall be bound to Tenant under all the terms, covenants and conditions of the Lease, and Tenant shall, after Acquiring Party's succession to Landlord's interest, have the same remedies against Acquiring Party for the breach of any agreement in the Lease that Tenant might have had against Landlord.

## Section 4. Tenant Estoppel Certificate.

(a) Tenant has no right or option of any nature whatsoever, whether arising out of the Lease or otherwise, to purchase the Property, or any interest or portion in or of the Property, to expand into other space in the Property or to extend or renew the term of the Lease.

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(b) Tenant represents and warrants to Bank that Exhibit B accurately identifies all amendments, supplements, side letters and other agreements and memoranda pertaining to the Lease, the leasehold and/or the Property.

(c) As of the date of this Agreement, Tenant represents and warrants, to its actual knowledge, that there exist no events of default, or events that with notice or the passage of time or both would be events of default, under the Lease, on either Tenant's part or Landlord's, nor is there any right of offset (including audit or accounting rights which might otherwise give rise to a claim or an offset for rents paid under the Lease) against any of Tenant's obligations under the Lease. The Lease is in full force and effect as of the date of this Agreement.

(d) Tenant acknowledges that Bank is relying on the representations, certifications and undertakings made by Tenant in this Agreement in extending credit secured by the Mortgage.

(e) Within ten (10) days after Bank's request, Tenant shall deliver to Bank and to any person designated by Bank, estoppel certificates executed by Tenant, certifying (if such is the case) that the Lease is in full force and effect, that there are no defenses or offsets outstanding under the Lease (or stating those claimed by Tenant, as the case may be) and such other information about Tenant or the Lease as Bank may reasonably request.

(f) This Agreement satisfies any condition or requirement in the Lease relating to the granting of a nondisturbance agreement from Bank.

## Section 5. Tenant's Purchase Option.

The lien of the Mortgage shall unconditionally be and remain at all times a lien on the Property prior and superior to any existing or future option or right of first refusal of Tenant to purchase the Property or any portion thereof. In the event of any transfer of Landlord's interest in the Property by foreclosure or other action or proceeding for the enforcement of the Mortgage or by deed in lieu thereof, Tenant specifically waives any right, whether arising out of the Lease or otherwise, to exercise any purchase option or right of first refusal which remains unexercised at the time of such transfer.

## Section 6. No Change in Lease.

Landlord and Tenant agree not to change, alter, amend or otherwise modify the Lease without the prior written consent of Bank. Any change, alteration, amendment, or other modification to the Lease without the prior written consent Bank shall be void as to Bank.

## Section 7. Notices.

In this Agreement, wherever it is required or permitted that notice and demand be given by any party to another party, that notice or demand shall be given in writing and forwarded by certified mail, addressed as follows:

For Landlord:                   Steppenwolf Theatre Company  
758 W. North Avenue  
Chicago, Illinois 60610

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Attn: David Hawkanson, Executive Director and David Schmitz,  
Managing Director

For Tenant: Ethan Allen Retail, Inc.  
Ethan Allen Drive  
Danbury, CT 06811  
Attn: Pamela A. Banks

For Bank: Bank of America, N.A.  
135 South LaSalle Street  
Chicago, Illinois 60603  
Attn: Steve Ahrenholz

Any party may change an address given for notice by giving written notice of that change by certified mail to all other parties.

## Section 8. Authority.

If any party is a corporation, limited liability company, or a partnership, all individuals executing this Agreement on behalf of such corporation, limited liability company, or partnership represent and warrant that they are authorized to execute and deliver this Agreement on behalf of the corporation, limited liability company, or partnership and that this Agreement is binding upon such corporation, limited liability company, or partnership.

## Section 9. Miscellaneous.

This Agreement may not be modified other than by an agreement in writing signed by the parties or by their respective successors in interest. If any party commences any action against any other party based on this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees, expenses, and costs of suit. This Agreement shall be binding on and inure to the benefit of the parties and their respective heirs, successors and assigns. The headings of this Agreement are for reference only and shall not limit or define any meaning of this Agreement. This Agreement may be executed in one or more counterparts, each of which is an original, but all of which shall constitute one and the same instrument. This Agreement shall be construed in accordance with and governed by Illinois law.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURE PAGE FOLLOWS]**

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The parties have duly executed this Agreement as of the date first above written.

**BANK:** BANK OF AMERICA, N.A.

By: Minal Patel  
Name: Minal Patel  
Title: SVP

**LANDLORD:** STEPPENWOLF THEATRE COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TENANT:** ETHAN ALLEN RETAIL, INC., f/k/a ETHAN ALLEN INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Property of Cook County Clerk's Office


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The parties have duly executed this Agreement as of the date first above written.

**BANK:** BANK OF AMERICA, N.A.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LANDLORD:** STEPPENWOLF THEATRE COMPANY

By:   
Name: David Hawkanson  
Title: Executive Director

**TENANT:** ETHAN ALLEN RETAIL, INC., f/k/a ETHAN ALLEN INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Property of Cook County Clerk's Office

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The parties have duly executed this Agreement as of the date first above written.

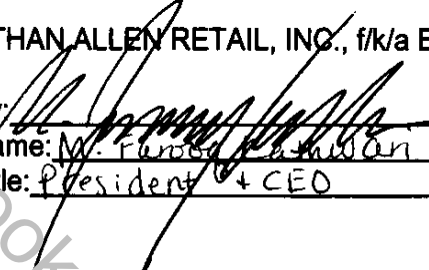
**BANK:** BANK OF AMERICA, N.A.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LANDLORD:** STEPPENWOLF THEATRE COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TENANT:** ETHAN ALLEN RETAIL, INC., f/k/a ETHAN ALLEN INC.

By:   
Name: M. Furore  
Title: President + CEO

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## ACKNOWLEDGMENT


STATE OF ILLINOIS )  
                                  ) SS.  
COUNTY OF COOK )

I, SARA DeJesus, a Notary Public in, and for said County, in the State aforesaid, DO HEREBY CERTIFY that Miriam Patel, Sara V. P. of BANK OF AMERICA, N.A., a national banking association, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal this 11<sup>th</sup> day of January, 2012.

Sara O. DeJesus  
Notary Public

Commission expires:

5-5-12  
 SARA O DEJESUS  
MY COMMISSION EXPIRES  
MAY 5, 2012

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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I David Schmitz, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that David Hawkanson, Executive Director of STEPPENWOLF THEATRE COMPANY, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal this 17<sup>th</sup> day of January, 2012.



[Signature]  
Notary Public

Commission expires:  
4/4/2015

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STATE OF Connecticut )  
 COUNTY OF Fairfield ) SS.

I Leeann E. Gilbert, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that M. Farooq Kathwari, President + CEO of **ETHAN ALLEN RETAIL, INC.**, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

*Leeann E. Gilbert*  
 Notary Public

Commission expires:

3/31/2012

**LEEANN ELIZABETH GILBERT**  
 NOTARY PUBLIC  
 STATE OF CONNECTICUT  
 My Commission Expires Mar. 31, 2012

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## EXHIBIT A

### LEGAL DESCRIPTION

LOTS 10, 11, 12, 13, 14 AND 15 IN BLOCK 6 IN SHEFFIELD'S ADDITION TO CHICAGO IN SECTION 32, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Street Address of Property 1700-1710 N. Halsted Street, Chicago, Illinois, 60614

Permanent Tax Identification Numbers: 14-32-426-043-0000  
14-32-426-044-0000  
14-32-426-045-0000  
14-32-426-070-0000

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## EXHIBIT B

### (SCHEDULE OF AMENDMENTS, SUPPLEMENTS, SIDE LETTERS AND OTHER AGREEMENTS AND MEMORANDA PERTAINING TO LEASE)

1. Lease-Chicago dated July 16, 2002 by and between Ethan Allen Inc. and LaSalle Bank National Association, not personally but solely as successor trustee to NBD Trust Company of Illinois under Trust Agreement dated March 1, 1995 and known as Trust No. 4941-HP.

End of list

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