

THIRD AMENDMENT TO SUBORDINATION AGREEMENT

THIS THIRD AMENDMENT TO SUBORDINATION AGREEMENT (the "Agreement") is made as of the 1st day of November, 1994, among BANK OF AMERICA ILLINOIS, an Illinois banking corporation, as successor in interest to Continental Bank, N.A. ("First Mortgagee"), and HERITAGE BANK (FKA Heritage Bank Tinley Park) ("Heritage").

Recitals

A. First Mortgagee's predecessor in interest, Continental Bank, N.A., a national banking association ("Continental"), Steel City National Bank of Chicago, now known as U.S. Bank, not personally but as Trustee under Trust Agreement dated October 10, 1988 and known as Trust No. 3059 ("Trustee") and Music Center Associates Limited Partnership, an Illinois limited partnership ("Beneficiary," with Trustee and Beneficiary being collectively referred to herein as the "Borrower") entered into a Loan Agreement dated as of May 24, 1990 (the "Loan Agreement"), whereby Continental agreed to make a loan to Borrower in the aggregate amount of \$6,500,000.00 (the "Loan") on the terms and conditions contained therein. Borrower executed and delivered to Continental a certain promissory note ("Note"), dated as of May 24, 1990, payable to the order of Continental in the original principal amount of \$6,500,000.00 with interest and principal payable as therein provided, originally maturing on April 1, 1992. The Loan is secured by a Mortgage ("Mortgage"), dated May 24, 1990, and filed with the Registrar of Titles of Cook County, Illinois (the "Registrar") on May 24, 1990 as Document Number LR3883618 and recorded with the Recorder of Deeds of Cook County, Illinois (the "Recorder") on May 25, 1990 as Document Number 90244360, encumbering the property described in Exhibit A attached hereto and made a part hereof (the "Land"). The Loan is additionally secured by an Assignment of Rents and Leases ("Assignment"), dated May 24, 1990, and filed with the Registrar on May 24, 1990 as Document Number LR3883619 and recorded with the Recorder on May 25, 1990 as Document Number 90244361.

B. With respect to the Loan, James Gierczyk, Arnold Granat, Michael Halikias, James Malecky and Jerome Mickelson (collectively, the "Guarantors") executed (i) a Completion Guaranty, dated as of May 24, 1990, and (ii) a Payment Guaranty dated as of May 24, 1990 (collectively, the "Guaranties"). In addition, the Guarantors executed and delivered an Environmental Indemnity Agreement, dated as of May 24, 1990, and two (2) Indemnity Agreements, one dated as of May 24, 1990 and the other dated as of June 4, 1990 (collectively, the "Indemnity Agreements").

C. Continental and Borrower entered into a First Amendment to Loan Agreement, dated as of June 4, 1990, whereby Continental agreed (1) to provide additional credit in the aggregate amount

19941395/MS

DE Rec 93223057

94967522

8352

UNOFFICIAL COPY

Property of Cook County Clerk's Office

55-1110-010

UNOFFICIAL COPY

of \$1,200,000.00 on the terms and conditions contained therein and (2) to increase the Loan Amount from \$6,500,000.00 to \$7,700,000.00.

D. In connection with the First Amendment to Loan Agreement, Borrower executed and delivered (i) a First Amendment to Note, dated as of June 4, 1990, (ii) a First Amendment to Mortgage, dated as of June 4, 1990, and filed with the Registrar on June 7, 1990 as Document Number LR3886876 and recorded with the Recorder on June 7, 1990 as Document Number 90267391, and (iii) a First Amendment to Assignment of Rents and Leases, dated as of June 4, 1990, and filed with the Registrar on June 7, 1990 as Document Number LR388687 and recorded with the Recorder of Deeds on June 7, 1990 as Document Number 90267392. In addition, the Guarantors executed and delivered First Amendments to Completion Guaranty and Payment Guaranty, and the respective parties to the following documents also executed and delivered First Amendments thereto: Environmental Indemnity Agreement, Security Agreement, Security Agreement/Assignment of Beneficial Interest, and Collateral Assignment of Permits, Licenses, Approvals and Contracts (all of the First Amendments, including the First Amendment to Loan Agreement, First Amendment to Note, First Amendment to Mortgage and First Amendment to Assignment of Rents and Leases, are collectively referred to as the "First Amendments").

E. Continental and Borrower entered into a certain letter agreement dated October 12, 1990 ("1990 Letter Agreement"), and a certain letter agreement dated December 23, 1991 ("1991 Letter Agreement"). Pursuant to the 1990 Letter Agreement, Continental agreed, among other things, to extend a principal payment due date and permit the Beneficiary to borrow up to \$600,000.00 from Heritage. Pursuant to the 1991 Letter Agreement, Continental, among other things, reinstated the Loan and extended two (2) principal payment due dates. The Guarantors accepted and acknowledged both the 1990 Letter Agreement and the 1991 Letter Agreement.

F. Continental, Borrower and certain other parties entered into a Modification Agreement, dated as of June 30, 1992 and recorded with the Recorder on July 22, 1992 as Document Number 92536358 (the "First Modification Agreement"), which modified the Loan Agreement, Note and Mortgage to reflect an extension of the Loan Maturity Date from April 1, 1992 to January 4, 1993 and a revised payment schedule of principal and interest payments, and in which First Modification Agreement the Guarantors joined. The Guarantors also confirmed, ratified and reaffirmed the Guaranties in connection with the Modification Agreement.

G. Continental, Borrower and certain other parties entered into a Second Modification Agreement, dated as of January 4, 1993, and recorded with the Recorder on March 25, 1993 as Document Number 93223058 (the "Second Modification Agreement"), which modified the Loan Agreement, Note and Mortgage to reflect an extension of the Loan Maturity Date from January 4, 1993 to

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

January 4, 1994 and a revised payment schedule of principal and interest payments. The Guarantors confirmed, ratified and reaffirmed the Guaranties in connection with the Second Modification Agreement.

H. Continental, Borrower and certain other parties entered into an unrecorded Third Modification Agreement, dated as of August 9, 1993 (the "Third Modification Agreement"), which revised the Loan Agreement and Note to reflect, among other things, a revised payment schedule of principal and interest payments. The Guarantors confirmed, ratified and reaffirmed the Guaranties in connection with the Third Modification Agreement.

I. Continental, Borrower and certain other parties entered into a Fourth Modification Agreement, dated as of January 4, 1994, and recorded with the Recorder on Nov. 8, 1994 as Document No. 94950739 (the "Fourth Modification Agreement"), which modified the Loan Agreement, Note and Mortgage to reflect an extension of the Loan Maturity Date from January 4, 1994 to January 4, 1997 and a revised schedule of principal and interest payments. The Guarantors confirmed, ratified and reaffirmed the Guaranties in connection with the Fourth Modification Agreement.

J. First Mortgagee is the successor in interest to Continental.

K. First Mortgagee, Borrower and certain other parties entered into an unrecorded Fifth Modification Agreement dated as of October 17, 1994 (the "Fifth Modification Agreement"), which modified the Loan Agreement and other Loan Documents to reflect, among other things, an extension of the Loan Maturity Date to January 4, 1999 and a revised schedule of principal and interest payments. The Guarantors confirmed, ratified and reaffirmed the Guaranties in connection with the Fifth Modification Agreement. In addition, the following documents were executed and delivered in connection with the Fifth Modification Agreement.

1. 1994 Amendment to Mortgage dated as of November 1, 1994 and recorded with the Recorder on Nov. 15, 1994 as Document No. 94967512;
2. 1994 Amendment to Assignment of Rents and Leases dated as of November 1, 1994 and recorded with the Recorder on Nov. 15, 1994 as Document No. 94967513;
3. Amendment and Restated Note dated as of November 1, 1994 in the principal amount of \$6,075,798.12; and
4. Pledge Agreement dated as of November 1, 1994.

94967533

UNOFFICIAL COPY

Property of Cook County Clerk's Office

01/20/2010

UNOFFICIAL COPY

The Fifth Modification Agreement and the documents described in paragraphs 1 through 4 above are collectively referred to herein as the "Fifth Modification Documents."

L. Borrower has constructed and is now operating the Development as an outdoor music theatre known as the "World Music Theatre."

M. Borrower has entered into a Lease Agreement, dated June 29, 1994, as amended through the date hereof and as hereafter amended from time to time (the "Lease") with NEJA Group L.L.C., a Delaware limited liability company ("NEJA"), pursuant to which the Development is leased to NEJA subject to the need to obtain First Mortgagee's approval of such Lease pursuant to the Loan Agreement, as amended. Borrower, First Mortgagee and NEJA have entered into a Subordination, Attornment and Non-Disturbance Agreement with respect to such Lease dated as of November 1, 1994 and recorded with the Recorder on Nov. 15, 1994 as Document No. 94962517 (the "Lease Subordination Agreement").

N. All loan documents enumerated in the Loan Agreement, including the Note, Mortgage and Assignment, as amended by the First Amendments, the 1990 Letter Agreement, 1991 Letter Agreement, the First Modification Agreement, the Second Modification Agreement, the Third Modification Agreement, the Fourth Modification Agreement and the Fifth Modification Documents, are referred to collectively as the "Loan Documents."

O. Heritage has made a loan in the principal amount of \$600,000 (the "Heritage Loan") to the Guarantors, which loan is secured by a Mortgage on the Land dated November 13, 1990 and filed with the Registrar on December 5, 1990 as Document No. LR 3930397 and recorded with the Recorder on December 11, 1990 as Document No. 90602016 (the "Second Mortgage") and an Assignment of Rents dated November 13, 1990 and recorded with the Recorder on December 11, 1990 as Document No. 90602017 (the "Second Assignment").

P. Continental and Heritage entered into a Subordination Agreement dated November 29, 1990, as amended by an Amendment to Subordination Agreement dated January 4, 1993 and recorded with the Recorder on March 25, 1993 as Document No. 93223059, and by a Second Amendment to Subordination Agreement dated January 4, 1994 and recorded with the Recorder on Nov. 08, 1994 as Document No. 94950740 (the "Subordination Agreement"), pursuant to which Heritage subordinated the Second Mortgage and Second Assignment to the Mortgage and Assignment, as amended through the date of the Fourth Modification Agreement, respectively.

Q. Heritage, Trustee and Guarantors have amended the Second Mortgage pursuant to an Extension and Modification Agreement dated as of November 1, 1994, and have amended the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Second Assignment pursuant to a 1994 Extension Amendment to Assignment of Rents dated November 1, 1994.

R. First Mortgagee and Heritage desire to amend the Subordination Agreement to provide for the subordination of the Second Mortgage and Second Assignment to the Mortgage and Assignment, each as amended through the date of the Fifth Modification Documents, respectively.

Agreements

NOW, THEREFORE, for and in consideration of the Recitals which are made a part of this Agreement by this reference, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, First Mortgagee and Heritage hereby agree as follows:

1. Defined Terms. Capitalized terms used herein which are not expressly defined have the meanings given them in the Subordination Agreement.
2. Subordination of Second Mortgage and Second Assignment. Heritage hereby subordinates the Second Mortgage to the Mortgage, each as amended through the date of the Fifth Modification Documents, and hereby subordinates the Second Assignment to the Assignment, each as amended through the date of the Fifth Modification Documents.
3. Lease Subordination Agreement. The Lease Subordination Agreement provides that, subject to certain conditions, NEJA may at its option increase the Annual Base Rent under the Lease to One Million One Hundred Thousand and 00/100 Dollars (\$1,100,000) (the "Increased Base Rent"). After the Increased Base Rent becomes effective, First Mortgagee and Heritage agree that notwithstanding anything in the Mortgage, Assignment, Second Mortgage or Second Assignment, or any other documents evidencing the Loan or the Heritage Loan, each as amended through the date of the Fifth Modification Documents, to the contrary:
 - (a) Increased Base Rent shall be paid in accordance with the Exhibit B attached hereto and made a part hereof; and
 - (b) Heritage shall be entitled to receive and retain, free and clear of any security interest of First Mortgagee, up to an additional \$50,000 from amounts distributed to Borrower pursuant to Section 11.1 of the Limited Liability Company Agreement for NEJA Group L.L.C., as amended, in excess of the 20% priority payment due First Mortgagee.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

4. Second Lease Subordination. Heritage has entered into a Subordination, Attornment and Non-Disturbance Agreement with NEJA with respect to the Lease, dated Nov. 12, 1994 and recorded with the Recorder on Nov. 15, 1994 as Document No. 94967518 (the "Second Lease Subordination"). Heritage shall not take any action under the Second Mortgage, the Second Assignment or the Second Lease Subordination, or any other document evidencing, securing or relating to the loan secured by the Second Mortgage, each as amended through the date of the Fifth Modification Documents, including without limitation an action to foreclose the Second Mortgage or to appoint a receiver, that terminates, seeks to terminate, or may result in the termination of the Lease, without the prior written consent of First Mortgagee.

5. Full Force and Effect. The terms and provisions of the Subordination Agreement, as amended hereby, shall remain in full force and effect. First Mortgagee and Heritage each hereby reaffirm and remake their respective agreements, covenants, representations and warranties contained in the Subordination Agreement, as amended hereby.

6. Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart.

7. Applicable Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Illinois.

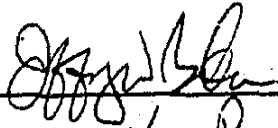
IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the date first above written.

FIRST MORTGAGEE:

Bank of America Illinois

By: _____

Its: _____


Vice President

HERITAGE:

Heritage Bank

By: _____

Its: _____


Epic Vice President

94967522

UNOFFICIAL COPY

Property of Cook County Clerk's Office

07/06/2010

UNOFFICIAL COPY

This document prepared by, and after recording mail to:

Terrence E. Budny, Esq.
Bell, Boyd & Lloyd
Three First National Plaza
70 West Madison Street
Suite 3100
Chicago, IL 60602

Common Address: Ridgeland and Flossmoor Roads, Tinley Park,
Illinois

PIN: 31-06-405-001; 31-06-406-001; 31-07-101-001;
31-07-102-001; 31-07-200-001; 31-07-201-002

002



UNOFFICIAL COPY

Property of Cook County Clerk's Office



00000000

UNOFFICIAL COPY

STATE OF ILLINOIS)
)
COUNTY OF COOK)

I, Mary K Foley, a notary public, in and for the County and State aforesaid, do hereby certify that Jeffrey W. Baker, of Bank of America Illinois, 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 to me that he signed and delivered this instrument as his own free and voluntary act, for the use and purposes set forth therein.

Given unto my hand and notarial seal this 3RD day of November, 1994.

Mary K Foley
Notary Public
"OFFICIAL SEAL"
MARY K. FOLEY
Notary Public, State of Illinois
My Commission Expires 4-12-96

Property of Cook County Clerk's Office

94907522

UNOFFICIAL COPY

Property of Cook County Clerk's Office

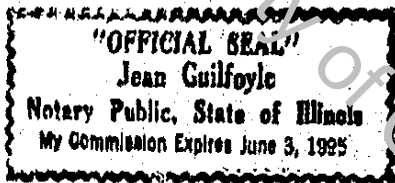
UNOFFICIAL COPY

STATE OF ILLINOIS)

COUNTY OF COOK)

I, Jean Guilfoyle, a notary public, in and for the County and State aforesaid, do hereby certify that Albert A. Steuta, Sr. V.P. of Heritage Bank, 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 to me that he signed and delivered this instrument as his own free and voluntary act, for the use and purposes set forth therein.

Given unto my hand and notarial seal this 3 day of Nov, 1994.



Jean Guilfoyle
Notary Public

DEPT-01 RECORDING \$83.50
T#0004 TRAN 8980 11/15/94 09:10:00
#4682 LF *-94-967522
COOK COUNTY RECORDER

94967522

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT B

Payment of Increased Base Rent during Lease Term

<u>Payee</u>	<u>Due Date</u>	<u>Amount</u>
First Mortgagee	January 1	\$160,000
First Mortgagee	April 1	\$160,000
First Mortgagee	July 1	\$160,000
First Mortgagee	August 1	\$200,000
Heritage	August 1	\$ 50,000
First Mortgagee	September 1	\$200,000
First Mortgagee	October 1	\$120,000
Heritage	October 1	<u>\$ 50,000</u>
	TOTAL	\$1,100,000

94967522

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

PARCEL 1:

THE SOUTH WEST 1/4 AND THE SOUTH EAST 1/4 OF THE SOUTH EAST FRACTIONAL 1/4 OF SECTION 6, TOWNSHIP 35 NORTH, RANGE 13, LYING SOUTH OF THE INDIAN BOUNDARY LINE, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THE NORTH EAST 1/4 OF THE NORTH EAST 1/4 OF SECTION 7, TOWNSHIP 35 NORTH, RANGE 13, LYING SOUTH OF THE INDIAN BOUNDARY LINE, EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPT THAT PART THEREOF BEING BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF THE NORTH EAST 1/4 OF SAID NORTH EAST 1/4; THENCE NORTH 89 DEGREES 58 MINUTES 42 SECONDS WEST, ALONG THE SOUTH LINE OF THE NORTH EAST 1/4 OF SAID NORTH EAST 1/4, 1327.91 FEET TO THE WEST LINE OF THE NORTH EAST 1/4 OF SAID NORTH EAST 1/4; THENCE NORTH 0 DEGREES 00 MINUTES 45 SECONDS EAST, ALONG THE LAST DESCRIBED LINE, 772.36 FEET; THENCE NORTH 89 DEGREES 56 MINUTES 22 SECONDS EAST 750.37 FEET; THENCE SOUTH 58 DEGREES 10 MINUTES 54 SECONDS EAST 679.96 FEET TO THE EAST LINE OF SAID NORTH EAST 1/4; THENCE SOUTH 0 DEGREES 03 MINUTES 20 SECONDS WEST, ALONG THE LAST DESCRIBED LINE, 415.16 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

PARCEL 3:

THAT PART OF THE NORTH 1/2 OF THE NORTH EAST 1/4 OF SECTION 7, TOWNSHIP 35 NORTH, RANGE 13, TOGETHER WITH THAT PART OF THE NORTH 1/2 OF THE NORTH WEST FRACTIONAL 1/4 OF SECTION 7, TOWNSHIP 35 NORTH, RANGE 13, LYING SOUTH OF THE INDIAN BOUNDARY LINE, EAST OF THE THIRD PRINCIPAL MERIDIAN, BEING BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF THE NORTH EAST 1/4 OF SAID SECTION 7; THENCE SOUTH 89 DEGREES 58 MINUTES 16 SECONDS EAST ALONG THE NORTH LINE OF THE NORTH EAST 1/4 OF SAID SECTION 7, 1328.90 FEET TO THE EAST LINE OF THE NORTH WEST 1/4 OF THE NORTH EAST 1/4 OF SAID SECTION 7; THENCE SOUTH 0 DEGREES 00 MINUTES 45 SECONDS WEST ALONG THE LAST DESCRIBED LINE 364.17 FEET; THENCE NORTH 89 DEGREES 58 MINUTES 16 SECONDS WEST 2391.37 FEET; THENCE WESTERLY ALONG A CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 750.00 FEET AND A CHORD THAT BEARS NORTH 81 DEGREES 10 MINUTES 10 SECONDS WEST A CHORD DISTANCE OF 229.53 FEET, AN ARC LENGTH OF 230.43 FEET; THENCE NORTHWESTERLY ALONG A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 930.74 FEET AND A CHORD THAT BEARS NORTH 61 DEGREES 52 MINUTES 45 SECONDS WEST A CHORD DISTANCE OF 338.85 FEET, AN ARC LENGTH OF 340.75 FEET TO THE SOUTHEASTERLY LINE OF GEORGE BRENNAN HIGHWAY AS PER DOCUMENT NUMBER 11231373; THENCE NORTH 44 DEGREES 46 MINUTES 37 SECONDS EAST ALONG THE LAST DESCRIBED LINE 134.12 FEET; THENCE SOUTH 45 DEGREES 13 MINUTES 27 SECONDS EAST, 63.67 FEET; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 472.00 FEET AND A CHORD THAT BEARS SOUTH 58 DEGREES 47

31-07-200-002

31-07-102-001

31-02-101-001

94967522

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

MINUTES 43 SECONDS EAST A CHORD DISTANCE OF 221.53 FEET, AN ARC LENGTH OF 223.61 FEET; THENCE EASTERLY ALONG A CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 650.00 FEET AND A CHORD THAT BEARS SOUTH 81 DEGREES 10 MINUTES 10 SECONDS EAST A CHORD DISTANCE OF 198.92 FEET, AN ARC LENGTH OF 199.71 FEET; THENCE SOUTH 89 DEGREES 58 MINUTES 16 SECONDS EAST, 1062.64 FEET TO THE WEST LINE OF THE NORTH EAST 1/4 OF SAID SECTION 7; THENCE NORTH 0 DEGREES 01 MINUTES 48 SECONDS WEST ALONG THE LAST DESCRIBED LINE 264.17 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

94907527

UNOFFICIAL COPY

Property of Cook County Clerk's Office