

JB

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Subordination, Non-Disturbance and Attornment agreement (this "Agreement") dated February 6, 1998, is made among Roper & Quigg ("Tenant"), 200 Michigan Ave. Associates, Limited Partnership, a New Mexico limited partnership, ("Landlord"), and NationsBank, N.A., a national banking association ("Mortgagee").

WHEREAS, Mortgagee is the owner of a promissory note (herein, as it may have been or may be from time to time renewed, extended, amended or supplemented, called the "Note") dated FEBRUARY 12, 1992, executed by Landlord, payable to the order of Mortgagee, in the principal face amount of \$2,000,000, bearing interest and payable as therein provided, secured by, among other things, a Mortgage (herein, as it may have been or may be from time to time renewed, extended, amended or supplemented, called the "Mortgage"), recorded 2-3-98, real property records of Cook County, Illinois, covering among other property, the land (the "Land") described in Exhibit A which is attached hereto and incorporated herein by reference, and the improvements thereon (such Land and improvements being herein together called the "Property");

(8)

Doc # 981-

WHEREAS, Tenant is the tenant under a lease which, including all amendments and supplements thereto, is described as follows: Lease having an effective date of February 1, 1992 ("Original Lease"), as amended by Amendment #1 to Lease dated June 17, 1992, and as further amended by Amended and Restated Amendment to Lease dated February 1, 1993, and as further amended by First Lease Amendment dated January 1, 1995, as well as a Storage Space Lease Agreement dated May 1, 1997, and to the extent further amended by letters dated June 23, 1992, and September 15, 1993, as well as a letter dated October 31, 1997 (together the "Lease"), covering a portion of the Property (said portion being referred to herein as the "Premises"); and

WHEREAS, the term "Landlord" as used herein means the present landlord under the Lease or, if the landlord's interest is transferred in any manner, the successor(s) or assign(s) occupying the position of landlord under the Lease at the time in question;

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

1. Subordination. Tenant agrees and covenants that Lease and all of Tenant's right, title and interest in and to the property covered by the Lease are and shall be subordinate and inferior to: (a) the Mortgage, and all right, title and interest of Mortgagee in the Property, and (b) all other security documents now or hereafter securing payment of any indebtedness of the Landlord (or any prior landlord) to Mortgagee which cover or affect the Property (the "Security Documents"). This Agreement is not intended and shall not be construed to subordinate the Lease to any mortgage, deed of trust or other security document other than those referred to in the preceding sentence, securing the indebtedness to Mortgagee. Without limitation of any other provision hereof, Mortgagee may, at its option and without joinder or further consent of Tenant, Landlord, or anyone else, at any time after the date hereof subordinate

1970 1728 Cook Co, Ill.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

the lien of the Mortgage (or any other lien or security interest held by Mortgagee which covers or affects the Property) to the Lease by executing an instrument which is intended for that purpose and which specifies such subordination; and, in the event of any such election by Mortgagee to subordinate, Tenant will execute any documents required to evidence such subordination.

2. Non-Disturbance. Mortgagee agrees that so long as the Lease is in full force and effect and Tenant is not in default in the payment of rent, additional rent or other payments or in the performance (beyond the period, if any, specified in the Lease within which Tenant may cure such default):

(a) Tenant's possession of the Premises under the Lease shall not be disturbed or interfered with by Mortgagee in the exercise of any of its rights under the Mortgage, including any foreclosure or conveyance in lieu of foreclosure, and

(b) Mortgagee will not join Tenant as a party defendant for the purpose of terminating Tenant's interest and estate under the Lease in any proceeding for foreclosure of the Mortgage.

3. Attornment.

(a) Tenant covenants and agrees that in the event of foreclosure of the Mortgage, or upon a transfer of the Property by conveyance in lieu of foreclosure (the purchaser at foreclosure or the or the transferee in lieu of foreclosure, including Mortgagee if it is such purchaser or transferee, being herein called "New Owner") Tenant shall attorn to the New Owner as Tenant's new landlord, and agrees that the Lease shall continue in full force and effect as a direct lease between Tenant and New Owner upon all of the terms, covenants, conditions and agreements set forth in the Lease and this Agreement, except for provisions which are impossible for Mortgagee to perform; provided, however, that in no event shall the New Owner be:

(i) liable for any act, omission, default, misrepresentation, or breach of warranty, of any previous landlord (including Landlord) or obligations accruing prior to New Owner's actual ownership of the property;

(ii) subject to any offset, defense, claim or counterclaim which Tenant might be entitled to assert against any previous landlord (including Landlord);

(iii) bound by any payment of rent, additional rent or other payments, made by Tenant to any previous landlord (including Landlord) for more than (1) month in advance;

(iv) liable for any deposit that Tenant may have given to any previous landlord (including Landlord) which has not, as such, been transferred to New Owner.

(b) The provisions of this Agreement regarding Attornment by Tenant shall be self-operative and effective without the necessity of execution of any new lease or other

UNOFFICIAL COPY

Property of Cook County Clerk's Office

document on the part of any party hereto or the respective heirs, legal representatives, successors or assigns of any such party. Tenant agrees, however, to execute and deliver at any time and from time to time, upon the request of Landlord or of any holder(s) of any of the indebtedness or other obligations secured by the Mortgage, any instrument or certificate which, in the reasonable judgment of Landlord or of such holder(s), may be necessary or appropriate in any such foreclosure proceeding or otherwise to evidence such attornment.

4. Estoppel Certificate. Tenant agrees to execute and deliver from time to time, upon the request of Landlord or of any holder(s) of any of the indebtedness or other obligations secured by the Mortgage, a certificate regarding the status of the Lease, consisting of statements, to wit: (a) that the Lease is in full force and effect, (b) setting forth the date through which rentals have been paid, (c) setting forth the date of the commencement of the term of the Lease, (d) identifying the nature of any amendments or modifications of the Lease, (e) setting forth that no default exists, or stating facts which with the passage of time or notice (or both) would constitute a default under the Lease, and (f) setting forth such other matters as may reasonably be requested.

5. Acknowledgement and Agreement by Tenant. Tenant acknowledges and agrees as follows:

(a) Tenant acknowledges that Landlord will execute and deliver to Mortgagee in connection with the financing of the Property an Assignment of Leases and Rents assigning absolutely the rent and all other sums due under the Lease to Mortgagee, and Landlord will also collaterally assign, in the Mortgage, the rent and all other sums due under the Lease to Mortgagee as additional security. Tenant hereby expressly consents to such absolute assignment and such collateral assignment and agrees that such assignment shall, in all respects, be superior to any interest Tenant has in the Lease of the Property, subject to the provisions of this Agreement. Tenant acknowledges that Mortgagee will rely upon this instrument in connection with such financing.

(b) Mortgagee, in making any disbursements to Landlord, is under no obligation or duty to oversee or to direct the application of the proceeds of such disbursements, and such proceeds may be used by Landlord for purposes other than improvement of the Property.

(c) From and after the date hereof, in the event of any act or omission by Landlord which would give Tenant the right, either immediately or after the lapse of time, to terminate the Lease or to claim a partial or total eviction, Tenant will not exercise any such right: (i) until it has given written notice of such act or omission to the Mortgagee; and (ii) until the same period of time as is given to Landlord under the Lease to cure such act or omission shall have elapsed; provided, however, that Mortgagee shall have no duty or obligation to cure or remedy any breach or default. It is specifically agreed that Tenant shall not, as to Mortgagee, require cure of any such default which is personal to Landlord, and therefore not susceptible to cure by Mortgagee.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

(d) In the event that Mortgagee notifies Tenant of a default under the Mortgage, Note, or Security Documents and demands that Tenant pay its rent and all other sums due under the Lease directly to Mortgagee in a notice specifically referencing this provision of this Agreement, Tenant shall honor such demand and pay the full amount of its rent and all other sums due under the Lease directly to Mortgagee or as otherwise required pursuant to such notice beginning with the payment next due after such notice of default, notwithstanding any contrary instructions or demands from Landlord. By its execution of this Agreement, Landlord agrees that Tenant is hereby authorized to make such payments to Mortgagee upon receipt of such notice from Mortgagee and that Tenant is not obligated to inquire as to whether a default actually exists under the Mortgage or otherwise in connection with the Note. Landlord hereby releases and discharges Tenant of and from any liability to Landlord resulting from Tenant's payment to Mortgagee in accordance with this Agreement.

(e) Tenant has no right or option of any nature whatsoever, whether pursuant to the Lease or otherwise, to purchase the Premises or the Property, or any portion thereof, and to the extent that Tenant has had, or hereafter acquires, any such right or option, same is hereby acknowledged to be subject and subordinated to the Mortgage and is hereby waived and released as against Mortgagee.

(f) This Agreement satisfies any condition or requirement in the Lease relating to the granting of a non-disturbance agreement.

(g) In the event that Mortgagee or any New Owner shall acquire title to the Premises or the Property, Mortgagee or such New Owner shall have no obligation, nor incur any liability, beyond Mortgagee's or New Owner's then equity interest, if any, in the Property or the Premises, and Tenant shall look exclusively to such equity interest of Mortgagee or New Owner, if any, for the payment and discharge of any obligations imposed upon Mortgagee or New Owner hereunder or under the Lease or for recovery of any judgment from Mortgagee, or New Owner, and in no event shall Mortgagee, New Owner, nor any of their respective officers, directors, shareholders, agents, representatives, servants, employees or partners ever be personally liable for such judgment.

(h) Nothing herein contained is intended, nor shall it be construed, to abridge or adversely affect any right or remedy of Landlord under the Lease in the event of any default by Tenant in the payment of rent and/or any other sums due under the Lease or in the performance of any of the other terms, covenants or conditions of the Lease on Tenant's part to be performed. Similarly, except to the extent specifically provided in paragraphs 3(a)(i)-(iv) to the contrary, nothing herein is intended, nor shall it be construed, to abridge or adversely affect any right or remedy of Tenant under the Lease in the event of any default by Landlord in the performance of any terms, covenants or conditions of the Lease on Landlord's part to be performed.

(i) Landlord has not agreed to any abatement of rent or other sums or period of "free rent" for the Premises unless same is specifically provided in the Lease.

UNOFFICIAL COPY

Property of Cook County Clerk's Office



6. Acknowledgement and Agreement by Landlord. Landlord, as landlord under the Lease and grantor under the Mortgage, acknowledges and agrees for itself and its heirs, representatives, successors and assigns, that: (a) this Agreement does not constitute a waiver by Mortgagee of any of its rights under the Mortgage, note or Security Documents; (b) the provisions of the Mortgage, Note, or Security Document remain in full force and effect and must be complied with by Landlord. Landlord represents and warrants to Mortgagee that a true and complete copy of the Lease has been delivered by Landlord to Mortgagee.

7. Lease Status. Landlord and Tenant certify to Mortgagee that neither Landlord nor Tenant has knowledge of any current default on the part of the other under the Lease, with the exception set forth in Article 10 below, that the Lease is bona fide and contains all of the agreements of the parties thereto with respect to the letting of the Premises, and that all of the agreements and provisions therein contained are in full force and effect.

8. Notices. All notices, requests, consents, demands and other communications required or which any party desires to give hereunder shall be in writing and shall be deemed sufficiently given or furnished if delivered by personal delivery, by telegram, telex, or facsimile, by expedited delivery service with proof of delivery, or by registered or certified United States mail, postage prepaid, at the addresses specified at the end of this Agreement (unless changed by similar notice in writing given by the particular party whose address is to be changed). Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of telegram, telex or facsimile, upon receipt. Notwithstanding the foregoing, no notice of change of address shall be effective except upon receipt. Paragraph 8 shall not be construed in any way to affect or to impair any waiver of notice or demand provided in this Agreement or in the Lease or in any document evidencing, securing or pertaining to the loan evidenced by the Note or to require giving of notice or demand to or upon any person in any situation or for any reason.

9. Miscellaneous.

(a) Nothing contained in this Agreement shall be construed to derogate from or in any way impair or affect the lien, security interest or provisions of the Mortgage, Note, or Security Documents.

(b) This Agreement shall inure to the benefit of the parties hereto, their respective successors and permitted assigns, and any New Owner, and its heirs, personal representatives, successors and assignees; provided, however, that in the event of the assignment or transfer of the interest of Mortgagee, all obligations and liability of the assigning Mortgagee under this Agreement shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of the party to whom Mortgagee's interest is assigned or transferred; and provided further that the interest of Tenant under this Agreement may not be assigned or transferred without the prior written consent of Mortgagee, except to the extent otherwise

UNOFFICIAL COPY

Property of Cook County Clerk's Office

permitted to be assigned or transferred without the prior written consent of Landlord under the Lease.

(c) THIS AGREEMENT AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION SHALL BE GOVERNED BY THE LAWS OF THE STATE OF ILLINOIS.

(d) The words "herein", "hereof", "hereunder" and other similar compounds of the word "here" as used in this Agreement refer to this entire Agreement and not to any particular section or provision.

(e) This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest.

(f) If any provision of the Agreement shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not apply to or affect any other provision hereof, but this Agreement shall be construed as if such invalidity, illegality, or enforceability did not exist.

10. Exceptions. It is Tenant's current information and belief that Landlord is in default of the Lease, specifically, Article 9 of the First Lease Amendment dated January 1, 1995 for failing to provide a Landlord's Renewal Notice having a good faith determination of the Base Annual Rent for the Renewal Term calculated in the manner required thereunder, and for thereafter failing to negotiate the Base Annual Rent in good faith as required thereunder.

Exhibit A - Land

UNOFFICIAL COPY

Property of Cook County Clerk's Office

IN WITNESS WHEREOF, the parties hereto have caused his Agreement to be duly executed as of the date first above written.

ADDRESS OF MORTGAGEE:

NationsBank, N.A.  
303 Roma, N.W.  
Albuquerque, New Mexico 87102  
Attention: Tina Salazar

MORTGAGEE:

NationsBank, N.A.

By:

Tina Salazar  
Tina Salazar, Vice President

ADDRESS OF TENANT:

Roper & Quigg  
200 S. Michigan Ave  
Suite 1000  
Chicago, IL 60604  
Attention: William P. Oberhardt

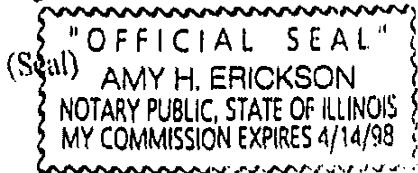
TENANT

Roper & Quigg

By:

William P. Oberhardt  
William P. Oberhardt  
Partner

Signed and subscribed before me this 11th day of February, 1998



Notary Public

My commission expires:

4/14/98

ADDRESS OF LANDLORD:

200 Michigan Ave. Associates  
Limited Partnership  
330 Garfield Street, Suite 200  
Santa Fe, New Mexico 87501  
Attention: Edward M. Gilbert

LANDLORD

200 Michigan Ave. Associates, Limited  
Partnership, a New Mexico limited partnership

By:

BGK Equities, Inc.,  
a New Mexico corporation, General Partner

By:

Edward M. Gilbert  
Edward M. Gilbert, President

STATE OF NEW MEXICO  
COUNTRY OF ~~BERNALILLO~~ SANTA FE

This instrument was acknowledged before me on February 12, 1998, by Tina Salazar as Vice President of NationsBank, N.A., a national banking association, and Edward M. Gilbert as President of BGK Equities, a New Mexico Corporation, General Partner.

(Seal)

Notary Public

My commission expires:

11/08/99

UNOFFICIAL COPY

Property of Cook County Clerk's Office

**EXHIBIT A**

**PARCEL 1:**

Sub Lots one (1), two (2), three (3), four (4), five (5), and six (6) of Assessor's Division of Original Lots one (1) and four (4); also the strip of land lying south of the south line of East Adams Street, east of Sub Lot four (4) aforesaid and west of Sub Lots one (1), two (2), and three (3) aforesaid, all in Block Five (5) of Fractional Section fifteen (15) Addition to Chicago in Township thirty-nine (39) north, range fourteen (14) east of the Third Principal Meridian in Cook County, Illinois, but excluding therefrom the following:

that part of Sub Lot 6 in the Assessor's Division of Original Lots 1 and 4 in Block 5 of Fractional Section 15 Addition to Chicago, in Township 39 north, range 14 east of the Third Principal Meridian, lying south of a line drawn from a point on the east line of said Sub Lot, 14.42 feet north of the southeast corner of said Sub Lot to a point on the west line of said Sub Lot 14.66 feet north of the southwest corner of said Sub Lot, in Cook Country, Illinois.

**PARCEL 2:**

Easements appurtenant for the benefit of Parcel 1 as created by the Operations Agreement between the Orchestral Association and the Equitable Life Assurance Society of the United States dated the 22<sup>nd</sup> day of February, 1994 and recorded March 1, 1994 as Document Number 94192418 for the following purposes:

1. Structural Support;
2. Facilities Use;
3. Maintenance;
4. Parking (Tower only)

PIN 17-15-105-017 } Volume 510  
PIN 17-15-105-018 }

200 South Michigan Avenue  
Chicago, Illinois 60604

This document has been prepared by Modrall, Sperling, Roehl, Harris & Sisk, P.A. and after recording should be returned to Diane Harrison Ogawa, Modrall Law Firm, 500 Fourth Street NW, Post Office Box 2168, Albuquerque, New Mexico 87103

UNOFFICIAL COPY

Property of Cook County Clerk's Office