

Return Address:  
GE Financial Assurance  
P. O. Box 490  
Seattle, WA 98111-0490  
Loan No. 3491

158  
\*199909130158\*

Kathy Hill, Skagit County Auditor  
9/13/1999 Page 1 of 11 4:14:51PM

ISLAND TITLE CO.  
5B-14817✓

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

Grantors:

1. HOLLYWOOD ENTERTAINMENT CORPORATION

Grantee:

1. GENERAL ELECTRIC CAPITAL ASSURANCE COMPANY, a Delaware corporation

Legal Description:

1. Abbreviated form: Lot 3, Fred Meyer Retail Store Binding Site Plan, Volume 11 of Short Plats, pages 41 through 48; ptn. SW NW, Sec. 5, T34N, R4E W.M.
2. Additional legal description is on page 8 of document

Assessor's Property Tax Parcel Account Number(s): 8013-000-003-0000

Recording Requested by and  
When Recorded Mail to:

GE FINANCIAL ASSURANCE  
P.O. Box 490  
Seattle, Washington 98111-0490  
Loan No. 3491

## SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

GENERAL ELECTRIC CAPITAL ASSURANCE COMPANY, a Delaware corporation ("Lender"), has agreed to make a loan ("Loan") to <sup>1</sup>ADRIENNE LAU, AS TRUSTEE UNDER THE ADRIENNE LAU REVOCABLE LIVING TRUST AGREEMENT DATED NOVEMBER 17, 1988, AS AMENDED, BRENT C. NICHOLSON, L.L.C., a Washington limited liability company and <sup>2</sup>KELVIN PROPERTIES, L.L.C. (formerly known as Commercial Realty Group, L.L.C.), a Washington limited liability company ("Borrower"), to be secured by a Deed of Trust, Assignment of Rents and Leases, and Security Agreement (the "Deed of Trust") on the property commonly known as 1040 South Burling Boulevard, Burlington, Washington ("Property"), and more particularly described on attached Exhibit A. The parties acknowledge that the Deed of Trust is being recorded concurrently with or after this instrument on 9/13/99, as Instrument No. 199909130157. (The parties hereby authorize the title company to insert the appropriate Deed of Trust recording information when available.)

HOLLYWOOD ENTERTAINMENT CORPORATION ("Tenant") has a lease ("Lease") on all or a portion of the Property ("Leased Premises") dated October 21, 1997.

Lender needs assurances from Tenant in order to make the Loan. Tenant is willing to give those assurances if Lender will agree, so long as Tenant is not in default under the Lease, not to disturb Tenant's possession of the Leased Premises in the event of foreclosure of the Deed of Trust. Tenant also understands that, in making the Loan, Lender will rely on the assurances and statements made in this agreement.

NOW, THEREFORE, Lender and Tenant agree as follows:

1. Subordination. So long as Tenant's occupancy is not disturbed as provided in Section 2 below, Tenant agrees that the Lease, and all rights of Tenant in, to and under the Lease and the Property, are hereby unconditionally subordinated, and shall remain unconditionally subordinate, to the lien of the Deed of Trust and any and all other instruments held by Lender as security for the Loan, and to any and all renewals, modifications and extensions thereof.

1 AMBER INVESTMENTS, L.L.C., a Washington limited liability company      2 KELVIN-BURLINGTON, L.L.C.

2. Tenant Not To Be Disturbed. Lender agrees that, so long as Tenant is not in default under the Lease (beyond any period given Tenant by the terms of the Lease to cure such default):

(a) Tenant's possession of the Lease Premises, or any extension or renewal rights therefor in the Lease, shall not be diminished or interfered with by Lender, and Tenant's occupancy of the Leased Premises shall not be disturbed by Lender during the term of the Lease or any such extensions or renewals thereof.

(b) Lender will not join Tenant as a party defendant in any action or proceeding foreclosing the Deed of Trust unless such joinder is necessary to foreclose the Deed of Trust, and then only for such purpose and not for the purpose of terminating the Lease.

3. Tenant to Attorn to Lender. If Lender becomes the owner of the Property by reason of foreclosure or other proceedings brought to enforce the Deed of Trust or by deed in lieu of foreclosure, the Lease shall continue in full force and effect as if Lender were the original Borrower and Tenant hereby attorns to Lender as Tenant's lessor, except Lender shall not be:

(a) Liable for any act or omission of any prior lessor (including Borrower) which occurred prior to the Lender's acquisition of title to the Leased Premises; provided, however, nothing herein shall limit Tenant's offsets or defenses for Lender's responsibilities under the Lease during the time Lender holds title to, or has possession of, the Leased Premises, for breach of the maintenance and repair responsibilities or for breach of the covenant of quiet enjoyment under the Lease, or for any offsets or defenses which arise therefrom; or

(b) Subject to any offset or defense which Tenant might have against any such prior lessor, unless Tenant shall have delivered to Lender written notice of the default giving rise to such offset or defense pursuant to paragraph 6(c) below, and Lender fails to cure the default within the period permitted in 6(c) below; or

(c) Bound by any prepayment of rent by Tenant, except as required by the Lease; or

(d) Bound by any amendment, modification or waiver of any material term of the Lease except as expressly provided for in the Lease, unless made with the prior written consent of Lender, which consent shall not be unreasonably withheld or denied and provided that in the event Lender fails to respond within thirty (30) days after receipt of a request for consent, Lender will be deemed to have consented to the requested modification, waiver or amendment.

If Lender becomes the owner of the Property and thereafter sells or otherwise transfers its interest in the Property, Lender shall have no liability with respect to obligations of the lessor under the Lease which arise following the sale or other transfer of the Property by Lender.

4. Third-Party Owner. If someone acquires the Property through Lender, whether at a trustee or foreclosure sale or otherwise, the person shall have the same rights and obligations to continue the Lease with Tenant as Lender would have under this agreement.

5. Purchase Options. Any option to purchase, right of first refusal, or other right that Tenant has to acquire all or any of the Property is set forth in the Lease. Tenant agrees that, under paragraph 1 above, any such option or right is hereby made subject and subordinate to the lien of the Deed of Trust and any and all other instruments held by Lender as security for the Loan, and to any and all renewals, modifications and extensions thereof. Foreclosure of the Deed of Trust or a deed in lieu of foreclosure shall not entitle Tenant to exercise any such option or right, but such option or right shall remain exercisable, upon and subject to the terms of the Lease, after foreclosure of the Deed of Trust or deed given in lieu of foreclosure.

6. Covenants of Tenant. Tenant covenants as follows:

(a) Tenant shall pay to Lender all rent and other payments otherwise payable to Borrower under the Lease upon written demand from Lender. By its signature below, Borrower consents to Tenant's payment of rent to Lender upon Lender's written demand, agrees that Tenant may rely solely upon Lender's written demand regardless of any dispute between Borrower and Tenant, and releases and discharges Tenant from all liability to Borrower for any payment of rent made as instructed by Lender in writing.

(b) Tenant shall not subordinate its rights under the Lease to any other mortgage, deed of trust or other security instrument without the prior written consent of Lender, provided that the Deed of Trust does not cover or encumber, or be construed to subject the lien thereof, any of Tenant's improvements or trade fixtures which Tenant has the right to remove under the Lease, or for any of Tenant's furniture or other personal property at any time placed or installed in the Leased Premises. Lender's consent shall not unreasonably withheld or denied.

(c) Tenant shall notify Lender if Borrower is in default under the Lease and will give Lender thirty (30) days after receipt of such notice in which to cure the default before Tenant invokes any of its remedies under the Lease. Notwithstanding the foregoing, however, nothing shall preclude Tenant from maintaining or repairing the Leased Premises pursuant to Sections 6.1(d) and 7.2 of the Lease.

7. Assignment of Lease. Tenant understands that Borrower's interest in the Lease has been assigned to Lender in connection with the Loan. Until Lender becomes owner of the Property, however, Lender assumes no duty, liability or obligation to Tenant under the Lease.

8. Costs and Attorneys' Fees. In the event of any claim or dispute arising out of this agreement, the party that substantially prevails shall be awarded, in addition to all other relief, all attorneys' fees and other costs and expenses incurred in connection with the claim or dispute, including without limitation those fees, costs and expenses incurred before, during or after suit, in any arbitration, in any appeal, in any proceedings under any present or future bankruptcy act or state receivership, and in any post-judgment proceeding.

9. Notices. Any notices under this agreement shall be in writing and shall be personally delivered or mailed, postage prepaid, certified or registered mail, return receipt requested. Any notice sent to a party shall be sent to the party at its address below its signature hereon. Each mail notice shall be deemed given three (3) days after its postmark. Any party may change its address by notice to the other parties.

10. Miscellaneous. This agreement may not be modified except in a writing executed by the parties or their successors in interest. This agreement shall be binding upon and shall inure to the benefit of the parties and their heirs, administrators, representatives, successors, and assigns. This agreement may be executed in counterparts, in which case all originals together shall constitute a single instrument.

11. Effective Date. This Agreement shall become effective upon the execution and delivery by and to each party hereto.

[Signature page(s) follow(s)]

**\*199909130158\***

**Kathy Hill, Skagit County Auditor**  
**9/13/1999 Page 5 of 11 4:14:51PM**

DATED this 13TH day of SEPTEMBER, 1999.

**LENDER:**

GENERAL ELECTRIC CAPITAL  
ASSURANCE COMPANY, a Delaware  
corporation

*Cherie Konkler*  
By: Cherie Konkler  
Its: Loan Closing Specialist

Address:

c/o GE Financial Assurance  
P.O. Box 490  
Seattle, Washington 98111-0490

**TENANT:**

HOLLYWOOD ENTERTAINMENT  
CORPORATION, an Oregon corporation

*J. Patrick O'Malley*  
J. Patrick O'Malley  
Senior Vice President

Address:

9275 SW Peyton Lane  
Wilsonville, Oregon 97070  
Attn: Donald J. Ekman, Esq.

**\*199909130158\***

UNREGISTERED  
CONSENT AND AGREED TO this 13<sup>th</sup> day of September, 1999

LANDLORD:

AMBER INVESTMENTS, L.L.C., a  
Washington limited liability company

By: Adrienne Lau Trustee  
Adrienne Lau, as Trustee of the  
Adrienne Lau Revocable Living  
Trust, Member

~~Adrienne Lau~~  
~~ADRIENNE LAU, AS TRUSTEE~~  
~~UNDER THE ADRIENNE LAU~~  
~~REVOCABLE LIVING TRUST~~  
~~AGREEMENT DATED NOVEMBER 17,~~  
~~1988, AS AMENDED~~

KELVIN-BURLINGTON, L.L.C., a  
Washington limited liability company

By: J. Terry Moss  
J. TERRY MOSS, Member

~~KELVIN PROPERTIES, L.L.C., a~~  
~~Washington limited liability company~~

By: [Signature]  
\_\_\_\_\_, Member

BRENT C. NICHOLSON, L.L.C., a  
Washington limited liability company

By: [Signature]  
\_\_\_\_\_, Member

Address:

2333 Carillon Point  
Kirkland, Washington 98033

[Acknowledgment page(s) follow(s)]

[Acknowledgment of Lender]

STATE OF WASHINGTON )

COUNTY OF KING )

SS.

I certify that I know or have satisfactory evidence that Cherie Konkler is the person who appeared before me and acknowledged that he or she signed the foregoing instrument, on oath stated that he or she was authorized to execute the instrument and acknowledged it as a Loan Closing Specialist of GENERAL ELECTRIC CAPITAL ASSURANCE COMPANY to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 1<sup>st</sup> day of September, 1999.

ADRIENNE J. HAYSE  
STATE OF WASHINGTON  
NOTARY --- PUBLIC  
MY COMMISSION EXPIRES 5-10-00

Adrienne J. Hayse  
Notary Public in and for Washington State  
Printed Name: Adrienne J. Hayse  
Residing at: Seattle  
Appointment Expires: 5-10-2000

[Acknowledgment of Tenant]

STATE OF OREGON )

COUNTY OF CLACKAMAS )

SS.

On August 12, 1999, before me, Kristen Kaesemeyer, a Notary Public in and for said County and State, personally appeared J. Patrick O'Malley, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature: Kristen Kaesemeyer



(seal)

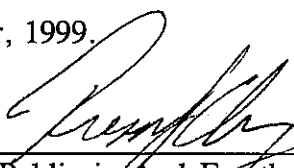


*Representative Capacity Acknowledgment*

STATE OF HAWAII )  
 ) ss.  
County of HONOLULU )

I certify that I know or have satisfactory evidence that **ADRIENNE LAU** is the person who appeared before me, and said person acknowledged that she signed this instrument as Trustee of the Adrienne Lau Revocable Living Trust, on oath stated she was authorized to execute the instrument and, as such Trustee, acknowledged it as the Member of **AMBER INVESTMENTS, L.L.C.**, a Washington limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 3rd day of September, 1999.

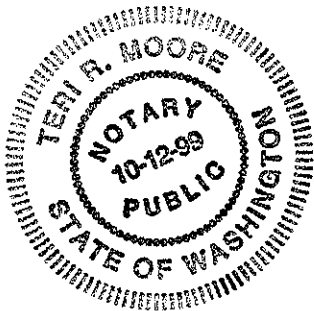
  
Notary Public in And For the State of HAWAII,  
residing at CITY AND COUNTY OF HONOLULU.  
Name (printed or typed): RUSSELL L. CHING  
My appointment expires: MAY 16, 2000.

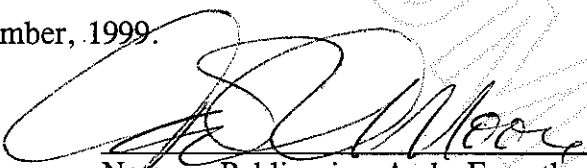
*Representative Capacity Acknowledgement*

STATE OF WASHINGTON )  
 ) ss.  
County of King )

I certify that I know or have satisfactory evidence that **J. TERRY MOSS** is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as a member of **KELVIN-BURLINGTON, L.L.C.**, a Washington limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 8th day of September, 1999.



  
Notary Public in And For the State of  
Washington,  
residing at Federal Way.  
Name (printed or typed): TERI R. MOORE  
My appointment expires: 10/12/99.

**Representative Capacity Acknowledgment**

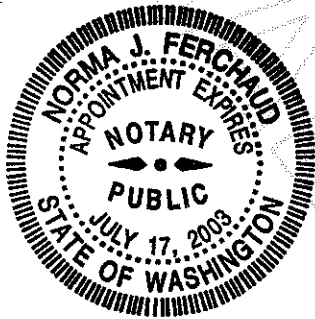
STATE OF WASHINGTON )

COUNTY OF King )

SS.

I certify that I know or have satisfactory evidence that Brent C. Nicholson is the person who appeared before me, and said person acknowledge that [he][she] signed this instrument, on oath stated that [he][she] was authorized to execute the instrument and acknowledged it as the Member of **BRENT C. NICHOLSON, L.L.C.** to the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

DATED this 17<sup>th</sup> day of August, 1999.



Norma Ferchaud  
Notary Public in and for state of Washington,  
Residing at: Issaquah  
Name (printed or typed): Norma Ferchaud  
Appointment Expires: 7-17-03

## EXHIBIT A

### LEGAL DESCRIPTION OF THE PREMISES

The Property is located in Skagit County, Washington, and legally described as follows:

Lot 3, FRED MEYER RETAIL STORE BINDING SITE PLAN, approved December 29, 1993, and recorded January 10, 1994, in Volume 11 of Short Plats, pages 41 through 48, under Auditor's File No. 9401100038, records of Skagit County, Washington, and as amended by that map recorded on November 3, 1997, in Volume 13 of Short Plats, page 57, under Auditor's File No. 9711030141, records of Skagit County, Washington; being a portion of the Southwest Quarter of the Northwest Quarter of Section 5, Township 34 North, Range 4 East of the Willamette Meridian.

Situated in Skagit County, Washington.

TOGETHER WITH an easement for ingress, egress, utilities and parking as set forth in the Declaration of Covenants, Conditions, Restrictions and Easements recorded September 10, 1993, under Auditor's File No. 9309100062, records of Skagit County, Washington, as amended by that certain First Amendment recorded October 16, 1996 under Auditor's File No. 9610160077, records of Skagit County, Washington.

**\*199909130158\***

Kathy Hill, Skagit County Auditor

9/13/1999 Page 11 of 11 4:14:51PM