

UNOFFICIAL COPY

00028817



1000 0032 15 001 Page 1 of 7  
2000-01-12 09:37:42  
Cook County Recorder 63.00

THIS INSTRUMENT PREPARED BY AND  
AFTER RECORDING RETURN TO:

SENN LEWIS & VISCIANO, P.C.  
ATTN: HSBL  
1801 CALIFORNIA STREET  
SUITE 4300  
DENVER, COLORADO 80202

SUBORDINATION OF LEASE AGREEMENT

THIS SUBORDINATION OF LEASE AGREEMENT (this "Agreement"), dated this \_\_\_\_\_ of December, 1999, between COLE TAYLOR BANK, a national banking association, not personally but solely as Trustee under Trust Agreement dated May 20, 1976, and known as Trust No. 91-490 ("Borrower"), R.C. KIMBREL ROOFING CO., an Illinois corporation ("Lessee") and HELLER SMALL BUSINESS LENDING CORP., a Delaware corporation (Heller Small Business Lending Corp. and its successors and assigns are hereinafter referred to as "Lender"), having its principal place of business at 500 West Monroe Street, 31<sup>st</sup> Floor, Chicago, Illinois 60661.

RECITALS:

A. Lessee is the lessee under that certain lease executed between Lessee and Borrower dated December 20, 1999, (the lease and all amendments thereto are hereinafter referred to as the "Lease"), covering all or a portion of property legally described in Schedule I attached hereto and made a part hereof (the "Property").

B. Lender is making a loan (the "Loan") to Borrower which is secured, in part, by the lien of a mortgage or deed of trust executed and delivered in favor of Lender encumbering the Property (the "Mortgage").

C. As a condition to making the Loan, Lender requires that Lessee enter into this subordination of lease agreement.

NOW, THEREFORE, in consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Representations and Warranties. Lessee hereby represents and warrants as follows:
  - (a) The Lease has not been amended, modified or extended.
  - (b) Lessee has not sublet any portion of the leased premises or assigned any of its rights under the Lease.
  - (c) The Lease does not contain any options to purchase and/or lease additional space, rights of first refusal to purchase and/or lease additional space or any similar provisions regarding acquisition of ownership interests or additional leased space in the building.
  - (d) The Lease is in full force and effect, Lessee has no existing claims, defenses or offsets under the Lease against Borrower, no uncured default exists under the Lease, and no event has occurred that would, except for the lapse of time, the giving of notice or both, constitute a default.

2. Cancellation; Amendment; Prepayment. No cancellation, modification, amendment, extension, or assignment of the Lease, and no subletting or prepayment of more than one month's rent shall be made without Lender's prior written consent.

BOX 333

3 of 4  
99092280-MN-NA

11  
4  
P

# UNOFFICIAL COPY

3. Rent Payments. All rent payments shall be paid as provided under the Lease until Lessee has been otherwise notified by Lender or its successors and assigns. All prepayments of more than one month's rent and any and all termination fees paid by Lessee, or at Lessee's direction, shall be payable jointly to Lender and Borrower.

4. Subordination. The Lease and all terms thereof, including, without limitation, any options to purchase, rights of first refusal, and any similar rights, are and shall be subject and subordinate to the Mortgage, and to all amendments, modifications, replacements and extensions thereof, to the full extent of the principal, interest, fees, expenses and all other amounts secured thereby.

5. Attornment. In the event Lender elects to foreclose the Mortgage and not join Lessee in said foreclosure or summary proceedings, upon Lender's succeeding to Borrower's interest under the Lease, Lessee covenants and agrees to attorn to Lender or a purchaser at a foreclosure or trustee's sale, to recognize such successor landlord as Lessee's landlord under the Lease, and to be bound by and perform all of the obligations and conditions imposed upon Lessee by the Lease. If requested by Lender or any subsequent owner, Lessee shall execute a new lease with Lender for a term equal to the remaining term of the Lease and otherwise containing the same provisions and covenants of the Lease.

6. Notice of Default. Prior to terminating the Lease due to a default by Borrower thereunder, Lessee agrees to notify Lender of such default and give Lender the opportunity to cure such default within thirty (30) days of Lender's receipt of such notice (or, if such default cannot reasonably be cured within such thirty (30) day period, Lender shall have such longer time as may be necessary to cure the default; provided that Lender commences the cure within such period and diligently pursues the cure thereafter).

7. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the respective heirs, personal representatives, successors and assigns of the parties hereto.

8. No Modifications. This Agreement can be modified only in writing duly executed by both parties.

9. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and together shall constitute the Agreement.

**NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN LESSEE'S LEASE INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT. THIS SUBORDINATION AGREEMENT CONTAINS PROVISIONS ALLOWING BORROWER TO OBTAIN A LOAN, A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE PROPERTY.**

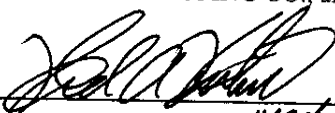
10. Trustee Exculpation. This Agreement is executed by Cole Taylor Bank, not personally but as trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such trustee (and said trustee hereby warrants that it possesses full power and authority to execute this instrument, and it is expressly understood and agreed that nothing herein contained shall be construed as creating any liability on the part of said trustee personally to pay the indebtedness evidenced by the Loan or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant either express or implied herein contained, all such personal liability, if any being expressly waived by Lender and by every person now or hereafter claiming any right or security hereunder, and that so far as said trustee is personally concerned, the legal holder or holders of the Mortgage and the owner or owners of any indebtedness accruing under the Loan shall look to the Property or any other collateral securing the indebtedness for the payment thereof, by the enforcement against said Property or other collateral provided in the Mortgage and any of the Loan Documents.

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

LESSEE:

R. C. KIMBREL ROOFING CO., an Illinois corporation

By:   
Name: Ned A. Kimbrel  
Its: pres

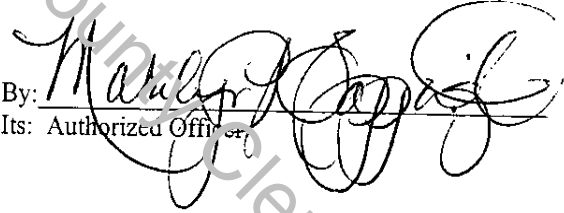
BORROWER:

COLE TAYLOR BANK, a national banking association,  
not personally but as Trustee as aforesaid

By:   
Title: ASSISTANT VICE PRESIDENT

LENDER:

HELLER SMALL BUSINESS LENDING CORP.

By:   
Its: Authorized Officer

Attest:   
Sr. Trust Officer

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## SCHEDULE I

### LEGAL DESCRIPTION

Lot 2 in Higgins Industrial Park Unit 2, a subdivision of part of the Northwest 1/4 of the Northeast 1/4 of Section 26, Township 41 North, Range 11 East of the Third Principal Meridian, according to the plat thereof recorded December 15, 1966 as Document 20022478, in Cook County, Illinois.

Commonly Known as 2411 East Oakton, Elk Grove Township, Illinois 60005

P.I.N.: 08-26-202-002-0000

Property of Cook County Clerk's Office

00028817

# UNOFFICIAL COPY

## ACKNOWLEDGMENT

STATE OF ILLINOIS            )  
  )ss.  
COUNTY OF Cook            )

I, Leonid Gelfgat, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Marilyn D.P. Sappington, who is personally known to me to be the AS Vice President of Heller Small Business Lending Corp., a corporation of the State of Delaware, and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he or she signed and delivered the said instrument as Assistant Vice President of said corporation pursuant to authority given by the Board of Directors of said corporation, as his or her own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 28th day of December, 1999.

Leonid Gelfgat  
Notary Public

[SEAL]

My commission Expires: 6/15/2002



# UNOFFICIAL COPY

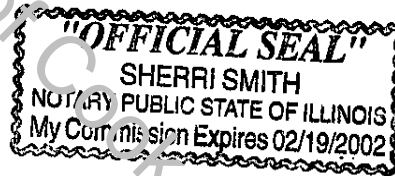
STATE OF ILLINOIS            )  
  ) SS  
COUNTY OF Cook            )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO  
HEREBY CERTIFY, that MARIO V. GOTANCO, A.V.P. of Cole Taylor Bank, who is  
personally known to me to be the same person whose name is subscribed to the foregoing instrument as such  
general partner, appeared before me this day in person and acknowledged that (he/she) signed and delivered the  
said instrument as (his/her) own free and voluntary act and as the free and voluntary act of said limited  
partnership, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 29<sup>th</sup> day of December, 1999.

*Sherrri Smith*  
Notary Public

My Commission Expires:  
\_\_\_\_\_



# UNOFFICIAL COPY

STATE OF Illinois )  
 ) SS  
COUNTY OF Cook )

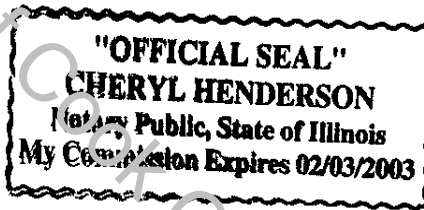
I, Cheryl Henderson, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Ned Kimbel who is personally known to me to be the President of R. C. KIMBREL ROOFING CO., a corporation of the State of Illinois, and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed and delivered the said instrument as his of said corporation, pursuant to authority given by the Board of Directors of said corporation, as (his/her) own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 25<sup>th</sup> day of December, 1999.

Cheryl Henderson  
Notary Public

My Commission Expires:

2/3/03



00028817