

7703 728 M.A. Doe

THIS INSTRUMENT PREPARED BY
AND AFTER RECORDING
RETURN TO

Nora A. Naughton, Esq.
Goldberg, Kohn, Bell, Black,
Rosenbloom & Moritz, Ltd.
55 East Monroe Street
Suite 3700
Chicago, Illinois 60603
(312) 201-4000

ATTORNMEN AND SUBORDINATION AGREEMENT

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THIS ATTORNMEN AND SUBORDINATION AGREEMENT (the "Agreement") is made and entered into as of the 30th day of January 1998, by and among RRR Leasing Co. CORPORATION ("Tenant"), JANICE BUILDING CORPORATION, as sole beneficiary of LaSalle National Bank, as successor trustee to LaSalle National Trust, N.A., a national banking association, as successor trustee to Columbia National Bank of Chicago, not in its individual capacity but as Trustee under a Trust Agreement dated January 30, 1991, and known as Trust no. 3682 a/k/a 01-3682 and LaSalle National Bank, as successor Trustee to LaSalle National Trust, N.A., a national banking association, as successor Trustee to Columbia National Bank of Chicago, not in its individual capacity but as Trustee under a Trust Agreement dated February 1, 1991, and known as Trust no. 3643 a/k/a 01-3643 ("Landlord"), and AMERICAN BUILDERS & CONTRACTORS SUPPLY CO., INC., a Delaware corporation ("Lender").

I
RECITALS

1.1 Tenant is the tenant under a certain Lease dated January 1, 1998 between Landlord and Tenant, pertaining to and covering a portion of that certain real estate which is legally described on Exhibit A attached hereto and the buildings and improvements located thereon (the "Property").

1.2 Lender is presently contemplating the making of a loan (the "Loan") to Landlord secured by the Property. Accordingly, this Agreement is entered into by the parties hereto with the intention of having Lender rely thereon in disbursing the Loan.

BOX 330-CTI

II WARRANTIES, COVENANTS AND AGREEMENTS

2.1 As of the date hereof, said Lease is in full force and effect and there have been no amendments, modifications or revisions to said Lease, and there are no agreements of any kind between Landlord and Tenant regarding the Leased Premises, except as provided in said Lease or except as follows: NONE. Said Lease, all extensions, modifications, replacements and renewals thereof (the "Lease"), and all the provisions thereof, and all of Tenant's rights and interests thereunder, shall be, are hereby made and shall remain completely subject and subordinate to that certain Junior Mortgage and Security Agreement dated _____ and recorded in the Office of the Cook County Recorder of Deeds on _____ as Document No. _____, and all extensions, modifications, replacements and renewals thereof (the "Mortgage"), and all other documents, including related Collateral Assignments of Beneficial Interest ("Assignments"), and all extensions, modifications, replacements and renewals thereof, now or hereafter securing the Loan (the Mortgage, Assignments and other documents being together referred to herein as the "Loan Instruments"), to the same extent as if the Loan Instruments had been executed, delivered and recorded prior to execution of the Lease. The provisions of this Section 2.1 shall be effective notwithstanding any provisions to the contrary in the Lease. Tenant hereby waives, to the extent permitted by law, the provisions of any statute or rule of law now or hereafter in effect which may give or purport to give Tenant any right or election to terminate or otherwise adversely affect its rights or obligations under the Lease or the obligations of Tenant under this Agreement by reason of any foreclosure proceeding.

2.2 Tenant agrees that it will not after the date hereof subordinate the Lease to any mortgage, deed of trust or other lien encumbering the Property, other than the Loan Instruments, without first obtaining the written consent of Lender.

2.3 Lender shall have the right at any time to elect, by a notice in writing given to Tenant, to make the Lease superior to the Loan Instruments, and, upon the giving of such notice to Tenant, the Lease shall be deemed to be prior and superior to such Loan Instruments and the interest thereby created and evidenced.

2.4 The Lease shall not, after the date hereof, be terminated, surrendered, renewed (except as specifically permitted by the Lease), or modified without first obtaining the prior written consent of Lender, and rent shall not be paid more than one month in advance.

2.5 Tenant hereby acknowledges that the interest of Landlord under the Lease shall be assigned to Lender solely as security for the Loan and Lender (i) shall not be liable for any claims for damages or setoffs arising out of Landlord's interest in the Property, for the return of any security deposit unless it has specifically been received by Lender, for any act committed by Landlord or any breach or failure to perform by Landlord, and (ii) shall not be obligated by reason of the Assignment or the exercise of any rights granted therein to perform any obligation of Landlord. Landlord and Tenant hereby agree that immediately upon notice by Lender that a

default or Event of Default has occurred under the Loan Instruments, Tenant will, if Lender so requests and until further notice and direction from Lender, make all future payments of rent and any other amounts becoming due under the Lease directly to Lender.

2.6 In the event of any default by Landlord under the Lease, Tenant shall promptly give notice of such default to Lender and, in such event and prior to the exercise by Tenant of any of its rights or remedies under the Lease or otherwise with respect to such default, Lender shall have the right, but not the obligation, to cure such default within thirty (30) days following the receipt of such notice (except that if Lender cannot cure such default within such period of time, such period shall be extended for a reasonable additional period of time, provided that Lender commences to take action in order to cure such default within such period and proceeds diligently thereafter to effect such cure), and, if Lender does cure such default, then the Lease shall remain in full force and effect.

2.7 Notwithstanding the subordination of the Lease as aforesaid, in the event that Lender or any other party succeeds to the rights of Landlord under the Lease ("**Successor Landlord**"), whether through foreclosure, the acceptance of a deed in lieu of foreclosure or any possession, surrender, assignment, judicial action or any other action taken by Lender, then Tenant agrees that (i) it shall attorn to, and be liable to and recognize Successor Landlord as the lessor under the Lease for the balance of the term of the Lease upon and subject to all the terms and conditions of this Agreement and of the Lease; (ii) thereafter, it shall make payments of rent (minimum, basic, percentage, additional or otherwise) to Successor Landlord, and otherwise perform all of Tenant's obligations set forth in the Lease; (iii) Successor Landlord shall be responsible only for the performance of those of lessor's obligations to be performed during the period of its ownership; and (iv) Tenant shall look solely to the interest of Successor Landlord in the Property for recovery of any judgment, it being specifically agreed that neither Successor Landlord, nor Lender, nor anyone claiming under Landlord or Lender, shall ever be personally liable for any such judgment.

2.8 Tenant agrees that on the written request of Lender made from time to time, Tenant will promptly execute and deliver to Lender an estoppel certificate addressing such matters pertaining to the Lease as Lender may request.

2.9 Whenever any of the parties hereto desires to give any notice to any of the others under this Agreement, it shall be sufficient for all purposes if such notice is hand delivered or sent by registered or certified U.S. mail, postage prepaid, return receipt requested, addressed to the intended recipient at the following addresses:

If to Lender:

American Builders & Contractors
Supply Co., Inc.
1 ABC Parkway
Beloit, Wisconsin 53511

with a copy to:

Leo & Associates

UNOFFICIAL COPY

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200 Randolph Avenue
Suite 200
Huntsville, Alabama 35801
Attn: C. Paul Davis

If to Tenant:

RRK Leasing Co.
220 Higgins Road
Elk Grove Village, Illinois 60007

If to Landlord:

Janice Building Corporation
2201 Higgins Road
Elk Grove Village, Illinois 60007

with a copy to:

Di Monte Schostok & Lizak
1300 West Higgins Road
Suite 200
Park Ridge, Illinois 60068
Attn: Alan L. Stefaniak

2.10 This Agreement shall inure to the benefit of and shall be binding upon Tenant, Landlord, Lender and their respective heirs, personal representatives, successors and assigns. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any of the provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision was not contained herein. This Agreement shall be governed by and construed according to the laws of the State of Illinois.

2.11 Nothing contained in this Agreement shall in any way impair or affect the lien created by the Mortgage, except as specifically set forth herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed in manner and form sufficient to bind them, as of the day and year first above written.

TENANT:

FRK Leasing Co.

By [Signature]
Its _____

LANDLORD

JANICE BUILDING CORPORATION, as sole beneficiary of the land trusts described aforesaid

By [Signature]
Its _____

LENDER:

AMERICAN BUILDERS & CONTRACTORS SUPPLY CO., INC., a Delaware corporation

By _____
Its _____

The undersigned, being the guarantor or guarantors of Tenant's obligations under the Lease, hereby consent(s) to the foregoing Agreement and reaffirm(s) his/her/their obligations under the guaranty executed by him/her/them.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed in manner and form sufficient to bind them, as of the day and year first above written.

TENANT:

By _____
Its _____

LANDLORD:

JANICE BUILDING CORPORATION, as sole beneficiary of the land trusts described aforesaid

By _____
Its _____

LENDER:

AMERICAN BUILDERS & CONTRACTORS SUPPLY CO., INC., a Delaware corporation

By Jan A. Cox
Its Asst. Corp. Credit Manager

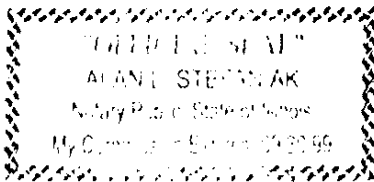
The undersigned, being the guarantor or guarantors of Tenant's obligations under the Lease, hereby consent(s) to the foregoing Agreement and reaffirm(s) his/her/their obligations under the guaranty executed by him/her/them.

ACKNOWLEDGMENT

STATE OF Illinois)
) SS
COUNTY OF LAKE)

I, Alan L. STEINAK a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT RICHARD C. Rosenthal of ZEPHYRUS CO. a Illinois corporation, 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 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 3rd day of September 1998.



Alan L. Steinak
Notary Public

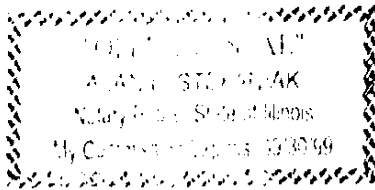
My Commission Expires:
9/30/99

ACKNOWLEDGMENT

STATE OF ILLINOIS)
COUNTY OF LAKE) SS

I, Alan L. STEPHANAK, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT RONALD C. BOGARD of JANICE BUILDING CORPORATION, an Illinois corporation, 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 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 30th day of JANUARY 1998.



Alan L. Stephanak
Notary Public

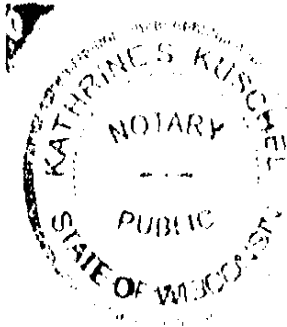
My Commission Expires:
9/30/99

ACKNOWLEDGMENT

STATE OF)
) SS
COUNTY OF)

I, _____, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT _____ of AMERICAN BUILDERS & CONTRACTORS SUPPLY CO., INC., a Delaware corporation, 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 _____ 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 10 day of February 1998.



Kathrine S. Kuschner
Notary Public

My Commission Expires:
January 27, 2002

CLERK'S OFFICE OF COOK COUNTY

EXHIBIT A

Parcel 1: Lot 1 (except the East 353.71 feet thereof and except the South 82 1/2 feet thereof) and except that part described as follows: beginning at a point in the West line thereof which is 158.65 feet North of the Southwest corner of said Lot 1; Thence North 1423.54 feet along the West line of said Lot 1 to the Northwest Quarter corner thereof and the center line of Higgins Road; Thence South 40° 46' 30" East along the Northeasterly line of said Lot 1 and the center line of Higgins Road 1064 feet to the center line of Creek; Thence along the center line of Creek South 48° 08' West 249.71 feet; Thence South 69° 10' West 188 feet; Thence South 49° 21' West 394.44 feet; Thence South 15° 10' 50" West 131.40 feet along the center line of said Creek to the point of beginning) in the Subdivision of the Estate of Henry Landmeier being a part of Sections 26 and 35, Township 41 North, Range 11, East of the Third Principal Meridian, (except the Northeasterly 50 feet of the above described tract of land for Higgins Road) and (except the Southwesterly 10 feet of the Northeasterly 60 feet of the Northwesterly 35 feet of that part lying South of the center of the Creek in Lot 1 aforesaid, bounded and described as follows: beginning at the intersection of the Northeasterly line of said Lot 1 and the center line of Creek; Thence Southwesterly along said center line of Creek, a distance of 50 feet for a point of beginning; Thence Southeasterly and parallel to the Northeasterly line of said Lot 1, a distance of 35 feet to a point; Thence Southwest and at right angles to the last described course, a distance of 10 feet to a point; Thence Northwesterly and parallel to the Northeasterly line of said Lot 1 a distance of 35 feet to the center line of Creek; Thence Northeast 10 feet (as measured along said center line to the point of beginning and except that part lying Southerly of the following described lines: commencing at a point on the South line of said tract 658.42 feet South 89° 55' 48" East of the Southwest corner thereof; Thence North 17° 54' 34" East 167.85 feet to the point of beginning; Thence North 89° 55' 48" West 277.58 feet; Thence North 22° 56' 00" West 299.68 feet to a Northwesterly line of said tract; and also except that part lying Easterly of the following described lines: beginning at a point on the South line of said tract 658.42 feet South 89° 55' 48" East of the Southwest corner thereof; Thence North 17° 54' 34" East 234.10 feet to a point of curve; Thence Northeasterly along an arc of a circle convex Northwesterly and having a radius of 522.50 feet for a distance of 242.97 feet to the Southwesterly line of Northeasterly 50 feet of said tract, the chord of said arc having a bearing of North 31° 13' 52" East) in Cook County, Illinois.

PROPERTY ADDRESS:

2201 HIGGINS ROAD
ELK GROVE VILLAGE, ILLINOIS

PROPERTY INDEX No. 08-26-103 007-0000