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**SUBORDINATION,  
NONDISTURBANCE AND  
ATTORNMEN~~T~~ AGREEMENT****99055729**9082/0612 03 001 Page 1 of 13  
1999-01-19 15:25:30  
Cook County Recorder 45.50

99055729

This  
SUBORDINATION,  
NONDISTURBANCE, AND  
ATTORNMEN~~T~~ AGREEMENT  
(this "Agreement") is  
entered into as of  
December 8,  
1998 (the "Effective  
Date"), between LASALLE  
NATIONAL BANK, a  
national banking  
association

("Mortgagee"), whose address is 135 South LaSalle Street, Suite 1225, Chicago, Illinois 60603, and Rubloff, Inc., a Delaware corporation ("Tenant"), whose address is 980 North Michigan Avenue, Chicago, Illinois 60611, with reference to the following facts:

A. American National Bank and Trust Company of Chicago, as Trustee under a Trust Agreement dated April 1, 1996 and known as Trust No. 121502-07 whose address is c/o RN Realty, as Agent, 350 W. Hubbard St., Suite 401, Chicago, Illinois 60610 ("Landlord"), owns certain real property commonly known as 2603-11 North Halsted Street, Chicago, Illinois (such real property, including all buildings, improvements, structures and fixtures located thereon, "Landlord's Premises"), as more particularly described in Schedule A.

B. Mortgagee has made a loan to Landlord in the stated principal amount of \$1,355,843.00 (the "Loan").

This instrument prepared by and  
after recording should be returned  
to:

Sharon Z. Letchinger  
Miller, Shakman, Hamilton,  
Kurtzon & Schlifke  
208 South LaSalle Street  
Suite 1100  
Chicago, Illinois 60604

Permanent Index Nos.:

14-28-302-051

Address of Property:

2603-11 North Halsted Street  
Chicago, Illinois

1ST AMERICAN TITLE Order # 0126530  
3/4me

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C. To secure the Loan, Landlord has encumbered Landlord's Premises by entering into that certain Construction Mortgage and Security Agreement with Assignment of Rents, to be recorded in the Office of the Recorder of Deeds of Cook County, Illinois (as further amended, restated, or otherwise changed from time to time, the "Mortgage").

D. Pursuant to a Lease dated March 10, 1997 (the "Lease"), Landlord demised to Tenant <sup>the shaded area on Exhibit B of approxi-</sup> ("Tenant's <sup>#4</sup> Premises") at Landlord's Premises. <sub>mately 3128 square feet</sub>

E. Tenant and Mortgagee desire to agree upon the relative priorities of their interests in Landlord's Premises and their rights and obligations if certain events occur.

NOW, THEREFORE, for good and sufficient consideration, Tenant and Mortgagee agree:

## 1. Definitions.

The following terms shall have the following meanings for purposes of this Agreement.

1.1 Construction Obligation. A "Construction Obligation" means any obligation of Landlord under the Lease to make, pay for, or reimburse Tenant for any alterations, demolition, or other improvements or work at Landlord's Premises, including Tenant's Premises. "Construction Obligations" shall not include: (a) reconstruction or repair following fire, casualty or condemnation; or (b) day-to-day maintenance and repairs.

1.2 Foreclosure Event. A "Foreclosure Event" means: (a) foreclosure under the Mortgage; (b) any other exercise by Mortgagee of rights and remedies (whether under the Mortgage or under applicable law, including bankruptcy law) as holder of the Loan and/or the Mortgage, as result of which Successor Landlord becomes owner of Landlord's Premises; or (c) delivery by Landlord to Mortgagee (or its designee or nominee) of a deed or other conveyance of Landlord's interest in Landlord's Premises in lieu of any of the foregoing.

1.3 Former Landlord. A "Former Landlord" means Landlord and any other party that was landlord under the Lease at any time before the occurrence of any attornment under this Agreement.

1.4 Offset Rights. "Offset Rights" means any right(s) or alleged right(s) of Tenant to any offset, defense (other than one arising from actual payment and performance, which payment and performance would bind a Successor Landlord pursuant to this Agreement), claim, counterclaim, reduction, deduction, or

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abatement against Tenant's payment of Rent or performance of Tenant's other obligations under the Lease, arising (whether under the Lease or other applicable law) from Landlord's breach or default under the Lease.

1.5 Rent. "Rent" means any fixed rent, base rent or additional rent under the Lease.

1.6 Successor Landlord. A "Successor Landlord" means any party that becomes owner of Landlord's Premises as the result of a Foreclosure Event.

1.7 Termination Right. A "Termination Right" means any right of Tenant to cancel or terminate the Lease or to claim a partial or total eviction arising (whether under the Lease or under applicable law) from Landlord's breach or default under the Lease.

## 2. Subordination.

The Lease shall be, and shall at all times remain, subject and subordinate to the Mortgage, the lien imposed by the Mortgage, and all advances made under the Mortgage.

## 3 Nondisturbance, Recognition and Attornment.

3.1 No Exercise of Mortgage Remedies Against Tenant. So long as the Lease is in full force and effect and Tenant is not in default under the Lease beyond any applicable cure period, Mortgagee shall not name or join Tenant as a defendant in any exercise of Mortgagee's rights and remedies arising upon a default under the Mortgage unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or prosecuting such rights and remedies. In the latter case, Mortgagee may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant's rights under the Lease or this Agreement in such action.

3.2 Nondisturbance and Attornment. If the Lease has not been terminated, then, when Successor Landlord takes title to Landlord's Premises: (a) Successor Landlord shall not terminate or disturb Tenant's possession of Tenant's Premises under the Lease, except in accordance with the terms of the Lease and this Agreement; (b) Successor Landlord shall be bound to Tenant under all the terms and conditions of the Lease (except as provided in this Agreement); (c) Tenant shall recognize and attorn to Successor Landlord as Tenant's direct landlord under the Lease as affected by this Agreement; and (d) the Lease shall continue in full force and effect as a direct lease, in accordance with its

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terms (except as provided in this Agreement), between Successor Landlord and Tenant.

3.3 Further Documentation. The provisions of this Article shall be effective and self-operative without any need for Successor Landlord or Tenant to execute any further documents. Tenant and Successor Landlord shall, however, confirm the provisions of this Article in writing upon request by either of them.

4. Protection of Successor Landlord.

Notwithstanding anything to the contrary in the Lease or the Mortgage, Successor Landlord shall not be liable for or bound by any of the following matters:

4.1 Claims Against Former Landlord. Any Offset Rights that Tenant may have against any Former Landlord relating to any event(s) or occurrence(s) before the date of attornment, including any claim for damages of any kind whatsoever as the result of any breach by Former Landlord that occurred before the date of attornment. (The foregoing shall not limit either (a) Tenant's right to exercise against Successor Landlord any Offset Rights otherwise available to Tenant because of events occurring after the date of attornment\*or (b) Successor Landlord's obligation to correct any conditions that existed as of the date of attornment and violate Successor Landlord's obligations as landlord under the Lease).

4.2 Prepayments. Any payment of Rent that Tenant may have made to Former Landlord more than thirty (30) days before the date such Rent was first due and payable under the Lease with respect to any period after the date of attornment other than, and only to the extent that, the Lease expressly required such a prepayment.

4.3 Payment, Security Deposit. Any obligation ~~(a)~~ to pay Tenant any sum(s) that any Former Landlord owed to Tenant, ~~or (b) other than the Security Deposit of \$10,000.00 which Successor Landlord hereby acknowledges.~~ ~~with respect to any security deposited with Former Landlord,~~ unless such security was actually delivered to Mortgagee. This paragraph is not intended to apply to any payments that constitute "Construction Obligations".

4.4 Modification, Amendment or Waiver. Any modification or amendment of the Lease, or any waiver of any of the terms of the Lease, made without Mortgagee's written consent.

4.5 Surrender, Etc. Any consensual or negotiated surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant, unless effected \*(including, without limitation, the failure of successor Landlord to correct previously existing conditions under subpart (b) hereof)

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unilaterally by Tenant pursuant to a specific provision in the Lease.

4.6 Construction Obligations. Any Construction Obligation of Former Landlord, except as expressly provided for in Schedule B (if any) attached to this Agreement.

## 5. Exculpation of Successor Landlord.

Notwithstanding anything to the contrary in this Agreement or the Lease, upon any attornment pursuant to this Agreement the Lease shall be deemed to have been automatically amended to provide that Successor Landlord's obligations and liability under the Lease shall never extend beyond Successor Landlord's (or its successors' or assigns') interest, if any, in Landlord's Premises from time to time, including insurance and condemnation proceeds and Successor Landlord's interest in the Lease (collectively, "Successor Landlord's Interest"). Tenant shall look exclusively to Successor Landlord's Interest (or that of its successors and assigns) for payment or discharge of any obligations of Successor Landlord under the Lease as affected by this Agreement. If Tenant obtains any money judgment against Successor Landlord with respect to the Lease or the relationship between Successor Landlord and Tenant, then Tenant shall look solely to Successor Landlord's Interest (or that of its successors and assigns) to collect such judgment. Tenant shall not collect or attempt to collect any such judgment out of any other assets of Successor Landlord.

## 6. Mortgagee's Right to Cure

6.1 Notice to Mortgagee. Notwithstanding anything to the contrary in the Lease or this Agreement, before exercising any Termination Right or Offset Right, Tenant shall provide Mortgagee with notice of the breach or default by Landlord giving rise to same (the "Default Notice") and, thereafter, the opportunity to cure such breach or default as provided for below.

6.2 Mortgagee's Cure Period. After Mortgagee receives a Default Notice, Mortgagee shall have a period of thirty (30) days beyond the time available to Landlord under the Lease in which to cure the breach or default by Landlord. Mortgagee shall have no obligation to cure (and shall have no liability or obligation for not curing) any breach or default by Landlord, except to the extent that Mortgagee agrees or undertakes otherwise in writing.

6.3 Extended Cure Period. In addition, as to any breach or default by Landlord the cure of which requires Mortgagee to possess and control Landlord's Premises, provided only that Mortgagee undertakes to Tenant by written notice to Tenant within thirty (30) days after receipt of the Default Notice to exercise

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reasonable efforts to cure such breach or default within the period permitted by this paragraph, Mortgagee's cure period shall continue for such additional time (the "Extended Cure Period") as Mortgagee may reasonably require to obtain possession and control of Landlord's Premises and to thereafter cure the breach or default with reasonable diligence and continuity. So long as any receiver of Landlord's Premises has been appointed and is continuing to serve, Mortgagee shall be deemed to have possession and control of Landlord's Premises.

7. Miscellaneous.

7.1 Notices. All notices or other communications required or permitted under this Agreement shall be in writing and given by certified mail (return receipt requested) or by nationally recognized overnight courier service that regularly maintains records of items delivered. Each party's address is as set forth in the opening paragraph of this Agreement, subject to change by notice under this paragraph. Notices shall be effective the next business day after being sent by overnight courier service, and five (5) business days after being sent by certified mail (return receipt requested).

7.2 Successors and Assigns. This Agreement shall bind and benefit the parties, their successors and assigns. If Mortgagee assigns the Mortgage, then upon delivery to Tenant of written notice thereof accompanied by the assignee's written assumption of all obligations under this Agreement, all liability of the assignor shall terminate.

7.3 Entire Agreement. This Agreement constitutes the entire agreement between Mortgagee and Tenant regarding the subordination of the Lease to the Mortgage and the rights and obligations of Tenant and Mortgagee as to the subject matter of this Agreement.

7.4 Interaction with Lease and with Mortgage. If this Agreement conflicts with the Lease, then this Agreement shall govern as between the parties and any Successor Landlord, including upon any Attornment. This Agreement supersedes, and constitutes full compliance with, any provisions in the Lease that provide for subordination of the Lease to, or for delivery of nondisturbance agreements by the holder of, the Mortgage. Mortgagee confirms that Mortgagee has consented to Landlord's entering into the Lease.

7.5 Mortgagee's Rights and Obligations. Except as expressly provided for in this Agreement, Mortgagee shall have no obligations to Tenant with respect to the Lease. If an attornment occurs pursuant to this Agreement, then all rights and obligations of Mortgagee under this Agreement shall terminate,

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without thereby affecting in any way the rights and obligations of Successor Landlord provided for in this Agreement.

7.6 Interpretation; Governing Law. The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the internal laws of the State of Illinois without regard to principles of conflict of laws.

7.7 Amendments. This Agreement may be amended, discharged or terminated, or any of its provisions waived, only by a written instrument executed by the party to be charged.

7.8 Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

7.9 Mortgagee's Representation. Mortgagee represents that Mortgagee has full authority to enter into this Agreement, and Mortgagee's entry into this Agreement has been duly authorized by all necessary actions.

IN WITNESS WHEREOF, this Agreement has been duly executed by Mortgagee and Tenant as of the Effective Date.

**MORTGAGEE:**

LASALLE NATIONAL BANK

By: [Signature]  
Its: Vice President

**TENANT:**

RUBLOFF, INC., a Delaware corporation

By: [Signature]  
Its: President

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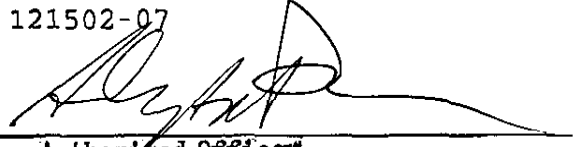
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Landlord consents and agrees to the foregoing Agreement. The foregoing Agreement shall not alter, waive or diminish any of Landlord's obligations under the Mortgage or the Lease. The above Agreement discharges any obligations of Mortgagee under the Mortgage and related loan documents to enter into a nondisturbance agreement with Tenant. Landlord is not a party to the above Agreement.

LANDLORD:

AMERICAN NATIONAL BANK AND TRUST  
COMPANY OF CHICAGO, as Trustee  
under a Trust Agreement dated  
April 1, 1996 and known as Trust  
No. 121502-07

This instrument is executed by the undersigned Land Trustee, not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that all the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee are undertaken by it solely in its capacity as Trustee and not personally. No personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Trustee on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the Trustee in this instrument.

By:   
Its: Authorized Officer

Property of Cook County Clerk's Office



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## MORTGAGEE'S ACKNOWLEDGMENT

STATE OF ILLINOIS     )  
                                   ) SS.  
 COUNTY OF COOK        )

I, Sharon Zaban Letchinger, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Lisa Cunningham, First Vice President of LaSalle National Bank, a national banking association, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such officer and 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 Bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 14<sup>th</sup> day of January, 1999.

(NOTARY SEAL)

Sharon Zaban Letchinger  
 Notary Public

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

"OFFICIAL SEAL"  
 SHARON ZABAN LETCHINGER  
 NOTARY PUBLIC, STATE OF ILLINOIS  
 MY COMMISSION EXPIRES 6/23/2002

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## TENANT'S ACKNOWLEDGMENT

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

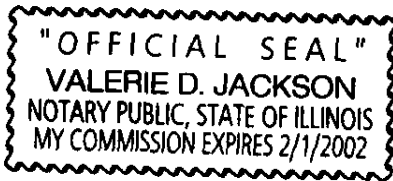
I HEREBY CERTIFY that on this 8 day of January, 1999, before me personally appeared Howard L. Rubloff of Rubloff, Inc., a Delaware corporation, to me known to be the same person who signed the foregoing instrument as his/hers free act and deed as such \_\_\_\_\_ for the use and purpose therein mentioned, and that the said instrument is the act and deed of said corporation.

WITNESS my signature and official seal at \_\_\_\_\_ in the County of Cook and State of Illinois, the day and year last aforesaid.

(NOTARY SEAL)

Valerie D. Jackson  
Notary Public

My Commission Expires: 2-1-02



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## LANDLORD'S ACKNOWLEDGMENT

STATE OF ILLINOIS) )  
 ) SS.  
COUNTY OF COOK )

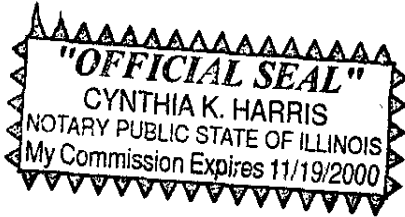
I HEREBY CERTIFY that on this 13<sup>th</sup> day of JANUARY, 1999, before me personally appeared Anthony A. DiMonte TRUST OFFICER of AMERICAN NATIONAL BANK & TRUST COMPANY OF CHICAGO, to me known to be the same person who signed the foregoing instrument as his free act and deed as such TRUST OFFICER for the use and purpose therein mentioned, and that the said instrument is the act and deed of said TRUST OFFICER.

WITNESS my signature and official seal at \_\_\_\_\_ in the County of Cook and State of Illinois the day and year last aforesaid.

(NOTARY SEAL)

Cynthia K. Harris  
Notary Public

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



**UNOFFICIAL COPY****99055729**SCHEDULE "A"LEGAL DESCRIPTION OF LANDLORD'S PREMISES

ALL OF LOT 30, THE WEST 98.14 FEET OF LOT 31, AND THE WEST 98.14 FEET OF LOT 32 (EXCEPT THE SOUTH 27.75 FEET OF THE WEST 49.85 FEET OF THE WEST 104.14 FEET, AND ALSO EXCEPT THE SOUTH 28.76 FEET OF THE EAST 54.29 FEET OF THE WEST 104.14 FEET OF SAID LOT 32) IN BLOCK 2 IN THE SUBDIVISION OF OUTLOT "E" IN WRIGHTWOOD, A SUBDIVISION OF THE SOUTHWEST 1/4 OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

P.I.N.: 14-28-302-051

Commonly Known As: 2603-11 North Halsted Street  
Chicago, Illinois

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SCHEDULE "B"

LANDLORD'S CONSTRUCTION OBLIGATIONS

THE OBLIGATIONS OF THE LANDLORD IN CONNECTION WITH THE HVAC SYSTEM SERVICING THE PREMISES, INCLUDING WITHOUT LIMITATION, THE REMEDIAL REPAIR OF LANDLORD'S HVAC WORK AND THE ELIMINATION OF ANY ONGOING WINDOW CONDENSATION.

Property of Cook County Clerk's Office