



200307310235

Skagit County Auditor

7/31/2003 Page 1 of 7 3:55PM

AFTER RECORDING RETURN TO:

Bank of America, NA
Attn: Thomas W. Braaten
Northwest Commercial Banking
1602 Hewitt Avenue, Third Floor
Everett WA. 98201

CHICAGO TITLE C28168

WASHINGTON STATE COUNTY AUDITOR'S/RECORDER'S INFORMATION
(RCW 65.04):

INSTRUMENT TITLES: LEASE SUBORDINATION AGREEMENT

GRANTOR(S): JANICKI INDUSTRIES, INC., formerly known as JANICKI MACHINE
DESIGN, INC.,

GRANTEE(S): BANK OF AMERICA N.A.

LEGAL DESCRIPTION: abbreviated:

Tracts 1, 2 and 3, Skagit County Short Plat No. 11-84; portion of SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sec. 18, T35N, R5E,
WM.

FOR THE FULL LEGAL DESCRIPTION SEE EXHIBIT "A" TO THIS DOCUMENT

ASSESSOR'S PROPERTY TAX PARCEL ACCOUNT NUMBER(S): 350518-4-029-0003;

REFERENCE NUMBER OF RELATED DOCUMENTS:

1. Grantor Lease recording no. n/a
2. Grantee Deeds of Trust recording nos. 9809140215 and as shown no page two
hereof (Auditors File No. 200307310 233)

LEASE SUBORDINATION AGREEMENT

THIS LEASE SUBORDINATION AGREEMENT ("Agreement"), made and entered into as of July 30, 2003, by and between JANICKI INDUSTRIES, INC., formerly known as JANICKI MACHINE DESIGN, INC., ("Tenant"), whose address is 24595 State Route 20, Sedro Woolley, Washington 98284, and BANK OF AMERICA. N.A., and its universal successors and assigns ("Lender"), whose address is WA1-501-13-03, 800 Fifth Ave., Seattle, WA 98104-3122, with respect to the following facts:

RECITALS:

A. Tenant is the present tenant under an Commercial Lease Agreement dated July 15, 1998, and any amendments thereto (the "Lease"), with Stanislaw Properties, L.L.C., a Washington limited liability company as "Landlord," for Premises described in the Lease (the "Premises"), and being all or a portion of the property described in Exhibit "A" hereto (the "Property").

B. Lender has made a loan to Landlord, repayment of which is secured by a Deed of Trust (the "1998 Deed of Trust") encumbering the Property, dated August 14, 1998, and recorded in the official records of Skagit County, Washington, on September 14, 1998, under Recording No. 9809140215, or which Lender is the Beneficiary and Landlord is the Grantor.

C. Lender has also made a loan to Tenant evidenced by, *inter alia*, that certain Borrowing Agreement dated August 4, 1998, in the original principal amount of \$1,750,000.00 (hereinafter referred to as the "Borrowing Agreement"). In connection with Lender's agreement to enter into that certain Amendment No. 1 to Credit Agreement between Lender and Tenant and that certain Amendment No. 2 to Credit Agreement between Lender and Landlord, both of even date herewith, which, among other matters, modify certain provisions of the loan to Landlord described in Recital B above and of the loan to Tenant described in this Recital C, Landlord is granting to Lender a deed of trust against the Real Property to secure the Borrowing Agreement. The said deed of trust securing the Borrowing Agreement is of even date herewith and is between Lender as the Beneficiary, Landlord as the Grantor, and PRLAP, Inc., as the Trustee. Said Deed of Trust has been recorded in the official records of Skagit County, Washington, on

JULY 31, 2003 under Recording No. 200307310233.
The said Deed of Trust described in this Recital C is referred to herein as the "the 2003 Deed of Trust". The 1998 Deed of Trust and the 2003 Deed of Trust are hereinafter sometimes referred to collectively as the "Deeds of Trust."

D. As a condition of entering into the two Loan Amendments described in Recital C above, Lender has required that Tenant unconditionally subordinate the Lease and all of Tenant's interest in the Premises in all respects to Lender's two Deeds of Trust.

AGREEMENT:

NOW, THEREFORE, in consideration of mutual benefits to be derived herefrom and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and with the understanding that Lender will act in reliance hereon, it is hereby agreed as follows:

1. **SUBORDINATION.** The Lease, and the rights of Tenant in, to or under the Lease and the Premises including, without limitation, any claim by Tenant to insurance proceeds and condemnation awards are unconditionally subject and subordinate and shall remain in all respects and for all purposes unconditionally subject, subordinate and junior



to the encumbrances of the Deeds of Trust and to all renewals, extensions, modifications and amendments of the Deeds of Trust, or either of them, and of the loans and/or other obligations secured by the Deeds of Trust, or either of them, and to the rights and interest of the from time-to-time holder or holders of the Deeds of Trust, as fully and with the same effect as if the Deeds of Trust had been duly executed, acknowledged and recorded, and the indebtednesses secured thereby had been fully disbursed prior to the execution of the Lease or possession of the Premises by Tenant, or its predecessors in interest.

2. **ATTORNMEN AT LENDER'S OPTION.** Neither Lender nor any other party acquiring the Landlord's interest in the Premises, through foreclosure, deed in lieu, or otherwise in satisfaction or partial satisfaction of the Deeds of Trust, or either of them, shall be required to recognize the rights of Tenant under the Lease and the rights of Tenant thereunder, including any options thereunder, shall, at the election of Lender or such other party and upon giving Tenant written notice of termination, cease and terminate. However, at Lender's sole option, if the interests of Landlord shall be transferred to and owned by Lender by reason of foreclosure of the Deeds of Trust, or either of them, or by deed or other conveyance in lieu thereof or by any other manner, and Lender succeeds to the interest of the Landlord under the Lease, Tenant shall be bound to Lender under all of the terms, covenants, and conditions of the Lease for the balance of the term thereof remaining and any extensions or renewals thereof which may be effected in accordance with any option therefor in the Lease, with the same force and effect as if Lender were the landlord under the Lease, and Tenant does hereby attorn to Lender, as its landlord; provided, said attornment and continuation of the Lease to be effective and operative only if Lender gives written notice to Tenant of Lender's exercise of this option within thirty (30) days following Lender's acquisition of the Landlord's interest in the Premises. With the giving of such notice by Lender this attornment shall thereupon be effective without the execution of any further instruments on the part of any of Lender and Tenant.

If Lender succeeds to the interest of Landlord under the Lease, then Lender shall not be (i) liable for any act or omission of any prior landlord (including Landlord); (ii) subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord); (iii) bound by any rent or additional rent which Tenant might have paid for more than the then current installment; (iv) obligated for repayment of any security deposit which has not been previously paid to Lender; or (v) bound by any amendment or modification of the Lease made without Lender's consent. Nothing in this Agreement or at law or equity shall be deemed or construed as constituting Lender a principal or surety for the performance of any of the Landlord's obligation's under the Lease, and under no circumstances whatever shall Lender have any personal liability for the breach or nonperformance of any of the Landlord's obligations to Tenant.

3. **WAIVER OF NON-DISTURBANCE.** Tenant hereby waives any right under the Lease to require a covenant of non-disturbance from Lender, and Tenant hereby agrees that no such covenant of non-disturbance is has been made or given by Lender and none shall be included nor shall be implied in this Agreement.

4. **PURCHASE OPTIONS.** Any options or rights contained in the Lease to acquire title to the Premises are hereby made subject and subordinate to the rights of Lender under the Deeds of Trust, shall not apply to any judicial or non-judicial foreclosure of the Deeds of Trust, or either of them, or to any acquisition of the Premises by Lender in lieu thereof, and any acquisition of title to the Premises made by Tenant during the term of either of the Deeds of Trusts shall be subordinate and subject to the Deeds of Trust and all of Lender's rights thereunder to the extent the obligations secured by the Deeds of Trust are not paid in full.

5. **SUCCESSORS AND ASSIGNS.** This Agreement and each and every covenant, agreement and other provisions hereof shall inure to the benefit of and be



binding upon the parties hereto and their respective successors and assigns. As used in this Agreement the term "Lender" shall include any nominee of Lender acquiring the Premises through foreclosure of the Deeds of Trust, or either of them, or by deed or other conveyance in lieu thereof.

6. **NOTICES.** Any notice under this Agreement which any party may desire or may be required to give to the other party shall be in writing and shall be given by delivering it or by mailing it by first-class regular mail, to the address for the other party as set forth above, or to such other address as either party hereto may by notice in writing designate. Lender, upon succeeding to the interest of Landlord under the Lease, shall not be deemed to have notice of any notice given by Tenant to any prior landlord (including Landlord) unless a copy of the notice was sent to Lender in the manner required by this Agreement.

7. **LENDER'S RIGHT TO CURE LANDLORD'S DEFAULT.** Notwithstanding anything herein or in the Lease to the contrary and so long as either of Lender's Deeds of Trust remain an encumbrance against the Premises, Tenant agrees to give Lender written notice of any default by Landlord under the Lease. Lender, following its receipt of such notice, shall have the right [but not the obligation] and a reasonable opportunity to cure such default on behalf of Landlord. Tenant further agrees not to exercise any of its remedies for such default so long as Lender is proceeding with diligence to cure such default or proceeding with diligence to obtain the legal right to enter the leased Premises and cure the default.

8. **CERTIFICATION OF TENANT.** Tenant certifies to Lender that it has accepted delivery of the Premises and has entered into occupancy and possession thereof; that the Lease represents the entire agreement between the parties as to the leasing, is in full force and effect, and has not been assigned, modified, supplemented or amended in any way except as indicated above; that the term of the Lease has commenced; that rent has not been paid for more than one installment in advance; that as of this date the Landlord is not in default under any of the terms, conditions, provisions, or agreements of the Lease; and that Tenant has no offsets, claims, liens, charges, or defenses against the Landlord or the rents due under the Lease. Tenant further agrees to provide to Lender from time-to-time, within ten (10) business days following Lender's written request to Tenant, certifications of Tenant as to the Lease, the rent, the term and other terms and conditions of the Lease, and of any breach or default of the Landlord's obligations thereunder.

9. **HAZARDOUS SUBSTANCES.** Tenant represents and warrants that it has not and will not use, generate, release, discharge, store or dispose of any Hazardous Substance on, under, in or about the Premises other than Hazardous Substances used in the ordinary and commercially reasonable course of Tenant's business in compliance with all applicable laws. Except for such legal and commercially reasonable use by Tenant, Tenant has no actual knowledge that any Hazardous Substance is present or has been used, generated, released, discharged, stored or disposed of by any party on, under, in or about the Premises. As used herein "**Hazardous Substance**" means any substance, material or waste (including petroleum and petroleum products), which is designated, classified or regulated as being "toxic" or "hazardous" or a "pollutant" or which is similarly designated, classified or regulated under any federal, state or local law, regulation or ordinance.

10. **ATTORNEYS' FEES.** If any lawsuit, judicial reference or arbitration or bankruptcy or other proceeding is commenced which arises out of or relates to this Agreement, and in any appeal therefrom, the prevailing party shall be entitled to recover from the non-prevailing party such sums as the court, referee or arbitrator may adjudge to be reasonable attorneys' fees, including the costs for any legal services by in-house counsel, in addition to costs and expenses otherwise allowed by law.



11. **INTEGRATION.** This Agreement integrates all of the terms and conditions of the parties' agreement regarding the matters contained herein. This Agreement supersedes and cancels all oral negotiations and prior and other writings with respect to the matters contained herein. This Agreement may not be modified or amended except by a written agreement signed by the parties or their respective successors in interest.

12. **CHOICE OF LAW.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State where the Premises are located without regard to the choice of law rules of that State.

13. **CAPTIONS AND HEADINGS.** The captions and headings of the various sections of this Agreement are for convenience only and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

14. **INSERTION OF RECORDING INFORMATION.** It is contemplated that this Lease Subordination Agreement will be filed for record after the 2003 Deed of Trust is filed, and Lender or its agent is specifically authorized to insert in this Agreement where indicated the actual filing dates and number of the 2003 Deed of Trust and such insertions shall be binding upon the parties hereto.

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be executed as of the date first set forth above.

LENDER:
BANK OF AMERICA, N.A.

By: Thomas W. Braaten, Sr.
Thomas W. Braaten, Sr. V.P.

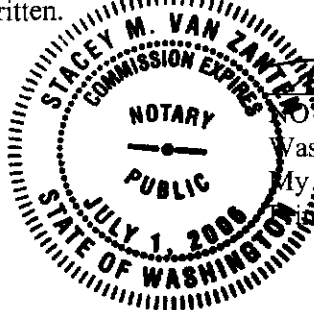
TENANT:
JANICKI INDUSTRIES, INC.
a Washington corporation

By: John Janicki
John Janicki, President

STATE OF WASHINGTON)
) ss.
COUNTY OF Skagit)

On this 30 day of July, 2003, before me personally appeared John Janicki, to me known (or proven on the basis of satisfactory evidence) to be the President of JANICKI INDUSTRIES, INC., a Washington corporation, that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that s/he was duly elected, qualified and acting as said President of the corporation, and that he was authorized to execute said instrument.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.



Stacey M. Van Zanten
NOTARY PUBLIC in and for the State of
Washington, residing at Sedro-Woolley
My commission expires 07-01-06
Name: Stacey M. Van Zanten

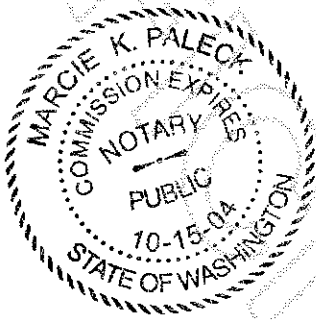
STATE OF WASHINGTON)

) ss.

COUNTY OF SKAGIT)

On this 31st day of July, 2003, before me personally appeared Thomas W. Braaten, to me known (or proven on the basis of satisfactory evidence) to be the Senior Vice President of BANK OF AMERICA, N.A., the national banking association that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said national banking association for the uses and purposes therein mentioned, and on oath stated that s/he was duly elected, qualified and acting as Senior Vice President of the said national banking association, and that he was authorized to execute said instrument.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.



Marcie K Paleck

NOTARY PUBLIC in and for the State of Washington, residing at MT Vernon

My commission expires 10/15/04

Print Name: _____

MARCIE K. PALECK



200307310235

Skagit County Auditor

EXHIBIT A

EXHIBIT ATTACHED TO AND FORMING A PART OF THAT LEASE
SUBORDINATION AGREEMENT DATED JULY 30, 2003 GIVEN BY JANICKI
INDUSTRIES, INC., AS TENANT.

LEGAL DESCRIPTION:

PARCEL A:

Tracts 1, 2 and 3, SKAGIT COUNTY SHORT PLAT NO. 11-84, approved May 23, 1984, and recorded October 17, 1984, in Volume 6 of Short Plats, pages 179 and 180, under Auditor's File No. 8410170004, records of Skagit County, Washington; being a portion of the Southwest Quarter of the Southeast Quarter in Section 18, Township 35 North, Range 5 East of the Willamette Meridian.

PARCEL B:

That portion of the East Half of the Southwest Quarter of the Southeast Quarter of Section 18, Township 35 North, Range 5 East of the Willamette Meridian, lying Northerly of the Great Northern Railway Company right of way;

EXCEPT the West 30 feet thereof;

ALSO EXCEPT the North 60 feet thereof;

AND ALSO EXCEPT that portion thereof lying Southerly of a sewer line as the same existed on May 1, 1970 and was referred to in Real Estate Contract recorded May 18, 1970, under Auditor's File No. 739080, records of Skagit County, Washington; and which runs in a Westerly direction from a point on the West line of the county road along the East line of said subdivision which is 351 feet, more or less, North of the centerline of the State Highway 20;

AND ALSO EXCEPT the East 20 feet for a road conveyed to Skagit County by Deed recorded under Auditor's File No. 57468, records of Skagit County, Washington;

AND FURTHER EXCEPTING any portion lying within the boundaries of Short Plat 92-019 recorded August 30, 1995 under Auditor's File No. 9508300056, records of Skagit County, Washington;

All situated in Skagit County, Washington



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Skagit County Auditor

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