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2000-07-18 10:23:34
Cook County Recorder 39.50



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This instrument was prepared by, and after recording, return to:

Dennis M. Wilson
LORD, BISSELL & BROOK
115 South LaSalle Street
34 Floor
Chicago, IL 60603

Address:
335-57 Ridge Road
Wilmette, Illinois 60091

Permanent Real Estate
Tax Index No.: 00-30-301-038 Vol. 108

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Re: Wil-Ridge Plaza

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement") is made and entered into this 17th day of July, 2000, by and between VICO UPDATE, Inc. ("Tenant"), WIL-RIDGE PLAZA L.L.C., an Illinois limited liability company ("Landlord"), and THE PRIVATE BANK AND TRUST COMPANY, an Illinois bank ("Mortgagee").

RECITALS

Tenant entered into that certain Lease (as hereinafter defined), the material terms of which are attached as Exhibit B hereto, whereby Tenant leases the premises described in said Lease from Landlord, which premises are hereinafter referred to as the "Leased Premises" and are situated upon certain real estate legally described in Exhibit A attached hereto and made a part hereof (the "Real Estate"); said lease together with any amendments, assignments or modifications thereof, whether now or hereafter existing, shall be hereinafter referred to as the "Lease"; and

There has been executed and delivered by Landlord to Mortgagee, a Mortgage and Security Agreement relating to the Real Estate (the "Mortgage") encumbering the Real Estate; and

Mortgagee, as a condition to making the loan secured by the Mortgage, has requested the execution of this Agreement, and Landlord and Tenant are willing to execute this Agreement, in accordance with the terms and conditions of the Lease, to induce Mortgagee to make the loan;

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ACCORDINGLY, in consideration of the mutual covenants and agreements herein-contained and in consideration of Ten and No/100 (\$10.00) Dollars, by each of the parties hereto paid to the other, the receipt and sufficiency of which is hereby acknowledged, and for other good and valuable consideration, the parties do hereby covenant and agree as follows:

1. Tenant acknowledges and agrees that (i) the Lease is in full force and effect and there is no existing default thereunder, and (ii) no rents have been prepaid except as provided for in the Lease and Tenant does not now have or hold any claim against the Landlord which might be set off or credited against future accruing rents.

2. The Lease is and shall be subject and subordinate to the Mortgage insofar as it affects the Real Estate, and to all renewals, modifications, consolidations, replacements, and extensions thereof, with the same force and effect as if the Mortgage had been executed, delivered and recorded prior to the execution and delivery of the Lease, to the full extent of the principal sum secured thereby and interest accrued and from time to time unpaid thereon.

3. Tenant agrees that upon receipt of written notice from Mortgagee of an uncured default by Landlord under the Mortgage or any other loan documentation given to the Mortgagee in support of and secured by the Mortgage, all checks for all or any part of rentals and other sums payable by Tenant under the Lease shall be delivered to and drawn to the exclusive order of Mortgagee until Mortgagee or a court of competent jurisdiction directs otherwise.

4. Tenant agrees to give Mortgagee, by registered or certified mail, return receipt requested, a copy of any notice of default served upon Landlord. Tenant further agrees that if Landlord shall have failed to cure such default within the time period provided for in the Lease, then Mortgagee shall be entitled to have an additional thirty (30) days; provided, however, that if a nonmonetary default cannot be cured within such time, and if such default does not involve a condition that renders all or a material part of the Leased Premises untenable or materially interferes with Tenant's use of the Leased Premises, and Mortgagee is diligently pursuing such cure, then Mortgagee shall have such additional time as is reasonably necessary to cure such default (including the time necessary to foreclose or pursue other proceedings in order to gain possession of the Real Estate). It is specifically agreed that Tenant shall not, as to Mortgagee, be entitled to require cure of any such default.

5. In the event it should become necessary to foreclose the Mortgage, Mortgagee thereunder will not join Tenant as a party defendant in any foreclosure proceeding so long as Tenant is not in default under any of the terms, covenants or conditions of the Lease, or any of its obligations to the Mortgagee separate and apart from the Lease.

6. In the event that Mortgagee or its designee shall succeed to the interest of Landlord under the Lease, Mortgagee agrees to be bound (or to cause its designee to be bound) to Tenant under all of the terms, covenants and conditions of the Lease, and Tenant agrees from and after such event, to attorn to Mortgagee, its designee or the purchaser at any foreclosure sale of any

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portion or all of the Real Estate of which the Leased Premises constitutes a part, all rights and obligations under the Lease to continue as though the interest of Landlord has not terminated or such foreclosure proceeding had not been brought, and Tenant shall have the same remedies against Mortgagee, designee or purchaser for the breach of any agreement contained in the Lease that Tenant might have under said documents against Landlord; provided, however, that Mortgagee, designee or purchaser shall not be:

- (a) liable for any act or omission of any prior landlord (including Landlord);
- (b) subject to any offsets or defenses which Tenant might have against any prior Landlord (including Landlord);
- (c) bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord (including Landlord); or
- (d) bound by any amendment or modification of the Lease made without the consent of Mortgagee subsequent to the date hereof.

7. Nothing contained in this Agreement shall in any way impair or affect the lien created by the Mortgage.

8. No modification, amendment, waiver or release of any provision of this Agreement or any right, obligation, claim or cause of action arising hereunder shall be valid or binding for any purpose whatsoever unless in writing and duly executed by the party against whom the same is sought to be asserted.

9. All notices, demands and requests given or required to be given hereunder shall be in writing. All such notices, demands and requests by Mortgagee to Tenant shall be deemed to have been properly given if served in person or if sent by United States registered or certified mail, postage prepaid, addressed to Tenant at:

VIAPO UPDATA, INC.
3100 WOODLAND PARKWAY LONDON
30 W. 7th ST., ST. PAUL, MN 55111-4913
Attention: JOHN BUONARO

or to such other address as Tenant may from time to time designate by written notice to Mortgagee given as herein required. All notices, demands and requests by Tenant to Mortgagee shall be deemed to have been properly given if served in person or if sent by United States registered or certified mail, postage prepaid, addressed to Mortgagee at:

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The Private Bank and Trust Company
Ten South Dearborn
Chicago, IL 60602
Attention: Mr. Mark Kosiek

or to such other address as Mortgagee may from time to time designate by written notice to Tenant given as herein required. Notice, demands and requests given by mail in the manner aforesaid shall be deemed sufficiently served or given for all purposes hereunder when personally delivered or ~~two (2)~~ ^{FIVE (5)} days after the time such notice, demand or requests shall be deposited in the mails.

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10. This Agreement shall inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that upon the assignment of the interest of the original or any successor Mortgagee hereunder, all obligations and liabilities of such Mortgagee under this Agreement shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of the party or parties to whom such Mortgagee's interest is so assigned; and provided further, that the interest of Tenant under this Agreement may not be transferred or assigned, by operation of law or otherwise, without Mortgagee's, or its successors' or assigns' prior written consent.

[Signature Page Follows]

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The parties hereto have executed this Agreement the day and year first above written.

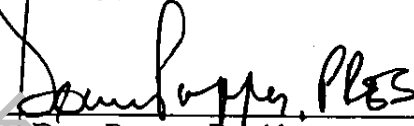
TENANT:

VIDEO UPDATE, INC.
a(n) DELAWARE CORP.

By: 
Its: Michael G. Schifsky
Senior Vice President


WIL-RIDGE PLAZA L.L.C.

By: Dean Pappas Associates, Inc., Manager

By: 
Its: Dean Pappas, President

MORTGAGEE:

THE PRIVATE BANK AND TRUST COMPANY

By: 
Its: OFFICER

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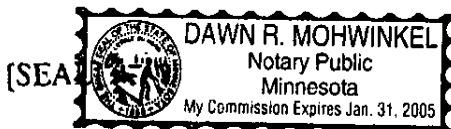
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CORPORATE ACKNOWLEDGMENT

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 Michael G. Schitsky the Sr. V.P of Video Update, Inc ("Tenant") personally known to me to be the same person whose name is subscribed to the foregoing instrument as such _____, appeared before me this day in person and acknowledged that he (she) signed, sealed and delivered said instrument as his (her) own free and voluntary act, and as the free and voluntary act of Tenant, for the uses and purposes therein set forth.

GIVEN UNDER my hand and notarial seal this 7th day of July, 2000.



Dawn R. Mohwinkel
 NOTARY PUBLIC

My commission expires: January 31, 2005

Notary of Cook County Clerk's Office

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MORTGAGEE ACKNOWLEDGEMENT

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 JANIS FRIED, the Private Branch Officer of THE PRIVATE BANK AND TRUST COMPANY (the "Bank") personally known to me to be the same person whose name is subscribed to the foregoing instrument as such _____, appeared before me this day in person and acknowledged that he (she) signed, sealed and delivered said instrument as his (her) own free and voluntary act, and as the free and voluntary act of the Bank, for the uses and purposes therein set forth.

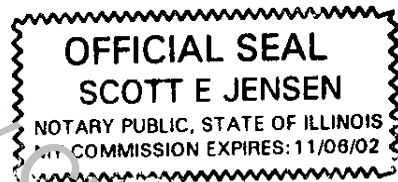
GIVEN UNDER my hand and notarial seal this 17th day of July, 2000.



NOTARY PUBLIC

[SEAL]

My commission expires: _____



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BENEFICIARY ACKNOWLEDGMENT

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 DEAN PAPPAS, the President of DEAN PAPPAS ASSOCIATES, INC., the Manager of Wil-Ridge Plaza L.L.C. personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of Beneficiary, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 17th day of July, 2000.



 NOTARY PUBLIC

[SEAL]

My commission expires: _____



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EXHIBIT A

PARCEL 1:

LOT 1 IN HYLAND'S SUBDIVISION, BEING A SUBDIVISION IN THE SOUTHWEST 1/4 OF SECTION 33, TOWNSHIP 42 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

EASEMENT FOR THE BENEFIT OF PARCEL 1 CREATED BY AGREEMENT BETWEEN PETER J. HUERTER POST NUMBER 669 OF THE AMERICAN LEGION AND CHICAGO NATIONAL BANK AS TRUSTEE UNDER TRUST NUMBER 15964 DATED OCTOBER 29, 1959 AND RECORDED OCTOBER 29, 1959 AS DOCUMENT NUMBER 17693113 AND RECORDED DECEMBER 11, 1959 AS DOCUMENT NUMBER 17733217 FOR INGRESS AND EGRESS BY VEHICLE OR BY FOOT FOR A PERIOD OF 49 YEARS OVER THE FOLLOWING REAL ESTATE; THAT PART OF LOT 16 IN COUNTY CLERK'S DIVISION OF THE WEST 1/2 OF SECTION 33, TOWNSHIP 42 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE INTERSECTION OF THE SOUTH LINE OF THE NORTH 212 FEET (AS MEASURED ALONG THE EAST LINE) OF SAID LOT 16 AND THE WEST LINE OF THE EAST 286.68 FEET OF SAID LOT 16; THENCE NORTH 212 FEET ALONG THE WEST LINE OF THE EAST 286.68 FEET TO THE NORTH LINE OF SAID LOT 16; THENCE WEST ALONG THE SAID NORTH LINE TO THE SOUTHEASTERLY LINE OF WILMETTE AVENUE SAID SOUTHEASTERLY LINE BEING A LINE 33 FEET SOUTHEASTERLY OF (AS MEASURED AT RIGHT ANGLES) AND PARALLEL TO THE CENTER LINE OF WILMETTE AVENUE; THENCE SOUTHWESTERLY ALONG THE SAID SOUTHEASTERLY LINE, 12 FEET; THENCE SOUTHEASTERLY AT RIGHT ANGLES TO THE SAID SOUTHEASTERLY LINE OF WILMETTE AVENUE TO A POINT OF INTERSECTION WITH THE WEST LINE OF THE EAST 295.91 FEET OF SAID LOT 16; THENCE SOUTH ALONG THE SAID WEST LINE TO THE SOUTH LINE OF THE NORTH 212 FEET (AS MEASURED ALONG THE EAST LINE) OF LOT 16; THENCE EAST ALONG THE SAID SOUTH LINE TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

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EXHIBIT B

The Lease

(Material Terms of Lease are Attached Hereto)

Lessor

Wil-Ridge Plaza LLC
64 Concord Dr.
Glencoe, IL 60022

Lessee

Video Update, Inc.
3100 World Trade Center
30 E. 7th Street
St. Paul, MN 55101-4913

Premises

Video Update Inc - #89
335 Ridge Rd. - Suite D
Wilmette, IL 60091

Date of Lease May 26, 1995

Lease Amendments & Modifications/Date

Rider / May 26, 1995

Lease Commencement

Sept. 1, 1995

Lease Expiration

August 31, 2005

Rental Rate

Base Rent

Sept. 1, '99 - Aug 31, '00 @ \$6725.62/mo
Sept. 1, '00 - Aug 31, '01 @ \$6859.50/mo
Sept. 1, '01 - Aug 31, '02 @ \$6999.75/mo
Sept 1, '02 - Aug 31, '03 @ \$7140.00/mo
Sept. 1, '03 - Aug 31, '04 @ \$7280.25/mo
Sept. 1, '04 - Aug 31, '05 @ \$7426.88/mo

Pass-thru Rent:

Common Area Maintenance (CAM)

\$1505.77/mo (2000)

Real Estate Taxes (REI)

\$3053.75/mo (2000)

Security Deposit

- 0 -

Renewal Options

1 - 5yr option

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