

# UNOFFICIAL COPY



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## SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

**\*\*LaSalle Bank National Association successor trustee to THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made and entered into as of the 3 day of <sup>April</sup> ~~March~~ 2000 among Brambles DVS, Inc., d/b/a Recall Total Information Management ("Tenant"), American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated October 25, 1985, known as Trust No. 65878 ("Borrower"), and Royal Neighbors of America, an Illinois fraternal benefit society ("Lender").**

### Introductory Statements

A) Under that certain lease dated as of June 30, 1994, (together with any amendments, modifications, renewals or extensions thereof, whether now or hereafter existing), (the "Lease"), Borrower demised to Tenant the premises described in the Lease and located on the real estate legally described in Exhibit A attached hereto and made a part hereof (the "Leased Premises"). Such real estate and the improvements located thereon are herein referred to as the "Premises".

B) Lender has loaned Borrower \$1,500,000 (the "Loan") which is evidenced by that certain Promissory Note dated March 3, 2000 (the "Note"), executed by Borrower in favor of Lender, and secured, in part, by that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement dated the date of the Note (the "Mortgage") entitling Lender to certain rights regarding all or part of the Premises. All of the rights, titles and interests of Lender with respect to the Premises, whether under the mortgage or any other document evidencing or securing the Loan, are collectively referred to herein as "Lien Rights".

C) Lender, Borrower and Tenant desire to enter into the Agreement in connection with the Loan.

### Agreement

In consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby covenant and agree as follows:

1. Tenant hereby agrees that all of Tenant's right, title and interest in and under the Lease are and shall at all times continue to be subject and subordinate to the Lien Rights of Lender, including renewals, modifications, consolidations, replacements and extensions of such Lien Rights, in the same manner and to the same extent as if the Lease were executed subsequent to the execution, delivery and recording of the Mortgage and the creation of the Lien Rights.

2. Tenant hereby warrants and represents to Lender that there has been no assignment of Tenant's rights or interests under the Lease to any party.

3. a) If Lender forecloses on the Premises, Tenant shall be bound and obligated, and agrees to recognize and attorn, to the purchaser at such foreclosure as "landlord" or "lessor" under the Lease, and such purchaser shall succeed to the rights and obligations of Borrower under the Lease.

b) Likewise, if Lender receives and accepts a conveyance of the Premises in lieu of

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foreclosure or otherwise, Tenant shall be bound and obligated, and agrees to recognize and attorn, to Lender as landlord or lessor under the Lease, and Lender shall succeed to the rights and obligations of Borrower under the Lease

c) Upon the occurrence of events described in paragraphs 3(a) or 3(b) above or the other exercise of Lender's Lien Rights, and provided that Tenant shall not then be in default under the Lease beyond the period, if any, provided therein for the cure of such default, all rights and obligations of Tenant under the Lease shall continue in full force and effect and be enforceable against Tenant by Lender or such purchaser, as the case may be, with the same force and effect as if the Lease had been originally made and entered into directly by and between Lender or such purchaser as landlord or lessor thereunder, and Tenant. Additionally, Tenant shall be permitted to remain in possession of the Leased Premises and exercise all of its rights under the Lease so long as the Lease is not terminated or Tenant's right to possession of the Leased Premises is not terminated in accordance with the Lease on account of any default of Tenant under the Lease.

d) Nothing herein contained shall impose any obligation upon Lender to perform any of the obligations of Borrower under the Lease unless and until Lender shall become an owner or mortgagee in possession of the Premises. In no event shall the Lender be liable for any act or omission of any prior lessor or landlord, and Tenant shall have no right of setoff for any prior acts of such landlord or lessor.

e) After Lender shall have conveyed the Premises and ceased to collect rent from Tenant, Lender shall not be liable for any unperformed covenant, duty or obligations of lessor or landlord thereafter accruing, but Lender shall not thereby be discharged from any unperformed covenant, duty or obligation of lessor or landlord that accrued during the period when Lender held (or was deemed to have held) the position of lessor or landlord.

f) Tenant waives any and all rights it has, or may have, with regard to the right of first refusal contained in Section 21.22 of the Lease, provided such waiver shall only apply to Lender obtaining possession and/or ownership at foreclosure sale or through any deed or other conveyance in lieu of foreclosure and any subsequent conveyance by Lender to any third party. Additionally, Lender may transfer its Lien Rights and/or ownership rights (including the right to transfer to any third party) to a subsidiary or other entity owned or controlled by Lender.

4. Nothing in this Agreement shall in any way impair or affect the lien created by the Mortgage or the other Lien Rights.

5. Tenant acknowledges and agrees that the Lease and the rental and other payments thereunder have been assigned to Lender by Borrower as security for its obligations under and secured by, the Mortgage. Tenant agrees that upon receipt of written notice from Lender that a default exists under the Mortgage, or any instrument or document collateral thereto, Tenant shall make all rental and other payments required pursuant to the Lease to Lender or as otherwise directed by Lender, and Tenant shall thereby be properly credited with an offset and credit for such payments as against the rental payments then due under the Lease.

6. Borrower acknowledges and agrees that Lender shall be entitled to collect and receive rents pursuant to the Lease as provided herein, and Tenant is authorized and hereby directed to make all such payments of rent to Lender upon receipt of the notice of default provided for herein, or as otherwise directed by Lender, and Tenant shall be under no duty or obligation to make further inquiry until authorized and directed in writing by Lender and Borrower.

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7. Any terms or conditions of the Lease notwithstanding, Tenant agrees that it will not make any addition, alteration, improvement, demolition or change in or to the Premises or any structure or improvement thereon or subject to the Mortgage that diminishes the value, utility or current usefulness of the Premises, nor shall it further modify or amend the Lease payments, term or other provisions materially affecting the economic benefits of the Lease without the prior written consent of Lender, such consent not to be unreasonably withheld.

8. Tenant agrees to provide Lender 30 days notice and opportunity to cure any defaults of Borrower under the Lease. Tenant agrees that its right to terminate the Lease is conditioned upon Lender's receipt of such notice of right to cure and failure to cure the default prior to the expiration of the cure period.

9. This Agreement may be modified or amended only in writing signed by all of the parties hereto or their respective heirs, successors or permitted assigns in interest. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and permitted assigns.

10. The terms and provisions of this Agreement among the parties shall terminate upon the release and discharge of the Mortgage.

11. All notices hereunder shall be in writing and shall be deemed to have been given if sent by hand delivery, overnight courier or certified mail, postage prepaid, addressed to the following addresses:

If to Tenant:	<b>Brables DVS, Inc.</b> 6111 Live Oak Parkway Norcross, Georgia 30093 Attention: Mr. Doug Hollman
If to Lender:	<b>The Philipsborn Company</b> 222 South Riverside Plaza, Suite 2310 Chicago, Illinois 60606-6201
If to Borrower:	<b>Stelar, Inc.</b> 10 North Riverside Plaza, Suite 1459 Chicago, Illinois 60606 and <b>Andrew Lampert, Esq.</b> <b>Jenner &amp; Block</b> One IBM Plaza Chicago, Illinois 60611-7602

Tenant, Lender or Borrower may at any time change its address for such notices by delivering to the other, as aforesaid, a notice of such change.

DRAFTED BY AND RETURN TO:  
 John Friedrich  
 Royal Neighbors of America  
 230 16th Street  
 Rock Island, IL 61201



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

**BRAMBLES DVS, INC., d/b/a RECALL  
TOTAL INFORMATION MANAGEMENT**

By: [Signature]  
Name: DOUGLAS A. HOLLMAN  
Title: PRESIDENT, RECALL-AMERICAS

By:

LaSalle Bank National Association successor trustee to  
**AMERICAN NATIONAL BANK AND  
TRUST COMPANY OF CHICAGO, AS  
TRUSTEE UNDER TRUST NO. 65878**

and not personally

ATTEST:

By: [Signature]  
Name: CHARLOTTE A. MARGUIRT  
Title: CONTROLLER, RECALL-AMERICAS

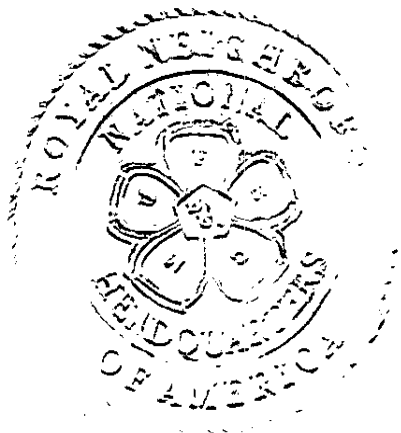
By: [Signature]  
Name: Nancy A. Carlin  
Title: Assistant Vice President

**ROYAL NEIGHBORS OF AMERICA, AN  
ILLINOIS FRATERNAL BENEFIT  
SOCIETY**

ATTEST:

By: [Signature]  
Name: Carol S. Hicks  
Title: National Secretary

By: [Signature]  
Name: Bonnie Brown  
Title: Deputy National President



This instrument is executed by LASALLE BANK National Association, not personally but solely as Trustee, as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee. All the terms, provisions, stipulations, covenants and conditions to be performed by LASALLE BANK National Association are undertaken by it solely as Trustee, as aforesaid, and not individually and all statements herein made are made on information and belief and are to be construed accordingly, and no personal liability shall be asserted or be enforceable against LASALLE BANK National Association by reason of any of the terms, provisions, stipulations covenants and/or statements contained in this instrument

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STATE OF ILLINOIS Ga. )  
 ) ss.  
COUNTY OF Fulton )

On this 29<sup>th</sup> day of March 2000, before me, the undersigned Notary Public in and for said State, personally appeared Doug Nollman, known to me to be the President of Brambles DVS, Inc., d/b/a Recall Total Information Management and acknowledged to me that the said instrument is the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute the said instrument on behalf of said corporation

Notary Public

Name: Jan K. Mitchell

NOTARY PUBLIC, FULTON COUNTY, GEORGIA  
MY COMMISSION EXPIRES DECEMBER 08 2002

My commission expires:

STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF Cook )

On this 3rd day of March 2000, before me the undersigned Notary Public in and for said State, personally appeared Nancy A. Carlin, known to me to be the Assistant Vice President of American National Bank and Trust Company of Chicago, as Trustee under Trust No. 65878, and acknowledged to me that the said instrument is the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute the said instrument on behalf of said corporation

\*\*LaSalle Bank National Association successor trustee to

"OFFICIAL SEAL"  
LOURDES MARTINEZ  
NOTARY PUBLIC STATE OF ILLINOIS  
My Commission Expires 09/30/2001

Notary Public

Name: Loures Martinez

My commission expires:

STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF ROCK ISLAND )  
April

On this 5th day of March 2000, before me, the undersigned Notary Public in and for said State, personally appeared Bonnie Brown, known to me to be the Deputy National Pres. of Royal Neighbors of America, an Illinois fraternal benefit society, and acknowledged to me that the said instrument is the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute the said instrument on behalf of said corporation.

Notary Public

Name: Julie A. Gustafson

My commission expires:

"OFFICIAL SEAL"  
JULIE A. GUSTAFSON  
Notary Public, State of Illinois  
My Commission Expires 10-25-00



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EXHIBIT "A"

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## LEGAL DESCRIPTION

## PARCEL 1:

THAT PART OF LOT "A" IN THE SUBDIVISION OF THE CIRCUIT COURT COMMISSIONERS, IN PARTITION OF THAT PART OF THE NORTHEAST QUARTER LYING SOUTH OF THE ILLINOIS AND MICHIGAN CANAL RESERVE OF SECTION 3, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID SUBDIVISION RECORDED IN THE RECORDER'S OFFICE OF COOK COUNTY, ILLINOIS, IN BOOK 59 OF PLATS, PAGES 32, ON SEPTEMBER 5, 1893, AS DOCUMENT NO. 1924571, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTH LINE OF WEST 40TH STREET (A PRIVATE STREET) WITH A LINE 810.93 FEET EAST OF AND PARALLEL TO THE NORTH AND SOUTH CENTER LINE OF SAID SECTION 3; THENCE EAST ALONG SAID SOUTH LINE OF WEST 40<sup>TH</sup> STREET TO ITS INTERSECTION WITH A LINE 1116.93 FEET EAST OF AND PARALLEL TO SAID NORTH AND SOUTH CENTER LINE OF SECTION 3; THENCE SOUTH 1020.0 FEET ALONG THE LAST ABOVE DESCRIBED PARALLEL LINE TO THE NORTH LINE OF RE-ESTABLISHED DISTRICT BOULEVARD; THENCE WEST ALONG THE NORTH LINE OF SAID RE-ESTABLISHED DISTRICT BOULEVARD, A DISTANCE OF 306 FEET TO ITS INTERSECTION WITH A LINE 810.93 FEET EAST OF AND PARALLEL TO THE NORTH AND SOUTH CENTER LINE OF SAID SECTION 3; THENCE NORTH ALONG THE LAST DESCRIBED PARALLEL LINE, A DISTANCE OF 1020.0 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

## PARCEL 2:

EASEMENT, CREATED BY GRANT OF EASEMENT FROM CMD CONSTRUCTION COMPANY, TO THE L. FISH CORPORATION RECORDED AS DOCUMENT NO. 22784448, IN PROPERTY LEGALLY DESCRIBED AS FOLLOWS:

THAT PART OF LOT "A" IN THE SUBDIVISION OF THE CIRCUIT COURT COMMISSIONERS IN PARTITION OF THAT PART OF THE NORTHEAST QUARTER LYING SOUTH OF THE ILLINOIS AND MICHIGAN CANAL RESERVE OF SECTION 3, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID SUBDIVISION RECORDED IN THE RECORDER'S OFFICE OF COOK COUNTY, ILLINOIS, IN BOOK 59 OF PLATS, PAGE 32, ON SEPTEMBER 5<sup>TH</sup>, 1893, AS DOCUMENT NO. 1924571, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 150.00 FEET NORTH OF THE NORTH LINE OF RE-ESTABLISHED DISTRICT BOULEVARD (A PRIVATE STREET), SAID POINT BEING ON A LINE 1116.93 FEET EAST OF AND PARALLEL TO THE NORTH AND SOUTH CENTER LINE OF SAID SECTION 3; THENCE NORTH ALONG AFORESAID PARALLEL LINE TO ITS INTERSECTION WITH A LINE 720.00 FEET NORTH OF AND PARALLEL TO SAID NORTH LINE OF RE-ESTABLISHED DISTRICT BOULEVARD; THENCE EAST ALONG LAST DESCRIBED PARALLEL LINE TO ITS INTERSECTION WITH A LINE 1126.93 FEET EAST OF AND PARALLEL TO SAID NORTH AND SOUTH CENTER LINE OF SECTION 3; THENCE SOUTH ALONG LAST DESCRIBED PARALLEL LINE TO ITS INTERSECTION WITH A LINE 150.00 FEET NORTH OF AND PARALLEL TO SAID NORTH LINE OF RE-ESTABLISHED DISTRICT BOULEVARD; THENCE WEST ALONG LAST DESCRIBED PARALLEL LINE TO THE POINT OF BEGINNING.

COMMON PROPERTY ADDRESS: 4242 WEST 42<sup>ND</sup> PLACE  
CHICAGO, ILLINOIS 60632

PERMANENT INDEX NUMBER: 19-03-200-029 VOLUME 379