

UNOFFICIAL COPY

91514081

Please return recorded copy to:  
Stam Jackson c/o  
Benderson Development Company, Inc.  
570 Delaware Avenue  
Buffalo, NY 14202

SUBORDINATION, NON-DISTURBANCE and  
ATTORNMEN T AGREEMENT

AGREEMENT, made the 14<sup>th</sup> day of October, 1991, between  
Manufacturers and Traders Trust Company, a New York banking  
corporation having an office at One M & T Plaza, Buffalo, New  
York 14240 hereinafter "Mortgagee", Benderson Development  
Company, Inc. having an office at 570 Delaware Avenue, Buffalo,  
New York 14202 hereinafter "Landlord", and Waban Inc., a  
corporation organized under the laws of the State of Delaware,  
having an office at One Mercer Road, Natick, Massachusetts 01760,  
hereinafter: Tenant.

W I T N E S S E T H :

WHEREAS, the Tenant has entered into a certain lease  
dated the 7th day of June, 1991, with the Landlord and covering  
certain premises commonly known as Orland Park, Illinois (the  
"Premises"), more particularly described in Schedule A attached  
hereto and made a part hereof (the "Lease"); and

WHEREAS, the Mortgagee holds a mortgage from the  
Landlord recorded on May 2, 1991 as Document No. 91204679 in the  
offices of the Recorder for Cook County, Illinois covering the  
Premises (the "Mortgage"); and

WHEREAS, the Tenant desires to be assured of continued  
occupancy of the Premises under the terms of the Lease;

NOW, THEREFORE, in consideration of the premises and of  
the sum of One (\$1.00) Dollar by each party in hand paid to the  
other, the receipt of which is hereby acknowledged, it is hereby  
agreed as follows:

FIRST: So long as Landlord is not then entitled to  
terminate the Lease as a result of default thereunder by Tenant,  
Mortgagee will not join Tenant as a party defendant in any action  
or proceeding for the purpose of terminating Tenant's interest  
and estate under the Lease because of any default under the  
Mortgage.

SECOND: Tenant's possession of the Premises and  
Tenant's rights, privileges, options and immunities under the  
Lease or any extensions or renewals thereof which may be effected  
in accordance with any option thereof in the Lease shall not be  
diminished or interfered with by Mortgagee, and Tenant's  
occupancy of the Premises shall not be disturbed by Mortgagee for  
any reason whatsoever during the term of the Lease or any such  
extension or renewals thereof, except as expressly permitted  
under the Lease.

91514081

783

UNOFFICIAL COPY

18011918

1991 MAR 21 PM 4:17

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

- 2 -

THIRD: If the interest of Landlord in the Premises shall be transferred to and owned by Mortgagee or any other entity (such transferee being hereinafter referred to as the "Successor Landlord") by reason of foreclosure or other proceedings or by any other manner, then Tenant shall be bound to the Successor Landlord under all 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 with the same force and effect as if the Successor Landlord were the Landlord under the Lease and Tenant does hereby then attorn to the Successor Landlord, such attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties immediately upon such transfer of title; provided, however, that Tenant receives written notice from such party claiming to be Successor Landlord that it has succeeded to the interest of the Landlord under the Lease and giving such proof as may be reasonably required to protect Tenant in treating such party as Successor Landlord. The respective rights and obligations of the Tenant and Successor Landlord upon such attornment (to the extent of the then remaining balance of the term of the Lease and any such extensions and renewals) shall be and are the same as now set forth therein; it being the intention of the parties hereto for this purpose to incorporate the Lease in this Agreement by reference with the same force and effect as if set forth at length herein.

FOURTH: Any Successor Landlord shall be bound to Tenant under all the terms, covenants and conditions of the Lease, and Tenant shall, from and after such succession to the interest of the Landlord under the Lease, have the same remedies against Successor Landlord for the breach of agreement contained in the Lease that Tenant might have under the Lease against the Landlord; provided, however, that Successor Landlord shall not be:

- (a) liable for any damages then accrued as the result of any act or omission of any prior landlord;
- (b) subject to any offsets or defenses which Tenant then has against any prior landlord;
- (c) bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord except as expressly required under the Lease; or
- (d) bound by an amendment or modification of the Lease hereafter made without its consent.

FIFTH: The Lease now is, and shall at all times continue to be, subordinate to the lien of the Mortgage, and to

91014081

# UNOFFICIAL COPY

- 3 -

any advance which may be made from time to time thereunder and to any and all renewals, modifications, extensions, substitutions and/or consolidations, and any such other mortgage or mortgages, shall nevertheless be subject to and entitled to the benefits of the terms of this Agreement.

SIXTH: To the extent that the Lease or Mortgage shall entitle the Tenant to notice of any mortgage or Mortgagee to notice of any lease, this Agreement shall constitute such notice.

SEVENTH: This Agreement may not be modified orally or in any other manner than by an agreement in writing signed by the parties hereto or their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto.

IN WITNESS WHEREOF, the parties herero have hereunto caused this Agreement to be duly executed as of the day and year first above written.

MANUFACTURERS AND TRADERS TRUST COMPANY

By:

Gregory M. Michalek, Vice President

BENDERSON DEVELOPMENT COMPANY, INC.

By:

Randall Berderson, Vice President

WABAN INC.

By:

John F. Levy, President VICE PRESIDENT-FINANCE

By:

George Freeman, Vice President

91514081

# UNOFFICIAL COPY

- 4 -

STATE OF NEW YORK )  
 : SS.  
COUNTY OF ERIE )

On this 30<sup>th</sup> day of OCT, 1991, before me personally came Gregory M. Michalek, to me personally known, who, being by me duly sworn, did depose and say that deponent resides at Orchard Park, New York; that deponent is a Vice President of Manufacturers and Traders Trust Company, the corporation described in and which executed the foregoing instrument; and that deponent signed such instrument by order of the Board of Directors of said corporation.

Mark G. Spellman  
MARK G. SPELLMAN  
Notary Public, State of New York  
Qualified in Erie County, N.Y.  
My Commission Expires April 21, 1992

STATE OF NEW YORK )  
 : SS.  
COUNTY OF ERIE )

On this 30<sup>th</sup> day of OCT, 1991, before me personally came Randall Benderson, to me personally known, who, being by me duly sworn, did depose and say that deponent resides at 270 1<sup>st</sup> Ave. Buffalo, NY 14201; that deponent is the Vice President of Benderson Development Company, Inc., the corporation described in and which executed the foregoing instrument; and that deponent signed such instrument by order of the Board of Directors of said corporation.

Shaun Jackson

*(Commonwealth)*  
STATE OF Massachusetts )  
 : SS.  
COUNTY OF Worcester )

SHAUN JACKSON  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires April 21, 1992

On this 30<sup>th</sup> day of OCT, 1991, before me personally came ~~John F. Levy~~ <sup>Edward J. Heston</sup>, to me personally known, who, being by me duly sworn, did depose and say that deponent resides at 1000 Waban, Woburn, Massachusetts; that deponent is the President of Waban Inc., the corporation described in and which executed the foregoing instrument; and that deponent signed such instrument by order of the Board of Directors of said corporation.

Mary T. Blattery

MARY T. BLATTERY  
Notary Public  
My Commission Expires March 12, 1993

92034081

# UNOFFICIAL COPY

- 5 -

STATE OF MASSACHUSETTS  
: SS.  
COUNTY OF Worcester

On this 27 day of OCT, 1991, before me personally came George Freeman, to me personally known, who, being by me duly sworn, did depose and say that deponent resides at 11111 MASSACHUSETTS; that deponent is the Vice President of Waban Inc., the corporation described in and which executed the foregoing instrument; and that deponent signed such instrument by order of the Board of Directors of said corporation.

Margaret Holloway

NOTARY PUBLIC  
My Commission Expires March 1, 1992

Property of Cook County Clerk's Office

91614081

## Schedule A

The Premises shall consist of a one-story building to be constructed containing one hundred nine thousand nine hundred eight (109,980) square feet of floor area having a frontage and width of four hundred twenty-three (423) square feet and other dimensions shown upon the Lease Plan attached to the Lease, plus the Outdoor Display Area containing nine thousand nine hundred seventy-five (9,975) square feet of floor area as shown on the Lease Plan.

The Premises are situated within a shopping center to be constructed upon the following described land:

The South 665.00 feet of the West 882.00 feet of the East 952.00 feet of the South  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 13, Township 36 North, Range 12, East of the Third Principal Meridian, excepting therefrom the South 150.00 feet of the East 220.00 feet of said South  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of said Section 13 except land dedicated for highway or street purposes, in Cook County, Illinois.

Page 22 of 102

As to the above, the Clerk's Office has no record.

91624081