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2005 049601

STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

2005 JUN 15 10:10 AM

MICHAEL J. ...  
RECORDER

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

2005 06 20 47435

THIS AGREEMENT, is entered into as of this 1st day of June, 2005 between Hyde Park Bank and Trust Company ("Mortgagee"), Auto Club Insurance Association, a Michigan Reciprocal Inter-Insurance Exchange ("Tenant") and 700 West Lincoln Highway, LLC an Indiana limited liability company ("Landlord").

Chicago Title Insurance Company

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RECITALS

A. Landlord has requested an extension of credit from Mortgagee and Landlord may request future extensions of credit from Mortgagee.

B. The Mortgagee is currently the holder of a Mortgage dated June 1, 2005 covering the property legally described on attached Exhibit A ("Premises") which Mortgage secures the payment of the indebtedness, obligations and liabilities of Landlord to the Mortgagee.

C. Mortgagee may in the future hold other Mortgages covering the Premises for future extensions of credit by Mortgagee to Landlord. The Mortgage dated as of June 1, 2005 together with any amendments, modifications, renewals, extensions, restatements and all subsequent Mortgages granted to Mortgagee on the Premises to secure future extensions of credit by Mortgagee shall hereinafter be collectively referred to as "Mortgage".

D. Tenant has entered into a certain lease with Chi-Co, Inc., a Colorado corporation, dated as of December \_\_\_\_\_, 2002 ("Lease") for the lease of all or a certain portion the Premises.

E. Chi-Co., Inc assigned the Lease to Landlord pursuant to an Assignment of Lease dated as of June 1, 2005.

G. As an inducement to Mortgagee to extend credit to Landlord now and in the future, the Tenant, Landlord and Mortgagee have agreed to enter into this Agreement.

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## AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. The Recitals set forth above are hereby incorporated by reference as though fully set forth herein.

2. The Lease, any options to purchase, any rights of first refusal and any extensions, renewals, replacements or modifications thereof, and all of the right, title and interest of the Tenant in and to said Premises are and shall be subject and subordinate to the Mortgage and to all of the terms and conditions contained therein, and to any renewals, modifications, replacements, consolidations and extensions thereof; and

3. Mortgagee consents to the Lease and, in the event of foreclosure of said Mortgage, or in the event Mortgagee comes into possession or acquires title to the Premises as a result of the enforcement of foreclosure of the Mortgage or mortgage note, or as a result of any other means, Mortgagee agrees that Tenant shall not be disturbed in its possession of the Premises for any reason other than one which would entitle the Landlord to terminate the Lease under its terms or would cause, without any further action by such Landlord, the termination of the Lease or would entitle such Landlord to dispossess the Tenant from the Premises, provided, however, that no default under the Lease exists and that no event has occurred and no condition exists, which after the passage of time (after notice required by the Lease, if any) would entitle the Landlord to terminate the Lease under its terms or would cause, without any further action of such Landlord to dispossess the Tenant from the Premises. Further, Mortgagee agrees that Tenant shall have the right to remain in quiet and peaceful possession of the Premises throughout the full term of the Lease subject, however, to the terms and provisions of the Lease and this Agreement, provided that at the time of the commencement of action to recover possession in any such foreclosure proceedings or otherwise, the following conditions shall have been complied with:

(i) A default by Tenant as defined in the Lease shall not exist beyond any applicable cure period;

(ii) The rent remaining to accrue shall not have been decreased, the term of the Lease shall not have been altered, amended or extended except in accordance with the options contained therein and the terms herein; and

(iii) Tenant shall have furnished to the Mortgagee a sworn statement in writing as to the status of the Lease in respect to the above conditions (i) and (ii) within ten (10) days after the Mortgagee shall have made written demand for the same in the manner provided for giving notices in the Lease.

4. Tenant agrees with Mortgagee and Landlord that if the interests of Landlord in the Premises shall be transferred to and owned by Mortgagee by reason of foreclosure or other proceedings or other means brought by it, or by any future lien against Landlord's estate in the Premises, or in the event that Landlord conveys its estate in the Premises, or in the event that Landlord's estate in the Premises passes to any other person, firm or corporation by operation of

law or any other means, then in any of said events, Tenant shall be bound to Mortgagee or such purchaser, grantee or other successor to Landlord's estate under all of the terms, covenants and conditions of the Lease subject to the terms of this Agreement for the balance of the term thereof remaining and any extensions or renewals thereof which may be affected in accordance with any option therefor in the Lease, with the same force and effect as if Mortgagee or such purchaser, grantee or other successor were the Landlord under the Lease, and Tenant does hereby agree to attorn to Mortgagee, purchaser, grantee or other successor succeeding to the interest of the Landlord in the Premises. Tenant agrees, however, upon the election of and written demand by Mortgagee, purchaser, grantee or other successor within twenty (20) days after Mortgagee, purchaser, grantee or other successor receives title to the Premises, to execute an instrument in confirmation of the foregoing provisions, satisfactory to Mortgagee, purchaser, grantee or other successor in which Tenant shall acknowledge such attornment and shall set forth the terms and conditions of its tenancy.

5. Tenant agrees with Mortgagee that if Mortgagee shall succeed to the interest of Landlord under the Lease, Mortgagee shall not be (a) liable for any action or omission of Landlord or any prior landlord under the Lease or subject to any claims, demands, actions or causes of actions which Tenant might have against Landlord or any prior landlord, (b) subject to any offsets or defenses which Tenant might have against Landlord or any prior landlord, (c) bound by any rent or additional rent which Tenant might have paid for more than the current and next succeeding month to Landlord or any prior landlord, (d) bound by any security deposit which Tenant may have paid to Landlord or any prior landlord, unless such deposit is in an escrow fund available to Mortgagee, or (e) bound by any amendment or modification or renewal of the Lease made without Mortgagee's consent. Tenant further agrees with Mortgagee that Tenant will not voluntarily subordinate the Lease to any lien or encumbrance without Mortgagee's consent.

6. In the event that the Landlord shall default in the performance or observance of any of the terms, conditions or agreements in the Lease, Tenant shall give prompt written notice thereof to the Mortgagee and the Mortgagee shall have the right (but not the obligation) within the same length of time as Landlord after notice to cure under the Lease to cause the curing of such default before Tenant may exercise Tenant's rights under the Lease or terminating or declaring a default under the Lease.

7. Mortgagee acknowledges that in accordance with the provisions of the Lease that the proceeds of all insurance policies provided by Tenant pursuant to the Lease covering the Premises, or any part thereof, are to be paid and/or made available to the Tenant for repair, replacement and rebuilding if so provided for in the Lease so long as Landlord is not in default under any promissory note payable to Mortgagee. As provided for in Section 18(e) of the Lease, Tenant will give Mortgagee prompt written notice in the event of any casualty damages to the Premises.

8. Tenant certifies, represents and warrants to Mortgagee the following:

(a) The Lease is valid and enforceable against Tenant in accordance with its terms;

- (b) The Lease is in full force and effect and has not been modified, altered or amended;
- (c) No rent under the Lease has been paid more than one month in advance of its due date; and
- (d) Tenant, as of this date, has no charge, lien, claim or cause of action under the lease or against Landlord or any predecessor of Landlord or otherwise against the rent or other charges due or to become due under the Lease.

9. Tenant agrees that Tenant shall not, without the express written consent of Mortgagee:

- (a) Enter into any sublease with respect to the Premises (except as may be provided in the Lease);
- (b) Make payment of rent for periods in excess of one month (except as may be provided in the Lease);
- (c) Assign its interest or any portion thereof in the Lease in a manner not allowed by the terms of the Lease; and
- (d) Alter, amend, modify or renew (except as may be provided in the Lease) the Lease.

10. The Tenant covenants and warrants that the Tenant has not made any structural additions, alterations, changes and improvements to the Premises and has not constructed any additional buildings and/or additions to the existing buildings. Except for the items described as "Tenant's Property" in Section 3(a)(i) of the Lease, all buildings and improvements are solely owned by the Landlord.

11. This Agreement shall bind and inure to the benefit of the parties hereto, their successors and assigns. As used herein the term "Tenant" shall include the Tenant, its successors and assigns; the words "foreclosure" and "foreclosure sale" as used herein shall be deemed to include the acquisition of Landlord's estate in the Premises by voluntary deed (or assignment) in lieu of foreclosure, and the word "Mortgagee" shall include the Mortgagee herein specifically named and any of its successors and assigns, including anyone who shall have succeeded to Landlord's interest in the Premises by, through or under foreclosure of the Mortgage.

12. If any provision of this Agreement is held to be void or unenforceable, such provision shall be deemed omitted from this Agreement; and with such provision omitted, this Agreement shall remain in full force and effect.

13. This Agreement shall not be modified or amended except in writing signed by all parties hereto.

14. This Agreement may be signed in counterparts, and each counterpart shall be deemed an original but all of which together shall constitute but one and the same instrument.

15. MORTGAGEE, TENANT AND LANDLORD HAVING BEEN FULLY ADVISED BY LEGAL COUNSEL KNOWINGLY AND VOLUNTARILY WAIVE ALL RIGHTS TO TRIAL BY JURY.

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

Hyde Park Bank and Trust Company

Auto Club Insurance Association, a Michigan Reciprocal Inter-Insurance Exchange

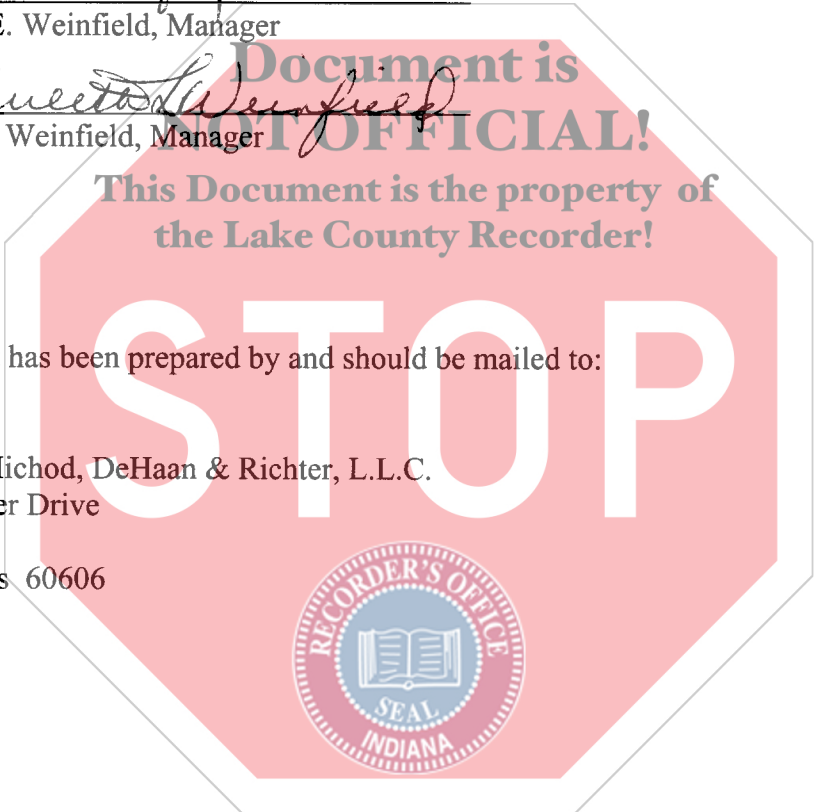
By: [Signature]  
Its: Senior Vice President

By: [Signature]  
Its: Director, Real Estate Services

700 West Lincoln Highway, LLC,  
an Indiana limited liability company

By: [Signature]  
Edwin E. Weinfield, Manager

By: [Signature]  
Paulette Weinfield, Manager



This Instrument has been prepared by and should be mailed to:

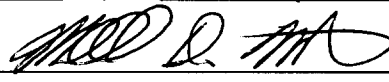
Paul J. Richter  
Kelly, Olson, Michod, DeHaan & Richter, L.L.C.  
30 South Wacker Drive  
Suite 2300  
Chicago, Illinois 60606  
(312) 236-6700

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF COOK        )

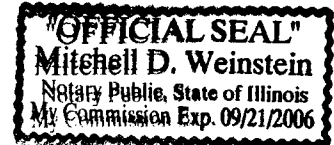


I, Mitchell Weinstein, a Notary Public in and for the County and State aforesaid, do hereby certify that Jay Fahn, personally known to me to be the same person whose name is as Senior Vice President of **Hyde Park Bank and Trust Company**, an Illinois banking corporation, subscribed to the foregoing instrument, appeared before me this day in person and acknowledged to me that he, being thereunto duly authorized, signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 1<sup>st</sup> day of June, 2005.

  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: 9/21/06



STATE OF Michigan )  
 ) SS.  
COUNTY OF Wayne )

The undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Peter Fleming, personally known to me to be the same person whose name is as Director of **Auto Club Insurance Association, a Michigan Reciprocal Inter-Insurance Exchange**, subscribed to the foregoing instrument, appeared before me this day in person and acknowledged to me that he, being thereunto duly authorized, signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of said exchange, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 10<sup>th</sup> day of June, 2005.

Retha L. Smith  
NOTARY PUBLIC

**RETHA L. SMITH**  
Notary Public, Wayne County, MI  
My Commission Expires Sep. 5, 2008


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



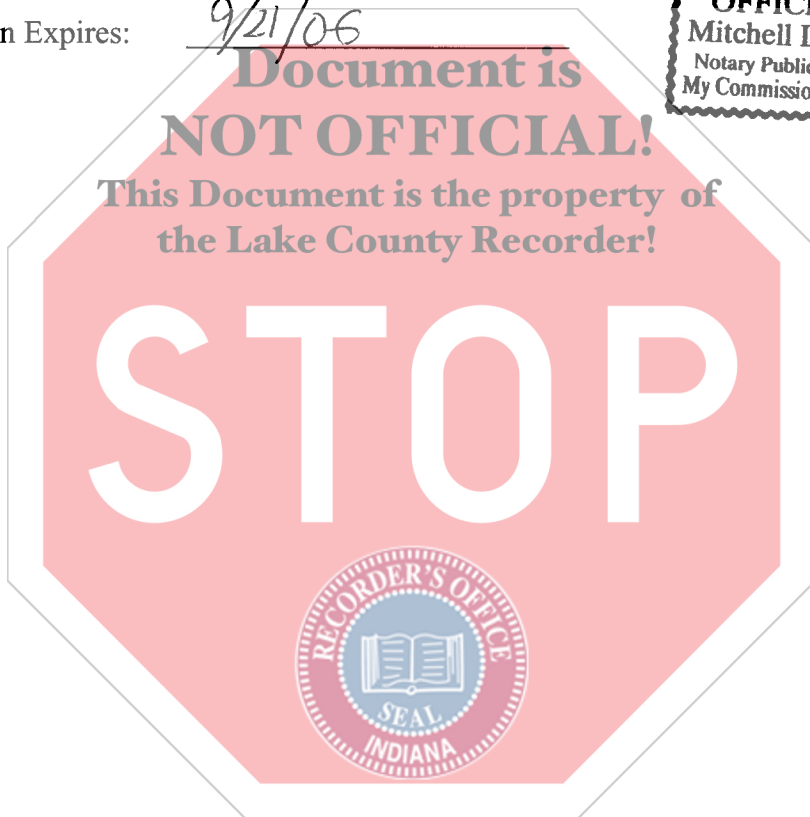
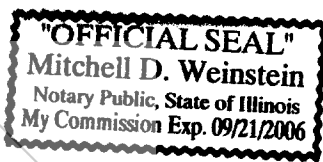
STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

The undersigned, a Notary Public in and for the County and State aforesaid do hereby certify that Edwin E. Weinfield and Paulette Weinfield personally known to me to be the same persons who are the Managers of **700 West Lincoln Highway, LLC**, an Indiana Limited Liability Company, subscribed to the foregoing instrument, appeared before me this day in person and acknowledged to me that they, being thereunto duly authorized, signed and delivered said instrument as the Managers of **700 West Lincoln Highway, LLC** as their own free and voluntary act and as the free and voluntary act of said Limited Liability Company for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 1<sup>st</sup> day of June, 2005.

  
NOTARY PUBLIC

My Commission Expires: 9/21/06





**EXHIBIT A**

Parcel 1: Lot 6, the Crossroads, as per plat thereof, recorded in Plat Book 69, page 3, in the Office of the Recorder of Lake County, Indiana.

Parcel 2: Easements for ingress, egress and parking for the benefit of Parcel 1 as created in Easements with Covenants and Restrictions recorded February 20, 1990 as Document No. 085156, and amendments thereto.

Key No.: 20-<sup>50</sup>13-514-0006

Common Address: 700 West Lincoln Highway  
Scherville, Indiana 46375

