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This Instrument Prepared
By and After Recording
To Be Returned To:

First American Bank
1650 Louis Avenue
Elk Grove Village, Illinois 60007
Attention: John Olsen



Doc#: 0412504236
Eugene "Gene" Moore Fee: \$42.00
Cook County Recorder of Deeds
Date: 05/04/2004 02:34 PM Pg: 1 of 10

JA-JLW 82-09-339D1(3)

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This **Subordination, Non-Disturbance and Attornment Agreement** ("Agreement") is made as of this 8th day of April, 2004, by and between Allstate Insurance Company, an Illinois corporation ("**Tenant**"), and **FIRST AMERICAN BANK**, an Illinois banking corporation, its successors and assigns ("**Lender**").

RECITALS

A. Lender is the owner and holder of that certain Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated of ~~even date herewith~~ ^{April 28, 2004} from **FULCRUM HIGGINS, LLC**, an Illinois limited liability company ("**Borrower**"), as recorded with the Cook County, Illinois Recorder's Office on _____, 2004, as Document No. 0412504234 (the "**Mortgage**"), covering Borrower's fee interest in the land and the building legally described in **Exhibit "A"** attached hereto and incorporated herein (the "**Property**"). The Mortgage and any and all other documents or instruments related thereto, and all renewals, amendments, supplements, restatements, extensions, and modifications thereof and thereto, are hereinafter collectively referred to as the "**Loan Documents**."

B. Tenant is the lessee of a portion of the Property known as 8501 West Higgins Road, Suite 120 (hereinafter also called the "**Demised Premises**"), such Demised Premises having a common address of 8501 West Higgins Avenue, Chicago, Illinois, under and pursuant to provisions of a certain [Office Lease] dated April 28, 1999, between Borrower ("**Landlord**") and Tenant (said Lease as the same may be hereafter modified, amended or extended from time to time is hereinafter collectively referred to as the "**Lease**").

C. Lender has required the execution of this Agreement as a condition of making such mortgage loan to Landlord.

AGREEMENT

For good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. **Subordination.** The parties hereby agree that the Lease is and shall at all times be subject and subordinate in all respects to the lien of the Mortgage, to all indebtedness and

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obligations secured thereby, and to all renewals, modifications, extensions, substitutions, rearrangements and replacements thereof.

2. **Non-Disturbance.** Lender agrees that, subject to the terms and conditions of this Agreement, if any action or proceeding is commenced by Lender or at Lender's behest for the foreclosure of the Mortgage or the sale of the Property or other realization under the Loan Documents, whether by foreclosure, deed in lieu of foreclosure or in any other proceedings made or brought to enforce the rights of Lender, or by any successor to Lender, Tenant shall not be named as a party therein (unless required by law to properly foreclose upon the Mortgage), and the sale of the Property in any such action or proceeding and the exercise by Lender of any such action or proceeding and at the time of its other rights under the Mortgage shall be made subject to all rights of Tenant under the Lease, provided that at the time of any such action or proceeding and at the time of any such sale or exercise of any such other rights, Tenant shall not be declared in default, and no event shall have occurred which with the giving of notice or passage of time or both could result in a default, under any of the terms, covenants or conditions of the Lease on Tenant's part to be observed or performed.

3. **Attornment.** If the interests of the Landlord in the Property and under the Lease or any portion thereof are acquired by Lender, whether by purchase and sale, foreclosure, deed in lieu of foreclosure or in any other proceeding made or brought to enforce the rights of Lender, or by any successor to Lender, including without limitation any purchaser at a foreclosure sale, Tenant shall be bound to Lender, its successors and assigns under all of the terms, covenants and conditions of the Lease for the balance of the term thereof, with the same force and effect as if they were named as landlord under the Lease, and Tenant does hereby attorn to Lender, its successors and assigns as its landlord, said attornment to be effective and self-operative immediately upon Lender's or its successor's or assign's succeeding to the interests of the Landlord in the Property and under the Lease, without the execution of any other or further instruments on the part of any party hereto. Tenant covenants and agrees from time to time to do all acts and to execute all instruments as may reasonably be requested by Lender for the purposes of fully carrying out and effectuating the purpose and intent of this Agreement, whether by filing with any public office or agency or otherwise.

4. **Limitation on Lender's Liability.** If Lender succeeds to the interests of Landlord in the Property and under the Lease, Lender shall thereupon be bound to Tenant under all of the terms, covenants and conditions of the Lease, and Tenant shall, from and after Lender's succession to the interests of Landlord, have the same rights and remedies against Lender for breach of the Lease that Tenant would have had under the Lease against Landlord if Lender had not succeeded to the interests of Landlord; provided, however, that Lender shall not be: (a) liable for any act or omission of any prior landlord (including without limitation Landlord); (b) subject to any offsets or defenses which Tenant might have against any prior landlord (including without limitation Landlord); (c) bound by any surrender, cancellation, agreement or modification of the Lease made without the prior written consent of Lender, or (d) bound to return Tenant's security deposit, if any, until such deposit has come into Lender's (or such successor's) actual possession and Tenant would be entitled to such security deposit under the Lease. Lender shall be bound by Tenant's payment of no more than one (1) month's rent in advance under the Lease unless otherwise approved by Lender.

not provided for under the terms of the Lease, if any (i.e. options to extend or terminate)

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5. **No Modification.** Tenant agrees that during the term of the Lease or any extension thereof, Tenant will not enter into any amendment or modification of the Lease and will not cancel or surrender the Lease without in any such instance Lender's prior written consent.

6. **No Merger.** Unless Lender shall otherwise expressly agree in writing, fee title to the Property and the leasehold estate created by the Lease shall not merge but shall remain separate and distinct, notwithstanding the union of said estates either in Landlord, in Tenant or in any third party, by purchase, assignment or in any other matter.

7. **Representations and Warranties.** Tenant hereby represents and warrants to Lender that there has not been filed by or against Tenant a petition in bankruptcy, voluntary or otherwise, any assignment for the benefit of creditors, any petition seeking reorganization or arrangement under the bankruptcy laws with respect to Tenant.

8. **Notice to Lender.** Tenant shall give Lender copies of all written notices and other written communications given by the Tenant to the Landlord relating to (a) defaults on the part of the Landlord under the Lease, (b) any violations of any ordinances, statutes, laws, rules, codes, regulations or requirements of any governmental agency having jurisdiction over the Property, and (c) any proposed or actual assignment or subletting of all or any portion of the Demised Premises. Prior to pursuing any remedy available to Tenant under the Lease, at law or in equity which Tenant may have as a result of any failure of Landlord to perform or observe any covenant, condition, provision or obligation to be performed or observed by Landlord under the Lease (any such failure hereunder referred to as a "Landlord's Default"), Tenant shall provide Lender with a notice of Landlord's Default (the "Tenant's Notice"), which notice may be sent concurrently with any similar notice to Landlord, specifying the nature thereof and the remedy which Tenant will elect under the terms of the Lease or otherwise. Lender shall have thirty (30) days from the date of Tenant's Notice (or such lesser time if an emergency exists), or such greater time period as available to Landlord under the Lease, within which to commence to cure Landlord's Default and diligently proceed to complete such cure at all times thereafter. Tenant shall not pursue any remedy available to it as a result of any Landlord's Default unless Lender fails to commence within the time period set forth above or thereafter fails to diligently pursue a cure of any Landlord's Default.

9. **Access.** Notwithstanding the provisions of the Lease, if Tenant shall not have provided Lender with access to the Demised Premises, and if access is required to remedy such default, the period of time set forth in the Lease in which to remedy same shall not commence until such access is provided to Lender.

10. **Notices.** Notices shall be in writing and shall be given by personal delivery, telecopier, followed by U.S. mail, overnight courier, or by mail addressed as set forth below. Notice by personal delivery shall be deemed effective upon the delivery of such notice to the party for whom it is intended at the recipient's address. Notice by telecopier shall be deemed given when confirmation has been received. Notice by overnight courier shall be deemed effective twenty-four (24) hours after deposit with a commercial courier or delivery service for overnight delivery within the United States, or on the second (2nd) business day after deposit with an international second day delivery service (as applicable). Notice by mail shall be made

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by certified or registered mail, return receipt requested, postage prepaid, properly stamped, sealed and addressed, and shall be deemed effective on the second (2nd) business day after deposit in the United States mail. Either party may give notice of any change of address in accordance with the notice procedures described herein.

TO TENANT: Allstate Insurance Company
8501 West Higgins Road
Suite 120
Chicago, Illinois 60631

With a copy to: N/A

TO LENDER: First American Bank
1650 Louis Avenue
Elk Grove Village, Illinois 60007
Attention: John Olsen

11. **Interpretation.** Whenever possible each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under such law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of said document.

12. **Governing Law; Litigation.** THE VALIDITY OF THIS AGREEMENT, ITS CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT, AND THE RIGHTS OF TENANT AND LENDER SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF ILLINOIS, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE MAXIMUM EXTENT PERMITTED BY LAW, TENANT HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT SHALL BE TRIED AND DETERMINED ONLY IN THE STATE OR FEDERAL COURTS LOCATED IN THE COUNTY OF COOK, STATE OF ILLINOIS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, TENANT HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS PARAGRAPH.

13. **Jury Waiver.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, TENANT AND LENDER EACH HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY ACTION, CAUSE OF ACTION, CLAIM, DEMAND, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS AGREEMENT, OR IN ANY WAY CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE DEALINGS OF TENANT AND LENDER WITH RESPECT TO THIS AGREEMENT, OR THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED

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BY LAW, TENANT AND LENDER EACH HEREBY AGREES THAT ANY SUCH ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT TENANT OR LENDER MAY FILE A COPY OF THIS EXECUTED AGREEMENT WITH ANY COURT OR OTHER TRIBUNAL AS WRITTEN EVIDENCE OF THE CONSENT OF TENANT AND LENDER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

14. **Miscellaneous.** This Agreement may not be amended or modified except by an agreement in writing signed by the party to be charged. If any action or proceeding is brought by any party against any other party arising from or related to this Agreement or the Lease, the prevailing party shall be entitled to recover its reasonable costs and attorneys' fees. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their heirs, representatives, successors and assigns. Time is of the essence. This document represents the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, representations and covenants.

[signature on following page]

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

TENANT:

Allstate Insurance Company, an Illinois corporation

By: 

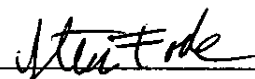
William B. Moston

Its: Assistant Vice President

Duly Authorized
Corporate Real Estate & Construction *MC*

LENDER:

FIRST AMERICAN BANK,
an Illinois banking corporation

By: 

Its: COMM. Loan Officer

Duly Authorized

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, DOROTHY M. SALSKI a Notary Public in and for said County in the State aforesaid, do hereby certify that WILLIAM B. MOSTON AUTHORIZED SIGNATORY of ALL state Insurance Company, an Illinois corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered such instrument as his/her own free and voluntary act and as the free and voluntary act of said authorized signatory for the uses and purposes set forth therein set forth.

Given under my hand and notarial seal this 27 day of APRIL, 2004.



Dorothy M. Salski
Notary Public

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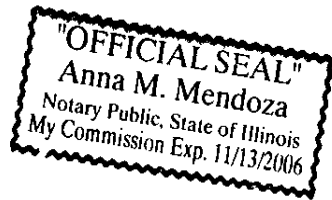
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STATE OF ILLINOIS)
) SS.
COUNTY OF Lupage)

I, Anna M. Mendoza, a Notary Public in and for said County in the State aforesaid, do hereby certify that Steve Forde, the Cash. Care Off. of **First American Bank**, an Illinois banking corporation (the "Bank"), who is 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 and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 29 day of April, 2004.

Anna M. Mendoza
Notary Public



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EXHIBIT "A" LEGAL DESCRIPTION

That part of the West 20 acres lying South of the center line of Higgins Road of that part of the East Half of the South West Quarter of Section 2, Township 40 North, Range 12, East of the Third Principal Meridian lying East of the West 20 acres of said East Half of the South West Quarter of Section 2 aforesaid and that part of the West 20 acres of the East Half of the South West Quarter of Section 2 aforesaid lying South of the center line of Higgins Road described as follows: beginning at the South West corner of the North East Quarter of said South West Quarter; thence East along the South line of said North East Quarter of the South West Quarter a distance of 330.23 feet to the intersection of said line with the East line of the West 20 acres of the East Half of the South West Quarter thence North Easterly along a line forming a deflection angle of 27 degrees 24 minutes 57 seconds to the left with the said South line of the North East Quarter of the South West Quarter a distance of 290.23 feet to a point; thence North Easterly along a line forming a deflection angle of 19 degrees 39 minutes 36 seconds to the left with the extension of the last described line a tract, at a point which is a distance of 1635.91 feet North of the South line of said South West Quarter as measured along the East line of this tract thence North along the East line of this tract a distance of 405.48 feet to the intersection of this line with the center line of Higgins Road thence North Westerly along the center line of Higgins Road, a distance of 759.96 feet to the intersection of said center line with the West line of said East Half of the South West Quarter; thence South along the West line of said East Half of the South West Quarter a distance of 882.01 feet to the place of beginning of this tract (except that part thereof taken for Higgins Road and except a parcel being described as a square 50 feet by 50 feet in dimensions lying extreme South Westerly corner of premises in question, the South West corner of said square being coincident with the South West corner of premises in question.

ALSO

That part of the East Half of the South West Quarter of Section 3, Township 40 North, Range 12, East of the Third Principal Meridian (except the West 20 acres thereof and also excepting the West 20 acres of that part of the East Half of the South West Quarter of Section 1 aforesaid lying South of the center line of Old Higgins Road and East of the West 20 acres of said East Half of the South West Quarter of said Section 2 and also excepting from said tract that part thereof lying North of the center line of Old Higgins Road) lying Westerly, Northwesterly and Southerly of the following described line: beginning at a point in the center line of Higgins Road 500.27 feet North Westerly of the East line of the North East Quarter of the South West Quarter as measured along the center line of said Road; thence Southerly and parallel to the East line aforesaid to a point 50 feet distant from and at right angles to the center line of said road; thence extending South Easterly to a point said point being 338.69 feet; North Westerly of the intersection of the center line of Higgins Road and the East line of the North East Quarter of the South West Quarter as measured on the center line of Higgins Road and 82 feet Southerly of and at right angles to the center line of said road for a place of beginning of this parcel of land thence extending South Westerly on a line which forms an angle of 66 degrees 26 minutes 09 seconds with the last described course a distance of 368.88 feet to the intersection of said line with the

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West line of this tract said intersection being 1635.91 feet North of the South line of the South West Quarter of said Section 2 as measured along the West line of this tract; thence North along the West line of this tract 354.65 feet to a point 50 feet distant from and at right angles to the center line of said Road thence South Easterly 254.47 feet to a place of beginning of this parcel of land all in Cook County, Illinois.

EXCEPTING FROM THE ABOVE DESCRIBED PARCELS any portion thereof released by that certain Parcel Release date July 28, 1965 from Connecticut General Life Insurance Company to Harris Trust and Savings Bank, a Corporation of Illinois, not personally or individually, but as Trustee under Trust Agreement dated December 16th, 1963 and known as Trust Number 31.358, recorded in the Recorder's Office of Cook County, Illinois on September 10, 1965 as Document Number 19583853.

P.I.N. No.: 12-02-301-008-0000

COMMON ADDRESS: 8501 West Higgins Road
Chicago, Illinois 60631

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