

# UNOFFICIAL COPY



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## NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made as of December 21, 1998, by and among CIB BANK, a FLL corporation, having an address at 900 E. Higgins Road, Elk Grove Village, Illinois 60007 ("Holder"), ARGONAUT HOLDINGS, INC., a Delaware corporation, having an address at c/o Worldwide Real Estate, 485 West Milwaukee Avenue, 9th Floor, "A" Building, Detroit, Michigan 48202, Attention: Director of Real Estate ("Tenant") and BEVERLY TRUST COMPANY, as Trustee under Trust Agreement dated May 22, 1997 and known as Trust No. 74-2569, having an address at c/o Mr. David L. Miller, 5513 Miller Circle Drive, Matteson, Illinois 60443 ("Landlord").

### RECITALS:

- A. Holder has made a loan in the original principal amount of One Million Dollars (\$1,000,000) (the "Loan") to Landlord and co-borrowers.
- B. Landlord is the owner of the land legally described in Schedule A attached hereto and made a part hereof and the buildings and other improvements located on such land (such land, buildings and improvements being referred to herein as the "Premises").
- C. Landlord is the lessor and Tenant is the lessee under that certain Prime Lease dated December 23, 1998 (the "Lease"), relating to the Premises.
- D. The Loan is secured by, among other things a Construction Mortgage, dated December 19, 1997 made by Landlord to Holder, and recorded February 4, 1998, as Document 98095081 in the Cook County, Illinois records (such instrument, as amended, increased, renewed, modified, consolidated, replaced, combined, substituted, severed, split, spread or extended from time to time, being herein referred to as the "Mortgage."

### AGREEMENT:

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and understanding that Tenant will rely on Holder's and Landlord's covenants and certifications, as set forth herein, in entering into the Lease, the parties hereto agree and certify as follows:

- 1. Consent to Lease. Holder hereby represents and warrants to Tenant that: (a) Holder has received and reviewed a copy of the Lease, together with a copy of that certain Dealership Sublease by and between Tenant, as landlord, and Dave Miller Olds, Inc., as tenant ("Subtenant"), of even date with the Lease, pursuant to which Tenant subleases the Premises to Subtenant; (b) Holder consents to and approves the Lease and the Sublease; and (c) neither the Lease nor the Sublease, nor the exercise by Landlord, Tenant, or Subtenant of any of the rights, remedies or options contained in the Lease or the Sublease shall constitute a breach or a default under the Mortgage or any of the documents and instruments now or hereafter evidencing or

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securing the Loan (which, together with the Mortgage, are collectively hereinafter referred to as the "Loan Documents").

2. Non-Disturbance. Tenant shall not be named as a party defendant in any action for foreclosure or other enforcement of the Mortgage, nor shall the Lease or Sublease be terminated in connection with, or by reason of, foreclosure or other proceedings for the enforcement of the Mortgage, or by reason of a transfer of the Landlord's interest under the Lease pursuant to the taking of a deed or assignment (or similar device) in lieu or in contemplation of foreclosure, nor shall Tenant's use or possession of the Premises be interfered with, and the rights of Tenant under the Lease and Subtenant under the Sublease shall remain in full force and effect, and Holder, and its successors and assigns (any of the foregoing being hereinafter referred to as a "Successor"), shall be bound to Tenant under all of the provisions of the Lease, and Tenant shall, from and after any such event, have the same remedies against the Successor for the breach of any agreement contained in the Lease that Tenant might have had under the Lease against Landlord thereunder.

3. Foreclosure. If the interest of the Landlord under the Lease shall be transferred by reason of foreclosure or other proceedings for enforcement of the Mortgage or the obligations which it secures or pursuant to a taking of a deed or assignment (or similar device) in lieu or in contemplation of foreclosure, Tenant shall be bound to the Successor, and the Successor shall be bound to Tenant under all of the terms, covenants and conditions of the Lease for the unexpired balance of the term thereof remaining (and any extensions, if exercised), with the same force and effect as if the Successor were the landlord, and Tenant does hereby (a) agree to attorn to the Successor, including Holder if it be the Successor, as its landlord, (b) affirm its obligations under the Lease, and (c) agree to make payments of all sums due under the Lease to the Successor, said attornment, affirmation and agreement to be effective and self-operative without the execution of any further instruments, upon the Successor succeeding to the interest of the Landlord under the Lease.

4. Notice and Cure. Notwithstanding anything to the contrary in the Mortgage, Holder shall not commence any action against Landlord or otherwise pursue any right or remedy against Landlord in consequence of a default by Landlord under the terms and provisions of the Mortgage or any of the other Loan Documents unless written notice by Holder specifying such default is given to Tenant at its address set forth above. Holder further agrees that Tenant shall have the right, but shall not be obligated, to cure such default on behalf of Landlord within thirty (30) days after receipt of such notice, or if such default cannot reasonably be cured in such 30-day period, Tenant shall have the right to commence the cure of such default in such 30-day period and thereafter diligently pursue such cure until completed. Holder further agrees not to invoke any of its remedies, either express or implied, under the Mortgage or the other Loan Documents unless such default shall remain uncured at the expiration of the 30-day period after receipt of such notice of default, or if such default cannot reasonably be cured in such 30-day period, unless the cure of such default shall not be commenced within such 30-day period and thereafter prosecuted diligently to completion.

5. Modifications. This Agreement may not be modified except by an agreement in writing signed by the parties. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns including a third-party purchaser at a foreclosure sale or any assignee of a deed in lieu thereof.

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6. Notices. All notices, demands or requests made pursuant to, under or by virtue of this Agreement shall be in writing and sent by an overnight courier service providing dated evidence of delivery or mailed by certified or registered mail, return receipt requested, to the person to whom the notice, demand or request is being made at its address set forth herein. Such notices shall be deemed to have been promptly given and received for all purposes (a) if mailed, by United States registered or certified mail, postage prepaid, return receipt requested, effective on the date shown on the return receipt; or (b) if sent by Federal Express or other reliable express courier, effective on the next business day after delivery to such express courier service. Any person may change the place that notices and demands are to be sent by written notice delivered in accordance with this Agreement. "Business day" shall mean any day, except Saturday, Sunday and any day which shall be in Matteson, Illinois, a legal holiday or a day on which banking institutions are authorized or required by law or other government action to close.

7. Construction. This Agreement shall be governed by the laws of the State of Illinois. If any of the terms of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of any such terms to any person or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

8. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same agreement.

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

"TENANT"

ARGONAUT HOLDINGS, INC., a Delaware corporation

By: [Signature]  
 Name: Roch X. McClain  
 Title: Vice President  
 [Corporate Seal]

EXECUTION BY  
 BY [Signature]  
 WORLDWIDE REAL ESTATE

Property of Cook County Clerk's Office

HOLDER"

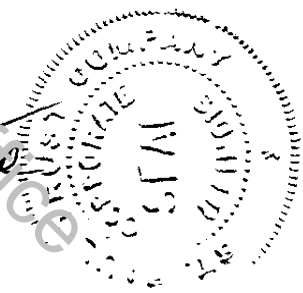
CIB BANK, a Illinois corporation

By: [Signature]  
 Name: Kevin L. Lietz  
 Title: vice President  
 [Corporate Seal]

"LANDLORD"

St. Paul Trust Co., as Successor Trustee to BEVERLY TRUST COMPANY, a Trustee under Trust No. 74-2569

By: [Signature]  
 Name: ROSEMARY MAZOR  
 Title: TRUST OFFICER



This document is made by St Paul Trust Company as Trustee and accepted upon the express understanding that the St Paul Trust Company enters into the same not personally, but only as Trustee and that no personal liability is assumed by nor shall be asserted or enforced against St Paul Trust Company because of or on account of the making or executing this document or of anything therein contained, all such liability, if any being expressly waived, nor shall St Paul Trust Company be held personally liable upon or in consequence of any of the covenants of this document, either expressed, or implied.

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STATE OF ILLINOIS )  
 )ss.  
COUNTY OF Wayne )

This instrument was acknowledged before me on January 21, 1999, by Roch X. McClain, as Vice President, of Argonaut Holdings, Inc. a Delaware corporation.

My commission expires: 12/17/2002

Notary Public Sharon E. Boon

(SEAL)

SHARON E. BOON  
Notary Public, Wayne County, MI  
My Commission Expires 12/17/2002

STATE OF ILLINOIS )  
 )ss.  
COUNTY OF )

This instrument was acknowledged before me on December 21, 1998 by Deborah Wheeler, as Director, of CIB Bank, a ILL corporation.

My commission expires:



(SEAL)

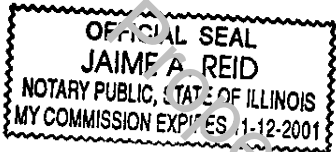
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STATE OF ILLINOIS )  
 )ss.  
COUNTY OF )

This instrument was acknowledged before me on 12-21-98 by Rosemary MAZUR, as TRUST OFFICER, of Beverly Trust Company, as Trustee under Trust Agreement dated May 22, 1997, and known as Trust No. 74-2569.

My commission expires:



*Jaime A. Reid*  
Notary Public

(SEAL)

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**SCHEDULE A**

**Legal Description**

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## LEGAL DESCRIPTION

Lot 4 in MATTESON AUTO MALL UNIT 1, being a Subdivision of the Southwest Quarter of Section 21, Township 35 North, Range 13 East of the Third Principal Meridian, according to the plat thereof recorded December 17, 1997 as Document No. 97948887, in Cook County, Illinois.

PERMANENT INDEX NUMBER: 31-21-300-04

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