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Doc#: 0514535124
Eugene "Gene" Moore Fee: \$36.00
Cook County Recorder of Deeds
Date: 05/25/2005 08:03 AM Pg: 1 of 7

This document was prepared by and after recording return to:
Jeffrey R. Liebman
Bank of Lincolnwood
4433 W. Touhy Ave.
Lincolnwood, IL 60712

SUBORDINATION AGREEMENT

This Subordination Agreement (the "Agreement") is made as of this 3rd day of May, 2005, between Bank of Lincolnwood (the "Senior Lender") and WexTrust Capital, LLC, an Illinois limited liability company (the "Junior Lender")

RECITALS:

A. Senior Lender is the owner and holder of a certain Promissory Note dated May 3, 2005, in the original principal amount of Four Hundred Thousand and 00/100 Dollars (\$400,000.00) made by Group West Builders, LLC, an Illinois limited liability company (the "Borrower"), payable to the order of Senior Lender (hereinafter referred to as the "Senior Note").

B. Senior Lender is also the owner and holder of the following documents, among others, securing or relating to the Senior Note:

(i) a certain Mortgage (the "Senior Mortgage") made by Borrower dated May 3, 2005, in favor of the Senior Lender, and recorded with the Recorder of Deeds of Cook County, Illinois (the "Recorder") on May 3, 2005, as Document No. _____ encumbering certain property (the "Property"), located in Cook County, Illinois and legally described on Exhibit A attached hereto. 0514535122

(ii) a certain Assignment of Rents (the "Senior Assignment") made by Borrower dated May 3, 2005, in favor of the Senior Lender, and recorded with the Recorder of Deeds of Cook County, Illinois (the "Recorder") on May 3, 2005, as Document No. 0514535123 encumbering the Property.

The Senior Note, Senior Mortgage, Senior Assignment, all guaranties, assignments, collateral assignments, indemnities, certificates, security agreements, mortgages, together with any and all other documents and instruments evidencing and securing or relating to the Senior Note are hereinafter collectively referred to as the "Senior Loan Documents."

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C. Junior Lender is the owner and holder of a certain Promissory Note dated May 3, 2005 in the original principal amount of Three Hundred Sixty Five Thousand and 00/100 Dollars (\$365,000.00) made by Borrower, payable to the order of Junior Lender (the "Junior Note").

D. Junior Lender is also the owner and holder of the following documents, among others, securing or relating to the Junior Note:

- (i) a certain Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing (the "Junior Mortgage") made by Borrower, dated May 3, 2005, in favor of Junior Lender, and recorded with the Recorder on May __, 2005, as Document No. _____ encumbering the Property.**
- (ii) a certain Assignment of Rents and Leases (the "Junior Assignment") made by Borrower, dated May 3, 2005, in favor of Junior Lender, and recorded with the Recorder on May __, 2005, as Document No. _____, encumbering, among other things, the Property.**
- (iii) a certain Environmental Indemnity Agreement Borrower and Guarantor (as defined therein), March 3, 2005 (the "Junior EA.") recorded with the Recorder on May __, 2005, as Document No. _____**

The, Junior Note, Junior Mortgage, Junior Assignment, Junior EA., that certain Pledge and Security Agreement dated May 3, 2005, all guaranties, assignments, collateral assignments, indemnities, certificates, security agreements, mortgages, together with any and all documents and instruments evidencing, securing or relating to the Junior Note are hereinafter collectively referred to as the "Junior Loan Documents."

E. All obligations of the Borrower to the Senior Lender now existing, due or to become due, under the Senior Note and the Senior Loan Documents are herein called the "Senior Liabilities."

F. All obligations of the Borrower or any other party to the Junior Loan Documents to the Junior Lender now existing, due or to become due, under the Junior Note and the Junior Loan Documents are herein called the "Junior Liabilities."

G. In order to induce Senior Lender to enter into the Senior Loan Documents, Junior Lender has agreed to execute and deliver this Subordination Agreement in order to subordinate the Junior Loan Documents and the Junior Liabilities, and all other debt between Junior Lender and Borrower to the Senior Loan Documents, the Senior Liabilities and all debt between Senior Lender and Borrower existing now or hereafter.

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NOW, THEREFORE, in consideration of the foregoing and as an inducement to Senior Lender to make the loan evidenced by the Senior Note, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto represent, warrant and agree as follows:

1. **Recitals.** The Recitals set forth above are incorporated herein as if fully set forth and are made a part of this Agreement.

2. **Subordination of Liens.** Junior Lender hereby agrees that the Junior Liabilities are and shall be subordinate to the Senior Liabilities and that the liens, security interests and rights of the Junior Lender created by the Junior Loan Documents are and shall be subordinate to the liens, security interests and rights of the Senior Lender created by the Senior Loan Documents and to any and all advances made under the Senior Loan Documents pursuant to the terms thereof, so that until the Senior Note and the Senior Liabilities are paid in full Senior Lender will have first claim, lien and priority over Junior Lender in all collateral (including the Property) held under the Senior Loan Documents.

Junior Lender agrees that so long as there are any Senior Liabilities outstanding, Junior Lender shall not ask, demand, take, sue for or receive from Borrower or any other person including, without limitation, any guarantor, member or manager of Borrower or successor in interest of any one or more of them (including any receiver or trustee), any payment of interest, principal or any other item payable, in full or in part, under the Junior Note or any of the other Junior Loan Documents. Junior Lender further agrees not to take or receive payment with respect to all or any part of the Junior Liabilities including, without limitation, any interest payable under the Junior Note and any amount obtained in connection with the enforcement of that certain Pledge and Security Agreement securing the Junior Note at any time until Senior Lender shall have advised Junior Lender in writing that all of the Senior Liabilities have been paid in full. Any property received by Junior Lender in violation of the foregoing undertaking, whether by way of direct payment, as proceeds of collateral or otherwise, shall be held in trust by Junior Lender for the benefit of Senior Lender, and shall be payable immediately to Senior Lender. Anything above to the contrary notwithstanding, Junior Lender shall be entitled to receive the payment contemplated under Section 3.5 of the Junior Note.

3. **Covenants of Junior Lender.** Junior Lender represents, warrants, covenants and agrees that: (a) Junior Lender shall not under any circumstance or at any time challenge the Senior Loan Documents or the Senior Lender's priority with respect to any collateral (including the Property) held under the Senior Loan Documents and the proceeds thereof, (b) Junior Lender shall notify Senior Lender in writing of any default under the Junior Loan Documents within five (5) business days of the occurrence of any default thereunder; (c) Junior Lender will not take any action including, without limitation, any foreclosure, affecting any lease of the Property, the Property, the sale of all or any portion of the Property or any other collateral held under the Senior Loan Documents as long as any of the Senior Liabilities remain outstanding, (d) Junior Lender will not, without the

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prior written consent of the Senior Lender, commence, or join with any other creditor in commencing any bankruptcy or insolvency proceeding or seek to appoint a receiver for the Property or any other collateral held under the Senior Loan Documents; (e) Junior Lender will not, without the prior written consent of the Senior Lender, modify, amend or consent to any modification of any document evidencing or securing the Junior Liabilities (f) Junior Lender will not, without the prior written consent of the Senior Lender, take any action to enforce the Junior EA. or the Pledge and Security Agreement and (g) Junior Lender has not previously assigned any interest in the Junior Note, and that no other party owns an interest in the Note other than the Junior Lender.

4. **Extension of Senior Liabilities.** It is further understood and agreed that Senior Lender may at any time, and from time to time, in its sole and absolute discretion, renew, modify or extend the time of payment of all or any portion of the Senior Liabilities without the consent of Junior Lender and without in any manner impairing or affecting this Agreement or any of Senior Lender's rights hereunder.

5. **Sale of Property and Release Deed.** It is further understood and agreed that Junior Lender is not entitled to the proceeds of sale of the Property or any part or parcel of the Property until the Senior Liabilities have been paid in full. Junior Lender further agrees that, on the date hereof, it will execute and deliver a release deed, acceptable to the Senior Lender with respect to the Property and deposit the release deed in escrow with Chicago Title Insurance Company to be delivered at the closing of the sale of the Property upon the written direction of the Senior Lender.

6. **Assignment by Senior Lender.** Senior Lender may, from time to time, assign or transfer any or all of the Senior Liabilities or any interest therein; and notwithstanding any such assignment or transfer or any subsequent assignment or transfer thereof, such Senior Liabilities shall be and remain Senior Liabilities for the purpose of this Agreement, and every immediate and successive assignee or transferee of any of the Senior Liabilities or of any interest therein shall, to the extent of the interest of such assignee or transferee in the Senior Liabilities, be entitled to the benefits of this Agreement to the same extent as if such assignee or transferee were Senior Lender.

7. **Assignment by Junior Lender.** Junior Lender may, from time to time, upon written notice to Senior Lender, assign or transfer any or all of the Junior liabilities or any interest therein provided that such assignment is expressly subject to the terms of this Agreement in form and substance reasonably satisfactory to Senior Lender.

8. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of Senior Lender, Junior Lender and their respective successors and assigns whether immediate or remote.

9. **Notice.** Any notice, demand or other communication which any party may desire or may be required to give to any other party shall be in writing, and shall be

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deemed given (i) if and when personally delivered, (ii) upon receipt if sent by a nationally recognized overnight courier addressed to a party at its address set forth below, or (iii) on the second (2d) business day after being deposited in the United States, registered or certified mail, postage prepaid, addressed to a party at its address set forth below:

If to Senior Lender: Bank of Lincolnwood
4433 West Touhy Avenue
Lincolnwood, IL 60712
Attn: Richard R. Robbins

With a copy to: Jeffrey R. Liebman
Bank of Lincolnwood
4433 West Touhy Avenue
Lincolnwood, IL 60712

If to Junior Lender: West Trust Capital, LLC
318 W. Adams, Suite 500
Chicago, IL 60606
Attn: ~~John H. Walker~~ STEVE BYERLE M

With a copy to: Andrew W. Lapin
Much Shelist
191 W. Wacker Drive
Suite 1800
Chicago, IL 60606

Any party hereto may change the address at which notices hereunder are required to be given to such party by notice to the other parties in accordance herewith.

10. **Construction and Interpretation of this Agreement.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. Wherever possible each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law but if any provision of this Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. Junior Lender consents to the exercise of jurisdiction over its person and property by any court of competent jurisdiction situated in the State of Illinois (whether it be a court of such State, or a court of the United States of America). Junior Lender hereby knowingly, voluntarily and intentionally waives the right to trial by jury in respect of any litigation based hereon, arising out of, or in connection with this Agreement.

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11. **Termination.** This Agreement is a continuing agreement of subordination and shall continue effective until the payment in full of all Senior Liabilities under the Senior Loan Documents and all extensions, modifications and renewals thereof.

12. **Buyout.** Notwithstanding any of the foregoing, Junior Lender shall be promptly notified of any notice of default sent to Borrower pursuant to the Senior Loan Documents. In addition, Junior Lender shall be promptly notified in the event Borrower does not cure said default to the complete satisfaction of Senior Lender, after any applicable cure period, if any, as set forth in the Senior Loan Documents. Thereafter, Junior Lender shall have the right to acquire the rights, title and interest in the Senior Loan Documents from the Senior Lender for all the amounts due and payable under the Senior Note and other Senior Loan Documents, including, without limitation, all interest, principal, late charges, attorneys' fees and costs. Senior Lender's determination of amounts due and payable under the Senior Note and other Senior Loan Documents shall be binding upon the parties unless manifestly in error. Nothing herein shall limit the Senior Lender from exercising any and all rights available to Senior Lender including, without limitation, the right to foreclose, available to Senior Lender under the Senior Loan Documents or under law or equity.

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the day and year first written above.

BANK OF LINCOLNWOOD

BY: 

Title: PRESIDENT/COO

WEXTRUST CAPITAL, LLC

BY: 

Title: CEO

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STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

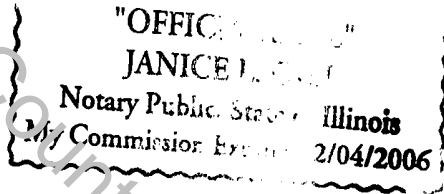
I, undersigned a notary public in and for said county in the state aforesaid, do hereby certify that _____, (title) of Bank of Lincolnwood, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such _____ (title), appeared before me this day in person and acknowledged that he signed and delivered the 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 3 day of May, 2005

Janice [Signature]
NOTARY PUBLIC

My commission expires:

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)



I, Latoria R. Johnson-Warren a notary public in and for said county in the state aforesaid, do hereby certify that Steven Byers, the Manager of WexTrust Capital, LLC, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his 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 3rd day of May, 2005

Latoria R. Johnson-Warren
NOTARY PUBLIC

My commission expires:

