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*This Document Prepared By And  
When Recorded Return To:*

Matthew B. Brotschul, Esq.  
BROTSCHUL POTTS LLC  
230 W. Monroe Avenue  
Suite 2250  
Chicago, Illinois 60606  
(312) 551-9003



Doc#: 0825926019 Fee: \$54.00  
Eugene "Gene" Moore RHSP Fee:\$10.00  
Cook County Recorder of Deeds  
Date: 09/15/2008 08:39 AM Pg: 1 of 10

PNTN  
70 W MADISON STE 1500  
CHICAGO IL 60602

For Recorder's Use Only

**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**  
(E&S Lease)

**THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** (this "Agreement"), made as of August 26, 2008, between ECAP & SOL, INC., an Illinois corporation, ("Tenant"), and VILLAGE BANK & TRUST ("Lender").

**WITNESSETH**

WHEREAS, STEAUA INVESTMENTS LLC, an Illinois limited liability company ("Borrower"), has executed and delivered or will execute and deliver to Lender concurrently herewith a Mortgage (such mortgage as the same may be amended, modified or restated from time to time being hereinafter referred to as the "Mortgage") encumbering, inter alia, that certain property commonly known as 800 Northwest Highway, Mount Prospect, Illinois 60056 and more accurately legally described on Exhibit A, attached hereto and incorporated herein (the "Property") to secure the repayment of that certain indebtedness (the "Loan") advanced by Lender to Borrower pursuant to that certain Loan Agreement, of even date herewith (the "Loan Agreement"); and

WHEREAS, Borrower has succeeded to the landlord's interest under that certain Lease Agreement, dated December 26, 2006 (such Lease, together with all amendments and modifications thereto, being hereinafter referred to as the "Lease") under which Tenant leases a portion of the Property subject to the terms and provision of the Lease; and

WHEREAS, in connection with the Loan, Lender has required the execution of this Agreement and Lender intends to rely on the provisions hereof.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements herein contained, the receipt and legal sufficiency of which are hereby acknowledged, the parties do hereby covenant and agree as follows:

1. Tenant agrees that the Lease is and shall be subject and subordinate to the Loan Documents (as defined in the Loan Agreement) and to all present or future advances under the obligations secured thereby and all renewals, amendments, modifications, consolidations, replacements and extensions of the secured obligations and the Loan Documents, to the full extent of all amounts secured by the Loan Documents from time to time. Said subordination is to have the same force and effect as if the Loan Documents and such renewals, modifications,

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consolidations, replacements and extensions thereof had been executed, acknowledged, delivered and recorded prior to the Lease, any amendments or modifications thereof and any notice thereof.

2. Lender agrees that, if the Lender exercises any of its rights under the Loan Documents, including an entry by Lender pursuant to the Mortgage or a foreclosure of the Mortgage, Lender shall not disturb Tenant's right of quiet possession of the Premises (as defined in the Lease) under the terms of the Lease so long as Tenant is not in default of any term, covenant or condition of the Lease.

3. Tenant agrees that, in the event of a foreclosure of the Mortgage by Lender or the acceptance of a deed in lieu of foreclosure by Lender or any other succession of Lender to fee ownership, Tenant will attorn to and recognize Lender as its landlord under the Lease for the remainder of the term of the Lease (including all extension periods which have been or are hereafter exercised) upon the same terms and conditions as are set forth in the Lease, and Tenant hereby agrees to pay and perform all of the obligations of Tenant pursuant to the Lease.

4. Tenant agrees that, in the event Lender succeeds to the interest of Landlord under the Lease, Lender shall not be:

- a. liable for any act or omission of any prior Landlord (including, without limitation, the then defaulting Landlord);
- b. subject to any defense or offsets which Tenant may have against any prior Landlord (including, without limitation, the then defaulting Landlord);
- c. bound by any payment of rent or additional rent which Tenant might have paid for more than one month in advance of the due date under the Lease to any prior Landlord (including, without limitation, the then defaulting Landlord);
- d. bound by any obligation to make any payment to Tenant which was required to be made prior to the time Lender succeeded to any prior Landlord's interest;
- e. accountable for any monies deposited with any prior Landlord (including security deposits), except to the extent such monies are actually received by Lender; or
- f. bound by any surrender, termination, amendment or modification of the Lease made without the consent of Lender.

5. Tenant agrees that, notwithstanding any provision hereof to the contrary, all of Tenant's right, title and interest in and to insurance proceeds and condemnation awards with respect to damage to or the condemnation of any portion of the Property, shall be subject to and subordinate to Lender's right, title and interest in and to such proceeds and awards.

6. Tenant hereby agrees to give to Lender copies of all notices of Landlord default(s) under the Lease in the same manner as, and whenever, Tenant shall give any such notice of default to Landlord, and no such notice of default shall be deemed given to Landlord unless and until a copy of such notice shall have been so delivered to Lender. Lender shall have the right to remedy any Landlord default under the Lease, or to cause any default of Landlord under the Lease to be remedied, and for such purpose Tenant hereby grants Lender a forty-five (45) day period of time to enable Lender to remedy, or cause to be remedied, any such default in addition to the period

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given to Landlord for remedying, or causing to be remedied, any such default. Tenant shall accept performance by Lender of any term, covenant, condition or agreement to be performed by Landlord under the Lease with the same force and effect as though performed by Landlord. No Landlord default under the Lease shall exist or shall be deemed to exist as long as Lender, in good faith, shall have commenced to cure such default within the above referenced time period. Tenant shall not pursue any remedy available to Tenant as a result of any default by Landlord under the Lease unless Lender fails to cure such default as provided herein.

7. Tenant hereby consents to the Assignment of Leases and Rents (as defined in the Loan Agreement) from Landlord to Lender in connection with the Loan. Tenant acknowledges that the interest of the Landlord under the Lease is to be assigned to Lender solely as security for the purposes specified in said assignments, and Lender shall have no duty, liability or obligation whatsoever under the Lease or any extension or renewal thereof, either by virtue of said assignments or by any subsequent receipt or collection of rents thereunder, unless Lender shall specifically undertake such liability in writing or unless Lender or its designee or nominee becomes, and then only with respect to periods in which Lender or its designee or nominee becomes, the fee owner of the Property. Tenant agrees that upon receipt of a written notice from Lender of a default by Landlord under the Loan, Tenant will thereafter, if requested by Lender, pay rent to Lender in accordance with the terms of the Lease.

8. The Lease shall not be assigned by Tenant, modified, amended or terminated without Lender's prior written consent in each instance.

9. Tenant acknowledges and agrees that any default by Tenant hereunder shall permit Lender, at its option, to exercise any and all of its rights and remedies at law and/or in equity against Tenant and to join Tenant in a foreclosure action thereby termination Tenant's right, title and interest in and to any portion of the Property.

10. Any notice, election, communication, request or other document or demand required or permitted under this Agreement shall be in writing and shall be deemed delivered on the earlier to occur of (a) receipt or (b) the date of delivery, refusal or nondelivery indicated on the return receipt, if deposited in a United States Postal Service Depository, postage prepaid, sent certified or registered mail, return receipt requested, or if sent via a recognized commercial courier service providing for a receipt, addressed to Tenant or Lender, as the case may be, at the following addresses:

If to Tenant:

ECAP & SOL, INC.

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

With a copy to:

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Lender:

Village Bank & Trust  
150 E. Rand Road  
Arlington Heights, Illinois 60004  
Attn: Alan Silber

With a copy to:

Brotschul Potts LLC  
230 W. Monroe  
Suite 2250  
Chicago, Illinois 60606  
Attn: Matthew B. Brotschul

11. The term "Lender" as used herein includes any successor or assign of the named Lender herein, including without limitation, any co-lender at the time of making the Loan, any purchaser at a foreclosure sale and any transferee pursuant to a deed in lieu of foreclosure, and their successors and assigns, and the terms "Tenant" and "Landlord" as used herein include any successor and assign of the named Tenant and Landlord herein, respectively; provided, however, that such reference to Tenant's or Landlord's successors and assigns shall not be construed as Lender's consent to any assignment or other transfer by Tenant or Landlord.

12. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to be enforceable, or if such modification is not practicable, such provision shall be deemed deleted from this Agreement, and the other provisions of this Agreement shall remain in full force and effect, and shall be liberally construed in favor of Lender.

13. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing executed by the party against which enforcement of the termination, amendment, supplement, waiver or modification is sought.

14. This Agreement shall be construed in accordance with the laws of the State of Illinois.

15. The person executing this Agreement on behalf of Tenant is authorized by Tenant to do so and execution hereof is the binding act of Tenant enforceable against Tenant.

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16. THE UNDERSIGNED HEREBY CONSENTS TO THE JURISDICTION OF ANY CIRCUIT COURT LOCATED WITHIN THE STATE OF ILLINOIS. TENANT WAIVES, AT THE OPTION OF LENDER, TRIAL BY JURY AND WAIVES ANY OBJECTION BASED ON IMPROPER VENUE OR FORUM NON CONVENIENS IN ANY ACTION OR PROCEEDING TO WHICH TENANT AND LENDER MAY BE PARTIES ARISING OUT OF, IN CONNECTION WITH, OR IN ANY WAY PERTAINING TO THIS AGREEMENT AND/OR ANY OTHER LOAN DOCUMENTS (AS DEFINED HEREIN). IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS AGREEMENT. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY TENANT, AND TENANT HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO, IN ANY WAY, MODIFY OR NULLIFY ITS EFFECT. TENANT FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

[remainder of page intentionally left blank]

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

**TENANT:**

ECAP & SOL, INC.  
An Illinois corporation,

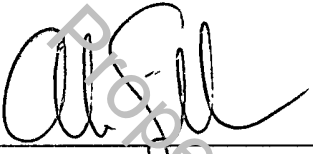
By: Heitha R  
Its: PRESIDENT

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

**LENDER:**  
VILLAGE BANK & TRUST

By:   
\_\_\_\_\_  
Alan Silber  
Senior Vice President

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STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF \_\_\_\_\_ )

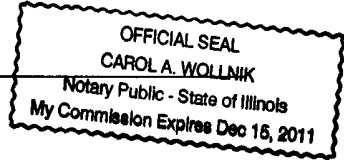
I, the undersigned, a Notary Public in and for said County, in the state aforesaid, DO HEREBY CERTIFY that HARYIARAHIMOV the PRESIDENT of ECAP & SOL, INC., an Illinois corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged to me that (s)he signed and delivered the said instrument as his(her) own free and voluntary act and as the free and voluntary act of the Company and for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 18 day of AUGUST, 2008.

Carol A. Wollnik  
NOTARY PUBLIC

My Commission Expires:

12/15/2011



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STATE OF ILLINOIS            )  
  ) SS  
COUNTY OF Cook            )

I, the undersigned, a Notary Public in and for said County, in the state aforesaid, DO HEREBY CERTIFY that ALAN SILBER, as the Senior Vice President of **VILLAGE BANK & TRUST**, personally known to me to be the Senior Vice President as aforesaid, and is the same person whose name is subscribed to the foregoing instrument as such Senior Vice President appeared before me this day in person and acknowledged to me that he signed and delivered the said instrument as his own free and voluntary act and 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 26<sup>th</sup> day of August, 2008.

OFFICIAL SEAL  
MATTHEW B. BROTSCHUL  
Notary Public - State of Illinois  
My Commission Expires Nov 27, 2010

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

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

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## EXHIBIT A

### THE PROPERTY -- LEGAL DESCRIPTION

PARCEL 1: LOT 1 IN CALLICK'S RESUBDIVISION OF LOTS 1, 2, 3 AND 4 IN MAPLEWOOD HEIGHTS, BEING A SUBDIVISION OF THE EAST 15 CHAINS OF THAT PART LYING NORTH OF RAILROAD OF THE SOUTH EAST 1/4 OF SECTION 12 (EXCEPT THE SOUTHERLY 66 FEET THEREOF) ALSO OF BLOCK 26 IN BUSSE'S EASTERN ADDITION TO MOUNT PROSPECT, IN THE EAST 1/2 OF SECTION 12, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PARCEL 2: LOT 1 IN OLIVER'S RESUBDIVISION OF LOTS 12 AND 13 IN MAPLEWOOD HEIGHTS, BEING A SUBDIVISION OF THE EAST 15 CHAINS OF THAT PARTY LYING NORTH OF THE RAILROAD OF THE SOUTH EAST 1/4 OF SECTION 12 (EXCEPT THE SOUTHERLY 66 FEET FOR ROAD) ALSO BLOCK 26 IN BUSSE'S EASTERN ADDITION TO MOUNT PROSPECT IN THE EAST 1/2 OF SECTION 12, ALL IN TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF REGISTERED IN THE OFFICE OF THE REGISTRAR OF TITLES OF COOK COUNTY, ILLINOIS, ON SEPTEMBER 14, 1956 AS DOCUMENT LR 1695707

PIN: 08-12-403-014-0000

PIN: 08-12-403-016-0000

COMMON ADDRESS: 800 E NORTHWEST HIGHWAY  
MOUNT PROSPECT, IL 60056