

# UNOFFICIAL COPY

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Cohen, Salk & Huvard, P.C.  
630 Dundee Road, Suite 120  
Northbrook, Illinois 60062  
Attention: Bruce A. Salk, Esq.



Doc#: 0509719067  
Eugene "Gene" Moore Fee: \$42.50  
Cook County Recorder of Deeds  
Date: 04/07/2005 11:11 AM Pg: 1 of 10

## SUBORDINATION AND STANDSTILL AGREEMENT

THIS SUBORDINATION AND STANDSTILL AGREEMENT (this "Agreement") is executed and entered into by LYNWOOD DT INVESTORS, L.L.C. an Illinois limited liability company (hereinafter referred to as the "Second Lender"), for the benefit of MB FINANCIAL BANK, N.A. (hereinafter referred to as the "First Lender").

### RECITALS:

WHEREAS, First Lender desires to make a loan (the "First Loan") to Lynwood Land Company, L.L.C., an Illinois limited liability company ("Borrower"), evidenced by that certain Mortgage Note (the "First Note"), dated February 28, 2005 in the original principal amount of \$6,900,000, executed by Borrower and payable to the order of First Lender, and secured by, among other things, that certain Mortgage and Security Agreement of even date therewith (the "First Mortgage"), covering the real property more particularly described on Exhibit "A" attached hereto and incorporated herein, together with all improvements thereon and rights associated therewith (the "Property") (the First Note, First Mortgage and any and all other documents evidencing or securing the First Loan are hereinafter collectively referred to as the "First Loan Documents"); and

WHEREAS, as additional consideration for the First Loan, the Borrower will execute and deliver a certain form of Guaranty agreement and a certain form of Environmental Indemnity Agreement (the "Guaranty Agreements"); and

WHEREAS, Second Lender currently holds a loan (the "Second Loan") made, by the Borrower as evidenced by that certain promissory note dated September 29, 2004, in the original principal amount of \$1,700,000, executed by the Borrower and payable to the order of Second Lender (such promissory note being herein referred to as the "Second Note"), which Second Loan is secured by a Mortgage and Security Agreement dated September 29, 2004 (the "Second Mortgage") encumbering the Property (the "Secondary Lien") (the Second Note, Second

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Mortgage and any and all other documents evidencing or securing the Second Loan are hereinafter collectively referred to as the "Second Loan Documents"; and

WHEREAS, as a condition to First Lender's consummation of the transactions described in the First Loan Documents, First Lender has required and Second Lender has agreed to execute this Agreement to limit Second Lender's rights and remedies with respect to the Second Loan;

NOW, THEREFORE, for and in consideration of Ten and No/100 Dollars (\$10.00) and the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which consideration are hereby acknowledged, it is hereby declared, understood and agreed as follows:

1. Effectiveness of Agreement. This Agreement shall be effective immediately upon the execution hereof by the parties hereto.
2. Certifications by Second Lender. Second Lender hereby certifies, represents and warrants to First Lender that the following information is true, correct and complete as of the date hereof:
  - (a) The Second Note and the other Second Loan Documents constitute all of the Second Loan Documents and there are no other documents, agreements or instruments in effect between the Borrower and the Second Lender or other parties amending, modifying or being in effect relative thereto;
  - (b) Second Lender is the present holder of the Second Note and has never assigned any interest (whether collateral or otherwise) in or to any of the Second Loan Documents;
  - (c) The current unpaid balance of the Second Loan is not greater than approximately Seven Hundred Fifty Thousand and 00/100 Dollars (\$750,000) plus all accrued and unpaid interest;
  - (d) There are no past due payments under the Second Note, nor does there exist any breach of any of the terms and provisions of any of the Second Loan Documents; and
  - (e) Second Lender has provided to First Lender true, correct and complete copies of the Second Loan Documents and such instruments have not been amended, modified, assigned or superseded whatsoever.

3. Priority Of Mortgage and Payments. Notwithstanding the time of the recording of the First Mortgage or the execution and delivery of the Guaranty Agreements and the time the Second Loan was initially effectuated, and notwithstanding anything to the contrary whatsoever contained in any of the Second Loan Documents, the Second Loan Documents, as well as all of the Second Lender's rights and remedies under the Second Loan Documents are hereby expressly made fully JUNIOR, SECONDARY, SUBJECT and SUBORDINATE in payment to the First Loan Documents (including, without limitation, any future advances by the First Lender pursuant to the First Loan Documents or otherwise taken to protect the Property or the First Lender's lien

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thereon or rights thereto), and to all of the First Lender's rights and remedies under the First Loan Documents. In addition, in furtherance of and without limiting the foregoing, the Second Lender agrees that:

(a) Second Lender currently has no and shall continue to have no rights or interest whatsoever under the Second Loan Documents in or to the Property other than the Secondary Lien. All rights of Second Lender under the Second Loan Documents in and to the Property including, without limitation, the Secondary Lien and the proceeds thereof (including, without limitation, any rights with respect to leases, rents, insurance proceeds and condemnation awards) shall be expressly SUBJECT and SUBORDINATE to the rights of First Lender in and to the Property and the proceeds thereof (including, without limitation, any rights with respect to leases, rents, insurance proceeds and condemnation), and to any other expenses incurred under and as permitted in the First Mortgage.

(b) The Second Lender hereby expressly consents to and authorizes, at the option of the First Lender, the release of all or any portion of the Property from the lien of the First Mortgage, and hereby waives any equitable rights Second Lender might have, as a result of any release of all or any portion of the Property by the First Lender under the First Mortgage, to require that the First Lender marshal the Property in favor of the Second Lender, and further, in the event of any foreclosure, the Second Lender hereby expressly consents to and authorizes, at the option of the First Lender, the sale, whether separately or together, of all or any portion of the Property;

(c) The Second Lender hereby expressly consents to and authorizes, at the option of the First Lender, the amendment, extension, restatement, refinance, or other modification, in whole or in part, of all or any of the First Loan Documents, including, without limitation, increasing or decreasing the stated principal amount of the First Note, increasing or decreasing the interest rate payable under the First Note or altering any other payment terms under the First Note;

(d) If the Second Lender shall acquire by indemnification, subrogation or otherwise, any lien, estate, right or other interest in the Property, that lien, estate, right or other interest shall be subordinate to the First Mortgage as provided herein;

(e) No modification or amendment of the Second Loan Documents shall be binding unless the First Lender shall have consented in writing to such modification or amendment;

(f) That upon the occurrence of an Event of Default under the First Loan Documents which results in liability to the Borrower pursuant to the First Loan Documents, Second Lender hereby confirms (and, to the extent necessary, the Second Loan Documents are hereby amended to provide) that no interest, principal or other payments of any sort whatsoever are to be due and payable pursuant to the Second Loan Documents unless and until all claims against the Borrower under the First Loan shall have been paid in full;

(g) If, notwithstanding the provisions of this Agreement, any payment or distribution or security of any character (whether in cash, securities, or other property) shall be received by

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the Second Lender out of or in connection with the Second Loan in contravention of the terms of this Agreement, and before all of the First Loan shall have been paid in full, such payment, distribution or security, as applicable, shall not be commingled with any asset of the Second Lender, shall be held in trust for the benefit of, and shall be paid over or delivered and transferred to, the First Lender or its representative, for application to the payment of the First Loan remaining unpaid, until all of the First Loan shall have been paid in full; and

(h) Second Lender shall give First Lender copies of any written notice whatsoever provided by Second Lender to Borrower relative to any of the Second Loan, the First Loan or any interest therein.

4. Certain Actions Regarding Second Loan. Until such time as the First Loan (or any refinancing thereof) shall have been paid in full, together with any and all other amounts which shall be due and payable under the terms of the First Loan Documents, the Second Lender shall not take any of the following actions with respect to the Second Loan without the prior written consent of the First Lender, which consent shall not be unreasonably withheld but which consent may be governed by the terms of the First Loan Documents:

(a) Declare a default of any sort under the Second Loan Documents, accelerate all or any portion of the Second Loan or exercise any of its remedies under the Second Loan Documents;

(b) Pursue a foreclosure action, levy or other remedy against all or any portion of the Property or accept a deed in lieu of such action or remedy;

(c) Commence any legal proceedings against the Borrower or commence any Enforcement Action (as defined in Section 5 below);

(d) Consent to any amendment or modification of the Second Loan Documents, except for an extension of the maturity date of the Second Loan;

(e) Commence or consent to any bankruptcy, insolvency, reorganization or similar proceeding by or against the Borrower; or

(f) Sell, convey, transfer, assign, pledge, hypothecate mortgage or grant a security interest in the Second Loan, the Second Note or any other Second Loan Documents, or any portion thereof.

5. Bankruptcy Issues.

(a) For purposes of this Section 5, the following terms shall have the meanings indicated:

(ii) "Bankruptcy Code" means Title 11, United States Code, as amended from time to time, any successor statute thereto, and any rules promulgated pursuant thereto.

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(iv) "Enforcement Action" means the commencement of any foreclosure proceeding, the exercise of any statutory power of sale, the taking of a deed or assignment in lieu of foreclosure, the obtaining of a receiver or the taking of any other enforcement action against, or the taking of possession or control of, or the exercise of any remedies with respect to, the Property or any portion thereof.

(b) This Agreement shall be applicable both before and after the commencement, whether voluntary or involuntary, of any case by or against the Borrower under the Bankruptcy Code and all references herein to the Borrower shall be deemed to apply to the Borrower as a debtor-in-possession and to any trustee in bankruptcy for the estate of the Borrower.

(c) In the event the First Lender is required under any bankruptcy or other law to return to the Borrower, the estate in bankruptcy thereof, any third party or any trustee, receiver or other similar representative of the Borrower any payment or distribution of assets, whether in cash, property or securities, including without limitation any Property or any proceeds of the Property previously received by the First Lender on account of the First Mortgage (a "Reinstatement Distribution"), then to the maximum extent permitted by law, this Agreement and the waiver, release and discharge of all rights of Second Lender in and to the Property (including, to the extent applicable, any and all subordination as to the Property) shall be reinstated with respect to any such Reinstatement Distribution. The First Lender shall not be required to contest its obligation to return such Reinstatement Distribution.

(d) The Second Lender hereby agrees that the Second Lender shall not make any election, give any consent, file any motion or take any other action in any case by or against the Borrower under the Bankruptcy Code without the prior written consent of the First Lender (other than filing a claim as an unsecured creditor). The Second Lender hereby appoints the First Lender as its agent, and grants to the First Lender an irrevocable power of attorney coupled with an interest, and its proxy, for the purpose of exercising any and all rights and taking any and all actions available to the Second Lender in connection with any case by or against the Borrower under the Bankruptcy Code, including without limitation, the right to vote to accept or reject a plan, to file a claim, to make any election under Section 1111(b) of the Bankruptcy Code with respect to the Second Loan Documents and to file a motion to modify the automatic stay with respect to the Second Loan Documents. The Second Lender hereby agrees that, upon the request of the First Lender, the Second Lender shall do, execute, acknowledge and deliver to the First Lender all and every such further acts, deeds, conveyances and instruments as the First Lender may request for the better assuring and evidencing of the foregoing appointment and grant.

6. Approval of Second Lender. Second Lender consents to and approves all provisions of the First Note, the First Mortgage and each of the First Loan Documents.

7. Reliance. First Lender would not make the First Loan to Borrower without this Agreement. Accordingly, Second Lender intentionally and unconditionally enters into the covenants and agreements as set forth above and understands that, in reliance upon and in consideration of such covenants and agreements, the First Loan shall be made and, as part and parcel thereof, specific monetary and other obligations have been, are being and shall be entered into which would not be made or entered into but for such reliance.

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8. Further Assurance. The Second Lender hereby agrees that, within three (3) days after request by the First Lender, the Second Lender shall do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances and instruments, in recordable form, as the First Lender may request for the better assuring and evidencing of the foregoing agreements.

9. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS, EXCEPT TO THE EXTENT THAT THE APPLICABILITY OF ANY SUCH LAWS MAY NOW OR HEREAFTER BE PREEMPTED BY FEDERAL LAW, IN WHICH CASE SUCH FEDERAL LAW SHALL SO GOVERN AND BE CONTROLLING.

10. Entire Agreement. This Agreement contains the entire agreement between the parties respecting the matters herein set forth and supersedes all prior agreements, whether written or oral, between the parties respecting such matters. Any amendments or modifications hereto, in order to be effective, shall be in writing and executed by the parties hereto. A determination that any provision of this Agreement is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Agreement to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

11. Notices. All notices, demands, requests and other communications made hereunder shall be in writing and shall be properly given and deemed delivered on the date of delivery if sent by personal delivery or nationally recognized overnight courier and on the third business day following mailing if sent by certified or registered mail, postage prepaid, return receipt requested, as follows:

If to First Lender: MB Financial Bank, N.A.  
6401 N. Lincoln Avenue  
Lincolnwood, Illinois 60712  
Attn: James Mann  
Fax: 847.745.3435

with copies to: Cohen, Salk & Huvard, P.C.  
630 Dundee Road, Suite 120  
Northbrook, Illinois 60062  
Attn: Bruce A. Salk, Esq.  
Fax: 847.480.7882

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Servicer: Lynwood Land Company, L.L.C.  
 1141-J Lake Cook Road  
 Deerfield, Illinois 60015  
 Attn: Steven Libert  
 Fax: 847.405.0770

If to Second Lender: Levenfeld Pearlstein, LLC  
 2 North LaSalle Street, Suite 1300  
 Chicago, Illinois 60602  
 Attn: Nick S. Legatos, Esq.  
 Fax: 312.346.8434

or to such other addresses as any party hereto may request by notice served as required hereunder.

12. Changes to this Agreement. This Agreement may not be changed, terminated or modified except by an agreement in writing, signed by each of the parties hereto.

13. No Third Party Beneficiaries. It is expressly agreed and understood that each and every representation, waiver, certificate and agreement of Second Lender in this Agreement are for the sole and exclusive benefit of First Lender and subsequent owners or holders of the First Loan Documents. No third party shall be entitled to rely on any agreements or certifications provided herein to any extent whatsoever.

14. Successors and Assigns. The terms, provisions, indemnities, covenants and conditions hereof shall be binding upon Second Lender and the successors and assigns of Second Lender, and shall inure to the benefit of First Lender, its directors, officers, shareholders, employees and agents and their respective successors and assigns. All references in this Agreement to Second Lender or the First Lender shall be deemed to include all such parties' successors and assigns, and the term "First Lender" as used herein shall also mean and refer to any lawful holder or owner, including pledgees and participants, of any of the indebtedness secured hereby.

15. Multiple Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which together shall constitute one agreement, binding on all parties hereto notwithstanding that all of the parties hereto are not signatories to the same counterpart. For purposes of this Agreement, each of the parties hereto agrees that a facsimile copy of the signature of the person executing this Agreement on either party's behalf shall be effective as an original signature and legally binding and effective as an execution counterpart hereof. Each of the undersigned parties authorizes the assembly of one or more original copies of this Agreement through the combination of several executed counterpart signature pages with one or more bodies of this Agreement, including the Exhibits, if any, to this Agreement, such that this Agreement, shall consist of the body of this Agreement, counterpart signature pages which collectively will contain the signatures of the undersigned parties hereto, and the Exhibits to this Agreement. Each such compilation of this Agreement shall constitute one original of this Agreement.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, Second Lender has executed this Agreement effective as of this 28th day of February, 2005.

LYNNWOOD DT INVESTORS, L.L.C., an Illinois limited liability company

By: *Daniel G. Dvorkin, Manager*  
Name: DANIEL G. DVORKIN  
Its: Co-Manager

Property of Cook County Clerk's Office



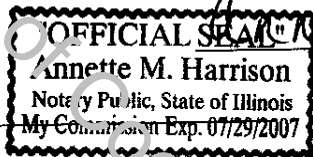
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STATE OF ILLINOIS )  
  ) SS.  
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that DANIEL G. DVORKIN is personally known to me as one of the co-managers of LYNWOOD DT INVESTORS, L.L.C., an Illinois limited liability company and 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 signed, sealed and delivered the said instrument as such co-manager of LYNWOOD DT INVESTORS, L.L.C. pursuant to authority, given by the members of LYNWOOD DT INVESTORS, L.L.C., as his own and free and voluntary act and as the free and voluntary act of LYNWOOD DT INVESTORS, L.L.C. for the uses and purposes therein set forth.

Given under my hand and notarial seal this 28<sup>th</sup> day of February, 2005.

*Annette M. Harrison*  
\_\_\_\_\_  
Notary Public



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

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## Exhibit A

### Legal Description of Property

PIN: 32-12-202-001-0000, 32-12-203-007-0000

ADDRESS: Lynwood, Illinois

Parcel 1: The Southwest 1/4 of the Northeast 1/4 (except the West 150 feet) of Section 12, Township 35 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 2: The North 1/2 of the North 1/2 of the Southeast 1/4 of the Northeast 1/4 of Section 12, Township 35 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois (excluding the East 294.00 feet thereof but including the North 128.00 feet of said East 294.00 foot strip), in Cook County, Illinois.

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