



201808130112

08/13/2018 03:15 PM Pages: 1 of 11 Fees: \$109.00
Skagit County Auditor

AFTER RECORDING MAIL TO:

Name The Standard
Address 19225 NW Tanasbourne Drive
City/State Hillsboro, OR 97124

Document Title(s):

1. SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

GUARDIAN NORTHWEST TITLE CO.

115918

Reference Number(s) of Documents Assigned or released:

UNRECORDED LEASE
DT #201808130110

Grantor(s):

1. KMG Realty, LLC
2. StanCorp Mortgage Investors, LLC

[] Additional information on page of document

Grantee(s):

1. Car Toys, Inc.
2.

[] Additional information on page of document

1ST AM

(1)

#903733

Abbreviated Legal Description:

SECTION 5, TOWNSHIP 34 NORTH, RANGE 4 EAST, SW NW (AKA LOT 3 FRED MEYER RETAIL STORE BSP)

Tax Parcel Number(s):

P104516

[X] Complete legal description is on page 11 of document

I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.

SIC Loan No. B8051802

**SUBORDINATION, NONDISTURBANCE, AND
ATTORNMEN AGREEMENT**

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR INTERESTS IN THE PROPERTY BECOMING SUBJECT TO AND OF A LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

THIS SUBORDINATION AGREEMENT is dated as of July 16, 2018

Recitals

A. The undersigned, Lessor, **KMG Realty, LLC, a Washington limited liability company** and the undersigned Lessee are parties to a lease dated **April 19, 2011**, defined below, which lease covers part or all of the real property (the "Property") described on Exhibit "A" attached hereto.

B. **Standard Insurance Company, an Oregon corporation ("Lender")** has agreed to make a loan (the "Loan") to Lessor and others, as applicable ("Borrower"), evidenced or secured by a note, Deed of Trust, Mortgage or Deed to Secure Debt with Assignment of Rents, Security Agreement and Fixture Filing dated July 16, 2018 on the Property and by such other security instruments as Lender may require of even date herewith (collectively, the "Security Instruments").

C. As a condition precedent to Lender's disbursement of Loan proceeds, Lender has required that Lessee (i) subordinates the Lease and Lessee's interest in the Property in all respects to the liens of the Security Instruments, if any, securing Lender's other interests in the Property, and (ii) agrees that it will attorn to Lender as a successor Lessor under the Lease.

D. In return for the subordination and attornment, Lender is agreeable to not disturbing Lessee's possession of the Property under the Lease on the terms set forth below.

Agreement

NOW, to induce Lender to make the Loan and in consideration of the promises made, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Lessee and Lessor, it is agreed as follows:

1. **Subordination.** The Lease, including but not limited to any rights of first refusal and/or purchase options contained therein, and Lessee's leasehold estate and any other interests created thereby and any renewals, extensions, amendments or modifications (collectively, the "Lease"), are completely and unconditionally subject and subordinate to the liens of the Security Instruments, including all Loan advances made or to be made, and to any extensions or modifications.

2. **Lessee Not To Be Disturbed.** So long as Lessee is not in default (beyond any applicable Lease notice and cure periods, if any) ("Default") in the payment of rents or in the performance of any of the other terms of the Lease on Lessee's part to be performed (collectively, the "Lessee Obligations"), Lessee's possession of the Property under the Lease and Lessee's rights and privileges under the Lease, will not be diminished or interfered with by

Lender, and Lessee's occupancy of the Property will not be disturbed by Lender during the Lease term.

3. **Lessee Not To Be Joined In Foreclosure.** So long as Lessee is not in Default under any Lessee Obligations, Lender will not join Lessee as a defendant in any action or proceeding foreclosing the Security Instruments unless such joinder is necessary to foreclose the Security Instruments and then only for such purpose and not to terminate the Lease.

4. **Lessee To Attorn To Lender.** If the interests of Lessor are transferred to and owned by Lender by foreclosure or otherwise, and Lender succeeds to the interest of the Lessor under the Lease, Lessee will be bound to Lender under the Lease for the balance of the term thereof remaining including any extensions or renewals, with the same force and effect as if Lender were the Lessor under the Lease. Lessee attorns to Lender as its Lessor, said attornment to be effective upon Lender succeeding to the interest of the Lessor under the Lease without the execution of any further instrument, provided that, except as described in the next paragraph, Lessee will not be obligated to pay rent to Lender, as Lessor until Lessee receives written notice from Lender that it has succeeded to the interest of the Lessor under the Lease. The respective rights and obligations of Lessee and Lender upon such attornment, to the extent of the then remaining balance of the term of the Lease and any such extensions and renewals, will be and are the same as now set forth therein; it being the intention of the parties hereto for this purpose to incorporate the Lease in this Agreement by reference.

5. **Lease Payments to Lender.** Receipt of Lender's notice will be the only condition to Lessee making payments to Lender or at Lender's direction. Lessor irrevocably authorizes Lessee to make payments to Lender or at Lender's direction. Lessor releases and discharges Lessee from liability for making such payments. Lessor indemnifies Lessee and Lender from all loss, cost, liability, claim, damage and expense (including reasonable attorney fees and costs, whether at pre-trial, at trial, on appeal, discretionary review and/or bankruptcy) that Lessee or Lender may incur as a result any challenge to Lender's notice or Lessee's payment to Lender or at Lender's direction.

6. **Exercise of Rights Under Loan Documents Not Lease Default.** The undersigned represents to Lender that the exercise by Lender of its rights and remedies under the Loan Documents, including without limitation its rights of foreclosure, will not constitute a default under the Lease.

7. **Lender Not Bound By Subsequent Lessor/Lessee Acts.** If Lender succeeds to the interests of Lessor under the Lease, Lender will not be (a) liable for any act or omission of any prior lessor (including Lessor), which accrued prior to the date Lender takes title to the Property, unless such act or omission continues after Lender (i) took title to the Property, (ii) received written notice of such act or omission, and (iii) failed to commence and continue cure within thirty (30) days, (b) subject to any offsets or defenses which Lessee might have against any prior lessor (including Lessor), in the Lease, if any, (c) bound by any rent or additional rent which Lessee might have paid for more than one month in advance of the then current installment, except for any monthly escrows required to be paid under the Lease, if any, for operating expenses, insurance and real estate taxes which are subject to annual reconciliation, (d) bound by any Lease termination, cancellation or any material amendment or modification of the Lease made without Lender's prior written consent, **such consent not to be unreasonably withheld, conditioned or delayed** or (e) liable for any security or other deposits paid by Lessee, or any predecessor in interest to Lessee, to any Lessor, and which are not actually received by Lender. For purposes of this paragraph, the term "material" refers to changes that

would increase Lessor's obligations under the Lease, financial or otherwise, or decrease Lessee's obligations under the Lease, whether financial or otherwise.

8. **Waiver.** Lessee waives notice and agrees that Lender, without notice to or consent of Lessee, upon terms as Lender may deem advisable, without releasing or discharging Lessee from this Subordination Agreement or affecting the lien or priority of the Security Instruments release, exchange, or modify any obligation secured by the Security Instruments and/or settle or compromise any claim with respect to the Loan.

9. **Successors and Assigns.** This Agreement is binding upon the parties and their heirs, executors, administrators, representatives, successors and assigns, including each lessee and lessor under the Lease or any other person having an interest therein and will inure to the benefit of Lender and its successors and assigns.

10. **Choice of Law.** The law of the state in which the Property is located will govern the validity, interpretation, construction, and performance of this Agreement. The parties irrevocably submit to the jurisdiction of any state or federal court in the State where the Property is located in any action or proceeding brought to enforce or otherwise arising out of or relating to this Agreement, and waive any claim that such forum is an inconvenient forum.

11. **Captions and Headings.** The captions and headings in this Agreement are for convenience and not to be construed as confining or limiting the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular includes the plural, the plural includes the singular, and the masculine, feminine and neuter are freely interchangeable.

12. **Notices.** All notices required or permitted under this Agreement will be in writing and may be delivered by hand or a nationally recognized overnight courier service, or mailed by first class registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to Lender:

StanCorp Mortgage Investors, LLC
Attn: Loan Closing, T3A
19225 NW Tanasbourne Drive
Hillsboro, OR 97124

If to Lessor:

KMG Realty, LLC
Attn: Ezra Genauer
650 S. Orcas, Suite 210
Seattle, Washington 98108

If to Lessee:

Car Toys, Inc.
20 West Galer, Suite 300
Seattle, WA 98119

Changes in the respective addresses to which such notices will be directed may be made from time to time by either party by notice to the other party given at least ten (10) days before such change of address is to become effective. Notices given by mail in accordance with this provision will be deemed to have been given three (3) days after the date of dispatch; notices given by any other means will be deemed to have been given when received.

13. **Severability and Counterparts.** In the event any one or more of the provisions contained in this Agreement is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision of this Agreement, but this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein. This Agreement will be signed in counterpart signature and notary pages all of which when taken together will constitute one Agreement.

IT IS RECOMMENDED THAT PRIOR TO THE EXECUTION OF THIS AGREEMENT, THE UNDERSIGNED CONSULT WITH ITS ATTORNEYS WITH RESPECT THERETO.

LESSEE:

Car Toys, Inc.

By: 

Title: 

SIGNATURES CONTINUE ON FOLLOWING PAGES.

NOTARY ACKNOWLEDGMENTS TO BE ATTACHED IN ACCORDANCE WITH STATE LAW.

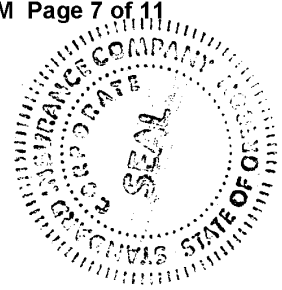
LESSOR:

KMG Realty, LLC, a Washington limited
liability company

By:  _____

SIGNATURES CONTINUE ON FOLLOWING PAGE.

NOTARY ACKNOWLEDGMENTS TO BE ATTACHED IN ACCORDANCE WITH STATE LAW.




LENDER:

Standard Insurance Company,
an Oregon corporation

By: 
 Assistant Vice President

ATTEST:

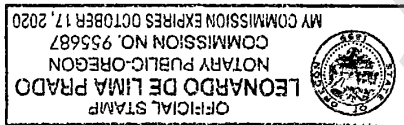
By: 
Caleb Coffman, Manager

NOTARY ACKNOWLEDGMENTS TO BE ATTACHED IN ACCORDANCE WITH STATE LAW.

STATE OF OREGON)
) ss:
COUNTY OF WASHINGTON)

On this 07th day of August, 2018, before me, Leonardo De Lima Prado, appeared AMY FRAZEY and CALEB COFFMAN, both to me personally known, who being duly sworn did say that she, the said AMY FRAZEY is the Assistant Vice President of STANDARD INSURANCE COMPANY, an Oregon corporation, the within named corporation, and that the seal affixed to said document is the corporate seal of said corporation, and that the said document was signed and sealed in behalf of said corporation by authority of its Board of Directors, and he, the said CALEB COFFMAN is the Director of Loan Operations of STANCORP MORTGAGE INVESTORS, LLC, an Oregon limited liability company, as Servicer of STANDARD INSURANCE COMPANY and AMY FRAZEY and CALEB COFFMAN acknowledged said document to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal the day and year last above written.

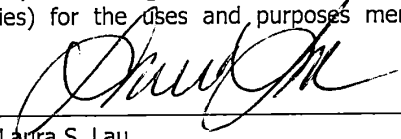


Leonardo L. Prado
Notary: Leonardo De Lima Prado
Notary Public for Oregon
My Commission Expires: October 17, 2020

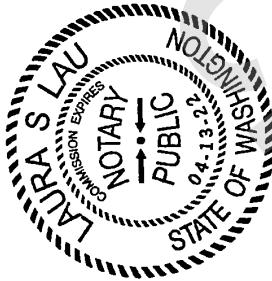
STATE OF Washington)
)-ss
COUNTY OF King)

I certify that I know or have satisfactory evidence that **Ezra Genauer**, is/are the person(s) who appeared before me, and said person(s) acknowledged that he/she/they signed this instrument, on oath stated that he/she/they is/are authorized to execute the instrument and acknowledged it as the **Managing Member** of **KMG Realty, LLC, a Washington limited liability company** to be the free and voluntary act of such party(ies) for the uses and purposes mentioned in this instrument.

Dated: 8/8/2018



Laura S. Lau
Notary Public in and for the State of Washington
Residing at: Mercer Island, WA
My appointment expires: 04/13/2022



Acknowledgment of Individual

STATE OF WASHINGTON

COUNTY OF King

On this day personally appeared before me

Dan Brettle, to me known to be the individual(s)
described in and who executed the within and foregoing instrument, and
acknowledged that he/she/they signed the same as his/her/their free and
voluntary act and deed, for the uses and purposes therein mentioned.Given under my hand and seal of office this 13th day of
August, 20 18.Michelle SimonNotary Public residing at Seattle, WAPrinted Name: Michelle Simon

My Commission Expires:

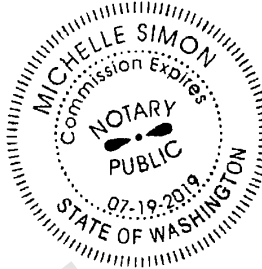
7/19/2019

EXHIBIT "A"
LEGAL DESCRIPTION
LOAN NO. **B8051802**
DATED: **July 16, 2018**

LOT 3, FRED MEYER RETAIL STORE BINDING SITE PLAN, APPROVED DECEMBER 29, 1993, AND RECORDED JANUARY 10, 1994, UNDER AUDITOR'S FILE NO. 9401100038, IN VOLUME 11 OF SHORT PLATS, PAGES 41 – 48, INCLUSIVE, AND AMENDED BY DOCUMENT RECORDED NOVEMBER 3, 1997 AS AUDITOR'S FILE NO. 9711030141 IN VOLUME 13 OF SHORT PLATS, PAGE 57; BEING A PORTION OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 5, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M.,

TOGETHER WITH NON-EXCLUSIVE EASEMENTS FOR INGRESS, EGRESS, UTILITIES AND PARKING AS SET FORTH IN THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENT RECORDED SEPTEMBER 10, 1993, UNDER AUDITOR'S FILE NO. 9309100062, RECORDS OF SKAGIT COUNTY, WASHINGTON.