

PREPARED BY: Carrie Fritz
AND AFTER RECORDING RETURN TO:
STANCORP MORTGAGE INVESTORS, LLC
ATTN: LOAN CLOSING, T3A
19225 NW TANASBOURNE DRIVE
HILLSBORO, OR 97124

SIC Loan No. B8020201

BY #6-078242

Parcel Identification Number 09-364-0004

**SUBORDINATION, NONDISTURBANCE, AND
ATTORNMEN T AGREEMENT**

**ALL REFERENCES TO LESSOR, LESSEE OR LEASE HEREIN SHALL BE
UNDERSTOOD TO MEAN GROUND LESSOR, GROUND LESSEE AND GROUND LEASE.**

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 April 30, 2018

Recitals

A. The undersigned Lessee, and Lessor are parties to a lease dated **May 10, 2004**, 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 April, 18, 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. **Condemnation.** Lender hereby covenants and agrees that any and all insurance proceeds payable under those policies of insurance maintained pursuant to the Lease and arising by reason of destruction or damage of the Premises, or any condemnation award acquired by Lender as a result of the condemnation of all or any part of the Premises, shall be used for restoration and repair to the extent required by the Lease, and shall otherwise be used and applied in accordance with and subject to the terms and conditions of the Lease.

8. **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, 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.

9. **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.

10. **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.

11. **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.

12. **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.

13. **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:

Wyndom Square, LLC

484 Hampton Court Lane
Fruit Heights, UT, 84037

If to Lessee:

Wendy's Old Fashioned Hamburgers of New York, LLC, Attention: Real Estate Department

4288 West Dublin-Granville Road P.O. Box 256
Dublin, Ohio 43017

With a copy to:

Wendy's Old Fashioned Hamburgers of New York, LLC, Attention: Legal Department-Real Estate

4288 West Dublin-Granville Road P.O. Box 256
Dublin, Ohio 43017

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.


14. **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:

Wendy's Old Fashioned Hamburgers of New
York, LLC, Attention: Real Estate
Department



By: 
Title: Kris A. Kaffenbarger
VP - System Optimization

SIGNATURES CONTINUE ON FOLLOWING PAGES.

NOTARY ACKNOWLEDGMENTS TO BE ATTACHED IN ACCORDANCE WITH STATE LAW.

STATE OF OHIO
COUNTY OF FRANKLIN

PERSONALLY APPEARED before me, the undersigned authority, a Notary Public in and for said County and State, Kris A. Kaffenbarger the VP - System Optimization with whom I am personally acquainted, or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged to be such officers, being authorized so to do, executed the foregoing instrument for the purposes therein contained as and for the company.

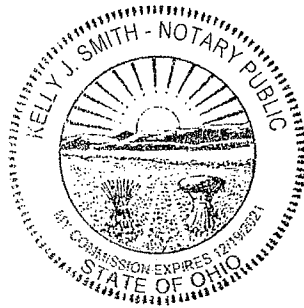
WITNESS my hand and official seal at office this 30th day of April, 2018.

Kelly J Smith
Notary Public

My Commission Expires:

12.29.21

(NOTARY SEAL)



LESSOR:

Wyndom Square, LLC, a Utah limited liability
company

By:  _____

SIGNATURES CONTINUE ON FOLLOWING PAGE.


NOTARY ACKNOWLEDGMENTS TO BE ATTACHED IN ACCORDANCE WITH STATE LAW.

STATE OF UTAH

COUNTY OF DAVIS

PERSONALLY APPEARED before me, the undersigned authority, a Notary Public in and for said County and State, Gary M. Wright, the Manager of Wyndom Square, LLC, with whom I am personally acquainted, or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledge to be such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained as and for the company.

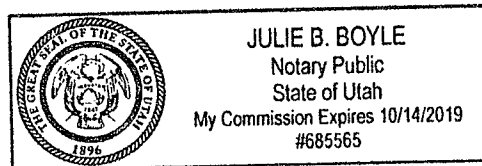
WITNESS my hand and official seal this 1 day of May, 2018.


Notary Public

My Commission Expires:

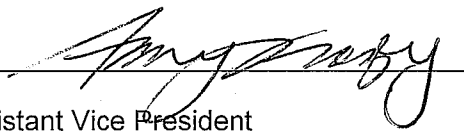
10-14-2019

(NOTARY SEAL)



LENDER:

Standard Insurance Company,
an Oregon corporation

By: 
Assistant Vice President

AM

ATTEST:

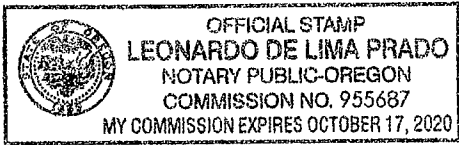
By: 

NOTARY ACKNOWLEDGMENTS TO BE ATTACHED IN ACCORDANCE WITH STATE LAW.

STATE OF OREGON)
) ss:
COUNTY OF WASHINGTON)

On this 20th day of April, 2018, before me, Leonardo De Lima Prado, appeared AMY FRAZEY and JASON F. WELLS, 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 JASON F. WELLS is the Manager of STANCORP MORTGAGE INVESTORS, LLC, an Oregon limited liability company, as Servicer of STANDARD INSURANCE COMPANY and AMY FRAZEY and JASON F. WELLS 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

EXHIBIT "A"
LOAN NO. B8020201
DATED: April 18, 2018

Parcel 1:

Lots 2, 3 and 4, Wyndom Square Commercial Subdivision, Phase 2, according to the Official Plat thereof as recorded February 4, 2008 in the Office of the Davis County Recorder, State of Utah.

Less and excepting from said Lot 3:

Beginning at a point which is South 20°22'38" East 110.65 feet from the Northeast corner of Lot 2, Wyndom Square Commercial Subdivision Phase 2 as recorded in the Davis County Recorder's office as Entry No. 2338844, February 4, 2008 and running thence South 89°35'46" East 64.29 feet; thence South 0°24'14" West 81.58 feet; thence North 89°35'46" West 64.29 feet; thence North 0°24'14" East 81.58 feet to the point of beginning.

Parcel 1A:

Benefits if any, accruing to Parcel 1, contained in easements with covenants and restrictions affecting land dated June 24, 2003, between Wal-Mart Stores, Inc., a Delaware Corporation, Manor House Real Estate, LLC, a Utah limited liability company, Teton Investment Holdings, L.P., a Utah limited partnership and Landstar Development, LLC, a Utah limited liability company, recorded June 24, 2003, as Entry No. 1881919, in Book 3318, at Page 1906, of official records.

Parcel 2:

Ingress and egress easement recorded February 5, 2008, as Entry No. 2339327, in Book 4463, at Page 1400, more fully described as follows: 25-foot easement for ingress and egress across Lot 1, Wyndom Square Commercial Subdivision, Phase 2.

Parcel No.: 09-364-0002, 09-364-0003, 09-364-0004