

**M05-65452**

Klamath County, Oregon

09/30/2005 12:03:36 PM

Pages 8 Fee: \$56.00

WHEN RECORDED RETURN TO:

**STANCORP MORTGAGE INVESTORS, LLC**

19225 NW TANASBOURNE DRIVE

HILLSBORO, OR 97124

ATTN: COMPLIANCE, T3A

SIC Loan No. **A5062904**

*1st 623611*

*1980137ml*

*TRUST DEED*

**SUBORDINATION AND ATTORNMENT AGREEMENT**

NOTICE: THIS SUBORDINATION AND ATTORNMENT 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 AND ATTORNMENT AGREEMENT is dated as of **September 19, 2005**.

#### **Recitals**

A. Lessor, **Steiner Klamath Investors, Inc., a Nevada corporation** and the undersigned Lessee are parties to a lease dated **October 1, 2004** ("the Lease"), which lease covers part or all of the real property (the "Property") described as follows:

**See Exhibit "A" attached hereto and by this reference made a part hereof for legal description.**

B. **Standard Insurance Company, an Oregon corporation** ("Lender") has agreed to make or purchase a loan to Lessor in the original principal sum of **\$2,300,000.00**, evidenced by a promissory note, dated **September 19, 2005** (the "Note"), and secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing of even date (the "Deed of Trust") on the Property and by such other security instruments as Lender may require (the "Security Instruments").

C. As a condition precedent to Lender's disbursement of loan proceeds, Lender has required that Lessee subordinate the Lease and Lessee's interest in the Property in all respects to the lien of the Deed of Trust, which will be recorded in the county in which the Property is located, and to the lien of the Security Instruments, if any, securing Lender's other interests in the Property.

D. It will be of substantial benefit to the Lessee for Lender to disburse the loan proceeds.

*56F*

E. Lender is disbursing the loan proceeds in reliance upon the agreements contained in this instrument.

### **Agreement**

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

1. **Subordination.** The Lease and Lessee's leasehold estate created thereby and any renewals, extensions, amendments or modifications thereof, shall be and are completely and unconditionally subject and subordinate to the lien of the Deed of Trust and to the liens of the Security Instruments, if any, and to all the terms, conditions and provisions thereof, to all advances made or to be made thereunder, and to any renewals, extensions, modifications or replacements thereof.

2. **Reliance By Lender.** The undersigned is executing this instrument in order to induce Lender to disburse the loan proceeds secured by the Deed of Trust, and the undersigned agrees that the disbursement by Lender of all or any part of the loan proceeds shall constitute conclusive reliance by Lender upon this instrument and the provisions hereof and the subordination affected hereby.

3. **Foreclosure.** In the event action is taken to foreclose the lien of the Deed of Trust, either pursuant to a power of sale or by judicial proceedings, or, in the event Lender acquires possession of the Property by deed in lieu of foreclosure, Quitclaim Deed or like action, Lender, or any purchaser of the Property at foreclosure sale, shall not be required to recognize the Lease, or the rights of the Lessee under the Lease, and the rights of the Lessee thereunder, including any option thereunder, shall, at the sole election of Lender or such other purchaser at foreclosure sale, cease and terminate upon acquisition of title to or upon possession of the Property by Lender or any purchaser at foreclosure sale.

4. **Purchase Options.** Any options or rights contained in the Lease allowing Lessee to acquire title to the Property are hereby made subject and subordinate to the rights of Lender under the Deed of Trust, any acquisition of title to the Property made by Lessee during the term of the Deed of Trust shall be made subordinate and subject to the Deed of Trust.

5. **Condemnation.** Without limiting the generality of the foregoing, Lessee subordinates its right, title and interest under the Lease to the interest of Lender in any award of condemnation or eminent domain, and Lessee does assign and transfer to Lender the right and privilege to receive any interest of Lessee in and to the full extent of such award of condemnation or eminent domain, or, if the Deed of Trust is not yet fully satisfied, to the extent necessary to pay in full

any and all sums secured by the Deed of Trust (Lessee authorizing Lender to apply any funds so received in satisfaction of any sums secured by the Deed of Trust).

6. **Attornment.** The undersigned represents to Lender that the exercise by Lender of its rights and remedies under the Deed of Trust, under the Security Instruments or under the Note, including without limitation its rights of foreclosure, shall not constitute an event of default under the Lease. If the interests of Lessor shall be transferred to and owned by Lender by reason of foreclosure or other proceedings brought by Lender in lieu of or pursuant to a foreclosure, or by any other manner, and Lender succeeds to the interests of the Lessor under the Lease, and if Lessor shall have elected not to terminate the interests of Lessee, Lessee shall be bound to Lender under all of the terms, covenants and conditions of the Lease for the balance of the term remaining, and any extensions or renewals thereof which may be effected in accordance with any option therefor in the Lease, with the same force and effect as if Lender were the lessor under the Lease, and Lessee does hereby attorn to Lender as its landlord, said attornment to be effective and self-operative immediately upon Lender succeeding to the interests of the Lessor under the Lease without the execution of any further instruments on the part of any of the parties hereto, **provided** that Lessee shall be under no obligation to pay rent to Lender until Lessee receives written notice from Lender that it has succeeded to the interests 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, shall be and are the same as now set forth therein.

7. **Lender Not Bound By Certain Acts of Lessor.** If Lender shall succeed to the interests of Lessor under the Lease, Lender shall not be (a) liable for any act or omission of any prior lessor (including Lessor), (b) subject to any offsets or defenses which Lessee might have against any prior lessor (including Lessor), (c) bound by any rent or additional rent which Lessee might have paid for more than the then current installment, (d) bound by any amendment or modification of the Lease made without its consent, or (e) liable for any security or other deposits which were paid by Lessee, or any predecessor in interest to Lessee, to any Lessor, and which were not received by Lender.

8. **Waiver.** Without limiting the generality of the foregoing, Lessee waives presentment, demand, protest, and notice and agrees that Lender, without notice to or consent of Lessee, upon such terms as Lender may deem advisable, without releasing or discharging Lessee from this Subordination Agreement or affecting the lien or priority of the Deed of Trust, may:

- (a) extend, in whole or in part, by renewal or otherwise, the time of payment or performance of any obligation secured by the Deed of Trust;
- (b) release, surrender, exchange, or modify any obligation secured by the Deed of Trust, or any security for such obligation; and/or
- (c) settle or compromise any claim with respect to any obligation secured by the Deed of Trust or any claim against any person who has given security for any such obligation.

The undersigned ratifies any such extension, renewal, release, surrender, exchange, modification, settlement, or compromise and waives all defenses, counterclaims, or offsets which it might have by reason thereof.

9. **Successors and Assigns.** This Subordination Agreement and each and every covenant, agreement and other provision hereof shall be binding upon the parties hereto and their heirs, devisees, executors, administrators, representatives, successors and assigns, including without limitation each and every lessee and lessor under the Lease or any other person having an interest therein and shall inure to the benefit of Lender and its successors and assigns.

10. **Choice of Law.** The law of the State of Oregon shall govern the validity, interpretation, construction, and performance of this Subordination Agreement.

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

12. **Notices.** All notices required or permitted under this Subordination Agreement shall be in writing and may be telecopied, cabled, delivered by hand, or mailed by first class registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

**If to Lender:**

**Standard Insurance Company  
Attn: Mortgage Loan Servicing T3A  
19225 NW Tanasbourne Drive  
Hillsboro, OR 97124**

**If to Lessee:**

**Diamond Home Hardware & Garden, LLC  
2380 South Sixth Street  
Klamath Falls, OR**

Changes in the respective addresses to which such notices shall 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 shall be deemed to have been given three (3) days after the date of dispatch; notices given by any other means shall be deemed to have been given when received.

13. **Severability.** In the event any one or more of the provisions contained in this Subordination Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Subordination Agreement, but this Subordination Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.



STATE OF CALIFORNIA  
COUNTY OF \_\_\_\_\_

Siskiyou

} ss.

On 9.27.05, before me, Mary Lorenzini,  
personally appeared Timothy A. Steiner

\_\_\_\_\_, personally known to me  
(or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

M. Lorenzini



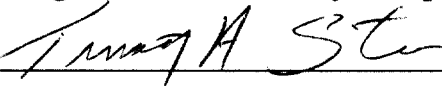
(This area for official notarial seal)

Title of Document Subordination  
Date of Document 9-19-05 No. of Pages 5  
Other signatures not acknowledged AT

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

LESSEE

**Diamond Home Hardware & Garden, LLC,  
an Oregon Limited Liability Company**

By: 

Its: managing member

**ACKNOWLEDGMENTS MUST BE ATTACHED IN SIZE AND FORM  
AS REQUIRED BY LAW.**

**Exhibit "A"**

Real property in the County of Klamath, State of Oregon, described as follows:

Parcel 1:

All that portion of Lot 70 of Enterprise Tracts described as follows:

Beginning at a point in the Southerly line of South Sixth Street as the same is presently located and constructed, at its intersection with a North-South line parallel with and 390 feet West of the East line of said Lot 70; thence South along said line a distance of 694.42 feet, more or less, to a point 17.5 feet East of the Southeast corner of tract of land conveyed by Marshall E. Cornett et ux, to Signal Oil Company by Deed recorded August 28, 1946 in Volume 194 page 435, Deed records of Klamath County, Oregon, said point being the true point of beginning of this description; thence continuing South on said North-South line a distance of 280.7 feet, more or less, to the Northerly right of way line of the O. C. & E. Railroad; thence North  $66^{\circ}51'15''$  West along said right of way line a distance of 156.65 feet to the Southwest corner of tract conveyed by Klamath Pine Lumber Co. to Marshall E. Cornett et ux by Deed recorded August 24, 1937, in Volume 111 page 399, Deed records of Klamath County, Oregon; thence North along the West line of last described tract, a distance of 275 feet, more or less, to a point of intersection with the Westerly right of way line of Spur Track described as Parcel 2 in Deed to Richfield Oil Corporation, recorded June 24, 1941 in Volume 139 page 63, Deed records of Klamath County, Oregon; thence Southeasterly along a  $11^{\circ}30'$  curve to the left a distance of 52.5 feet, more or less, to its intersection with the South line, extended Westerly, of aforementioned track conveyed to Signal Oil Company by Deed recorded in Volume 194 page 435; thence East along the South line and South line extended of last mentioned Parcel a distance of 139.6 feet, more or less, to the point of beginning. LESS AND EXCEPTING a 17 foot strip deeded to Richfield Oil Company for a spur track by Deed recorded in Volume 139 page 63, Deed records of Klamath County, Oregon.

ALSO, all that portion of Lot 70 of Enterprise Tracts described as follows: Beginning at a point in the South line of Sixth Street at its intersection with a North and South line 390.0 feet West of the East line of Lot 70; thence South 706.5 feet; thence West 17.5 feet; thence North along a North and South line 407.5 feet West of the East line of Lot 70 a distance of 718.43 feet to the intersection of said line with the South line of Sixth Street; thence Southeast along said street line 21.2 feet to the point of beginning.

Parcel 2:

All that portion of Tracts 69 and 70 of Enterprise Tracts described as follows:

A strip of land 390 feet wide, East and West, bounded on the North by the Dalles-California Highway, on the South by the Northerly line of Oregon, California and Eastern Railway on the East by the East line of Tracts 69 and 70 of Enterprise Tracts, and on the West by a line drawn parallel to and distant 390 feet West from the East boundary above described.

Parcel 3:

A strip of land across Lot 70, Enterprise Tracts, in Section 4, T. 39 S., R. 9 E. W. M., in the County of Klamath, State of Oregon, 17 feet wide, being a portion of Parcel 2, described in Deed Volume M87 page 17793 Official records of said County, and being 8.5 feet on each side of the center line of a spur track, now discontinued, said center line being described as follows:

Preliminary Report

Beginning at a point in the Southerly line of Parcel 1, described in Deed Volume M94 page 36722, official records, 417.5 feet West of the East line of said Lot 70; thence Northwesterly on an  $11^{\circ}30'$  curve to the right, a distance of 291.05 feet, more or less, to an intersection with the North line of said Parcel 1. The side lines of said strip to be extended or shortened to intersect the Southerly line and the Northerly line and its Westerly extension thereof of said Parcel 1.

-----Tax-Parcel-Number: 531035 and 879793 and 531044-----