

# UNOFFICIAL COPY

Doc# 1621755080 Fee: \$64.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 08/04/2016 09:46 AM Pg: 1 of 9

40025457(3/3)  
GIT

PREPARED BY Kyle Smith  
WHEN RECORDED MAIL TO:

STANCORP MORTGAGE INVESTORS, LLC  
19225 NW TANASBOURNE DRIVE  
HILLSBORO, OR 97124

ATTN: COMPLIANCE, T3A

SIC Loan No. B6042703

GIT

## SUBORDINATION, NONDISTURBANCE AND ATTORNIEMENT 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~~ THE MORTGAGE DESCRIBED HEREIN.

THIS SUBORDINATION AGREEMENT by and between Standard Insurance Company and CarMax Auto Superstores, Inc. is dated as of June 20, 2016.

### Recitals

A. The Lessor, 2000 Frontage Road LLC, a Delaware limited liability company, and the undersigned Lessee are parties to a Lease Agreement dated June 29, 2004, as amended June 24, 2009, collectively (the "Lease"), which lease covers part or all of the real property (the "Property") described as follows:

### TO FOLLOW.

PROPERTY TAX ID NO: 04-13-112-044-0000  
STREET ADDRESS: 2000 Frontage Road  
Glencoe, Illinois 60022

B. Standard Insurance Company, an Oregon corporation ("Lender") has agreed to make or purchase a loan to Lessor, evidenced by a promissory note, dated June 20, 2016, and secured by a Mortgage of even date (the "Mortgage") on the Property and by such other security instruments as Lender may require (the "Security Instruments").

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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 Mortgage, which will be recorded in the county in which the Property is located, and to the lien and security title of the Security Instruments, if any, securing Lender's other interests in the Property.

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

E. In return for the subordination, Lender is agreeable to not disturbing Lessee's possession of the Property under the Lease.

## 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, 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 thereof, shall be and are completely and unconditionally subject and subordinate to the lien of the Mortgage 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 are executing this instrument in order to induce Lender to disburse the loan proceeds secured by the Mortgage, and the undersigned agree 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. **Tenant Not To Be Disturbed.** So long as Lessee is not in default (beyond any period given Lessee to cure such default) in the payment of rent or additional rent or in the performance of any of the other terms, covenants or conditions of the Lease on Lessee's part to be performed, Lessee's possession of the Property under the Lease and Lessee's rights and privileges under the Lease, including but not limited to any rights of first refusal and/or purchase options contained therein, or any extensions or renewals thereof which may be affected in accordance with any renewal rights therefor in the Lease, shall not be diminished or interfered with by Lender, and Lessee's occupancy of the Property shall not be disturbed by Lender for any reason whatsoever during the term of the Lease or any such extensions or renewals thereof.

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4. **Lessee Not To Be Joined In Foreclosure.** So long as Lessee is not in default (beyond any period given Lessee to cure such default) in the payment of rent or additional rent or in the performance of any of the terms, covenants or conditions of the Lease on Lessee's part to be performed, Lender will not join Lessee as a defendant in any action or proceeding foreclosing the Mortgage unless such joinder is necessary to foreclose the Mortgage and then only for such purpose and not for the purpose of terminating the Lease.

5. **Lessee To Attorn To Lender.** 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 interest of the Lessor under the Lease, Lessee shall be bound to Lender under all of the terms, covenants and conditions of the Lease for the balance of the term thereof 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 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 Lessee shall be under no obligation to pay rent to Lender 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, shall 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 with the same force and effect as if set forth herein. If Lender shall succeed to the interests of Lessor under the Lease, Lender shall be bound to Lessee under all the terms, covenants and conditions of the Lease, and Lessee shall, from and after Lender's succession to the interests of Lessor under the Lease, have the same remedies against Lender for any breach or default by Lender of any agreement contained in the Lease that Lessee may have had under the Lease against Lessor for Lessor's breach, or default, subject to the provisions of Paragraph 7 below.

~~6. **Exercise of Rights Under Loan Documents Not Lender Default.** The undersigned represents to Lender that the exercise by Lender of its rights and remedies under the Mortgage, under the Security Instruments or under the note secured thereby, including without limitation its rights of foreclosure, shall not constitute an event of default under the Lease.~~

7. **Lender Not Bound By Certain Acts of Lessor.** 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), (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 Lease termination or cancellation or any material 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. For purposes of this paragraph, the term "material" refers to changes that would increase Lessor's obligations under the Lease or decrease Lessee's obligations under the Lease, whether financial or otherwise.

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~~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 Agreement or affecting the lien or priority of the Mortgage, may:~~

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

9. **Successors and Assigns.** This Agreement and each and every covenant, agreement and other provision hereof shall be binding upon the parties hereto and their heirs, 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 in which the Property is located shall govern the validity, interpretation, construction, and performance of this Agreement. The parties hereto 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 of the various sections of this 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 Agreement shall be in writing and shall be delivered by hand, or mailed by first class registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

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If to Lender:

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

If to Lessee:

**CarMax Auto Superstores, Inc.**  
Attn: VP of Real Estate  
12800 Tuckahoe Creek Parkway  
Richmond, VA 23238

with a copy to:

**CarMax Auto Superstores, Inc.**  
Attn: Legal Department  
12800 Tuckahoe Creek Parkway  
Richmond, VA 23238

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 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 Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

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

LESSEE:

CARMAX AUTO SUPERSTORES, INC.,  
a Virginia corporation

By: *KDM*  
K. Douglass Moyers  
Vice President, Real Estate

*PC*

COMMONWEALTH OF VIRGINIA

COUNTY OF GOOCHLAND, to-wit:

The foregoing instrument was acknowledged before me, the undersigned Notary Public, in the County and State aforesaid, this 19 day of July, 2016, by K. Douglass Moyers, Vice President, Real Estate of CarMax Auto Superstores, Inc., a Virginia corporation, for and on behalf of the corporation.

*Rachel Curling*  
Notary Public

My commission expires: 8/31/2016  
Registration Number: 7513647



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

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LENDER

Standard Insurance Company,  
an Oregon corporation

By: *Amy Frazier*  
SR Amy Frazier  
Its: Assistant Vice President

TF  
KBS

Attest By: *Jason F Wells*  
Jason F Wells  
Its: Manager

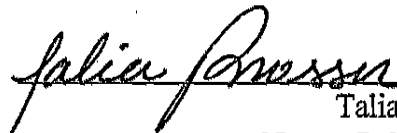
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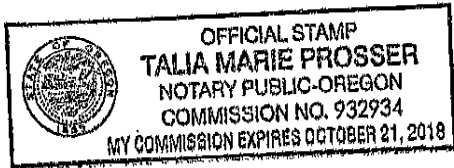
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STATE OF OREGON                    )  
  ) ss:  
COUNTY OF WASHINGTON        )

On this 19<sup>th</sup> day of July, 2016, before me, Talia Marie Prosser, 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.

  
\_\_\_\_\_  
Talia Marie Prosser  
Notary Public for Oregon  
My Commission Expires: October 21, 2018



Notary of Cook County Clerk's Office



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EXHIBIT "A"  
LOAN NO. B6042703  
DATED: June 20, 2016

LOT 1 AS SHOWN ON THAT CERTAIN PLAT ENTITLED "RESUBDIVISION OF LOT 2 OF VILLAGE FRONTAGE SUBDIVISION", A RESUBDIVISION IN THE SOUTH HALF OF THE NORTH HALF OF SECTION, 13, TOWNSHIP 42 NORTH RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS RECORDED AS DOCUMENT NUMBER 0011209603.

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