

WHEN RECORDED PLEASE MAIL TO:

Tesoro Wasatch, L.L.C.  
300 Concord Plaza Drive  
San Antonio, Texas 78211

8685311  
06/11/2003 02:30 PM 37.00  
Book - 8815 Pg - 7173-7186  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
FIRST AMERICAN TITLE  
BY: SMR, DEPUTY - WI 14 P.

15258

**SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT**

8685311

**SUBORDINATION AGREEMENT; ACKNOWLEDGMENT OF LEASE ASSIGNMENT,  
ATTORNMENT AND NON-DISTURBANCE AGREEMENT  
(Lease To Deeds of Trust)**

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

THIS SUBORDINATION AGREEMENT; ACKNOWLEDGMENT OF LEASE ASSIGNMENT, ATTORNMENT AND NON-DISTURBANCE AGREEMENT ("Agreement") is made May 1, 2003, by and between JTS Station I, LLC ("Owner"), TESORO WASATCH, LLC, a Delaware limited liability company ("Lessee"), and Stancorp Mortgage Investors, LLC ("Lender").

**RECITALS**

- A. Pursuant to the terms and provisions of a Land and Building Lease dated as of May 1, 2003 (the "Lease"), Owner, as "Lessor", granted to Lessee a leasehold estate in and to that property described on Exhibit A attached to the Lease and incorporated herein by this reference (together with all improvements now or hereafter located thereon, a "Property"). This Agreement is being recorded in the county or district where the Property is located.
- B. Said Lease contains provisions and terms granting Lessee an option to substitute a new property for the Property covered by the Lease (the "Option to Substitute").
- C. Owner has executed, or proposes to execute, a deeds of trust or mortgage (a "Deed of Trust") securing, among other things, a promissory note ("Note") in favor of Lender, which Note is payable with interest and upon the terms and conditions described in the "Loan Documents" referred to therein ("Loan"). The Deed of Trust is to be recorded concurrently herewith.
- D. As a condition to making the Loan secured by the Deeds of Trust, Lender requires that the Deed of Trust be unconditionally and at all times remain a lien on the Property, prior and superior to all the rights of Lessee under the Lease and the Option to Substitute and that the Lessee specifically and unconditionally subordinate the Lease and the Option to Substitute to the lien of the Deed of Trust.
- E. Owner and Lessee have agreed to the subordination, attornment and other agreements herein in favor of Lender.

NOW THEREFORE, for valuable consideration and to induce Lender to make the Loan, Owner and Lessee hereby agree for the benefit of Lender as follows:

LAND AND BUILDING LEASE — PAGE 54

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62096

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1. **SUBORDINATION.** Owner and Lessee hereby agree that:

1.1. **Prior Lien.** The Deed of Trust securing the Note (and certain other Loan Documents) in favor of Lender, and any modifications, renewals or extensions thereof, shall unconditionally be and at all times remain a lien on the Property prior and superior to the Lease and the Option to Substitute;

1.2. **Subordination.** Lender would not make the Loan without this agreement to subordinate; and

1.3. **Whole Agreement.** This Agreement shall be the whole agreement and only agreement with regard to the subordination of the Lease and the Option to Substitute to the lien of the Deed of Trust and shall supersede and cancel, but only insofar as would affect the priority between any Deed of Trust and the Lease and the Option to Substitute, any prior agreements as to such subordination, including, without limitation, those provisions, if any, contained in the Lease and the Option to Substitute which provide for the subordination of the Lease and the Option to Substitute to a deed or deeds of trust or to a mortgage or mortgages.

AND FURTHER, Lessee individually declares, agrees and acknowledges for the benefit of Lender, that:

1.4. **Use of Proceeds.** Lender, in making disbursements pursuant to the Note, the Deed of Trust or any Loan Documents with respect to the Property, is under no obligation or duty to, nor has Lender represented that it will, see to the application of such proceeds by the person or persons to whom Lender disburses such proceeds, and any application or use of such proceeds for purposes other than those provided for in such agreement or agreements shall not defeat this agreement to subordinate in whole or in part; and

1.5. **Waiver, Relinquishment and Subordination.** Lessee intentionally and unconditionally waives, relinquishes and subordinates all of Lessee's right, title and interest in and to the Property to the lien of the Deed of Trust and understands that in reliance upon, and in consideration of, this waiver, relinquishment and subordination, specific loans and advances are being and will be made by Lender and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination.

2. **ASSIGNMENT.** Lessee acknowledges and consents to the assignment of the Lease by Lessor in favor of Lender.

2.1. **ADDITIONAL AGREEMENTS.** Lessee covenants and agrees that, during all such times as Lender is the beneficiary or mortgagee under any Deed of Trust:

2.2. **Modification, Termination and Cancellation.** Lessee will not consent to any modification, amendment, termination or cancellation of the Lease (in whole or in part) without

Lender's prior written consent and will not make any payment to Lessor in consideration of any modification, termination or cancellation of the Lease (in whole or in part) without Lender's prior written consent.

2.3. **Notice of Default.** Lessee will notify Lender in writing concurrently with any notice given to Lessor of any default by Lessor under the Lease, and Lessee agrees that Lender has the right (but not the obligation) to cure any breach or default specified in such notice within the time periods set forth below and Lessee will not declare a default of the Lease, as to Lender, if Lender cures such default within thirty (30) days from and after the expiration of the time period provided in the Lease for the cure thereof by Lessor; provided, however, that if such default cannot with diligence be cured by Lender within such thirty (30) day period, the commencement of action by Lender within such thirty (30) day period to remedy the same shall be deemed sufficient so long as Lender pursues such cure with diligence. Notwithstanding the foregoing, Lender shall have no obligation to cure defaults incurable by Lender or (e.g. defaults unique to the status of Owner) provided that Lender is diligently pursuing a foreclosure or deed in lieu of foreclosure and is otherwise curing all curable defaults in accordance with the provisions of this Section.

2.4. **No Advance Rents.** Lessee will make no payments or prepayments of rent more than one (1) month in advance of the time when the same become due under the Lease.

2.5. **Assignment of Rents; Direct Payment to Lender.** Owner has assigned its rights to receive rent and payments under the Lease to Lender, subject to the terms of the Loan Documents governing the Loan, and Owner hereby directs Lessee, at all times and until such time as Lessee receives written notice from Lender to the contrary, to make all rent and other payments due from time to time under the Lease directly to Lender, by wire transfer or other means approved by Lender, to the account referenced on Exhibit B hereto.

2.6. **Substitution Provisions and Release of Lien.** Without modifying the provisions of Section 36.04 of the Lease in any manner, Lessee specifically acknowledges and agrees that, in the event Lender disapproves a substitution of collateral under the Loan but Owner and Lessee still determine to consummate a substitution under the Lease of a new property for the Property then covered by the Lease, Lender shall have no obligation to release the lien of a Deed of Trust with respect to the to-be released Property unless and until Owner has satisfied all preconditions to such release of lien set forth in the Loan Documents.

3. **ATTORNMENT.** Lessee agrees for the benefit of Lender (including for this purpose any transferee of Lender or any transferee of Lessor's title in and to any Property by Lender's exercise of the remedy of foreclosure under any Deed of Trust, or deed in lieu thereof) that, except as otherwise required under this Agreement, following a foreclosure under any Deed of Trust, or deed in lieu thereof:

3.1. **Payment of Rent.** Lessee shall continue to pay to Lender all rental payments required to be made by Lessee pursuant to the terms of the Lease for the duration of the term of the Lease;

3.2. **Continuation of Performance.** Lessee shall be bound to Lender in accordance with all

of the provisions of the Lease for the balance of the term thereof, and Lessee hereby attorns to Lender as its landlord, such attornment to be effective and self-operative without the execution of any further instrument immediately upon Lender succeeding to Lessor's interest in the Lease and giving written notice thereof to Lessee;

3.3. **No Offset.** Lender shall not be liable for, nor subject to, any offsets or defenses which Lessee may have by reason of any act or omission of Lessor under the Lease, nor for the return of any sums which Lessee may have paid to Lessor under the Lease as and for security deposits, advance rentals or otherwise, except to the extent that such sums are actually delivered by Lessor to Lender; and

3.4. **Subsequent Transfer.** If Lender, by succeeding to the interest of Lessor under the Lease, should become obligated to perform the covenants of Lessor thereunder, then, upon any further transfer of Lessor's interest by Lender, all of such obligations shall terminate as to Lender.

4. **NON-DISTURBANCE.** In the event of a foreclosure under any Deed of Trust, so long as there shall then exist no breach, default, or event of default on the part of Lessee under the Lease, Lender agrees for itself and its successors and assigns that the leasehold interest of Lessee under the Lease shall not be extinguished or terminated by reason of such foreclosure, but rather the Lease shall continue in full force and effect and Lender shall recognize and accept Lessee as tenant under the Lease subject to the terms and provisions of the Lease except as modified by this Agreement; provided, however, that Lessee and Lender agree as follows (and for purposes of the following subsections (a) through (c), "Lender" shall be deemed to include any affiliate of Lender who purchases the Property at a foreclosure or deed-in-lieu thereof, provided such affiliate does not acquire title to the Property for real estate investment purposes, but rather to facilitate and accommodate Lender's internal and/or regulatory policies and practices regarding real property foreclosure):

- (a) Any right of first refusal or right of first offer with respect to any Property (including, without limitation, as set forth in Section 36.02 of the Lease) shall not be binding on Lender (but shall be binding on any third-party who purchases the Property either from Lender or at a foreclosure sale); and
- (b) the provisions of Section 13.02 of the Lease shall be modified as follows (solely for the period of time, if any, while Lender or its affiliate is the successor owner of the Property): Notwithstanding the provisions set forth in Section 13.02 of the Lease, in the event that circumstances occur which would otherwise give Lessee a right under Section 13.02 to terminate the Lease with respect to a particular Property (as the result of condemnation), instead of a right to terminate the Lease with respect to such Property Lessee instead shall be entitled to purchase, on an "as is" basis, with no representations or warranties from Lender, such Property from Lender for a purchase price equal to 120% of Lender's allocated loan amount with respect to such Property (as of the date of foreclosure or deed-in-lieu) plus such Property's proportionate share of any unpaid interest, costs and expenses due and owing under the Loan Documents (such amount, the "Release Price"), provided Lessee pays all closing

costs associated with such purchase and closes such purchase within fifteen (15) days after providing Lender with notice of Lessee's intent to purchase); and

- (c) The provisions of Section 36.04 of the Lease shall be modified as follows (solely for the period of time, if any, while Lender or its affiliate is the successor owner of the Property): Notwithstanding the provisions set forth in Section 36.04 of the Lease, in the event that Lessee desires to substitute a new property in place of a Property then encumbered by the Lease (in accordance with the provisions of such Section 36.04), Lender (as successor Landlord) shall be entitled, in its sole and absolute discretion, to either (i) approve such requested substitution or (ii) to offer to sell such affected Property to Lessee for the Release Price (calculated in accordance with subsection (b) above). In the event that Lender offers to sell the affected Property to Lessee for the Release Price, Lessee may then either consummate a purchase (on the same terms and time requirements as set forth in subsection (b) above) of the affected Property for the Release Price (and thereby terminate the Lease with respect to such Property) or withdraw the request for a substitution.

## 5. MISCELLANEOUS.

5.1. **Heirs, Successors, Assigns and Transferees.** Except as expressly limited in Section 5 above, the covenants herein shall be binding upon, and inure to the benefit of, the heirs, successors and assigns of the parties hereto; and

5.2. **Notices.** All notices or other communications required or permitted to be given pursuant to the provisions hereof shall be deemed served upon delivery or, if mailed, upon the first to occur of receipt or the expiration of three (3) days after deposit in United States Postal Service, certified mail, postage prepaid and addressed to the address of Lessee or Lender appearing below:

<b>"OWNER"</b>	JTS Station I, LLC 4393 S. Riverboat Road, Suite 330 Murray, Utah 84123
<b>"LENDER"</b>	Stancorp Mortgage Investors, LLC Attn: Holly Raymond 920 SW Sixth Avenue Portland, Oregon 97204
<b>"LESSEE"</b>	TESORO WASATCH, LLC 300 Concord Plaza Drive San Antonio, Texas 78211

provided, however, any party shall have the right to change its address for notice hereunder by the giving of written notice thereof to the other party in the manner set forth in this Agreement; and

5.3 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute and be construed as one and the same instrument; and

5.4 **Remedies Cumulative.** All rights of Lender herein to collect rents on behalf of Lessor under the Lease are cumulative and shall be in addition to any and all other rights and remedies provided by law and by other agreements between Lender and Lessor or others; and

5.5 **Paragraph Headings.** Paragraph headings in this Agreement are for convenience only and are not to be construed as part of this Agreement or in any way limiting or applying the provisions hereof.

5.6 **Memorandum.** Concurrently with the execution of this Agreement, the parties shall execute multiple Memorandums of Subordination Agreement; Acknowledgment of Lease Assignment, Attornment and Non-Disturbance Agreement, in substantially the form attached as Exhibit C hereto, one for recordation in each county where a Property is located (with appropriate legal descriptions for the Properties appended), and Owner and Lessee hereby authorize Lender to arrange for recordation of same at Owner's expense.

5.7 **INCORPORATION.** Exhibits A, B, C and Lease Guarantor's Consent are attached hereto and incorporated herein by this reference.

*(SIGNATURES ON NEXT PAGE)*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.

IT IS RECOMMENDED THAT, PRIOR TO THE EXECUTION OF THIS AGREEMENT, THE PARTIES CONSULT WITH THEIR ATTORNEYS WITH RESPECT HERETO.

"OWNER" JTS STATION I, LLC

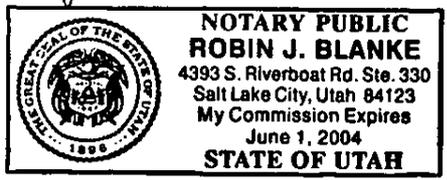
By: Joseph T. Sorenson, MANAGER

*[Handwritten signature of Joseph T. Sorenson]*

STATE OF Utah §

COUNTY OF Salt Lake §

This instrument was acknowledged before me on May 29th, 2003, by Joseph T. Sorenson, Manager of JTS Station I, LLC



Robin J. Blanke  
NOTARY PUBLIC IN AND FOR THE STATE OF Utah  
MY COMMISSION EXPIRES: June 1, 2004

"LENDER" STANCORP MORTGAGE INVESTORS, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_, 2003, by \_\_\_\_\_

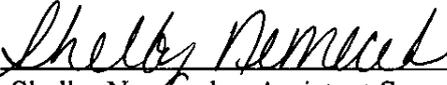
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Dated: **June 3, 2003.**

LENDER:

**STANCORP MORTGAGE INVESTORS, LLC,**  
an Oregon limited liability company

By:   
Mark Temme – Assistant Vice President

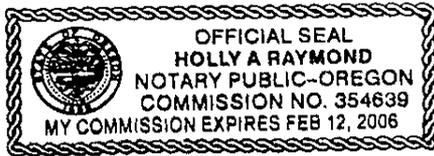
Attest:   
Shelby Nemcek – Assistant Secretary

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STATE OF OREGON                    )  
  ) ss:  
COUNTY OF MULTNOMAH        )

On this 3rd day of June, 2003, before me appeared MARK TEMME and SHELBY NEMECEK, both to me personally known, who being duly sworn did say that he, the said MARK TEMME is the Assistant Vice President, and she, the said SHELBY NEMECEK is the Assistant Secretary of STANCORP MORTGAGE INVESTORS, LLC, an Oregon limited liability company, the within named limited liability company, and that the said document was signed in behalf of said limited liability company, and MARK TEMME and SHELBY NEMECEK acknowledge said document to be the free act and deed of said limited liability company.

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



*Holly A. Raymond*  
\_\_\_\_\_  
Holly A. Raymond  
Notary Public for Oregon  
My Commission Expires: February 12, 2006



**EXHIBIT A**  
**Legal Descriptions**

[to attach]

**EXHIBIT B**  
**Intentionally Deleted**

EXHIBIT C  
Intentionally Deleted

*pg 7105*

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EXHIBIT "A"

Commencing at the Southeast Corner of Lot 1, Block 31, Plat "F", Salt Lake City Survey, said corner being North 00°00'15" East along the monument line 63.86 feet and South 89°58'19" East 62.48 feet from a City monument located in the intersection of 1300 East Street and 2nd South Street and running thence South 89°58'19" East along the Southerly line of said Lot 1 148.62 feet; thence North 00°00'28" East parallel to the East line of said Lot 1 79.14 feet; thence North 89°58'19" East 148.62 feet to the Easterly line of said Lot 1; thence South 00°00'28" West along said Easterly line 79.14 feet to the point of beginning.

TOGETHER WITH a non-exclusive easement for driveway purposes and for foot and automotive traffic, including the right to grade, gravel, pave or blacktop the same or any part thereof, over and across the following described parcel of land;

Beginning at a point North 0°00'02" East 79.14 feet from the Southeast Corner of Lot 1, Block 31, Plat "F", Salt Lake City Survey; and running thence South 89°58'19" West 35.0 feet; thence North 0°00'02" East 9.0 feet; thence North 89°58'19" East 35.0 feet; thence South 0°00'02" West 9.0 feet to the point of beginning.

Tax Parcel No. 16-05-230-033-0000  
16-05-230-034-0000