

Prepared by and
After Recording Return
To:

00674125 B: 1323 P: 904

B: 1323 P: 904 Fee \$26.00
Debbie B. Johnson, Iron County Recorder - Page 1 of 8
09/03/2015 02:56:30 PM By: FIRST AMERICAN TITLE INSURANCE COMPANY -
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**SUBORDINATION, NONDISTURBANCE
AND ATTORNMENT AGREEMENT**

This Subordination, Nondisturbance and Attornment Agreement ("Agreement") is made and entered into as of the 1st day of September, 2015, by and between DOLLAR TREE STORES, INC., a Virginia corporation ("Tenant"), whose address is 500 Volvo Parkway, Chesapeake, Virginia 23320, and ACS CEDAR SOUTH UT, LLC, a Nevada limited liability company, its successors and assigns ("Landlord"), whose address is 350 Pine Street, Suite 800, Beaumont, Texas 77701 and WELLS FARGO BANK, NATIONAL ASSOCIATION, its successors and assigns ("Lender"), whose address is 1000 Louisiana Street, 3rd Floor, Houston, Texas 77002.

RECITALS

- A. The Tenant is the present tenant under a lease dated July 31, 2011, with Cedar South Station Inc., as Landlord, known as Dollar Tree Store # 02665, Town Center, Cedar City, Utah (the "Premises"), to include Commencement Certificate dated February 17, 2012, (said documents, being sometimes hereinafter referred to as the "Lease").
- B. Landlord has requested a loan from Lender (the "Loan") to be secured by a first priority mortgage and security agreement (the "Mortgage") covering the Property and assignment of rents and leases (the "Assignment"). The Mortgage and Assignment, as the same may hereafter be amended (the consent of Tenant to which shall not be required) are referred to herein as the "Security Instruments." As one of the conditions to making the Loan to Landlord, Lender is requiring Tenant to execute this Agreement.
- C. The Landlord has requested that the Tenant subordinate the Lease and its interest in the Lease and its interest in the Premises in all respects to the Security Instruments.
- D. The Tenant has requested that Lender agree not to disturb the Tenant's possession of the Premises.
- E. Lender is relying upon the agreements contained in this instrument, without which it would not disburse or close the Loan.

NOW, THEREFORE, in consideration of the sum of \$1.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:



1. Subordination: Except as otherwise provided in this Agreement, the Lease is hereby subjected and subordinated to and shall remain in all respects and for all purposes subject, subordinate and junior to the Mortgage and all renewals modifications and extensions thereof.

2. Purchase Options. The Tenant's options or rights contained in said Lease to acquire title to the Premises, if any, including any rights of first refusal, are hereby made subject and subordinate to the rights of the Lender under the Mortgage and any acquisition of title to the Property.

3. Tenant Not to be Disturbed: So long as Tenant is not in default (beyond any period under the Lease given to Tenant to cure such default) in the payment of rent to be paid under the Lease or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed, Tenant's possession of the Premises under all of the terms, covenants and conditions of the Lease and any extensions or renewals thereof which may be affected in accordance with any renewal rights therefore in the Lease, shall not be diminished or interfered with by Lender, and Tenant's occupancy of the Premises under all of the terms, covenants and conditions of the Lease shall not be disturbed by Lender during the term of the Lease or any such extensions or renewals thereof.

4. Tenant Not to be Joined in Foreclosure unless Required by Law: So long as Tenant is not in default beyond any period under the Lease given to Tenant to cure such default in the payment of rent to be paid under the Lease or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed, Lender will not name or join Tenant in any action or proceeding foreclosing the Mortgage unless such naming or joinder is necessary to foreclose the Mortgage and then only for such purpose and not for the purpose of terminating the Lease.

5. Tenant to Attorn to Lender; Lender Not Bound by Certain Acts:

a. If the interests of Landlord shall be transferred to and owned by Lender by reason of foreclosure or other proceedings brought by it in lieu of or pursuant to a foreclosure, or by any other manner and subject to the provisions of paragraph (b) below, Tenant and Lender shall be bound 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 affected in accordance with any option therefor in the Lease, with the same force and effect as if Lender were the landlord. The foregoing shall be self-operative immediately upon Lender succeeding to the interest of the Landlord under the Lease without the execution of any further instruments on the part of any of the parties hereto; provided, however, that Tenant shall be under no obligation to pay rent to Lender until Tenant receives written notice from Lender that it has elected to receive such rents. Landlord agrees to indemnify and hold Tenant harmless from and against all claims, expenses, costs, including reasonable attorneys' fees, losses and liabilities arising out of, or resulting from, Tenant's payment of rent to Lender. The respective rights and obligations of Tenant and Landlord 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 at length herein.

b. If Lender should succeed to the interest of Landlord under the Lease, Lender shall not be (i), liable for any act or omission of any prior landlord, (ii) subject to any offsets or defenses which Tenant might have against any prior landlord except for credits and overpayments of common area maintenance charges, taxes and insurance, which are prorated and paid monthly, and are reconciled at the end of the calendar year, or as otherwise expressly permitted by the



Lease, it being understood that Lender hereby agrees that to the extent that Tenant is due a credit for common area maintenance charges, taxes and insurance accrued prior to Lender's acquisition of the Shopping Center, Lender will be responsible for such credit, (iii) bound by any fixed monthly rent which Tenant might have paid for more than the current monthly installment, (iv) bound by any material amendment or modification of the economic terms of the Lease made without its consent, which consent shall not be unreasonably withheld and which shall be deemed given if Lender does not approve or reject the request for modification within thirty (30) days of receipt thereof, (v) liable for the return of any security deposit except to the extent actually received by Lender from Landlord or (vi) responsible for any obligation to initially construct the Premises but if Lender fails to do so upon request following Lender's succeeding to Landlord's interest in the Premises, Tenant may terminate the Lease. Notwithstanding anything to the contrary contained herein, Lender shall be liable for any repair, restoration, rebuilding or maintenance obligations of Landlord under the Lease that are ongoing at the time Lender succeeds to the interest of Landlord under the Lease so long as Lender has been provided notice of the event or occurrence giving rise to Landlord's obligation to repair, restore or rebuild the Premises, pursuant to Section 6 hereof.

6. Notice of Default: Tenant hereby agrees to give Lender simultaneous notice of any default by the Landlord under the Lease or any occurrence that would give rise to Tenant's right to exercise any remedies under the Lease, including the right to offset, reduce or abate rent or terminate the Lease and Lender shall have the same opportunity (but shall not be required) to cure provided to Landlord in the Lease.

7. Assignment of Lease: Landlord has by the Assignment assigned its interest in the rent and payments due under the Lease to Lender as security for repayment of the Loan. Provided Tenant is furnished a fully executed copy of this Agreement, the Lender may, at its option under the Assignment, require that all rents and other payments due under the Lease be paid directly to it. Upon written notification to that effect by the Lender to Tenant, the Landlord hereby authorizes and directs Tenant and the Tenant agrees to pay the rent and any payments due under the terms of the Lease to Lender. The Assignment does not diminish any obligations of the Landlord under the Lease nor impose any such obligations on the Lender. Landlord further covenants that the Tenant may rely upon the written representation of Lender that it is entitled to receive such rents and the payment of rent to the Lender shall be binding upon the Landlord, the Lender and those claiming through or under them.

8. Successors and Assigns: This Agreement and each and every covenant, agreement and other provision hereof shall be binding upon the parties hereto and their successors and assigns and shall inure to the benefit of the Lender and its successors and assigns. As used herein, the words "successors and assigns" shall include the heirs, administrators and representatives of any natural person who is a party to this Agreement.

9. Choice of Law: This Agreement is made and executed under and in all respects to be governed and construed by the laws of the State in which the Property is situated.

10. 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 continuing 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 neutral shall be freely interchangeable.

11. Fully Executed Document: The parties hereto agree that Tenant will have no obligations under this agreement unless and until Tenant is provided with a fully executed copy of the agreement.



12. **Notices:** Any notice required or permitted to be given hereunder must be given by or on behalf of either party to the other in writing to the address stated in this Agreement and shall be deemed given and effective: (a) upon signed receipt if personally delivered; or (b) upon signed receipt of a notice (or refusal to sign or accept such notice) sent by certified or registered mail, return receipt requested and postage prepaid; or (c) upon signed receipt of a notice (or refusal to sign or accept such notice) sent by a nationally recognized overnight courier that provides verification of receipt. Landlord shall not mail or deliver any notice or consent to the Premises that is required to be given by or on behalf of Landlord; furthermore, in the event Landlord does mail or deliver such notice or consent to the Premises, proper notice shall not be deemed to have occurred. In addition, any notice to or from Landlord (as the case may be) as required by this Lease shall be sent to or from Landlord (as the case may be) as identified in this Agreement hereof, which shall be one (1) person or one (1) business entity, and which in any event shall be one (1) taxpayer identification number.

- (a) **Change of Address.** Either party's address as shown in this Agreement may be changed from time to time by such party giving written notice to the other party of the new address.
- (b) **Service of Process.** Notwithstanding anything to the contrary in the Lease or applicable law, (a) service of process ("Service") related to any action or proceeding under this Lease or related to the Premises shall not constitute valid Service upon Tenant if made by serving Tenant at the Premises, and (b) Service upon Tenant shall only be valid if such Service is served upon Tenant through Tenant's Registered Agent for such Service in the state in which the property is located.

For purposes of notice, the addresses of the parties shall be as follows:

Each notice to Lender shall be addressed as follows:

WELLS FARGO BANK, NATIONAL ASSOCIATION
1000 Louisiana Street, 3rd Floor
Houston, Texas 77002

Each notice to Landlord shall be addressed as follows:

ACS CEDAR SOUTH UT, LLC
350 Pine Street, Suite 800
Beaumont, Texas 77701

Each notice to Tenant shall be addressed as follows:

DOLLAR TREE STORES, INC.
ATTN: Lease Administration Dept #02665
500 Volvo Parkway
Chesapeake, VA 23320

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13. Tenant shall look solely to the Lender's interest in the Property for recovery of any judgments or damages from Lender, its successors and assigns, and neither Lender nor its successors or assigns shall have any personal liability, directly or indirectly, under or in connection with the Lease or this Agreement or any amendment or amendments made at any time or times, heretofore or hereafter and Tenant hereby forever and irrevocably waives and releases any and all such personal liability. The limitation of liability provided in this paragraph is in addition to and not in limitation of any limitation on liability applicable to Lender its successors and assigns provided by law or by any other contract, agreement or instrument.

14. This Agreement is being executed by the Tenant at the request of the Lender. It is understood by all parties that the Landlord named herein is not, as of the date hereof, the fee simple owner of the Shopping Center. Should the Landlord not acquire the Shopping Center this Agreement shall become null and void.

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be executed as of the date first above written.

TENANT:
DOLLAR TREE STORES, INC.

By: Deborah E. Miller
Deborah E. Miller
Vice President, Assistant General Counsel/Real Estate
Date: 7-30-15
FEIN#: 54-1387365

STATE OF VIRGINIA, AT LARGE
CITY OF CHESAPEAKE, to-wit:

The foregoing document was acknowledged before me this 30th day of July, 2015, by Deborah E. Miller, Vice President, Assistant General Counsel/Real Estate of DOLLAR TREE STORES, INC., a Virginia corporation.

Jennifer Marie Stawicki
Notary Public
My commission expires: December 31, 2018

(Notarial Seal)



Jennifer Marie Stawicki
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #7582127
My Commission Expires
December 31, 2018

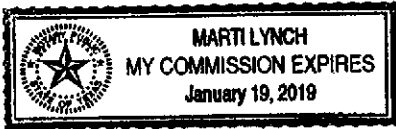


LANDLORD:
ACS CEDAR SOUTH UT, LLC

[Handwritten Signature]
By: _____
Name: Thomas Cormier
Title: Manager
Date: _____
FEIN#: _____

STATE OF Texas
CITY/COUNTY OF Jefferson, to-wit:

The foregoing document was acknowledged before me this 1st day of September, 2015, by Thomas Cormier as for manager of ACS Cedar South UT, LLC, a Nevada Limited Liability Company.



(Notarial Seal)

Marti Lynch
Notary Public
My commission expires: 1-19-2019

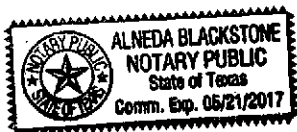


LENDER:
WELLS FARGO BANK, NATIONAL ASSOCIATION

By: Tim P. Gebauer
Name: TIMOTHY P. GEBAUER
Title: VICE PRESIDENT
Date: _____
FEIN#: _____

STATE OF Texas
CITY/COUNTY OF Harris, to-wit:

The foregoing document was acknowledged before me this 2nd day of September, 2015, by Timothy P. Gebauer as Vice President for Wells Fargo Bank, a same.



Alneda Blackstone
Notary Public
My commission expires: 5/21/2017

(Notarial Seal)

(12)

EXHIBIT A

Legal Description

LEGAL DESCRIPTION *Cedar South Shopping Center*

PARCEL 1:

Commencing 371.48 feet North 0°16' West of the Southwest corner of the Northwest Quarter of the Northwest Quarter (NW¼NW¼) of Section 23, Township 36 South, Range 11 West, Salt Lake Base and Meridian; thence North 0°16' West 324.92 feet, more or less, to the Southeasterly Right-of-Way line of State Route No. 130 (Old U.S. Highway 91, also known as South Main Street); thence North 45°37' East along the said Right-of-way a distance of 311.00 feet; thence South 44°23' East 173.10 feet; thence Southeasterly along the arc of a 382.5 foot radius curve to the right 21.40 feet (the Chord of which bears South 42°47' East 21.40 feet, said curve has a Delta Angle of 3°12'00"); thence North 45°37' East 114.10 feet to the Southwesterly line of Pine Street at a corner common to Lots 2 and 3, Block 4 of the original Plat of VALLEY VIEW SUBDIVISION; thence South 44°23' East 36.90 feet; thence Southeasterly along the arc of a 352.50 foot radius curve to the right 272.34 feet (the Chord of which bears South 22°15' East 265.61 feet, said curve has a Delta Angle of 44°16'00"); thence South 0°07' East 208.00 feet; thence South 89°44' West 564.73 feet to the point of Beginning.

PARCEL 2:

Commencing at the Southwest Corner of the Northwest Quarter of the Northwest Quarter (NW¼NW¼) of Section 23, Township 36 South, Range 11 West, Salt Lake Base and Meridian; thence North 0°16'00" West, 150.00 feet; thence North 89°44'00" East, 285.23 feet; thence South 0°16'00" East, 26.52 feet; thence North 89°44'00" East, 75.00 feet; thence South 0°16'00" East, 170.49 feet (107.50 feet of record); thence South 89°15'30" West, 360.28 feet (360.37 feet of record); thence North 0°13'45" West (North 0°07'00" West record) 50.00 feet along the Section line to the point of beginning.

PARCEL 2A:

A perpetual, nonexclusive easement for purposes of ingress and egress of vehicular and pedestrian traffic over and across the following described land (which said easement was provided to in that certain Warranty Deed recorded in Iron County, Utah on July 16, 1981 as Entry No. 228615 in Book 278 at page 288): COMMENCING 150.00 feet North 0°16' West of the Southwest corner of the Northwest Quarter of the Northwest Quarter (NW¼NW¼) of Section 23, Township 36 South, Range 11 West, Salt Lake Base and Meridian; thence North 0°16' West 281.48 feet; thence North 89°44' East 30.00 feet; thence South 0°16' East 281.48 feet; thence South 89°44' West 30.00 feet to the BEGINNING, as disclosed by instrument recorded August 29, 2001 as Entry No. 438138 in Book 763 at Pages 806-809, Official Iron County Records.

ALSO, all of the easements, rights, covenants, restrictions, and requirements which are appurtenances of and/ or intended to benefit the Parcel (i.e., Parcel 1) in question and which are created or provided for in that certain "Covenants recorded in Iron County, Utah on July 16, 1981 as Entry No. 228617 in Book 278 at page 298, as said instrument as heretofore been amended by that certain First Amendment thereto recorded on November 17, 1981 as Entry No. 231361 in Book 284 at page 113 and by that certain Second Amendment thereto, dated February 15, 1982, recorded on May 12, 1982 as Entry No. 235091 in Book 289 at page 932, Official Iron County Records.

