

STATE OF NEBRASKA } ss
YORK COUNTY

This Instrument was filed for record
on August 28, 2017
at 12:49 PM, and duly
recorded in Vol. 46 of GEN
Page 349

Instrument No. 2017-01865

Kelly Turner
Fee \$ 58.00

WSJ
County Clerk

SUBORDINATION, NONDISTURBANCE AND
ATTORNMEN T AGREEMENT

Dollar Tree Stores, Inc., a Virginia corporation

To

Enterprise Bank, a State Chartered Bank

NEBRASKA TITLE COMPANY
14680 West Dodge Road
Suite 1
Omaha, NE 68154

0272271

Please Return recorded document to:
Nebraska Title Company
11336 South 96th Street, Suite 120
Papillion, NE 68046

Prepared by and After Recording Return To: <hr/> <hr/> <hr/>

**SUBORDINATION, NONDISTURBANCE
AND ATTORNMEN AGREEMENT**

This Subordination, Nondisturbance and Attornment Agreement (this "Agreement") is made and entered into as of the 21st day of August, 2017, by and between DOLLAR TREE STORES, INC., a Virginia corporation ("Tenant"), BATIS DEVELOPMENT COMPANY, a Kansas corporation ("Landlord"), and ENTERPRISE BANK, a State Chartered Bank ("Lender").

RECITALS

Contemporaneously with the execution of this Agreement, Landlord and Tenant will enter into a lease for certain premises located at Highway 81 and 35th Street located in the City of York, County of York, State of Nebraska including all site improvements together with a building containing approximately 8,800 square feet (collectively the "Premises") and situated on the real property more particularly described on Exhibit "A". Such lease, as the same may be renewed, extended and modified from time to time, is hereinafter referred to as the "Lease".

Lender has previously made a loan (the "Loan") to Landlord secured by, among other security, a lien and security interest on the Premises evidenced by a first priority mortgage, deed of trust, deed to secure debt or similar instrument (as the same may be renewed, extended, modified or increased from time to time, the "Mortgage") and an assignment of rents and leases covering the rents and leases of the Premises (as the same may be renewed, extended or modified from time to time, the "Assignment"). The Mortgage, the Assignment, and all other documents evidencing or securing the Loan from time to time, as they may be renewed, extended, modified or increased from time to time, are hereinafter collectively referred to as the "Security Instruments".

As an inducement to Tenant to enter into the Lease, Landlord has agreed to cause Lender to enter into this Agreement.

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, the undersigned hereby agree as follows:

1. Subordination. Subject to the terms and conditions of 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 lien of the Mortgage and the other Security Instruments. Without limiting the foregoing, Tenant's options or rights contained in the 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 Premises.

2. Tenant Not to be Disturbed. So long as Tenant is not in 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, in either instance beyond any period given to Tenant to cure such default under the Lease, 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 contained 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.

3. Tenant Not to be Joined in Foreclosure unless Required by Law. So long as Tenant is not in 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 beyond any period given to Tenant to cure such default under the Lease, Lender will not name or join Tenant in any action or proceeding to foreclose the Mortgage unless such naming or joinder is necessary to foreclose the Mortgage under applicable state law and then only for such purpose and not for the purpose of terminating the Lease.

4. 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 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 or on any other periodic basis 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 Premises, 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 construct the Premises initially or complete the delivery conditions set forth in the Lease, 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 upon notice to Lender. 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 5 hereof.

5. Notice of Default: Tenant hereby agrees to give Lender simultaneous notice of any default by 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 to cure provided to Landlord in the Lease, without any obligation to do so.

6. Assignment of Lease: Pursuant to the Assignment Landlord has assigned its interest in the rent and other payments due under the Lease to Lender as security for payment of the Loan. Provided Tenant has received a fully executed copy of this Agreement, Lender may, at its option, direct Tenant to make future payments of rents or other amounts due under the Lease directly to Lender. Upon written notification to that effect by Lender to Tenant, Landlord hereby authorizes and directs Tenant to, and Tenant agrees to, pay the rent and any payments due under the Lease to Lender. Notwithstanding the foregoing, neither the execution of the Assignment nor the exercise of Lender's right to receive the rents thereunder shall be deemed to diminish any obligations of Landlord under the Lease or impose any such obligations on Lender. Landlord agrees that Tenant may rely upon the written representation of Lender that it is entitled to receive the rents payable under the Lease and the payment of rent to Lender shall be binding upon Landlord, Lender and those claiming through or under them.

7. 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 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.

8. Choice of Law: This Agreement is made and executed under and in all respects is to be governed and construed in accordance with the laws of the State in which the Premises is situated.

9. Captions and Readings: 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.

10. 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 this Agreement.

11. Notices: Any notice required or permitted to be given under this Agreement must be given in writing to the respective address(es) of the parties stated in this Agreement and shall be deemed given and effective: (a) upon signed receipt if personally delivered to the stated address; 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. Neither Landlord nor Lender shall mail or deliver any required notice or consent to the Premises and any notice or consent delivered to the Premises shall not be deemed to be proper notice or effective notice for purposes of this Agreement.

- i. Change of Address. Any 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.
- ii. 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 Agreement 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 Premises is located.

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

Lender: Enterprise Bank

Landlord: Batis Development Company
Attn: J. Mark Wittenburg
2933 SW Woodside Drive, # 200
Topeka, Kansas 66614

Tenant: DOLLAR TREE STORES, INC.
500 Volvo Parkway
Chesapeake, VA 23320
Attention: Lease Administration

12. Memorandum of Lease. Lender acknowledges that Tenant may elect to record a Memorandum of Lease or other evidence of the Lease in the real property records of the jurisdiction where the Premises is located and Lender consents to such recordation and agrees that such recordation shall not constitute a default or potential default under the Security Instruments.

13. Limited Liability. Tenant shall look solely to Lender's interest in the Premises 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.

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

TENANT:

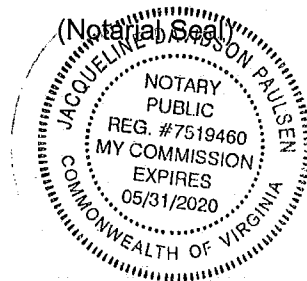
DOLLAR TREE STORES, INC.

By: Deborah E. Miller
Deborah E. Miller, Vice President,
Assistant General Counsel/Real Estate
Date: 7-26-17
FEIN#: 54-1387365

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

The foregoing document was acknowledged before me this 26th day of July, 2017, by Deborah E. Miller, Vice President, Assistant General Counsel/Real Estate of DOLLAR TREE STORES, INC., a Virginia corporation.

Jacqueline Davidson Paulsen
Notary Public
My commission expires: 5/31/2020



LANDLORD:

BATIS DEVELOPMENT COMPANY

By: [Signature]
Name: J. Mark Wittenburg
Title: President
Date: 8/4/17
FEIN#: 26-0843721

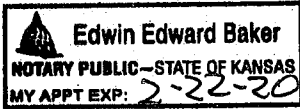
STATE OF KANSAS
CITY/COUNTY OF SHAWNEE, to-wit:

The foregoing document was acknowledged before me this 4th day of August, 2017, by J. Mark Wittenburg as President for BATIS DEVELOPMENT COMPANY, a Kansas limited liability company.

[Signature: Edwin Baker]

Notary Public
My commission expires: 2-22-20

(Notarial Seal)



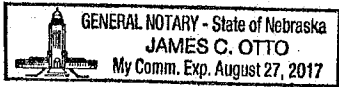
LENDER:

ENTERPRISE BANK

By: *Andrew Antonio*
Name: Andrew Antonio
Title: Assistant Vice President
Date: 08/21/2017
FEIN#: 47-0742496

STATE OF Nebraska,
CITY/COUNTY OF Douglas, to-wit:

The foregoing document was acknowledged before me this 21st day of August, 2017, by Andrew Antonio as Asst. Vice President for ENTERPRISE BANK, a State Chartered Bank.



J. C. Otto
Notary Public
My commission expires: 8/27/17

(Notarial Seal)

EXHIBIT A

LEGAL DESCRIPTION

Lot 2, Holthus Subdivision, Third Addition, City of York, York County, Nebraska in the records of York County, Nebraska