

03 NOV 14 PM 11:55

WJC - 59760

Vol M03 Page 84454

State of Oregon, County of Klamath
Recorded 11/14/03 11:55a.m
Vol M03 Pg 84454-61
Linda Smith, County Clerk
Fee \$ 56.00 # of Pgs 8

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

INTERVEST - Mortgage Investment Company
Attn: Brenda Lund
5285 S.W. Meadows Road, Suite 400
Lake Oswego, OR 97035

Document Title: Subordination, Nondisturbance, Attornment Agreement
and Estoppel Certificate

Lessor: Klamath-Austin, LLC, an Oregon limited liability company

Lessee: Dollar Tree Stores, Inc., a Virginia corporation

Lender: INTERVEST-Mortgage Investment Company

**Abbreviated
Legal Description:** A complete legal description is attached as Exhibit "A".

Assessor's Property Tax Parcel/Account Number: 3909-003BD-02800-000

*Referencing trust deed recorded concurrently herewith
under volume M03 page 84414.*

**SUBORDINATION, NONDISTURBANCE,
ATTORNMEN AGREEMENT AND
ESTOPPEL CERTIFICATE**

THIS AGREEMENT is made this 11th day of November, 2003,
between **DOLLAR TREE STORES, INC.** (hereinafter called "Tenant"), **INTERVEST-
MORTGAGE INVESTMENT COMPANY** (hereinafter called "Lender"), and
KLAMATH-AUSTIN, LLC (hereinafter called "Landlord").

*56.00
am*

WITNESSETH:

WHEREAS, Tenant has entered into a lease dated October 27, 2003, (the "Lease") with Landlord covering a portion of the premises (the "Premises") described in Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, Lender has agreed to make a loan to Landlord secured by a deed of trust, (hereinafter referred to as "Deed of Trust"); provided, however, that said Lease is subordinate to the lien of the Deed of Trust; and

WHEREAS, Lender has been requested by Tenant and by Landlord to enter into a nondisturbance agreement with Tenant;

NOW, THEREFORE, in consideration of the premises and mutual covenants hereinafter contained, the parties hereto mutually covenant and agree as follows:

Estoppel Certificate: Tenant hereby confirms and certifies to Lender the following:

- 1. That it has not yet accepted possession of the Premises described in the Lease, which Lease is in full force and effect.**
- 2. That the improvements and space required to be furnished according to the Lease are under construction.**
- 3. That the Lease has not been modified, altered or amended.**
- 4. That to the best of Tenant's knowledge, as of the date hereof, there are no offsets or credits against rentals and no claims or defenses to enforcement of the Lease, nor have rentals been paid.**
- 5. The term of the Lease is 60 months. The lease term shall commence the earlier of ninety (90) days after Turnover Date or when Tenant opens for business and will expire on the last date of the 60th month following Lease Commencement Date.**
- 6. Nothing in this estoppel certificate is to bar a claim by Tenant on account of default by Landlord that is unknown to Tenant as of the date hereof.**

Subordination: The Lease and any extensions, renewals, or modifications thereof, and all of the right, title and interest of Tenant in and to said Premises, shall be subject and subordinate to the Deed of Trust and to all of the terms and conditions contained herein, and to any renewals, modifications, replacements, consolidations and extensions thereof.

Nondisturbance: Lender consents to the Lease and, in the event of foreclosure of the Deed of Trust, or in the event Lender comes into possession or acquires title to the Premises as a result of any other means, Lender agrees to recognize Tenant and further agrees that Tenant shall not be disturbed in its possession of the Premises for any reason other than one which would entitle the Landlord to terminate the Lease under its terms.

Attornment: Provided Tenant is furnished with a fully executed copy of this Agreement, Tenant and Lender hereby agree as follows:

1. That if the interest of Landlord in the Premises shall be transferred to and owned by Lender, Tenant shall be bound to Lender under all of the terms, covenants and conditions of the Lease for the balance of the term remaining, with the same force and effect as if Lender were the landlord under the Lease, and Tenant does hereby attorn to Lender as its Landlord, said attornment to be effective and self-operative immediately upon Lender succeeding to the interest of Landlord in the Premises without the execution of any further instruments on the part of any of the parties hereto.

2. In the event that the Landlord shall default in the performance or observance of any of the terms, conditions or agreements in the Lease, Tenant shall give simultaneous written notice thereof to Lender, and Lender shall have the right afforded the Landlord under the Lease.

3. Tenant agrees that without the written consent of Lender it will not (a) materially modify, extend or in any manner alter the terms of the Lease provided, however, that Tenant's option to renew, shall under no circumstances be considered a material change requiring Lender's approval; (b) pay the rent or any other sums becoming due under the terms of the Lease more than one month in advance; (c) accept Landlord's waiver of, or release from the performance of any obligations under the Lease except as provided in the Lease.

84457

4. Should Lender advise Tenant that Landlord is in default in the indebtedness to Lender and request that payment of all future rentals be made directly to Lender, Tenant agrees that it shall make all future rental payments under the Lease directly to Lender until instructed otherwise by Lender. Landlord specifically acknowledges Lender's right to collect rent under such circumstances and authorizes Tenant to comply with Lender's exercise of this right.


IN WITNESS WHEREOF the parties hereto have placed their hands and seals the day and year first above written.

TENANT:

DOLLAR TREE STORES, INC.

By

Its:


John L. Cole
Vice President
Corporate Counsel

LENDER:

INTERVEST-MORTGAGE
INVESTMENT COMPANY

By

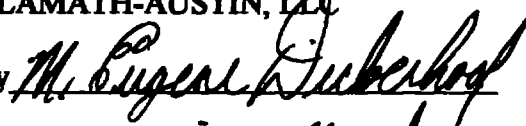

David Clay, Vice President

LANDLORD:

KLAMATH-AUSTIN, LLC

By

Its:


Managing Member

84458

City
County of CHESAPEAKE)
) ss.
State of VIRGINIA)

I certify that I know or have satisfactory evidence that JOHN L. COTE is the person who appeared before me, and said person acknowledged that he was authorized to sign this instrument as V.P. Corporate Counsel of **DOLLAR TREE STORES, INC.**, and acknowledged it to be the free and voluntary act of such entity, for the uses and purposes mentioned in the instrument.

DATED: November 5, 2003.

Dolene B. DeBlanchard
Notary Public in and for the State of
Virginia, residing at Chesapeake
My appointment expires: 01-31-06

State of Oregon)
) ss.
County of Clackamas)

I certify that I know or have satisfactory evidence that DAVID CLAY personally appeared before me, and on oath stated that he was authorized to execute the instrument and acknowledged it, as **VICE PRESIDENT of INTERVEST-MORTGAGE INVESTMENT COMPANY**, to be the free and voluntary act of such party, for the uses and purposes mentioned in the instrument.

DATED: October 30, 2003.



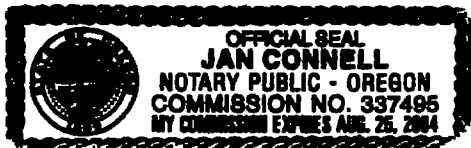
Brenda L. Lund
Notary Public in and for the State of
OREGON, residing at WILSONVILLE
My appointment expires: 6/13/07

84459

State of Oregon)
County of Benton) ss.

I certify that I know or have satisfactory evidence that M. Eugene Dickerhoof is the person who appeared before me, and said person acknowledged that he was authorized to sign this instrument as Managing Member of KLAMATH-AUSTIN, LLC, and acknowledged it to be the free and voluntary act of such entity, for the uses and purposes mentioned in the instrument.

DATED: 11/11, 2003.



Jan Connell
Notary Public in and for the State of
Oregon, residing at Corvallis, OR
My appointment expires: 8/25/04

EXHIBIT "A"
LEGAL DESCRIPTION

84460

All that property located in the County of Klamath and State of Oregon described as follows:

PARCEL 1:

A tract of land situated in Tract 33A Enterprise Tracts subdivision, in the SE1/4 NW1/4 of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at the cased monument marking the Northwest corner of said Section 3; thence South 00° 00' 30" East along the Westerly boundary of said Section 3, 826.8 feet, more or less, to its intersection with a line parallel with and 75 feet distant at right angles Northeasterly from the centerline of South Sixth Street as the same is now located and constructed, said parallel line being also the Northerly right of way line of said street; thence South 55° 52' 30" East along said parallel line 1,741.84 feet to a 5/8 inch iron pin marking the True Point of Beginning of this description, said point being on the Easterly right of way line of Austin Street with the location of said point being in conformance with record of Survey No. 939 filed in the office of the Klamath County Surveyor which contains the original owner's certification of original property corners; thence North 34° 07' 40" East at right angles to said South Sixth Street and along the Easterly right of way line of Austin Street a distance of 250.00 feet to a 5/8 inch iron pin with aluminum cap; thence South 55° 52' 30" East parallel with South Sixth Street a distance of 310.00 feet to a 5/8 inch iron pin; thence South 34° 07' 30" West parallel with Austin Street a distance of 250.00 feet to a 5/8 inch iron pin on the Northerly right of way line of South Sixth Street; thence North 55° 52' 30" West along the Northerly right of way line of South Sixth Street a distance of 310.00 feet to the True Point of Beginning of this description.

PARCEL 2:

A tract of land situated in Tract 33A, Enterprise Tracts Subdivision, in the SE1/4 NW1/4 of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at the cased monument marking the Northwest corner of said Section 3; thence South 0° 00' 30" East along the Westerly boundary of said Section 3, 826.8 feet, more or less, to its intersection with a line parallel with and 75 feet distant at right angles Northeasterly from the centerline of South Sixth Street as the same is now located and constructed, said parallel line being also the Northerly right of way line of said street; thence South 55° 52' 30" East along said parallel line 1,741.84 feet to a 5/8 inch iron pin marking a point on the Easterly right of way line of Austin Street with the location of said point being in conformance with Record of Survey No. 939 filed in the office of the Klamath County Surveyor which contains the original owner's certification of original property corners; thence continuing South 55° 52' 30" East along said parallel line a
(continued)

Parcel 2 (continued)

distance of 310.00 feet to a 5/8 inch iron pin marking the True Point of Beginning of this description; thence North $34^{\circ} 07' 30''$ East at right angles to South Sixth Street and parallel with Austin Street a distance of 250.00 feet to a 5/8 inch iron pin; thence South $55^{\circ} 52' 30''$ East parallel with South Sixth Street a distance of 141.18 feet to a 5/8 inch iron pin with aluminum cap on the Westerly line of that property described in Volume M68 page 4736, Klamath County Deed Records; thence south $34^{\circ} 07' 30''$ West parallel with Austin Street and along the Westerly line of the last described property a distance of 250.00 feet to a 5/8 inch iron pin on the Northerly right of way line of South Sixth Street, said point being the Southwesterly corner of the above described property and from which a cross chiseled in the concrete sidewalk bears South $34^{\circ} 07' 30''$ West 10.00 feet; thence North $55^{\circ} 52' 30''$ West along the Northerly right of way line of South Sixth Street a distance of 141.18 feet to the True Point of Beginning of this description.