



W3042459

MAIL RECORDED ORIGINAL TO:
Legal Department (Loc. #38847)
7-Eleven, Inc.
3200 Hackberry Road
Irving, Texas 75063

E# 3042459 PG 1 OF 9
Leann H. Kilts, WEBER COUNTY RECORDER
20-Mar-20 0404 PM FEE \$40.00 DEP TH
REC FOR: COTTONWOOD TITLE INSURANCE AGENCY
ELECTRONICALLY RECORDED

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Subordination, Non-Disturbance and Attornment Agreement ("Agreement"), made by and among 7-ELEVEN, INC., a Texas corporation ("Tenant"), with principal offices at 3200 Hackberry Road, Irving, Texas 75063, TD Taylor Investments, LLC, a Utah limited liability company ("Lender"), whose address is 175 N 200 E. HC-13 Box 300615, Fayette, Utah 84630, and C&N Harrisville, LLC, a Utah limited liability company ("Borrower"), whose address is 1835 South Highway 89 Perry, Utah 84302.

RECITALS:

WHEREAS, Lender has made a loan to Borrower in the cumulative amount of _____, as evidenced by a certain promissory note dated 9-25, 2019 in the principal amount of \$1,600,000 (the "Promissory Note").

WHEREAS, Borrower, as security for the Promissory Note, has executed and delivered to Lender a Deed of Trust, Security Agreement and Assignment of Rents dated 9-25-19, 2019 and filed of record by the County Clerk of Weber County, State of Utah, on 10-2-19, 2019 as Document No. 3007425 in Official Records (the "Security Instrument"), which Security Instrument constitutes a first and prior lien against certain real property including the property more particularly described in Exhibit A, attached hereto and made a part hereof (the "Premises");

WHEREAS, pursuant to that certain Freestanding Lease dated February 27, 2019 ("Lease"), evidenced by that certain Memorandum of Lease recorded or to be recorded in the Official Records of Weber County, Utah, Borrower has leased the land together with the building and improvements thereon (the "Premises") to Tenant;

WHEREAS, Tenant desires to subordinate its leasehold interest to the Security Instrument and to be assured of continued occupancy of the Premises subject to the lien of the Security Instrument; and

WHEREAS, in return, Lender agrees to assure Tenant of its ongoing and undisturbed peaceful possession of the Premises, regardless of any action taken by Lender under the Security Instrument.

AO Form 4.01
Loc. No. 38847
120 Wall North Street and Wall Avenue
Harrisville, Utah

ACCOMMODATION RECORDING ONLY.
COTTONWOOD TITLE INSURANCE AGENCY,
INC. MAKES NO REPRESENTATION AS TO
CONDITION OF TITLE, NOR DOES IT ASSUME
ANY RESPONSIBILITY FOR VALIDITY,
SUFFICIENCY OR EFFECTS OF DOCUMENT.

NOW THEREFORE, the parties hereby agree as follows:

1. **Subordination**. Subject to the provisions of Paragraphs 2 and 3 below, the Lease and the rights of Tenant in, to and under the Lease and the Premises are hereby subjected and subordinated to the lien of the Security Instrument and to any and all renewals, modifications and extensions thereof.

2. **Non-Disturbance**. So long as the Lease is then in full force and effect and Tenant is not in material default under the Lease (beyond any period given Tenant by the terms of the Lease to cure such default) in the payment of rent or other amounts owed pursuant to the Lease or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed, then Lender, any successor or assign of Lender, or any owner of the Premises following a foreclosure sale or conveyance in lieu of foreclosure (collectively, the "**Lender Entities**") acknowledge and agree that: (i) Tenant's possession of the Premises, or any extension or renewal rights therefor in the Lease, shall not be diminished or interfered with by the Lender Entities, (ii) the Lease shall not be terminated and all of Tenant's rights and privileges under the Lease shall be recognized by the Lender Entities, and (iii) the Lender Entities will not join Tenant as a party defendant in any action or proceeding foreclosing the Security Instrument unless such joinder is necessary to foreclose the Security Instrument and then only for such purpose and not for the purpose of terminating the Lease.

3. **Attornment**. If (i) Lender or its successors and assigns shall become the owner of the Premises, (ii) the Premises shall be sold by reason of foreclosure or other proceedings brought to enforce the Security Instrument, or (iii) the Premises shall be transferred by deed in lieu of foreclosure, the Lease shall continue in full force and effect as a direct lease between the then owner of the Premises and Tenant, and Tenant hereby attorns to the owner of the Premises, said attornment to be effective and self operative without the execution of any further instruments. Tenant shall be under no obligation to pay rent to Lender or any such other owner until Tenant receives written notice from Lender or any such other owner that it has succeeded to Borrower's interest under the Lease, upon which notice Tenant shall be entitled to rely.

4. **Notice to Cure Defaults**. Tenant agrees to provide Lender a copy of any notice of default served upon Borrower which with the passage of time or otherwise would entitle Tenant to cancel the Lease or abate the rent under the Lease. Tenant further agrees that if Borrower shall have failed to cure such default within the time provided for in the Lease, then Lender shall have an additional thirty (30) days after its receipt of notice within which to cure such default or if such default cannot be cured within that time, then such additional time as may be necessary to cure such default shall be granted if within such thirty (30) days Lender has commenced and is diligently pursuing the remedies necessary to cure such default (including, but not limited to, commencement of foreclosure proceedings necessary to effect such cure), in which event the Lease shall not be terminated while such remedies are being so diligently pursued, provided, that, such additional period of time shall not exceed ninety (90) additional days.

5. **Limitation of Liability**. In the event that Lender succeeds to the interest of Borrower under the Lease, then Lender and any successor to Lender's interest in the Lease shall assume and be bound by the obligations of Borrower under the Lease which accrue from and after such party's succession to any prior landlord's interest in the Premises, but Lender shall not be:

(i) bound by any rent or additional rent which Tenant has paid more than one (1) month in advance to any prior landlord (including, without limitation, Borrower), except as expressly provided in the Lease;

(ii) liable for any act or omission of any prior landlord (including, without limitation, Borrower), except (a) for any tenant improvement allowance owed to Tenant under the Lease that has not been previously remitted to Tenant; or (b) to the extent the default is non-monetary, relates to the repair or maintenance of the Premises, and continues to accrue after attornment, in which event, the successor landlord shall be bound to cure same within the time provided for in the Lease, which time shall be calculated from the date of attornment;

(iii) liable for the retention, application or return of any security deposit to the extent not paid over to Lender;

(iv) subject to any offsets or defenses which Tenant might have against any prior landlord (including, without limitation, Borrower), except as expressly provided in the Lease; or

(v) bound by any amendment or modification of the Lease made without Lender's written consent, such consent not to be unreasonably withheld or delayed, that: (a) reduces rent or additional rent payments to the landlord under the Lease, (b) shortens the term of the Lease, or (c) imposes any additional material obligations upon the landlord under the Lease. All other amendments or modifications of the Lease that do not relate to the provisions set forth herein shall not require Lender approval.

Notwithstanding the foregoing, nothing in this section shall be deemed to waive any of Tenant's rights and remedies against any prior landlord (including, without limitation, Borrower).

6. Assignment of Leases. Tenant consents to the Assignment of Leases contained in the Security Instrument (collectively, the "Assignment"). Tenant agrees that after any foreclosure action, sale under a power of sale, transfer in lieu of the foregoing, or the exercise of any other remedy pursuant to the Security Instrument, if Lender, pursuant to the Assignment, and whether or not it becomes a mortgagee in possession, shall give written notice to Tenant that Lender has elected to require Tenant to pay to Lender the rent and other charges payable by Tenant under the Lease, Tenant agrees that it shall pay rent and all other sums due under the Lease directly to Lender without notice to or the consent of Borrower and without any obligation on the part of Tenant to determine whether or not the demand is proper. Borrower agrees that Tenant shall have the right to rely on any such notice from Lender without incurring any obligation or liability to Borrower as if such notice were given at the direction of Borrower.

7. Leasehold Improvements and Business Fixtures. Lender agrees that it will not claim and shall not have or assert any right, title or interest in and to any leasehold improvements and/or business fixtures installed upon the Premises by Tenant pursuant to the terms of the Lease.

8. Notices. Any notice required to be sent hereunder shall be in writing and shall be delivered by hand, sent prepaid by Federal Express (or a comparable overnight delivery service) or sent by the United States first-class mail, certified, postage prepaid, return receipt requested, to the following address:

If to Lender:

TD Taylor Investments, LLC
175 N 200 E HC-13 PO Box 300615
Fayette, Utah 84630
Attn: Trent Taylor _____

If to Borrower:

C&N Harrisville, LLC
1835 S. Hwy. 89
Perry, Utah 84302
Attn: Ryan Forsyth

If to Tenant:

7-Eleven, Inc.
Attention: Corporate Real Estate (Loc. #38847)
P.O. Box 711
Dallas, Texas 75221-0711

Any notice, request, demand or other communication delivery or sent in the manner aforesaid shall be deemed delivered on the earlier to occur of (i) receipt, or (ii) the date of delivery, refusal or non-delivery indicated on the return receipt, if deposited in a United States Postal Service Depository, postage prepaid, sent certified or registered mail, return receipt requested, or if sent via a recognized commercial courier service providing for a receipt, addressed to Tenant or Lender, as the case may be, at the addresses set forth above. Any of the above persons or entities may change such person's or entity's address by notifying the other persons and entities of the new address in any manner permitted by this paragraph.

9. Joinder of Borrower. Borrower hereby agrees to the subordination and attornment effected hereunder upon the terms herein stated.

10. Successors and Assigns. This Agreement and each and every covenant, agreement and other provision hereof shall be binding upon and shall inure to the benefit of the parties hereto and their representatives, successors and assigns, as applicable.

11. Counterparts. This Agreement may be executed in any number of Counterparts, all of which taken together shall constitute one and the same instrument, and any person intended to be a signatory hereto may execute this Agreement by signing any such Counterpart.

12. Governing Law. The laws of the state in which the Premises are located shall govern the validity, performance and enforcement of this Agreement. The invalidity or unenforceability of any provision of this Agreement shall not affect or impair any other provision.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth in their respective acknowledgments.

*[Remainder of Page Intentionally Left Blank.
Signatures with Acknowledgments to follow.]*

[SIGNATURE AND ACKNOWLEDGMENT PAGE OF LENDER TO SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT]

WITNESS the following signatures and seals.

“LENDER” TD Taylor Investments, LLC,
a Utah limited liability company

TD Taylor LLC

By:

Trent B Taylor

Title: Manager

ACKNOWLEDGEMENT

STATE OF Utah

§

COUNTY OF Box Elder

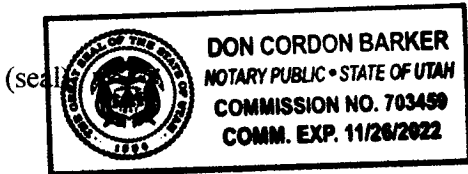
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BEFORE ME, the undersigned, a Notary Public in and for the aforesaid County and State, on this day personally appeared TD Taylor in Trent Taylor a or the Manager of TD Taylor LLC, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said entity and that he or she executed the same as the act of such entity for the purposes therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 9th day of July, 2019.

[Signature]
(Notary signature)



Don Cordon Barker
(typed or printed name)

My commission expires: 11/26/22

WB

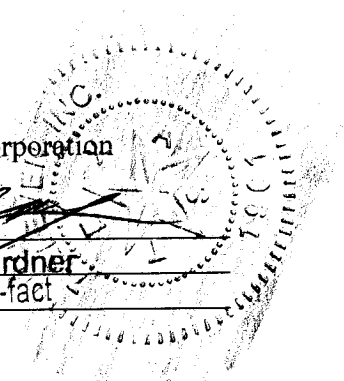
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[SIGNATURE AND ACKNOWLEDGMENT PAGE OF TENANT TO SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT]

WITNESS the following signatures and seals.

Attest: Robin D. Bryant
Name: Robin D. Bryant
Title: Assistant Secretary

"TENANT"
7-ELEVEN, INC., a Texas corporation
By: Nathanael Gardner
Name: Nathanael Gardner
Title: Attorney-in-fact

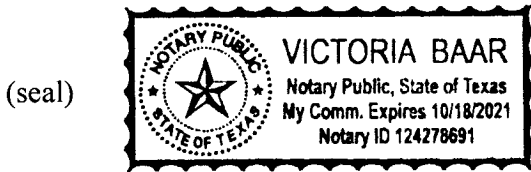


ACKNOWLEDGEMENT

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned, a Notary Public in and for the aforesaid County and State, on this day personally appeared Nathanael Gardner and Robin D. Bryant, a(n) Attorney-in-fact and an Assistant Secretary, respectively, of 7-ELEVEN, INC., known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said corporation and that they each executed the same as the act of such corporation for the purposes therein expressed and in the capacities therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 2ND day of October, 2019.



Victoria Baar
(Notary signature)
Victoria Baar
(typed or printed name)

My commission expires: 10-18-2021

Exhibit A

Legal Description of the Premises

The Land referred to herein below is situated in the County of Weber, State of Utah, and is described as follows:

PARCEL 1:

PART OF THE SOUTHWEST QUARTER OF SECTION 8, TOWNSHIP 6 NORTH, RANGE 1 WEST, SALT LAKE MERIDIAN, U.S. SURVEY: BEGINNING AT A POINT 1297.72 FEET NORTH AND 326.7 FEET WEST FROM THE SOUTHEAST CORNER OF SAID QUARTER SECTION; THENCE NORTH 263.7 FEET; THENCE EAST 165.2 FEET; THENCE SOUTH 263.7 FEET; THENCE WEST 165.2 FEET TO THE PLACE OF BEGINNING.

11-038-0022

LESS AND EXCEPTING THEREFROM THAT PORTION OF THE ABOVE DESCRIBED PROPERTY DEEDED TO THE STATE ROAD COMMISSION OF UTAH, BY DEED RECORDED IN VOLUME 130 OF DEEDS, PAGE 24, AND ALSO EXCEPTING THAT PORTION LYING WITHIN NORTH STREET.

ALSO LESS AND EXCEPTING

A PARCEL OF LAND IN FEE FOR THE TRAFFIC SAFETY IMPROVEMENT OF HIGHWAY STATE ROUTE 204 KNOWN AS PROJECT NO. S-0204(8)5, BEING PART OF AN ENTIRE TRACT OF PROPERTY, SITUATE IN THE NORTHEAST ¼ SOUTHWEST ¼ OF SECTION 8, TOWNSHIP 6 NORTH, RANGE 1 WEST, S.L.B. & M, AND FILED AS ENTRY NO. 1101740 IN THE WEBER COUNTY RECORDER'S OFFICE, WEBER COUNTY, UTAH. THE BOUNDARIES OF SAID PARCEL OF LAND ARE DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTH RIGHT OF WAY LINE OF NORTH STREET, 33.00 FEET WIDE, AND THE EAST LINE OF SAID TRACT FILED AS ENTRY NO. 1101740 BEING A POINT 1297.72 FEET NORTH AND 326.7 FEET WEST FROM THE SOUTHEAST CORNER OF SAID QUARTER SECTION, AND BEING SOUTH 88°50'11" EAST, 227.70 FEET ALONG THE MONUMENT LINE IN NORTH STREET AND NORTH 01°17'34" EAST, 33.00 FEET FROM THE OGDEN CITY STREET MONUMENT LOCATED AT THE INTERSECTION OF WALL AVENUE AND NORTH STREET, BEING ALSO AT A POINT 9.00 FEET PERPENDICULARLY DISTANT NORTHERLY FROM THE CENTERLINE OF SAID NORTH STREET, ENGINEERS STATION 56+36.42; THENCE NORTH 88°50'11" WEST, 147.70 FEET ALONG SAID NORTH RIGHT OF WAY LINE, TO A POINT IN EAST RIGHT OF WAY LINE OF SAID WALL AVENUE, 100 FEET WIDE, WHICH POINT IS 9.00 FEET PERPENDICULARLY DISTANT NORTHERLY FROM THE CENTERLINE OF SAID NORTH STREET ENGINEERS STATION 54+88.72; THENCE NORTH 01°17'34" EAST, 48.43 FEET ALONG SAID EAST RIGHT OF WAY LINE OF WALL AVENUE, TO A POINT 57.42 FEET PERPENDICULARLY DISTANT NORTHERLY FROM THE CENTERLINE OF SAID NORTH STREET AT ENGINEERS STATION 54+88.84; THENCE SOUTH 41°48'49" EAST, 17.62 FEET TO A POINT 44.54 FEET PERPENDICULARLY DISTANT NORTHERLY FROM THE CENTERLINE OF SAID NORTH STREET AT ENGINEERS STATION 55+00.84; THENCE SOUTH 01°09'49" WEST, 31.03 FEET TO A POINT 13.51 FEET PERPENDICULARLY DISTANT NORTHERLY FROM THE CENTERLINE OF SAID NORTH STREET AT ENGINEERS STATION 55+00.84; THENCE SOUTH 88°44'50" EAST, 100.34 FEET TO A POINT 13.36 FEET PERPENDICULARLY DISTANT NORTHERLY FROM THE CENTERLINE OF SAID NORTH STREET AT ENGINEERS STATION 56+01.18; THENCE SOUTH 81°47'21" EAST, 35.51 FEET TO EAST LINE OF SAID TRACT FILED AS ENTRY NO. 1101740, AND THE POINT OF BEGINNING.

11-038-0034

Location 38847
120 Wall North Street and Wall Avenue
Harrisville, Utah