

PERMANENT EASEMENT

FOR AND IN CONSIDERATION of the sum of Ten Dollars (\$10.00) cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of all of which are hereby acknowledged, the undersigned Grantor, MDC COAST 21, LLC, a Delaware limited liability company, as the fee simple owner (“**MDC**”), and Family Dollar Stores of South Dakota, LLC, a Virginia limited liability company, as the tenant (“**Family Dollar**”), MDC and Family Dollar together the “Grantors,” do hereby sell, convey and quitclaim, without any warranties, unto the CITY OF DEADWOOD, SOUTH DAKOTA, a city commission municipality, as Grantee, a non-exclusive permanent easement (“**Easement**”) ON that certain real property depicted as “Permanent Utility Easement 10x10” on Exhibit “A,” attached hereto and incorporated herein by reference (the “**Easement Area**”), which is a part of that certain real property commonly known as 124 Sherman St., Deadwood, SD 57732 (“**Property**”).

The Easement conveyed herein solely for the purpose of, Grantee, at its sole cost and expense, constructing, installing, maintaining and repairing a drop inlet (“**Drop Inlet**”) within the Easement Area (“**Grantee’s Work**”) to assist with storm water runoff from the Property to stormwater facilities that the Grantee will place, at its sole cost and expense, on the adjacent property owned by the Grantee (“**Facilities**”). The Drop Inlet installed by Grantee in connection with its rights herein shall be below or flush with the ground. Notwithstanding anything to the contrary contained herein, except for the Drop Inlet, the Facilities shall be located solely on the Grantee’s adjacent property.

Grantors’ execution of this Permanent Easement and the granting of the rights herein described are subject to the following terms. Grantee’s exercise of any rights granted herein shall be deemed an acceptance of said terms.

For purposes of this Permanent Easement, the term “Grantee” shall include Grantee, its affiliates, agents, employees and/or contractors.

1. Grantee’s exercise of its rights under the Easement shall be conducted in a manner that shall not materially interfere with or impair any operations or business being conducted on the Property, pedestrian or vehicular access to/from the Property, or the visibility of any signage situated on the Property.
2. Grantee shall have no right to park vehicles, store equipment or materials on the Property.
3. Grantee may remove or trim such trees and bushes located in the Easement Area as may be necessary to exercise the rights conveyed herein. Any damage to improvements on the Property resulting from Grantee's exercise of rights under this Easement shall be repaired or replaced at Grantee’s expense.

4. Grantee shall, at its sole cost and expense, operate, maintain, repair and, as necessary, replace the Drop Inlet and Facilities and the connection between them, keeping the same in good condition and repair so that the same remain in a condition reasonably suitable to permit the operation/function of the Drop Inlet for the purposes described herein.
5. Grantors reserve the right to the full use and enjoyment of the Easement Area subject to the rights herein granted to Grantee. Future notices regarding the Easement shall be directed to: Realty Income Corporation, Attn.: Legal Department, 11995 El Camino Real, San Diego, CA 92130, Telephone: (858) 284-5000. So long as Family Dollar is MDC's tenant for the Property, a copy of notices regarding the Easement shall be sent to: Family Dollar, 500 Volvo Parkway, Chesapeake, Virginia 23320, Reference: Store #30984.
6. To the extent permitted by law, Grantee shall and does hereby indemnify, defend and protect Grantors and hold Grantors harmless from any and all loss, cost, damage, expense and/or liability incurred in connection with or arising from Grantee's Work and exercise of Grantee's rights under the Easement. This indemnification (a) shall survive the expiration or termination of the Easement; (b) shall not be limited by reason of any insurance carried by Grantee, Grantors, or any tenant of the Property; and (c) shall extend to any tenant or occupant of the Property.
7. Grantee accepts the Property as is, where is, with all faults. Moreover, (a) Grantors make no representations or warranties of any kind, either express or implied, with respect to the Property or the condition thereof; and (b) the rights granted by this Easement are subject to all matters of record, applicable laws to which the Property is subject, and to any state of facts which a current survey or physical inspection of the Property might disclose.
8. If the Easement is discontinued or abandoned for the purposes herein granted, the Easement shall, without notice, demand or re-entry, revert to MDC, its successors and assigns. In such event, upon the request of MDC, Grantee shall convey the Easement Area by Quitclaim deed to MDC.
8. MDC shall have the right, at its sole option and expense, to relocate the Easement to a location of MDC's choosing on the Property, provided such relocation does not frustrate the purposes of the Easement. In the event that MDC relocates the Easement, Grantee shall agree to modify the Easement to accommodate the new location.

Further, Grantee hereby grants a perpetual non-exclusive easement to Grantors to use the Drop Inlet for the acceptance of stormwater collected by the Drop Inlet on MDCs Property and constructed by Grantee, to divert stormwater from the Property to the Facilities constructed by Grantee on Grantee's adjacent parcel.

So long as Family Dollar is MDC's tenant for the Property, Family Dollar shall have the right to enforce this Easement.

[SIGNATURES ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the duly authorized representative of MDC has executed this instrument on this the _____ day of _____, 2021.

MDC COAST 21, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

On _____, 2021 before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

(Notary Seal)

IN WITNESS WHEREOF, the duly authorized representative of Family Dollar has executed this instrument on this the _____ day of _____, 2021.

FAMILY DOLLAR STORES OF SOUTH DAKOTA, LLC
a Virginia limited liability company

By: _____

Name: _____

Title: _____

[PLEASE INSERT NOTARY ACKNOWLEDGEMENT]

IN WITNESS WHEREOF, the duly authorized representative of the Grantee has executed this instrument on this the _____ day of _____, 2021.

**CITY OF DEADWOOD, SOUTH
DAKOTA,**
a city commission municipality

By: _____
Name: _____
Title: _____

[PLEASE INSERT APPLICABLE NOTARY ACKNOWLEDGEMENT]

Exhibit “A”
Legal Description & Depiction

