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Prepared by and  
After Recording Return  
To:

**Younkins & Schecter LLP**  
~~420 Lexington Avenue, Ste 2050~~  
New York, New York 10170

2008 066399

STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

2008 SEP 24 AM 8:33

MICHAEL A. BROWN  
RECORDER

**SUBORDINATION, NONDISTURBANCE  
AND ATTORNMENT AGREEMENT**

This Subordination, Nondisturbance and Attornment Agreement ("SNDA") is made and entered into as of the 29<sup>th</sup> day of June, 2008, by and between DOLLAR TREE STORES, INC., a Virginia corporation ("Tenant"), whose address is 500 Volvo Parkway, Chesapeake, Virginia 23320, and, GATEWAY ARTHUR, INC., a California 501 (c) (25) corporation, as successor in interest to Bradley Operating Limited Partnership, its successors and assigns, ("Landlord"), whose address is c/o Emmes Asset Management CO., LLC, 420 Lexington Avenue, Suite 900, New York, New York 10170, and, MANUFACTURERS AND TRADERS TRUST COMPANY, a New York banking corporation, its successors and assigns, ("Lender"), whose address is 350 Park Avenue, New York, New York 10022.

Document is  
RECITALS  
NOT OFFICIAL!

- A. The Tenant is the present tenant under a lease dated March 31, 2004, with Gateway Arthur, Inc., as Landlord, as successor in interest to Bradley Operating Limited Partnership, known as Dollar Tree Store #748, Village Shopping Center, Gary, Indiana, (the "Premises"), to include Commencement Letter dated September 29, 2004, (said documents, including amendments, 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.

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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 a separate Assignment of Rents and Leases ("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 SNDA, 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 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.

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 notices and other communications permitted or required by the provisions of this Agreement shall be in writing and shall be deemed to have been properly given or served upon receipt or rejection after depositing the same with the United States Postal Service, or any official successor thereto, designated as Certified Mail, Return Receipt Requested, bearing adequate postage, or deposited with a reputable private courier or overnight delivery service and addressed as hereinafter provided. Either party shall have the right from time to time to change its address, pursuant to the notice provisions of the Lease.





Each notice to Lender shall be addressed as follows:

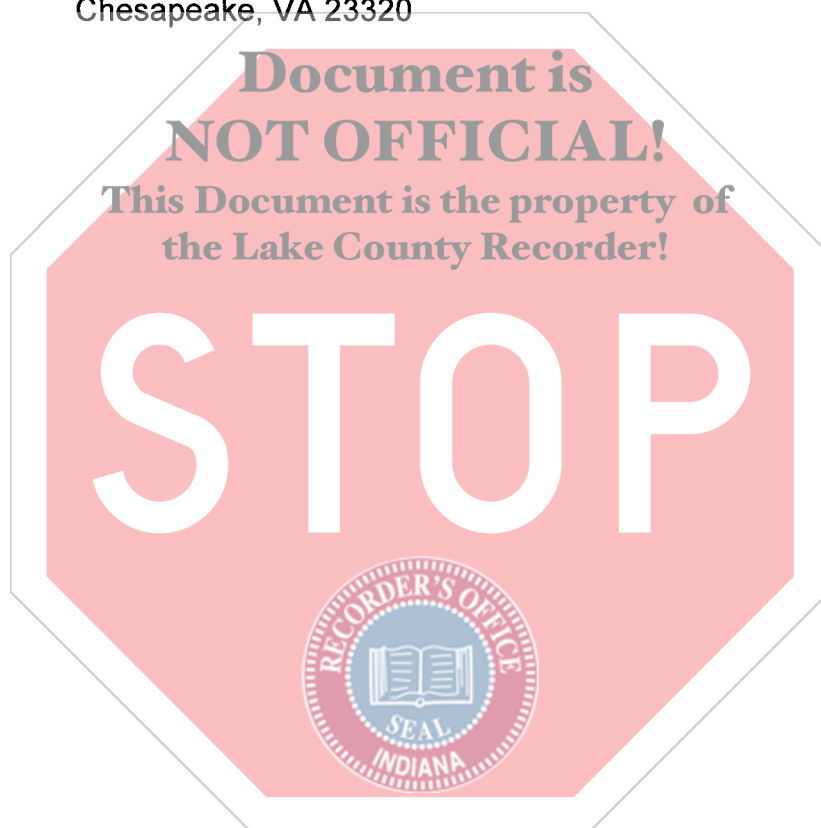
MANUFACTURERS AND TRADERS TRUST COMPANY  
350 Park Avenue  
New York, NY 10022

Each notice to Landlord shall be addressed as follows:

GATEWAY ARTHUR, INC  
c/o Emmes Asset Management Co., LLC  
420 Lexington Avenue, Suite 900  
New York, NY 10170  
Attention: Legal Department

Each notice to Tenant shall be addressed as follows:

DOLLAR TREE STORES, INC.  
ATTN: Lease Administration Dept #748  
500 Volvo Parkway  
Chesapeake, VA 23320



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 SNDA 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:

  
John L. Cote, Vice President  
Corporate Counsel

Date: June 2, 2008

FEIN#: 54-1387365

**NOT OFFICIAL!**

**This Document is the property of  
the Lake County Recorder!**

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

The foregoing document was acknowledged before me this 2<sup>ND</sup> day of June, 2008, by John L. Cote, Vice President and Corporate Counsel of DOLLAR TREE STORES, INC., a Virginia corporation.

  
Notary Public  
My commission expires: 1/31/11

(Notarial Seal)



LANDLORD:  
GATEWAY ARTHUR, INC  
By: Emmes Asset Management company LLC,  
its authorized agent

By: \_\_\_\_\_  
Name: Gary M. Tischler  
Title: Authorized Signatory  
Date: 7.2.08  
FEIN#: 20-8380303

STATE OF NEW YORK,  
CITY/COUNTY OF NEW YORK, to-wit:

The foregoing document was acknowledged before me this 2<sup>nd</sup> day of July, 2008, by Gary M. Tischler as Authorized signatory for Gateway Arthur, Inc., a California corporation.

Grace Alvarez  
Notary Public  
My commission expires: 8/6/2011

(Notarial Seal)

GRACE ALVAREZ  
Notary Public - State of New York  
NO. 01AL6172263  
Qualified in Nassau County  
My Commission Expires 8/6/2011



LENDER:  
MANUFACTURERS AND TRADERS TRUST COMPANY

By: [Signature]  
Name: Jonathan Tolpin  
Title: [Signature]  
Date: July 29, 2008  
FEIN#: 16-8538020

STATE OF New York,  
CITY/COUNTY OF New York, to-wit:

The foregoing document was acknowledged before me this 29<sup>th</sup> day of July, 2008, by Jonathan Tolpin as Vice President for Manufacturers and Traders Trust Company, a New York banking corporation.

[Signature]  
Notary Public  
My commission expires: 10/19/2010

(Notarial Seal)





Exhibit "A"  
LEGAL DESCRIPTION

The Southeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 20, Township 36 North, Range 8 West of the Second Principal Meridian, and the East  $\frac{1}{2}$  of the Southwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of said Section 20, Township 36 North, Range 8 West of the Second Principal Meridian, in Lake County, Indiana, except the following 3 legal descriptions:

- (a) The North 770.29 feet of the West 600 feet of the East  $\frac{1}{2}$  of the Southwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 20, Township 36 North, Range 8 West of the Second Principal Meridian in Lake County, Indiana.
- (b) The West 598.70 feet of the East  $\frac{1}{2}$  of the Southwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 20, Township 36 North, Range 8 West of the Second Principal Meridian, except the North 770.29 feet thereof in the City of Gary, Lake County, Indiana.
- (c) The South 274 feet of the North 512.5 feet of the East 171.0 feet of the Southeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 20, Township 36 North, Range 8 West of the Second Principal Meridian, in Lake County, Indiana.

