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Skagit County Auditor

1/22/2002 Page 1 of 10 3:57PM

AFTER RECORDING RETURN TO:

Gregory Bray, Esq.
 Milbank, Tweed, Hadley & McCloy, LLP
 601 South Figueroa Street
 30th Floor
 Los Angeles, CA 90017

FIRST AMERICAN TITLE CO.

Document Title(s) (or transactions contained therein):	
Lease Assignment, Assumption, Amendment, Ratification, Consent And Nondisturbance Agreement	
Reference Number(s) of Documents assigned or released:	
<div style="text-align: right;">SKAGIT COUNTY WASHINGTON REAL ESTATE EXCISE TAX</div>	
Grantor(s) (Last name first, then first name and initials) <div style="float: right;">JAN 22 2002</div>	
1. Brown & Cole, Inc.	
2. Pacific Northwest Properties	
Grantee(s) (Last name first, then first name and initials) <div style="float: right;"> Amount Paid \$ <u>0</u> Skagit Co. Treasurer By <u>[Signature]</u> Deputy </div>	
1. Brown & Cole Stores, LLC	
2. General Electric Capital Corporation	
Legal description: Lot 2, Short Plat No. SW-0284, Recorded in Book 6 of Short Plats, Page 200, Under Auditor's File No. 8501140002, Records of Skagit County, Washington. Legal Description is on Exhibit A of document.	
Assessor's Property Tax Parcel/Account Number(s):	
4170-000-001-005 R76911, 4170-000-001-0104 R100311, 4170-000-001-0302 R100330, 4170-000-001-0401 R100335, 4170-000-001-0500 R100467, 4170-000-001-0609 R100469, 4170-000-001-0203 R100316	

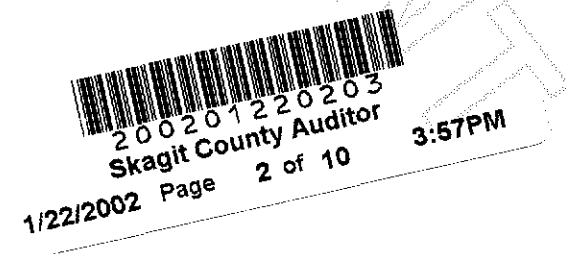
LEASE ASSIGNMENT, ASSUMPTION, AMENDMENT, RATIFICATION, CONSENT
AND NONDISTURBANCE AGREEMENT

Store Name and No. Sedro Wooley Thrifty #22

THIS LEASE ASSIGNMENT, ASSUMPTION, AMENDMENT, RATIFICATION, CONSENT AND NONDISTURBANCE AGREEMENT (this "Agreement") is made by and between PACIFIC NORTHWEST PROPERTIES, a Washington general partnership ("Landlord"), BROWN & COLE, INC., a Washington corporation ("Tenant"), and BROWN & COLE STORES, LLC, a Washington limited liability company ("B&C Stores") and is consented to by U.S. BANK, N.A., a national banking association, as successor by merger to West One Bank, Washington ("Landlord's Lender").

RECITALS

- A. Landlord, by that certain Lease and Agreement dated April 1, 1988, as amended by that certain Amendment to Lease and Agreement dated November 22, 1989, the Lease Amendment, Ratification, Consent and Nondisturbance Agreement dated February 28, 1994, a Lease Assignment, Assumption, Amendment, Ratification, Consent and Nondisturbance Agreement dated January 24, 1997 and a 2001 Amendment to Lease and Agreement dated September 17, 2001 (collectively the "Lease"), leases to Tenant certain real property located at 530 Crossroads Square, Sedro Wooley, Skagit County, Washington (the "Premises"). The Landlord's right, title and interest in the Premises and the Lease is encumbered by a Deed of Trust, Assignment of Rents and Leases and Security Agreement dated May 3, 1989, (the "Fee-Deed of Trust") in favor of Landlord's Lender, as successor by assignment to Security Pacific Bank Washington, N.A.. A Memorandum of the Lease was recorded on _____ under Recording No. _____ in the real property records of Skagit County, Washington.
- B. Financing from General Electric Capital Corporation (the "Loan"), acting for itself and as agent and/or collateral agent for other lenders (the "Lender") has been sought for the purposes of refinancing certain existing indebtedness of Tenant and for other purposes related to the grocery store business currently conducted by Tenant.
- C. Tenant has formed and is and expects to remain the majority member of B&C Stores, a new Washington limited liability company. In connection with the Loan, Tenant will assign and transfer to B&C Stores, and B&C Stores will accept and succeed to, substantially all of the assets of Tenant used in Tenant's grocery store business, including all of Tenant's right, title and interest in, to and under the Lease (the "Tenant's Interest"). The parties by this Agreement wish to provide for the consent of Landlord to the substitution of B&C Stores for Tenant as the Tenant under the Lease.



- D. The Lease permits the Tenant's Interest to be encumbered by a leasehold deed of trust, and the Tenant's Interest is presently encumbered by a leasehold deed of trust in favor of Bank of America National Trust and Savings Association ("Existing Lender"). The Loan to be obtained by B&C Stores from Lender will be used in part to refinance the outstanding indebtedness to Existing Lender secured by the existing leasehold deed of trust against the Tenant's Interest. The Loan is to be secured by a new leasehold deed of trust (the "Leasehold Deed of Trust") against the Tenant's Interest in favor of Lender, for itself and as agent and/or collateral agent for the benefit of other lenders, which will replace the existing leasehold deed of trust in favor of Existing Lender.
- E. The parties desire that the Lease be amended for the purpose of substituting B&C Stores as the "Tenant" under the Lease, to substitute the Leasehold Deed of Trust as the "Leasehold Deed of Trust" under the Lease, and to substitute the Lender as the "Lender" under the Lease. The parties by this Agreement wish additionally to effectuate such Lease amendments.
- F. The date on which the Loan closes for purposes of this Agreement shall be called the "Effective Date."

ACCORDINGLY, the parties agree as follows:

1. CONFIRMATION OF ASSIGNMENT; ASSUMPTION. As of the Effective Date all parties acknowledge, confirm and consent to the conveyance and transfer (the "Assignment") of the Tenant's Interest from Tenant to B&C Stores. As of the Effective Date, B&C Stores hereby confirms its acceptance of the Tenant's Interest and agrees to assume each and every obligation associated with the Tenant's Interest, including but not limited to, the payment of all rental and other sums which are and will become due and payable under the Lease as of, or on and after, the Effective Date. The Assignment shall result in a novation, by which B&C Stores shall be fully substituted as the Tenant under the Lease for all purposes.
2. LEASE AMENDMENTS. As of the Effective Date:
 1. All of the Tenant's right, title and interest in and to the Lease is assigned and conveyed to B&C Stores, and the Lease is amended to change the name of the "LESSEE" under the Lease to "Brown & Cole Stores, LLC," a Washington limited liability company.
 2. All references to "LESSEE" in the Lease shall mean and refer to B&C Stores.
 3. Unless and until Tenant and Lender give written notice to Landlord to the contrary, Lender is fully substituted for Existing Lender as the "Lender" referred to in the Lease, and all references in the Lease to the "Lender" shall mean and refer to "General Electric Capital Corporation, acting for itself and as agent and/or collateral agent for



other lenders," and to its and their respective successors and assigns as beneficiary or beneficiaries of the Leasehold Deed of Trust.

4. Unless and until Tenant and Lender give written notice to Landlord to the contrary, all references in the Lease to the "Leasehold Deed of Trust" shall mean and refer to the new Leasehold Deed of Trust in favor of Lender.
5. The first sentence of Section 43 (entitled "*Tenant's Right to Encumber Tenant's Leasehold*") of the Lease is amended to read:

Notwithstanding anything to the contrary provided by this Lease, Tenant may, without the consent of Landlord, encumber this Lease and Tenant's leasehold estate by a deed of trust (a "Leasehold Deed of Trust") executed at arms' length in favor of any institutional lender ("Lender").

The remainder of such Section 43 remains unchanged and in full force and effect.

3. **NO OTHER MODIFICATION.** Except as expressly set forth in this Agreement, all terms and conditions of the Lease remain in full force and effect. Without limiting the foregoing, Landlord and Tenant agree and confirm that the legal description attached as Exhibit A is the correct legal description of the Premises or, if the Premises are located in a shopping center, of such shopping center.
4. **LANDLORD'S RATIFICATION.** Landlord represents and warrants to Tenant and Lender as follows:
 1. The Lease as modified by this Agreement constitutes the entire agreement between Landlord and Tenant as to the leasing of the Premises and the Lease has not been amended or modified except as set forth in this Agreement.
 2. The Lease is in full force and effect. Landlord has no outstanding claims against Tenant pursuant to the Lease or otherwise; to the best knowledge of Landlord there are no outstanding defaults by Tenant under the Lease; and to the best knowledge of Landlord there is no event or occurrence which, with the giving of notice or passage of time, or both, will result in a default by Tenant under the Lease.
 3. As of the date of Landlord's execution of this Agreement, Tenant's payment of all sums due under the Lease (including without limitation common area maintenance, pro rata share of real estate taxes, pro rata share of property insurance, pro rata share of building operating expenses, pro rata share of utilities and services, and pro rata share of management charges) is current.
5. **LANDLORD'S CONSENTS.** If and to the extent that Landlord's consent may be required by the Lease, Landlord consents to (a) the Assignment, (b) the encumbrance of the



Tenant's Interest by the Leasehold Deed of Trust, and (c) the amendments to the Lease set forth in this Agreement.

6. CREDITING OF DEPOSITS. On the Effective Date, Landlord shall credit the amount of all deposits which Tenant has made with Landlord, if any, in B&C Store's favor.
7. LANDLORD'S LENDER'S CONSENTS AND NONDISTURBANCE AGREEMENT.

7.1 Landlord's Lender consents to (a) the Assignment, (b) the encumbrance of the Tenant's Interest by the Leasehold Deed of Trust, and (c) the amendments to the Lease set forth in this Agreement.

7.2 Landlord's Lender ~~agrees to recognize the validity and enforceability of the Lease (as amended by this Agreement) and further~~ agrees that, notwithstanding any default by Landlord under the Fee Deed of Trust, the rights of the holder of the leasehold estate under the Lease ("Holder") to possession and quiet enjoyment of, and all of Holder's rights under the Lease in and to, the Premises, shall not be disturbed by Landlord's Lender unless Holder is in default under the terms of the Lease beyond any cure period granted in this Lease, as amended by this Agreement, ~~to Holder and the holder of any Leasehold Deed of Trust.~~ For the purposes of this Section 7.2 only, the term "Lease" shall be deemed to include any New Lease as defined in the Lease, as such Lease is amended by this Agreement.

8. TENANT. Tenant represents and warrants to B&C Stores and Lender that the Lease as modified by this Agreement constitutes the entire agreement between Landlord and Tenant as to the subleasing of the Premises and the Lease has not been amended or modified, except as set forth in this Agreement.
9. SUCCESSORS AND ASSIGNS; RECORDING. The provisions of this Agreement shall inure to the benefit of Tenant, B&C Stores, Lender (for itself and as agent and/or collateral agent for other lenders), each of the lenders for whom Lender or any successor of Lender may act as agent or collateral agent, and all of their respective successors and assigns, and shall be binding upon Landlord and Landlord's successors and assigns. The parties agree and consent to the filing of this document for recording in Skagit County, Washington.
10. NOTICES TO LENDER. All notices to Lender under the Lease or this Agreement shall be in writing, sent by certain mail, and shall be addressed to Lender at the following address:

General Electric Capital Corporation/Capital Funding, Inc.
Attention: William A. Holley, Esquire
401 Merrit Seven, 2nd Floor
Norwalk, Connecticut 06856



or such other address as the Lender hereafter may specify in writing to Landlord and to B&C Stores.

11. COUNTERPARTS. This Agreement may be signed and acknowledged in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document.
12. COMPLETION OF BLANKS. Each party executing this Agreement authorizes any title insurance company causing this document to be recorded to insert recording numbers of previously-recorded documents, tax parcel or tax account numbers, and legal descriptions in any blanks left by the parties in this document for such information.

***THE REST OF THIS PAGE INTENTIONALLY HAS BEEN LEFT BLANK –
SIGNATURES AND ACKNOWLEDGEMENTS FOLLOW ON SUBSEQUENT PAGES***



DATED as of the 26th day of OCTOBER, 2001

LANDLORD:

PACIFIC NORTHWEST PROPERTIES,
a Washington general partnership,

By: Gerard Christensen
(Signature)

Name: GERARD CHRISTENSEN

Title: MANAGING PARTNER

LANDLORD'S LENDER:

U.S. BANK, N.A., a national banking
association, (as successor-in-interest to West One
Bank, Washington

By: Robert Finkbeiner
(Signature)

Name: ROBERT FINKBEINER

Title: VICE PRESIDENT

TENANT:

BROWN & COLE, INC.,
a Washington corporation

By: James R. Anderson
(Signature)

Name: JAMES R. ANDERSON

Title: SENIOR VICE PRES. INT

B&C STORES:

BROWN & COLE STORES, LLC
a Washington limited liability company

By: James R. Anderson
(Signature)

Name: JAMES R. ANDERSON

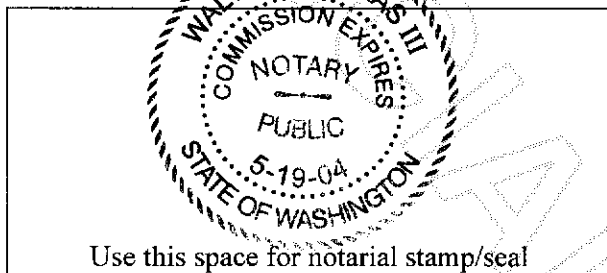
Title: SENIOR VICE PRES. INT



Authentication of Landlord:

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

BE IT REMEMBERED, that on this 26TH day of OCTOBER, A.D. 2001, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came GERMA W. CHRISTENSEN, the MANAGING PARTNER of PACIFIC NORTHWEST PROPERTIES, a partnership duly organized, incorporated and existing under and by virtue of the laws of Washington, who is personally known to me to be the same person who executed, as such officer, the within instrument of writing on behalf of said corporation, and such person duly acknowledged the execution of the same to be the act and deed of said corporation.

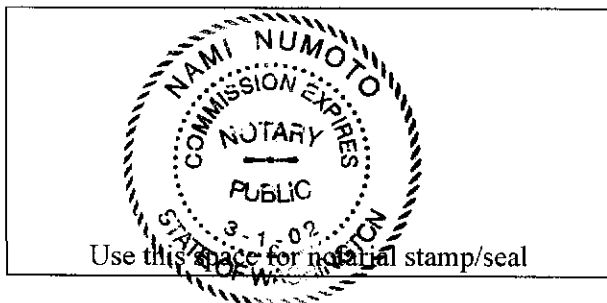


[Signature]
Notary Public in and for the State of
WASHINGTON, residing at WEDDINVILLE
Print or type name: WALTER M. MAAS III
My Commission Expires: 5/19/04

Authentication of Tenant:

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

BE IT REMEMBERED, that on this 17 day of JANUARY, A.D. 2002, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came JAMES R. ANDERSON, the SR. VICE PRES of BROWN & COLE, INC., a corporation duly organized, incorporated and existing under and by virtue of the laws of Washington, who is personally known to me to be the same person who executed, as such officer, the within instrument of writing on behalf of said corporation, and such person duly acknowledged the execution of the same to be the act and deed of said corporation.



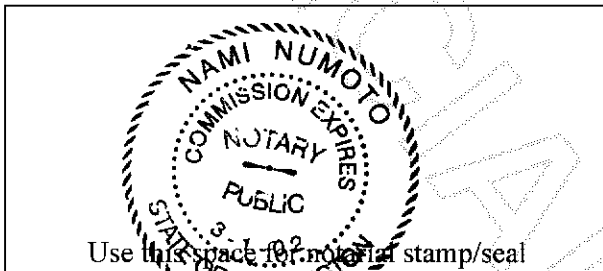
[Signature]
Notary Public in and for the State of
WA, residing at SEATTLE
Print or type name: NAMI NUMOTO
My Commission Expires: 3-1-02



Authentication of B&C Stores:

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

BE IT REMEMBERED, that on this 12 day of JANUARY, A.D. 2001², before me, the undersigned, a Notary Public in and for the County and State aforesaid, came JAMES R. ANDERSON, the SR. VICE PRES. of BROWN & COLE STORES, LLC., a limited liability company duly organized, formed and existing under and by virtue of the laws of Washington, who is personally known to me to be the same person who executed, as such officer, the within instrument of writing on behalf of said corporation, and such person duly acknowledged the execution of the same to be the act and deed of said corporation.

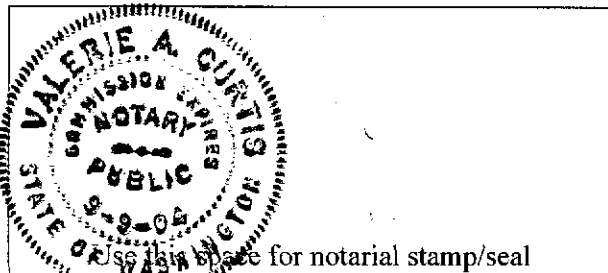


Nami Numoto
Notary Public in and for the State of WA, residing at SEATTLE
Print or type name: NAMI Numoto
My Commission Expires: 3-1-02

Authentication of Landlord's Lender:

STATE OF WASHINGTON)
) ss.
COUNTY OF Skagit)

BE IT REMEMBERED, that on this 27 day of December, A.D. 2001, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Robert Finkbohner, the Vice pres. of U.S. BANK, N.A., a national banking association, who is personally known to me to be the same person who executed, as such officer, the within instrument of writing on behalf of said national banking association, and such person duly acknowledged the execution of the same to be the act and deed of said banking association.



Valerie A. Curtis
Notary Public in and for the State of Wa, residing at Mt Vernon
Print or type name: Valerie A. Curtis
My Commission Expires: 9-9-04



UNOFFICIAL DOCUMENT

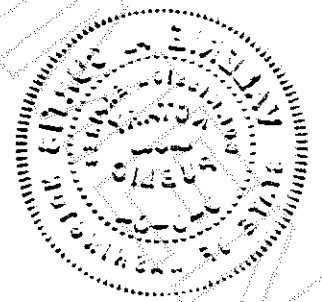


EXHIBIT A
to
LEASE MEMORANDUM, ASSIGNMENT, ASSUMPTION, AMENDMENT,
RATIFICATION, CONSENT AND NONDISTURBANCE AGREEMENT

Property Tax Parcel Nos.: 4170-000-001-005 R76911, 4170-000-001-0104
R100311, , 4170-000-001-0302 R100330, , 4170-
000-001-0401 R100335, 4170-000-001-0500
R100467, , 4170-000-001-0609 R100469, , 4170-
000-001-0203 R100316

Legal Description

LOT 2, SHORT PLAT NO. SW-0284, APPROVED JANUARY 11, 1985,
RECORDED JANUARY 14, 1985 IN BOOK 6 OF SHORT PLATS, PAGE 200,
UNDER AUDITOR'S FILE NO. 8501140002 AND BEING A PORTION OF
LOTS 1, 2, 8, 9 AND 10, "SEDRO ACREAGE", AS PER PLAT RECORDED IN
VOLUME 3 OF PLATS, PAGE 35, RECORDS OF SKAGIT COUNTY,
WASHINGTON.

SITUATE IN THE CITY OF SEDRO WOOLLEY, COUNTY OF SKAGIT,
STATE OF WASHINGTON.



200201220203
Skagit County Auditor