



200201220207

Skagit County Auditor

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3:58PM

## AFTER RECORDING RETURN TO:

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

FIRST AMERICAN TITLE CO.

66249

Document Title(s) (or transactions contained therein):	
Sublease Assignment, Assumption, Amendment, Ratification, Consent And Nondisturbance Agreement	
Reference Number(s) of Documents assigned or released:	
9806120088	
Grantor(s) (Last name first, then first name and initials)	
1. Brown & Cole, Inc.	SKAGIT COUNTY WASHINGTON REAL ESTATE EXCISE TAX  JAN 22 2002  Amount Paid \$ Skagit Co. Treasurer By Deputy
2. Associated Grocers, Incorporated	
Grantee(s) (Last name first, then first name and initials)	
1. Brown & Cole Stores, LLC	By Deputy
2. General Electric Capital Corporation	
Legal description (abbreviated: i.e. lot, block, plat or section, township, range)	
Section 19, Township 35, Range 2 Ptn. Gov. Lot 2	
<input checked="" type="checkbox"/> Additional legal is on Exhibit A of document.	
Assessor's Property Tax Parcel/Account Number(s):	
350219-0-002-0004 R32909	

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

Store Name and No.: ANACORTES #79

THIS SUBLEASE ASSIGNMENT, ASSUMPTION, AMENDMENT, RATIFICATION, CONSENT AND NONDISTURBANCE AGREEMENT (this "Agreement") is made by and between ASSOCIATED GROCERS, INCORPORATED, a Washington corporation ("Sublandlord"), BROWN & COLE, INC., a Washington corporation ("Subtenant"), and BROWN & COLE STORES, LLC, a Washington limited liability company ("B&C Stores").

RECITALS

- A. Sublandlord, as lessee, is a party to that certain Shopping Center Lease (the "Basic Lease") dated as of March 9, 1998, a memorandum of which was recorded with the Auditor of Skagit County, Washington on June 12, 1998 under Skagit County Auditor's No. 9806120088. Pursuant to the Basic Lease, Sublandlord leases certain real property located at 1519 Commercial, Anacortes, Skagit County, Washington (the "Premises").
- B. Sublandlord and Subtenant are parties to that certain Sublease dated as of March 9, 1998, a memorandum of which was recorded with the Auditor of Skagit County, Washington, on \_\_\_\_\_ under Skagit County Auditor's No. \_\_\_\_\_. The Sublease Agreement has been amended by amendments thereto contained in an Amended And Restated Master Supply Agreement With Rights Of First Refusal And Amendments To Subleases dated as of April 4, 2001 by and between Sublandlord and Subtenant (the original Sublease and the foregoing amendments collectively being referred to hereafter as the "Sublease"). Pursuant to the Sublease, Sublandlord subleases the Premises to Subtenant.
- C. Financing from General Electric Capital Corporation ("Lender") has been sought for the purposes of refinancing certain existing indebtedness of Subtenant and for other purposes related to the grocery store business currently conducted by Subtenant (the "Loan").
- D. Subtenant 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, Subtenant will assign and transfer to B&C Stores, and B&C Stores will accept and succeed to, substantially all of the assets of Subtenant used in Subtenant's grocery store business, including all of Subtenant's right, title and interest in, to and under the Sublease (the "Subtenant's Interest"). The parties by this Agreement wish to provide for the consent of Sublandlord to the substitution of B&C Stores for Subtenant as the subtenant under the Sublease.
- E. The Sublease permits the Subtenant's Interest to be encumbered by a leasehold deed of trust, and the Subtenant'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 Subtenant's Interest. The Loan is to be secured by a new leasehold deed of trust (the "Leasehold Deed of Trust") against the Subtenant'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.

- F. The parties desire that the Sublease be amended for the purpose of substituting B&C Stores as the "Subtenant" under the Sublease, to substitute the Leasehold Deed of Trust as the "Leasehold Deed of Trust" under the Sublease, and to substitute the Lender as the "Lender" under the Sublease. The parties by this Agreement wish additionally to effectuate such Sublease amendments.
- G. 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 Subtenant's Interest from Subtenant to B&C Stores. As of the Effective Date, B&C Stores hereby confirms its acceptance of the Subtenant's Interest and agrees to assume each and every obligation associated with the subtenant'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 Sublease as of, or on and after, the Effective Date. Subject to Section 2.5 of that Contribution Agreement dated August 8, 2001 between Brown & Cole, Inc., Sublandlord and B&C Stores, the Assignment shall result in a novation, by which B&C Stores shall be fully substituted as the subtenant under the Sublease for all purposes.
2. SUBLEASE AMENDMENTS. As of the Effective Date:
  1. All of the Subtenant's right, title and interest in and to the Sublease is assigned and conveyed to B&C Stores, and the Sublease is amended to change the name of the "Sublessee" to "Brown & Cole Stores, LLC," a Washington limited liability company. All references to "Sublessee" in the Sublease shall mean and refer to B&C Stores.
  2. The first sentence of Section (41) of the Sublease is amended to read:

Notwithstanding anything to the contrary provided by this Sublease, Subtenant may, without the consent of Sublandlord, encumber this Sublease and Subtenant's subleasehold estate by a deed of trust (a "Subleasehold Deed of Trust") executed at arms' length in favor of any institutional lender ("Lender").



The remainder of Section (41) of the Sublease remains unchanged and in full force and effect.

3. Notwithstanding anything in the Sublease to the contrary, Lender shall, in the event it shall foreclose upon the Leasehold Deed of Trust and thereby succeed to the interest of Subtenant under the Sublease, have the right to exercise any and all rights Subtenant may have to assign or otherwise transfer or convey its subleasehold interest pursuant to the Amended and Restated Master Supply Agreement With Rights of First Refusal and Amendments to Subleases dated as of April 4, 2001 by and between Sublandlord and Subtenant.
4. Unless and until Subtenant and Lender give written notice to Sublandlord to the contrary, Lender is fully substituted for Existing Lender as the "Lender" referred to in the Sublease, and all references in the Sublease 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.
5. Unless and until Subtenant and Lender give written notice to Sublandlord to the contrary, all references in the Sublease to the "Leasehold Deed of Trust" shall mean and refer to the new Leasehold Deed of Trust in favor of Lender.
6. The address for Lender for purposes of any notices given under the Sublease shall be :

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

or to such other address as the Lender or its successors and assigns hereafter may specify in writing to Sublandlord and to B&C Stores.

3. NO OTHER MODIFICATION. Except as expressly set forth in this Agreement, all terms and conditions of the Sublease remain in full force and effect. Without limiting the foregoing, Sublandlord and Subtenant 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. SUBLANDLORD'S RATIFICATION. Sublandlord represents and warrants to Subtenant and Lender as follows:
  1. The Basic Lease described in the foregoing Recital A constitutes the entire agreement between Basic Landlord and Sublandlord as to the leasing of the Premises, and the Basic Lease has not been amended or modified except as set forth in this Agreement.



2. The Sublease as modified by this Agreement constitutes the entire agreement between Sublandlord and Subtenant as to the subleasing of the Premises and the Sublease has not been amended or modified except as set forth in this Agreement.
3. The Sublease is in full force and effect. Sublandlord has no outstanding claims against Subtenant pursuant to the Sublease or otherwise; to the best knowledge of Sublandlord there are no outstanding defaults by Subtenant under the Sublease; and to the best knowledge of Sublandlord there is no event or occurrence which, with the giving of notice or passage of time, or both, will result in a default by Subtenant under the Sublease.
4. As of the date of Sublandlord's execution of this Agreement, to the best of Sublandlord's knowledge, Subtenant's payment of all sums due under the Sublease (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. **SUBLANDLORD'S CONSENTS.** If and to the extent Sublandlord's consent may be required by the Sublease:
  1. Sublandlord consents to (a) the Assignment, (b) the encumbrance of the Subtenant's Interest by the New Leasehold Deed of Trust, and (c) the amendments to the Sublease set forth in this Agreement.
  2. Sublandlord further consents and agrees as follows:
    - a. Personal property of Subtenant (the "Collateral") stored, utilized, and/or installed at the Premises in accordance with the Sublease shall not be deemed a fixture or part of the real estate but shall at all times continue to be considered personal property, whether or not any of the Collateral becomes so related to the real estate that an interest therein would arise under real estate law.
    - b. Until such time as the obligations of Subtenant to Lender are paid in full, Sublandlord disclaims any security interest, lien, or other interest in the Collateral, including any statutory lien pursuant to Section 60.72.010 of the Washington Revised Code, and agrees not to distrain or levy upon any of the Collateral or to assert any claim against the Collateral for any reason.
    - c. Lender or its representatives may enter upon the Premises at any time to inspect the Collateral. Lender shall use reasonable efforts to notify Sublandlord by telephone prior to taking possession of the Collateral, and following written notification to Sublandlord, Lender may advertise and conduct public auctions or private sales of the Collateral at the Premises, in each case without liability of



Lender to Sublandlord; provided, however, that if Lender conducts a public auction or private sale of the Collateral at the Premises, Lender shall use reasonable efforts to notify Sublandlord first and to hold such auction or sale in a manner which would not unduly disrupt Sublandlord's or any other tenant's or subtenant's use of the Premises; and provided further, that Lender shall promptly repair, at Lender's expense, any physical damage to the Premises actually caused by said removal by Lender. Lender shall not be liable for any diminution in value of the Premises caused by the absence of Collateral actually removed or by any necessity of replacing the Collateral.

- d. Sublandlord shall not interfere with any sale of the Collateral, by public auction or otherwise, conducted by or on behalf of Lender on the Premises.
  - e. In addition to any other rights granted to Lender in the Sublease and subject to the payment to Sublandlord by Lender of the rent and other monetary amounts due under the Sublease for the actual period of occupancy by Lender, pro-rated on a per diem basis determined on a thirty (30) day month, Sublandlord will permit Lender to remain on the Premises for a period of up to one hundred eighty (180) days following receipt by Lender of written notice from Sublandlord that Sublandlord has terminated the Sublease and directing removal of the Collateral or, if the Sublease has expired by its own terms, Sublandlord will permit Lender to remain on the Premises for a period of up to thirty (30) days following Lender's receipt of such notice. Lender's right to occupy the Premises under the preceding sentence shall be extended for the time period Lender is prohibited from selling the Collateral due to the imposition of the automatic stay by the filing of bankruptcy proceedings by or against Subtenant. During Lender's occupancy of the Premises, Lender shall provide and retain liability and property insurance coverage, electricity and heat to the extent required by the Sublease. Lender shall not be under any obligation to cure any default by Subtenant under the Sublease, and no action by Lender shall constitute or be deemed to be an assumption by Lender of any unperformed or unpaid obligations of Subtenant under the Sublease for any period prior to the receipt of such notice of termination or any period after Lender ceases to actually occupy the Premises.
  - f. The consents provided for by this Agreement shall be effective without receipt by Sublandlord of a written notice of the New Leasehold Deed of Trust in favor of Lender.
6. **CREDITING OF DEPOSITS.** On the Effective Date, Sublandlord shall credit the amount of all deposits which Subtenant has made with Sublandlord, if any, in B&C Store's favor.
7. **SUBTENANT.** Subtenant represents and warrants to B&C Stores and Lender that the Sublease as modified by this Agreement constitutes the entire agreement between Sublandlord and Subtenant as to the subleasing of the Premises and the Sublease has not been amended or modified, except as set forth in this Agreement.



8. **SUCCESSORS AND ASSIGNS; RECORDING.** The provisions of this Agreement shall bind and inure to the benefit of Sublandlord, Subtenant, 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. The parties agree and consent to the filing of this document for recording in Skagit County, Washington.
9. **SUBORDINATE TO BASIC LEASE.** Anything to the contrary herein notwithstanding, the Sublease and this Agreement and any rights granted hereunder are subordinate and subject to the terms and provisions of the Basic Lease, and neither Subtenant nor Lender shall take any action, or fail to take any required action, or require Sublandlord to take or not take any action, where such action of failure to take such action would cause or result in a default under the Basic Lease.
10. **NOTICES TO LENDER.** All notices to Lender under this Agreement or the Sublease 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, 2<sup>nd</sup> Floor  
Norwalk, Connecticut 06856

or such other address as the Lender hereafter may specify in writing to Basic Landlord, Sublandlord 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, property tax parcel 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 17<sup>th</sup> day of January, 2001<sup>2</sup>

**SUBLANDLORD:**

ASSOCIATED GROCERS, INCORPORATED,  
a Washington corporation

By: Robert E. Hoyt

(Signature)

Name: Robert E. Hoyt

Title: Pres. + CEO

**SUBTENANT:**

BROWN & COLE, INC.,  
a Washington corporation

By: James L. Anderson

(Signature)

Name: James L. Anderson

Title: Senior Vice President

**B&C STORES:**

BROWN & COLE STORES, LLC,  
a Washington limited liability company

By: James L. Anderson

(Signature)

Name: James L. Anderson

Title: Senior Vice President



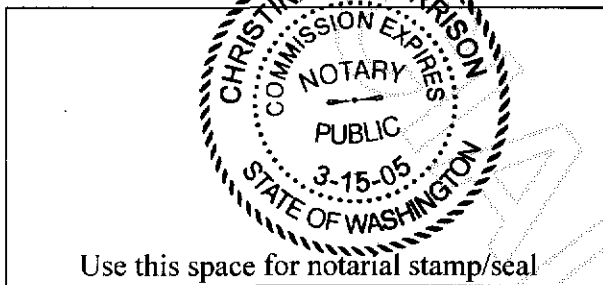


**Authentication of Sublandlord:**

STATE OF Washington )  
COUNTY OF King ) ss.

I certify that I know or have satisfactory evidence that Robert E. Hoyt is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the Pres. & CEO of ASSOCIATED GROCERS, INCORPORATED, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: December 18, 2001.



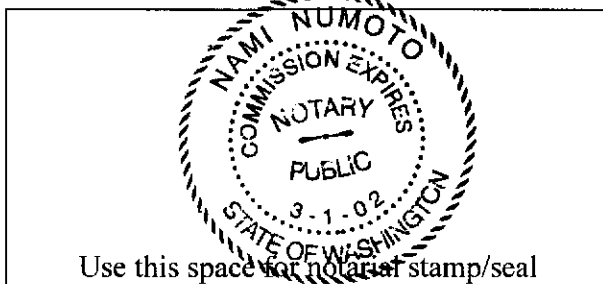
Christina M. Morrison  
Notary Public in and for the State of WA, residing at Renton  
Print or type name: Christina M. Morrison  
My appointment expires: 3-15-05

**Authentication of Subtenant:**

STATE OF WASHINGTON )  
COUNTY OF KING ) ss.

I certify that I know or have satisfactory evidence that JAMES R. ANDERSON is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the SR. V-P. of BROWN & COLE, INC., to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: JAN. 17, 2001.



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

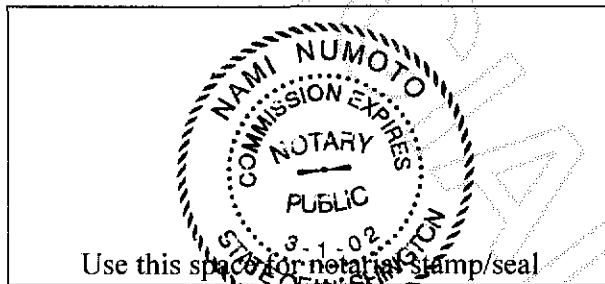


**Authentication of B&C Stores:**

STATE OF WASHINGTON )  
COUNTY OF KING ) ss.

I certify that I know or have satisfactory evidence that JAMES R. ANDERSON is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/~~she~~ was authorized to execute the instrument and acknowledged it as the SR.V-P of BROWN & COLE STORES, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: JAN. 17, 2002.



Nami Numoto  
Notary Public in and for the State of  
WA, residing at SEATTLE

Print or type name: NAMI NUMOTO

My appointment expires: 3-1-02



200201220207  
Skagit County Auditor

**Anacortes Food Pavilion (Store #79)**  
**Legal Description**

THAT PORTION OF GOVERNMENT LOTS 1 AND 2, SECTION 19, TOWNSHIP 35 NORTH, RANGE 2 EAST, W.M., LYING SOUTH OF THE SOUTH LINE OF 15TH STREET, EAST OF THE EAST LINE OF COMMERCIAL AVENUE AND COMMERCIAL AVENUE EXTENDED, EASTERLY OF THE WESTERLY LINE OF THE FIRST DESCRIBED PREMISES IN DEED TO ESTVOLD ENTERPRISES, INC., A CORPORATION, DATED NOVEMBER 12, 1965, FILED DECEMBER 7, 1965, AS FILE NO. 675599, NORTH OF THE NORTH LINE OF 17TH STREET EXTENDED AND WEST OF THE WEST LINE OF "Q" AVENUE, EXCEPT THE FOLLOWING DESCRIBED TRACTS:

PART OF GOVERNMENT LOT 2, SECTION 19, TOWNSHIP 35 NORTH, RANGE 2 EAST, W.M., DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTH LINE OF 17TH STREET WITH THE EAST LINE OF COMMERCIAL AVENUE IN THE CITY OF ANACORTES; THENCE EAST ALONG THE NORTH LINE OF 17TH STREET A DISTANCE OF 37.55 FEET TO THE SOUTHWESTERLY LINE OF THAT CERTAIN TRACT DEEDED TO THE SEATTLE AND MONTANA RAILROAD COMPANY BY DEED DATED JULY 29, 1902, AND RECORDED AUGUST 11, 1902 IN VOLUME 47 OF DEEDS, PAGE 405, AND THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE FROM SAID TRUE POINT OF BEGINNING CONTINUE EAST ALONG THE NORTH LINE OF 17TH STREET A DISTANCE OF 9.8 FEET; THENCE NORTH 0°35'45" EAST PARALLEL TO THE EAST LINE OF COMMERCIAL AVENUE A DISTANCE OF 84.73 FEET; THENCE NORTH 89°24'15" WEST PARALLEL TO THE NORTH LINE OF 17TH STREET, A DISTANCE OF 47.35 FEET TO THE INTERSECTION OF THE EAST LINE OF COMMERCIAL AVENUE AND THE SOUTHWESTERLY LINE OF SAID SEATTLE AND MONTANA RAILROAD COMPANY TRACT; THENCE SOUTH 23°18'30" EAST A DISTANCE OF 92.68 FEET TO THE TRUE POINT OF BEGINNING.

SITUATE IN THE COUNTY OF SKAGIT, STATE OF WASHINGTON.



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