



201603140137

Skagit County Auditor

\$85.00

3/14/2016 Page

1 of

13 2:42PM

AFTER RECORDING MAIL TO:

Name Frost Brown Todd LLC - any Dreisbach
Address 400 West Market St. 32nd Floor
City/State Louisville, KY 40202-3363

Document Title(s):

1. Subordination, Non-Disturbance and Attornment Agreement

Reference Number(s) of Documents Assigned or released:

GUARDIAN NORTHWEST TITLE CO.

110654-5

Grantor(s):

1. Best Buy Stores, L.P.
- 2.

[] Additional information on page of document

Grantee(s):

1. German American Capital Corporation
- 2.

[] Additional information on page of document

Abbreviated Legal Description:

LOTS 2 - 9, INCLUSIVE, AND LOTS 13 AND 14 CITY OF BURLINGTON BSP NO. BURL-01-04

Tax Parcel Number(s):

P121437, P121438, P121439, P121440, P121441, P121442, P121443, P121444, P121448 and P121449

[X] Complete legal description is listed under Exhibit "A"

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement") is made as of the 11th day of MARCH, 2016 by and between **GERMAN AMERICAN CAPITAL CORPORATION**, a Maryland corporation ("Lender"), **BEST BUY STORES, L.P.**, a Virginia limited partnership ("Tenant"), and **STRATFORD HALL, INC.**, a New York corporation ("Landlord"), **SHI OWNER, LLC**, a Delaware limited liability company

RECITALS:

A. Lender is the present owner and holder of a certain mortgage, deed of trust, deed to secure debt or similar security agreement dated March 11, 2016, given by Landlord to Lender (the "Security Instrument") which encumbers the fee estate of Landlord in certain premises described in Exhibit A attached hereto (the "Property") and which secures the payment of certain indebtedness owed by Landlord to Lender evidenced by a certain promissory note, dated March 11, 2016, given by Landlord to Lender (the "Note"); and

B. Tenant is the holder of a leasehold estate in a portion of the Property pursuant to the provisions of a certain lease, described as follows (collectively, the "Lease"): (i) a Lease dated January 19, 2004, (ii) Amendment No. 1 dated March 4, 2004, (iii) Amendment No. 2 dated July 16, 2004, and (iv) Amendment No. 3 dated January 28, 2015; and

C. Tenant has agreed to subordinate the Lease to the Security Instrument and to the lien thereof and Lender has agreed to grant non-disturbance to Tenant under the Lease on the terms and conditions hereinafter set forth.

AGREEMENT:

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. Subordination Tenant agrees that the Lease, as the same may hereafter be modified, amended or extended, and all of the terms, covenants and provisions thereof and all rights, remedies and options of Tenant thereunder are and shall at all times continue to be subject and subordinate in all respects to the Security Instrument and the lien thereof, including without limitation all renewals, increases, modifications, consolidations and extensions thereof.

2. Non-Disturbance So long as Tenant is not in default under the Lease beyond any applicable notice and cure periods, Lender agrees for itself and its successors in interest and for any purchaser of the Property upon a foreclosure of the Security Instrument for the foreclosure of the

Security Instrument or the sale of the Property, Tenant shall not be named as a party therein unless such joinder shall be required by law, provided, however, such joinder shall not result in the termination of the Lease or disturb the Tenant's possession, quiet enjoyment or use of the premises demised thereunder, and the sale of the Property in any such action or proceeding and the exercise by Lender of any of its other rights under the Security Instrument shall be made subject to all rights of Tenant under the Lease. For purposes of this Agreement, a "foreclosure" shall include (but not be limited to) a sheriff's or trustee's sale under the power of sale contained in the Security Instrument, and any other transfer of the Landlord's interest in the Property under peril of foreclosure, including, without limitation to the generality of the foregoing, an assignment or sale in lieu of foreclosure.

3. Attornment. After its receipt of notice from Lender or any person or entity which acquires the Property through a foreclosure (an "Acquiring Party") of the completion of a foreclosure under the Security Instrument or that Lender or Acquiring Party has received a conveyance of the Property in lieu of foreclosure or otherwise obtained the right to possession of the Property, Tenant will be considered to have attorned to and recognized Lender or Acquiring Party as its substitute landlord under the Lease, and Tenant's possession, quiet enjoyment and use of the Property will not be disturbed. The foregoing provision will be self-operative, and will not require the execution of any further instrument or agreement by Tenant to effectuate the attornment and recognition. The attornment and recognition of a substitute landlord will be upon all of the terms set forth in the Lease.

4. No Liability. Lender and Tenant agree that if Lender or any Acquiring Party shall become the owner of the Property by reason of the foreclosure of the Security Instrument or the acceptance of a deed or assignment in lieu of foreclosure or otherwise, the Lease shall not be terminated or affected thereby but shall continue in full force and effect as a direct lease between Lender or any Acquiring Party and Tenant upon all of the terms, covenants and conditions set forth in the Lease and in that event, Tenant agrees to attorn to Lender or Acquiring Party and Lender or Acquiring Party agree to accept such attornment, provided, however, that Lender or Acquiring Party shall not be:

(a) liable for any act or omission of any prior landlord (including Landlord), unless Lender has been given written notice thereof and the same time to cure as afforded Landlord under the Lease, or

(b) subject to any offsets or defenses that Tenant might have against any prior landlord (including Landlord) unless Lender has been given written notice thereof and the same time to cure as afforded Landlord under the Lease; or

(c) bound by any rent or additional rent which is payable on a monthly basis and which Tenant might have paid for more than one (1) month in advance to any prior landlord (including Landlord), unless such prepayment is required under the Lease; or

(d) bound by any amendment or modification of the Lease which would change the term of the Lease or the fixed rent specified therein made without Lender's prior written

consent.

5. Rent. Tenant hereby agrees to and with Lender that upon receipt from Lender of a notice of any default by Landlord under the Security Instrument, Tenant will pay to Lender directly all rents, additional rents, and other sums due under the Lease. Tenant shall have no responsibility to ascertain whether such demand by Lender is permitted under the Security Instrument, or to inquire into the existence of default by Landlord under the Security Instrument. In the event of the foregoing, Landlord hereby authorizes Tenant to pay to Lender directly all rents, additional rents, and other sums due under the Lease and hereby waives any right, claim or demand it may now or hereafter have against Tenant by reason of such payment to Lender, and any such payment shall discharge the obligations of Tenant under the Lease to make such payment to Landlord. In addition, Landlord hereby indemnifies and holds Tenant harmless from and against any and all claims, causes of actions, demands, liabilities and losses of any kind or nature, including but not limited to attorney's fees and expenses, sustained by Tenant as a result of its payment of the rent, additional rents, and other sums due under the Lease directly to Lender in accordance with the terms and conditions hereof.

6. Lender's Consent. Unless Lender shall give its written consent to the same (which consent shall be obtained by Landlord), Lender shall not be bound by any agreement amending or modifying the Lease which would change the term of the Lease or the fixed rent specified therein.

7. Lender to Receive Notices. Tenant shall provide Lender with copies of all written notices of any default by Landlord sent to Landlord pursuant to the Lease simultaneously with the transmission of such notices to the Landlord. Lender shall have the right to remedy any Landlord default under the Lease, or to cause any default of Landlord under the Lease to be remedied during the same time period as Landlord as set forth in the Lease. Tenant shall accept performance by Lender of any term, covenant, condition or agreement to be performed by Landlord under the Lease with the same force and effect as though performed by Landlord.

8. Notices. All notices or other written communications hereunder shall be deemed to have been properly given if given in accordance with the provisions of the Lease and addressed as follows:

If to Tenant:

Best Buy Stores, L.P.
7601 Penn Avenue South
Richfield, MN 55423
Attention: Legal Department - Real Estate

with a copy to:

Robins, Kaplan, Miller & Ciresi
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, MN 55402
Attention: Steven A. Schumeister, Esq.

If to Lender:

German American Capital Corporation
60 Wall Street, 10th Floor
New York, NY 10005
Attention: Robert W. Pettinato, Jr.

With Copy to:

Frost Brown Todd LLC
400 West Market Street, STE 3200
Louisville, KY 40202
Attention: John W. Gragg, Es q.

If to Landlord:

Stratford Hall, Inc.
c/o Colliers International
601 Union Street, STE 5300
Seattle, WA 98101
Attention: _____

or to such other address in the United States as such party from may from time to time designate by written notice to the other parties. Any notice or consent required to be given by or on behalf of either party to the other shall be in writing and given by mailing such notice or consent by either (i) one (1) business day after sending by an overnight courier service, or (ii) two (2) business days after sending by registered or certified mail, return receipt requested, addressed to the other party as indicated above, or at such other address in the United States as may be specified from time to time in writing by either party. Any notice or consent given hereunder by either party shall be deemed effective when mailed as aforesaid, but the time period in which to respond to any notice or consent shall commence to run on the date on which such notice or consent is actually received by the addressee. Refusal to accept delivery shall be deemed receipt thereof.

9. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Lender, Landlord and Tenant and their respective successors and assigns.

10. Definitions. The term "Lender" as used herein shall include the successors and assigns of Lender and any person, party or entity which shall become the owner of the Property by reason of a foreclosure of the Security Instrument or the acceptance of a deed or assignment in lieu of foreclosure or otherwise to which Tenant has received written notice of. The terms "Tenant" and "Landlord" as used herein include any successor and assign of the named Tenant and Landlord herein, respectively.

11. No Oral Modifications. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by all the parties hereto, or if the Note is paid in full, this Agreement shall automatically terminate.

12. Governing Law. This Agreement shall be governed, construed, applied and enforced in accordance with the laws of the State where the Property is located.

13. Inapplicable Provisions. If any provision of this Agreement is held to be invalid or

unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to be enforceable, or if such modification is not practicable, such provision shall be deemed deleted from this Agreement, and the other provisions of this Agreement shall remain in full force and effect.

14. Duplicate Originals; Counterparts. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single agreement. This Agreement shall not be binding on Tenant until a fully-executed and recorded copy hereof has been returned to it.

15. Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular forms of nouns and pronouns shall include the plural and vice versa.

16. Tenant's Personal Property. It is expressly agreed to between Lender, Landlord and Tenant that in no event shall the Security Instrument cover or encumber (shall not be construed as subjecting in any manner to the lien thereof) any of Tenant's moveable trade fixtures, business equipment, furniture, signs, inventory, or other personal property at any time placed in, on or about the Property.

IN WITNESS WHEREOF, Lender, Landlord and Tenant have duly executed this Agreement as of the date first above written.

[SIGNATURES ON NEXT PAGE]

LENDER:

GERMAN AMERICAN CAPITAL CORPORATION, a
Maryland corporation

By: [Signature]
Name: Jon Tilli
Title: Vice President
Date: _____

By: [Signature]
Name: _____
Title: MURRAY MACKINNON
Date: VICE PRESIDENT

TENANT:

BEST BUY STORES, L.P., a Virginia limited partnership

By: BBC Property Co., a Minnesota corporation, its
general partner

By: [Signature]
Name: Cara Helper
Title: Authorized Signatory
Date: 2/10/2016

LANDLORD:

STRATFORD HALL, INC., a New York corporation

By: _____
Name: _____
Title: _____
Date: _____

LENDER:

GERMAN AMERICAN CAPITAL CORPORATION, a
Maryland corporation


By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

TENANT:

BEST BUY STORES, L.P., a Virginia limited partnership

By: BBC Property Co., a Minnesota corporation, its
general partner

By:  _____
Name: Cara Helper
Title: Authorized Signatory
Date: 2/10/2016

LANDLORD:

STRATFORD HALL, INC., a New York corporation

By: _____
Name: _____
Title: _____
Date: _____

STATE OF _____)
) ss.
COUNTY OF _____)

On _____, 2016, before me, _____, a Notary Public in
and for said State, personally appeared _____,
_____ and _____,

_____ of **GERMAN AMERICAN CAPITAL CORPORATION**, a, Maryland
corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be
the person whose name is subscribed to the within instrument and acknowledged to me that he/she
executed the same in his/her authorized capacity, and that by his/her signature on the instrument the
person, of the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

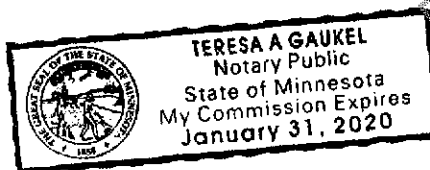
Notary Public
My Commission Expires: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

On Feb 10, 2016, before me, Teresa A. Gaukel, a Notary Public in and
for said State, personally appeared Cara Helper, Authorized Signatory, of BBC Property Co., a
Minnesota corporation, the general partner of **BEST BUY STORES, L.P.**, a Virginia limited
partnership, personally known to me (or proved to me on the basis of satisfactory evidence) to be
the person whose name is subscribed to the within instrument and acknowledged to me that he
executed the same in his authorized capacity, and that by his signature on the instrument the person,
of the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Teresa A. Gaukel
Notary Public
My Commission Expires: January 31, 2020



STATE OF New York, New York COUNTY ss:

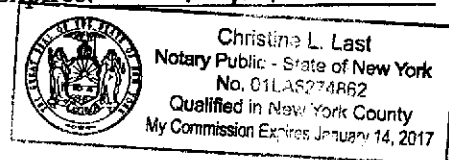
On this 9th day of March, 2016, before me, the undersigned, a Notary Public in and for the State of New York, duly commissioned and sworn, personally appeared Jon Tili, the Vice President of German American Capital Corporation and acknowledged said instrument to be the free and voluntary act and deed of said Corporation for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year first above written.

Name of Notary: Christine L. Last
Notary Public in and for the State of New York,
residing at: New York

[SEAL]

My Commission Expires: 1/14/17



STATE OF New York New York COUNTY ss:

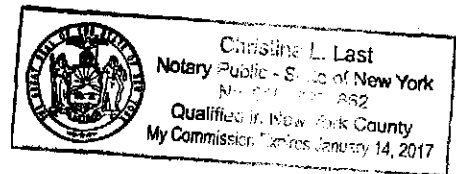
On this 9th day of March, 2016, before me, the undersigned, a Notary Public in and for the State of New York duly commissioned and sworn, personally appeared Murray Machup the Vice President of Genova American Capital Corporation ~~Maryland Corporation~~ and acknowledged said instrument to be the free and voluntary act and deed of said Corporation for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year first above written.

Name of Notary: Christine L. Last
Notary Public in and for the State of New York,
residing at: New York

[SEAL]

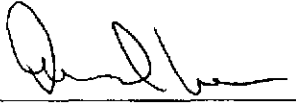
My Commission Expires: 1/14/17



LANDLORD:

SHI OWNER, LLC, a Delaware limited liability corporation

By: **STRATFORD HALL, INC.**, a Delaware corporation, its Sole Member and Manager

By: 

Name: Frank Lee

Title: Authorized Signatory

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 *Los Angeles*

On *March 9, 2016*

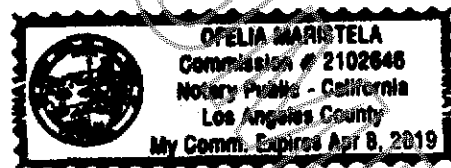
before me, *Ofelia Maristela*, a Notary Public personally appeared
Frank Lee

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 *Ofelia Maristela*



(This area for official notarial seal)

Exhibit A

Legal Description

Lots 2 - 9, inclusive, and Lots 13 and 14, inclusive, City of Burlington Binding Site Plan No. Buri-01-04, entitled Newman Development of Burlington, LLC, Retail/Commercial Center, approved March 8, 2004 and recorded March 15, 2004 under Skagit County Auditor's File No. 200403150156, and being a portion of Government Lot 8 and the Southeast 1/4 of the Northeast 1/4, Section 7, Township 34 North, Range 4 East, W.M.

TOGETHER WITH an easement for ingress, egress and utilities as described in that instrument recorded on February 11, 2004, under Auditor's File No. 200402110099, records of Skagit County, Washington.

ALSO TOGETHER WITH an easement for ingress, egress and utilities as described in that instrument recorded on March 15, 2004 under Auditor's File No. 200403150158 and re-recorded April 8, 2004, under Auditor's File No. 200404080093, records of Skagit County, Washington.

Situate in the County of Skagit, State of Washington.

Burlington Crossings Shopping Center Parcel Numbers:

#340407-0-009-0000
#340407-0-023-0200
#340407-0-087-0005
#340407-1-027-0006
#340407-1-023-0018
#340407-1-028-0005
#340407-0-010-0007
#340407-1-023-0300
#340407-0-008-0001
#340407-0-008-0100