



200201220204
Skagit County Auditor

1/22/2002 Page 1 of 9 3:58PM

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): | 66249 |
| Lease Assignment, Assumption, Amendment, Ratification, Consent And Nondisturbance Agreement | |
| Reference Number(s) of Documents assigned or released: | |
| 9402280160, 9402280159, 9701280068 | |
| Grantor(s) (Last name first, then first name and initials) | |
| 1. Brown & Cole, Inc. | SKAGIT COUNTY WASHINGTON REAL ESTATE EXCISE TAX |
| 2. Thrifty Properties of Burlington | |
| Grantee(s) (Last name first, then first name and initials) | JAN 22 2002 |
| 1. Brown & Cole Stores, LLC | Amount Paid \$ Skagit Co. Treasurer By Deputy |
| 2. General Electric Capital Corporation | |
| Legal description: | |
| All Block 102 "Amended Plat of Burlington" Legal Description is on Exhibit A of document. | |
| Assessor's Property Tax Parcel/Account Number(s): | |
| 4076-102-026-005 R71976, 4076-102-016-0007 R71975, 4076-102-013-0000 R71974 | |

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

Store Name and No. Burlington Thrifty #44

THIS LEASE ASSIGNMENT, ASSUMPTION, AMENDMENT, RATIFICATION, CONSENT AND NONDISTURBANCE AGREEMENT (this "Agreement") is made by and between THRIFTY PROPERTIES OF BURLINGTON, 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").

RECITALS

- A. Landlord, by that certain Lease dated April 1, 1969, as amended by an Addendum to Lease dated November 11, 1993, by a Lease Amendment, Ratification and Consent Agreement dated February 28, 1994 and a Lease Assignment, Assumption, Amendment, Ratification, Consent and Nondisturbance Agreement dated January 24, 1997 (collectively the "Lease"), leases to Tenant certain real property located at 130 Fairhaven, Burlington, Skagit County, Washington (the "Premises"). 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.



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. **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.
8. **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.



9. 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.

10. 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.
11. 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 15th day of October, 2001

LANDLORD:

THRIFTY PROPERTIES OF BURLINGTON,
a Washington general partnership.

By: R. Kirk Wilson
(Signature)

Name: R. Kirk Wilson
Title: MANAGING PARTNER

TENANT:

BROWN & COLE, INC.,
a Washington corporation

By: [Signature]
(Signature)

Name: James R. Anderson
Title: Senior Vice Pres, dent

B&C STORES:

BROWN & COLE STORES, LLC
a Washington limited liability company

By: [Signature]
(Signature)

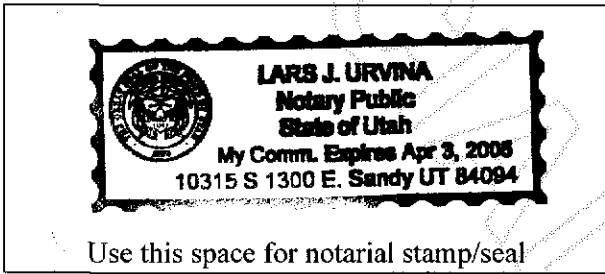
Name: James R. Anderson
Title: Senior Vice Pres, dent



Authentication of Landlord:

STATE OF UT)
) ss.
COUNTY OF SL)

BE IT REMEMBERED, that on this 15th day of October, A.D. 2001, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came R Kirk Wilson, the Managing Partner of THRIFTY PROPERTIES OF BURLINGTON, 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.



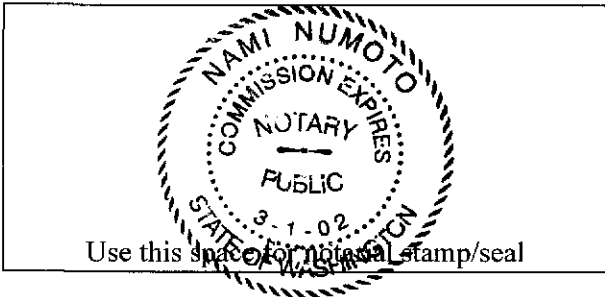
L Sue Urvina
Notary Public in and for the State of UT, residing at SL

Print or type name: L Sue Urvina
My Commission Expires: 4/3/05

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.



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

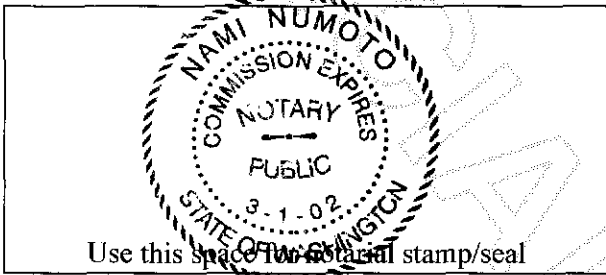
Print or type name: Nami Numoto
My Commission Expires: 3-1-02



Authentication of B&C Stores:

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 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



EXHIBIT A

to

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

Property Tax Parcel Nos.: 4076-102-026-005 R71976, 4076-102-016-0007
R71975, 4076-102-013-0000 R71974

Legal Description

LOTS 1 THROUGH 26, INCLUSIVE, BLOCK 102, "AMENDED PLAT OF BURLINGTON, SKAGIT COUNTY, WASH.", AS PER PLAT RECORDED IN VOLUME 3 OF PLATS, PAGE 17, RECORDS OF SKAGIT COUNTY, WASHINGTON, EXCEPT THOSE PORTIONS CONVEYED TO THE CITY OF BURLINGTON BY DEEDS RECORDED APRIL 13, 1990 UNDER AUDITOR'S FILE NOS. 9004130154 AND 9004130155, TOGETHER WITH ALL OF THE VACATED ALLEY IN SAID BLOCK 102.

SITUATE IN THE CITY OF BURLINGTON, COUNTY OF SKAGIT, STATE OF WASHINGTON.



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