

STATE OF ALABAMA

COUNTY OF _____

**SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

Between

WEC 2000A-1 LLC,
Landlord,

FIRST SECURITY BANK, N.A., as Trustee,
Lender

and

Big B, Inc.,
Tenant

Dated as of August 1, 2000

**THIS INSTRUMENT PREPARED BY AND AFTER
RECORDING SHOULD BE RETURNED TO:**

Lewis A. Burleigh, Esq.
Day, Berry & Howard LLP
260 Franklin Street
Boston, Massachusetts 02110

Inst # 2000-35576

**10/12/2000-35576
08:54 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE**

013 MMB 47.00

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Subordination, Non-Disturbance and Attornment Agreement (this "Agreement") is dated as of August 1, 2000 between First Security Bank N.A., as Trustee ("Lender"), Big B, Inc., an Alabama corporation ("Tenant"), and WEC 2000A-1 LLC, a Delaware limited liability company ("Landlord").

RECITALS

A. Tenant is the tenant under a certain Lease dated as of August 1, 2000, of premises described in Exhibit A attached hereto and made a part hereof (the "Land"), together with the buildings and improvements located on the Land ("Improvements") (collectively, the "Mortgaged Property"). A memorandum or short form of the Lease may be recorded approximately simultaneously with the recording of this Agreement with the Registry of Deeds/Office of the Clerk or in the Land Records, as applicable, in the county or counties, city or cities, or town or towns as applicable, and state where the Land is located (the "Registry").

B. This Agreement is being entered into in connection with a mortgage loan (the "Loan") from Lender to Landlord, secured by, inter alia: (a) a first mortgage, deed of trust or deed to secure debt on and of the Mortgaged Property (the "Security Instrument") dated as of even date herewith to be recorded with the Registry concurrently with, but prior to, the recording of this Agreement; and (b) a first assignment of lease and rents (the "Assignment of Lease and Rents") dated as of even date herewith to be recorded with the Registry concurrently with, but prior to, the recording of this Agreement. The Security Instrument and the Assignment of Lease and Rents are hereinafter collectively referred to as the "Loan Documents".

AGREEMENT

For mutual consideration, including the mutual covenants and agreements set forth below, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Tenant agrees that the Lease, subject to the provisions of paragraph 20(a) of Part II of the Lease, and notwithstanding the exercise of a "Substitute Collateral Right" pursuant to paragraph 19 of the Security Instrument, is and shall be, at the option of Lender upon notice to Tenant, at any time and from time to time, either subject and subordinate, or superior, to the Loan Documents and to all present or future advances under the obligations secured thereby and all renewals, amendments, modifications, consolidations, replacements and extensions of the secured obligations and the Loan Documents, to the full extent of all amounts secured by the Loan Documents from time to time. Such options of the Lender may be exercised an unlimited number of times. This Agreement shall constitute notice to Tenant that for the time being, until further written notice to the contrary, Lender elects that the Lease is and shall be subject and subordinate as aforesaid. In addition, to the extent that the Lease shall entitle Tenant to notice of

any mortgage, this Agreement shall constitute such notice to Tenant with respect to the Security Instrument.

2. Notwithstanding the provisions of Section 1 hereof, Lender agrees that, if the Lender exercises any of its rights under the Loan Documents, including an entry by Lender pursuant to the Security Instrument or a foreclosure of, or exercise of any power of sale under, the Security Instrument, or any sale or transfer in lieu thereof, Lender shall not disturb Tenant's right of quiet possession of the Mortgaged Property under the terms of the Lease so long as no "Event of Default" (as defined in the Lease) shall have occurred and be continuing.

3. Tenant agrees that, in the event of a foreclosure of the Security Instrument by Lender or the acceptance of a conveyance in lieu of foreclosure by Lender or any other succession of Lender to ownership of Landlord's interest in the Mortgaged Property, Tenant will attorn to and recognize Lender as its landlord under the Lease for the remainder of the term of the Lease (including all extension periods which have been or are hereafter exercised) upon the same terms and conditions as are set forth in the Lease, and Tenant hereby agrees to pay and perform all of the obligations of Tenant pursuant to the Lease.

4. Tenant agrees that, in the event Lender succeeds to the interest of Landlord under the Lease, Lender shall not be:

(a) liable for any act or omission of any prior Landlord (including, without limitation, the then defaulting Landlord), or

(b) subject to any defense or offsets which Tenant may have against any prior Landlord (including, without limitation, the then defaulting Landlord), or

(c) bound by any payment of "Fixed Rent" or "Additional Rent" (as such terms are defined in the Lease) which Tenant might have paid for more than one month in advance of the due date under the Lease to any prior Landlord, (including, without limitation, the then defaulting Landlord), except to the extent such monies are actually received by Lender, or

(d) bound by any obligation of any prior Landlord to make any payment to Tenant which was required to be made prior to the time Lender succeeded to any such prior Landlord's interest, except the obligations set forth in Paragraph 33 (Completion Reserve) of the Security Instrument, or

(e) accountable for any monies deposited with any prior Landlord (including security deposits), except to the extent such monies are actually received by Lender, or

(f) bound by any amendment or modification of the Lease or by any waiver or forbearance on the part of any prior Landlord (including, without limitation, the then defaulting Landlord), in either case to the extent the same is made or given without the prior written consent of Lender; or

(g) liable with respect to warranties or indemnities of any nature whatsoever made by any prior Landlord (including, without limitation, the then defaulting Landlord), including any warranties or indemnities regarding use, compliance with zoning, hazardous

wastes or environmental laws, Landlord's title, Landlord's authority, habitability, fitness for purpose, or possession except for the limited covenant of title set forth in the Lease.

In the event that Lender shall acquire title to the Mortgaged Property, Lender shall have no obligation, nor incur any liability, beyond Lender's then equity interest, if any, in the Mortgaged Property, and Tenant shall look exclusively to such equity interest of Lender, if any, in the Mortgaged Property for the payment and discharge of any obligations or liability imposed upon Lender hereunder, under the Lease or under any new lease of the Mortgaged Property, except with respect to the misappropriation of insurance or condemnation proceeds which have been received by Lender.

5. Tenant hereby acknowledges Lender as being entitled to copies of all notices of Landlord default(s), if any, under the Lease in the same manner as, and whenever, Tenant shall give any such notice of default to Landlord, and no such notice of default shall be deemed given to Landlord unless and until a copy of such notice shall have been so delivered to Lender. 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 and shall accept notices of default from Lender. Lender's cure of Landlord's default shall not be considered an assumption by Lender of Landlord's other obligations under the Lease. If, in curing any such default, Lender requires access to the Mortgaged Property to effect such cure, Tenant shall furnish access to the Mortgaged Property to Lender as required by Lender to effect such cure at all reasonable times and manners; provided that Tenant's occupancy, use and enjoyment of the Mortgaged Property is not unreasonably disrupted thereby. Unless Lender otherwise agrees in writing, Lender shall have no liability to perform Landlord's obligations under the Lease, both before and after Lender's exercise of any right or remedy under this Agreement except as to the rights of Tenant set forth in paragraph 2 hereof. Neither Lender nor any other purchaser at foreclosure or recipient of a deed in lieu thereof shall become liable under the Lease unless and until Lender or such other purchaser or recipient becomes, and then only with respect to periods in which Lender or its designee or nominee is, the owner of Landlord's interest in the Mortgaged Property. Lender shall have the right, without Tenant's consent but subject to the provisions of this Agreement, to foreclose, or exercise any power of sale under, the Security Instrument or to accept a conveyance in lieu of foreclosure of the Security Instrument or to exercise any other remedies under the Loan Documents.

6. Tenant agrees that Tenant shall not, without the prior written consent of Lender, (a) amend or modify the Lease, (b) terminate, cancel or surrender the Lease except in accordance with the express provisions thereof, or enter into any agreement with Landlord to do so, (c) pay any installment of Fixed Rent or Additional Rent under the Lease more than one month in advance of the due date thereof or otherwise than in the manner provided for in the Lease, or (d) sublease all or any part of the Mortgaged Property except in accordance with the terms of the Lease. Tenant further agrees that upon the assignment or sublease of the Lease in accordance with the terms of the Lease, Tenant shall remain primarily liable for all obligations under the Lease. Tenant further agrees that, to the extent that the Mortgaged Property does not consist of one or more contiguous tax parcels that lie entirely within the boundaries of the Mortgaged Property (the "Tax Parcel Requirement"), Tenant will perform such acts and make such filings as is necessary to cause the Mortgaged Property to comply with the Tax Parcel Requirement within a reasonable period of time, not to exceed 18 months, and until such time as the Tax Parcel

Requirement is satisfied, Tenant will pay all "taxes" (as defined in the Lease) assessed and/or due against all real estate lying within any tax parcel that includes any portion of the Mortgaged Property as and when such taxes are due.

7. Tenant has no knowledge of any prior assignment or pledge of the rents accruing under the Lease by Landlord. Tenant hereby consents to the Assignment of Lease and Rents. Tenant acknowledges that the interest of the Landlord under the Lease is to be assigned to Lender solely as security for the purposes specified in said assignment, and Lender shall have no duty, liability or obligation whatsoever under the Lease or any extension or renewal thereof, either by virtue of said assignment or by any subsequent receipt or collection of rents thereunder, unless Lender shall become the owner of the Mortgaged Property or shall specifically undertake such liability in writing.

8. In accordance with the terms of the Lease, Tenant agrees to permit Lender and or Landlord and Lender's and/or Landlord's representatives access to, and an opportunity to inspect, the Mortgaged Property during normal business hours and upon reasonable notice.

9. If Tenant is a corporation, the individual executing this Agreement on behalf of such corporation is duly authorized to execute and deliver this Agreement on behalf of such corporation, and that this Agreement is binding upon such corporation in accordance with its terms.

10. Any notice, demand, statement, request or consent made hereunder shall be effective and valid only if in writing, referring to this Agreement, signed by the party giving such notice, and delivered either personally to such other party, or sent by nationally recognized overnight courier delivery service or by certified mail of the United States Postal Service, postage prepaid, return receipt requested, addressed to the other party as follows (or to such other address or person as either party or person entitled to notice may by notice to the other party specify):

If to Tenant:

Big B, Inc.
c/o CVS Corporation
One CVS Drive
Woonsocket, Rhode Island 02895
Attention: Property Administration Department
Store #: 4864

with a copy to:

Mintz, Levin, Cohn,
Ferris, Glovsky and Popeo P.C.
One Financial Center
Boston, Massachusetts 02111
Attention: Andrew R. Urban, Esq.

If to Lender:

First Security Bank, N.A.
79 South Main Street
Salt Lake City, Utah 84111
Attention: Val T. Orton

with a copy concurrently to:

Day, Berry & Howard LLP
260 Franklin Street
Boston, Massachusetts 02110
Attention: Lewis A. Burleigh, Esq.

If to Landlord:

WEC 2000A-1 LLC
c/o The Staubach Company
15601 Dallas Parkway, Suite 400
Addison, Texas 75001
Attention: Greg L. England

with a copy concurrently to:

Winstead Sechrest & Minick P.C.
1201 Elm Street, Suite 5400
Dallas, Texas 75270
Attention: J. Richard White, Esq.

Unless otherwise specified, notices shall be deemed given as follows: (i) if delivered personally, when delivered, (ii) if delivered by nationally recognized overnight courier delivery service, on the day following the business day such material is sent, or (iii) if sent by certified mail, three (3) business days after such notice has been sent.

11. The term "Lender" as used herein includes any successors or assigns of the Lender named herein, including without limitation, any co-lender at the time of making the Loan, any purchaser at a foreclosure sale and any transferee pursuant to a conveyance in lieu of foreclosure, and their successors and assigns, and the term "Tenant" as used herein includes the Tenant named herein (the "Original Tenant") and any successors or assigns of the Original Tenant.

12. 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.

13. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing executed by the party against which enforcement of the termination, amendment, supplement, waiver or modification is sought.

14. This Agreement shall be construed in accordance with the laws of the State or Commonwealth in which the Mortgaged Property are located.

[Balance of page intentionally left blank.]

WITNESS the execution hereof as of the date first above written.

LENDER:

**First Security Bank, N.A., as Trustee,
a national banking association**

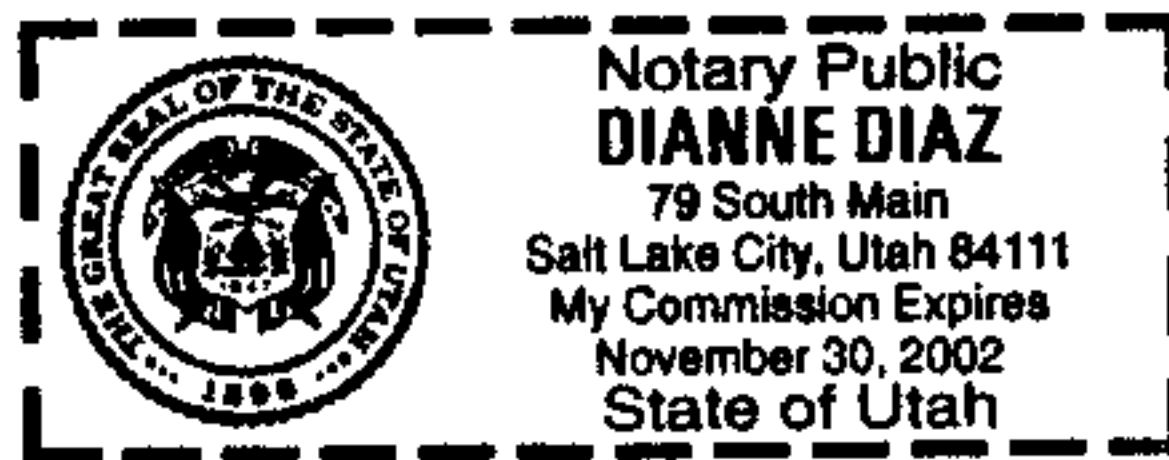


By: Val T. Orton
Name: Val T. Orton
Title: Vice President

STATE OF UTAH)
)
) ss.
COUNTY OF SALT LAKE)

I, the undersigned Notary Public in and for said county, in said State, hereby certify that Val T. Orton, whose name as Vice President of First Security Bank, N.A., a national banking association, as Trustee, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she, acting in his/her capacity as such officer and with full authority executed the same voluntarily for and as the act of said association.

Given under my hand and official seal this 1ST day of August, 2000.



[Notarial Seal]

Notary Public
My commission expires:

[Signatures continued on following page.]

(AL)

WITNESS the execution hereof as of the date first above written.

TENANT:

Big B, Inc.
an Alabama corporation

[CORPORATE SEAL]



By: _____

Name: Michael B. Nulman
Title: Assistant Secretary

STATE OF RHODE ISLAND)

)
)
)

ss.

COUNTY OF

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Michael B. Nulman, whose name as Assistant Secretary of Big B, Inc., an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, she/he, acting in her/his capacity as such officer and with full authority executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 2nd day of August, 2000.



Notary Public

My commission expires:

[Notarial Seal]

[Signatures continued on following page.]


Ellen E. Putnam Notary Public
Pascog, Providence Co. RI
My Commission Expires 07-28-02

(AL)

WITNESS the execution hereof as of the date first above written.

LANDLORD:

**WEC 2000A-1 LLC,
a Delaware limited liability company**

By: 
Name: Greg L. England
Title: Vice President

STATE OF TEXAS)
) **SS.**
COUNTY OF DALLAS)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Greg L. England, whose name as Vice President of WEC 2000A-1 LLC, a Delaware limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, she/he as such officer and with full authority executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 3 day of August, 2000.



Maria Madrid
Notary Public
My commission expires: 7/23/2004

[Notarial Seal]

(AL)

Exhibit A
Legal Description

(Attached following this page)

LEGAL DESCRIPTION
BIRMINGHAM, ALABAMA
STORE NO. 4864

EXHIBIT A

Parcel I:

A parcel of land located in the East half of the Southeast quarter of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southwest corner of said Southeast quarter of Section 36 and run north along the West line of same 770.80 feet; thence right $119^{\circ}08'28''$ and run Southeasterly 257.20 feet; thence left $90^{\circ}04'42''$ and run Northeasterly 1,495.98 feet to a point on the Southwesterly right of way of U. S. Highway #280; thence right $89^{\circ}57'31''$ and run Southeasterly along said right of way 777.61 feet; thence right of $44^{\circ}58'43''$ and continue Southeasterly along said right of way 34.90 feet to the point of beginning of the herein described Site "C"; thence continue along last described course 21.70 feet to a point on the Northwesterly right of way of Shelby County Highway #17 (Valleydale Road); thence right $44^{\circ}58'43''$ and run Southwesterly along said right of way 193.86 feet to the point of curve of a curve to the right having a radius of 1,387.42 feet and a central angle of $7^{\circ}21'35''$; thence run Southwesterly along the arc of said curve and right of way 178.22 feet to a point of intersection with a curve to the right having as radius of 72.14 feet and a central angle of $72^{\circ}45'42''$; thence right $20^{\circ}54'23''$ from the tangent behind to the tangent ahead and run southwesterly along the arc of said curve 91.61 feet to the point of tangent; thence run Northwesterly along tangent 6.69 feet to the point of curve of a curve to the right having a radius of 113.50 feet and a central angle of $39^{\circ}00'54''$; thence run Northwesterly along the arc of said curve 77.29 feet to the point of tangent; thence run Northwesterly along tangent 200.89 feet; thence right 90° and run Northeasterly 357.84 feet to the point of beginning.

Also described as:

A parcel of land situated in the Southeast Quarter of Section 36, Township 18 South, Range 2 West, Huntsville Meridian, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southwest corner of said Southeast Quarter of Section 36 and run Northeasterly along the Westerly line thereof for a distance of 770.80 feet to a found $\frac{3}{4}$ " rebar; thence turn a deflection angle to the right of $119^{\circ}08'28''$ and run Southeasterly for a distance of 257.20 feet to a found 1" crimped iron; thence turn a deflection angle to the left of $90^{\circ}04'42''$ and run Northeasterly for a distance of 1495.98 feet to a found 1" crimped iron on the Southwesterly right of way of U.S. Highway 280; thence turn a deflection angle to the right of $89^{\circ}58'11''$ and run Southeasterly along said right of way for a distance of 777.55 feet; thence turn a deflection angle to the right of $44^{\circ}59'08''$ and continue Southeasterly along said right of way for a distance of 34.90 feet to the Point of Beginning; thence continue along last described course for a distance of 21.70 feet to a point on the Northwesterly right of way of Shelby County Highway No. 17 (Valleydale Road); thence turn a deflection angle to the right of $44^{\circ}58'43''$ and run Southwesterly along said right of way for a distance of 193.86 feet to the point of curvature of a

curve to the right having a radius of 1387.42 feet and a central angle of 7°21'35"; thence continue along the arc of said curve and along said right of way for a distance of 178.22 feet to the point of intersection of said arc with a curve to the right having a radius of 72.14 feet and a central angle of 72°45'42"; thence turn a deflection angle to the right of 20°54'23" from the tangent back to the tangent ahead and leaving said right of way, run Southwesterly along the arc of said curve for a distance of 91.61 feet to the point of tangency thereof; thence Northwesterly along a line tangent to last described course for a distance of 6.69 feet to the point of curvature of a curve to the right having a radius of 113.50 feet and a central angle of 39°00'54"; thence continue along the arc of said curve for a distance of 77.29 feet to the point of tangency thereof; thence continue Northwesterly along a line tangent to last described course for a distance of 200.88 feet; thence turn a deflection angle to the right of 90°00'00" and run Northeasterly for a distance of 357.84 feet to the Point of Beginning.

Parcel II:

Together with Easement Agreement recorded as Instrument #1999-49910, as affected by Corrective Easement Agreement recorded with Shelby County Judge of Probate on July 5, 2000 as Instrument No. 2000-22003.

Inst # 2000-35576

**-2- 10/12/2000-35576
08:54 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
013 MMB 47.00**