

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Best Buy # 383

**THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** ("Agreement") made as of the 15<sup>th</sup> day of ~~February~~<sup>March</sup>, 2001, by and between South Trust Bank, an Alabama banking institution ("Lender"), Best Buy Stores, L.P., a Delaware limited partnership ("Tenant"), and River Ridge Retail Company, L.L.C., a Delaware limited liability company ("Landlord").

### RECITALS

- i. Landlord holds the Landlord's interests in and Tenant holds the Tenant's interests in that certain Lease dated December 19, 2000, between River Ridge Retail Company, L.L.C., as Landlord and Best Buy Stores, L.P., a Delaware limited partnership, as Tenant (the "Lease") regarding space in the River Ridge Shopping Center ("Premises"), located upon real estate in the City of Birmingham, Jefferson County, State of Alabama, more particularly described on attached Exhibit A;
- ii. Lender has made or has agreed to make a mortgage loan to the Landlord secured by a mortgage or deed of trust on the Premises which includes an assignment of Landlord's interest in the Lease (the "Mortgage");
- iii. Tenant and Lender desire to confirm their understanding with respect to the Lease and the Mortgage.

**NOW, THEREFORE**, in consideration of the mutual agreements contained in this Agreement, and other valuable consideration, the parties agree as follows:

1. Tenant's interests in the Lease, including, but not limited to, any option in favor of Tenant to extend or renew the Lease, are subordinate to the Mortgage and to any consolidations, extensions, modifications or renewals thereof;
2. Lender agrees that the rights of Tenant under the Lease will remain in full force and effect, and Tenant's possession of the Premises under the Lease will remain undisturbed by Lender during the term of the Lease, and any renewal or extension thereof, in accordance with its terms;
3. After its receipt of notice from Lender of the completion of a foreclosure under the Mortgage or that Lender has received a conveyance of the Premises in lieu of foreclosure or otherwise obtained the right to possession of the Premises, Tenant will be considered to have attorned to and recognized Lender, its successors or assigns, or any purchaser at the foreclosure sale, as its substitute Landlord under the Lease, and Tenant's possession of the Premises will not be disturbed as provided herein.

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SHELBY COUNTY JUDGE OF PROBATE  
007 C11 29.00

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This Agreement will be considered self-operative, and no separate agreements will be required 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. If Lender or any other person or entity becomes the owner of the Premises ("New Owner") as a result of a foreclosure sale, a conveyance in lieu of foreclosure or otherwise, Tenant will have no claim against the New Owner resulting from, and the New Owner will not be liable for, any act, omission and/or breach of the Lease by any prior Landlord under the Lease occurring prior to (a) if the New Owner acquires the Premises through foreclosure, the date of expiration of all periods of redemption having occurred or the date said New Owner takes possession of the Premises, whichever shall occur first, or (b) if the New Owner acquires the Premises through a deed in lieu of foreclosure, the date of such acquisition; provided, however, that the rights of the New Owner in and to the Premises and in, to and under the Lease will be subject to any right of set-off in favor of Tenant expressly and specifically provided for in the Lease. Further, Lender shall not be bound by any prepayment of rent or amendment of the Lease made in violation of Paragraphs 5 and 6 below, or any security deposit other than any security deposit actually delivered to it;
5. Tenant shall not prepay any Base Rent or Additional Rent under the Lease for more than one (1) month in advance except with the written consent of Lender, unless such prepayment is required under the Lease;
6. Tenant shall not, without obtaining the prior written consent of Lender, enter into any agreement amending or modifying the Lease which would change the term of the Lease or the fixed rent specified therein;
7. 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. This Agreement may not be amended, modified or altered in any manner other than by a written agreement signed by all the parties hereto;
9. This Agreement will be binding upon and will inure to the benefit of the parties to this Agreement and their respective heirs, executors, administrators, personal representatives, successors and assigns, including any purchaser of the Premises at a foreclosure sale;

10. All notices required or permitted to be given under this Agreement shall be in writing and sent to the following addresses:

If to Lender: South Trust Bank  
PO Box 2554 (35290)  
420 North 20<sup>th</sup> Street  
Birmingham, AL 35203  
Attn: Commercial Real Estate Department

If to Tenant: Best Buy Stores, L.P.  
7075 Flying Cloud Drive  
Eden Prairie, MN 55344  
Attn: Real Estate - Legal

with a copy to: Robins Kaplan Miller & Ciresi L.L.P.  
2800 LaSalle Plaza  
800 LaSalle Avenue  
Minneapolis, MN 55402  
Attn: Steven A. Schumeister, Esq.

If to Landlord: River Ridge Retail Company, L.L.C.  
c/o Bayer Properties, Incorporated  
2222 Arlington Avenue  
Birmingham, Alabama 35205  
Attention: Mr. David L. Silverstein

with a copy to: River Ridge Retail Company, L.L.C.  
c/o Bayer Properties, Incorporated  
2222 Arlington Avenue  
Birmingham, Alabama 35205  
Ms. Jill V. Deer, Legal Counsel

Any party may change its address for such notices from time to time by serving written notice of the change upon the other parties as above provided; and

11. This Agreement may be executed in multiple counterparts, all of which shall be deemed originals and with the same effect as if all parties had signed the same document. All such counterparts shall be construed together and shall constitute one instrument.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first above written.

[SIGNATURES ON NEXT PAGE]

**LENDER:**

**SOUTH TRUST BANK**  
an Alabama Banking institution

By: Scott Abbott  
Name: Scott Abbott  
Title: Vice President  
Date: 3-1-01

**TENANT:**

**BEST BUY STORES, L.P.**

By: BBC Property Co.  
a Minnesota corporation  
Its: General Partner  
By: Patrick R. Matre  
Name: Patrick R. Matre  
Title: J.P.  
Date: 2-26-01

**LANDLORD:**

**RIVER RIDGE RETAIL COMPANY, L.L.C.**

By: David L. Silverstein  
Name: David L. Silverstein  
Title: Authorized Agent  
Date: 3-1-01



STATE OF Alabama )  
 ) ss  
COUNTY OF Jefferson )

On March 1, 2001, before me, Regina Ellis, a Notary Public in and for said State, personally appeared Scott Abbott, Vice President of **SOUTH TRUST BANK**, an Alabama banking institution, 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.

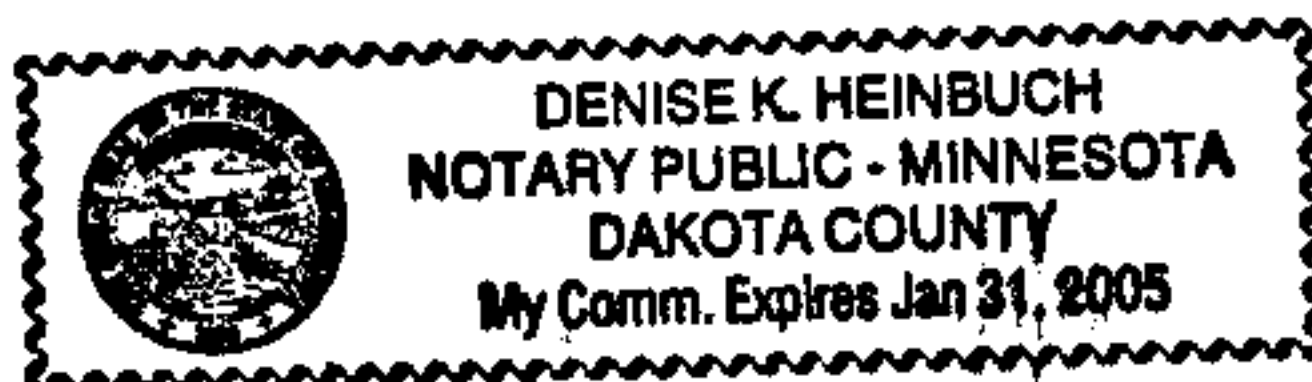
WITNESS my hand and official seal.

Regina H. Ellis  
Notary Public  
My Commission Expires: 8-6-2001

STATE OF MINNESOTA )  
 ) ss  
COUNTY OF HENNEPIN )

On February 26, 2001, before me, Denise K. Heinbuch, a Notary Public in and for said State, personally appeared Patrick R. Matre, Vice President of BBC Property Co., a Minnesota corporation, the general partner of **BEST BUY STORES, L.P.**, a Delaware 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.



Denise K. Heinbuch  
Notary Public  
My Commission Expires: 1-31-05

STATE OF Alabama )  
COUNTY OF Jefferson ) ss

On March 1, 2001, before me, ~~David L. Silverstein~~ Regina H. Ellis, a Notary Public in and for said State, personally appeared David L. Silverstein of **RIVER RIDGE RETAIL COMPANY, L.L.C.**, a Delaware limited liability company, 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.

Regina H. Ellis  
Notary Public  
My Commission Expires: 8-6-2001

## **EXHIBIT A**

### **Description of Property**

Lots 2, 3, 4 and 5 according to the Map of River Ridge Plaza as recorded in Map Book 26, Page 14 in the Office of the Judge of Probate of Shelby County, Alabama, excluding therefrom at Landlord's option, that certain outparcel as shown on the Site Plan attached to the Lease as Exhibit "B".

**Inst # 2001-07392**

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SHELBY COUNTY JUDGE OF PROBATE  
007 CJ1 29.00**