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Doc#: 0721515118 Fee: \$50.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 08/03/2007 02:03 PM Pg: 1 of 14

SUBORDINATION NON-DISTRUBANCE AND ATTORNEMENT
AGREEMENT

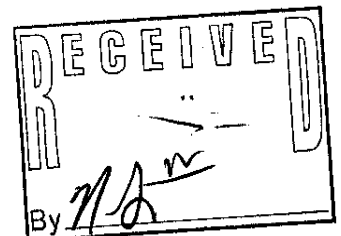
11009196
1071

PREPARED BY:

KATTEN MUCHIN ROSENMAN LLI
401 SOUTH TRYON STREET, SUITE 2600
CHARLOTTE, NC 28202
ATTN: DANIEL S. HUFFENUS, ESQ.

WHEN RECORDED RETURN TO:

LANDAMERICA COMMERCIAL SERVICES
ATTN: A. BROWN
1850 NORTH CENTRAL AVENUE, SUITE 300
PHOENIX, ARIZONA 85004



14

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BEAR STEARNS COMMERCIAL MORTGAGE, INC.

AND

BEST BUY STORES, L.P., A VIRGINIA LIMITED PARTNERSHIP

AND

COLE BB EVANSTON IL, LLC

SUBORDINATION NON-DISTURBANCE AND ATTORNEMENT AGREEMENT

Date: May 31, 2007

Premises: 2301 Howard Street, Evanston, IL 60202

Bear Loan No.: 50462

11009196

UPON RECORDATION
RETURN TO:

~~KattenMuchinRosenman LLP~~
401 S. Tryon Street, Suite 2600
Charlotte, NC 28202
Attn: Daniel S. Huffenus, Esq.

When recorded mail to:
LandAmerica Financial Group, Inc.
Attn: A. Brown
1850 N. Central Avenue, Suite 300
Phoenix, AZ 85004

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ESROW NO.

07-52175

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Best Buy #313

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT (the "Agreement") is made as of the 27th day of June, 2007 by and between **BEAR STEARNS COMMERCIAL MORTGAGE, INC.**, a New York corporation ("Lender"), **BEST BUY STORES, L.P.**, a Virginia limited partnership ("Tenant"), and **COLE BB EVANSTON II, LLC**, a Delaware limited liability company ("Landlord").

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 June 27, 2007, 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 June 27, 2007, 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 February 27, 1997, (ii) a First Amendment to Lease dated March 18, 1997, (iii) an Assignment and Assumption of Lease dated April 1, 1997; (iv) Second Amendment to Lease dated September 27, 1997; 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

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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

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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.

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If to Lender: Bear Stearns Commercial Mortgage, Inc.
 383 Madison Avenue, 10th Floor
 New York, New York 10179
 Attention: J. Christopher Hoeffel
 Re: Bear Loan No. 50462

If to Landlord: Cole BB Evanston IL, LLC
 c/o Cole Companies
 2555 E. Camelback Road, Suite 400
 Phoenix, AZ 85016

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.

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

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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]

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LENDER:

BEAR STEARNS COMMERCIAL MORTGAGE, INC., a New York corporation

By: Michael A. Forastiere
Michael A. Forastiere
Managing Director

TENANT:

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

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

By: _____
Alan Winner
Sr. Corporate Counsel
Date: _____

LANDLORD:

COLE BB EVANSTON IL, a Delaware limited liability company

By: Cole IM LNC Portfolio I, a Delaware limited liability company, its Manager

By: Cole REIT Advisors II, L.L.C, a Delaware limited liability company, its Manager

By: _____
John M. Pons
Executive Vice President

Property of Cook County Clerk's Office

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LENDER:

BEAR STEARNS COMMERCIAL MORTGAGE, INC., a New York corporation

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: Alan Winner
Name: Alan Winner
Title: Sr. Corporate Counsel
Date: 5/21/09

LANDLORD: COLE BB EVANSTON IL, LLC
~~SEE DDG~~ By: Cole IM LNC Portfolio I, LLC
~~COLE BB EVANSTON IL, LLC~~ a Delaware limited liability company, its Manager

By: Cole REIT Advisors II, LLC, Its Manager

By: John M. Pons
Name: ~~John M. Pons~~ John M. Pons
Title: Executive Vice President
Date: June 21, 2007

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STATE OF NEW YORK)

:ss.

COUNTY OF NEW YORK)

On this ^{21st} day of June, 2007, before me, the undersigned officer, personally appeared Michael A. Forastiere having an address at 383 Madison Avenue, New York, New York 10179, and personally known and acknowledged himself/herself themselves to me (or proved to me on the basis of satisfactory evident to be the Managing Director of **BEAR STEARNS COMMERCIAL MORTGAGE, INC.**, (hereinafter, the "Corporation"), and that as such officer(s), being duly authorized to do so pursuant to its bylaws or a resolution of its board of directors, executed, subscribed and acknowledged the foregoing instrument for the purposes therein contained, by signing the name of the Corporation by himself/herself/themselves in their authorized capacity as such office(s) as his free and voluntary act and deed and the free and voluntary act and deed of said Corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Notary Public
NOTARY SEAL

KIMBERLEY J. FRANK
Notary Public State of New York
No. 01FR032737
Qualified in New York County
Commission Expires May 23, 2010

Notary Public of Cook County, New York's Office

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STATE OF _____)
) ss.
COUNTY OF _____)

On _____, 20____, before me, _____, a Notary Public in and for said State, personally appeared _____, _____ of **BEAR STEARNS COMMERCIAL MORTGAGE, INC.**, a New York 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.

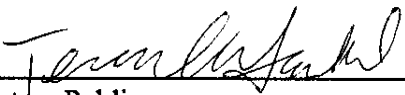
WITNESS my hand and official seal.

Notary Public
My Commission Expires: _____

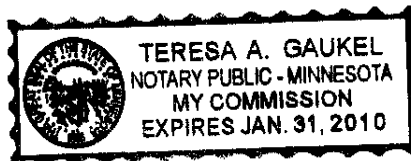
STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

On May 31, 2007, before me, Teresa A. Gaukel, a Notary Public in and for said State, personally appeared Alan Winner, Sr. Corporate Counsel, 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.



Notary Public
My Commission Expires: 1/31/2010



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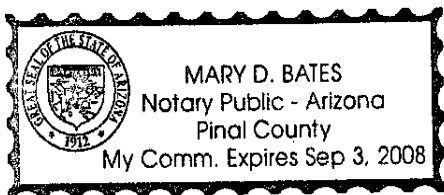
STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On June 21, 2007, before me, Mary D. Bates, a Notary Public in and for said State, personally appeared John M. Pons, Executive Vice President of **COLE BB EVANSTON IL, LLC**, 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.

Mary D. Bates
Notary Public
My Commission Expires: 9/3/2008

*by Cole IM LNC Portfolio I, LLC, a Delaware limited liability company, its Manager, by Cole REIT Advisors II, LLC, its Manager



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EXHIBIT A

Description of Property

[see attached]

Property of Cook County Clerk's Office

UNOFFICIAL COPY**EXHIBIT "A"**

Legal Description:

PARCEL 1:

LOT 8 IN HOWARD-HARTREY SUBDIVISION OF PART OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 25, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 1, 1993, AS DOCUMENT NUMBER 93-696916, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THE PART OF LOT 6 IN HOWARD-HARTREY SUBDIVISION OF PART OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 25, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 1, 1993 AS DOCUMENT NUMBER 93-696916, IN COOK COUNTY, ILLINOIS AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 6 AFORESAID; THENCE SOUTH ALONG A WEST LINE OF SAID LOT (BEING ALSO AN EAST LINE OF LOT 8 IN HOWARD-HARTREY SUBDIVISION), A DISTANCE OF 163.45 FEET TO THE NORTHWEST CORNER OF LOT 7 IN SAID SUBDIVISION; THENCE EAST ALONG THE NORTH LINE OF SAID LOT 7, FORMING AN ANGLE OF 90 DEGREES 00 MINUTES 00 SECONDS WITH THE LAST DESCRIBED LINE, AS MEASURED CLOCKWISE FROM NORTH TO EAST, A DISTANCE OF 35.00 FEET; THENCE NORTH ALONG A LINE DRAWN PARALLEL WITH AND 35.00 FEET EAST FROM THE AFOREMENTIONED WEST LINE OF LOT 6, A DISTANCE OF 163.53 FEET TO A POINT ON THE NORTH LINE OF SAID LOT; THENCE WEST ALONG SAID NORTH LINE, A DISTANCE OF 35.00 FEET TO THE POINT OF BEGINNING; IN COOK COUNTY, ILLINOIS.

PARCEL 3:

THAT PART OF LOT 7 IN HOWARD-HARTREY SUBDIVISION OF PART OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 25, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 1, 1993, AS DOCUMENT NUMBER 93-696916, IN COOK COUNTY, ILLINOIS AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 7 AFORESAID; THENCE SOUTH ALONG THE WEST LINE OF SAID LOT (BEING ALSO AN EAST LINE OF LOT 8 IN HOWARD-HARTREY SUBDIVISION), A DISTANCE OF 132.00 FEET TO THE SOUTHWEST CORNER OF LOT 7; THENCE EAST ALONG A SOUTH LINE OF SAID LOT, FORMING AN ANGLE OF 90 DEGREES 00 MINUTES 00 SECONDS WITH THE LAST DESCRIBED LINE, AS MEASURED CLOCKWISE FROM NORTH TO EAST, A DISTANCE OF 25.74 FEET TO AN ANGLE POINT IN SAID LINE; THENCE SOUTHEASTWARDLY ALONG A SOUTHERLY LINE OF LOT 7, FORMING AN ANGLE OF 210 DEGREES 15 MINUTES 29 SECONDS WITH THE LAST DESCRIBED LINE, AS MEASURED CLOCKWISE FROM WEST TO SOUTHWEST, A DISTANCE OF 10.72 FEET TO A POINT ON A LINE DRAWN PARALLEL WITH AND 35.00 FEET EAST FROM THE AFOREMENTIONED WEST LINE OF LOT 7; THENCE NORTH ALONG SAID PARALLEL LINE, A DISTANCE OF 137.40 FEET TO A POINT ON THE NORTH LINE OF LOT 7; THENCE WEST ALONG SAID NORTH LINE, A DISTANCE OF 35.00 FEET TO THE POINT OF BEGINNING; IN COOK COUNTY, ILLINOIS.

PARCEL 4

A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS, PARKING AND UTILITIES CREATED BY OPERATION AND EASEMENT AGREEMENT DATED AUGUST 27, 1993, AND RECORDED SEPTEMBER 3, 1993 AS DOCUMENT NUMBER 93705513, AS AMENDED BY A CERTAIN AMENDMENT TO OPERATION AND EASEMENT AGREEMENT DATED APRIL 5, 1994 AND RECORDED APRIL 7, 1994 AS DOCUMENT NUMBER 94314569, AS FURTHER AMENDED BY THAT CERTAIN SECOND AMENDMENT TO OPERATION AND EASEMENT AGREEMENT DATED DECEMBER 16, 1994 AND RECORDED DECEMBER 27, 1994 AS DOCUMENT NUMBER 04072477.

10-25-104-025
10-25-104-028
10-25-104-031

2301 HOWARD ST.
EVANSTON, IL