

UNOFFICIAL COPY



Doc#: 0801033037 Fee: \$48.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 01/10/2008 09:25 AM Pg: 1 of 13

8431011 D2AEM 5079

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

Property of Cook County Clerk's Office

**Box 400-CTCC**

After recording, return to:  
Blackwell Sanders LLP  
Attention: Gaylord G. Smith  
4801 Main Street  
Kansas City, MO 64112

13  
8

**UNOFFICIAL COPY****Subordination, Non-Disturbance and  
Attornment Agreement**

Best Buy #1165

**THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** (the "Agreement") is made as of the 26<sup>th</sup> day of December, 2007 by and between **ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA**, a Minnesota corporation ("Lender") **BEST BUY STORES, L.P.**, a Virginia limited partnership ("Tenant") and **HP WILLOW, L.L.C.**, an Illinois limited liability corporation ("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 December 26, 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 December 26, 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 July 17, 2006, and (ii) a First Amendment to Lease dated August 31, 2007; 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. Provided that the proceeds of any insurance recovery or condemnation award shall be used for the purposes stated in the Lease, 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

f431011 DELEM

# UNOFFICIAL COPY

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 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 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") or 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.

# UNOFFICIAL COPY

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), (a) 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, and (b) Lender shall not be responsible for any prepayment of the rents, additional rents or other sums due under the Lease for more than one (1) month in advance of the due dates thereof, unless such prepayment is required under the terms of the Lease.

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 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 Attn: Legal Department - Real Estate
with a copy to:	Robins, Kaplan, Miller & Ciresi L.L.P. 2800 LaSalle Plaza 800 LaSalle Avenue

# UNOFFICIAL COPY

Minneapolis, MN 55402  
Attn: Steven A. Schumeister, Esq.

If to Lender: Allianz Life Insurance Company of North America  
c/o Allianz of America, Inc.  
55 Greens Farm Road  
PO Box 5160  
Westport, CT 06881  
Attn: Real Estate Department

with a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

If to Landlord: HP Willow, L.L.C.  
c/o Hamilton Partners  
300 Park B, Suite 500  
Itasca, IL 60143  
Attn: Mr. Paul Sheridan

with a copy to: Seyfarth Shaw LLP  
55 E. Monroe St., Suite 4200  
Chicago, IL 60603  
Attn: J. Kelly Bufton

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 or commonwealth where the Property is located.

# UNOFFICIAL COPY

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 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.

[SIGNATURES ON NEXT PAGE.]

# UNOFFICIAL COPY

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

**LENDER:**

**ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA**, a Minnesota 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 Winnie  
Name: Alan Winnie  
Title: Sr. Corporate Counsel  
Date: 12/26/07

**LANDLORD:**

**HP WILLOW, L.L.C.**,  
an Illinois limited liability corporation

By: James Sheridan  
Name: James A. Sheridan  
Title: Managing Member  
Date: 12/27/07

Property of COOK COUNTY Clerk's Office

# UNOFFICIAL COPY

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2007, before me, \_\_\_\_\_, a Notary Public in and for said state or commonwealth, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of a ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA, a Minnesota 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, or 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 December 26, 2007, before me, Teresa A. Gaukel, a Notary Public in and for said state or commonwealth, personally appeared Alan Winner, Sr. Corporate Counsel, the 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, or 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: 1/31/2010





# UNOFFICIAL COPY

STATE OF ILLINOIS                    )  
  ) ss.  
COUNTY OF DUPAGE                 )

On DECEMBER 27, 2007, before me, JOAN SABOURIN, a Notary Public in and for said state or commonwealth, personally appeared JAMES L. SHERIDAN, the Managing Member of HP WILLOW, L.L.C., an Illinois 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, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Joan Sabourin  
\_\_\_\_\_  
Notary Public  
My Commission Expires: 05/04/10



Property of Cook County Clerk's Office

# UNOFFICIAL COPY

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

**LENDER:**

**ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA**, a Minnesota corporation

By: *TS*  
Name: THEODORE L. SULLIVAN  
Title: ASSISTANT TREASURER  
Date: \_\_\_\_\_

*ECT*  
*WRK*  
WENDELL R. KURTZ  
ASSISTANT TREASURER

**TENANT:**

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

By: BBC Property Co.,  
a Minnesota corporation  
Its: General Partner

By: *Alfred Winner*  
Name: Alfred Winner  
Title: Senior Corporate Counsel  
Date: 12/26/07

**LANDLORD:**

**HP WILLOW, L.L.C.**,  
an Illinois limited liability corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF Connecticut )  
COUNTY OF Fairfield ) ss.

On Dec. 31<sup>ST</sup>, 2007, before me, Ruth O. Guglielmoni Notary Public in and for said state or commonwealth, personally appeared John Sullivan & Wendell Kutz the Assist. Treasurers of a ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA, a Minnesota corporation personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names <sup>are</sup> subscribed to the within instrument and acknowledged to me that <sup>they</sup> ~~he~~ <sup>she</sup> executed the same in <sup>their</sup> ~~his~~ <sup>her</sup> authorized capacity, and that by <sup>their</sup> ~~his~~ <sup>her</sup> signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Ruth O. Guglielmoni

Notary Public  
My Commission Expires:

**RUTH O. GUGLIELMONI**  
**STATE OF CONNECTICUT**  
**NOTARY PUBLIC**  
**MY COMMISSION EXPIRES JULY 31, 2011**

STATE OF MINNESOTA )  
COUNTY OF HENNEPIN ) ss.

On December 26, 2007, before me, Ieresa A. Gaukel, a Notary Public in and for said state or commonwealth, personally appeared Alan Winner, Sr. Corporate Counsel, the 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, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Ieresa A. Gaukel

Notary Public  
My Commission Expires:

1/31/2010



# UNOFFICIAL COPY

## EXHIBIT A TO SNDA

### Legal Description of Shopping Center

[See attached.]

Property of Cook County Clerk's Office

**UNOFFICIAL COPY****EXHIBIT A****Legal Description of Shopping Center  
Northbrook**

PARCELS 1 AND 2 TAKEN AS A WHOLE MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PART OF LOT SE-1A IN THE FINAL PLAT OF SUBDIVISION OF TECHNY PARCEL SE-1, BEING A SUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF SECTION 14, AND PART OF THE NORTHWEST QUARTER OF SECTION 23, AND PART OF THE NORTHEAST QUARTER OF SECTION 23, ALL IN TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THAT PLAT THEREOF RECORDED DECEMBER 22, 2000 AS DOCUMENT NUMBER 0001007540 AND PART OF LOT 12 IN THE COUNTY CLERKS DIVISION OF SECTION 23, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 11, 1876 AS DOCUMENT NUMBER 106454 DESCRIBED AS FOLLOWS: BEGINNING AT THE MOST SOUTHERLY SOUTHWEST CORNER OF LOT SE-1A; THENCE NORTHERLY ALONG THE WEST LINE OF SAID LOT SE-1A THE FOLLOWING FIVE (5) COURSES AND DISTANCES; 1) NORTH 45 DEGREES 00 MINUTES 00 SECONDS WEST 63.37 FEET; 2) NORTH 01 DEGREES 18 MINUTES 06 SECONDS EAST 436.45 FEET TO A POINT OF CURVATURE; 3) ALONG AN ARC OF A CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 1000.00 FEET, HAVING A CHORD BEARING OF NORTH 08 DEGREES 53 MINUTES 18 SECONDS EAST, 264.83 FEET TO A POINT OF REVERSE CURVATURE; 4) ALONG AN ARC OF A CURVE CONCAVE TO THE WEST, HAVING A RADIUS OF 1100.00 FEET, HAVING A CHORD BEARING OF NORTH 08 DEGREES 53 MINUTES 18 SECONDS EAST, 291.31 FEET TO A POINT OF TANGENCY; 5) THENCE NORTH 01 DEGREES 18 MINUTES 05 SECONDS EAST 242.29 FEET TO THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 14; THENCE SOUTH 88 DEGREES 44 MINUTES 41 SECONDS EAST ALONG SAID SOUTH LINE OF THE SOUTHWEST QUARTER 1357.53 FEET TO THE EAST LINE OF LOT SE-1A; THENCE SOUTHERLY ALONG SAID EAST LINE OF LOT SE-1A THE FOLLOWING SIX (6) COURSES AND DISTANCES; 1) SOUTH 29 DEGREES 38 MINUTES 50 SECONDS EAST 270.59 FEET; 2) SOUTH 60 DEGREES 21 MINUTES 10 SECONDS WEST 24.72 FEET; 3) SOUTH 29 DEGREES 38 MINUTES 50 SECONDS EAST 382.00 FEET; 4) SOUTH 23 DEGREES 22 MINUTES 11 SECONDS EAST 188.45 FEET; 5) SOUTH 12 DEGREES 11 MINUTES 13 SECONDS EAST 149.20 FEET; 6) SOUTH 03 DEGREES 28 MINUTES 58 SECONDS EAST 2.28 FEET; THENCE CONTINUING SOUTH 03 DEGREES 28 MINUTES 58 SECONDS EAST 352.55 FEET; THENCE SOUTH 43 DEGREES 51 MINUTES 14 SECONDS WEST 42.27 FEET; THENCE NORTH 88 DEGREES 39 MINUTES 06 SECONDS WEST 212.15 FEET TO THE SOUTHEAST CORNER OF SAID LOT SE-1A; THENCE NORTH 88 DEGREES 41 MINUTES 55 SECONDS WEST ALONG THE SOUTH LINE OF SAID LOT SE-1A, A DISTANCE OF 1611.66 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS. PERM. TAX NOS.: 04-23-108-001, 04-23-200-043.

*PIN Numbers*  
*04-23-108-001*  
*04-23-200-043*