

June 2013

Property Description

Address: 17545, # 33 on Property List

Size: 5.99 acres, site contains a 56,150 SF retail building leased to Best Buy

Date Purchased: April 2005

IUDA Purchase Price: \$16,700,000

Estimated Current Value: \$9,000,000 to \$12,000,000 (preliminary estimate by Keyser Marston)

Reason Acquired: To facilitate development of the Auto Mall

Plan and Zoning: Automobile Zone, parcel data and Assessor information included in binders

Lease Revenue: \$\$79,166 per month through February 2018

Environmental: Phase I

Potential for Transit-Oriented Development: None

History of Development Proposals: The property was purchased to facilitate the build out of the Auto Mall as it is located in the center of the Mall. Once the lease expires the building is suitable for conversion to an auto dealership.

Staff Recommendation: Staff recommends the property be retained by the Successor Agency and lease revenues be utilized to pay for enforceable obligations until the optimum time to sell is determined.



(33) Address : 17545 E. Gale Avenue
 City : City of Industry
 APN : 8264-012-919
 Acre : 5.99 Ac.

Prepared by:
CNC
 ENGINEERING
 Consulting Civil Engineers • Surveyors
 255 N. Hopeville Blvd., Ste. 222
 City of Industry, Ca. 91744
 Phone (626) 333-0336
 Fax (626) 336-7076

CITY OF INDUSTRY
SUCCESSOR AGENCY OF THE INDUSTRY
URBAN-DEVELOPMENT AGENCY
PROPERTY LIST ITEM # 33

CHECKED BY: D.T.M.	JOB No. MP 12-03#3	SHT. 1 OF 1
DATE: OCTOBER 2012		

DESIGN BY: V.S. DRAWN BY: J.B.P.

Best Buy #103

LEASE

by and between

SunWest N.C. III Partners Limited Partnership,
a Texas limited partnership

("Landlord")

and

Best Buy Co., Inc.,
a Minnesota corporation

("Tenant")

17545 East Gale Avenue, City of Industry, California 91744

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EXHIBITS

- A. LEGAL DESCRIPTION
- B. MEMORANDUM OF LEASE COMMENCEMENT
- C. COVENANT DOCUMENTS
- D. SUBORDINATION, NON-DISTURBANCE AND ATTORNEY AGREEMENT

L E A S E

THIS LEASE, is entered into and effective as of January 30, 1998, between SUNWEST N.C. III PARTNERS LIMITED PARTNERSHIP, a Texas limited partnership (hereinafter called "Landlord") and BEST BUY CO., INC., a Minnesota corporation (hereinafter called "Tenant").

The parties mutually agree as follows:

1. THE PREMISES.

Landlord, for and in consideration of the rents, covenants, agreements and stipulations hereinafter mentioned, reserved and contained, to be paid, kept and performed by Tenant, does hereby lease and rent unto Tenant, and Tenant hereby agrees to lease and take upon the terms and conditions hereinafter set forth a building containing approximately 55,925 square feet constructed by Tenant and then sold to Landlord (the "Building"), together with all other improvements situated on the hereinafter described parcel of land containing approximately 6.0 acres (the "Land") located at 17545 East Gale Avenue, City of Industry, California 91744, and legally described on Exhibit "A" attached hereto.

The Land and Building together constitute the "Leased Premises" hereunder.

2. BASE TERM.

The Base Term of this Lease (the "Term") shall commence on January 20, 1998 (the "Commencement Date") and end on February 11, 2018 unless sooner terminated pursuant to any provision hereof.

Landlord and Tenant shall also execute a Memorandum of Lease Commencement in the form set out on Exhibit "B" specifying the Commencement Date, and the Expiration Date applicable to this Lease. Said Memorandum of Lease Commencement shall be attached to and become a part of this Lease.

3. RENT.

Tenant hereby covenants and agrees to pay Landlord as monthly fixed rent for the Leased Premises during the Term the sums set forth below:

Years	Annual Rent	Monthly Rent
1-20	\$950,000.00	\$79,166.67

Such monthly rent shall be payable in advance and without demand on the first day of every calendar month commencing on the

Commencement Date. Rent shall be prorated for any partial month at the beginning or end of the Term. If any installment of rent is not paid within five (5) days of Tenant's receipt of written notice from Landlord stating that said rent is due and payable and has not been received by Landlord, Tenant shall pay Landlord interest on such overdue payment at the rate of fifteen percent (15%) per annum (but in no event more than the maximum rate then allowed by law) accruing from the due date of such payment until the same is paid. Tenant shall pay rent to Landlord at the following address unless otherwise notified in writing by Landlord:

SunWest N.C. III Partners Limited Partnership
17776 Preston Road, Suite 100
Dallas, Texas 75252
Federal Tax Identification Number: 75-2721406

It is the intention of the parties hereto that the obligations of Tenant hereunder shall be separate and independent covenants and agreements, and that rent and all other sums payable by Tenant hereunder shall continue to be payable in all events, and that the obligations of Tenant hereunder shall continue unaffected, unless the requirement to pay or perform the same shall have been terminated pursuant to an express provision of this Lease. All sums payable hereunder by Tenant shall be paid without notice or demand, and without setoff, counterclaim, recoupment, abatements, suspension, deferment, diminution, deduction, reduction or defense, except as otherwise specifically set forth herein. This Lease shall not terminate and Tenant shall not have any right to terminate this Lease during the Term (except as otherwise expressly provided herein). Tenant agrees that, except as otherwise expressly provided herein, it shall not take any action to terminate, rescind or avoid this Lease notwithstanding (i) the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution, winding-up or other proceeding affecting Landlord, (ii) the exercise of any remedy, including foreclosure, under any mortgage, (iii) any action with respect to this Lease (including the disaffirmance hereof) which may be taken by Landlord under the Federal Bankruptcy Code or by any trustee, receiver or liquidator of Landlord or by any court under the Federal Bankruptcy Code or otherwise, (iv) the taking of the Leased Premises or any portion thereof (except as specifically provided in Article 19 below), (v) the prohibition or restriction of Tenant's use of the Leased Premises under any legal requirement or otherwise, (vi) the destruction of the Leased Premises or any portion thereof, (vii) the eviction of Tenant from possession of the Leased Premises, by paramount title or otherwise (except as specifically provided in Article 39), or (viii) default by Landlord under any other agreement between Landlord and Tenant. Tenant waives all rights which are not expressly stated herein but which may now or hereafter otherwise be conferred by law to quit, terminate or surrender this Lease or any of the Leased Premises; to any setoff, abatement, suspension, deferment, diminution of rent or any other

sums payable under this Lease, and for any statutory lien or offset right against Landlord or its property, each except as otherwise expressly provided herein.

Landlord and Tenant agree that this Lease is a true lease and does not represent a financing arrangement. Each party shall reflect the transaction represented hereby in all applicable books, records and reports (including income tax filings) in a manner consistent with "true lease" treatment rather than "financing" treatment.

4. ACCEPTANCE OF PREMISES.

Tenant has constructed the Building and other improvements on the Leased Premises to plans and specifications approved by Tenant and by contractors chosen by Tenant. Tenant therefore will be familiar with the designs of the improvements and condition of the Leased Premises as of the Commencement Date, and will be presumed as of such Commencement Date to have accepted the Leased Premises in their then existing condition. To the maximum extent permitted by law, Tenant waives the implied warranty of suitability for the Leased Premises. Landlord shall cooperate in Tenant's attempt to enforce warranty and other obligations of contractors and suppliers for the original construction of the Leased Premises, but shall have no other responsibility or liability for the design, construction or condition of Leased Premises and makes no warranties with respect thereto, and Landlord shall not be required to make any repairs of any kind whatsoever during the term of this Lease, except under the provisions of Section 19 hereof. Landlord will transfer all contractor and supplier warranties in its possession to Tenant, for the Term of this Lease which transferred warranties shall revert back to Landlord upon termination of said Lease. Tenant accepts the Leased Premises "as is, where is and with all faults." Landlord makes no, and expressly hereby disclaims and denies any, representations or warranties, express or implied, regarding the condition or suitability of, or title to, the Leased Premises. To the maximum extent permitted by applicable law, Tenant waives any implied warranty of suitability for the Leased Premises.

5. MAINTENANCE AND REPAIRS BY TENANT.

Tenant agrees at its expense to keep and maintain the entire Leased Premises, both Building and Land, in good order, condition and repair, including but not limited to maintenance and repair including replacement (as necessary) of all structural or load-bearing elements, roofs, walls, foundations, heating, ventilating and air conditioning systems, windows, walls, doors, electrical systems and equipment, mechanical equipment, plumbing and all other components of the Building, mowing lawns, care of plantings, resurfacing and striping of walkways, driveways and parking areas, and adjacent public sidewalks, removal of trash, maintenance of utility lines and exterior lighting on the Land. All such

maintenance and repair shall keep the Leased Premises in a good state of repair and in a clean, safe, and sanitary condition and in compliance with all applicable laws, including without limitation the Americans with Disabilities Act, and insurance regulations. Tenant must make all repairs, corrections, improvements or alterations necessitated by age, Tenant's use, the elements or required pursuant to governmental order or mandate. Tenant expressly waives the benefit of any statute now or hereinafter in effect which would otherwise afford Tenant the right to make repairs at Landlord's expense or to terminate this Lease because of Landlord's failure to keep the Leased Premises in good order, condition or repair. Any and all obligations that Landlord may incur under any operation and reciprocal easement agreement and any other agreements to which the Land may be subject as of the Commencement Date and any amendments thereto or modification thereafter shall become the sole obligation of Tenant during the initial Term of the Lease and any extensions thereof.

If Tenant fails to perform any of its obligations under this Section 5, or under another provision of this Lease, Landlord may at its option (but shall not be required to) enter upon the Leased Premises after ten (10) days prior written notice to Tenant (except in the case of an emergency, in which case no notice or waiting period shall be required), perform such obligations on Tenant's behalf and put the same in good order, condition and repair, and the cost thereof, together with interest at 15% per annum (but in no event more than the maximum rate then allowable by law) shall become due and payable as additional rental to Landlord together with Tenant's next rental installment. Except for the obligations of Landlord under Section 19 (relating to condemnation of the Leased Premises), it is intended by the parties hereto that Landlord have no obligation, in any manner whatsoever, to repair and maintain the Leased Premises or the equipment therein or any part thereof, whether structural or non-structural, all of which obligations are intended to be that of Tenant. In no event shall Landlord be obligated to pay for repairs or replacement of any part of the Leased Premises.

6. SPECIAL NET LEASE.

This Lease is what is commonly called a "Net, Net, Net Lease" it being understood that Landlord shall receive the rent set forth in Section 3 and Section 41 free and clear of any and all other impositions, taxes, liens, charges or expenses of any nature whatsoever in connection with the ownership and operation of the Leased Premises. In addition to the rent reserved by Section 3 and Section 41, Tenant shall pay to the parties respectively entitled thereto all impositions, insurance premiums, operating charges, maintenance charges, construction costs and any other charges, costs and expenses which arise or may be contemplated. All such charges, costs and expenses shall constitute additional rent, and upon the failure of Tenant to pay any of such costs, charges or

expenses including, without limitation, utilities pursuant to Section 7 and taxes and assessments pursuant to Section 8, Landlord shall have the same rights and remedies as otherwise provided in this Lease for the failure of Tenant to pay rent. It is the intention of the parties except as expressly provided herein that this Lease shall not be terminable for any reason by Tenant, and that Tenant shall in no event be entitled to any abatement of, or reduction in, rent payable under this Lease, except as otherwise expressly provided herein. Any present or future law to the contrary shall not alter this agreement of the parties.

7. UTILITIES.

Tenant shall pay on time and indemnify, defend and hold Landlord free and harmless from all bills or assessments for light, heat, water, gas, electric, telephone, sewer rentals or charges, and any other expenses arising out of or incidental to the occupancy or operation of said Building and Leased Premises. No full or partial utility deprivation including, but not limited to, blackout, brownout, or rationing shall give rise to any abatement of rent nor give rise to any right of Tenant to terminate the Lease. Landlord shall have no obligation to furnish any utilities to the Leased Premises.

8. TAXES AND ASSESSMENTS.

As additional rent, Tenant agrees and covenants to pay directly to the proper governmental agency, on or before the date each installment becomes due and payable, an amount equal to all "Real Property Taxes" including but not limited to (i) the ad valorem or property taxes; and all other taxes including commercial rental taxes and other similar taxes levied against the Leased Premises, excepting income taxes of Landlord, which become due and payable during the Term of this Lease, and (ii) all installments of general, special, ordinary or extraordinary assessments including statutory interest, if any. Landlord shall have the obligation to, if possible, (i) have the tax bills mailed directly to Tenant by the proper governmental agency; and (ii) for the last lease year of the Term hereof, furnish an apportionment between Landlord and Tenant based on the number of days of Tenant's last lease year which fall within the then current calendar year. In the event Landlord is unable to have the tax bills mailed directly to Tenant by the proper governmental authorities, Landlord shall within five (5) business days of receipt thereof forward to Tenant the tax bills. Landlord agrees to pay any late fees, charges or penalties incurred due to Landlord's failure to forward to Tenant the tax bills within the time period provided herein if, due to Landlord's failure, Tenant is prevented from paying such tax bills before any late fees, charges or penalties are incurred. Tenant may, in good faith and in a lawful manner and upon giving written notice to Landlord of its intention so to do, contest in Landlord's name any tax assessment or charge against the Leased Premises, but all costs

and expenses incidental to such contest shall be paid by Tenant, and in case of an adjudication adverse to Tenant, then Tenant shall promptly pay such tax, assessment or charge including penalties or late charges, if any. Tenant shall indemnify, defend and save Landlord harmless against any loss or damage arising from such contest and shall, if necessary to prevent a sale or other loss or damage to Landlord, pay such tax, assessment or charge under protest and take such other steps as may be necessary in Landlord's determination to prevent any sale or loss. Tenant agrees, if requested by Landlord's lender, to pay its estimated share of real estate taxes into a monthly escrow account.

Tenant shall promptly furnish Landlord with satisfactory evidence that all taxes have been paid. If Tenant shall fail to pay any such taxes, Landlord shall have the right to pay the same, in which case Tenant shall repay such amount to Landlord with Tenant's next rent installment together with interest at the rate of 15% per annum but in no event more than the maximum rate then allowable by law. As used herein, the term "Real Property Tax" shall include any form of real estate tax or assessment, general, special, ordinary or extraordinary, and any license fees, commercial rental tax, including without limitation, sales, use, gross receipts or value added taxes levied on the rent payable hereunder, improvement bond or other bonds, including statutory interest, levy or tax (other than inheritance, personal income or estate taxes) imposed on the Leased Premises by any authority having the direct or indirect power to tax, including any city, state or federal government, or any school, agricultural, sanitary, fire, street, drainage or other improvement district thereof, as against any legal or equitable interest of Landlord in the Leased Premises or in the real property of which the Leased Premises are a part, as against Landlord's right to rent or other income therefrom, and as against Landlord's business of leasing the Leased Premises. The term "Real Property Tax" shall also include any tax, fee, levy, assessment or charge (i) in substitution of, partially or totally, any tax, fee, levy, assessment or charge included within the definition of "Real Property Tax", or (ii) the nature of which was previously included within the definition of "Real Property Tax", or (iii) which is imposed as a result of a transfer, either partial or total, of Landlord's interest in the Leased Premises or which is added to a tax or charge included within the definition of "Real Property Tax" by reason of such transfer, or (iv) which is imposed by reason of this transaction, any modifications or changes hereto, or any transfers hereof. Tenant shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of Tenant contained in the Leased Premises or elsewhere. When possible, Tenant shall cause said trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Landlord. If any of Tenant's personal property shall be assessed with Landlord's real property, Tenant shall pay the taxes attributable to Tenant within ten (10) days after receipt

of a written statement setting forth the taxes applicable to Tenant's property.

9. TENANT'S IMPROVEMENTS.

Any structural alterations or improvements or any non-structural improvements or alterations costing more than \$500,000 shall require Landlord's consent, which consent shall not be unreasonably withheld. Landlord's consent shall be automatically granted if Landlord does not respond to Tenant's request within 15 days after receipt by Landlord of notice and submission of preliminary plans and specifications from Tenant. Subject to the preceding sentence, during the full Term of this Lease, Tenant shall have the right, at any time during the Term, and from time to time, at its own cost and sole expense and liability to place or install within the Leased Premises, such non-structural leasehold improvements as it shall desire provided that such improvements do not diminish the market value of the Premises. Unless expressly released by Landlord in writing, all such improvements shall be and remain, at the time of expiration or other termination of this Lease, the property of Landlord without payment or offset unless such improvements are not permanently attached to the Leased Premises. No such installation or construction by Tenant shall violate any lawful rule or regulation, plat or zoning construction or other law, ordinance or regulation applicable thereto, or any Covenant Documents, and all alterations and improvements shall be done and performed in good and workmanlike manner. All costs of any such improvements shall be paid by Tenant and Tenant shall allow no liens for labor or materials to attach to the Leased Premises by virtue thereof. Tenant shall submit drawings and specifications of all alterations and improvements to Landlord prior to commencement of work and as-built plans promptly after completion thereof. Tenant shall give Landlord not less than ten (10) days notice prior to the commencement of any work in, on or about the Leased Premises and Landlord shall have the right to post notices of non-responsibility in or on the Leased Premises as provided by law. Landlord may require that Tenant remove any or all alterations, improvements or additions made by Tenant to the Leased Premises at the expiration of the Term and restore the Leased Premises to its prior condition. In no event will any alteration or improvement reduce the square footage of the Building located on the Leased Premises.

Any alterations, improvements and additions in, or about the Leased Premises that Tenant desires to make and which require the consent of Landlord shall be presented to Landlord in written form, with proposed detailed plans. If Landlord shall consent, the consent shall be deemed conditioned upon Tenant acquiring a permit to do so from appropriate governmental agencies, the furnishing of a copy thereof to Landlord prior to the commencement of the work and the compliance by Tenant of all conditions of said permit in a prompt and expeditious manner. Tenant shall pay, when due, all claims for

labor or materials furnished or alleged to have been furnished to or for Tenant at, or for use in the Leased Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Leased Premises or any interest therein. If Tenant shall, in good faith, contest the validity of any such lien, claim or demand, then Tenant shall, at its sole expense defend itself and Landlord against the same and shall post any necessary bond or obtain a title insurance indemnity over, if reasonably required by Landlord, and shall pay and satisfy any such adverse judgement that may be rendered thereon before the enforcement thereof against Landlord or the Leased Premises. In addition, Landlord may require Tenant to pay Landlord's attorneys' fees and costs in participating in such action if Landlord shall decide it is in its best interest to do so.

10. INSURANCE.

Tenant agrees to provide and keep in force during the Term of this Lease and at its own cost and expense pay all premiums and costs for the following insurance coverage from an insurance company or companies authorized to do business in the State in which the Leased Premises are located:

a. Fire and All Risk. Fire and all risk insurance in an amount not less than the Full Insurable Value (defined below) of the Building and improvements on said property, and to keep such insurance in full force and effect for and during the time any Buildings and improvements are located on the Leased Premises during the term of this Lease. The coverage shall include all risks commonly insured for properties similar to the Leased Premises in the area where the Leased Premises are located. For the purpose hereof, "Full Insurable Value" shall mean the actual replacement cost of the improvements without allowance for depreciation but excluding footings, foundations, and other portions of improvements which are customarily not insurable. Such policy or policies shall insure Landlord and Tenant, and shall contain a standard mortgagee clause providing for payment of proceeds to a mortgagee, as its interest may appear.

b. Public Liability and Property Damage. Public liability and property damage insurance with limits of not less than \$2,000,000 for injury and death to any one person, and \$5,000,000 for injury or death in any one accident or occurrence per location including property damage, insuring Landlord and Tenant, and with a cross-liability endorsement covering claims by an insured against another insured. Provided, however, regardless of the limits specified herein, in the event that any other binding agreement affecting the Leased Premises, i.e. Covenant Documents as listed on the attached Exhibit "C", require higher limits, Tenant shall comply with the higher limits therein specified. The public

liability and property damage insurance described in this Section 10(b) shall be primary insurance and any insurance maintained by Landlord shall be excess and noncontributing.

c. Business Interruption. Business interruption insurance covering all rent related to the Leased Premises for a minimum of six (6) months.

d. Worker's Compensation. Worker's compensation insurance covering all persons employed by Tenant on the Leased Premises in connection with any work done on or about any of the Leased Premises.

e. Additional Insureds. Each policy shall name Landlord and Landlord's mortgagee, if any, as Additional Insureds, as their interests may appear, and shall contain a covenant that should such policies be cancelled, assigned or materially changed during the policy period, the insurer will mail a notice thereof to Landlord and Landlord's mortgagee at least thirty (30) days in advance of such cancellation or change. Certificates of insurance evidencing the existence and amounts of such insurance, shall be delivered to Landlord by Tenant prior to Tenant's occupancy of any portion of the Leased Premises. No such policy shall be cancelable except after thirty (30) days written notice to Landlord and Landlord's mortgagee. Tenant shall, prior to the expiration of any such policy, furnish Landlord with renewals or "binders" thereof together with evidence of the payment of premiums therefor, or upon written notice to Tenant Landlord may order such insurance and charge the cost thereof to Tenant, which amount shall be repaid to Landlord with Tenant's next rent installment together with interest at the rate of fifteen percent (15%) per annum but in no event more than the maximum rate then allowable by law. The insurance, as to the interest of Landlord's mortgagee therein, shall not be invalidated by any act or neglect of Landlord or Tenant or any owner of the Leased Premises, nor by any foreclosure or any other proceedings or notices thereof relating to the Leased Premises, nor by any change in the title or ownership of the Leased Premises nor by occupancy of the Leased Premises for purposes more hazardous than are permitted by such policy. Each insurance policy referred to in this Section shall contain, to the extent applicable, standard non-contributory mortgagee clauses in favor of Landlord's mortgagee.

f. Deductibles. The fire and all risk coverage specified herein shall have a deductible no greater than \$100,000. The public liability and property damage coverage specified herein shall have a deductible no greater than \$100,000. Tenant shall be liable for any deductible amount. The policies of insurance required to be carried by Tenant shall be primary and not in excess of any other insurance available to

Landlord. It shall be the responsibility of Tenant not to violate nor knowingly permit to be violated any condition of the policies required under this Lease. Neither the issuance of any such insurance policy nor the minimum limits specified in this Section 10 shall be deemed to limit or restrict in any way Tenant's liability arising under or out of this Lease.

g. Waiver of Subrogation. To the extent such waivers are permitted by insurance carriers, Landlord and Tenant waive their respective right of recovery against the other and the officers, employees, agents and representatives of such other party for any direct or consequential damage to the property of the other including its interest in the Leased Premises by fire or other casualty to the extent such damage is insured (disregarding any deductible) against under a policy or policies of insurance. Each such insurance policy carried by either Landlord or Tenant shall include a waiver of the insurer's rights of subrogation. Such waiver shall in no way be construed or interpreted to limit or restrict any indemnity or other waiver made by Tenant under the terms of this Lease.

h. No Impairment of Coverage. Tenant shall not carry any stock of goods or do anything in or about the Leased Premises which will impair or invalidate the obligation of any policy of insurance on or in reference to the Leased Premises or the Building. Landlord shall have the right to require that the amount or types of insurance coverages required of Tenant hereunder be adjusted from time to time to reflect insurance customarily required for similar properties in the area where the Leased Premises are located. All insurance coverages required by this Section 10 shall be written by an insurance company or companies licensed to do business in the State of where the Leased Premises are located with a Best's rating of at least "A-VII". Each policy required to be carried by Tenant shall provide that any loss otherwise payable thereunder shall be payable notwithstanding (i) any act or omission of Landlord or Tenant which might, absent such provision, result in a forfeiture of all or a part of such insurance payment, (ii) the occupation or use of any of the Leased Premises for purposes more hazardous than permitted by the provisions of such policy; (iii) any foreclosure or other action or proceeding taken by any mortgagee of Landlord pursuant to any provision of the mortgage held by such mortgagee upon the happening of an event of default therein, or (iv) any change in title or ownership of any of the Leased Premises.

i. Review of Coverage. Tenant agrees to review with Landlord the insurance coverages provided herein at least once every two (2) years and to increase the limits, if necessary, in accordance with reasonable commercial standards.

11.A. DAMAGE, DESTRUCTION, OBLIGATION TO REBUILD.

If the Leased Premises are totally or partially damaged or destroyed by storm, fire, lightning, earthquake, or from any other cause whatsoever, during the Term of this Lease whether or not such damage or destruction is covered by any insurance required to be maintained under Section 10 hereof, then Tenant shall (i) give Landlord immediate notice thereof, (ii) adjust, collect and compromise any and all such claims, with the consent of Landlord's mortgagee and Landlord, not to be unreasonably withheld or delayed and Landlord and Landlord's mortgagee shall have the right to join with Tenant therein and (iii) in any event repair, restore and rebuild the Leased Premises in accordance with applicable building and zoning codes at the time of rebuilding to substantially the same condition immediately prior to such damage or destruction and this Lease shall remain in full force and effect, provided, however, that Tenant shall have the right, with the consent of Landlord (which shall not be unreasonably withheld) to replace the Leased Premises with a different structure so long as (a) the value of the Leased Premises with such structure is no less than the value of the Leased Premises immediately prior to the date of casualty and no less than the square footage shown in Section 1 of this Lease, and (b) the new structure can be built and occupied under the then applicable laws, codes, ordinances, and zoning restrictions. Such repair, restoration and rebuilding (all of which are herein called "repair") shall be commenced within a reasonable time however no more than 30 days after such damage or destruction has occurred and permits necessary to authorize such rebuilding have been issued, and shall be diligently pursued to completion.

a. Insurance Proceeds. Subject to Section 11.B., the proceeds of any insurance maintained under Section 10 hereof shall be made available to Tenant for payment of costs and expense of repair, provided however, that such proceeds may be made available to Tenant subject to reasonable conditions, including, but not limited to architects' certification of cost, retention of percentage of such proceeds pending recordation of a notice of completion and a lien and completion bond (or payment and performance bond) to insure against mechanic's or materialmen's liens arising out of the repair and to insure completion of the repair, all at the expense of Tenant. In the event the insurance proceeds are insufficient to cover the cost of repair, then any amounts required over the amount of the insurance proceeds received that are required to complete said repair shall be paid by Tenant.

b. Abatement of Rent. Notwithstanding the partial or total destruction of the Leased Premises and any part thereof, and notwithstanding whether the casualty is insured or not, there shall be no abatement of rent or of any other obligation of

Tenant hereunder including, without limitation, payment of operating expenses, insurance premiums and property taxes, by reason of such damage or destruction unless the Lease is terminated by virtue of another provision of this Lease.

c. Waiver: Tenant waives the provisions of any statutes which relate to termination of leases when the property leased is destroyed and agrees that such event shall be governed by the terms of this Lease.

11.B. RESTORATION:

a. If the estimated cost of Restoration (which is deemed to mean the restoration of the Leased Premises after damage by casualty as nearly as possible to the value, condition and character existing immediately prior to such damage) is in excess of \$100,000, all proceeds of any insurance shall be paid to a Trustee which shall be a federally insured bank or other financial institution, selected by Landlord and Tenant and reasonably satisfactory to Landlord's mortgagee (the "Trustee"). If the Leased Premises shall be covered by a mortgage, Landlord's mortgagee, if it so desires, shall be the Trustee. Each insurer is hereby authorized and directed to make payment under said policies directly to such Trustee instead of to Landlord and Tenant jointly; and Tenant hereby appoints such Trustee as Tenant's attorney-in-fact to endorse any draft therefor for the purposes set forth in this Lease after approval by Tenant of such Trustee, if Trustee is other than Landlord's mortgagee, such approval not to be unreasonably withheld or delayed.

The proceeds of such insurance payment shall be retained by the above-mentioned Trustee and, promptly after such casualty, Tenant shall commence and diligently continue to perform the Restoration to the Leased Premises. Upon payment to the trustee of such proceeds, the Trustee shall, to the extent available, make the proceeds available to Tenant for Restoration, in accordance with the provisions of this Article. Tenant shall, whether or not the proceeds are sufficient for the purpose, promptly repair or replace the Leased Premises as nearly as possible to their value and condition and character existing immediately prior to such event and otherwise in accordance with all insurance requirements and legal requirements and the provisions of this Lease and the entire proceeds of such loss plus any and all accumulated interest thereon shall be payable to Tenant, subject to the provisions of this Article.

c. In the event that any damage or destruction shall occur at such time as Tenant shall not have maintained third-party insurance in accordance with this Lease, Tenant shall pay to the Trustee the amount of the proceeds that would have been

payable had such insurance program been in effect (the "Tenant Insurance Payment").

d. The proceeds and Tenant Insurance Payment (the aggregate of which and any interest being herein defined as the "Restoration Fund") paid to the Trustee shall be disbursed by the Trustee in accordance with the following conditions:

(i) At the time of any disbursement, no Default shall exist and no mechanics' or materialmen's liens shall have been filed and remain undischarged and unbounded.

(ii) If the cost of Restoration exceeds \$250,000 prior to the commencement of the Restoration, the architects, contracts, contractors, plans and specifications for the Restoration shall have been approved by Landlord, which approval shall not be unreasonably withheld or delayed.

(iii) Each request for disbursement shall be accompanied by a certificate of Tenant, signed by the President, Treasurer or any Vice President of Tenant, describing the completed work for which payment is requested, stating the cost incurred in connection therewith and stating that Tenant has not previously received payment for such work and the certificate, to be delivered by Tenant upon completion of the work shall, in addition, state that the work has been completed and complies with the applicable requirements of this Lease and all legal requirements and insurance requirements.

(iv) Disbursement shall be made from time to time in an amount equal to the cost of the work completed less the retainage specified in subsection (v) herein since the last disbursement upon receipt of (1) satisfactory evidence, including architects' certificates, of the state of completion, of the estimated cost of completion and of performance of the work to date in a good and workmanlike manner in accordance with the contracts, plans and specifications approved by Landlord (2) waivers of the general contractor's lien, (3) a satisfactory bring down of title insurance, and (4) other evidence of cost and payment so that Landlord can verify that the amounts disbursed from time to time are represented by work that is completed in place and free and clear of mechanics' lien enforcement actions.

(v) The Trustee may retain ten percent (10%) from each disbursement of the Restoration Fund until the Restoration is fully completed and the Leased Premises are available for their intended use, in the reasonable judgment of the Landlord's mortgagee, including the issuance of any necessary certificate of occupancy.

(vi) The Restoration Fund shall be kept in a separate interest-bearing account federally insured to the extent applicable by the Trustee or by the Landlord's mortgagee.

e. Prior to the commencement of Restoration and at any time during Restoration, if the estimated cost of Restoration, as reasonably determined by Landlord or Landlord's mortgagee, exceeds the amount of the Restoration Fund, the amount of such excess shall be paid by Tenant to the Trustee to be added to the Restoration Fund prior to any further disbursement or Tenant shall fund at its own expense the costs of such Restoration until the remaining Restoration Fund is sufficient for the completion of the Restoration.

12. ABATEMENT.

Except only as provided in Section 19, Tenant's obligations to pay rent and to perform all of the other covenants and agreements which Tenant is bound to perform under the terms of this Lease shall not terminate, abate or be diminished during any period that the Leased Premises or any part thereof are untenable regardless of the cause of such untenability.

13. COMPLIANCE WITH LAWS, ETC.

Tenant shall use the Leased Premises as a general business, or as a store for other retail products and supplies, or, with the consent of Landlord (which shall not be unreasonably withheld) for any other lawful purpose, and, in the use and occupancy of the Leased Premises, and in the conduct of its business and activities, shall at its own cost and expense secure and maintain all necessary licenses and permits required for the conduct of its business. Tenant shall not use the Leased Premises or permit anything to be done in or about the Leased Premises which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. Tenant shall at its sole cost and expense comply with all laws, statutes, ordinances and governmental rules, regulations or requirements of any board of fire underwriters (including all modifications and improvements required thereby) now in force or which may hereafter be in force relating to or affecting the condition, use or occupancy of the Leased Premises. Tenant shall observe all plat and deed restrictions of record. Without limiting

the generality of the foregoing, Tenant will not generate, store, bury, discharge or release on or from the Leased Premises any hazardous substances or waste in a manner which would give rise to penalty or liability under the Resources Conservation Recovery Act 42 U.S.C. 6901 et seq., or any other federal, state or local law.

Upon 15 days notice, Tenant shall provide Landlord with copies of all documents and information evidencing Tenant's compliance with any laws, ordinances, orders, rules and regulations requested by Landlord. Tenant shall notify Landlord in writing immediately of any threatened or actual notice, citation, warning or report regarding Tenant's alleged failure to cause the Leased Premises to comply with all laws, ordinances, orders, rules and regulations.

14. WASTE; USE; NO LIENS.

Except as to liens arising as a result of work performed by or at the direction of Landlord (other than work performed by or at the direction of Landlord due to Tenant's failure to perform such work as required by this Lease); which shall be the sole responsibility of Landlord, Tenant agrees that during the Term hereof it shall not do or suffer any waste to the Land, Building or Leased Premises, or cause, suffer or permit any liens to attach to or to exist against the Land, Building or Leased Premises by reason of any act or omission of Tenant or person claiming through Tenant or by reason of its performance or of its failure to perform any act required of it hereunder. Tenant agrees to indemnify, defend and save and hold harmless Landlord from and against any such lien(s) or claims of lien(s). Tenant shall not permit the Leased Premises to be used for any illegal purposes. Tenant agrees that Tenant's use of the Leased Premises and any permitted assignee and/or sublessee of Tenant's use of the Leased Premises are limited by and subject to the "Covenant Documents" as more fully set forth on the attached Exhibit "C". Provided, however, Tenant shall not be required to pay or discharge any lien against the Leased Premises so long as Tenant has given Landlord notice of its intent to contest such lien and Tenant is in good faith contesting the validity or amount thereof and has given to Landlord such security as Landlord has reasonably requested to assure payment of such lien and to prevent the sale, foreclosure or forfeiture of the Land, Building or Leased Premises by reason of non-payment. In the event that any lien does so attach, and is not released within thirty (30) days after written notice to Tenant thereof or if Tenant has not indemnified Landlord against such lien within said thirty (30) day period, Landlord, in its sole discretion, may pay and discharge the same and relieve the Leased Premises therefrom, and Tenant agrees to repay and reimburse Landlord upon demand for the amount so paid by Landlord, together with interest of fifteen percent (15%) per annum, but in no event more than the maximum rate then allowed by law. The existence of any mechanics', laborer's, materialmen's, supplier's or vendor's lien, or any right in respect thereof, shall not constitute a violation of this paragraph if payment is not yet

due and payable upon the contract or for the goods or services in respect of which any such lien has arisen. On final determination of the lien or claim of lien Tenant will immediately pay any judgement rendered, and all costs and charges, and shall cause the lien to be released or satisfied. Tenant will not use or permit the use of the Land, Building or Leased Premises in any manner which would result or would with the passage of time result in the creation of any easement or prescriptive right. Tenant shall not use or occupy the Leased Premises, or knowingly permit them to be used or occupied, contrary to any statute, rule, order, ordinance, requirement, regulation or certificate of occupancy affecting the same, or which would make void or voidable any insurance then in force with respect thereto or which would make it impossible to obtain fire or other insurance thereon required to be furnished hereunder at Tenant's expense, or which would cause structural injury to the improvements or cause the value or usefulness of the Leased Premises, or any portion thereof, to diminish (reasonable wear and tear excepted), or which would constitute a public or private nuisance or waste, and Tenant agrees that it will promptly, upon discovery of any such use, take all necessary steps to compel the discontinuance of such use.

a. No Toxics. To the best of Tenant's knowledge, information and belief, no electrical transformers, light fixtures or other equipment containing polychlorinated biphenyl are or were located on the Leased Premises at any time during or prior to Tenant's possession and/or occupancy thereof, except as disclosed in the PSA (as defined in Section 15(b)). Tenant hereby represents and warrants that Tenant shall not install any asbestos containing materials or equipment containing polychlorinated biphenyl in the Leased Premises.

b. No Storage Tanks. To the best of Tenant's knowledge, information and belief, no storage tanks (either above-ground or underground) for gasoline or any other substances are or were located on the Leased Premises at any time during or prior to Tenant's possession and/or occupancy thereof, except as disclosed in the PSA. Upon the termination of this Lease, or sooner if required by law, Tenant shall, remove and/or remediate any Hazardous Materials and contaminated soil or ground water, if any, at Tenant's sole cost and expense, which may then be present upon the Land.

c. Indemnification. Tenant hereby agrees to indemnify, defend, protect, and hold harmless Landlord and Landlord's employees, agents, representatives and Landlord's mortgagee from and against any and all loss, damages or liability including, without limitation, (i) all foreseeable damages, directly or indirectly arising out of the use, generation, storage, transportation, treatment, release, threatened release or disposal of Hazardous Materials upon the Land and

(ii) the cost of any required or necessary repair, remediation, cleanup or detoxification and the preparation of any closure or other required plans or reports, whether such action is required or necessary prior to or following transfer of title to the Leased Premises, to the full extent that such action is attributable, directly or indirectly, to the presence or use, generation, storage, transportation, release, threatened release or disposal of Hazardous Materials by Tenant and any of Tenant's agents, employees, contractors or invitees during the Term of the Lease. This agreement to indemnify, defend, protect and hold harmless Landlord shall be in addition to any other obligations or liabilities Tenant may have to Landlord at common law under all statutes and ordinances or otherwise and survive the termination of the Lease to the extent of acts or omissions of Tenant occurring prior to the termination of the Lease.

15. TENANT REPRESENTATIONS.

Tenant acknowledges, represents, and warrants to Landlord and Landlord's successors and assigns that:

a. Occupation of Leased Premises. Tenant shall be deemed the prior owner and occupant of the Leased Premises immediately prior to Landlord's purchase of the Leased Premises from Tenant;

b. PSA. Landlord has caused Kleinfelder Inc., to prepare a Phase I Environmental Site Assessment of the Leased Premises, dated on or about December 16, 1997 (the "PSA") a complete copy of which has been furnished to Tenant;

c. No Violation of Health and Safety Laws. Tenant represents, to the best of its knowledge, information and belief, the Leased Premises are not in violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene, health and safety, or to the use, generation, storage, transportation, treatment, release or disposal of Hazardous Materials (as defined in Section 15(e)) or to the environmental condition on, under or about the Leased Premises, including, but not limited to, soil and ground water condition, and no notice from any governmental body has been served upon or delivered to Tenant claiming any such violation;

d. No Hazardous Materials. Neither Tenant nor, to the best of Tenant's knowledge, information and belief, any third party has at any time during or prior to Tenant's possession and/or occupancy of the Leased Premises used, generated, manufactured, stored, treated, released or disposed of on, under or about the Leased Premises, or transported to or from the Leased Premises, any Hazardous Materials. Tenant shall

not conduct, nor permit, any of the foregoing activities to occur on the Leased Premises during the term. The term "Hazardous Materials" as used in this Lease shall include, but not be limited to, any flammable materials, explosives, radioactive materials, hazardous or toxic substances which are or become regulated by any local governmental authority, the State of in which the Leased Premises are located or the United States Government or which would require removal, treatment or other remedial action. The term "Hazardous Materials" includes, without limitation, any material or substance which is (i) listed or defined as a "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," or "hazardous substance", or the like, under any municipal, state or federal law, code or other regulation, (ii) defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et. seq., The Hazardous Materials Transportation Act 49 U.S.C. § 1801, et. seq. and the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et. seq.; (iii) petroleum; (iv) asbestos; (v) polychlorinated biphenyl; (vi) designated as a "hazardous substance" pursuant to Section 3.11 of the Federal Water Pollution Control Act (33 U.S.C. § 1317); (vii) any substance which is subject to the reporting requirements of the Federal Emergency Planning and Community Right-to-Know Act; (viii) defined as a "hazardous substance" pursuant to the Toxic Substances Control Act, 15 U.S.C. § 2601; or (ix) any substance which contaminates soil or ground water and causes degradation of the soil and/or water to the extent that mitigation methods are needed to restore the soil or water to its natural state;

e. No Asbestos. Tenant agrees that no asbestos-containing materials will be installed within the Leased Premises, or exposed in the Leased Premises through demolition, renovation or otherwise, at any time during or prior to Tenant's possession and/or occupancy thereof.

f. Signs. All signs located on the Leased Premises have been approved and have been installed in accordance with local ordinances and any other agreements, i.e. Covenant Documents as listed on the attached Exhibit "C", to which the Land may be subject as of the Commencement Date.

16. LANDLORD'S PERFORMANCE OF TENANT'S DUTIES.

a. Performance at Tenant's Sole Expense. If Tenant should fail to pay or perform in full any covenant on its part to be performed by virtue of any provision of this Lease, Landlord may, after five (5) days' written notice in the case of defaults in the payment of rent, additional rent or other monetary amount, or after thirty (30) days' notice in the case

of non-monetary failures to perform (or, in the case of emergencies, after reasonable attempts at prior notice), pay or perform the same for the account of Tenant, and Tenant hereby authorizes Landlord to come upon the Leased Premises for such purposes and while on the Leased Premises to do all things reasonably necessary to accomplish the correction of such default. If Landlord, at any time, is compelled to pay or elects to pay any sum of money by reason of the failure of Tenant ten (10) days after the due date thereof to comply with any provision of this Lease, or if Landlord is compelled to incur any expense, including reasonable attorneys' fees and costs, in instituting, prosecuting or defending any action or proceeding instituted by reason of any default of Tenant hereunder, the sum or sums so paid by Landlord with all interest costs at fifteen percent (15%) per annum from the date so paid by Landlord and damages including any loss of rent, shall be deemed to be additional rent hereunder.

All covenants and agreements to be performed by Tenant under any of the terms of this Lease shall be performed by Tenant at Tenant's sole expense and without abatement of rent. If Tenant shall fail to observe and perform any covenant, condition, provision or agreement contained in this Lease or shall fail to perform any other act required to be performed by Tenant, Landlord may, upon notice to Tenant, without obligation, and without waiving or releasing Tenant from any default or obligations of Tenant, make any such payment or perform any such obligation on Tenant's part to be performed. All sums so paid by Landlord and all costs incurred by Landlord, including reasonable attorneys' fees and costs, shall be payable to Landlord on demand together with interest thereon in a per annum amount equal to eighteen percent (18%) per annum but in no event greater than the maximum interest rate permitted by law, and Tenant covenants to pay any such sums, and Landlord shall have (in addition to any other right or remedy hereunder) the same rights and remedies in the event of Tenant's non-payment thereof as in the case of default by Tenant in the payment of rent.

b. Interest on Past Due Amounts. Any amount due from Tenant to Landlord which is not paid within five (5) days after receipt by Tenant of Landlord's written notice that said amount is past due shall bear interest at the lesser of fifteen percent (15%) per annum or the maximum interest rate permitted by law from five (5) days after notice that such payment is due until paid, but the payment of such interest shall not excuse or cure any default by Tenant under this Lease.

c. Late Charge. Upon receipt by Tenant of written notice from Landlord that Tenant is more than ten (10) days late in paying any installment of rent due under this Lease, Tenant

shall pay to Landlord a late charge equal to five percent (5%) of each delinquent amount of rent and any subsequent delinquent amount of rent. The parties agree that the amount of such late charge represents a reasonable estimate of the cost and expense that would be incurred by Landlord in processing each delinquent payment of rent by Tenant and that such late charge shall be paid to Landlord as liquidated damages for each delinquent payment, but that the payment of such late charge shall not excuse or cure any default by Tenant under this Lease.

d. Purpose of Interest and Late Charge. The parties agree that the payment of late charge and the payment of interest provided for in this Section 16 are distinct and separate from one another in that the payment of interest is to compensate Landlord for the use of Landlord's money by Tenant, while the payment of a late charge is to compensate Landlord for the additional administrative expense incurred by Landlord in handling and processing delinquent payments, but excluding attorneys' fee and attorneys' costs incurred with respect to such delinquent payments.

17. NOTICE TO MORTGAGEE.

So long as there remains of record a mortgage or mortgages of Landlord's interest in the property, and Tenant has been given written notice of the identity and address of such mortgagee(s), Tenant shall give a duplicate notice of each notice sent to Landlord to such mortgagee. Failure to give notice to mortgagee shall not invalidate Tenant's notice to Landlord or expose Tenant to liability to mortgagee. Tenant agrees that if in any notice to Landlord the performance of some act is required or compliance with some provision hereof is requested and Landlord does not, within the allotted time, perform such act or comply with such provision, then mortgagee shall have an additional thirty (30) days after expiration of Landlord's cure period in which to perform such act or comply with such provision for and on behalf of Landlord, and Tenant shall have no right to take action otherwise permitted it, or to terminate this Lease, if the mortgagee shall perform and comply within said thirty (30) days. In the event the act or thing to be complied with within said thirty (30) day period cannot by its nature reasonably be completed within such period, mortgagee shall be deemed to have complied therewith in the event it commenced the performance of compliance within said thirty (30) day period and thereafter completes the same with due diligence. The granting to the mortgagee of additional time in which to comply shall not be deemed in any manner to release or relieve Landlord from the obligations of Landlord under this Lease. The said mortgagee is hereby authorized to enter upon the Leased Premises following reasonable notice to Tenant and while thereon to do anything necessary to correct such default. For purposes of this

Lease any reference to a mortgage or mortgages shall include references to deeds of trust and beneficiaries thereof.

18. SUBLETTING AND ASSIGNMENT.

Provided that Tenant shall remain liable under all of the terms and conditions of this Lease for the full remainder of the Term, and provided further that any sublessee shall consent to use the Leased Premises for retail purposes only and said sublessee's use does not increase the risk of Hazardous Materials being used, generated, manufactured, stored, treated, released or disposed of on, under or about the Leased Premises or transported to or from the Leased Premises, Tenant shall have the absolute right to sublet the Leased Premises, in whole or in part, without the consent of Landlord. Except as expressly permitted below, Tenant shall not assign its interest in this Lease without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed. An assignment of this Lease by Tenant to a parent, subsidiary or affiliate of Tenant shall not require the consent of Landlord. An "affiliate" of Tenant shall mean any corporation, partnership or other business entity which controls or is controlled by, or is under common control with Tenant. The word "control" (including "controlled by", "under common control with" and "controlling") as used with respect to any corporation, partnership or other business entity, shall mean the possession of the power to direct or cause the direction of the management and policies of such corporation, partnership or other business entity, whether through the ownership of voting securities or contract. So long as Tenant is not publicly traded, a change of ownership of 51% or more of Tenant shall be deemed an assignment of this Lease for purposes of this paragraph. Transfers in connection with a public offering shall not be deemed an assignment of Lease. A change of ownership of 51% or more of the stock of Tenant shall not be considered an assignment if it occurs in connection with a bona fide merger or acquisition or change in the state of incorporation of Tenant.

a. No Release. No assignment or subletting shall serve to release Tenant of any obligations hereunder or alter the primary liability of Tenant for the payment of rent and other sums due Landlord hereunder or for the performance of or compliance with each and every term, covenant, condition and obligation to be performed or observed by Tenant under this Lease.

b. Acceptance of Renter Performance. Landlord may accept any rent or performance of Tenant's obligations from any person other than Tenant and such acceptance of any rent or performance shall not constitute a waiver or estoppel of Landlord's rights to exercise its remedies for the default or breach by Tenant of any of the terms, covenants or conditions of this Lease.

c. No Need to Exhaust Security. In the event of any default or breach of Tenant's obligations under this Lease, Landlord may proceed directly against Tenant, or any one else responsible for the performance of Tenant's obligations under this Lease, including the sublessee, without first exhausting Landlord's remedies against any other person or entity responsible therefor, or any security held by Landlord or Tenant.

d. Assumption. Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment or entering into such sublease, be deemed for the benefit of Landlord, to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Tenant during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of the assignment or sublease. Any assignee of this Lease shall covenant to assume the Lease in a manner that is directly enforceable by Landlord. Tenant agrees that in the case of any assignment, Tenant shall, within fifteen (15) days after execution and delivery of any such assignment, deliver to Landlord (i) a duplicate original of such assignment in recordable form and (ii) an agreement, executed and acknowledged by the assignee in recordable form wherein the assignee shall agree to assume and agree to observe and perform all of the terms and provisions of this Lease on the part of the Tenant to be observed and performed from and after the date of such assignment.

e. Provisions to be Included in Sublease. The following terms and conditions shall apply to any subletting by Tenant of all or any part of the Leased Premises and shall be deemed included in all subleases, original duplicates of which Tenant shall deliver to Landlord within ten (10) days after the same is executed, under this Lease whether or not expressly incorporated therein.

(1) Assignment of Rents. Tenant hereby assigns and transfers to Landlord all of Tenant's interest in all rents and income arising from any sublease of all or a portion of the Leased Premises heretofore or hereafter made by Tenant, and Landlord may collect such rent and income and apply same toward Tenant's obligation under this Lease; provided, however, that except during any period in which a breach has occurred in the performance of Tenant's obligations under this Lease, and remains uncured Tenant may, except as otherwise provided in this Lease, receive, collect and enjoy the rents accruing under such sublease. Landlord shall pay to Tenant any portion of such rents, collected from any sublessee that exceed the rental and other monetary obligations then due

from Tenant under the Lease. Landlord shall not, by reason of this assignment of rents or any other assignment of sublease to Landlord, nor by reason of the collection of the rents from a sublessee, be deemed liable to the sublessee for any failure of Tenant to perform and comply with any of Tenant's obligations to such sublessee under such sublease. Tenant hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Landlord stating that a default exists in the performance of Tenant's obligation under this Lease, to pay to Landlord the rents and other charges due and to become due under the sublease. Sublessee shall rely upon any such statement and request from Landlord and shall pay such rents and other charges to Landlord without any obligation or right to inquire as to whether such default exists and notwithstanding any notice from or claim from Tenant to the contrary, Tenant shall have no right or claim against said sublessee, or, until the default has been cured, against Landlord, for any such rents and other charges so paid by sublessee to Landlord.

(2) Attornment. In the event of a breach by Tenant in the performance of its obligations under this Lease, and a resulting termination of Lease by Landlord, Landlord, at its option and without any obligation to do so, may require any sublessee to attorn (i.e., agree to become tenant to a new owner or landlord of the same property) to Landlord, in which event Landlord shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Landlord shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior defaults or breaches of such sublessor under such sublease.

(3) Consent of Landlord Required. Any matter or thing requiring the consent of the sublessor under a sublease shall also require the consent of Landlord herein, if Landlord's consent is required under this lease.

(4) Conditions of Sublease. Each sublease shall provide that (i) it is subject and subordinate to this Lease and any Underlying Mortgage (defined in Section 35 below); (ii) Landlord may enforce the provisions of the sublease, including collection of rent; (iii) if this Lease is terminated for any reason, Landlord may, at its option, either (A) terminate the sublease, or (B) takeover all of the rights and interest of Tenant, as sublessor, under such sublease, in which case such sublessee shall attorn to Landlord. If Landlord elects to takeover the rights

and interest of Tenant, Landlord shall not (1) be liable for any previous act or omission of Tenant under the sublease, (2) be subject to any defense or offset in favor of the sublessee against Tenant, or (3) be bound by any modification to the sublease made without Landlord's written consent or by any prepayment by sublease of more than one month's rent.

19. CONDEMNATION.

Immediately upon obtaining knowledge of the institution of any proceeding for condemnation, Tenant shall notify Landlord thereof and Landlord shall be entitled to participate in any condemnation proceeding at Landlord's expense. Landlord immediately upon obtaining knowledge of the institution of any proceeding for condemnation, shall notify Tenant thereof and Tenant shall have the right to participate in such proceeding at Tenant's own expense. In the event all of the Leased Premises, or such portion thereof as will make the remaining Leased Premises unusable for the purposes of Tenant; be condemned by any legally constituted authority for any public use or purpose, then in either of said events, the Term hereby granted shall cease, at the option of either Landlord or Tenant on thirty (30) days' written notice from the time when possession thereof is taken by said public authorities, and rent shall be accounted for as between Landlord and Tenant as of that date. Said termination, however shall be without prejudice to the rights of either Landlord or Tenant, or both, to recover compensation and damage caused by condemnation from the condemnor, except: (i) Tenant shall have no rights for the value of its leasehold; and (ii) neither Tenant nor Landlord shall have any rights in any separate award made to the other party by the condemnor. In the event of any condemnation of part of the Leased Premises which does not result in a termination of this Lease, subject to the requirements of Section 11.B., the net award of such condemnation shall be retained by Landlord and, promptly after such condemnation, Tenant shall commence and diligently continue to perform the Restoration. Upon the payment to Landlord of the net share of a condemnation which falls within the provisions of this subparagraph Landlord shall, to the extent received, make that portion of the net award equal to the cost of Restoration (the "Restoration Award") available to Tenant for Restoration, in accordance with the provisions of Section 11.B., and the balance remaining (the "net surplus award") shall be the property of Landlord. There shall be an abatement of annual Rent after such taking which shall be equal to the greater of the (i) the percentage of the total area of the Leased Premises after the taking as relates to the total area of the Leased Premises immediately prior to said taking thereunder, to the termination of this Lease, or (ii) the percentage of total area of the Building after the taking as relates to the total area of the Building immediately prior to said taking thereunder, to the termination of this Lease. Except with respect to an award or payment to which

Tenant is entitled pursuant to the foregoing provisions of this Section, no agreement with any condemnor in settlement of or under threat of any condemnation shall be made by either Landlord or Tenant without the written consent of the other, and of Landlord's mortgagee, if the Leased Premises are then subject to a mortgage, which consent shall not be unreasonably withheld or delayed provided such award or payment is applied in accordance with this Lease.

20. MUTUAL INDEMNIFICATION.

Each party ("Indemnifying Party") agrees to indemnify, defend and save harmless the other ("Indemnified Party") against and from any and all claims by and on behalf of any persons, firms or corporations, arising from the conduct or management of, from any work or thing whatsoever done by or on behalf of the Indemnifying Party in or about, its activities upon or (in the case of Tenant) occupancy of, the Leased Premises during the Term of this Lease, and will further indemnify, defend and save the Indemnified Party harmless against and from any and all claims arising from any breach or default on the part of the Indemnifying Party in the performance of any covenant or agreement on the part of such Indemnifying Party to be performed pursuant to the terms of this Lease, or from any violation or failure to comply with any law, ordinance or regulation, or from any act or negligence of such Indemnifying Party, or any of its agents, contractors, servants, employees, licensees, or invitees or arising from any accident, injury or damage whatsoever caused to any person, firm or corporation, occurring during the Term of this Lease, in or about the Leased Premises, or upon or under the sidewalks and the land adjacent thereto, and from and against all costs, reasonable and necessary counsel fees, expenses and liabilities incurred in or about any such claim or action or proceeding brought thereon, and in case any action or proceeding is brought against the Indemnified Party by reason of any such claim, the Indemnifying Party upon notice from the Indemnified Party covenants to resist or defend such action or proceeding by counsel reasonably satisfactory to the Indemnified Party. Landlord's liability is limited to Landlord's interest in the Leased Premises and will be cancelled automatically upon any failure by Tenant to maintain in full force and effect all insurance required to be furnished by Tenant under the provisions of this Lease.

21. INSPECTION OF PREMISES.

Tenant agrees to permit Landlord and its agents, and any mortgagee of the Leased Premises, to inspect the Leased Premises at all reasonable times, and to come upon the Leased Premises if necessary to perform any act which Tenant has failed to perform, as provided elsewhere in this Lease. Tenant shall be given reasonable prior notice of any such entry (except in the case of emergency) and any such entry shall be undertaken in a manner that reasonably

minimizes interference with Tenant's use and operations and Tenant shall have the right to have one or more of its employees present during such inspection.

22. TENANT DEFAULT.

Tenant shall be in default under this Lease if one or more of the following events (herein called "Defaults") shall happen and be continuing, namely:

a. Failure to make the punctual payment of any rent, additional rent or other monetary payment herein agreed to be paid and such failure shall continue for a period of ten (10) days after written notice is given by Landlord to Tenant of such failure; however said time period shall be inclusive of any and all statutory time periods for non-payment of rent and breach of covenants in Lease.

b. Tenant shall have filed a petition in bankruptcy or prayed for any relief under any debtor relief law including the Federal Bankruptcy Law or made an assignment for the benefit of creditors;

c. An attachment or execution shall have been levied upon Tenant's property in or interest under this Lease, which shall not have been satisfied or released or the enforcement thereof stayed or superseded by an appropriate proceeding within thirty (30) days thereafter;

d. An involuntary petition in bankruptcy or for reorganization or arrangement under any debtor relief law including the Federal Bankruptcy Law shall have been filed against Tenant and not withdrawn, dismissed or discharged within sixty (60) days from the filing thereof;

e. A Receiver or Trustee shall have been appointed for the property of Tenant or Tenant's business or assets and the order or decree appointing such Receiver or Trustee shall have remained in force undischarged for thirty (30) days after the entry of such order or decree;

f. Tenant shall have failed to perform or observe any other covenant, agreement or condition to be performed or kept by Tenant under the terms and provisions of this Lease, and such failure shall continue for thirty (30) days after written notice thereof has been given to Tenant by Landlord, unless Tenant shall have commenced corrective action within such thirty (30) days and thereafter diligently completes the same; the foregoing provision shall not require Tenant to occupy the Leased Premises and Tenant shall be entitled to vacate the Leased Premises so long as it otherwise complies with its obligations hereunder; however said time period shall be

inclusive of any and all statutory time periods for non-payment of rent and breach of covenants in Lease.

23. LANDLORD'S REMEDIES UPON DEFAULT.

Upon the occurrence of any Default by Tenant, Landlord, at its option, may have one or more of the following remedies, in addition to all of the rights and remedies provided at law or in equity.

a. Entry by Landlord. Landlord may cure the Default for the account of Tenant, and Tenant hereby authorizes Landlord to come upon the Leased Premises for such purposes and while on the Leased Premises to do all things reasonably necessary to accomplish the correction of such Default. If Landlord, at any time, is compelled to pay or elects to pay any sum of money by reason of the occurrence of a Default by Tenant or if Landlord is compelled to incur any expense, including reasonable attorneys' fees and attorney's costs, in instituting, prosecuting or defending any action or proceeding instituted by reason of any Default of Tenant hereunder, the sum or sums so paid by Landlord with all interest costs and damages, including any loss of rent, shall be deemed to be additional rent hereunder.

b. Performance By Landlord. Landlord may, upon notice to Tenant, without obligation, and without waiving or releasing Tenant from any Default or obligations of Tenant, make any such payment or perform any such obligation on Tenant's part to be performed. All sums so paid by Landlord and all costs incurred by lessor, including reasonable attorneys' fees and costs, shall be payable to Landlord on demand together with interest thereon in an amount equal to fifteen percent (15%) per annum but in no event greater than the maximum interest rate permitted by law, and Tenant covenants to pay any such sums, and Landlord shall have (in addition to any other right or remedy hereunder) the same rights and remedies in the event of Tenant's non-payment thereof as in the case of default by Tenant in the payment of rent.

c. Repossession; Damages. Landlord may without further notice repossess the Leased Premises and at any time thereafter may terminate this Lease by written notice to Tenant. In such event, Landlord shall be entitled to recover: (i) the worth at the time of award of the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of the award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; (iii) the worth at the time of the award of the amount by which the unpaid Rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be

reasonably avoided; (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which the ordinary course of things would be likely to result therefrom, including but not limited to (y) the cost of recovering the Leased Premises, (z) reasonable costs of reletting and refurbishing the Leased Premises, including without limitation, leasing commissions paid, tenant improvement costs, and rent concessions and repairs to the Leased Premises; and (v) all such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time under applicable law.

d. Termination of Right of Possession. Landlord may immediately terminate Tenant's right of possession of the Leased Premises by written notice to Tenant, with or without terminating this Lease, and without notice or demand enter upon the Leased Premises or any part thereof and take absolute possession of the same, expel or remove Tenant and any other person or entity who may be occupying the Leased Premises and change the locks. In the event that Landlord terminates Tenant's right to possession without terminating this Lease, Landlord shall use reasonable efforts to relet the Leased Premises or any part thereof for such terms and such rents as Landlord may reasonably elect. In the event Landlord shall elect to so relet, the rent received by Landlord from such reletting shall be applied first, to the payment of any sums owing from Tenant to Landlord hereunder other than rent due hereunder from Tenant to Landlord, second, to the payment of any reasonable cost of such reletting, including, without limitation, refurbishing costs and leasing commissions, and third, to the payment of rent due and unpaid hereunder, and Tenant shall satisfy and pay any deficiency upon demand therefor from time to time. Any such entry into the possession of the Leased Premises by Landlord under this Section 23 shall be without liability or responsibility for damages to Tenant and shall not be in lieu of or in substitution for any other rights of Landlord hereunder at law or in equity. Tenant further agrees that Landlord may file suit to recover any sums due Landlord under the terms of this Section 23 and that no recovery of any portion due Landlord hereunder shall be any defense to any subsequent action brought for any amount not theretofore reduced to judgment in favor of Landlord. Reletting of the Leased Premises shall not be construed as an election on the part of Landlord to terminate this Lease and notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach.

e. No Termination Without Written Notice. No re-entry by Landlord or any action brought by Landlord to oust Tenant from the Leased Premises after the occurrence of a Default shall

operate to terminate this Lease unless Landlord shall give written notice of termination to Tenant, in which event Tenant's liability shall be as above provided. In the event of a Default by Tenant, Landlord shall have the right of an injunction or a restraining order against Tenant and the right to invoke any remedy allowed by law or in equity whether or not other remedies, indemnities or reimbursements are herein provided.

f. Remedies Are Cumulative. The rights and remedies given to Landlord in this Lease are distinct, separate and cumulative remedies, and except as provided herein, no one of them, whether or not exercised by Landlord, shall be deemed to be an exclusion of any of the others. No right or remedy granted to Landlord herein is intended to be exclusive of any other right or remedy hereunder or now or hereafter existing in law or equity or by statute. In the event of termination of Tenant's right to possession by Landlord after the occurrence of a Default, Tenant waives any and all rights to redeem the Leased Premises either provided by any statute now in effect or hereafter enacted.

24. LANDLORD DEFAULT.

Landlord shall not be in default hereunder and Tenant shall not have any remedy or cause of action unless Landlord fails to perform any of its obligations hereunder within thirty (30) days after written notice from Tenant specifying such failure (unless such performance will due to the nature of the obligation, require a period of time in excess of thirty (30) days, then after such period of time as is reasonably necessary). If Landlord is in default hereunder, Tenant's exclusive remedy shall be an action for damages, subject to Article 40. All obligations of Landlord hereunder shall be construed as covenants not conditions.

25. CONDITION OF PREMISES ON TERMINATION.

Upon termination of this Lease for any reason, Tenant covenants and agrees to remove all of its personal property, including fixtures and equipment installed by Tenant upon the Leased Premises which are not permanently attached, and Tenant shall repair any damage caused by the removal thereof, and shall leave the Leased Premises in as good repair and clean condition as at the commencement of this Lease, normal and reasonable wear and tear and usage excepted. Tenant shall either (i) remove at Tenant's sole expense, any title encumbrances relating to the Leased Premises caused by Tenant's interest in the Lease, or (ii) provide Landlord with a bond for the total amount of said title encumbrances.

All fixtures (other than trade fixtures and equipment not for the operation of the Building), improvements, alterations and equipment for the operation of the Building now or hereafter permanently

attached to the Leased Premises shall be and remain Landlord's property and shall not be removed from the Leased Premises without Landlord's prior written consent. All movable fixtures and equipment are and shall remain Tenant's property, and Landlord agrees to sign any and all waivers reasonably required by Tenant in order to complete any fixture financing arrangements relative to said movable fixtures and equipment. Landlord shall have no interest in any movable fixtures and equipment owned by Tenant, or installed in or upon the Leased Premises solely at the cost and expense of Tenant. In the event said property is thereafter removed from the Leased Premises by Tenant, or any party holding a lien on, a security interest in, or a reversionary interest in the property, or by any agent or representative thereof or any purchaser thereof, pursuant to the exercise or enforcement of any rights incident to the interests created, Tenant or party holding such interest shall repair any damage necessitated by the removal of such property as may be necessary to restore the Leased Premises to good condition and repair, excepting only reasonable wear and tear, without any cost or expense to Landlord.

26. SUCCESSORS AND ASSIGNS.

Subject to Section 18, the obligations and responsibilities of the parties to this Lease shall be binding upon, and the rights and benefits shall inure to the successors and assigns of the parties hereto; but the liabilities of any successor to the interest of Landlord hereunder shall be limited to the performance of those obligations which arise and accrue during the period of ownership of the Leased Premises by any such successor. Landlord may at any time transfer its interest in this Lease and underlying fee, but no transfer or sale of Landlord's interest hereunder shall be binding upon Tenant until Tenant has received a true, correct and complete copy of the original instrument assigning Landlord's interest in this Lease or a certified and conformed copy of any deed conveying Landlord's fee interest in the Leased Premises. Any such instrument shall evidence the fact that the assignee or transferee thereunder has assumed all of Landlord's obligations under this Lease and acquired sufficient title to the Leased Premises to enable it to perform such obligations. Upon completion of said assignment or transfer in conformance with the requirements of this Section, Landlord shall have no further liability under this Lease.

27. NOTICES.

Any notice or consent required to be given by or on behalf of either party to the other shall be in writing and shall be deemed to have been given for all purposes either (i) one (1) business day after sending by an overnight courier service, or (ii) two (2) business days after sending by United States registered or certified mail, postage prepaid, return receipt requested, addressed to the other party as follows:

(i) If to Landlord:

SunWest N.C. III Partners Limited Partnership
17776 Preston Road, Suite 100
Dallas, TX 75252
Attention: Robert J. Pierson, Sr.

with a copy to:

Winstead Sechrest & Minick, P.C.
5400 Renaissance Tower
1201 Elm Street
Dallas, TX 75270-2199
Attention: Edward A. Peterson, Esq.

(ii) If to Landlord's mortgagee:

Nomura Asset Capital Corporation
Two World Financial Center, Building B
New York, New York 10281
Attention: Barry Funt, General Counsel

with a copy to:

Weil, Gotshal & Mangels, LLP
767 Fifth Avenue
New York, New York 10153
Attention: J. Philip Rosen, Esq. (RH)

(iii) If to Tenant:

Best Buy Co., Inc.
7075 Flying Cloud Drive
Eden Prairie, MN 55344
Attention: Legal Department - Real Estate

with a copy to:

Robins, Kaplan, Miller & Ciresi
2800 LaSalle Plaza
800 LaSalle Avenue South
Minneapolis, MN 55402-2015
Attention: Steven A. Schumeister, Esq.

or to such other addresses as the parties may designate in writing. Any notice or consent given hereunder by either party shall be deemed effective when mailed as aforesaid, but the time period in which to respond to any notice or consent shall commence to run on the date on which such notice or consent is actually received by the addressee. Refusal to accept delivery shall be deemed receipt thereof.

28. NO ORAL AGREEMENTS.

It is expressly agreed between Landlord and Tenant that there is no oral understanding or agreement which in any way changes the terms, covenants and conditions herein set forth, and that no modification of this Lease and no waiver of any of its terms and conditions shall be effective unless made in writing and duly executed by the authorized officers of the necessary parties or party and consented to by Landlord's mortgagee, if any.

Landlord and Tenant hereby agree that all prior or contemporaneous oral understandings, agreements or negotiations relative to the leasing of the Leased Premises are merged into this Lease.

29. NO WAIVER.

The failure of Landlord or Tenant to insist, in one or more instances, upon the strict performance by Tenant or Landlord of any of the provisions of this Lease shall not be construed as a waiver of any right or remedy available for any future breach of such provisions. Receipt by Landlord of rent with knowledge of the breach of any provisions hereof shall not be deemed a waiver of any right or remedy available for such breach.

30. WARRANTIES OF TENANT; ESTOPPEL CERTIFICATE.

Tenant warrants to and for the benefit of Landlord and any mortgagee of the Leased Premises that as of the date of execution of this Lease it neither has nor claims any defense to this Lease nor any offset against the rentals payable or other obligations required of Tenant hereunder; and Tenant warrants that it has not paid any rental in advance for a period of more than one (1) month and covenants that it will not, without such mortgagee's written consent, at any time during the term hereof prepay any rental for a period longer than one month.

Tenant shall at any time and from time to time upon not less than ten (10) days prior written notice by Landlord, execute, acknowledge and deliver to Landlord a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), the dates to which the rent and any other charges have been paid in advance, if any, stating whether or not to the best knowledge of Tenant, Landlord is in default in the performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default of which Tenant may have knowledge and containing any other information and certifications which reasonably may be requested by Landlord or the holder of any Underlying Mortgages. Any such statement delivered pursuant to this Section 30 may be relied upon by a prospective purchaser of the fee of the Property or any mortgagee, ground lessor or other

like encumbrancer thereof, or any assignee of any such encumbrancer upon the Building or the Leased Premises.

31. CARDING.

Landlord may place signs at the Leased Premises "For Rent" or "For Sale" two hundred seventy (270) days before the termination of this Lease. Landlord may enter the premises at reasonable hours and upon reasonable notice to exhibit same to prospective purchasers, tenants and mortgagees and to inspect or make repairs.

32. LANDLORD AND TENANT.

This Lease shall create the relationship of landlord and tenant between Landlord and Tenant.

33. TIME OF ESSENCE.

Time is of the essence of this Lease.

34. DEFINITION.

"Landlord" as used in this Lease shall include the original Landlord hereunder, its successors, and if this Lease shall be validly assigned, shall also include Landlord's assignees. "Tenant" shall include the original Tenant hereunder, its successors, and if this Lease shall be validly assigned or sublet, shall include also Tenant's assignee or sublessee, as to premises covered by such assignment or sublease. "Landlord" and "Tenant" include male and female, singular and plural, corporation, partnership or individual, as may be appropriate for the particular parties.

35. MORTGAGE.

Landlord shall have the right to place trust deeds or mortgages against the Leased Premises as security for one or more loans obtained or to be obtained by Landlord.

This Lease is subject and subordinate to all mortgages, trust deeds, ground Leases or other encumbrances which may now affect the Leased Premises (the "Underlying Mortgages") and to all renewals, modifications, consolidations, replacements and extensions of any such Underlying Mortgages. Tenant agrees, upon demand, without cost, to execute such reasonable instruments as may be required to further effectuate or confirm such subordination. So long as no Default shall be outstanding, Tenant's tenancy shall not be disturbed, nor shall this Lease be affected by any default under such Underlying Mortgage, and in the event of a foreclosure or other enforcement of any such Underlying Mortgage, or sale in lieu thereof, the purchaser at such foreclosure sale shall be bound to Tenant for the Term of this Lease and any extensions thereof, the rights of Tenant hereunder shall expressly survive, and this Lease

shall in all respects continue in full force and effect so long as no Default by Tenant has occurred and is continuing. So long as no Default by Tenant has occurred and is continuing, Tenant shall not be named as a party defendant in any such foreclosure suit, except as may be required by law.

Notwithstanding the provisions of this Article, the holder of the Underlying Mortgage to which this Lease is subject and subordinate shall have the right, at its sole option, at any time, to subordinate and subject the Underlying Mortgage, in whole or in part, to this Lease by recording a unilateral declaration to such effect.

At any time prior to the expiration of the Term, Tenant agrees, at the election and upon demand of any owner of the Leased Premises, or of any holder of an Underlying Mortgage who has granted non-disturbance to Tenant pursuant to this Article, to attorn, from time to time, to any such owner or holder, upon the then executory terms and conditions of this Lease, for the remainder of the term originally demised in this Lease and for any renewal term, provided that such owner or holder shall then be entitled to possession of the Leased Premises subject to the provisions of this Lease. The provisions of this paragraph shall enure to the benefit of any such owner or holder, shall apply notwithstanding that, as a matter of law, this Lease may terminate upon the foreclosure of the Underlying Mortgage, shall be self-operative upon any such demand, and further instrument shall be required to give effect to said provisions.

Each of Tenant and Landlord agrees that, if requested by any of the others, each shall, without charge, enter into a Subordination, Non-Disturbance and Attornment Agreement in form and substance as set forth in Exhibit D, which is attached hereto.

36. ZONING.

Tenant covenants that the Leased Premises are zoned properly so as to enable Tenant to operate the Leased Premises as a retail consumer electronics store and for any activities usually related thereto. Tenant shall furnish Landlord a certificate from the appropriate governmental authority stating that the Leased Premises are so zoned. Landlord makes no representation or warranty regarding current zoning and cannot guarantee future zoning or changes in permitted uses, and Tenant assumes the risk thereof.

37. LANDLORD'S CONSENT.

In all matters referred to in this Lease, where Landlord's consent or approval is required, Landlord agrees that Landlord will not unreasonably withhold Landlord's consent or approval, except where this Lease indicates that Landlord may act in its discretion.

38. LEGAL EXPENSE.

If Landlord retains the services of attorneys and successfully recovers possession of the Leased Premises, or successfully recovers any sum due but not paid after proper notice has been given by Landlord prior to any suit being filed, then all such costs and expenses, including reasonable attorneys' fees and attorney's costs, incurred by Landlord shall be paid by Tenant. If any action, arbitration or proceeding (including any appeal thereof) is brought by Landlord or Tenant (whether or not such action is prosecuted to judgment) to enforce its respective rights under this Lease or to enforce a judgment ("Action"), (i) the unsuccessful party therein shall pay all costs incurred by the prevailing party therein, including reasonable attorneys' fees and costs, and (ii) as a separate right, severable from any other rights set forth in this Lease, the prevailing party therein shall be entitled to recover its reasonable attorneys' fees and costs incurred in enforcing any judgment against the unsuccessful party therein, which right to recover such post-judgment attorneys' fees and costs shall be included in any such judgment. The right to recover post-judgment attorneys' fees shall (i) not be deemed waived if not included in any judgment, (ii) survive the final judgment in any Action, and (iii) not be deemed merged into such judgment. The rights and obligations of the parties under this Section 38 shall survive the termination of this Lease.

39. TITLE OF LANDLORD.

Landlord expressly covenants and agrees that as of the Commencement Date of the Term of this Lease, it will be the owner of the fee simple title to the Land and Building and other improvements subject to the Covenant Documents as set forth on the attached Exhibit "C". Landlord further covenants that Tenant, on paying the monthly rental and observing and performing all other terms and conditions contained in this Lease, shall have quiet and peaceful possession of the Leased Premises for the full Term, or extensions thereof subject to the provisions of this Lease.

40. LIMITATION ON LANDLORD'S LIABILITY.

It is expressly understood and agreed that if Tenant obtains a money judgment against Landlord resulting from any default or other claim arising under this Lease, that judgment shall be satisfied only out of Landlord's right, title and interest in the Leased Premises, and no other real, personal or mixed property of Landlord (or any of the partners which comprise Landlord, if any) wherever situated, shall be subject to levy to satisfy such judgment.

41. FINANCIAL STATEMENTS.

Tenant shall submit to any mortgagee of Landlord and Landlord (i) within forty-five (45) days of the end of each of the first three fiscal quarters of each fiscal year of Tenant, quarterly balance

sheets, income and cash flow statements for Tenant named herein, certified by a senior financial officer of Tenant; (ii) within ninety (90) days of the end of each fiscal year, annual balance sheets, income and cash flow statements for Tenant named herein, certified by an independent public accountant. Statements on Form 10-Q as filed with the Securities and Exchange Commission shall satisfy the requirements contained in (i) herein. Copies of the Statements on Form 10-K filed with the Securities and Exchange Commission will satisfy the requirement contained in (ii) herein. The obligations of Tenant named herein shall continue whether or not this Lease shall have been assigned. Tenant acknowledges that this undertaking is of substantial value to Landlord because Landlord's rights to such financial statements may affect the availability or cost of Landlord's financing.

42. OPTION TO EXTEND LEASE.

Provided that Tenant is not in Default and the Leased Premises are being occupied, both when exercising its option to extend and at the commencement of the renewal Term, Tenant shall have the option to extend the Term of this Lease for three successive additional renewal terms of five years each commencing at the expiration date of the original Term or prior renewal Term hereof (as the case may be) on the same terms and conditions as the original Term except that the annual rent for each and every Lease Year during said optional renewal terms shall be as follows:

For the first optional renewal Term:

<u>Years</u>	<u>Annual Rent</u>	<u>Monthly Rent</u>
21-25	\$950,000.00	\$79,166.67

For the second optional renewal Term:

<u>Years</u>	<u>Annual Rent</u>	<u>Monthly Rent</u>
26-30	\$997,500.00	\$83,125.00

For the third optional renewal Term:

<u>Years</u>	<u>Annual Rent</u>	<u>Monthly Rent</u>
31-35	\$1,047,375.00	\$87,281.25

Tenant shall give Landlord written notice of its exercise of the option for the first renewal Term not less than 180 days before the expiration date of the original Term.

Tenant shall give Landlord written notice of its exercise of the option for the second or third renewal Term not less than 180 days before the expiration date of the then renewed Term, as the case may be.

43. GOVERNING LAW.

This Lease shall be performed, construed and enforced in accordance with the laws of the State in which the Leased Premises are located.

44. HEADINGS.

The headings used in this Lease are for convenience only and shall not have any bearing or meaning with respect to the content or context of this instrument.

45. HOLDING OVER.

Tenant shall have no right to retain possession of the Leased Premises beyond the expiration or earlier termination of the Lease.

If Tenant holds over after the expiration of the Term, with or without the express or implied consent of Landlord, such tenancy shall be from month-to-month only, and not a renewal hereof or an extension for any further Term, and such month-to-month tenancy shall be subject to each and every term, covenant and agreement contained herein; provided, however, that Tenant shall pay as rent during any holding over period, an amount equal to one hundred fifty percent (150%) of the rent payable immediately preceding the expiration of the Term. Nothing in this Section 44 shall be construed as a consent by Landlord to any holding over by Tenant and Landlord expressly reserves the right to require Tenant to surrender possession of the Leased Premises upon the expiration of the Term or upon the earlier termination hereof and to assert any remedy in law or equity to evict Tenant and/or collect damages in connection with such holding over.

46. RIGHTS ARE CUMULATIVE.

All rights, powers and privileges conferred hereunder upon the parties shall be cumulative, but not restricted to those given by law.

47. MEMORANDUM OF LEASE.

Either party may, at its sole cost, prepare and record a Memorandum of Lease at the location where the deed of title to the Leased Premises is of record. The other party shall join in executing such Memorandum of Lease on request.

48. AUTHORITY TO SIGN LEASE.

If Tenant is a corporation, then the persons executing this Lease on behalf of Tenant represent and warrant to Landlord that they are duly authorized to execute and deliver this Lease on Tenant's behalf in accordance with a duly adopted resolution of the Board of Directors of Tenant. Landlord warrants to Tenant that the person

or persons executing this Lease on behalf of Landlord are duly authorized to execute and deliver this Lease on Landlord's behalf.

49. INVALIDITY.

If any term or provision of this Lease shall be held invalid or unenforceable to any extent, the remaining terms, conditions and covenants of this Lease shall not be affected thereby and each of said terms, covenants and conditions shall be valid and enforceable to the fullest extent permitted by law.

50. CONDITIONS AND COVENANTS.

Each provision of this Lease performable by Landlord and/or Tenant shall be deemed both a covenant and a condition.

Landlord and Tenant hereby acknowledge that the Leased Premises are subject to the Covenant Documents as set forth on the attached Exhibit "C". Landlord hereby assigns to Tenant and Tenant hereby agrees to assume, for the Term of this Lease (including any extensions thereof) all of the rights and obligations of the owner of the Leased Premises pursuant to said Covenant Documents. Tenant's failure to timely comply with or satisfy any of the obligations contained therein shall be deemed a material default under this Lease.

Tenant will pay as additional rent hereunder throughout the Term of this Lease (and will indemnify, defend and hold Landlord harmless from any obligation to pay the same) all Landlord's share of the costs and expenses of the maintenance and operation of any such parking and other common areas, at the times, in the amounts and in the manner set forth in the Covenant Documents as set forth on the attached Exhibit "C".

51. SECURITY.

Tenant hereby assumes responsibility for all security measures for the Leased Premises.

52. COUNTERPARTS.

This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

53. INTERPRETATION.

The Lease has been fully negotiated and no provision shall be construed for or against either Tenant or Landlord, and this Lease shall be interpreted in accordance with its general tenor in an effort to reach an equitable result.

54. NO MERGER OF TITLE.

There shall be no merger of this Lease nor of the leasehold estate created by this Lease with the fee estate in or ownership of any of the Leased Premises by reason of the fact that the same person, corporation, firm or other entity may acquire or hold or own, directly or indirectly, (i) this Lease or the leasehold estate created by this Lease or any interest in this Lease or in such leasehold estate and (ii) the fee estate or ownership of any of the Leased Premises or any interest in such fee estate or ownership. No such merger shall occur unless and until all persons, corporations, firms and other entities having any interest in (x) this Lease or the leasehold estate created by this Lease and (y) the fee estate in or ownership of the Leased Premises including, without limitation, any mortgagee of Landlord's interest therein, or any part thereof sought to be merged shall join in a written instrument effecting such merger and shall duly record the same.

55. NO USURY.

The intention of the parties being to conform strictly to the usury laws now in force in the State where the Leased Premises are located, whenever any provision herein provides for payment by Tenant to Landlord of interest at a rate in excess of the legal rate permitted to be charged, such rate herein provided to be paid shall be deemed reduced to such legal rate.

56. BROKER.

Landlord and Tenant represent and warrant to each other that neither party negotiated with any broker in connection with this Lease and that this Lease was negotiated directly by Landlord and Tenant. Each party hereby agrees to indemnify the other against all claims, damages, costs and expenses incurred by the indemnified party as a result of the breach of the foregoing representation or warranty by the indemnifying party.

57. MODIFICATIONS.

This Lease may be modified, amended, discharged or waived only by an agreement in writing by the party against whom enforcement of any such modification, amendment, discharge or waiver is sought. Each of Tenant and Landlord agree that it will not modify or amend this Lease without the written consent of any mortgagee of Landlord.

IN WITNESS WHEREOF, the parties have caused this Lease to be duly executed as of the day and year first written above.

[SIGNATURES ON NEXT PAGE]

LANDLORD:

SUNWEST N.C. III PARTNERS LIMITED
PARTNERSHIP, a Texas limited
partnership

By: SunWest Properties N.C. III,
Inc., a Texas corporation, its
general partner

DATE: DECEMBER 22, 1997

By: *Robert J. Nelson*
Name: ROBERT J. NELSON, Sr.
Its: PRESIDENT

TENANT:

BEST BUY CO., INC., a Minnesota
corporation

DATE: December 18, 1997

By: *Robert C. Fox*
Name: Robert C. Fox
Its: Sr. Vice President - Finance

EXHIBIT "A"

Legal Description

Those portions of Lots 9 and 10 of Rowland Tract, in the City of Industry, in the County of Los Angeles, State of California, as per map recorded in Book 3, Pages 93 and 94 of Maps, in the Office of the County Recorder of said county, described as follows:

Beginning at the northwesterly corner of the land described in Deed recorded in Book 2250, Page 180 of Deeds, Records of said county, said corner being the northerly line of said Lot 9, distant thereof South 63°55' East, 86.06 feet, more or less from the northwesterly corner of said Lot 9; thence along the northerly lines of said Lots 9 and 10, North 63°55' West 272.76 feet more or less to an angle point in the northerly line of said Lot 10; thence following the boundaries of said Lot 10, South 26°05' West 50.00 feet and North 63°55' West 4.00 feet to the northeasterly corner of the land described in the Deed recorded in Book 2222, Page 136 of Deeds, Records of said county; thence along the easterly line of the land described in said Deed, South 12°05' West 1029.30 feet, more or less to the southerly line of said Lot 10; thence easterly along the southerly lines of said Lots 9 and 10 to the southwestly corner of the land described in said Deed recorded in book 2250, Page 180 of Deeds; thence along the westerly line of the land described in said last mentioned Deed North 4°16' East 995.20 feet more or less to the Point of Beginning.

Except from said land, the Southeasterly 230.00 feet thereof, measured at right angles from the southerly line, as conveyed to the State of California by Deed recorded May 11, 1959 as Instrument No. 1320, in Book D462, Page 243, official records.

Also except therefrom one-half of all oil, gas, minerals and other hydrocarbon substances as reserved by Giacomo Dotta and Mary J. Dotta, husband and wife, as tenants in common, in deed recorded November 1, 1955 in book 49402 page 336, official records.

BEING ONE AND THE SAME AS THE FOLLOWING:

Those portions of Lots 9 and 10 of Rowland Tract, in the City of Industry, as per map recorded in Book 3 Pages 93 and 94 of Maps, in the Office of the County Recorder of Los Angeles County, described as follows:

BEGINNING (P.O.B.) at the northwesterly corner of the land described in Deed recorded in Book 2250 Page 180 of Deeds, Records of said county, said corner being on the northerly line of said Lot 9, distant thereon South 64°06'39" East, 86.06 feet, more or less from the northwesterly corner of said Lot 9; thence along the northerly lines of said Lots 9 and 10, North 64°06' 39" West 274.29 feet more or less to an angle point in the northerly line of said Lot 10; Thence, following the boundaries of said Lot 10, South 25°53'21" West, a distance of 50.00 feet; Thence North 64°06'39" West, a distance of 4.00 feet; said point being the northeasterly corner of the land described in the Deed recorded in Book 2222 Page 136 of Deeds, Records of said county;

EXHIBIT "B"

MEMORANDUM OF LEASE COMMENCEMENT

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES).

This Memorandum of Lease Agreement (this "Memorandum") executed as of January 30, 1998, between SUNWEST N.C. III PARTNERS LIMITED PARTNERSHIP, a Texas limited partnership (hereinafter called "Landlord") and BEST BUY CO., INC., a Minnesota corporation (hereinafter called "Tenant").

WITNESSETH:

That Landlord and Tenant have entered upon into a Lease (the "Lease") dated as of this date, the terms, provisions and conditions of which are incorporated herein by reference to the same extent as if recited in their entirety herein, whereby Landlord has leased to Tenant the premises (the "Leased Premises") located in Los Angeles County, California, together with the improvements located thereon, said Leased Premises being more particularly described on Exhibit "A" attached hereto.

Special reference is hereby made to the following terms and provisions of the Lease:

1. Subject to the terms and conditions of the Lease, the Base Term shall commence on January 30, 1998 (the Close of Escrow Date), and, unless earlier terminated in accordance with the provisions of the Lease or law, shall continue until February 11, 2018. Tenant shall have the right to extend the Term of the Lease for three (3) additional consecutive five (5) year periods (collectively, the "Extended Terms" and individually, an "Extended Term") by giving Landlord written notice of its election to exercise such right of extension at least one hundred eighty (180) days before the expiration of the Base Term or any Extended Term of the Lease, as the case may be. In order for such notice to be effective, Tenant shall not then be in default under any terms or provisions contained in the Lease. In the event of the exercise of the right to extend the Lease for Extended Terms, all terms and conditions of the Lease shall continue during each such Extended Term. If Tenant fails to exercise within the applicable time period its right to extend the term of the Lease for any of the Extended Terms, the Term of the Lease shall expire at the end of the Base Term or the Extended Term, as the case may be.

2. Upon the expiration or sooner termination of the Lease, at the request of either party, Landlord and Tenant shall enter into and record a memorandum evidencing such termination in a form reasonably satisfactory to both parties.

This Memorandum is executed for the purpose of recordation in the Official Records of Los Angeles County, California, in order to give notice of the terms and provisions of the Lease and is not intended and shall not be construed to define, limit or modify the Lease. This Memorandum may be executed in counterpart.

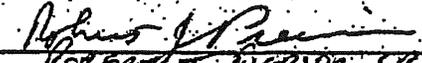
EXECUTED on the date first recited above.

LANDLORD:

SUNWEST N.C. III PARTNERS LIMITED PARTNERSHIP, a Texas limited partnership

By: SunWest Properties N.C. III, Inc., a Texas corporation, its general partner

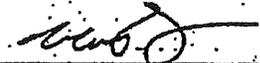
DATE: December 22, 1997

By: 
Name: ROBERT J. PETERSON, SR.
Its: PRESIDENT

TENANT:

BEST BUY CO., INC., a Minnesota corporation

DATE: December 18, 1997

By: 
Name: Robert C. Fox
Its: Sr. Vice President - Finance

STATE OF TEXAS)
COUNTY OF DALLAS) ss.

On December 22, 1997, before me, MARLA H. LONG, a Notary Public in and for said State, personally appeared ROBERT S. NELSON, SR., PRESIDENT of SunWest Properties N.C. III, Inc., a Texas corporation, the general partner of SUNWEST N.C. III PARTNERS LIMITED PARTNERSHIP, a Texas 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/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.

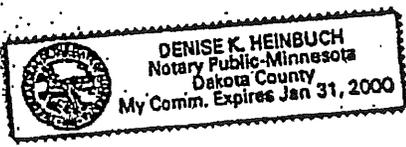


Marla H. Long
Notary Public

STATE OF MINNESOTA)
COUNTY OF HENNEPIN) ss.

On December 18, 1997, before me, Denise K. Heimbuch, a Notary Public in and for said State, personally appeared Robert C. Fox, Sr. Vice President of BEST BUY CO., INC., 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 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. Heimbuch
Notary Public

EXHIBIT "A"**Legal Description**

Those portions of Lots 9 and 10 of Rowland Tract, in the City of Industry, in the County of Los Angeles, State of California, as per map recorded in Book 3, Pages 93 and 94 of Maps, in the Office of the County Recorder of said county, described as follows:

Beginning at the northwesterly corner of the land described in Deed recorded in Book 2250, Page 180 of Deeds, Records of said county, said corner being the northerly line of said Lot 9, distant thereof South 63°55' East, 86.06 feet, more or less from the northwesterly corner of said Lot 9; thence along the northerly lines of said Lots 9 and 10, North 63°55' West 272.76 feet more or less to an angle point in the northerly line of said Lot 10; thence following the boundaries of said Lot 10, South 26°05' West 50.00 feet and North 63°55' West 4.00 feet to the northeasterly corner of the land described in the Deed recorded in Book 2222, Page 136 of Deeds, Records of said county; thence along the easterly line of the land described in said Deed, South 12°05' West 1029.30 feet, more or less to the southerly line of said Lot 10; thence easterly along the southerly lines of said Lots 9 and 10 to the southwestly corner of the land described in said Deed recorded in book 2250, Page 180 of Deeds, thence along the westerly line of the land described in said last mentioned Deed North 4°16' East 995.20 feet more or less to the Point of Beginning.

Except from said land, the Southeasterly 230.00 feet thereof, measured at right angles from the southerly line, as conveyed to the State of California by Deed recorded May 11, 1959 as Instrument No. 1320, in Book D462, Page 243, official records.

Also except therefrom one-half of all oil, gas, minerals and other hydrocarbon substances as reserved by Giacomo Dotta and Mary J. Dotta, husband and wife, as tenants in common, in deed recorded November 1, 1955 in book 49402 page 336, official records.

BEING ONE AND THE SAME AS THE FOLLOWING:

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Thence, along the easterly line of the land described in said Deed, South $11^{\circ}53'39''$ West, a distance of 799.58 feet, more or less to a point being 16 feet northerly of the centerline of Gail Avenue, measured at right angles, having a half width of 16 feet;

Thence parallel and 16 feet northerly; measured at right angles, from the centerline of said Gail Avenue, South $81^{\circ}31'24''$ East, a distance of 386.61 feet; more or less, to a point on the westerly line of the land described in Deed recorded in Book 2250, Page 180 of Deeds; said point being South $04^{\circ}05'39''$ West, a distance of 16.04 feet; more or less, from a monument found as shown on parcel map recorded in Book 188, Pages 74 through 77, inclusive, of parcel maps;

Thence leaving said line parallel and 16' distant from the centerline of said Gail Avenue, measured at right angles, North $04^{\circ}05'39''$ East, a distance of 764.83 feet; more or less, to the POINT OF BEGINNING.

Also except therefrom one-half of all oil, gas, minerals and other hydrocarbon substances as reserved by Giacomo Dotta and Mary J. Dotta, husband and wife, as tenants in common, in deed recorded November 1, 1955 in book 49402 page 336, official records.

The bearing of North $81^{\circ}31'24''$ West along the centerline of Gail Avenue as shown on Parcel Map filed in Book 188, Pages 74 through 77, inclusive, of parcel maps, Records of Los Angeles County, California was used as the basis of bearings for this legal.

Contains 6.13 acres, more or less.

EXHIBIT "B"

MEMORANDUM OF LEASE COMMENCEMENT

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

This Memorandum of Lease Agreement (this "Memorandum") executed as of January 30, 1998, between SUNWEST N.C. III PARTNERS LIMITED PARTNERSHIP, a Texas limited partnership (hereinafter called "Landlord") and BEST BUY CO., INC., a Minnesota corporation (hereinafter called "Tenant").

WITNESSETH:

That Landlord and Tenant have entered upon into a Lease (the "Lease") dated as of this date, the terms, provisions and conditions of which are incorporated herein by reference to the same extent as if recited in their entirety herein, whereby Landlord has leased to Tenant the premises (the "Leased Premises") located in Los Angeles County, California, together with the improvements located thereon, said Leased Premises being more particularly described on Exhibit "A" attached hereto.

Special reference is hereby made to the following terms and provisions of the Lease:

1. Subject to the terms and conditions of the Lease, the Base Term shall commence on January 30, 1998 (the Close of Escrow Date), and, unless earlier terminated in accordance with the provisions of the Lease or law, shall continue until February 11, 2018. Tenant shall have the right to extend the Term of the Lease for three (3) additional consecutive five (5) year periods (collectively, the "Extended Terms" and individually, an "Extended Term") by giving Landlord written notice of its election to exercise such right of extension at least one hundred eighty (180) days before the expiration of the Base Term or any Extended Term of the Lease, as the case may be. In order for such notice to be effective, Tenant shall not then be in default under any terms or provisions contained in the Lease. In the event of the exercise of the right to extend the Lease for Extended Terms, all terms and conditions of the Lease shall continue during each such Extended Term. If Tenant fails to exercise within the applicable time period its right to extend the term of the Lease for any of the Extended Terms, the Term of the Lease shall expire at the end of the Base Term or the Extended Term, as the case may be.

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EXECUTED on the date first recited above.

LANDLORD:

SUNWEST N.C. III PARTNERS LIMITED PARTNERSHIP, a Texas limited partnership

By: SunWest Properties N.C. III, Inc., a Texas corporation, its general partner

DATE: December 22, 1997

By: [Signature]
Name: ROBERT J. PIERSON, Sr.
Its: PRESIDENT

TENANT:

BEST BUY CO., INC., a Minnesota corporation

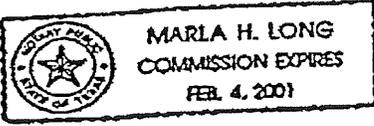
DATE: December 18, 1997

By: [Signature]
Name: Robert C. Fox
Its: Sr. Vice President - Finance

STATE OF TEXAS)
) ss.
COUNTY OF DALLAS)

On DECEMBER 22, 1997, before me, MARLA H. LONG,
a Notary Public in and for said State, personally appeared
ROBERT S. NELSON, SR., PRESIDENT of SunWest
Properties N.C. III, Inc., a Texas corporation, the general partner
of SUNWEST N.C. III PARTNERS LIMITED PARTNERSHIP, a Texas 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/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.



Marla H. Long
Notary Public

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

On December 18, 1997, before me, Denise K. Heimbuch,
a Notary Public in and for said State, personally appeared Robert
C. Fox, Sr. Vice President of BEST BUY CO., INC., 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 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
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Notary Public

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BEING ONE AND THE SAME AS THE FOLLOWING:

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The bearing of North $81^{\circ}31'24''$ West along the centerline of Gail Avenue as shown on Parcel Map filed in Book 188, Pages 74 through 77, inclusive, of parcel maps, Records of Los Angeles County, California was used as the basis of bearings for this legal.

Contains 6.13 acres, more or less.

EXHIBIT "C"

COVENANT DOCUMENTS

1. THE FACT THAT THE OWNERSHIP OF SAID LAND DOES NOT INCLUDE ANY RIGHTS OF ACCESS, SAID RIGHTS HAVING BEEN RELINQUISHED, CONDEMNED OR RESERVED IN A DOCUMENT
RECORDED: MAY 11, 1959 AS INSTRUMENT NO. 1320, IN BOOK D462 PAGE 243, OFFICIAL RECORDS.
FROM: POMONA FREEWAY.
2. A WAIVER OF ANY CLAIMS FOR DAMAGE TO SAID LAND AS CONTAINED IN A DOCUMENT
RECORDED: MAY 11, 1959 AS INSTRUMENT NO. 1320, IN BOOK D462 PAGE 243, OFFICIAL RECORDS.
3. AN EASEMENT FOR PURPOSES HEREIN STATED, AND RIGHTS INCIDENTAL THERETO AS PROVIDED IN A DOCUMENT
FOR: STREET AND HIGHWAYS.
AFFECTS: AS DESCRIBED THEREIN.
RECORDED: SEPTEMBER 14, 1976 AS INSTRUMENT NO. 4008, IN BOOK D7240 PAGE 953, OFFICIAL RECORDS.
4. AN EASEMENT FOR PURPOSES HEREIN STATED, AND RIGHTS INCIDENTAL THERETO AS PROVIDED IN A DOCUMENT
FOR: STORM DRAIN, INGRESS AND EGRESS.
AFFECTS: AS DESCRIBED THEREIN.
RECORDED: AUGUST 19, 1981 AS INSTRUMENT NO. 81-832378.
5. AN EASEMENT FOR PURPOSES HEREIN STATED, AND RIGHTS INCIDENTAL THERETO AS PROVIDED IN A DOCUMENT
FOR: SANITARY SEWER AND STORM DRAINS.
AFFECTS: AS DESCRIBED THEREIN.
RECORDED: AUGUST 19, 1981 AS INSTRUMENT NO. 81-832379.
6. AN EASEMENT FOR PURPOSES HEREIN STATED, AND RIGHTS INCIDENTAL THERETO AS PROVIDED IN A DOCUMENT
FOR: PUBLIC UTILITIES AND APPURTENANCES THEREOF.
AFFECTS: AS DESCRIBED THEREIN.
RECORDED: SEPTEMBER 15, 1989 AS INSTRUMENT NO. 89-1492898.

EXHIBIT "D"

WHEN RECORDED, RETURN TO:

WEIL, GOTSHAL & MANGELS LLP
767 Fifth Avenue
New York, New York 10153
Attention: J. Philip Rosen, Esq. (RH)

Best Buy #103

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENr AGREEMENT

This Subordination, Non-Disturbance and Attornment Agreement (the Agreement), made as of the 30 day of January, 1998 by and between NOMURA ASSET CAPITAL CORPORATION, a Delaware corporation ("Lender"), BEST BUY CO., INC., a Minnesota corporation ("Tenant"), and SUNWEST N.C. III PARTNERS LIMITED PARTNERSHIP, a Texas limited partnership ("Landlord").

WITNESSETH:

A. Lender is the present owner and holder of a certain Mortgage and Security Agreement (the "Security Instrument") dated January 30, 1998, given by Landlord to Lender which encumbers the Property and which secures the payment of certain indebtedness owed to Lender evidenced by a certain Promissory Note dated 9-26-97 Amended 11-25-97 (the "Note");

B. Tenant is the holder of a leasehold estate in a portion of the property described on Schedule A (the "Property") pursuant to the provisions of a certain lease dated January 30, 1998 by and between Landlord, as landlord, and Tenant, as tenant (the "Lease");

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.

NOW, THEREFORE, the parties hereto, in consideration of the covenants contained herein have agreed and hereby 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 lien and terms of the Security Instrument and to the lien thereof, including without limitation, all renewals, increases, modifications, consolidations and extensions thereof and to all sums secured thereby and advances made thereunder with the same force and effect as if the Security Instrument has been executed, delivered and recorded prior to the execution and delivery of the Lease.

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, 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 and quiet enjoyment 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); or

(b) subject to any offsets or defenses that Tenant might have against any prior landlord (including Landlord); 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 or which would materially affect any other provision of the Lease without Lender's prior written consent, which consent shall not be unreasonably withheld or delayed.

5. Notice to Tenant. 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. 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. 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 of this Section 5.

6. Notice to Lender and Right to Cure. 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 and for thirty (30) days following the expiration of the time period available to Landlord under 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.

7. Notices. Any notice or consent required to be given by or on behalf of any party hereto to the other parties hereto shall

be in writing and shall be deemed to have been given for all purposes either (i) one (1) business day after sending by an overnight courier service, or (ii) two (2) business days after sending by United States registered or certified mail, postage prepaid, return receipt requested, addressed to the other party as follows:

(i) If to Lender:

Nomura Asset Capital Corporation
Two World Financial Center, Building B
New York, New York 10281
Attention: Barry Funt, General Counsel

with a copy to:

Weil, Gotshal & Mangels, LLP
767 Fifth Avenue
New York, New York 10153
Attention: J. Philip Rosen, Esq. (RH)

(ii) If to Tenant:

Best Buy Co., Inc.
7075 Flying Cloud Drive
Eden Prairie, MN 55344
Attention: Legal Department - Real Estate

with a copy to:

Robins, Kaplan, Miller & Ciresi
2800 LaSalle Plaza
800 LaSalle Avenue South
Minneapolis, MN 55402-2015
Attention: Steven A. Schumeister, Esq.

(iii) If to Landlord:

SunWest N.C. III Partners Limited Partnership
17776 Preston Road, Suite 100
Dallas, TX 75252
Attention: Robert J. Pierson, Sr.

with a copy to:

Winstead Sechrest & Minick, P.C.
5400 Renaissance Tower
1201 Elm Street
Dallas, TX 75270-2199

or to such other addresses as the parties may designate in writing.

Any notice or consent given hereunder by either party shall be deemed effective when mailed as aforesaid, but the time period in which to respond to any notice or consent shall commence to run on the date on which such notice or consent is actually received by the addressee. Refusal to accept delivery shall be deemed receipt thereof.

8. Successors. This Agreement shall be binding upon and inure to the benefit of Lender, Tenant and Landlord and their respective successors and assigns.

9. Governing Law. This Agreement shall be governed, construed, applied and enforced in accordance with the laws of the State where the Property is located.

10. Miscellaneous. This Agreement may not be modified or amended in any manner or terminated except by an instrument in writing executed by the parties hereto. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision. 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. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

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

[SIGNATURES ON NEXT PAGE]

LENDER:

NOMURA ASSET CAPITAL CORPORATION, a Delaware corporation

By: [Signature]
Name: Christopher M. Tierney
Title: Vice President
Date: December 22, 1997

TENANT:

BEST BUY CO., INC., a Minnesota corporation

By: [Signature]
Name: Robert C. Fox
Title: Sr. Vice President - Finance
Date: December 18, 1997

LANDLORD:

SUNWEST N.C. III PARTNERS LIMITED PARTNERSHIP, a Texas limited partnership

By: SunWest Properties N.C. III, Inc., a Texas corporation, its general partner

By: [Signature]
Name: Robert J. Pierson
Title: President
Date: December 19, 1997

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On this 22nd day of DECEMBER, 1997, before me personally came CHRIS TRACNET, to me known, who, being by me duly sworn, did depose and say that he resides at Two World Financial Center, Building B, New York, New York 10281; that he is the VICE PRESIDENT of Nomura Asset Capital Corporation, the corporation described in and which executed the foregoing instrument; and that he signed his name thereto by order of the board of directors of said corporation.

IN WITNESS WHEREOF, I have hereunder set my hand and affixed my official seal the day and year in this certificate first above written.

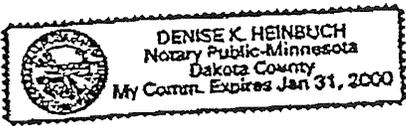
Cullen Caughron
Notary Public
CULLEN CAUGHRON
Notary Public, State of New York
No. 01CAS038474
Qualified in Richmond County
Commission Expires Jan. 30, 1999

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

On this 18th day of December, 1997, before me personally came Robert C. Fox, to me known, who, being by me duly sworn, did depose and say that he resides at 7075 Flying Cloud Drive, Eden Prairie, Minnesota 55344; that he is the Sr. Vice President - Finance of Best Buy Co., Inc., the corporation described in and which executed the foregoing instrument; and that he signed his name thereto by order of the board of directors of said corporation.

IN WITNESS WHEREOF, I have hereunder set my hand and affixed my official seal the day and year in this certificate first above written.

Denise K. Heimbuch
Notary Public

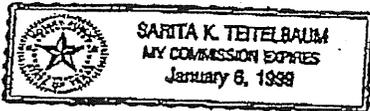


STATE OF TEXAS)
) ss.
COUNTY OF COLLIN)

On this 19th day of December, 1997, before me personally came Robert G. Pierson, to me known, who, being by me duly sworn, did depose and say that he resides at 17776 Preston Road, Suite 100, Dallas, TX 75252; that he is the President of SunWest Properties N.C. III, Inc., a Texas corporation, the general partner of SunWest N.C. III Partners Limited Partnership, a Texas limited partnership, the limited partnership described in and which executed the foregoing instrument; and that he signed his name thereto by order of the board of directors of said corporation in its capacity as the general partner of the limited partnership.

IN WITNESS WHEREOF, I have hereunder set my hand and affixed my official seal the day and year in this certificate first above written.

Sarita K. Tetelbaum
Notary Public



SCHEDULE "A"

Legal Description

Those portions of Lots 9 and 10 of Rowland Tract, in the City of Industry, in the County of Los Angeles, State of California, as per map recorded in Book 3, Pages 93 and 94 of Maps, in the Office of the County Recorder of said county, described as follows:

Beginning at the northwesterly corner of the land described in Deed recorded in Book 2250, Page 180 of Deeds, Records of said county, said corner being the northerly line of said Lot 9, distant thereof South 63°55' East, 86.06 feet, more or less from the northwesterly corner of said Lot 9; thence along the northerly lines of said Lots 9 and 10, North 63°55' West 272.76 feet more or less to an angle point in the northerly line of said Lot 10; thence following the boundaries of said Lot 10, South 26°05' West 50.00 feet and North 63°55' West 4.00 feet to the northeasterly corner of the land described in the Deed recorded in Book 2222, Page 136 of Deeds, Records of said county; thence along the easterly line of the land described in said Deed, South 12°05' West 1029.30 feet, more or less to the southerly line of said Lot 10; thence easterly along the southerly lines of said Lots 9 and 10 to the southwest corner of the land described in said Deed recorded in book 2250, Page 180 of Deeds, thence along the westerly line of the land described in said last mentioned Deed North 4°16' East 995.20 feet more or less to the Point of Beginning.

Except from said land, the Southeasterly 230.00 feet thereof, measured at right angles from the southerly line, as conveyed to the State of California by Deed recorded May 11, 1959 as Instrument No. 1320, in Book D462, Page 243, official records.

Also except therefrom one-half of all oil, gas, minerals and other hydrocarbon substances as reserved by Giacomo Dotta and Mary J. Dotta, husband and wife, as tenants in common, in deed recorded November 1, 1955 in book 49402 page 336, official records.

BEING ONE AND THE SAME AS THE FOLLOWING:

Those portions of Lots 9 and 10 of Rowland Tract, in the City of Industry, as per map recorded in Book 3 Pages 93 and 94 of Maps, in the Office of the County Recorder of Los Angeles County, described as follows:

BEGINNING (P.O.B.) at the northwesterly corner of the land described in Deed recorded in Book 2250 Page 180 of Deeds, Records of said county, said corner being on the northerly line of said Lot 9, distant thereon South 64°06'39" East, 86.06 feet, more or less from the northwesterly corner of said Lot 9; thence along the northerly lines of said Lots 9 and 10, North 64°06' 39" West 274.29 feet more or less to an angle point in the northerly line of said Lot 10; Thence, following the boundaries of said Lot 10, South 25°53'21" West, a distance of 50.00 feet; Thence North 64°06'39" West, a distance of 4.00 feet; said point being the northeasterly corner of the land described in the Deed recorded in Book 2222 Page 136 of Deeds, Records of said county;

Thence, along the easterly line of the land described in said Deed, South $11^{\circ}53'39''$ West, a distance of 799.58 feet, more or less to a point being 16 feet northerly of the centerline of Gail Avenue, measured at right angles, having a half width of 16 feet;
Thence parallel and 16 feet northerly; measured at right angles, from the centerline of said Gail Avenue, South $81^{\circ}31'24''$ East, a distance of 386.61 feet; more or less, to a point on the westerly line of the land described in Deed recorded in Book 2250, Page 180 of Deeds; said point being South $04^{\circ}05'39''$ West, a distance of 16.04 feet; more or less, from a monument found as shown on parcel map recorded in Book 188, Pages 74 through 77, inclusive, of parcel maps;
Thence leaving said line parallel and 16' distant from the centerline of said Gail Avenue, measured at right angles, North $04^{\circ}05'39''$ East, a distance of 764.83 feet; more or less, to the POINT OF BEGINNING.

Also except therefrom one-half of all oil, gas, minerals and other hydrocarbon substances as reserved by Giacomo Dotta and Mary J. Dotta, husband and wife, as tenants in common, in deed recorded November 1, 1955 in book 49402 page 336, official records.

The bearing of North $81^{\circ}31'24''$ West along the centerline of Gail Avenue as shown on Parcel Map filed in Book 188, Pages 74 through 77, inclusive, of parcel maps, Records of Los Angeles County, California was used as the basis of bearings for this legal.

Contains 6.13 acres, more or less.