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DOC # 0781123  
04/06/2011 10:56 AM Deputy: GB

OFFICIAL RECORD  
Requested By:  
OLD REPUBLIC

Parcel Numbers: 142006602015  
142006602023  
142006602028  
142006602031

**SUBORDINATION, NON-DISTURBANCE  
AND ATTORNMENT AGREEMENT  
DATED 12-01-2010**

Douglas County - NV  
Karen Ellison - Recorder  
Page: 1 Of 12 Fee: 25.00  
BK-0411 PG-0805 RPTT: 0.00



**Recording Requested by:**

Old Republic National Title Insurance Company  
10655 Park Run Drive, Suite 130  
Las Vegas, NV 89144

**Return to:**

Old Republic National Title Insurance Company  
10655 Park Run Drive, Suite 130  
Las Vegas, NV 89144

This page added to provide additional information required by NRS 111.312

This cover page must be typed or printed clearly in black ink only.

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

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT, made as of the 1<sup>st</sup> day of December, 2010, by and between **DEUTSCHE BANK TRUST COMPANY**, having an office at 280 Park Avenue, Floor 4E, New York, NY 10017, Attn: David C. Williams, Director, (the "Mortgagee") and **BED BATH & BEYOND INC.**, a New York corporation, having an office at 650 Liberty Avenue, Union, New Jersey 07083 (the "Tenant").

WITNESSETH:

WHEREAS, Mortgagee is the holder of a mortgage (the "Mortgage") covering a parcel of land owned by **CARSON VALLEY CENTER, L.L.C.**, a Missouri limited liability company (the "Landlord"), together with the improvements erected thereon (said parcel of land and improvements thereon being hereinafter referred to as the "Shopping Center" and being more particularly described on Exhibit A attached hereto and made a part hereof); and

WHEREAS, by a certain lease heretofore entered into between Landlord and Tenant dated as of October 9, 2002 (the "Lease"), Landlord leased to Tenant a portion of the Shopping Center, as more particularly described in the Lease (the "Premises"); and

WHEREAS, a copy of the Lease has been delivered to Mortgagee, the receipt of which is hereby acknowledged; and

For mortgages occurring after the Lease is executed: WHEREAS, Section 17.1 of the Lease provides that the Lease shall become subject and subordinate to a mortgage encumbering the fee interest of Landlord in and to the Shopping Center if and when a non-disturbance agreement is entered into with respect to such mortgage; and

WHEREAS, the parties hereto desire to effect the subordination of the Lease to the Mortgage and to provide for the non-disturbance of Tenant by Mortgagee.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Mortgagee hereby consents to and approves the Lease and the term thereof, including the options to extend the term as set forth in the Lease, and covenants and agrees that the exercise by Tenant of any of the rights, remedies and options therein contained shall not constitute a default under the Mortgage.

2. Tenant covenants and agrees with Mortgagee that the Lease hereby is made and shall continue hereafter to be subject and subordinate to the lien of the

Mortgage, and to all modifications and extensions thereof (and such subordination shall not lessen or diminish Tenant's rights under the Lease), subject, however, to the provisions of this Agreement.

3. Mortgagee agrees that so long as the Lease shall be in full force and effect, and so long as Tenant shall not be in default under the Lease beyond any applicable notice and grace period:

(a) Tenant shall not be named or joined as a party or otherwise in any suit, action or proceeding for the foreclosure of the Mortgage or to enforce any rights under the Mortgage or the bond or note or other obligation secured thereby;

(b) The possession by Tenant of the Premises and Tenant's rights thereto shall not be disturbed, affected or impaired by, nor will the Lease or the term thereof be terminated or otherwise affected by (i) any suit, action or proceeding brought upon the Mortgage or the bond or note or other obligation secured thereby, or for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage, or by any judicial sale or execution or other sale of the Premises or the Shopping Center, or any deed given in lieu of foreclosure, or by the exercise of any other rights given to any holder of the Mortgage or other documents as a matter of law, or (ii) any default under the Mortgage or the bond or note or other obligation secured thereby; and

(c) All condemnation awards and insurance proceeds paid or payable with respect to the Premises or any other part of the Shopping Center shall be applied and paid in the manner set forth in the Lease.

4. If Mortgagee or any future holder of the Mortgage shall become the owner of the Shopping Center by reason of foreclosure of the Mortgage or otherwise, or if the Shopping Center shall be sold as a result of any action or proceeding to foreclose the Mortgage, or transfer of ownership by deed given in lieu of foreclosure, the Lease shall continue in full force and effect, without necessity for executing any new lease, as a direct lease between Tenant and the then owner of the Shopping Center, as "landlord", upon all of the same terms, covenants and provisions contained in the Lease, and in such event:

(a) Tenant shall be bound to such new owner under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the Renewal Periods, if Tenant elects or has elected to exercise its options to extend the term) and Tenant hereby agrees to attorn to such new owner and to recognize such new owner as "landlord" under the Lease; and

(b) Such new owner shall be bound to Tenant under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the Renewal Periods, if Tenant elects or has elected to exercise its options to extend the term) which such new owner hereby agrees to assume and perform and Tenant shall, from and after the date such new owner succeeds to the interest of "landlord" under the Lease, have the same remedies against such new owner for the breach of any covenant contained in the Lease that Tenant might have had under the Lease against Landlord if such new owner had not succeeded to the interest of "landlord"; provided, however, that such new owner shall not be:

(i) liable for any act or omission of any prior landlord (including Landlord) unless such act or omission continues from and after the date upon which the new owner succeeds to the interest of such prior landlord;

(ii) subject to any defenses which Tenant may have against any prior landlord (including Landlord) unless resulting from any default or breach by such prior landlord which continues from and after the date upon which the new owner succeeds to the interest of such prior landlord;

(iii) subject to any offsets which Tenant may have against any prior landlord, except to the extent such offsets are expressly provided under the Lease and Mortgagee has received notice thereof and the opportunity to cure within the applicable time periods set forth in the Lease (it being further agreed that offsets under the Lease that were deducted by Tenant prior to the date upon which the new owner succeeds to the interest of such prior landlord shall not be subject to challenge);

(iv) bound by any fixed rent or additional rent which Tenant might have paid for more than one month in advance of its due date under the Lease to any prior landlord (including Landlord), unless such additional rent is paid in accordance with the applicable provisions of the Lease; or

(v) bound by any amendment or modification of the Lease made without its consent; notwithstanding the foregoing, Mortgagee acknowledges that the Lease specifically provides for amendments thereof upon the occurrence of certain events described in the Lease (such as, for example, an amendment to the Lease confirming the measurement of the Premises), and, by its execution below, Mortgagee agrees to recognize such amendments as part of the Lease, and Mortgagee further agrees that such new owner shall also be bound by such amendment(s) to the Lease, without any consent on the part of Mortgagee or such new owner.

(c) Tenant's obligations hereunder shall be effective only so long as Mortgagee is bound to Mortgagee's obligations hereunder.

5. Tenant will notify Mortgagee of any default by Landlord under the Lease which would entitle Tenant to terminate the Lease or abate the rent payable thereunder and agrees that notwithstanding any provision of the Lease, no notice of termination thereof nor any abatement shall be effective unless Mortgagee has received the aforesaid notice and has failed to cure the subject default within the same time period allowed Landlord under the Lease. It is understood that the abatement provisions of this Section relate to abatements by reason of Landlord's default and do not apply to provisions of the Lease whereby Tenant has the automatic right to abate rentals such as, for example, abatement upon casualty or condemnation.

6. Neither the Mortgage nor any other security instrument executed in connection therewith shall encumber or be construed as subjecting in any manner to the lien thereof, any trade fixtures, signs or other personal property at any time furnished or installed by or for Tenant or its subtenants or licensees on the aforementioned property regardless of the manner or mode of attachment thereof.

7. Any notices of communications given under this Agreement shall be in writing and shall be given by registered or certified mail, return receipt requested, postage prepaid, (a) if to Mortgagee, at the address of Mortgagee as hereinabove set forth or at such other address or persons as Mortgagee may designate by notice in the manner herein set forth, or (b) if to Tenant, at the address of Tenant as hereinabove set forth, with duplicate copies to Allan N. Rauch, Esq., c/o Bed Bath & Beyond Inc., 650 Liberty Avenue, Union, New Jersey 07083, or such other address or persons as Tenant may designate by notice in the manner herein set forth. All notices given in accordance with the provisions of this Section shall be effective upon receipt (or refusal of receipt) at the address of the addressee.

8. This Agreement shall bind and inure to the benefit of and be binding upon and enforceable by the parties hereto and their respective successors, assigns, and sublessees.

9. This Agreement contains the entire agreement between the parties and cannot be changed, modified, waived or canceled except by an agreement in writing executed by the party against whom enforcement of such modification, change, waiver or cancellation is sought.

10. This Agreement and the covenants herein contained are intended to run with and bind all lands affected thereby.

IN WITNESS WHEREOF, the parties hereto have duly executed this Subordination, Non-Disturbance and Attornment Agreement as of the day and year first above written.

**MORTGAGEE:**

**DEUTSCHE BANK TRUST COMPANY  
AMERICAS, as Mortgagee**

ATTEST:

By: \_\_\_\_\_  
(Assistant) Secretary

By: *David C. Williams*  
Print Name: David C. Williams  
Print Title: Director  
*Marcy Morgar*  
Marcy Morgar  
Director

**TENANT:**

**BED BATH & BEYOND INC., as Tenant**

ATTEST:

By: *Alan M. Freeman*  
Alan M. Freeman  
Assistant Secretary  
Counsel

By: *Allan N. Rauch*  
Allan N. Rauch  
Vice President, Legal & General

IN WITNESS WHEREOF, the parties hereto have duly executed this Subordination, Non-Disturbance and Attornment Agreement as of the day and year first above written.

**MORTGAGEE:**

**DEUTSCHE BANK TRUST COMPANY AMERICAS, as Mortgagee**

ATTEST:

By: \_\_\_\_\_  
(Assistant) Secretary

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Print Title: \_\_\_\_\_

**TENANT:**

**BED BATH & BEYOND INC., as Tenant**

ATTEST:

By: Alan M. Freeman  
Alan M. Freeman  
Assistant Secretary  
Counsel

By: Allan N. Rauch  
Allan N. Rauch  
Vice President, Legal & General

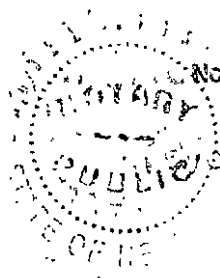


STATE OF NY )  
 : ss.  
COUNTY OF NY )

On the 1 day of Dec, 2010, before me, the undersigned, a notary public in and for said state, personally appeared David Williams, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

[Signature]  
Notary Public

Deutsche Bank Trust Company Americas



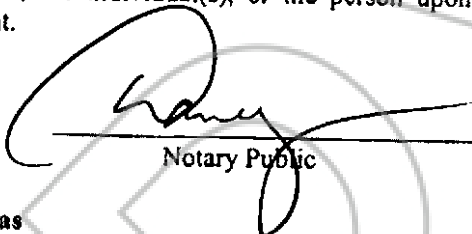
DANIEL C. EISENBERG  
Notary Public - State of New York  
Reg. No. 01218022678  
Qualified in Queens County  
Commission Expires 04/06/2011

May 7, 2014

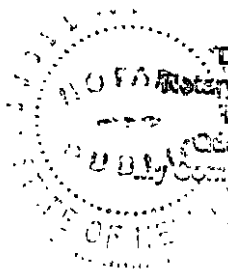


STATE OF NY  
COUNTY OF NY : ss.

On the 1 day of Dec, 2010, before me, the undersigned, a notary public in and for said state, personally appeared Matey Moran, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

Deutsche Bank Trust Company Americas

  
DANIEL C. EISENBERG  
Notary Public - State of New York  
Reg. No. 01E15022573  
Qualified in Queens County  
Commission Expires 04/06/2011

May 7, 2011

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

On this \_\_\_ day of \_\_\_\_\_, 2010, before me personally came \_\_\_\_\_ to me known, who being by me duly sworn, did depose and say that she/he is the \_\_\_\_\_ of Deutsche Bank Trust Company Americas, the corporation described in and which executed the above instrument and that he signed his name thereto by order of the Board of Directors of said corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

STATE OF NEW JERSEY )  
 ) : ss.  
COUNTY OF UNION )

On this 3 day of November, 2010, before me personally came Allan N. Rauch to me known, who being by me duly sworn, did depose and say that he is the Vice President, Legal & General Counsel of Bed Bath & Beyond Inc., the corporation described in and which executed the above instrument and that he signed his name thereto by order of the Board of Directors of said corporation.

Kathleen C Ferenchak  
Notary Public

My Commission Expires:

**KATHLEEN C. FERENCHAK**  
NOTARY PUBLIC OF NEW JERSEY  
COMMISSION EXPIRES NOVEMBER 2, 2013



Exhibit A

Legal Description of the Shopping Center

PARCEL 1

The Northwest ¼ of the Northwest ¼ of the Southeast ¼, of the Northeast ¼ and the Northeast ¼ of the Northeast ¼ of the Southwest ¼ of the Northeast ¼ of Section 6 Township 14 North, Range. 20 East, M.D.M.

EXCEPTING therefrom any portion lying within the boundaries of U.S. Highway 395

Said lands are set forth on record of survey recorded February 26, 1998 in Book 298 of Official Records at Page 4977, Douglas County, Nevada as Document No. 433544.

Being Parcel APN 1420-06-6-2-007

PARCEL 2

The Southeast ¼ of the Northeast ¼ of the Southwest ¼ of the Northeast ¼, AND the Southwest ¼ of the Northwest ¼ of the Southeast ¼ of the Northeast ¼ of Section 6, Township 14 North, Range 20 East, M.D.B.&M.

EXCEPTING therefrom any portion lying within the boundaries of U.S. Highway 395.

Said lands are set forth on Record of Survey recorded February 26, 1998 in Book 298 of Official Records at Page 4977, Douglas County, Nevada, as Document No. 433544, and Record of Survey recorded April 10, 2000, in Book 0400 of Official Records at Page 1314, Douglas County, Nevada, as Document No. 489613.

Being Parcel APN 1420-06-6-2-008

PARCEL 3

The Northeast ¼ of the Southwest ¼ of the Southwest ¼ of the Northeast ¼ of Section 6, Township 14 North, Range 20 East, M.D.M.

Being Parcel APN 1420-06-6-2-003

PARCEL 4

The Southeast ¼ of the Southwest ¼ of the Southwest ¼ of the Northeast ¼ of Section 6, Township 14 North, Range 20 East, M.D.M.

Being Parcel APN 1420-06-6-2-002

PARCEL 5

The Southeast ¼ of the Northwest ¼ of the Southwest ¼ of the Northeast ¼ of Section 6, Township 14 North, Range 20 East, M.D.M.

Said lands are set forth on record of survey recorded November 13, 1997 in Book 1197 of Official Records at Page 1162, Douglas County, Nevada as Document No. 425734.

Being Parcel APN 1420-06-6-2-004

PARCEL 6

The Northeast ¼ of the Northwest ¼ of the Southwest ¼ of the Northeast ¼ of Section 6, Township 14 North, Range 20 East, M.D.M.

Said lands are set forth on record of survey recorded November 13, 1997 in Book 1197 of Official Records at Page 1162, Douglas County, Nevada as Document No. 425734.

Being Parcel APN 1420-06-6-2-005

PARCEL 7

The Northwest ¼ of the, Northeast ¼, of the Southwest ¼, of the Northeast ¼ of Section 6, Township 14 North, Range 20 East, M.D.M.

Said lands are set forth on record of survey recorded February 26, 1998 in Book 298 of Official Records at Page 4977, Douglas County, Nevada as Document No. 433544.

Being Parcel APN 1420-06-6-2-006

PARCEL 8

The West 1/2 of the West 1/2 of the West 1/2 of Lot 1 of the Northeast quarter, of Section 6, Township 14 North, Range 20 East, M.D.M.

Said lands are set forth on record of survey recorded November 13, 1997 in Book 1197 of Official Records at Page 1162, Douglas County, Nevada as Document No. 425734.

Being Parcel APN 1420-06-6-2-001

PARCEL 9

The Southwest 1/4 of the Northeast 1/4 of the West half of Lot 1 of the Northeast 1/4, the North half of the Southeast 1/4, of the West half of Lot 1 of the Northeast 1/4, Southwest 1/4 of the southeast 1/4 of the West half of Lot 1 of the Northeast 1/4 and the Northwest 1/4 of the Southwest 1/4 of the East half of Lot 1 of the Northeast 1/4, of Section 6, Township 14 North, Range 20 East, M.D.M.

Excepting therefrom any portion lying within the boundaries of U.S. Highway 395

Said lands are set forth on record of survey recorded November 13, 1997 in Book 1197 of Official Records at Page 1162, Douglas County, Nevada as Document No. 425734.

Being Parcel APN 1420-06-6-2-009

PARCEL 10

All that certain lot, piece or parcel of land situate in the County of Douglas, State of Nevada, described as follows:

The Southeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of the Northeast 1/4, and also the Southwest 1/4 of the Southwest 1/4 of the Southeast 1/4 of the Northeast 1/4 of Section 6, Township 14 North, Range 20 East, M.D.B.&M, excepting therefrom any portion lying within the boundaries of U.S. Highway 395.

Said lands are set forth on Record of Survey for Douglas County, State of Nevada recorded April 10, 2000 in Book 0400, Page 1314 as Document No. 489613 and amended on July 11, 2000 in Book 0700, Page 1320 as Document No. 495561, of Official Records

Being Parcel APN 1420-06-6-2-010