



201006220018

Skagit County Auditor

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**THIS DOCUMENT PREPARED BY,
AND AFTER RECORDING, RETURN TO:**

Zanna Lantzman, Esq.
Bed Bath & Beyond Inc.
650 Liberty Avenue
Union, New Jersey 07083

(The Above Space for Recorder's Use Only)

Document Title(s) (or transactions contained therein): (all areas applicable to your document must be filled in)

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

Reference Number(s) of Documents assigned or released: N/A

☐ Additional reference #'s on page ___ of document

200604190074

Grantor(s) (Last name first, the first name and initials)

1. Bank of America, National Association

☐ Additional names on page ___ of document

Grantee(s) (Last name first, the first name and initials)

1. Bed Bath & Beyond Inc., a New York corporation

☐ Additional names on page ___ of document

Legal description (abbreviated: i.e., lot, block, plat or section, township, range):

Lots 2-9, 13 and 14, Burlington BSP No. BURL-01-04. Newman Development of Burlington, LLC, Retail/Commercial Center

☒ Additional legal is described on Exhibit A of this document.

Assessors' Property Tax Parcel/Account Numbers:

P24106, 340407-1-028-005; P24092, 340407-1-023-0018; P112790, 340407-1-023-0300;
P24033, 340407-0-087-0005; P24105, 340407-1-027-0006; P23909, 340407-0-008-0001;
P23910, 340407-0-008-0100; P23928, 340407-0-023-0200; P90025, 340407-0-006-0102;
P23912, 340407-0-010-007; P23911, 340407-0-009-0000

**THIS DOCUMENT PREPARED BY,
AND AFTER RECORDING, RETURN TO:**

Zanna Lantzman, Esq.
Bed Bath & Beyond Inc.
650 Liberty Avenue
Union, New Jersey 07083

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Subordination, Non-Disturbance and Attornment Agreement

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT, made as of the 14th day of June, 2010, by and between BANK OF AMERICA, NATIONAL ASSOCIATION, a national banking association, as Trustee for the Registered Holders of Wachovia Bank Commercial Mortgage Trust, Commercial Mortgage Pass-Through Certificates, Series 2006-C25, having an office at 540 West Madison Street, Mail Code IL 4-540-18-04, Chicago, Illinois 60661 (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 that certain Deed of Trust, Assignment of Rents and Fixture Filing, dated April 18, 2006, by and between Stratford Hall, Inc., a New York corporation, as grantor, and Pacific Northwest Title Insurance Company, as grantee and trustee for Wachovia Bank, National Association, the beneficiary, recorded April 19, 2006 in the office of the Skagit County Auditor under Auditor's No. 200604190074, as assigned by Assignment of Deed of Trust, Security Agreement and Fixture Filing, dated August 15, 2006, by and between Wachovia Bank, National Association, as assignor, and Wells Fargo Bank, N.A., as assignee and trustee, recorded August 20, 2007 in the office of the Skagit County Auditor under Auditor's No. 200708200143, as further assigned the Mortgagee by Assignment of Deed of Trust, Security Agreement and Fixture Filing and Assignment of Leases and Rents, dated as of March 31, 2009, between Wells Fargo Bank, as trustee and assignor, to Bank of America, N.A., as trustee and assignee, recorded July 16, 2009 in the office of the Skagit County Auditor under Auditor's No. 200907160107 (such Deed of Trust, Assignment of Rents and Fixture Filing, as so assigned, the "**Mortgage**") covering a parcel of land owned by Stratford Hall, Inc., a Delaware corporation (the "**Landlord**"), together with the improvements erected (or to be 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 Agreement heretofore entered into between Landlord and Tenant dated as of June 14, 2010 (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

WHEREAS, as an inducement to Tenant to enter into the Lease, Sections 2.3.1 and Section 17.3 thereof provides that the Lease is conditioned upon Landlord obtaining this Agreement from Mortgagee; and

WHEREAS, the parties desire to satisfy the foregoing condition and to provide for the non-disturbance of Tenant by the holder of the Mortgage; and

WHEREAS, capitalized terms used herein and not otherwise defined shall be as defined in the Lease.

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, provided, however, if applicable law requires that Tenant be named in such suit, action or proceeding, Tenant may be named provided that: (i) there be no adverse affect on Tenant; and (ii) such suit, action or proceedings does not interfere with Tenant's rights under the Lease or otherwise cause a termination of the Lease;

(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 to the rebuilding and restoration of the Premises and the Critical Area (as defined in the Lease) 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.

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

6. 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.

7. 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.

8. Any notices of communications given under this Agreement shall be in writing and shall be given by registered or certified mail, return receipt requested, or by any recognized overnight mail carrier, with proof of delivery slip, 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 (c) 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, and Mitchell S. Berkey, Esq., Wolff & Samson PC, One Boland Drive, West Orange, New Jersey 07052 (via a separately delivered notice), 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.

9. 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.

10. 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



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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK –
SIGNATURES ON FOLLOWING PAGE(S)]



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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:

ATTEST:

By: _____
Name: _____
Title: (Assistant) Secretary

[SEAL]

BANK OF AMERICA, NATIONAL
ASSOCIATION, as Trustee for the Registered
Holders of Wachovia Bank Commercial
Mortgage Trust, Commercial Mortgage Pass-
Through Certificates, Series 2006-C25, having
an office at 540 West Madison Street, Mail
Code IL 4-540-18-04, Chicago, Illinois 60661

By: Kirk Youngs
Name: KIRK YOUNGS
Title: Vice President ASSOCIATE

TENANT:

ATTEST:

By: Alan M. Freeman
Name: Alan M. Freeman
Title: (Assistant) Secretary

[SEAL]

BED BATH & BEYOND INC.,
a New York corporation

By: Warren Eisenberg
Name: Warren Eisenberg
Title: Co-Chairman SDG

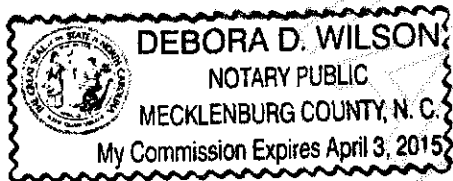


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MORTGAGEE ACKNOWLEDGMENT

STATE OF NORTH CAROLINA)
) SS.
COUNTY OF MECKLENBURG)

On JUNE 8, 2010, personally appeared the above named KIRK
YOUNG, an ASSOCIATE of WELLS FARGO BANK, N.A., successor by
merger to Wachovia Bank, National Association, acting in its authorized capacity as Master
Servicer for and on behalf of **Bank of America, National Association, successor-in-interest to
Wells Fargo Bank, N.A., as Trustee for the registered holders of Wachovia Bank
Commercial Mortgage Trust, Commercial Mortgage Pass-Through Certificates, Series
2006-C25** and acknowledged the foregoing to be the free act and deed of said association,
before me.



Deborah W. Wilson
Notary Public
My commission expires: April 3, 2015

TENANT ACKNOWLEDGMENT

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

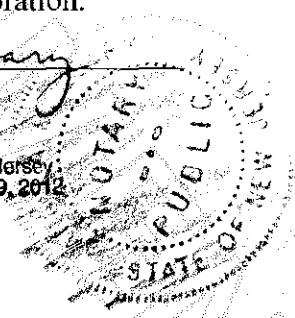
On this 28th day of May, 2010, before me personally came Warren Eisenberg to me known, who being by me duly sworn, did depose and say that he is the Co-Chairman of Bed Bath & Beyond Inc., the corporation described in and which executed the above instrument and that he signed his name thereto by order of the Board of Directors of said corporation.

My Commission Expires:

July 9, 2012

Notary Public

ANGELA M. LEARY
Notary Public, State of New Jersey
My Commission Expires July 9, 2012



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Exhibit "A"

Legal Description of Shopping Center

Lots 2 - 9, inclusive, and Lots 13 and 14, inclusive, City of Burlington Binding Site Plan No. Burl-01-04, entitled Newman Development of Burlington, LLC, Retail/Commercial Center, approved June 12, 2006 and recorded June 27, 2006, under Skagit County Auditor's File No. 200606270207, being a revision of that certain instrument approved March 8, 2004 and recorded March 15, 2004, under Auditor's File No. 200403150156, and being a portion of Government Lot 8 and the Southeast 1/4 of the Northeast 1/4, Section 7, Township 34 North, Range 4 East, W.M.

TOGETHER WITH an easement for ingress, egress and utilities as described in that instrument recorded on February 11, 2004, under Auditor's File No. 200402110099, records of Skagit County, Washington.

ALSO TOGETHER WITH an easement for ingress, egress and utilities as described in that instrument recorded on March 15, 2004 under Auditor's File No. 200403150158 and re-recorded April 8, 2004, under Auditors File No. 200404080093, records of Skagit County, Washington.

Situate in the County of Skagit, State of Washington.



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