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Skagit County Auditor

\$82.00

3/14/2016 Page

1 of

10 2:42PM

**AFTER RECORDING MAIL TO:**

Name Frost Brown Todd LLC - any Dreisbach  
Address 400 West Market St. 32nd Floor  
City/State Louisville, KY 40202-3363

**Document Title(s):**

1. Subordination, Non-Disturbance and Attornment Agreement

**Reference Number(s) of Documents Assigned or released:**

GUARDIAN NORTHWEST TITLE CO.

110654-4

**Grantor(s):**

1. Bed Bath & Beyond Inc.
- 2.

[ ] Additional information on page of document

**Grantee(s):**

1. German American Capital Corporation
- 2.

[ ] Additional information on page of document

**Abbreviated Legal Description:**

LOTS 2 - 9, INCLUSIVE, AND LOTS 13 AND 14 CITY OF BURLINGTON BSP NO. BURL-01-04

**Tax Parcel Number(s):**

P121437, P121438, P121439, P121440, P121441, P121442, P121443, P121444, P121448 and P121449

[ X ] Complete legal description is listed under Exhibit "A"

After Recording, Return to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(The Above Space for Recorder's Use Only)

Subordination, Non-Disturbance and Attornment Agreement

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT, made as of the 11<sup>th</sup> day of MARCH, 2016, by and between GERMAN AMERICAN CAPITAL CORPORATION, a Maryland corporation, having an office at 60 Wall Street, 10<sup>th</sup> Floor, New York, NY 10005, together with its successors and assigns (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 being recorded concurrently herewith covering a parcel of land owned by SHI OWNER, LLC, a Delaware limited liability company, as successor-in-interest to Stratford Hall, Inc., a Delaware corporation (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 unrecorded lease heretofore entered into between Landlord and Tenant dated as of June 14, 2010 (as amended and/or modified, 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, 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 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 (unless Mortgagee's consent is not required under the terms of the Mortgage); 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, or by any recognized overnight courier with proof of delivery slip, (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.

**NOTE: THIS AGREEMENT BY TENANT SHALL NOT BE EFFECTIVE UNLESS AND UNTIL ANY PRIOR MORTGAGES ON THIS SHOPPING CENTER HAVE BEEN SATISFIED SO THAT TENANT'S PRIOR AGREEMENTS TO ATTORN TO SAID MORTGAGES AND/OR TO SUBORDINATE ITS LEASE TO SAID MORTGAGEES SHALL HAVE BEEN EXTINGUISHED.**

[signature pages follows]

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:**

WITNESS/ATTEST:

GERMAN AMERICAN CAPITAL CORPORATION, a Maryland corporation

\_\_\_\_\_  
(Assistant) Secretary

By:  
Name:  
Title:

Jon Tili  
Vice President

STATE OF New York,  
COUNTY OF New York ) ss.:

On this 9 day of Mar., 2016, before me, the undersigned, a Notary Public in and for the State of New York, duly commissioned and sworn, personally appeared Jon Tili, the Vice President of German American Capital Corp., and acknowledged said instrument to be the free and voluntary act and deed of said \_\_\_\_\_ for the uses and purposes therein mentioned.

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

Name of Notary: Theresa Ellel  
Notary Public in and for the State of New York  
residing at: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
Notary Public - State of New York  
No. 01EL6276003  
Qualified in Queens County  
My Commission Expires 2/4/2017

[SEAL]

WITNESS/ATTEST:

GERMAN AMERICAN CAPITAL CORPORATION, a Maryland corporation

\_\_\_\_\_  
(Assistant) Secretary

By:  
Name:  
Title:

Murray Mackinnon  
VICE PRESIDENT

STATE OF New York,  
COUNTY OF New York ) ss.:

On this 9 day of Mar., 2016, before me, the undersigned, a Notary Public in and for the State of New York, duly commissioned and sworn, personally appeared Murray Mackinnon, the Vice President of German American Capital Corp., and acknowledged said instrument to be the free and voluntary act and deed of said \_\_\_\_\_ for the uses and purposes therein mentioned.

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

Name of Notary: Theresa Ellel  
Notary Public in and for the State of New York  
residing at: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
Notary Public - State of New York  
No. 01EL6276003  
Qualified in Queens County  
My Commission Expires 2/4/2017

[SEAL]

**TENANT:**

BED BATH & BEYOND INC.

WITNESS:

*Bernard [Signature]*

By: *Allan N. Rauch*  
Allan N. Rauch  
Vice President – Legal  
General Counsel

*h*

STATE OF NEW JERSEY )

) . ss.

COUNTY OF UNION )

On this 29 day of January, 2016, 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, and 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 P. Currie*  
Notary Public

My Commission Expires:

**KATHLEEN P CURRIE**

ID # 17737

NOTARY PUBLIC

STATE OF NEW JERSEY

My Commission Expires Nov. 2, 2018





# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
 County of Los Angeles )  
 On March 9, 2016 before me, Ofelia Maristela, a Notary Public,  
 Date Here Insert Name and Title of the Officer  
 personally appeared Frank Lee  
 Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(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 authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Ofelia Maristela  
 Signature of Notary Public

Place Notary Seal Above

## OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

### Description of Attached Document

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_  
 Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
 Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
 Signer Is Representing: \_\_\_\_\_

1 Exhibit A-2

2 Legal Description of Shopping Center

3  
4 Lots 2 - 9, inclusive, and Lots 13 and 14, inclusive, City of Burlington Binding Site Plan  
5 No. Burl-01-04, entitled Newman Development of Burlington, LLC, Retail/Commercial  
6 Center, approved June 12, 2006 and recorded June 27, 2006, under Skagit County  
7 Auditor's File No. 200606270207, being a revision of that certain instrument approved  
8 March 8, 2004 and recorded March 15, 2004, under Auditor's File No. 200403150156,  
9 and being a portion of Government Lot 8 and the Southeast 1/4 of the Northeast 1/4,  
10 Section 7, Township 34 North, Range 4 East, W.M.

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

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

20  
21 Situate in the County of Skagit, State of Washington.