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Mary Ann Trussell, Summit County Utah Recorder

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By Landmark Title Company

Electronically Recorded

After Recording, Return to:

Christopher J. Devlin
Investments, Mortgages & RE Div
Unum Life Insurance Company of America
2211 Congress Street - C474
Portland, ME 04122-0590

(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 29th day of January, 2015, by and between UNUM LIFE INSURANCE COMPANY OF AMERICA, having an office at 2211 Congress Street – C474, Portland, Maine 04122-0590 (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 covering a parcel of land owned by Boyer Spring Creek, L.C., a Utah 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 September 10, 2003 (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 Shopping Center at any time furnished or installed by or for Tenant or its subtenants or licensees on the aforementioned Shopping Center 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:

UNUM LIFE INSURANCE COMPANY OF AMERICA

M N A M
(Assistant) Secretary

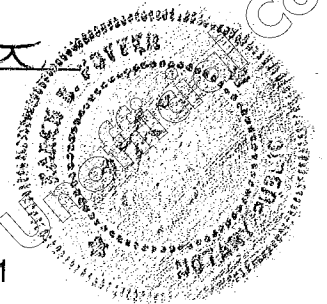
By: Madelyn Duzinski
Name: MADELYN DUZINSKI
Title: SENIOR INVESTMENT OFFICER

STATE OF)
COUNTY OF) ss.:

Then personally appeared the above-named Madelyn Duzinski and acknowledged the foregoing instrument to be his/her free act and deed, in his/her said capacity, and the free act and deed of said corporation.

Karen B. Fotter
Notary Public

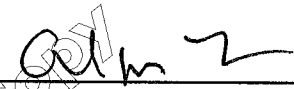
KAREN B. FOTTER
NOTARY PUBLIC
STATE OF MAINE
MY COMMISSION EXPIRES FEBRUARY 23, 2021



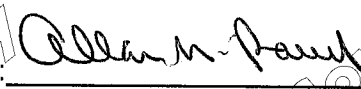
TENANT:

BED BATH & BEYOND INC.

WITNESS/ATTEST:



Alan M. Freeman
Assistant Secretary

By: 

Allan N. Rauch
Vice President – Legal
General Counsel

Aut

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

On this 28 day of January, 2015, 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.



Notary Public

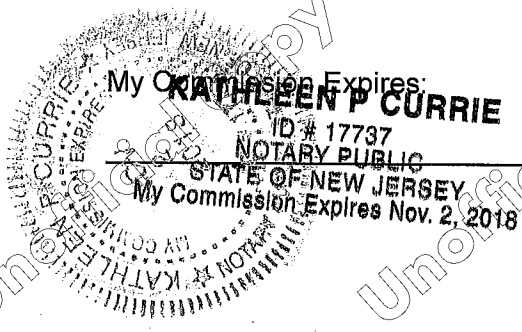


EXHIBIT A

Legal Description

The land referred to herein is described as follows: situated in Summit County, State of Utah, to-wit:

PARCEL 1:

LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 AND 20, REDSTONE AMENDMENT NO. 1 SUBDIVISION, according to the plat thereof, recorded November 25, 2003 under Entry No. 681341 of the Official Records of the County Recorder of Summit County, Utah.

LESS AND EXCEPTING THEREFROM THE FOLLOWING FOUR (4) TRACTS:

EXCEPTED TRACT A:

The parcel of land conveyed to SUMMIT COUNTY in that certain Special Warranty deed recorded January 18, 2013 as Entry No. 961829, in Book 2167, at Page 6 of the Official Records of the County Recorder of Summit County, Utah, to-wit:

A part of Lot 10, Redstone Subdivision, a subdivision lying within the Northwest Quarter of Section 19, Township 1 South, Range 4 East, Salt Lake Base and Meridian, U.S. Survey in Summit County, Utah; Beginning at a point 82.95 feet North 89°43'46" East along the South Line of Newpark Boulevard from the Northwest Corner of said Lot 10 located 1943.60 feet South 89°47'32" East along the Section Line; and 1933.28 feet South 0°12'28" West from the Northwest Corner of said Section 19; and running thence North 89°43'46" East 123.97 feet along said North Line; thence Southwesterly along the arc of a 72.09 foot radius curve to the left a distance of 51.63 feet (Center bears South 25°26'22" East; Central Angle equals 41°02'03" and Long Chord bears South 44°02'36" West 50.53 feet); thence South 0°22'52" East 5.00 feet; thence South 89°37'08" West 58.93 feet to a point of curvature; thence Northwesterly along the arc of a 12.00 foot radius curve to the right a distance of 18.89 feet (Central Angle equals 90°12'40" and Long Chord bears North 45°16'32" West 17.00 feet) to a point of tangency; thence North 0°10'12" West 5.29 feet to a point of curvature; thence Northwesterly along the arc of a 25.00 foot radius curve to the left a distance of 31.94 feet (Central Angle equals 73°11'23" and Long Chord bears North 36°45'53" West 29.81 feet) to the point of beginning.

EXCEPTED TRACT B:

Beginning at the Northeasterly corner of Lot 4 REDSTONE AMENDMENT NO. 1 SUBDIVISION, according to the plat thereof, recorded November 25, 2003 under Entry No.

681341 of the Official Records of the County Recorder of Summit County, Utah, and running thence South 31°25'02" West along the easterly line of said Lot 4 and the extension thereof a distance of 109.38 feet to a point on the southerly boundary line of said REDSTONE AMENDMENT NO. 1 SUBDIVISION (which point is also on the southerly boundary line of FOX POINT AT REDSTONE VILLAGE PHASE 1), according to the plat thereof, recorded November 19, 2004 as Entry No. 717479 of the Official Records of the County Recorder of Summit County, Utah); thence South 58°41'43" East along said southerly boundary line 18.911 feet; thence South 58°37'39" East along said southerly boundary line 25.089 feet; thence North 31°25'02" East to and along the westerly line of Lot 5 of said REDSTONE AMENDMENT NO. 1 SUBDIVISION a distance of 109.32 feet to the Northwesterly corner of said Lot 5; thence North 58°34'58" West 44.00 feet to the point of beginning.

EXCEPTED TRACT C:

The AIR RIGHTS PARCELS located above the top of the joists defining the ceiling for the COMMERCIAL SPACE and supporting the floor for the AIR PARCELS defined and provided for in that certain Red Stone Village Air Rights Declaration recorded February 5, 2001 as Entry No. 581759, in Book 1352, at Page 632 of the Official Records of the County Recorder of Summit County, Utah, as amended by that certain First Amendment to Red Stone Village Air Rights Declaration recorded December 20, 2002 as Entry No. 642056, in Book 1498, at Page 428 of the Official Records of the County Recorder of Summit County, Utah.

EXCEPTED TRACT D:

Units F1 through F9 (inclusive) Building "F"; Units G1 through G10 (inclusive), Building "G", and Units H1 through H13 (inclusive) Building "H", all contained within FOX POINT AT REDSTONE VILLAGE PHASE 11 (A Utah Condominium Project), as the same is identified in the Record of Survey Map recorded November 19, 2004 as Entry No. 717479 of the Official Records of the County Recorder of Summit County, Utah (as said Record of Survey Map may have heretofore been amended and/or supplemented) and in the Third Amended Declaration of Condominium for Fox Point at Redstone (A Utah Expandable Condominium Project), recorded November 19, 2004 as Entry No. 717480, in Book 1661, at Page 849 of the Official Records of the County Recorder of Summit County, Utah (as said Declaration may have heretofore been amended and/or supplemented), together with the appurtenant interest in and to the project's common areas and facilities more particularly described in said Record of Survey Map, Declaration and any amendments and/or supplements thereto.

PARCEL 2 (EASEMENT ESTATE):

The nonexclusive easements, appurtenant to PARCEL 1 described herein defined in and created by that certain Master Declaration of Covenants, Conditions and Restrictions, recorded February

5, 2001 as Entry No. 581758, in Book 1352, at Page 608 of the Official Records of the County Recorder of Summit County, Utah, as amended, supplemented and/or otherwise affected by that certain First Amendment to Master Declaration of Covenants, Conditions and Restrictions, recorded December 20, 2002 as Entry No. 642057, in Book 1498, at Page 437 of the Official Records of the County Recorder of Summit County, Utah.

PARCEL 3 (EASEMENT ESTATE):

The easements, appurtenant to PARCEL 1 described herein, defined in and created by that certain Red Stone Village Air Rights Declaration recorded February 5, 2001 as Entry No. 581759, in Book 1352, at Page 632 of the Official Records of the County Recorder of Summit County, Utah, as amended by that certain First Amendment to Red Stone Village Air Rights Declaration recorded December 20, 2002 as Entry No. 642056, in Book 1498, at Page 428 of the Official Records of the County Recorder of Summit County, Utah.

PARCEL 4 (EASEMENT ESTATE):

The easements, appurtenant to PARCEL 1 described herein, defined in and created by that certain Development and Easement Agreement recorded February 5, 2001 as Entry No. 581761, in Book 1352, at Page 664 of the Official Records of the County Recorder of Summit County, Utah.

For reference purposes only:

Tax Parcel Numbers

RS-1-1AM, RS-2-1AM, RS-3-1AM,
RS-4-1AM, RS-5-1AM, RS-6-1AM,
RS-7-1AM, RS-8-1AM, RS-9-1AM,
RS-10-1AM, RS-20-1AM