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Recorder's Copy

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2009 067208

2009 OCT -5 AM 10:15

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

Cathleen H. Giuliana, Esq.
Riker, Danzig, Scherer, Hyland & Perretti LLP
Headquarters Plaza
One Speedwell Avenue
P.O. Box 1981
Morristown, New Jersey 07962-1981

MICHAEL A. BROWN
RECORDER

Common address of Property:
110-144 Indianapolis Blvd.
Schererville, Indiana 46321

Tax Parcel Identification Nos. 20-13-721-1;
20-13-721-3; 20-13-721-4; and 20-13-721.5

(The Above Space for Recorder's Use Only)

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "*Agreement*") is made as of the _____ day of _____, 2009, by and between BANK OF AMERICA, NATIONAL ASSOCIATION, as successor by merger to LaSalle Bank National Association, as Trustee for Morgan Stanley Capital I Inc., Commercial Mortgage Pass-Through Certificates, Series 2007-TOP25 effective October 17, 2008, having an office at 1320 Willow Pass Road, Concord, California 94520 ("*Mortgagee*") and Bed Bath & Beyond Inc., a New York corporation, having an office at 650 Liberty Avenue, Union, New Jersey 07083 ("*Tenant*").

WITNESSETH:

WHEREAS, Mortgagee is the holder of that certain Mortgage and Absolute Assignment of Rents and Leases and Security Agreement (and Fixture Filing) from Town Square Shopping Center, L.L.C., an Illinois limited liability company ("*Landlord*"), dated as of October 10, 2006 and recorded October 18, 2006, as Instrument No. 2006-091002 in the Recorder's Office of Lake County, Indiana (the "*Mortgage*"), covering a parcel of land owned by Landlord and 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 _____, 2009 (the "*Lease*"), Landlord leased to Tenant a portion of the Shopping Center, as more particularly described in the Lease (the "*Premises*"); and

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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 17.3 thereof provide 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 proceeding 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; provided, however, that the preceding shall in no way limit or affect the provisions of Section 9 set forth below.

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 in or on the Premises, 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 (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, and to Cathleen H. Giuliana, Esq., Riker, Danzig, Scherer, Hyland & Perretti LLP, Headquarters Plaza, One Speedwell Avenue, P.O. Box 1981, Morristown, New Jersey 07962-1981, 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.

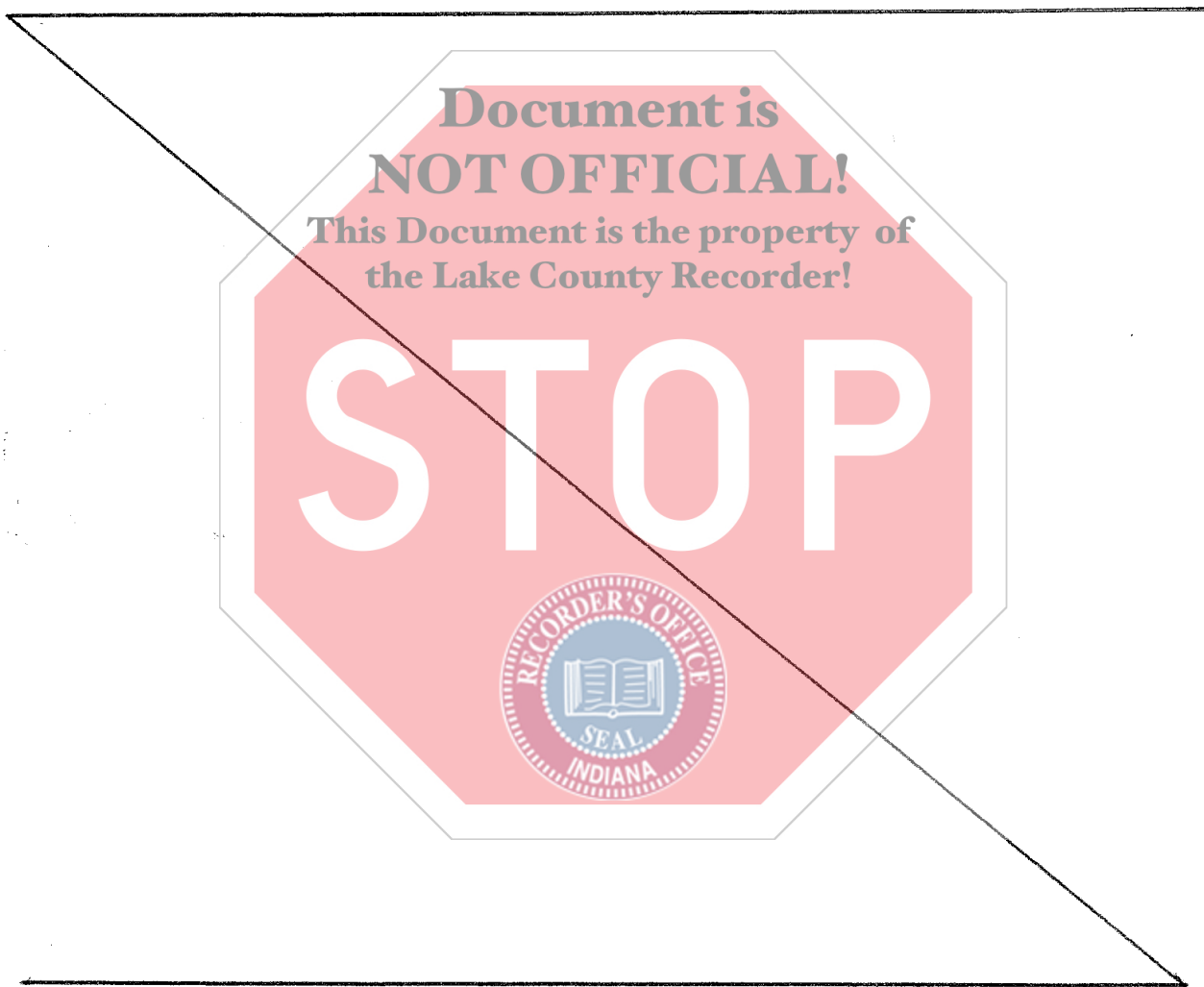
9. This Agreement shall bind and inure to the benefit of and be binding upon and enforceable by the parties hereto and their respective successors, assigns, and sublessees.

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.

12. The Bank of America, National Association, as successor by merger to LaSalle Bank National Association, as Trustee for Morgan Stanley Capital I Inc., Commercial Mortgage Pass-Through Certificates, Series 2007-TOP25 effective October 17, 2008, became the holder of the Mortgage when LaSalle Bank National Association merged into the charter and title of the Bank of America, National Association, and, as such, the Bank of America, National Association and Mortgage Electronic Registration Systems, Inc., each represent and warrant that the Bank of America, National Association is authorized to execute this Agreement.

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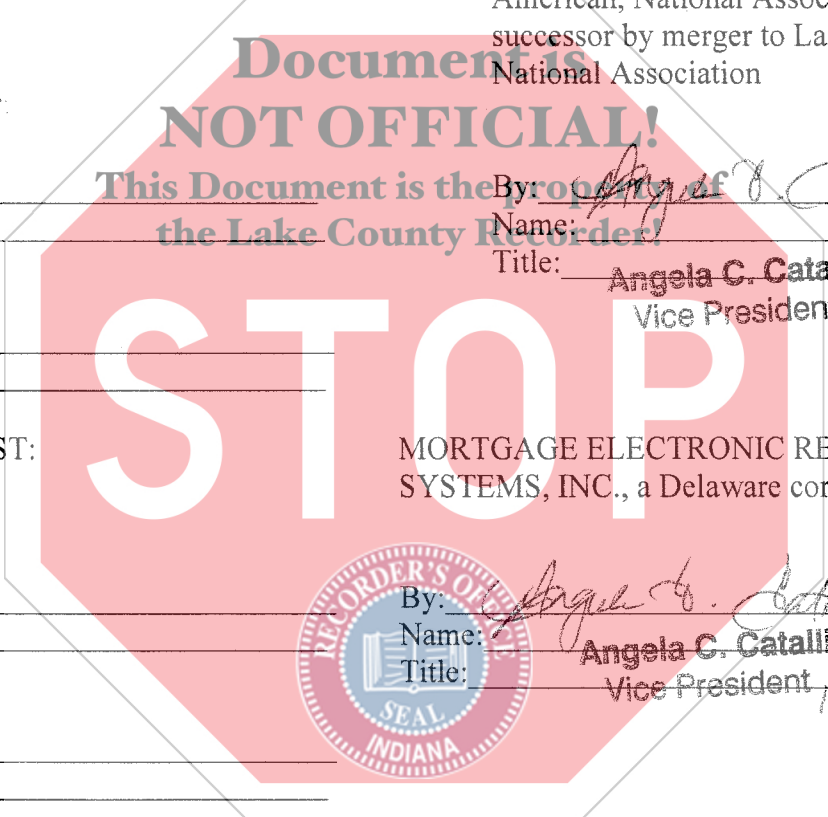
IN WITNESS WHEREOF, the parties hereto have duly executed this Subordination, Non-Disturbance and Attornment Agreement as of the day and year first above written.

MORTGAGEE:

WITNESS:

BANK OF AMERICA, NATIONAL ASSOCIATION, as successor by merger to LaSalle Bank National Association, as Trustee for Morgan Stanley Capital I Inc., Commercial Mortgage Pass-Through Certificates, Series 2007-TOP25

By: Wells Fargo Bank, National Association, as Master Servicer under the Pooling and Servicing Agreement dated as of January 1, 2007, among Morgan Stanley Capital I Inc., Wells Fargo Bank, National Association, Centerline Servicing Inc. (f/k/a ARCap Servicing, Inc., and Bank of American, National Association, as successor by merger to LaSalle Bank, National Association



By: _____
Name: _____

By: Angela C. Catalli
Name: _____
Title: Vice President

By: _____
Name: _____

WITNESS/ATTEST:

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a Delaware corporation

By: _____
Name: _____

By: Angela C. Catalli
Name: _____
Title: Vice President, ASST. SECRETARY

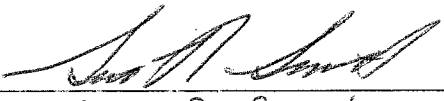
By: _____
Name: _____

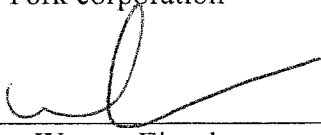
Signatures continue on the following page.

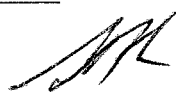
TENANT:

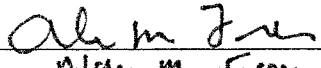
WITNESS:

BED BATH & BEYOND INC.,
a New York corporation

By: 
Name: Scott R. Smith

By: 
Name: Warren Eisenberg
Title: Co-Chairman



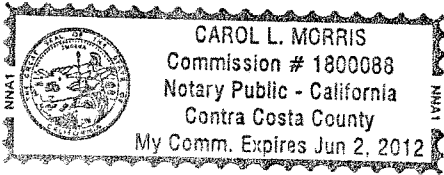
By: 
Name: Alan M. Freeman



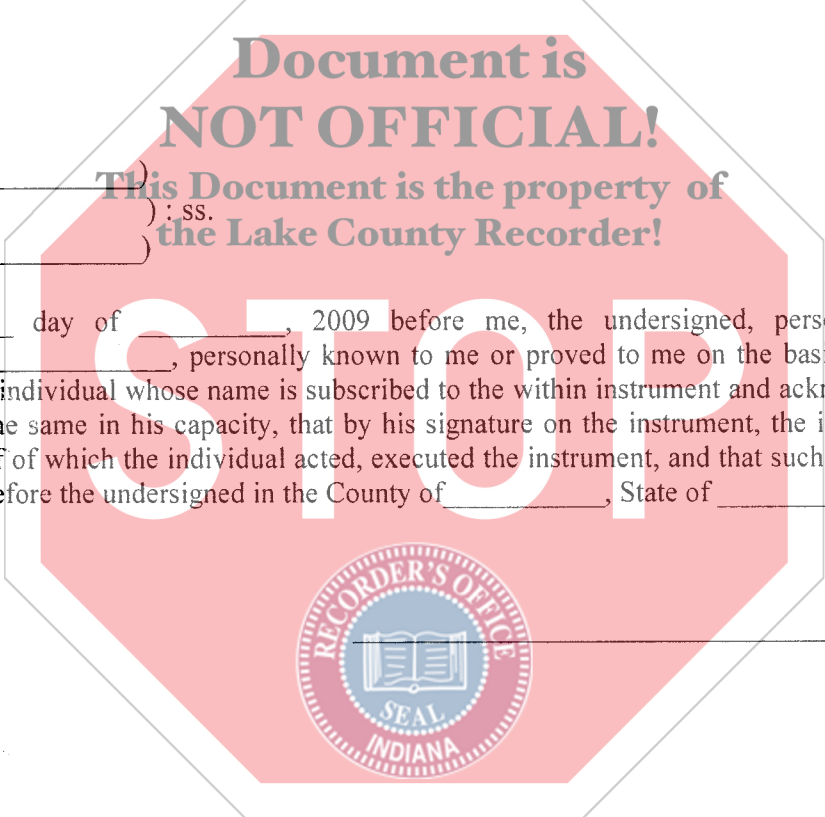
ACKNOWLEDGMENTS

STATE OF California
COUNTY OF Contra Costa : ss.

On the 21st day of Sept., 2009 before me, the undersigned, personally appeared Niguel C. Gutierrez, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument, and that such individual made such appearance before the undersigned in the County of Contra Costa, State of California.



[Signature]
Notary Public



STATE OF _____)
COUNTY OF _____) : ss.

On the ___ day of _____, 2009 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument, and that such individual made such appearance before the undersigned in the County of _____, State of _____.

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

On the 18 day of ^{August} April, 2009, before me, the undersigned, personally appeared Warren Eisenberg, Co-Chairman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument, and that such individual made such appearance before the undersigned in the County of Union, State of New Jersey.

Kathleen C Ferencsak

Notary Public

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



EXHIBIT A

Legal Description of Shopping Center

The property is located in the Town of Schererville, Lake County, State of Indiana, and is described as follows:

PARCEL A

Lots 1, 3, 4 and 5 in Town Square Shopping Center, an Addition to the Town of Schererville, as per plat thereof recorded in Plat Book 89 Page 36 in the Office of the Recorder of Lake County, Indiana.

Together with a Reciprocal Roadway Easement for ingress and egress made by and between Mercantile Bank, as Trustee under Trust No. 4684, dated September 15, 1985; and Lake County Trust Company, as Trustee under Trust No. 3399, dated the 7th day of December 1984, as amended; and William J. McEnery, as Trustee of the William J. McEnery Revocable Trust dated April 22, 1993, dated December 27, 1996 and recorded May 20, 1999 as Document No. 99042671.

Together with a Reciprocal Cross-Access Easement for ingress and egress made by and between Town Square Shopping Center, LLC, an Illinois limited liability company, and Town Square I, LLC, an Illinois limited liability company dated July 19, 2002 and recorded April 9, 2003 as Document No. 2003 036192 and in First Amendment to Reciprocal Cross-Access Easement Agreement with Covenants, Conditions and Restrictions recorded October 10, 2003 as Document No. 2003 109382.

PARCEL B

Lot 2 in Town Square Shopping Center, an Addition to the Town of Schererville, as per plat thereof recorded in Plat Book 89 Page 36 in the Office of the Recorder of Lake County, Indiana.

EXCEPTING therefrom Lots 1, 2 and 3 of the land that portion appropriated by the State of Indiana in Judgment of Appropriation recorded January 13, 2005 as Document No. 2005 002653.

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