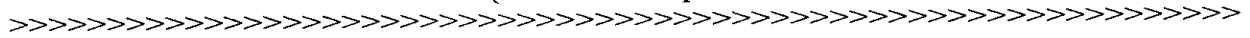


Prepared by:
Sills Cummis Radin Tischman
Epstein & Gross, P.A.
One Riverfront Plaza
Newark, New Jersey 07102-5400



After Recording, Return to:
Alan M. Freeman, Esq.
Real Estate Counsel
Bed Bath & Beyond
650 Liberty Avenue
Union, New Jersey 07083

(The Above Space for Recorder's Use Only)



DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS (this "**Declaration**") is made as of ~~December~~ ^{November} 9, 2003 by RIVERDALE CENTER II, L.C., a Utah limited liability company, having an office at c/o The Boyer Company, 90 South 400 West, Salt Lake City, Utah 84109 ("**Declarant**").

RECITALS

A. Declarant is the owner of certain real property located at the southwesterly corner of the intersection of Riverdale Road and 300 West in Riverdale, Utah, as more particularly described on Exhibit 1 annexed hereto (the "**Declarant's Parcel**").

B. RIVERDALE CENTER III, L.C., a Utah limited liability company, having an office at c/o The Boyer Company, 90 South 400 West, Salt Lake City, Utah 84109 ("**Landlord**"), an affiliate of Declarant, and BED BATH & BEYOND INC., a New York corporation, having an office at 650 Liberty Avenue, Union, New Jersey 07083 ("**Tenant**") have, on or about the date hereof, entered into a lease (the "**Lease**") for certain premises in a shopping center located at the northwesterly intersection of Riverdale Road and 300 West in Riverdale, Utah, which shopping center is more particularly described in the Lease (the "**Premises**").

C. Tenant is unwilling to enter into the Lease unless Declarant executes and records this Declaration.

D. Landlord and Declarant are affiliated business entities and as such Declarant will derive substantial benefit from the Tenant's operation in the Premises and execution of the Lease by Tenant.

NOW THEREFORE, in consideration of execution of the Lease by Tenant, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Declarant hereby declares as follows.

2039187 PG 1 OF 10
DOUG CROFTS, WEBER COUNTY RECORDER
23-JUN-04 121 PM FEE \$32.00 DEP SGC
REC FOR: HOME.ABSTRACT

ARTICLE 1
BASIC TERMS AND DEFINITIONS

Section 1.1 Basic Terms and Definitions. The following terms shall have the meanings set forth in this Section 1.1 except as otherwise expressly provided herein.

1.1.1 Affiliate: A corporation, partnership, person or other entity which is controlling, controlled by, or under common control with, Declarant. As used herein, "**control**" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of Declarant, whether through the ownership of voting securities or rights, by contract, or otherwise.

1.1.2 Excused Periods: Periods during which Tenant's failure to conduct the operations of its business or any other business: (x) resulted from alterations or renovations being performed in and to the Premises (not to exceed one hundred twenty (120) days in respect of any single bona fide alteration or renovation project), or (y) resulted from Tenant's diligent, good faith efforts to assign Tenant's interest in this Lease or to sublease all or any portion of the Premises (not to exceed ninety (90) consecutive days), or (z) was caused by damage or destruction, eminent domain proceedings or actions, or *Force Majeure*, or (xx) was caused by any act or omission of Landlord or Declarant, or its employees, agents, or contractors.

1.1.3 Exhibits. The exhibits annexed to this Declaration shall be a binding part of this Declaration as if fully set forth herein.

1.1.4 Existing Leases. Fully executed and delivered leases in effect on the date hereof with respect to Declarant's Parcel identified on Exhibit 2 attached hereto.

1.1.5 Floor Area: The actual number of square feet of space contained on all floors within any building area in the relevant portion of Declarant's Parcel, and, with respect to exterior areas, including all exterior areas leased to or exclusively used by one or more tenants on a consistent or continual basis, (but specifically excluding exterior loading dock areas, exterior patio areas used on a non-exclusive basis by restaurant tenants, trash compactor areas, and trash container areas). All measurements pursuant to this Subsection shall be from the exterior of outside walls or store front and/or to the centerline of any common walls, but in no event shall Floor Area include any non-selling or storage space areas within any mezzanine, lower floor, second floor or any exterior areas, except as set forth above.

1.1.6 Force Majeure: Except as otherwise expressly set forth herein, in the event Declarant shall be delayed or hindered in, or prevented from, the performance of any act required hereunder by reason of strikes, failure of power, riots, insurrection, war, earthquake, hurricane or tornado (or comparable weather conditions of unusual severity), or other reasons of a like nature which are beyond the reasonable control of the party and which could not have been avoided through the exercise of due diligence by a party (collectively referred to herein as "*Force Majeure*"), then the performance of any such act shall be excused for a period equal to the period of the delay. Notwithstanding the foregoing provisions, the following shall not constitute Force Majeure: (i) the financial inability of Declarant to perform its obligations under this Declaration; or (ii) delays occurring in the course of complying with applicable Legal Requirements that could have been avoided through the exercise of due diligence by Declarant.

1.1.7 Declarant's Mailing Address: Riverdale Center II, L.C., c/o The Boyer Company, 90 South 400 West, Suite 200, Salt Lake City, Utah 84109, or such other place and/or to the attention of such other person as Declarant may notify Tenant from time to time by notice given in accordance with the provisions of Article 4 hereof.

1.1.8 Legal Requirements: All laws, statutes, codes, acts, ordinances, judgments, decrees, authorizations, directions and requirements of, and agreements with, all governmental departments, commissions, boards, courts, authorities, agencies, officials and officers, which now or at any time hereafter may be applicable to Declarant's Parcel, or any part(s) thereof.

1.1.9 Tenant's Mailing Address: 650 Liberty Avenue, Union, New Jersey 07083, Attn: Mr. Warren Eisenberg, or such other place and/or to the attention of such other person as Tenant may notify Declarant from time to time by notice given in accordance with the provisions of Article 13 hereof.

ARTICLE 2 RESTRICTIONS

Section 2.1 Prohibited Uses. Declarant shall not lease, rent or occupy or permit any portion of Declarant's Parcel to be occupied (except to the extent otherwise permitted under any Existing Lease) for any of the "**Prohibited Uses**" (defined in Exhibit 3 hereto annexed)

Section 2.2 Tenant's Exclusive. To induce Tenant to execute the Lease, and subject to all of the terms and provisions of this Section 2.2, Declarant covenants and agrees as follows.

2.2.1 Subject to the rights of tenants and occupants under the Existing Leases, Declarant shall not lease, rent or occupy or permit any other premises in Declarant's Parcel to be occupied, whether by a tenant, sublessee, assignee, licensee or other occupant or itself, for the sale, rental or distribution, either singly or in any combination, of items contained in any of the following respective categories of merchandise: (a) linens and domestics; (b) bathroom items (excluding plumbing hardware); (c) housewares (excluding furniture, and major appliances or "white goods"); (d) frames and wall art (provided that a fine art gallery shall not be precluded); (e) window treatments; and/or (f) closet, shelving and storage items (which items, either singly or in any combination, are hereinafter referred to as the "**Exclusive Items**"). Notwithstanding the foregoing, any tenant or subtenant in Declarant's Parcel shall have the right to utilize its respective premises for the sale, rental and/or distribution of Exclusive Items within an aggregate area (which shall include an allocable portion of the aisle space adjacent to such sales, rental and/or distribution area) not to exceed the lesser of (x) six and one-half percent (6.5%) of the Floor Area of such tenant's or subtenant's premises, or (y) two thousand (2,000) square feet of Floor Area within such tenant's or subtenant's premises. [For example only, a tenant occupying premises containing a total of five thousand (5,000) square feet of Floor Area could sell Exclusive Items (either singly or in any combination) so long as the aggregate area within its entire demised premises in which any and all Exclusive Items are sold shall not exceed two hundred fifty (250) square feet.] Existing tenants of Declarant's Parcel (and current or future assignees or sublessees of such tenants) shall nevertheless be subject to the restrictions contained in this Section 2.2 in the event that: (i) the lease between Declarant and any such tenant requires Declarant's consent to any assignment or subletting or to a change in the use of the applicable premises to permit the sale, rental or distribution of the Exclusive Items; or (ii) Declarant permits or agrees to an expansion of the applicable premises for the sale, rental, or distribution of the Exclusive Items.

2.2.2 The restrictions set forth in Subsection 2.2.1 above shall not apply to a full-line national or regional: (i) department store [for example, Wal-Mart, Macy's, or Target], (ii) discount club [for example, Costco, BJ's Wholesale Club, or Sam's Club], (iii) home improvement center [for example, Home Depot or Lowe's], or (iv) furniture

store [for example, R.C. Willey], commonly located in first-class shopping centers in the state in which Declarant's Parcel is located, each occupying at least 80,000 square feet of Floor Area within Declarant's Parcel, as such stores are currently operated as of the date hereof.

2.2.3 The exclusive rights granted to Tenant in this Section 2.2 shall inure to the benefit of any assignee of Tenant's interest under the Lease so long as use of the Premises as a linens and domestic retail store has not been discontinued for a period in excess of three hundred sixty-five (365) consecutive days, not including any Excused Periods.

ARTICLE 3 DEFAULT

Section 3.1 Declarant Default. If Declarant shall fail to perform or observe any of the covenants of this Declaration on Declarant's part to be performed or observed, or fail to cure a material breach of any warranty or representation under this Declaration within thirty twenty-five (25) days after receiving notice from Tenant thereof (or, if same cannot reasonably be cured within twenty-five (25) days, if Declarant shall fail to promptly commence and diligently prosecute said cure to completion) (hereinafter referred to as a "*Declarant's Default*"), then Tenant, in addition to such other rights and remedies as may be available at law or in equity, may seek injunctive relief, or seek specific performance for any covenant or agreement of Declarant. In no event shall Declarant be liable to Tenant for any consequential damages suffered by Tenant as a result of a default by, or any other act of, Declarant.

ARTICLE 4 NOTICE

Subject to the further provisions of this Article 4, whenever it is provided herein that any notice, demand, request, consent, approval or other communication ("*Notice*") shall or may be given to either of the parties by the other, it shall be in writing and, any Legal Requirement to the contrary notwithstanding, shall not be effective for any purpose unless same shall be given by registered or certified mail, postage prepaid, return receipt requested, or by any recognized overnight mail carrier, with proof of delivery slip, addressed to Declarant at Declarant's Mailing Address or to Tenant at Tenant's Mailing Address, with copies of notices to Tenant also given to: (i) Allan N. Rauch, Esq., c/o Bed Bath & Beyond Inc., 650 Liberty Avenue, Union, New Jersey 07083, and (ii) Jeffrey H. Newman, Esq., c/o Sills Cummis Radin Tischman Epstein & Gross, P.A. One Riverfront Plaza, Newark, New Jersey 07102, or to such other person or other address as may, from time to time, be specified by either party in a written notice to the other party. 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.

ARTICLE 5 MISCELLANEOUS

Section 5.1 Attorneys' Fees. In any action or proceeding hereunder (whether to enforce the terms and provisions of an indemnity or otherwise), the prevailing party shall be entitled to recover from the other party the prevailing party's reasonable costs and expenses in such action or proceeding, including reasonable attorneys' fees, costs and expenses. Except as otherwise set forth herein, if either party is sued by a third party as a

result of a violation of a covenant or warranty herein contained by the other party hereto, then the party who has violated the covenant or warranty shall be responsible for the reasonable costs and expenses in such action or proceeding against the non-violating party, including reasonable attorneys' fees, costs and expenses.

Section 5.2 Non-Waiver. The failure of Tenant to insist upon the strict performance of, or to enforce, any provision, covenant or condition herein shall not be deemed to be a waiver thereof, nor void or affect the right of Tenant to enforce the same covenant or condition on the occasion of any subsequent breach or default; nor shall the failure of Tenant to exercise any option in this Declaration upon any occasion arising therefor be deemed or construed to be a waiver of the right to exercise that same kind of option upon any subsequent occasion.

Section 5.3 Rights Cumulative. Unless expressly provided to the contrary in this Declaration, each and every one of the rights, remedies and benefits provided by this Declaration shall be cumulative and shall not be exclusive of any other such rights, remedies and benefits allowed by applicable Legal Requirements.

Section 5.4 Definition of Declarant. The term "**Declarant**" shall mean only the person or entity which, from time to time, shall then own Declarant's Parcel, and in the event of the transfer by such owner of its interest in Declarant's Parcel, such owner shall (except to the extent of (1) claims made by Tenant against Declarant which arose prior to the effective date of the transfer of such ownership interest, and/or (2) judgments obtained by Tenant against Declarant, on or prior to the effective date of the transfer of such ownership interest) thereupon be released and discharged from all covenants and obligations of Declarant thereafter accruing, but such covenants and obligations shall be binding during the term of the Lease upon each new owner for the duration of such owner's ownership.

Section 5.5 Limitation of Declarant's Liability. Tenant shall look only to Declarant's estate and property in Declarant's Parcel (or the proceeds from the sale of all or any portion thereof) and net income derived from Declarant's Parcel for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) requiring the payment of money by Declarant hereunder and no other property or assets of Declarant, its officers, directors, stockholders, members or partners shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to this Declaration. Except with respect to the limitation on personal liability hereinabove set forth, the provisions of this Section 5.5 shall not be deemed or construed to limit Tenant's rights and remedies pursuant to this Declaration or which may be available at law or in equity.

Section 5.6 Severability. If any term, covenant, condition or provision of this Declaration is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

Section 5.7 Grammatical Usages and Construction. In construing this Declaration, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa, and plural terms shall be substituted for singular and singular for plural in any place in which the context so requires. This Declaration shall be construed without regard to the identity of the party who drafted the various provisions hereof. Any rule or construction that a document is to be construed against the drafting party shall not be applicable hereto.

Section 5.8 Definition of Hereunder, Herein, etc.. Unless the context clearly indicates to the contrary, the words "herein," "hereof," "hereunder," "hereafter," and

words of similar import refer to this Declaration and all the Exhibits attached hereto as a whole and not to any particular section, subsection, or paragraph hereof.

Section 5.9 Modification. This Declaration cannot be changed, modified or discharged orally, but only by an agreement in writing, signed by Declarant and Tenant.

Section 5.10 No Joint Venture or Partnership Created by Lease. Nothing contained herein shall be deemed or construed as creating the relationship of principal and agent or of partnership or of joint venture between Declarant and Tenant.

Section 5.11 Tenant's Tradename. Declarant shall not make use of Tenant's tradename [i.e., "Bed Bath & Beyond"®] in any advertising or marketing material, including, without limitation, on any internet website, without obtaining Tenant's prior written approval, which may be withheld in Tenant's sole and absolute discretion.

Section 5.12 Waiver of Trial by Jury. Declarant and Tenant hereby mutually waive any and all rights which either may have to request a jury trial in any proceeding between them at law or in equity.

Section 5.13 Governing Law. This Lease shall be governed by, construed, and enforced in accordance with the laws of the State in which Declarant's Parcel is located.

ARTICLE 6
BINDING EFFECT

Section 6.1 Beneficiary, Successors and Assigns. The provisions of this Declaration are made for the benefit of Tenant and Tenant shall have any right to enforce the provisions hereof. This Declaration shall be binding upon Declarant, its successors and assigns, and shall inure to the benefit of Tenant and its successors, assigns and subtenants.

Section 6.2 Covenants Running with the Land. The terms of this Declaration shall constitute covenants running with the land.

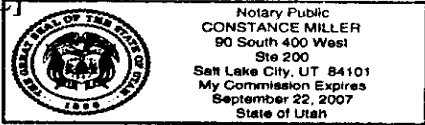
Section 6.3 Term. This Declaration shall remain in full force and effect for so long the Lease shall remain in full and effect.

IN WITNESS WHEREOF, the parties have executed this instrument under seal the day and year first-above written.

WITNESS:

Constance Miller

[SEAL]



DECLARANT:

RIVERDALE CENTER II, L.C.,
a Utah limited liability company,
by its Manager:

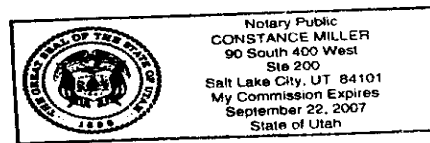
THE BOYER COMPANY, L.C.,
a Utah limited liability company

By: [Signature]
Name: _____
Title: [Signature]

STATE OF UTAH)
):ss.
COUNTY OF SALT LAKE)

On this 10th day of ^{December} ~~November~~, 2003, before me personally came

KEM C. GARDNER to me known, who being by me duly sworn, did depose and say that he is the MANAGER of The Boyer Company, L.C., the Manager of Riverdale Center II, L.C., a Utah limited liability company, the company described in and which executed the above instrument, and that [s]he was authorized to, and did, execute the foregoing instrument as KEM C. GARDNER of The Boyer Company, L.C., as Manager of Riverdale Center II, L.C..



F# 2039187 P67 OF 10

Exhibit 1

Legal Description of Declarant's Parcel

Riverdale Center II Subdivision

All of Lots 2, 3, 3A and 4, **RIVERDALE CENTER II SUBDIVISION**, according to the official plat thereof, filed in Book "52" of Plats at Page 52 of the Official Records of the Weber County Recorder.

[For reference purposes only: Tax Parcel/Serial Nos. 06-274-0002, 06-274-0003, 06-274-0004 and 06-274-0005]

Boyer Parcel 8

A PART OF THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 5 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY:
BEGINNING at a point 1111.12 feet South 1°00'35" West, Utah State Plane Grid Bearing along the Section line, 72.91 feet South 78°05'28" East and 330.13 feet South 78°05'28" East from the Northwest corner of said Northwest Quarter, and running thence South 78°05'28" East 271.84 feet to the Westerly line of Riverdale Road (State Highway 26); thence South 38°24'20" West 106.31 feet along said line; thence North 78°05'28" West 87.20 feet; thence North 51°29'55" West 42.85 feet; thence North 68°22'35" West 16.93 feet; thence North 89°41'28" West 14.21 feet; thence North 78°05'28" West 67.15 feet; thence North 11°03'04" East 75.97 feet to the point of BEGINNING.

[For reference purposes only: Tax Parcel/Serial No. 06-028-0009]

Exhibit 2

Existing Leases

Olive Garden
Westaff (USA) Inc.
EBC Computers – Ogden
Murdock Music
Souper Salad
American General Finance Ctr.
Lifeway Christian Stores
Pine Factory
T-Mobile USA, Inc.
Supreme Sleep Center
Omniserv Cellular, Inc.
Seagull Book & Tape, Inc.
Audibel
Burger King #2228

Staples, Inc. (store no 703)
Ross Dress for Less
Petco Animal Supplies
Deseret Book Company
Mind Your Memories
Embellish Salon
Five State Beauty Supply
Hogi Yogi/Teriyaki Stix
Best Buy
Michaels
Jenny Craig
American Family Mutual Insurance
Girl Scouts
Washington Mutual Finance

Exhibit 3

Prohibited Uses

As used in this Declaration, the term "*Prohibited Uses*" shall mean any of the following uses:

- (1) Any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance);
- (2) Any dumping, disposing, incineration, or reduction of garbage (exclusive of trash compactors or trash containers located near the rear of any building);
- (3) A facility for the sale or display of pornographic material, as determined by community standards for the area in which the Shopping Center is located, including, without limitation: (x) a store displaying for sale or exhibition books, magazines or other publications containing any combination of photographs, drawings or sketches of a sexual nature, which are not primarily scientific or educational [provided, however, that the sale of books, magazines and other publications by a national bookstore of the type normally located in first-class shopping centers in the State in which the Shopping Center is located (such as, for example, Borders and Barnes & Noble, as said stores currently operate) shall not be deemed a "pornographic use" hereunder]; or (y) a store offering for exhibition, sale or rental video cassettes or other medium capable of projecting, transmitting or reproducing, independently or in conjunction with another device, machine or equipment, an image or series of images, the content of which has been rated or advertised generally as NC-17 or "X" or unrated by the Motion Picture Rating Association, or any successor thereto [provided, however, that the sale or rental of such videos by a national video store of the type normally located in first-class shopping centers in the State in which the Shopping Center is located (such as, for example, Blockbuster or West Coast Video, as said stores currently operate) shall not be deemed a "pornographic use" hereunder]; or massage parlor [except for therapeutic massages given in connection with the operation of a day spa or health club]
- (4) Any so-called "head shop", or other establishment for the sale of paraphernalia for use with illicit drugs or selling or exhibiting drug-related paraphernalia;
- (5) Any pawn shop, gun shop, or tattoo parlor
- (6) Any carnival, amusement park or circus;