

NON-DISTURBANCE AGREEMENT

THIS AGREEMENT is made as of the 12th day of September, 2003 among FOX POINT AT REDSTONE ASSOCIATION, INC., a Utah corporation, having an office at 299 S. Main Street, #1710, Salt Lake City, UT 84111 (the "Association"), BOYER KIMBALL JUNCTION, L.C., a Utah limited liability company, having an office at 90 South 400 West, Suite 200, Salt Lake City, Utah 84101-1365 (the "Boyer") and BED BATH & BEYOND INC., a New York corporation, having an office at 650 Liberty Avenue, Union, New Jersey 07083 (the "Tenant").

WITNESSETH

WHEREAS, by a certain lease heretofore entered into between BOYER SPRING CREEK, L.C. (hereinafter called "Landlord") and Tenant dated as of September 10, 2003 (hereinafter called the "Lease"), Landlord leased to Tenant a portion of the "Property", as such term is defined in that certain Master Declaration of Covenants, Conditions and Restrictions", dated as of February 2, 2001 and recorded in the Summit County Clerk's office in Book 1352_ at page 608, as Entry No. 581758, as amended by "First Amendment to Master Declaration of Covenants, Conditions and Restrictions", dated April 11, 2002 by and among Landlord, Boyer Kimball Junction, L.C., SGD-Equimark, LLC and Fox Point Affordable Housing, L.C., and recorded December 20, 2002 as Entry 642057 in Book 1498 at page 428 (collectively, the "Declaration"), which portion is shown crosshatched on Exhibit 1 annexed hereto and made a part hereof (hereinafter called the "Demised Premises"); and

WHEREAS, as an inducement to Tenant to enter into the Lease, Section 2.3.1 thereof provides that Tenant's obligations under the Lease are conditioned upon Landlord obtaining this Agreement from Boyer and the Association;

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

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. Boyer and the Association each warrants and represents to Tenant that Landlord is not in default under the Declaration nor has any event occurred which would after notice to Landlord and the passage of time become a default of Landlord under the Declaration.

2. Boyer and the Association each respectively agrees that so long as the Lease shall be in full force and effect:

(i) Tenant shall not be named or joined as a party or otherwise in any suit, action or proceeding for the foreclosure of any lien for unpaid costs or assessments payable by Landlord, as an "owner", under the Declaration; and

(ii) the possession by Tenant of the Demised 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 any suit, action or proceeding for (i) the collection of costs or assessments under the Declaration, or (ii) the foreclosure of any lien for costs or assessments payable by Landlord, as an Owner, under the Declaration, or any judicial or non-judicial sale of the Property or Demised Premises, or any deed given in lieu of foreclosure.

3. If Boyer or the Association shall become the owner of the Property or Demised Premises by reason of foreclosure of the lien for costs or assessments, or transfer of ownership by deed given in lieu of foreclosure, the Lease shall continue in full force and effect, without the necessity of executing any new lease, as a direct lease between Tenant and the then owner of the Demised Premises, as "landlord", upon all of the same terms, covenants and provisions contained in the Lease, and in such event:

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(i) 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

(ii) 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 (i) be bound by any rent or additional rent which Tenant might have paid for more than one month in advance to any prior landlord (including Landlord); or (ii) be bound by any amendment or modification of the Lease made without its consent which would (x) reduce fixed annual rent, or (y) reduce any other monetary obligation of Tenant under the Lease.

4. Notwithstanding anything in the Declaration to the contrary, Boyer and the Association hereby covenant and agree:

(i) Tenant shall not be bound by any covenants or restrictions, or other terms or condition, established by Boyer pursuant to Section 2.5 of the Declaration;

(ii) the Association shall neither perform nor permit to be performed, any reconstruction, repair or replacements of any portion of the Common Roadways or Commercial Roadways during the month of August of any year, without the prior consent of Tenant, which consent may be granted or denied in Tenant's sole and unfettered discretion, reasonably or unreasonably exercised; and

(iii) the Declaration shall not be amended or modified if such amendment or modification could diminish the rights or increase the obligations of Tenant thereunder or under the Lease, or could adversely affect Tenant's use or occupancy of the Demised Premises or the conduct of Tenant's business therein, without the prior consent of Tenant, which consent may be granted or denied in Tenant's sole and unfettered discretion, reasonably or unreasonably exercised.

5. Any notices or communications given under this Agreement shall be in writing and shall be given by registered or certified mail, return receipt requested, postage prepaid, (a) if to Boyer, at the address of Boyer as hereinabove set forth or at such other address as Boyer may designate by notice, (b) if to the Association, at the address of the Association as hereinabove set forth or at such other address as the Association may designate by notice, 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 Jeffrey H. Newman, Esq., Sills Cummis Radin Tischman Epstein & Gross, P.A., One Riverfront Plaza, Newark, New Jersey 07102, or such other address or persons as Tenant may designate by notice in the manner herein set forth. During the period of any postal strike or other interference with the mail, personal delivery shall be substituted for registered or certified mail.

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

7. 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.

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

9. This Agreement and each and every covenant, agreement and other provision hereof shall be binding upon and inure to the benefit of the parties hereto and their heirs, administrators, representatives, successors and assigns.

10. This Agreement is made and executed under and in all respects is to be governed by and construed in accordance with the laws of the State of Utah.

11. If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement will not be affected, and in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision will be added as a part of this Agreement that is as similar to the illegal, invalid, or unenforceable provision as may be possible and be legal, valid and enforceable.

12. This Agreement may be executed in several counterparts, each of which shall be deemed an original. The signatures to this Agreement may be executed and notarized on separate pages, and when attached to this Agreement shall constitute one (1) complete document.

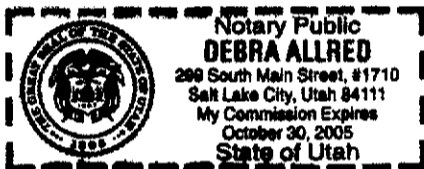
IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

BOYER KIMBALL JUNCTION, L.C.

Attest:

Name: _____
Title: _____

By: [Signature]
Name: H. Roger Boyer
Title: _____



Attest:

Name: Debra Allred
Title: _____

FOX POINT AT REDSTONE ASSOCIATION, INC.
(insert name of RESIDENTIAL ASSOCIATION)

By: [Signature]
Name: CRAIG P. BURTON
Title: Manager

BED, BATH & BEYOND INC.

Attest:

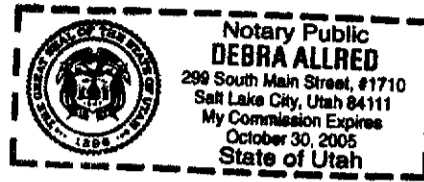
[Signature]
Name: Alan M Freeman
Title: Asst Secretary

By: [Signature]
Name: Warren Eisenberg
Title: Co-Chairman of the Board of Directors

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

The foregoing instrument was acknowledged before me this 12 day of September, 2003 by Craig P Burton of _____, a Utah

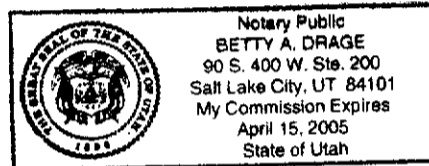
Debra Allred
NOTARY PUBLIC
Residing at: Salt Lake City
My Commission Expires: _____



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

The foregoing instrument was acknowledged before me this 10 day of September, 2003 by H. Roger Boyer of BOYER KIMBALL JUNCTION, L.C., a Utah limited liability company.

Betty A. Drage
NOTARY PUBLIC
Residing at: Salt Lake County
My Commission Expires: 4-15-05



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

The foregoing instrument was acknowledged before me this 3rd day of September, 2003, by Warren Eisenberg, Co-Chairman of the Board of Directors of BED BATH AND BEYOND INC., a New York corporation.

Genevieve Frisciandaro
NOTARY PUBLIC
Residing at: Union, NJ
My Commission Expires: 11/4/07

GENEVIEVE FRISCIANDARO
Notary Public - State of N.J.
My Commission Expires 11/4/07



BK1577 PG1175

EXHIBIT A

Legal Description of the Shopping Center

BEGINNING at a point on the East line of Lot 7, THE VILLAGE AT KIMBALL JUNCTION, a subdivision in the West half of Section 19, Township 1 South, Range 4 East, Salt Lake Base and Meridian, said point being North 0° 16' 14" West 1238.18 feet from the Southeast corner of said Lot 7; thence North 0° 16' 14" West 826.33 feet; thence South 89° 43' 46" West 304.84 feet; thence South 0° 16' 14" East 40.00 feet; thence South 89° 43' 46" West 70.00 feet; thence North 0° 16' 14" West 40.00 feet; thence South 89° 43' 46" West 740.33 feet; thence South 0° 27' 00" West 15.00 feet; thence North 89° 33' 00" West 165.00 feet; thence South 0° 27' 00" West 234.22 feet; thence South 89° 33' 00" East 185.91 feet; thence South 31° 25' 02" West 185.66 feet; thence South 58° 34' 58" East 191.33 feet; thence South 31° 25' 02" West 33.35 feet; thence South 58° 34' 58" East 21.15 feet; thence South 31° 25' 02" West 17.61 feet; thence South 58° 34' 58" East 81.60 feet; thence North 31° 25' 02" East 79.23 feet; thence North 76° 25' 02" East 55.53 feet; thence South 58° 34' 58" East 45.91 feet; thence North 31° 25' 02" East 48.44 feet; thence South 58° 34' 58" East 80.94 feet; thence South 31° 25' 02" West 21.00 feet; thence South 58° 34' 58" East 44.00 feet; thence South 31° 25' 02" West 17.50 feet; thence South 58° 34' 58" East 206.00 feet; thence North 31° 25' 02" East 31.50 feet; thence South 58° 34' 58" East 44.00 feet; thence North 31° 25' 02" East 13.55 feet; thence South 58° 34' 58" East 215.00 feet; thence South 31° 25' 02" West 5.00 feet; thence South 58° 34' 58" East 88.00 feet; thence North 31° 25' 02" East 5.00 feet; thence South 58° 34' 58" East 44.00 feet; thence North 31° 25' 02" East 88.90 feet; thence South 58° 34' 58" East 38.54 feet; thence North 89° 43' 46" East 114.04 feet to the point of beginning.

LESS AND EXCEPTING THEREFROM THAT PORTION OF THE FOLLOWING DESCRIBED PARCELS CREATED IN THAT CERTAIN DOCUMENT ENTITLED RED STONE VILLAGE AIR RIGHTS DECLARATION RECORDED FEBRUARY 4, 2001 AS ENTRY NO. 581759 IN BOOK 1352 AT PAGE 632, WHICH ARE LOCATED ABOVE THE TOP OF THE JOISTS DEFINING THE CEILING FOR THE COMMERCIAL SPACE AND SUPPORTING THE FLOOR FOR THE AIR PARCELS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Air Rights Parcel #1:

Beginning at a point which is North 0° 16' 14" West 1513.91 feet along the East line of Lot 7, THE VILLAGE AT KIMBALL JUNCTION, a subdivision in the West half of Section 19, Township 1 South, Range 4 East, Salt Lake Base and Meridian; and South 89° 43' 46" West 742.41 feet from the Southeast corner of said Lot 7; thence North 58° 34' 58" West 162.00 feet; thence North 31° 25' 02" East 63.00 feet; thence South 58° 34' 58" East 165.00 feet; thence South 31° 25' 02" West 26.00 feet; thence North 58° 34' 58" West 3.00 feet; thence South 31° 25' 02" West 37.00 feet to the point of beginning.

Air Rights Parcel #2:

Beginning at a point which is North 0° 16' 14" West 1410.24 feet along the East line of Lot 7, THE VILLAGE AT KIMBALL JUNCTION, a subdivision in the West half of Section 19, Township 1 South, Range 4 East, Salt Lake Base and Meridian; thence South 89° 43' 46" West 647.76 feet from the Southeast corner of said Lot 7; thence North 58° 34' 58" West 91.00 feet; thence North 31° 25' 02" East 17.50 feet; thence North 58° 34' 58" West 44.00 feet; thence North 31° 25' 02" East 58.00 feet; thence South 58° 34' 58" East 47.00 feet; thence South 31° 25' 02" West 17.50 feet; thence South 58° 34' 58" East 88.00 feet; thence South 31° 25' 02" West 58.00 feet to the point of beginning.

Air Rights Parcel #3:

Beginning at a point which is North 0° 16' 14" West 1316.08 feet along the East line of Lot 7, THE VILLAGE AT KIMBALL JUNCTION, a subdivision in the West half of Section 19, Township 1 South, Range 4 East, Salt Lake Base and Meridian; and thence South 89° 43' 46" West 409.47 feet from the Southeast corner of said Lot 7; thence North 58° 34' 58" West 93.23 feet; thence South 31° 25' 02" West 13.55 feet; thence North 58° 34' 58" West 44.00 feet; thence South 31° 25' 02" West 31.50 feet; thence North 58° 34' 58" West 91.00 feet; thence North 31° 25' 02" East 58.00 feet; thence South 58° 34' 58" East 71.17 feet; thence North 79° 59' 37" East 68.10 feet; thence South 50° 34' 58" East 106.00 feet; thence South 31° 25' 02" West 58.00 feet to the point of beginning.

Air Rights Parcel #4:

Beginning at a point which is North 0° 16' 14" West 1232.13 feet along the East line of Lot 7, THE VILLAGE AT KIMBALL JUNCTION, a subdivision in the West half of

Section 19, Township 1 South, Range 4 East, Salt Lake Base and Meridian; thence South 89° 43' 46" West 163.06 feet from the Southeast corner of said Lot 7; thence South 31° 25' 02" West 58.00 feet; thence North 58° 34' 58" West 44.00 feet; thence South 31° 25' 02" West 5.00 feet; thence North 58° 34' 58" West 88.00 feet; thence North 31° 25' 02" East 5.00 feet; thence North 58° 34' 58" West 69.00 feet; thence North 31° 25' 02" East 58.00 feet; thence South 58° 34' 58" East 72.00 feet; thence South 31° 25' 02" West 5.00 feet; thence South 58° 34' 58" East 82.00 feet; thence North 31° 25' 02" East 5.00 feet; thence South 58° 34' 58" East 47.00 feet to the point of beginning.