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Book - 10215 Pg - 1176-1183
Gary W. Ott
Recorder, Salt Lake County, UT
BONNEVILLE SUPERIOR TITLE
BY: eCASH, DEPUTY - EF 8 P.

When recorded mail to:
William A. Meaders
Kirton McConkie
50 East South Temple
Salt Lake City, UT 84111

BST #01459-4763

Affecting Tax Parcel Nos. **33-03-178-001; 33-03-178-002;**
33-03-178-003; 33-03-178-004; 33-03-178-005

(Space above this line for Recorder's use only.)

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND
EASEMENTS**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS (this "Declaration") is made this 3rd day of March, 2014, by BANGERTER/REDWOOD, LLC, a Utah limited liability company ("Declarant"), in contemplation of the following facts and circumstances:

RECITALS

A. Declarant is the owner of real property located at the northwest corner of the intersection of Bangerter Highway and Redwood Road in Riverton, Utah (the "City") and containing approximately 10.16 acres, which Declarant is developing as Bangerter Redwood Subdivision, a commercial development, consisting of Lots 1 through 5 (individually, a "Lot," and collectively, the "Lots"), and as more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "Property").

B. In addition to the easements, covenants and restrictions imposed on the Property by that certain subdivision plat (the "Plat"), recorded in the Salt Lake County Recorder's Office on March 13, 2013, as Entry No. 11595913, at Book 2013P and Page 42, Declarant desires to restrict the use of the Property, as set forth herein.

COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

NOW, THEREFORE, for the reasons cited above, the Declarant hereby covenants, agrees and declares that the Property shall be subject to the following covenants, conditions, restrictions and easements.

1. Restrictive Covenants. The Property is subject to the following covenants, conditions, restrictions and easements (collectively, the "Restrictive Covenants"):

a. Zoning. All land use and building on the Property shall be in compliance with all applicable City zoning and land use ordinances, as well as all other regulations of the municipalities and agencies having jurisdiction over the Property. Subject to the foregoing and the prohibited uses described in Section 1.b. below, the Property may be used for any legally permissible purpose, as determined by each Lot owner in its sole and absolute discretion.

b. Prohibited Uses. No portion of the Property shall be used for: a flea market or a business selling so-called “second hand” goods; a bookstore or establishment primarily engaged in the business of selling, exhibiting or delivering pornographic or obscene materials; a “head shop;” a video or other type of game-room or arcade; an off-track betting parlor; a junk yard; a recycling facility; a gasoline station; a motor vehicle or boat storage facility; a laundromat or dry cleaning facility; a warehouse; a theater, an auditorium, sports or other entertainment viewing facility, whether live, film, audio/visual or video; a discotheque, dance hall, comedy club, night club or adult entertainment facility; a bowling alley; a skating rink; a billiard or pool hall; a massage parlor; or industrial, residential or manufacturing uses

Without the prior written consent of the owner of Lot 2, no Lot other than Lot 2 will be used as a tire service center, oil change or “quick lube” facility, emissions testing facility, or for any other automotive service business (excluding, however, a car wash or window replacement facility), or any tenant whose principal business is selling auto parts (excluding, however, a tenant such as a Maverick or 7-11 which incidentally sells oil, belts, filters or similar items).

c. Common Area Easements. Subject to the Lot 2 exceptions below, easements and rights of way for (i) installation and maintenance of utilities, drainage systems and facilities, and irrigation; (ii) access from Redwood Road to each Lot; (iii) parking and signage on the Property; (iv) pedestrian and vehicular access on the Property; and (v) landscaping, are reserved for the burden and benefit of each of the Lots over those parking and drive areas, access ways, sidewalks, planters, loading platforms, storage shelters, common areas, and other facilities available for joint use as shown on the Plat (collectively, the “Common Areas”), as they may from time to time exist and be available to all of the Lot owners/tenants on the Property, and their employees, agents, customers, licensees and/or invitees. Without limiting the generality of the foregoing, rights of way for access to and from Redwood Road and easements for utilities are reserved for each of the Lots over and across those areas which are cross-hatched or shaded on the Plat and located on Lot 2 (along the north and south portions thereof), Lot 3 (along the west portion thereof) and Lot 5 (along the east portion thereof) and such areas are part of the Common Areas.

There is also reserved to each of the Lots an easement for storm water drainage to the storm water detention pond located on Lot 3 as shown on the Plat. The owners of the Lots will participate in the cost of maintaining the storm water detention pond pursuant to paragraphs (d) and (e) hereinbelow.

Within the utility/drainage easements and rights of way, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities, or which may change the direction of flow of drainage channels in, on, or about the easements and rights of way, or which may obstruct or retard the flow of water through the drainage channels in any of the easements or rights of way. Subject to the aforementioned limitations, the foregoing shall not

prohibit the laying of asphalt/cement surfaces, the construction of landscape amenities, or the planting of grass, shallow-root trees and/or shrubs over the utility/drainage easement areas.

d. **Common Area Maintenance and Reimbursement.** The Common Areas, and all pedestrian/vehicular access ways, parking areas, signage (including the pole sign advertising the tenants on the Property), landscape amenities, and any other improvements within said areas, shall be insured and maintained continuously by the owner of the Lot underlying such Common Areas, excepting those improvements for which a public authority or utility company is expressly responsible. Subject to the Lot 2 exceptions below, each Lot owner shall reimburse the paying Lot owner for its proportionate share of the costs and expenses incurred by such paying Lot owner to carry the required insurance and/or complete the required maintenance (including snow and ice removal). Each Lot owner's proportionate share shall be determined by dividing the square footage of such owner's Lot by the total square footage of the Lots required to participate in the reimbursement, multiplied by the total amount incurred by the paying Lot owner to carry the required insurance or conduct the required maintenance. Notwithstanding the foregoing, for any utility maintenance and/or repairs which benefit fewer than all of the Lots, the prorata reimbursement for utility maintenance and/or repairs shall be allocated between the Lots benefitting from the utilities requiring such maintenance and/or repair, and not the Property as a whole.

e. **Lot 2 Exceptions.** The owner/occupants of Lot 2 shall benefit from the use of the vehicular/pedestrian access ways and parking areas on the other Lots, but the other Lot owners/occupants shall have no reciprocal access/parking rights or benefits over Lot 2. The owner/occupants of Lot 2 shall have exclusive use of the Common Areas on Lot 2, excluding, however, the rights of the other Lot owners/occupants to use the two access ways providing access from the other Lots onto Redwood Road which are cross-hatched or shaded on the Plat (and any adjacent sidewalks), and the rights of the other Lot owners/occupants to benefit from any utility/drainage improvements/easements serving their respective Lot(s). The Section 1.d. reimbursement obligations of the Lot 2 owner/occupants shall be limited to Lot 2's proportionate share of: (i) the Common Areas insurance maintained by each of the Lot owners, (ii) the costs incurred to maintain the two access ways from the Property to Redwood Road (including any adjacent sidewalks) to the extent such maintenance is on portions of the two access ways that are immediately adjacent to Lot 2, (iii) the costs incurred to maintain the pole sign advertising the tenants on the Property, (iv) the costs incurred to maintain the storm water detention pond located on Lot 3; and (v) any costs associated with the maintenance of any other Common Areas that benefit Lot 2 and are not included in or on any other leased premises on the Property. Furthermore, the owner/occupants of Lot 2 shall be solely responsible for the costs associated with the insurance, maintenance and/or repair of the common areas and/or facilities located within Lot 2 (excluding the prorata obligations of the other Lot owners pertaining to the maintenance/repair of the two access ways onto Redwood Road, the utility/drainage improvements/easements, and the pole sign).

The aforementioned exceptions shall expire on the date that certain "Building Lease and Purchase Option Agreement" (the "Lease"), dated August 15, 2012, between Declarant, as landlord, and Burt Brothers Riverton, LLC, as "Tenant," is terminated. In the event that Tenant exercises its option to purchase Lot 2 pursuant to the terms and conditions of the Lease, the exclusions in this Section 1.e. shall continue in full force and effect for as long as Tenant owns Lot 2. Upon the sale or transfer of Tenant's fee title interest in Lot 2, this Section 1.e. shall terminate.

2. **Enforcement of Restrictive Covenants.** Declarant, the Lot owners, and any party to whom Declarant may assign the rights granted under this Declaration, shall have the authority to enforce the Restrictive Covenants against any person or persons violating or attempting to violate the same and may enter proceedings at law or in equity to restrain a violation of the Restrictive Covenants and to recover damages for the breach or violation thereof. A violation of the Restrictive Covenants may result in immediate irreparable harm for which monetary damages alone are not adequate.

3. **Duration.** The Restrictive Covenants shall run with and bind the Property for a term of twenty (20) years from the date this Declaration is recorded, after which time, they shall be automatically extended for successive periods of ten (10) years, unless terminated at the end of any such period by the affirmative vote of two-thirds (2/3) of the Lot owners. No such termination shall terminate the easements described in Section 1.c. above, and all such easements shall survive any termination of this Declaration and may be extinguished only in the manner provided by law for the termination of an easement.

4. **Covenants Run with the Land.** All of the provisions, rights, powers, obligations, covenants, conditions, restrictions and easements contained in this Declaration shall be binding upon and inure to the benefit of the fee simple Lot owners, their respective successors, assigns, heirs, devisees, executors, administrators, subsidiaries, representatives, lessees, sublessees, members and all other persons or entities acquiring either tenement, or any portion thereof or interest therein. All of the provisions, rights, powers, obligations, covenants, conditions, restrictions and easements contained in this Declaration shall be covenants running with the Lots, both for the benefit of each tenement and as a burden upon each, pursuant to the applicable laws of the State of Utah.

5. **Owner's Insurance.** Each Lot owner shall at all times maintain liability insurance providing coverage against personal injury, death and property damage occurring on such owner's Lot (including the Common Areas thereon) in reasonable amounts and coverage that are customary for owners of commercial buildings in the metropolitan Salt Lake City, Utah area. Each Lot owner or occupant, to the extent such owner shall place responsibility on the occupant to do so, shall keep its Lot and all improvements thereon insured for the full replacement value thereof (less deductible) under standard fire and extended coverage policies.

6. **Amendment.** This Declaration may be amended or modified from time to time only by a recorded document executed by a majority of the fee simple owners of all of the Lots. The consent or approval of no other persons shall be required to accomplish any amendment or modification hereto. Notwithstanding the foregoing, Declarant reserves and shall have the sole right, regardless of whether or not Declarant owns any real property on the Property, to (i) amend

this Declaration without the vote or consent of any owner for the purpose of curing any inconsistency between the provisions contained herein, or (ii) amend this Declaration without the vote or consent of any owner in any manner which does not adversely affect the substantive rights of existing owners or mortgagees.

7. **No Third Party Beneficiary.** This Declaration has been executed and recorded for the benefit of Declarant, each Lot owner, and its/their successors or assigns. No other party shall be construed to be an intended third party beneficiary of any of the rights, duties or obligations set forth herein and no party other than Declarant, each Lot owner, and its/their successors or assigns shall, therefore, have the right to enforce any provision hereof.

8. **Liberal Interpretation.** The provisions of this Declaration shall be liberally construed as a whole to effectuate the purpose of this Declaration.

9. **Captions.** The titles, headings and captions used herein are for convenience only and are not a part of this Declaration and shall not be considered in construing, nor shall same be used to limit or amplify the terms and provisions hereof.

10. **Invalidity of Provision.** If any provision of this Declaration as applied to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of this Declaration, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of the Declaration as a whole.

11. **Governing Law.** This Declaration shall be governed by and construed under the laws of the State of Utah.

12. **Attorneys' Fees.** If a lawsuit is commenced or any other action taken to enforce or interpret any of the provisions of this Declaration, the prevailing or non-defaulting party, as applicable, shall have the right to recover its reasonable attorneys' fees and legal costs from the unsuccessful or defaulting party, as applicable, including all such fees and costs incurred in bankruptcy proceedings and in any appellate process.

13. **Notices.** Notices, demands, and statements required or desired to be given hereunder shall be in writing and shall be by personal delivery thereof or by deposit in the United States mail, certified mail, return receipt requested, postage prepaid, addressed to a good and sufficient address for the intended recipient. The date notice is deemed to have been given shall be the date of actual delivery to the party concerned. The address for notice to each Lot owner shall be the address of the Lot. The notice address for Declarant shall be:

Bangerter/Redwood, LLC
261 East 300 South #350
Salt Lake City, UT 84111

14. **No Public Dedication.** Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Property to or for the general public or for any public purpose whatsoever, it being the intention of the Declarant that this Declaration will be strictly limited to and for the purposes herein expressed. Notwithstanding the grant of the easements, each Lot owner may be entitled to take whatever steps it deems necessary to protect and preserve the private ownership of its Lot and to prevent same from being dedicated to the public use as a matter of law; provided, however, that such steps shall be taken in such manner and at such time as shall cause minimal disruption of the occupancy and usage of said owner's Lot.

15. **Mortgagee Protection.** No breach of any of the covenants, conditions, restrictions, or limitations contained in this Declaration shall defeat or render invalid the lien of any mortgage made in good faith and for value; provided, however, that all such covenants, conditions, restrictions or limitations contained herein shall be binding upon a Lot owner whose title is derived through foreclosure, trustee's sale or by deed or assignment in lieu of foreclosure.

16. **No Merger.** The easements, covenants and restrictions and other provisions contained in this Declaration shall remain in full force and effect despite the fact that any of the Lots may be owned by the same persons from time to time. It is the express intent of the Declarant to create a common scheme for the development and operation of the Property which will not be terminated by the doctrine of merger or otherwise unless this Declaration is terminated in accordance with the provisions hereof.

17. **Assignment of Declarant's Rights and Remedies.** All of the rights, powers and reservations of Declarant herein contained may be assigned by Declarant to any person, corporation, association or other entity which assumes such assigned duties of Declarant hereunder. To be effective, such assignment must be in writing, must be recorded in the office of the Salt Lake County Recorder, State of Utah, and must expressly refer to the Declarant's rights. Upon acceptance of such assignment by any such person or entity and recording of such assignment in the office of the Salt Lake County Recorder, State of Utah, said assignee shall be deemed to have assumed Declarant's duties hereunder and shall have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. Upon such assignment and recording, the party making such assignment shall be relieved from all liabilities, obligations and duties hereunder arising from and after the date of such assignment. Anything contained elsewhere herein to the contrary notwithstanding, the mere conveyance or transfer of ownership of the Property by Declarant to any person or party, whether by deed or other instrument of conveyance, shall in no way convey any right, power or reservation of Declarant hereunder. A successor to Declarant by reason of any merger or consolidation of the then Declarant shall automatically be deemed to have assumed Declarant's duties hereunder and shall have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein.

[Signature and notary acknowledgment on following page.]

EXECUTED to be effective as of the date of recording in the Office of the Salt Lake County Recorder.

DECLARANT: Bangerter/Redwood, LLC,
a Utah limited liability company

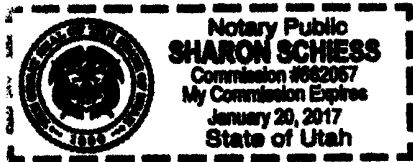
By: [Signature]

Name: Howard Kent

Its: Manager

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

On this 3RD day of MARCH, 2014, personally appeared before me HOWARD KENT, known or satisfactorily proved to me to be the person who signed the foregoing instrument, and acknowledged to me that he/she is the MANAGER of Bangerter/Redwood, LLC, a Utah limited liability company, and acknowledged to me that said limited liability company executed the same.



[Signature]
Notary Public

EXHIBIT A

[Legal Description of the Property]

Real property located in Salt Lake County, State of Utah, and more particularly described as follows:

All of Lots 1, 2, 3, 4 and 5, BANGERTER REDWOOD SUBDIVISION, Riverton City, Salt Lake County, Utah, according to the official plat thereof.

**Tax ID Nos: 33-03-178-001
33-03-178-002
33-03-178-003
33-03-178-004
33-03-178-005**