



W3277906

WHEN RECORDED MAIL TO:

C & N Roy DT, LLC
1835 S Hwy 89
Perry, UT 84302

E# 3277906 PG 1 OF 10
Leann H. Kilts, WEBER COUNTY RECORDER
29-Mar-23 10:03 AM FEE \$40.00 DEP SLV
REC FOR: COTTONWOOD TITLE INSURANCE AGENCY
ELECTRONICALLY RECORDED

File No.: 164005-KAP

SUPPLEMENTAL EASEMENTS, COVENANTS AND RESTRICTIONS AGREEMENT

In Reference to Tax ID Number(s):

NOT YET ASSESSED
(Prior 09-509-0010)

**SUPPLEMENTAL
EASEMENTS, COVENANTS AND RESTRICTIONS AGREEMENT**

THIS SUPPLEMENTAL EASEMENTS, COVENANTS AND RESTRICTIONS AGREEMENT (the “Agreement”) effective as of March 27, 2023 by and between **K.B. FAMILY ROY, LLC, a Utah limited liability company (“KBF”)**, and **C & N Roy DT, LLC, a Utah limited liability company (“C & N”)**. KBF and C & N may hereinafter be referred to individually as “party” or collectively as the “parties”.

WITNESSETH:

WHEREAS, C & N is, or will become, the owner of certain real property located in the County of Weber, City of Roy and State of Utah, as more particularly described on **Exhibit “A” (“DT Parcel”)**;

WHEREAS, KBF is the owner of certain real property located in the County of Weber, City of Roy and State of Utah, as more particularly described on **Exhibit “B” (“KBF Parcel”)**; and

WHEREAS, KBF and C & N have agreed that KBF Parcel and DT Parcel (collectively referred to as the “Property”) shall each be held, sold and conveyed subject to the easements, covenants and restrictions contained herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Shopping Center Restrictions and Easements. KBF and C & N acknowledge: (a) the Declaration of Covenants, Conditions and Restrictions, recorded December 12, 2002 as Entry No. 1896739 in the Office of the Weber County Recorder (the “Shopping Center REA”); and (b) the Subdivision Plat, recorded as Entry No. 3276582 in the Office of the Weber County Recorder, as amended (the “Shopping Center Plat”, together with the Shopping Center REA , collectively the “Shopping Center Documents”) and agree the Shopping Center Documents burden and benefit the KBF Parcel and DT Parcel. It is the intention of this Agreement to supplement the Shopping Center Documents. In the event of any direct conflicts between the Shopping Center Documents and this Agreement, the Shopping Center Documents shall control.

2. Additional Restrictions and Covenants. In addition to the restrictions set forth in the Shopping Center Documents, the following restrictions shall apply:

(a) No part of DT Parcel shall be used for (i) flea markets or similar businesses; (ii) adult entertainment; (vi) churches; (iii) car rentals or vehicles offered for lease or sale in the parking areas; (iv) bingo games, casinos or off-track betting agencies; (v) pawn and gun shops; (vi) post offices or postal facilities or (vii) a grocery store, provided, however a single price point retail variety store selling general merchandise including food and beverages shall be permitted on the DT Parcel provided that no more than 2,500 square feet of building(s) on the DT Parcel may be used for the sale of food or beverage for off premises consumption.

(b) Prior to construction on the DT Parcel, the owner/occupant of the DT Parcel shall be responsible, at its sole cost and expense, for maintaining the DT Parcel in neat and orderly condition, free from overgrown or noxious weeds, garbage or refuse until improved and constructed in accordance with the Shopping Center Documents.

(c) Once construction has been commenced on the DT Parcel, the owner/occupant of the DT Parcel shall diligently pursue such construction to completion in a timely fashion. The exterior of the building to be construed or placed on the DT Parcel shall be architecturally and aesthetically compatible with the remainder of the Shopping Center. In order to ensure the exterior architectural and aesthetic compatibility of the building on the DT Parcel, the owner/occupant of the DT Parcel shall submit to KBF, detailed design drawings, elevations, and plans and specifications (“Plans”) covering the initial construction of the building and structures to be constructed on the DT Parcel and any additions, remodeling, reconstruction or other alterations thereto which changes the exterior or exterior appearance thereof for approval at least sixty (60) days prior to commencement of any such work. If KBF rejects the Plans for not complying with the architectural theme of the Shopping Center, the owner/occupant of the DT Parcel and KBF shall mutually consult to establish approved Plans for the proposed work. If KBF fails to respond to C & N (or its successors or assigns) within such sixty (60) day period, the Plans submitted shall be deemed approved. KBF shall not arbitrarily or unreasonably withhold approval of the Plans. Owner/occupant of the DT Parcel shall not materially deviate from the approved Plans.

(d) All construction activities performed by the owner/occupant of the DT Parcel on the DT Parcel shall be performed in compliance with all applicable laws, rules, regulations, orders and ordinances of all applicable governmental agencies. Owner/occupant of the DT Parcel agrees that its construction activities shall not:

- a. cause unreasonable increase in the costs of constructing improvements on any other real property at the Shopping Center;
- b. unreasonably interfere with construction work being performed on any other part of the Shopping Center;
- c. unreasonably interfere with the use, occupancy or enjoyment of any part of the remainder of the Shopping Center by any other party;
- d. cause any other building or improvements on any other property within the Shopping Center to be in violation of any law, rule, regulation or ordinance.

(e) Owner of the DT Parcel agrees to defend, indemnify and hold KBF harmless from all claims, losses, liabilities, actions, proceedings, and costs (including reasonable attorneys’ fees and costs of suit), including liens and any accident, injury, loss or damage whatsoever occurring to any person or property of any person arising out of or resulting from any construction activities performed or authorized by the owner of the DT Parcel, except to the extent caused by or arising from the negligence of KBF or KBF’s agents, owners, contractors, subcontractors, or other similar parties.

(f) Notwithstanding anything set forth in this Agreement to the contrary, after construction of a building on the DT Parcel, the Owner of the DT Parcel, and its successor and assigns shall pay its prorata share of common area expenses including landscape maintenance, snow removal, common area repairs and maintenance, utility and insurance costs for common areas as set forth in the Shopping Center Documents or as otherwise mutually agreed by KBF and Owner of the DT Parcel. In addition to any requirements in the Shopping Center Documents, the owner of the KBF Parcel agrees to (a) maintain, and remove snow from, any publicly accessible parking lots located on the DT Parcel, and (b) maintain any landscaped areas located on the DT Parcel. The costs associated with the foregoing obligations will be added to the Owner of the DT Parcel’s prorata share of common area expenses and billed and paid at the same time as common area expenses. Notwithstanding the foregoing or anything to the contrary in the Shopping Center Documents, the parties hereto acknowledge and agree that (i) the owner of the DT Parcel shall not be required to pay any common area

assessments until a building has been fully constructed on the DT Parcel, and (ii) in the first year after a building has been constructed on the DT Parcel, the owner of the DT Parcel shall not be required to pay more than \$17,500 in common expenses attributable to the DT Parcel (the "Maximum Annual Assessment"), including any assessments made pursuant to the Shopping Center Documents and any assessments related to any work completed by the owner of the KBF Parcel as required by this subparagraph (f). Thereafter, the Maximum Annual Assessment attributable to the owner of the DT Parcel shall increase five percent (5%) per annum. The foregoing notwithstanding, the following uncontrollable common area expenses are not subject to the Maximum Annual Assessment: utilities, taxes, insurance, snow removal and/or other uncontrollable expenses caused by a force majeure event and not otherwise covered by insurance. Except for those areas described above, the Owner of the DT Parcel shall maintain its site at its sole cost and expense, including without limitation, sidewalks, taxes, insurance, building maintenance, and other like costs identifiable specifically to the DT Parcel. If the Owner of the DT Parcel is assessed more than the Maximum Annual Assessment in any one year, the owner of the KBF Parcel agrees to reimburse the owner of the DT Parcel any amounts exceeding the Maximum Annual Assessment.

3. Grant of Access Easements. The Shopping Center Documents provide blanket access and utility easements for the Common Areas of the Shopping Center. In furtherance thereof, KBF and C & N hereby confirm and agree as follows:

(a) The purpose and intent of the parties are to establish non-exclusive cross-access easements across any and all drive aisles and sidewalks whether now existing or in the future to exist on all lots of their respective parcels. Accordingly, C & N and KBF hereby establish non-exclusive access easements for access over, through and across any and all drive ways, drive aisles and sidewalks, whether now existing or in the future to exist, on any and all lots of the Property defined in this Agreement for the DT Parcel's (and all agents, employees, tenants, assignees, business invitees of the Owner of the DT Parcel) limited purposes of vehicular and pedestrian ingress and egress to and from the respective parcels. The locations of the easements granted in this Section 3(a) may be relocated, from time to time, by the party on whose property the easement is located so long as access is not materially impeded. The easements granted in this Section 3(a), are sometimes collectively referred to herein as the "Access Easement(s)". Except as otherwise provided herein, each party may designate areas on such party's respective parcel for building areas, parking, ingress, egress and landscaping and other uses beneficial to such party's use and occupation of its respective parcel.

(b) C & N and KBF hereby grant each other a limited non-exclusive cross-parking easement allowing any respective permittees, including, without limitation, employees and customers, to park on the other party's parcel. The foregoing easement shall be limited to the number of parking stalls on each parcel equal to the difference of the number of stalls required by Roy City and/or a signed lease for such parcel and the actual number of parking stalls on the specific parcel. For example, if Roy City requires 10 parking stalls on the DT Parcel and the DT Parcel has 7 parking stalls, the owner of the DT Parcel shall have the right to use 3 parking stalls on the KBF Parcel. The foregoing easement is further limited such that in no event shall the number of parking stalls subject to the easement cause either parcel to fall below the required number of parking stalls by Roy City. The parking stalls subject to this easement shall be designated as the parking stalls adjacent and/or closest to the boundary line between the parcels. In addition, the easements granted herein shall be for short-term parking only and shall not be interpreted to allow vehicles to park for extended periods of time including for the purpose of marketing automobiles for sale.

(c) Each party agrees to keep the easement areas free and clear from obstacles or obstructions which would prevent or hinder the free passage of vehicular traffic within or across any sidewalks, driveways or parking areas, except temporarily, for reasonable times and in a reasonable manner, for purposes of performing work permitted by this Agreement.

(d) KBF and C & N hereby recognize that certain improvements exist in, on or around the easement areas for the purposes described herein (the "Improvements"). Except as otherwise provided herein or in the Shopping Center Documents, nothing contained in this Agreement shall be construed as allowing one party to construct any improvements, perform any work or grant any other easements on the other party's respective parcel without that party's prior written consent or to allow any liens on another party's respective parcel without that party's prior written consent. Nothing contained herein shall require either party to develop its respective parcel or to operate any business thereon.

4. Default. In the event of a default of any of the provisions hereof by either party, the non-defaulting party shall have the right to cure the default at the other party's sole expense if the defaulting party has not commenced curing said default within ten (10) days after receipt of a written default notice from the non-defaulting party. Notwithstanding the above, either party may cure a default immediately in an emergency situation. The defaulting party agrees to reimburse the non-defaulting party for any amount so paid by the non-defaulting party to cure any default within ten (10) days after receipt of a written invoice from the non-defaulting party. The non-defaulting party may take such other proceedings at law or in equity as the non-defaulting party deems necessary. The non-performing party hereby grants to the other party a non-exclusive right of entry and non-exclusive easement and cross, over and under all parts of the non-performing party's parcel for all purposes reasonably necessary to enable the performing party (acting directly or through contractors, agents or subcontractors) to perform the terms, provisions or conditions of this Agreement.

7. Indemnification and Insurance. The parties hereby acknowledge the Shopping Center REA contains certain indemnification and insurance rights and obligations. The parties agree such provisions are incorporated herewith and shall apply to this Agreement. In addition to the above and notwithstanding anything contained herein to the contrary, in the event either party causes any damage to that portion of any easements granted herein located on the other party's respective parcel, whether through the negligent or intentional acts or omissions of said party, its agents, customers and/or employees, including, without limitation, damage caused by delivery vehicles, such as, by way of illustration and not limitation, "eighteen wheelers", of said party, then the damaging party shall immediately reimburse the damaged party for such damage upon receipt from said damaged party of a billing with supporting invoices.

8. Any and all notices required or permitted to be given under this Agreement shall be in writing, postage and/or shipping and delivery pre-paid and shall be sent by U.S. Postal Service Certified Mail with Return Receipt Requested or via a national overnight (or 2 day) courier service requiring a signature upon delivery (such as Federal Express) to:

If by U.S. Postal Service Certified Mail:

C & N:
C & N Roy DT, LLC
1835 S. Hwy 89
Perry, UT 84302
Attn: Ryan W. Forsyth
ryan@LTDEVCO.com

KBF:

K.B. Family Roy LLC
David Lloyd
260 N. Main Street
Brigham City, UT 84302
dalloyd20@outlook.com

KBF and C & N and any other person to whom any such notice, instrument or communication may be given, shall each have the right to specify, from time to time, as its address for purposes of this Agreement, any address in the 48 contiguous States of the United States of America upon giving fifteen (15) days' notice thereof to each other person then entitled to receive notices, instruments or communications hereunder.

9. As used in this Agreement, unless the context clearly otherwise requires, C & N and KBF shall mean, with respect to each parcel, the record owner(s) from time to time of an interest in fee simple in all or any part of DT Parcel or KBF Parcel whether such owner be one or more persons or entities.

10. Nothing contained herein shall be deemed to be a gift or dedication of any portion of any property to the general public. This Agreement shall not be construed as conferring upon any third party any right or benefit and any and all claims which may arise hereunder may be enforced solely by the parties and their respective successors and assigns.

11. Notwithstanding anything contained herein to the contrary, except as set forth in the Shopping Center Documents, each party reserves the right to eject any person or persons not authorized hereby. Each party hereby reserves any and all rights which are not directly incompatible with the Shopping Center Documents and the easements granted hereunder, including, without limitation, the right to grant easements to third parties over, under and through the granting party's respective parcel.

12. The agreements and restrictions described in this Agreement shall run with the land and shall be binding upon and inure to the benefit of KBF, C & N , and their respective successors, lessees, and the future owners and lessees and shall be perpetual, except that all use restrictions in Section 2(a) above shall be for a period of thirty (30) years commencing on the date this Agreement is recorded in the Recorders Office of the County of Weber, Utah and said restrictions shall automatically terminate upon expiration of said thirty (30) year period. Except as provided herein, all easements granted herein may be used for the purposes designated herein by KBF, C & N , and their respective successors, designees, tenants, employees, agents, customers, and invitees free from charge. Except as specifically set forth herein, no other easements are granted herein, nor shall any other easements be implied.

13. It is further understood and agreed to by KBF and C & N that the easements and other rights may be mortgaged to any mortgagee taking a mortgage on KBF Parcel or DT Parcel, but any mortgagee taking a mortgage on any easement herein shall take said mortgage subject to the other rights, benefits, duties, and obligations created and established herein.

14. No waiver of any provision hereof shall be deemed to constitute or imply a further waiver thereof of any other provision set forth herein. Unless the context in which used clearly requires another construction, throughout this Agreement, the masculine gender shall be deemed to include the neuter of feminine or both, the neuter gender shall include the masculine or both, and the singular of terms shall include the plural and vice versa. Each exhibit described herein is hereby attached hereto and incorporated herein by reference. If any one or more of the provisions contained herein shall be held invalid, illegal or unenforceable for any reason, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, which shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. The parties intend that if any provision hereof is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

15. If any legal action or other proceeding is brought for the enforcement hereof, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions hereof, the successful or prevailing party or parties shall be entitled to recover attorneys' fees, court costs, and all expenses even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

16. Any amendment to this Agreement shall require the prior written consent of all owners of DT Parcel and KBF Parcel. Notwithstanding the above, any amendment to the use restriction in Section

2(a) shall at all times (and whether or not if C & N owns or leases any portion of DT Parcel) require the prior written consent of C & N or its corporate successors or assigns. In the event there are easements of record prior to this Agreement providing for any matters stated herein, then this Agreement shall amend any prior documents with respect to all property mentioned herein.

16. The parties hereby represent that each is the fee simple owner of their respective parcel, and that all lienholders have consented to this Agreement. Either party shall have the right to assign this Agreement at or after the closing of its respective parcel.

17. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF UTAH, WITHOUT REFERENCE TO ITS PRINCIPLES OF CONFLICTS OF LAW.

18. This Agreement, together with the Shopping Center Documents, constitutes the entire Agreement between the parties pertaining to the subject matter contained herein and supersedes all prior and contemporaneous agreements, representations and understandings, oral or otherwise, between or among the parties with respect to the matters contained herein. Any term not defined herein shall have the meaning ascribed to such term as defined in the Shopping Center Documents.

19. Nothing contained herein shall be construed as creating an employment, partnership, agency or principal, or joint venture relationship between the parties.

20. The words “hereof”, “herein”, “hereunder”, and other words of similar import refer to this Agreement as a whole and not to any specific article, section or subsection hereof. All exhibits and schedules attached or to be attached hereto, and all other agreements and instruments referred to herein, are hereby incorporated by reference into this Agreement, as fully as if copied herein verbatim. The word “party” or “parties” means only those persons or entities who are signatories to this Agreement. The terms “include,” “includes,” “including,” or words of like import, shall be construed as being without limitation to the matters or items thereafter specified, notwithstanding any rule of construction to the contrary, unless an intention to be so limited is clearly expressed. Unless expressly otherwise provided herein, the terms “and” and “or” as used in this Agreement means one or other or both, or any one or ones or all, of the items, entities or persons in connection with which the words are used.

21. Each party agrees that upon written request of another party, it will issue to a prospective mortgagee of or prospective successor to such other party, an estoppel certificate stating:

(a) Whether the party to whom the request has been directed knows of any default by the requesting party under the Agreement, and if there are known defaults, specifying the nature of the default;

(b) Whether to its knowledge this Agreement has been modified or amended in any way (and if it has, then stating the nature thereof); and

(c) That to the party’s knowledge, this Agreement is in full force and effect as of that date.

[SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth hereinabove.

K.B. FAMILY ROY LLC

C & N ROY DT, LLC

By: David Lloyd
Name: David Lloyd
Its: Manager / Authorized Person / CEO

By: Ryan Forsyth
Name: Ryan Forsyth
Its: Manager

STATE OF UTAH)
) ss.
COUNTY OF DAMS)

The foregoing instrument was acknowledged before me this 27 day of MARCH 2023, by David Lloyd, the Manager of **K.B. FAMILY ROY LLC**, a Utah limited liability company on behalf of such limited liability company.

Krista Allred
Notary Public

[Seal]



STATE OF UTAH)
) ss.
COUNTY OF DAMS)

The foregoing instrument was acknowledged before me this 28 day of MARCH 2023, by Ryan Forsyth, the Manager of **C & N ROY DT, LLC**, a Utah limited liability company on behalf of such limited liability company.

Krista Allred
Notary Public

[Seal]



Exhibit "A"

Real property situated in Weber County, Utah, more particularly described as follows:

Lot 13, Kent's, a Commercial Subdivision, 1st Amendment, (being all of Lots 9 and 10 of Kent's, a Commercial Subdivision), according to the official plat thereof and of record at the Weber County Recorder's Office recorded March 16, 2023 as Entry No. 3276582 in Book 95 at Page 45.

Exhibit "B"

Real property situated in Weber County, Utah, more particularly described as follows:

Lot 14, Kent's, a Commercial Subdivision, 1st Amendment, (being all of Lots 9 and 10 of Kent's, a Commercial Subdivision), according to the official plat thereof and of record at the Weber County Recorder's Office recorded March 16, 2023 as Entry No. 3276582 in Book 95 at Page 45.