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\*W3028399\*

After recording return to:  
Roywell, LLC  
4598 South 700 West, Ste. C  
Riverdale, UT 84405  
Attn: Mr. Gage Crabtree

EH 3028399 PG 1 OF 13  
LEANN H KILTS, WEBER COUNTY RECORDER  
14-JAN-20 155 PM FEE \$40.00 DEP PU  
REC FOR: ROYWELL LLC

08-636-0001-0007 ✓ *Bz*

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**DECLARATION OF INGRESS, EGRESS, UTILITIES,  
RECIPROCAL ACCESS AND TEMPORARY CONSTRUCTION EASEMENTS**

THIS DECLARATION OF INGRESS, EGRESS, UTILITIES, RECIPROCAL ACCESS AND TEMPORARY CONSTRUCTION EASEMENTS ("Declaration") is made as of this 13 day of JANUARY, 2019 by Roywell, LLC, a Wyoming limited liability company ("Declarant").

RECITALS:

- A. Declarant is the owner of that certain parcel of real property located in Weber County, Utah and described by metes and bounds description on Exhibit A attached hereto and incorporated in this Declaration by this reference (the "Property").
- B. Contemporaneous with the execution of this Declaration, Declarant is recording a plat for the Roywell Subdivision (the "Plat") which divides the Property into six (6) separate lots as numbered in the Plat, placed of record in the Weber County Recorder's Office prior to the recording of this Declaration (referred to individually in this Declaration as a "Lot" or collectively as the "Lots" where specific identification of a specific Lot is not relevant, or by Lot number according to the designation thereof on the Plat if specific identification of a specific Lot is relevant).
- C. Declarant desires to establish various easements and rights over certain portions of the Lots for the purposes and on the terms described in this Declaration.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Declarant hereby establishes the following regime of benefits and burdens with respect to the Property.

AGREEMENTS:

1. **Accuracy of the Recitals.** Declarant hereby acknowledges the accuracy of the Recitals.
2. **Definitions.** Certain capitalized terms which are used in this Declaration are defined in this Declaration prior to this Section 2. In addition to those previously defined terms, the following capitalized terms shall have the meanings indicated:

“Access Areas” means the areas on the Lots used at any time and from time to time as traffic lanes, driveways, sidewalks, walkways or similar areas for ingress and egress of vehicles and pedestrians, but does not include any land covered by a Building or any exterior service areas that are intended for the exclusive use of the Occupants of a particular Building, such as loading docks, trash areas and any areas in, upon or under which a fuel canopy is constructed on Lot 1 (referred to herein as the “Motor Fuel Area”).

“Benefitted Parties” means, with respect to a Lot, the Owners and Occupants of that Lot, and their respective Permittees (defined below).

“Building” means a building or other principal structure on a Lot including, without limitation, all extensions or projections thereof, all structures or facilities accessory or integral thereto, and any garages, platforms or docks, storage tanks, canopies or overhangs, porches, the Motor Fuel Area and similar items.

“Burdened Lot” is defined in Section 4(a).

“Common Parking Field” is an area legally depicted and described on the Plat which is intended to be a parking area within the Property used in common by Lots 2, 3 and 4 as more particularly described in Section 3(d).

“Construction Contract” is defined in Section 4(c).

“Developing Owner” is defined in the introductory paragraph of Section 4.

“Driveway” shall mean that driveway and related driveway improvements, paving, curbing, entrances and exits, in the location on the Lots depicted and described on the Plat.

“Governmental Authorities” means all governmental or quasi-governmental units, commissions, councils, boards, agencies, staffs or similar bodies having jurisdiction over a Lot or its use, operation, maintenance or development.

“Government Requirements” means all laws, ordinances, statutes, regulations or other similar laws promulgated by Governmental Authorities.

“Improvements” means all improvements other than Buildings and related improvements located from time-to-time on a Lot including, without limitation, any Access Areas, Parking Areas, landscaping, driveways, walkways, exterior lighting, striping, curbs, retaining walls, screening walls and signs.

“Lateral Utility Improvements” means lateral utility lines extending from utility trunk lines located in the Driveway or the Utility Easement Area, as the case may be, to the Lots.

“Maintaining Owner” is defined in Article 8(a) below and relates to the obligations of maintaining the Driveway.

“Mortgage” means a recorded mortgage, deed of trust or other security agreement creating a lien on a Lot or a portion of a Lot as security for the payment of indebtedness.

“Mortgagee” means a Person which is the mortgagee, beneficiary or other secured party under a Mortgage.

“Occupant” means any Person that, pursuant to a lease, a rental arrangement, a license or any other instrument, agreement, contract, document, understanding or arrangement is entitled to or does occupy, possess or use any Lot or any portion of a Lot.

“Owner” means the Person that, at a specified time, is the owner of record in the office of the County Recorder of Weber County, Utah of a fee or an undivided fee interest in a Lot or portion of a Lot. In the event that, at any time, there is more than one Owner of a Lot, the liability of each such Owner for performance or compliance with the applicable provisions of this Declaration shall be joint and several. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term “Owner” shall not mean or include a Mortgagee unless and until such Person has acquired fee title to the Lot encumbered by a Mortgage pursuant to foreclosure, trustee's sale or any arrangement or proceeding in lieu thereof.

“Owners' Share” is defined in Section 4(c).

“Parking Areas” means the areas on each Lot that are used at any time and from time to time for parking which shall, in all events, contain such number of parking stalls as may be required by Governmental Authorities to provide for parking of the Buildings located on the Lot.

“Person” means a natural person, legal entity or trust.

“Permittees” shall mean the tenant(s) or occupant(s) of a Lot, and the respective employees, agents, contractors, customers, invitees, franchisees and licensees of (i) the Owner of such Lot, and/or (ii) such tenant(s) or occupant(s).

“Permitted Uses” means, with respect to a Lot, all commercial, retail, restaurant, and office use permitted by Governmental Requirements on such Lot and not prohibited or otherwise restricted pursuant to Section 5 hereof, and in respect of Lot 6 only, residential use as may be permitted by Governmental Authorities.

“Plans and Specifications” is defined in Section 4(b).

“Utility Easement Area” shall have the meaning ascribed to it in Section 3(c) below.

“Utility Lines” means all utility lines and facilities constructed in any Utility Easement Area in accordance with Section 4, which shall include, without limitation, lines related to water, sewer, storm sewer, power, natural gas, telephone, cable, fiber-optic lines and the like.

3. **Grant of Easements.** Except where the benefit and burden are described/limited in the subparagraphs below, Declarant hereby creates the following easements with respect to each Lot for the benefit of the Benefitted Parties of the other Lots, which easements shall be appurtenant to each of the Lots:

(a) **Pedestrian Easements.** Non-exclusive easements across the sidewalks or walkways as they exist from time to time on each Lot for pedestrian use by the Benefitted Parties of the other Lots; provided, the Owner of Lot 6 may restrict pedestrian access to Lot 6 if, but only if, Lot 6 is developed for residential or self-storage purposes.

(b) **Vehicular Access Cross Easement.** Declarant hereby establishes for the benefit of and burden on the Lots, a perpetual non-exclusive easement for the purpose of furnishing vehicular access and the right of access for the vehicles of the Benefitted Parties of each Lot across all paved driveways, roadways and walkways as presently or hereafter constructed and constituting a part of the Access Areas including, without limitation, the Driveway, so as to provide for the passage of motor vehicles between all portions of the Access Areas.

(c) **Utilities Easements.** Each of the Owners of a Lot or Lots agrees to grant such easements as do not unreasonably interfere with the use and enjoyment of the Lot in question for the purpose of the installation and maintenance of Utility Lines within areas to be more particularly described in the actual grant of easement (which shall be recorded in each case) within areas generically and commonly referred to herein as a Utility Easement Area. Such easements shall be granted in locations as agreed so as to minimize negative impact and confer the broadest benefit to all of the Lots. For purposes of the foregoing, a request for a utility easement under a Building already developed on a Lot shall constitute an unreasonable interference with the use and enjoyment of said Lot. The foregoing non-exclusive easements may only be used to such extent as may be reasonably related to the use of the Lots for the Permitted Uses.

(d) **Shared Parking for Lots 2, 3 & 4.** Because of the configuration of the Lots and the location of the Driveway, it is anticipated that the Common Parking Field will likely serve the Occupants of Lots 2, 3 and 4, and that it will be impractical for the Owners of said Lots to effectively police the use of Common Parking Field. Because of this circumstance, there is established a common parking easement for the benefit and burden of Lots 2, 3 & 4 in and to the Common Parking Field. In that regard, however, each Owner and/or Occupant of any of said Lots shall be obligated to meet all parking requirements of Governmental Authorities in connection with use and site plan approvals with the stalls actually located on the Lot for which such use and site plan approval is sought. No Buildings shall be permitted to be built within the Common Parking Field and no other improvements impeding use and circulation shall be permitted within the Common Parking Field.

(e) **Drainage.** Declarant hereby establishes for the benefit of Lot 2 and Lot 4 an easement for storm water drainage to the areas within Lots 1, 3 & 5 as depicted and described on the Plat (the "Storm Drain Areas"). The use of such drainage rights may be through surface drainage, through underground conduits or a combination of both, but all in accordance with drainage systems approved by Roy City. The Storm Drain Areas shall be used by all of the Lots and the maintenance costs associated therewith shall be allocated according to the provisions of Section 8 below.

4. **Construction of the Driveway Improvements and Utility Easement Area.** It is anticipated that development of the Lots will occur at different times. In recognition of the foregoing, an Owner of any particular Lot which elects to develop Buildings and Improvements on its Lot (a "**Developing Owner**") may construct the portion of the Driveway, the Utility Lines within a Utility Easement Area and the Storm Drain Area not already constructed on such Lot as necessary or appropriate for the development of the Developing Owner's Lot. Each other Owner hereby grants to the Developing Owner a temporary construction easement (including, without limitation, the right to construct temporary barriers and construction screening, as reasonably necessary and to the extent not materially interfering with the traffic or circulation on such granting Lot) over the portions of its Lot as may be necessary or appropriate to install the Driveway and Utility Lines, subject to the following terms and conditions:

(a) **Duration.** The duration of such temporary construction easement shall extend only as long as reasonably necessary to start and complete the Utility Lines, the Driveway and/or the Storm Drain Area and shall be constructed in a manner that minimizes the interference with the portions of Lots outside the Driveway, Utility Easement Area and Storm Drain Areas (the "**Burdened Lot**").

(b) **Plans and Specifications.** The scope and extent of the Driveway, Utility Line and Storm Drain Area improvements to be constructed on the Burdened Lot will be reflected in plans and specifications prepared by the Developing Owner (the "**Plans and Specifications**"). The Plans and Specifications shall comply with all Governmental Requirements and shall otherwise be subject to the approval of the Owners of the Burdened Lots, which approval shall not be unreasonably withheld, conditioned or delayed by such Owners. Notwithstanding the foregoing, in no event shall any of the foregoing construction activities be performed in a manner that could or would adversely affect, as determined by the Occupant of Lot 1, access to and from Lot 1 and/or the visibility of the Lot 1 Occupant's exterior image, trade dress or signage located on Lot 1 without the written approval of the Occupant of Lot 1, which approval shall not be unreasonably withheld, conditioned or delayed by such Lot 1 Occupant.

(c) **Construction Contract.** The Developing Owner shall procure a fixed price construction contract for the installation of the portion of the Driveway and Utility Lines to be developed pursuant to the Plans and Specifications (the "**Construction Contract**"). The Construction Contract shall identify (i) the entire cost of installing the portion of the Driveway actually located on the Burdened Lot and (ii) a fair apportionment of the cost of Utility Lines located on each Lot (the "**Owner's Share**"). The Construction Contract shall be subject to the approval of the Owners of the Burdened Lots, which approval shall not be unreasonably withheld, conditioned or delayed by such Owners.

(d) **Payment.** The Developing Owner shall initially pay for all costs of the installation of the Driveway, Utility Lines and Storm Drain Areas, subject to the obligation of the Owner of each Burdened Lot to reimburse the Developing Owner for the Burdened Lot Owner's Share of such cost, such amount to be paid by the Owner of the Burdened Lot at such time as the Owner of the Burdened Lot is issued a building permit for development of any portion of the Burdened Lot. If the any Owner of a Burdened Lot fails to pay such Burdened Lot Owner's Share on the date such payment should have been paid under this Section 4, then: (i) a five percent (5%) late payment fee shall immediately be added to the amount; (ii) the unpaid balance shall thereafter accrue interest at the rate of eighteen percent (18%) per annum; and (iii) all sums owing shall be secured by a lien against such Burdened Lot. If the Developing Owner elects to do so, such Developing Owner may record any additional documentation evidencing such lien as such Developing Owner elects in its discretion.

(e) No Liens. The Developing Owner shall keep the Driveway and the Burdened Lot(s) in their entirety free from all mechanic's, materialmen's or construction liens with respect to such construction and installation of the Driveway, Utility Lines and Storm Drain Areas. The Developing Owner shall defend, indemnify and hold all other Lot Owners harmless from all claims, liabilities, damages, losses, costs, expenses (including without limitation reasonable attorneys' fees), actions and causes of action arising out of or in any way relating to any mechanic's, materialmen's or construction liens associated with the Developing Owner's construction, maintenance or repair of the Driveway, Utility Lines and Storm Drain Areas.

5. Use Restriction.

(a) Each Lot shall be used for lawful purposes in conformance with all restrictions imposed by all applicable governmental laws, ordinances, codes, and regulations, and no use or operation shall be made, conducted or permitted on or with respect to all or any portion of a Lot which is illegal. In addition to the foregoing, throughout the term of this Declaration, it is expressly agreed that neither all nor any portion of any Lot, shall be used, directly or indirectly, for purposes of an adult book store, adult theatre, adult amusement facility (i.e. so-called strip club), any facility selling or displaying pornographic materials or having such displays, the outdoor housing or raising of animals, any facility for the sale of paraphernalia for use with illicit drugs, or any use which creates a nuisance.

(b) So long as 7-Eleven, Inc., a Texas corporation ("7-Eleven") is the Occupant of Lot 1, no other Lot shall be allowed to sell any of the following described items ("Exclusive Items"):

- (i) packaged fluid milk in one quart or larger containers;
- (ii) fresh or commercially packaged bakery or bread products;
- (iii) delicatessen and delicatessen type items, including, but not limited to, packaged lunch meats, pre-prepared sandwiches and foods, chicken wings and chicken fingers, grill items (such as hot dogs), burritos, taquitos, pre-made salads and fruit cups or fruit salad for consumption on or off premises;
- (iv) pizza by the slice;
- (v) grocery items commonly sold from a convenience store;
- (vi) cigarettes, tobacco products and devices which simulate tobacco or other smoking, such as, for example, electronic cigarettes and vaporizers;
- (vii) beer and wine for off premise consumption;
- (viii) health and beauty care products;
- (ix) chilled, single serve beverages, including frozen or semi-frozen carbonated beverages;
- (x) energy drinks by the case, bottle, or can;

- (xi) beverages in six pack, eight pack, twelve pack, case lots, half, one or two liter bottles;
- (xii) candy, unless sold from a candy store or gift boxed or sold in bulk;
- (xiii) hot beverages by the cup, including coffee or hot chocolate;
- (xiv) newspapers, magazines and paperback books except from a bookstore;
- (xv) motor fuels or petroleum products;
- (xvi) lottery ticket, money orders (except from a bank), phone cards (except from a phone specialty store); and/or
- (xvii) gift cards (other than gift cards sold by a tenant in the Shopping Center for the particular business operated by such tenant within the Shopping Center).

(c) Notwithstanding the restricted uses in this paragraph 5(b), the following uses shall be permitted on any of the Lots so long as such uses do not prohibit 7-Eleven from operating under its lease for Lot 1 or from offering for sale or rent any of the Exclusive Items: (i) automotive retail store which may include the sale of tires, the provision of related services, the sale of motor oil and other products derived from petroleum (but not motor fuels) and the incidental sale of candy and drinks; (ii) freestanding "dollar store"; (iii) a specialty coffee shop with a drive-through window; (iv) pharmacy; and (v) "fast-food" restaurant or quick serve restaurant of any food type with or without drive-through service.

(d) So long as AutoZone is the Occupant of Lot 5, no other Lot shall be used as an auto parts store or for the sale of automobile parts, supplies and/or accessories. This restriction shall not apply to any business whose principal business is a drug-store and/or pharmacy, grocery store, convenience store (it being understood that the operations on Lot 1 by 7-Eleven shall not be considered a violation of this Section 5(c)), department store, variety store, hardware store, home improvement store or any other seller of a broad mix of general merchandise which sells auto (or similar) parts as an incidental part of its general merchandise business; provided that, no business sells automobile carburetors, starters, brakes, alternators, fuel pumps, water pumps or other coolant pumps for off-premises installation. Further, so long as AutoZone is the Occupant of Lot 5, no Lot shall be used for any of the following: manufacturing or industrial uses; flea markets or similar businesses; adult entertainment; schools of any type; churches; libraries; car rentals or sales; parking vehicles offered for lease or sale in the Parking Areas; nightclubs; cocktail lounges; meeting halls; taverns; entertainment facilities; undertaking establishments; bingo games, casinos or off track betting agencies, provided the sale of State-sponsored lottery tickets shall be permitted; pawn and gun shops; post offices or postal facilities; family planning clinics; theaters, either motion picture or live; bowling alleys; skating rinks of any type; or call centers. Finally, so long as AutoZone is the Occupant of Lot 5, and absent a waiver from AutoZone, Lot 4 may not be used for any of the following: offices, either private or government (including, but not limited to, any type of medical office, clinic or facility); residential use; commercial indoor amusements; restaurants greater than 2,500 square feet in size; gymnasiums, spas or massage parlors, tanning facilities, dance studios or health clubs.

6. **Construction of Buildings and Related Improvements.**

(a) **Construction of Buildings on Lots.** Each Owner, at its own cost and expense, may construct Buildings and other Improvements on its Lot. Each of the Lots shall including Parking Areas which contain sufficient parking stalls sufficient to meet all Governmental Requirements given the Buildings and Improvements on the Lot and the uses thereof. Once commenced construction of any Buildings and related other Improvements shall be diligently pursued to completion. Construction of all Buildings and other Improvements shall be performed in a good and workmanlike manner. No fences or walls may be constructed on Lot lines which are common to any other Lot or that front public rights-of-way except (i) by the Owner of Lot 6 if, but only if, Lot 6 is developed and used for a residential use or a self-storage use that requires a security fence or (ii) if the installation of a fence is required by law on the abutting property line separating commercially and residentially zoned parcels. Notwithstanding the foregoing, in no event shall any of the foregoing construction activities be performed in a manner that could or would adversely affect, as determined by the Occupant of Lot 1, access to and from Lot 1 and/or the visibility of the Lot 1 Occupant's exterior image, trade dress or signage located on Lot 1 without the written approval of the Occupant of Lot 1, which approval shall not be unreasonably withheld, conditioned or delayed by such Lot 1 Occupant, and provided further that any Building approved and erected in compliance with the set-back requirements of governmental authorities from public rights-of-way shall be deemed to be acceptable to the Occupant of Lot 1.

(b) **Destruction of Buildings.** If any Building or other Improvements on a Lot is at any time destroyed or condemned and the Owner of the Lot does not diligently proceed to rebuild the same, such Owner shall either promptly reconstruct the damaged Building or raze the remaining portion of such Building. Any unimproved land or land rendered unimproved as a result of the razing of a destroyed or condemned Building shall be maintained in a weed-free condition and shall be paved or covered with gravel or landscaped to avoid dust.

7. **Alteration, Relocation or Changes to Access Areas, Parking Areas and Buildings.** The Owner of a Lot may alter, relocate or change the configuration of the Access Areas, Parking Areas and Buildings on its Lot at any time and from time to time; provided, however, the location of the Driveway and the access point to and from adjacent streets as depicted on the Plat may not be altered or closed at any time without the reasonable consent of all Owners of all Lots; and provided further that the Common Parking Field shall not be altered without the consent of the Owners of Lots 2, 3 & 4. Notwithstanding the foregoing, in no event shall any of the foregoing construction activities be performed in a manner that could or would adversely affect, as determined by the Occupant of Lot 1, access to and from Lot 1 and/or the visibility of the Lot 1 Occupant's exterior image, trade dress or signage located on Lot 1 without the written approval of the Occupant of Lot 1, which approval shall not be unreasonably withheld, conditioned or delayed by such Lot 1 Occupant, and provided further that any Building approved and erected in compliance with the set-back requirements of governmental authorities from public rights-of-way shall be deemed to be acceptable to the Occupant of Lot 1.

(a) **Compliance with Governmental Requirements.** Any alteration, relocation or other change shall comply with all Governmental Requirements.

(b) **Restrictions.** Any alteration, relocation or other change shall not reduce the number of parking stalls located on a Lot to less than the number of parking spaces required by Governmental Authorities to provide parking for the Buildings and other Improvements located on the Lot; or



(c) Payment of Costs. The Owner proposing to make any alteration, relocation or other change shall pay the entire cost of such alteration, relocation or change.

(d) Consent Required. No Buildings shall be located in the Driveway or the Utility Easement Area.

8. Maintenance. Except for the circumstances specifically identified in subsections (a) through (c) below, each Owner, at its cost and expense, shall continuously maintain the Access Areas and Building on its Lot in good, clean, safe and attractive condition and in good order, condition and repair.

(a) As to the Driveway (or portion thereof developed at any particular time), the Owner of Lot 2 (the "Maintaining Owner") shall be responsible for arranging and paying for the maintenance, repair and replacement of the same (which maintenance and repair obligations shall include, without limitation, ice and snow removal and trash removal on and/or within the Driveway as frequently as may be necessary to ensure the uninterrupted use of the Driveway), which functions shall begin upon the installation of any portion thereof. All such costs shall be allocated among any Lots from and after the date a building permit has been issued for the construction of a Building or Improvements thereon, with each Lot being allocated a portion equal to any other Lot being allocated a portion, adjusted for partial years of use. The costs of maintenance shall include the reasonable actual cost of a third party to manage the same. Further, the Maintaining Owner shall have the right to estimate such costs on an annual basis and bill the responsible Owners for such costs monthly throughout the year, subject to an annual reconciliation and revised budget prepared promptly after the end of each calendar year. The Owners of all Lots who receive bills for their share of such maintenance costs and, while 7-Eleven is the Occupant of Lot 1, 7-Eleven shall have the right to review all bills associated therewith to assure that the same are proper and not in excess of the cost for the same services generally in the marketplace in which the Shopping Center is situate.

(b) As to the Common Parking Field, the Maintaining Owner shall be responsible for arranging and paying for the maintenance, repair and replacement of the same, which functions shall begin upon the installation of any portion thereof. The allocation of responsibility, accounting, billing and payment of the said maintenance cost shall be identical to that provided for in subparagraph (a) above, except that only Lot 2, 3 & 4 shall share in such costs and sharing of the costs for any of said Lots shall only begin upon receipt of a certificate of occupancy in respect of a Building on any such Lot.

(c) As to the Storm Drain Areas, the Maintaining Owner shall be responsible for arranging and paying for the maintenance and repair of the same, which functions shall begin upon the installation of any portion thereof. The allocation of responsibility, accounting, billing and payment of the said maintenance cost shall be identical to that provided for in subparagraph (a) above.

(d) If the Maintaining Owner in the case of the Driveway, the Common Parking Field or the Storm Drain Areas, or an Owner in the case of Access Areas on its Lot, fails to maintain the same as contemplated herein, any other Owner (except in the case of the Common Parking Field, which shall be limited to the Owner of Lot 3 or Lot 4) may, after thirty (30) days written notice to the party responsible for maintenance setting forth in reasonable detail the particular failure, enter the Lot and perform the required maintenance at the cost and expense Owner primarily responsible therefor. The Owner performing the maintenance shall invoice the defaulting Owner. If the defaulting Owner fails to pay the

invoice within fifteen (15) days, then: (i) a five percent (5%) late payment fee shall be added to the invoice on the sixteenth (16<sup>th</sup>) day; (ii) the unpaid balance shall thereafter accrue interest at the rate of eighteen percent (18%) per annum; and (iii) all sums owing shall be secured by a lien against the Lot owned by the invoiced Owner. If the non-defaulting Owner that performed such maintenance or repair for the defaulting Owner elects to do so, such non-defaulting Owner may record any additional documentation evidencing such lien as such non-defaulting Owner elects in its discretion.

9. **Insurance; Right of Other Owners to Insure.** Each owner shall procure and maintain (or cause to be procured and maintained) (i) general and/or comprehensive public liability and property damage insurance against claims for personal injury (including contractual liability arising under the indemnity contained in paragraph 2.2 above), death, or property damage occurring upon such Owner's Lot, with single limit coverage of not less than an aggregate of Two Million Dollars (\$2,000,000.00) including umbrella coverage, if any. If any such Owner shall fail to maintain any of the insurance required to be maintained by such Owner pursuant to this Declaration, then any other Owner or the Maintaining Owner shall have the right to give the defaulting Owner written notice of such default specifying the particulars thereof. The Owner receiving such a notice shall have a period of ten (10) days in which to cure such default. If the defaulting Owner does not cure such default within said ten (10) day period, the Owner(s) and/or tenant(s) giving the notice of default may do so and the curing Owner or tenant may then bill the defaulting Owner for the expense incurred. If the defaulting Owner shall not pay such bill within fifteen (15) days, then: (i) a five percent (5%) late payment fee shall be added to the invoice on the sixteenth (16<sup>th</sup>) day; (ii) the unpaid balance shall thereafter accrue interest at the rate of eighteen percent (18%) per annum; and (iii) all sums owing shall be secured by a lien against the Lot owned by the invoiced Owner. If the non-defaulting Owner that paid such insurance for the defaulting Owner elects to do so, such non-defaulting Owner may record any additional documentation evidencing such lien as such non-defaulting Owner elects in its discretion. Notwithstanding the foregoing requirements of this Section 9, provided the Owner or Occupant of any Lot, either independently or in combination with its corporate parent, has a net worth of at least Two Hundred Million Dollars (\$200,000,000.00) (as determined by generally accepted accounting principles, consistently applied), such Owner or Occupant, at its election, may (i) self-insure to provide any coverage such Owner or Occupant is required to carry under the preceding provisions of this Section 9 or (ii) retain the financial risk for any claim that would otherwise fall under the coverage(s) the Owner or Occupant is required to carry under this Section 9.

10. **No Rights in Public; No Implied Easements.** Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of the Property. Except as specifically granted and created in this Declaration, no easements shall be implied by this Declaration. Except for the Common Parking Field shared by Lots 3, 4 & 5, the parking areas within each Lot shall be for the exclusive use of the Permittee(s) therein, such Permittees customers, employees, invitees, successors, assigns and sublessees. Each respective Owner and their Permittees shall have the right hereunder to erect and/or remove signage, from time to time, adjacent to such exclusive spaces indicating such parking exclusivity, and are hereby authorized to enforce such exclusive parking right through towing and other means.

11. **Default.** The Declarant confirms that no Owner of a Lot shall have the right to terminate this Declaration even if another Owner defaults under the terms of this Declaration.

12. **Amendment or Termination; Duration of Declaration.** This Declaration may be amended or terminated by, but only by an instrument filed for record in the office of the County Recorder of Weber

County, Utah that is executed by all of the Owners of all of the Lots. The term of this Declaration is perpetual; this Declaration shall be and remain in force and effect until terminated pursuant to this Section.

13. **Covenants to Run with Land.** This Declaration and the easements and covenants created by this Declaration are intended by the Declarant to be, and shall constitute, covenants running with the land as to each of the Lots, and shall be binding upon and shall inure to the benefit of each Owner and its Occupants and any Person who acquires or comes to have any interest in any Lot, and their respective grantees, transferees, lessees, heirs, devisees, personal representatives, successors, and assigns. This Declaration and all of the easements, covenants, provisions, and requirements hereof shall also inure to the benefit of each and each Person owning any interest in or occupying any portion of a Lot. Each Owner shall comply with, and all interests in all Lots shall be subject to, the terms of this Declaration. By acquiring, in any way coming to have an interest in, or occupying a Lot, the Person so acquiring, coming to have such interest in, or occupying a Lot, shall be deemed to have consented to, and shall be bound by, each and every provision of this Declaration.

14. **Enforcement.** The Owner of a Lot or any portion of a Lot shall have the right to enforce, through any permitted proceeding at law or in equity, the terms, provisions, restrictions and requirements of this Declaration. Any failure to insist upon the strict performance of or compliance with any of the terms, provisions, covenants and requirements of this Declaration shall not result in or be construed to be an abandonment or termination of this Declaration or any waiver of the right to insist upon such performance or compliance with the terms of this Declaration in the future. If any action or proceeding is brought because of a default under, or to enforce or interpret any of the covenants, provisions, or requirements of, this Declaration, the Owner or Occupant prevailing in such action shall be entitled to recover from the unsuccessful Owner reasonable attorneys' fees (including those incurred in connection with any appeal), the amount of which shall be fixed by the court or the arbitrator and made a part of any judgment rendered.

15. **Special Provisions Related to Lot 6.** Recognizing the potential development of Lot 6 in conjunction with real property abutting Lot 6 which is not part of the Shopping Center, the Owner of Lot 6 shall have the right to remove itself from the Shopping Center and the burdens and benefits of this Declaration at any time by executing and recording an instrument so declaring its intentions. Upon such recording, all easements or rights granted for the benefit of Lot 6 and all burdens on Lot 6 shall immediately terminate and allocations of expenses in respect of the Driveway maintenance shall thereafter be shared among the remaining Lots within the Shopping Center. In all events, it is understood that Lot 6 shall not have the right to grant any easements, access rights or any other rights in and to the Shopping Center for benefit of property not included within the Shopping Center, either by direct grant or by virtue of Lot 6 being a part of the Shopping Center.

16. **Effective Date.** This Declaration, any amendment or termination hereof, and any supplement hereto shall take effect upon its being filed for record in the office of the County Recorder of Weber County, Utah.

17. **Titles, Captions and References.** All Section titles or captions in this Declaration are for convenience only, shall not be deemed part of this Declaration and in no way define, limit, extend or describe the scope or intent of any provisions of this Declaration. When this Declaration refers to a Section by number or other designation, such reference shall be deemed to be to the correspondingly numbered

Section of this Declaration unless the context refers to another agreement, document or instrument.

18. **Pronouns and Plurals.** Whenever the contest may require, any pronoun used in this Declaration shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

19. **Applicable Law.** This Declaration shall be construed in accordance with and governed by the laws of the State of Utah, without reference to its choice of law rules that would apply the law of another jurisdiction.

20. **Exhibits.** All exhibits attached to this Declaration are expressly made a part of and incorporated in this Declaration by reference as fully as though completely set forth in this Declaration.

21. **Mortgage Subordination.** Any mortgage or deed of trust affecting any portion of any Lot shall at all times be expressly made subject and subordinate to the terms of this Declaration, whether by a supplemental consent appended to this Declaration or else by separate agreement, and any party foreclosing any such mortgage or deed of trust, or acquiring title by deed in lieu of foreclosure or trustee sale, shall acquire title subject to all the terms and conditions of this Declaration.

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

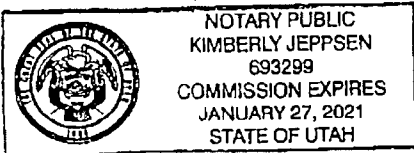
Roywell, LLC, a Wyoming limited liability company

By its Manager, Crabtree Investments, Inc., a Utah corporation

By: Gage Crabtree  
Gage Crabtree, Vice President

STATE OF UTAH            )  
                                      :    ss.  
COUNTY OF WEBER        )

On the 14th day of January, 2020, personally appeared before me Gage Crabtree, who being by me duly sworn did say that he is the Vice-President of Crabtree Investments, Inc., a Utah corporation, which is the Manager of Roywell, LLC, a Wyoming limited liability company, signer of the foregoing instrument, and that he signed the same with all proper authority.



Kimberly Jeppsen  
Notary Public  
Residing at: 3602 Washington Blvd.

**EXHIBIT A  
TO  
DECLARATION OF INGRESS, EGRESS, UTILITIES,  
RECIPROCAL ACCESS AND TEMPORARY CONSTRUCTION EASEMENT**

*(Boundary Description of Roywell Subdivision)*

A TRACT OF LAND SITUATED WITHIN THE SOUTHEAST QUARTER OF SECTION 3 AND THE SOUTHWEST QUARTER OF SECTION 2, TOWNSHIP 5 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF 4000 SOUTH (SR-37), SAID POINT BEING NORTH 89°25'05" WEST 208.60 FEET ALONG THE SECTION LINE AND NORTH 00°51'31" EAST 21.11 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 3, AND RUNNING THENCE ALONG THE NORTHERLY AND EASTERLY RIGHT OF WAY LINES OF 4000 SOUTH (SR-37) AND MIDLAND DRIVE (SR-108) THE FOLLOWING ELEVEN (11) COURSES: (1) SOUTH 89°05'45" WEST 60.93 FEET; (2) NORTH 86°12'26" WEST 146.23 FEET; (3) NORTH 79°21'17" WEST 167.69 FEET; (4) NORTH 00°01'17" WEST 4.40 FEET; (5) SOUTH 89°58'43" WEST 91.72 FEET; (6) NORTH 24°13'55" WEST 49.04 FEET; (7) NORTH 38°23'51" EAST 46.06 FEET; (8) NORTH 89°55'18" WEST 12.72 FEET; (9) 100.27 FEET ALONG THE ARC OF A 9945.00 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT, CHORD BEARS NORTH 40°02'12" EAST, THROUGH A CENTRAL ANGLE OF 00°34'40"; (10) NORTH 40°19'32" EAST 365.74 FEET; (11) 130.49 FEET ALONG THE ARC OF A 10055.00 FOOT RADIUS TANGENT CURVE TO THE RIGHT, CHORD BEARS NORTH 39°57'13" EAST 130.49 FEET, THROUGH A CENTRAL ANGLE OF 00°44'37" TO AN EXISTING FENCELINE; THENCE SOUTH 85°06'43" EAST 304.16 FEET ALONG SAID FENCELINE TO THE WESTERLY LINE OF EDGEWATER ESTATES PHASE NO.1 SUBDIVISION RECORDED AUGUST 24, 1995 AS ENTRY NO. 1360165 IN BOOK 40 AT PAGE 46 AT THE WEBER COUNTY RECORDER'S OFFICE; THENCE SOUTH 00°51'31" WEST 126.89 FEET ALONG SAID WESTERLY LINE; THENCE SOUTH 89°48'38" WEST 212.13 FEET; THENCE SOUTH 00°51'31" WEST 427.08 FEET TO THE POINT OF BEGINNING.

Less and excepting any portion of the foregoing dedicated in fee simple by the Plat.