

PREPARED BY AND RETURN TO:

Ryan Forsyth, Esq.  
Mountain West Property Law, PLLC.  
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1835 South Highway 89, Perry, UT 84302

Ent 408606 Page 1 of 10  
Date: 29-Oct-2014 11:36AM  
Fee: \$28.00  
Filed By: DS  
DIXIE SWASEY, Recorder  
EMERY COUNTY CORPORATION  
For: FOUNDERS TITLE COMPANY - SYRACU

STATE OF UTAH

COUNTY OF EMERY

**RECIPROCAL EASEMENT AGREEMENT**

**THIS RECIPROCAL EASEMENT AGREEMENT** (this "Agreement") is made and entered into this 23 day of DECEMBER, 2014, by and between T & N HUNTINGTON, LLC A Utah Limited Liability Company, its successors and/or assigns ("First Party"), and KATHY N. BRINGHURST, An Individual, its/his/her/their successors and/or assigns ("Second Party").

WHEREAS, First Party is the owner of a tract of real property located in Huntington, County of Emery, State of Utah, more particularly described on Exhibit A attached hereto and incorporated by reference (the "First Party Tract"), and intends to develop the First Party Tract to be used for retail purposes; and

WHEREAS, Second Party owns a tract of real property adjacent to and lying next to the First Party Tract, also located in Huntington, County of Emery, State of Utah, more particularly described on Exhibit B attached hereto and incorporated herein by reference (the "Second Party Tract"), and has developed the Second Party Tract for commercial purposes; and

WHEREAS, First Party and Second Party desire to grant to each other easements of access, ingress and egress and parking to enable each of them and their respective Permittees (as hereinafter defined) to have access over and through their respective properties and reciprocal parking rights; and

WHEREAS, First Party desires to construct a driveway over a portion of the Second Party Tract and Second Party is willing to grant a construction easement for the construction of the driveway; and

WHEREAS, the parties have agreed that the Second Party Tract will be subject to certain restrictive use covenants; and

WHEREAS, the parties desire to enter into other agreements regarding the use of their respective parcels;

NOW, THEREFORE, in consideration of the above premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. Grant of Construction Easement. Second Party hereby grants to First Party a construction easement (the "Construction Easement") on, over and across that portion of the Second Party Tract as may be reasonably necessary for installing and constructing a shared driveway area and access drive (the "Cross Access Drive") connecting the First Party Tract with the existing driveway on the Second Party Tract. The location of the Cross Access Drive is shown on the site plan (the "Site Plan") set forth in Exhibit C attached hereto and incorporated by reference. The Construction Easement shall be a temporary easement, existing for a period of 365 days (the "Construction Period") beginning on the date (the "Commencement Date") that First Party commences construction of the Cross Access Drive. The Commencement Date shall be set forth in a written notice from First Party to Second Party given not less than ten (10) days prior to the Commencement Date. First Party shall construct the Cross Access Drive during the Construction Period in a manner that will not interfere with business operations on the Second Party Tract or with the orderly flow of traffic thereon. First Party shall obtain and pay for all permits, approvals and licenses necessary for the construction and use of the Cross Access Drive. The Cross Access Drive shall be constructed in accordance with all applicable laws, codes, ordinances and other requirements of governmental authorities having jurisdiction thereof. The Cross Access Drive shall be constructed in a good and workmanlike manner and in accordance with the Site Plan. First Party shall pay all costs or expenses related to the construction of the Cross Access Drive and shall not permit any lien to attach to the Second Party Tract or any part thereof. Once constructed, First Party shall keep and maintain the Cross Access Drive located on the First Party Tract, and other vehicular drives and curb cuts located on the First Party Tract, in good condition and repair. Second Party shall keep and maintain the Cross Access Drive located on the Second Party Tract, and other vehicular drives and curb cuts located on the Second Party Tract, in good condition and repair. The Construction Easement shall automatically terminate upon the expiration of the Construction Period; provided, however, in no event shall the Construction Period last more than one (1) year from the date of recordation of this Agreement.

2. Grant of Reciprocal Easements of Access, Ingress and Egress and Parking.

(a) First Party hereby grants to Second Party, and their respective Permittees (as hereinafter defined), a perpetual, permanent, non-exclusive easement over and across those portions of the First Party Tract improved from time to time for vehicular traffic, including 18-wheel tractor-trailer vehicles, (e.g., driveways and curb cuts), which easement shall be for use by Second Party for vehicular access, ingress and egress (but not parking on the Second Party Access Easement depicted and defined below in Exhibit C.) to and from the Second Party Tract and rights-of-way adjacent to the First Party Tract. Said easement shall hereinafter be referred to as the "Second Party Access Easement."

(b) Second Party hereby grants to First Party, and their respective Permittees (as hereinafter defined), a perpetual, permanent, non-exclusive easement over and across those portions of the Second Party Tract improved from time to time for vehicular traffic (e.g., driveways and curb cuts), which easement shall be for use by First Party for vehicular access,

ingress and egress and parking to and from the First Party Tract and rights-of-way adjacent to the Second Party Tract. Said easement shall hereinafter be referred to as the "First Party Access Easement."

(c) Notwithstanding the above, the Second Party Access Easement and the First Party Access Easement are contingent upon the completion of construction of the Access Drive in accordance with the requirements set forth in Section 1 above.

3. Covenants Running with the Land.

(a) The Second Party Access Easement herein granted by First Party to Second Party shall run with the land. First Party hereby warrants and covenants with Second Party that it has the right to convey such easements and that the easements are unencumbered except for easements and restrictions of record on the date hereof.

(b) The First Party Access Easement and Parking Easement herein granted by Second Party to First Party shall run with the land. Second Party hereby warrants and covenants with First Party that it has the right to convey such easements and that the easements are unencumbered except for easements and restrictions of record on the date hereof and a mortgage in favor of Zion's Bank. (the "Lender").

5. Condemnation Nothing in this Agreement shall be construed to give one party any interest in any award or payment made to the other party in connection with any exercise of eminent domain or transfer in lieu thereof affecting the other party's rights or giving the public or any government any rights. The parties may file collateral claims with the condemning authority for their losses that are separate and apart from the value of the land area and improvements taken.

6. Driveway Changes. First Party and Second Party each reserve the right to from time to time change the driveways and other traffic improvements located within their respective parcels as long as (i) such change does not materially impair the other party's use of the easements herein granted and the accessibility afforded by such easements to adjoining rights-of-way, (ii) the party making such changes to its parcel provides at least thirty (30) days prior written notice to the other party describing such changes in reasonable detail, and (iii) the party making such changes does not unreasonably interfere with business operations on the other party's parcel.

7. Indemnification Each party shall and does hereby, indemnify and hold the other party, its legal representatives, lessees, tenants, employees, successors and assigns (all of whom shall be collectively referred to as the "Indemnitees") harmless of, from and against any and all loss, cost, expense, suits, judgments and liabilities for damages or injuries, of whatsoever kind, whether to persons or property, arising in any way by any reason of the use of the easements herein granted by the indemnifying parties; provided, however, that said indemnity and hold harmless shall exclude any and all loss, cost, expense, suits, judgments and liabilities for damages or injuries, of whatsoever kind, whether to persons or property, caused by negligence of "Indemnitees," or any other person acting under their direction or contract with them, or other third parties.


8. Restricted Use. The First Party Tract and the Second Party Tract shall be used for lawful purposes in conformance with all restrictions imposed by all applicable governmental laws, ordinances, codes, and regulations. Neither all nor any portion of the tracts may be used, directly or indirectly, for a store or other business selling, renting or displaying "x-rated" or "adults only" books, tapes, films, magazines or other merchandise, massage parlor, any establishment featuring "adults only" or "x-rated" entertainment.

9. Specific Use Restrictions for the Second Party Tract. In addition to the restrictions set forth in this Section 9, so long as Family Dollar is operating a store on the First Party Tract, the Second Party Tract will not be leased, subleased, or sold to any variety store, variety discount store, discount department store, dollar store, thrift store, any store selling used clothing, or any discount store occupying less than 40,000 square feet operated by or under the name of Fred's, Marc's, Wal-Mart, K-Mart, Sears Holdings, Meijer's, Duckwall-Alco, A. J. Wright, Big Lots, Shopko, dd's Discounts, Pamida, Value City, Dolgencorp or Dollar General, Bill's Dollar, Bonus Dollar, Deals, Only Deals, 99 Cents Only, Dollar Tree, or any entity controlled by, affiliated with or related to any of them, or any other dollar store or single price point store occupying more than 2,000 square feet, or any store operated by Variety Wholesalers, including but not limited to, Maxway, Roses, Super 10, ValuMart, Pope's and Bargaintown. This Paragraph is not intended to prohibit the Second Party Tract from being operated as a drugstore, toy store, hobby store, sporting goods store, card and gift store, shoe store, hardware store, home improvement store, auto supply store, electronics store, office supply store or any other store selling a single category of merchandise even though the category may be a broad one such as toys or hardware.

10. Permittees. As used herein, the term "Permittees" shall mean each party hereto, and their successors in title, and each of their respective tenants, employees, contractors, guests and invitees.

(Signature/Notary pages attached)

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

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| <p>WITNESSES AS TO FIRST PARTY:</p> <p>Signed: <u>[Signature]</u><br/>         Print Name: <u>Jennifer Mostay</u></p> <p>Signed: _____<br/>         Print Name: _____</p>  | <p>FIRST PARTY:</p> <p>T&amp;N <del>HUNTINGTON</del> A Utah Limited Liability Company</p> <p>By: <u>[Signature]</u><br/>         Print Name: <u>Kurt Lund</u><br/>         Title: <u>Manager</u></p> <p>Dated: <u>10-27-14</u></p> |
| <p>STATE OF UTAH<br/>         COUNTY OF <del>EMERY</del> <u>DAVIS</u></p> <p>I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by <u>Kurt Lund</u>, the <u>manager</u>, of T&amp;N <del>HUNTINGTON</del> L.C., A Utah Limited Liability Company, freely and voluntarily under authority duly vested in him by said company. <u>He/she is personally known to me</u> or has produced _____ as identification.</p> <p>WITNESS my hand and official seal in the County and State last aforesaid this <u>27</u> day of <u>Oct</u>, 2014.</p> <p><u>[Signature]</u><br/>         Notary Public<br/> <u>Jim C. Morris</u><br/>         Typed, printed or stamped name of Notary Public</p> <p>My Commission Expires: <u>10-22-15</u></p> <div data-bbox="766 1153 1214 1293" style="border: 1px solid black; padding: 5px;">  <p>JIM C. MORRIS<br/>             Notary Public • State of Utah<br/>             Commission # 648757<br/>             COMM. EXP. 10-22-2015</p> </div> |  |

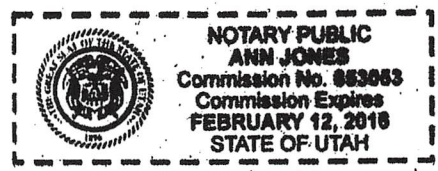
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|--|---|
| <p>WITNESSES AS TO SECOND PARTY:</p> <p>Signed: <u>Kathleen Winn</u><br/> Print Name: <u>Kathleen Winn</u></p> <p>Signed: <u>Chris Christensen</u><br/> Print Name: <u>Chris Christensen</u></p> | <p>SECOND PARTY:</p> <p>By: <u>Kathy Bringhurst</u><br/> Print Name: <u>KATHY BRINGHURST</u><br/> Title: <u>owner</u></p> <p>Dated: <u>10-23-2014</u></p> |
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STATE OF UTAH  
COUNTY OF EMERY

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by Kathy Bringhurst the owner, of \_\_\_\_\_, a \_\_\_\_\_, freely and voluntarily under authority duly vested in him by said company. He/she is personally known to me or has produced known as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 23 day of Oct, 2014.

Ann Jones  
\_\_\_\_\_  
Notary Public



Typed, printed or stamped name of Notary Public  
My Commission Expires: 2-12-16

TRACT - CONSENT AND SUBORDINATION OF LENDER

**Lender Consent**

Jeff Pero, a bank (Type of Lender), as holder of that certain Deed of Trust (Mortgage, Deed of Trust, etc.) dated July 11, 2013 with respect to the Tract, hereby consents to the terms and conditions contained in this Agreement and subordinates the lien of said Deed of Trust (Mortgage, Deed of Trust, etc.) to this Agreement.

STATE OF Utah:  
COUNTY OF Carbon:

Jeff Pero

The foregoing instrument was acknowledged before me on 23rd, 2014 by Jeff Pero, the Commercial Relationship manager of Zions Bank, a Utah Bank.

He/She is personally known to me, or produced Drivers License as identification.

Tamera Jean Ellis  
Notary Public, State of Utah

Name Printed: Tamera Jean Ellis  
My Commission expires: July 16, 2015

[NOTARIAL SEAL]

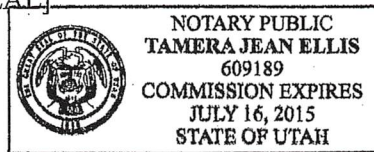


EXHIBIT A

Description of First Party Tract Subject to Easement

A part of lot 1, Block 44, Huntington Townsite survey;  
Beginning at a point which is South 67.50 feet along the East line of Lot 1 from the  
Northeast corner of said Lot 1; thence West 155.00 feet; thence North 27.30 feet; thence  
East 155.00 feet to said East line; thence South 27.30 feet to the point of beginning.



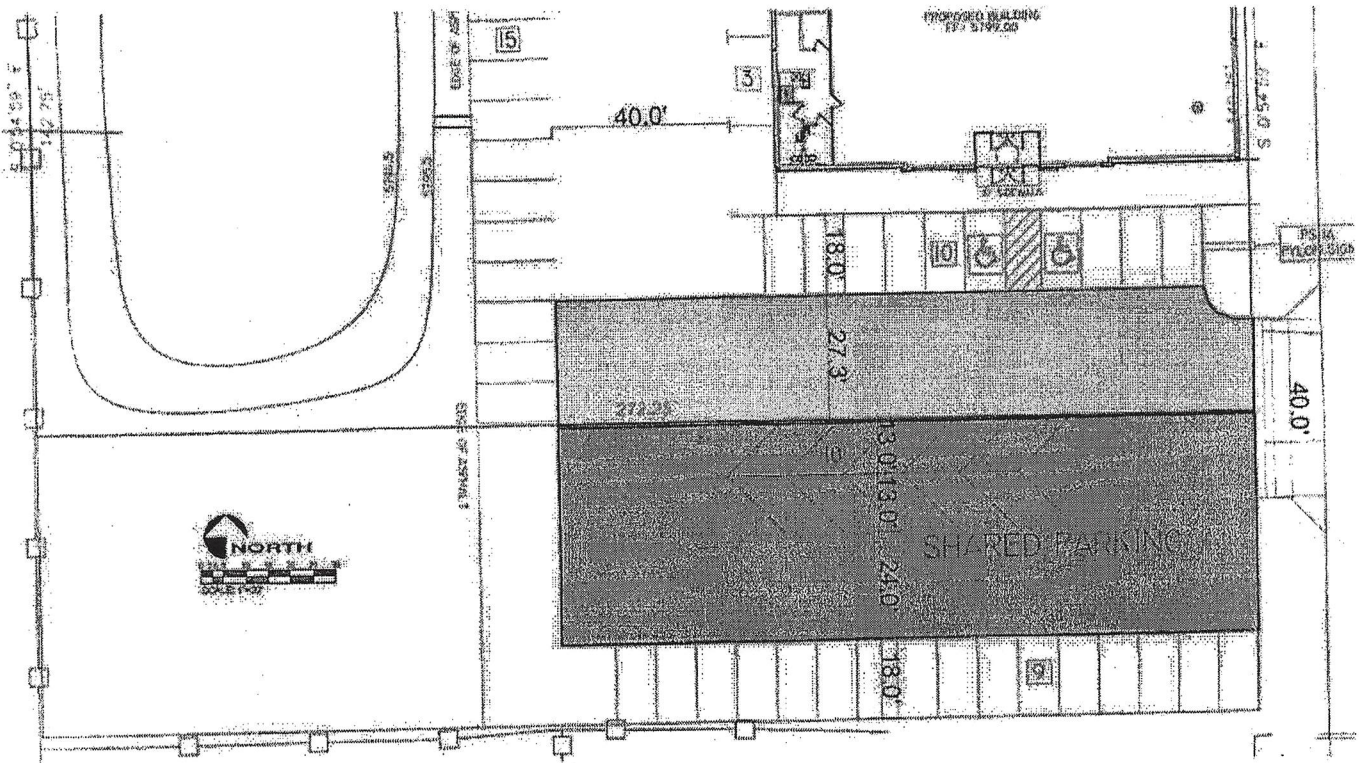
EXHIBIT B

Description of Second Party Tract Subject to Easement

A part of lot 1, Block 44, Huntington Townsite survey;  
Beginning at a point which is South 67.50 feet along the East line of Lot 1 from the  
Northeast corner of said Lot 1; thence South 50.00 feet along said East line; thence West  
155.00 feet; thence North 55.00 feet; thence East 155.00 feet to said East line and the  
point of beginning.

EXHIBIT C

Site Plan



Cross Access Agreement:

- Kathy Bringhurst's customers to be able to drive across Family Dollar's area shaded blue.
- Family Dollar's customers to be able to drive across Bringhurst's area shaded red.
- Customers of both businesses to be able to park in the 10 shared spaces at the center of the parking lot.