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ENT 62279:2016 PG 1 of 12  
Jeffery Smith  
Utah County Recorder  
2016 Jul 07 10:28 AM FEE 34.00 BY SS  
RECORDED FOR Founders Title Company  
ELECTRONICALLY RECORDED

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

Space Above For Recorder's Use Only

ACCESS EASEMENT AGREEMENT

This ACCESS EASEMENT AGREEMENT ("Easement Agreement") is entered into this 14<sup>th</sup> day of June, 2016 ("Effective Date"), by and between, Utah CVS Pharmacy, L.L.C., a Utah limited liability company, ("Grantor"), and Timp Valley Floral Incorporated, ("Grantee") (collectively, the "Parties" and individually, a "Party").

WITNESSETH:

A. Grantor is the owner of the "CVS Property" as described on Schedule I attached hereto; and

B. Grantee is the owner of the "Timp Floral Property" as described on Schedule II attached hereto (each of the CVS Property and the Timp Floral Property a "Property" and collectively, the "Properties"); and

C. Grantor has agreed to grant Grantee access over the CVS Property for ingress from and egress to State Street (SR 89), a public street located in Utah County, Utah ("State Street") in accordance with and pursuant to the terms of this Easement Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **Ingress and Egress.** Grantor, as owner of the CVS Property, hereby grants to Grantee, as owner of the Timp Floral Property, its contractors, employees, agents, licensees, customers, and invitees ("Permittees"), for the benefit of the Timp Floral Property, a nonexclusive easement for ingress and egress by vehicular and pedestrian traffic upon, over, and across the CVS Property to and from State Street in the area legally described on Exhibit A and depicted on Exhibit

A-1 (the "Easement Area"). Neither Grantee nor its Permittees shall use any portion of the Easement Area for parking or for any other purpose for which the Easement Area is not intended.

**2. Maintenance.** Grantor shall maintain the Easement Area in a manner consistent with local practices, which shall include, without limitation, keeping the Easement Area free of debris, obstructions, and snow and ice. No obstructions shall be erected by Grantor or Grantee or permitted upon the Easement Area which will in any way interfere with any rights granted to Grantee under this Easement Agreement, except as required by applicable law.

**3. Changes to the Easement Area.** Except as required by applicable law, Grantor shall not take any action which would prohibit, restrain, frustrate, or otherwise deter Grantee and its Permittees from passing freely into, out of, on and over the Easement Area. Grantor, however, may close off the Easement Area for such reasonable period or periods of time as may be required for maintenance and repair and as may be legally necessary to prevent the acquisition of prescriptive rights by anyone, provided, however, prior to closing off any portion of the Easement Area, as herein provided, Grantor shall give prior written notice to Grantee of its intention to do so, and shall coordinate such closing with Grantee so that no unreasonable interference with Grantee's operations shall occur.

Nothing in this Agreement shall prevent the relocation, renovation or improvement of the Easement Area by Grantor, so long as in each instance the free flow of pedestrian and vehicular traffic to and from the Timp Floral Property and State Street is not prevented as the result of such renovation or improvement.

**4. Restriction on Timp Floral Property.** Grantee covenants and agrees that the Timp Floral Property shall not be leased or used for the construction or operation of a pharmacy, a pharmacy mail order facility, a drug store, a pharmacy prescription department, a candy store, a health and beauty aids store, a store offering one hour or other on-site photo processing, including, without limitation, digital processing, a discount/dollar store, a gift store, stores selling adult or pornographic material, a vitamin store, a greeting card store, a liquor store, or a retail health center. A "pharmacy prescription department" includes the dispensing, distribution or furnishing of prescription drugs by physicians, dentists and other health care practitioners, or a facility which accepts prescriptions from customers which are filled elsewhere and delivered to the customer, or entities such as clinics, dispensaries or health maintenance organizations where such dispensing is for a fee or a profit. A "pharmacy prescription department" shall not include the distribution or furnishing of free samples of prescription drugs by physicians, dentists and other health care practitioners. A "retail health center" shall include such operations as CVS's "Minute Clinic" or other similar use providing walk-in, non-traumatic medical services, but specifically excluding physician, dentistry, or other health care offices or practitioners that are separately operated and not located inside any retail store or establishment.

**5. Indemnification.** Grantee shall indemnify, protect and defend Grantor from and against any and all claims, actions, suits and any other forms of legal action arising from or related to Grantee's and/or Permittees' use of the Easement Area. In the event that the Easement Area is damaged, destroyed, or otherwise becomes inoperative or inaccessible for any reason other than the

gross negligence or willful misconduct of Grantor, Grantee's inability to use the Easement Area shall not subject Grantor to any liability whatsoever.

6. **Insurance.** Prior to any use of the Easement Area, Grantee shall obtain insurance for the Easement Area covering property damage and personal injury in the following amount: Two Million Dollars (\$2,000,000.00) per occurrence and which names CVS as an additional insured. Grantee shall provide Grantor with a copy of its insurance at least ten (10) days prior to its use of the Easement Area, and at Grantor's request thereafter, at least thirty (30) days before the expiration of the policy.

7. **No Warranties.** Grantor makes no representation or warranty, express or implied, that the Easement Area is adequate, suitable, or sufficient for Grantee's intended use. The Parties hereby acknowledge and agree that the Grantee's and Permittee's use the Easement Area at their own risk.

8. **General Provisions.**

a. **Successors.** This Easement Agreement shall run with the land and shall bind and inure to the benefit of the Parties hereto and their respective successors and assigns. At such time as a Party or its successor ceases to have an interest in such Party's parcel, such Party or successor shall thereupon be deemed released and discharged from any and all obligations under this Easement Agreement accruing thereafter.

b. **Entire Agreement.** This Easement Agreement contains the entire agreement between the Parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Easement Agreement shall be construed as a whole and not strictly for or against either Party.

c. **Modification and Termination.** This Easement Agreement may not be modified in any respect whatsoever or terminated, in whole or in part, except with the consent of Grantor and Grantee, and then only by written instrument duly executed and acknowledged by Grantor and Grantee and recorded in the office of the Utah County recorder.

d. **Not a Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Properties or the Easement Area to the general public or for the general public or for any public purpose whatsoever, it being the intention of the Parties that this Easement Agreement shall be strictly limited to and for the purposes herein expressed.

e. **Breach Shall Not Permit Termination.** It is expressly agreed that no breach of this Easement Agreement shall entitle Grantor or Grantee to terminate this Easement Agreement, but such limitation shall not affect in any manner any other rights or remedies which Grantor or Grantee may have hereunder by reason of any breach of this Easement Agreement. Any breach of this Easement Agreement shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value.

f. Default. A Party shall be deemed to be in default of this Easement Agreement only upon the expiration of thirty (30) days from receipt of written notice from the other Party specifying the particulars in which such person has failed to perform the obligations of this Easement Agreement; provided, however, that such Party shall not be in default if, prior to the expiration of said thirty (30) days, it has rectified the particulars specified in said notice of default.

g. Notices. Any notice required or permitted to be delivered under this Easement Agreement shall be in writing and shall be deemed given (i) on the date of receipt, in the case of delivery by courier service or personal delivery, (ii) three (3) business days after being sent by the United States Postal Service, postage prepaid, certified or registered mail, return receipt requested, (iii) the next business day if sent by a reputable national overnight express mail service or (iv) when sent if sent by facsimile during business hours, provided that a written confirmation or transmittal report indicating that such facsimile was successfully sent has been received by the sender. Notices must be sent to the parties as set forth below:

IF TO GRANTOR: Utah CVS Pharmacy, L.L.C.  
c/o CVS Health Corporation  
One CVS Drive  
Woonsocket, RI 02895  
Attention: Property Administration, Store 10577

With a copy to: Mintz, Levin, Cohn, Ferris, Glovksy and Popeo, P.C.  
One Financial Center  
Boston, MA 02111  
Attention: Maryann Civitello, Esq.

IF TO GRANTEE: Timp Valley Floral Incorporated  
445 E State Road  
American Fork, UT 84003  
Attention: Laurene Hutchings

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The person and address to which notices are to be given may be changed at any time by any Party upon written notice to the other Party at the above addresses. All notices given pursuant to this Easement Agreement shall be deemed given upon receipt. For the purpose of this Easement Agreement, the term "receipt" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document sent to the address specified herein as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the person or entity such notice was delivered to as specified herein, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of the date of the attempted delivery or refusal to accept delivery; the date of the postmark on the return receipt; or the date of receipt of notice of refusal or

notice of non-delivery by the sending Party, or in the case of a telefacsimile, the date and time of receipt as shown on the confirmation of the telefacsimile transmission.

h. Severability. If any term or provision of this Easement Agreement or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Easement Agreement or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Easement Agreement shall be valid and shall be enforced to the extent permitted by law.

i. Not a Partnership. The provisions of this Easement Agreement are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the Parties.

j. No Third Party Beneficiary Rights. This Easement Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a Party hereto.

k. Captions and Headings. The captions and headings in this Easement Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

l. Construction. In construing the provisions of this Easement Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

m. Recordation. This Easement Agreement shall be recorded in the office of the Utah County, Utah recorder.

n. Governing Law. This Easement Agreement shall be governed by and constructed and enforced in accordance with the laws of the State of Utah, without regard to the conflict of laws principles of such state. The federal and state courts of the State of Utah shall have exclusive jurisdiction to adjudicate any dispute arising from this Easement Agreement.

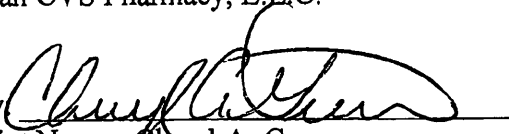
o. Counterparts. This Easement Agreement may be executed in counterparts, each of which shall be an original, but such counterparts together shall constitute one and the same instrument.

p. Exhibits and Schedules. All Exhibits and Schedules referred to in this Easement Agreement are considered an integral part of this Easement Agreement and are hereby incorporated herein. This Easement Agreement shall not be considered executed and/or complete until and unless such Exhibits and Schedules shall be attached hereto.

IN WITNESS WHEREOF, this Agreement has been executed as of the date first above written.

**GRANTOR:**

Utah CVS Pharmacy, L.L.C.

By 

Print Name: Cheryl A. Green

Title: Assistant Secretary

Legal Approval: Maryann Civitello, Mintz Levin

STATE OF RHODE ISLAND )

COUNTY OF PROVIDENCE )

On this 5 day of July, 2016, before me, the undersigned notary public, personally appeared Cheryl A. Green, personally known to the notary to be the person who signed the preceding or attached document as Assistant Secretary of **Utah CVS Pharmacy, L.L.C.** in my presence, and acknowledged to the notary that she signed it voluntarily for its stated purpose on behalf of **Utah CVS Pharmacy, L.L.C.**.



Notary Public

SUSAN DUPRE

Notary Public

State of Rhode Island

My Commission Expires 8-02-2019

AFFIX SEAL

My commission expires: \_\_\_\_\_

[Signatures continued on following page]

GRANTEE:

Timp Valley Floral Incorporated

By: Laurene Hutchings  
Print Name: Laurene Hutchings  
Title: ~~OWNER~~ President *LH*

STATE OF Utah )  
COUNTY OF Utah ) ss.

On this 14 day of JUNE, 2016, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Laurene Hutchings, to me personally known to be the person described in and who executed the foregoing instrument, who, being by me first duly sworn, stated that he/she is the OWNER President of Timp Valley Floral Incorporated and that he/she executed such instrument on behalf of said company by authority of its members and/or managers, and said person acknowledged to me that he/she executed such instrument as the act and deed of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public: *Maria Fackrell*  
Printed Name: MARIA FACKRELL  
My Commission Expires: 9/18/18



**Schedule I****Legal Description CVS Property**

A parcel of land located in the Northwest Quarter of Section 24, Township 5 South, Range 1 East, Salt Lake Base and Meridian, American Fork City, Utah County, Utah, said parcel being more particularly described as follows:

Commencing at the North Quarter corner of said Section 24; thence North 89°45'02" West 822.73 feet along the section line; thence South 769.35 feet to a point on the West line of 500 East Street and the POINT OF BEGINNING; thence South 00°17'00" West 346.09 feet along said West line to a point on the North line of State Street (SR-89); thence North 73°17'02" West 312.35 feet along said North line; thence North 00°49'17" West partially along a fence line 199.21 feet to a fence corner; thence North 01°06'59" West 68.00 feet to a fence corner; thence North 00°42'22" East along a fence line 204.60 feet to the apparent boundary of Elm Street; thence South 89°18'56" East 159.65 feet (Record-South 89°17'38" East 159.66 feet); thence South 213.61 feet; thence East 142.88 feet to the POINT OF BEGINNING

Tax ID No. 13-056-0069, 13-056-049 and 13-056-0070



**Schedule II**

**Legal Description Timp Floral Property**

Commencing 365.56 feet East and 706.7 feet South from the Southeast corner of Block 15, Plat "A", AMERICAN FORK CITY SURVEY; thence South 3°05' West 174.3 feet along fence line; thence South 73°14' East 75.06 feet along the State Road; thence North 0°45' West 195.7 feet; thence West 59.90 feet to beginning.

Tax ID No. 13-056-0020

**Exhibit A****Description of Access Easement Area**

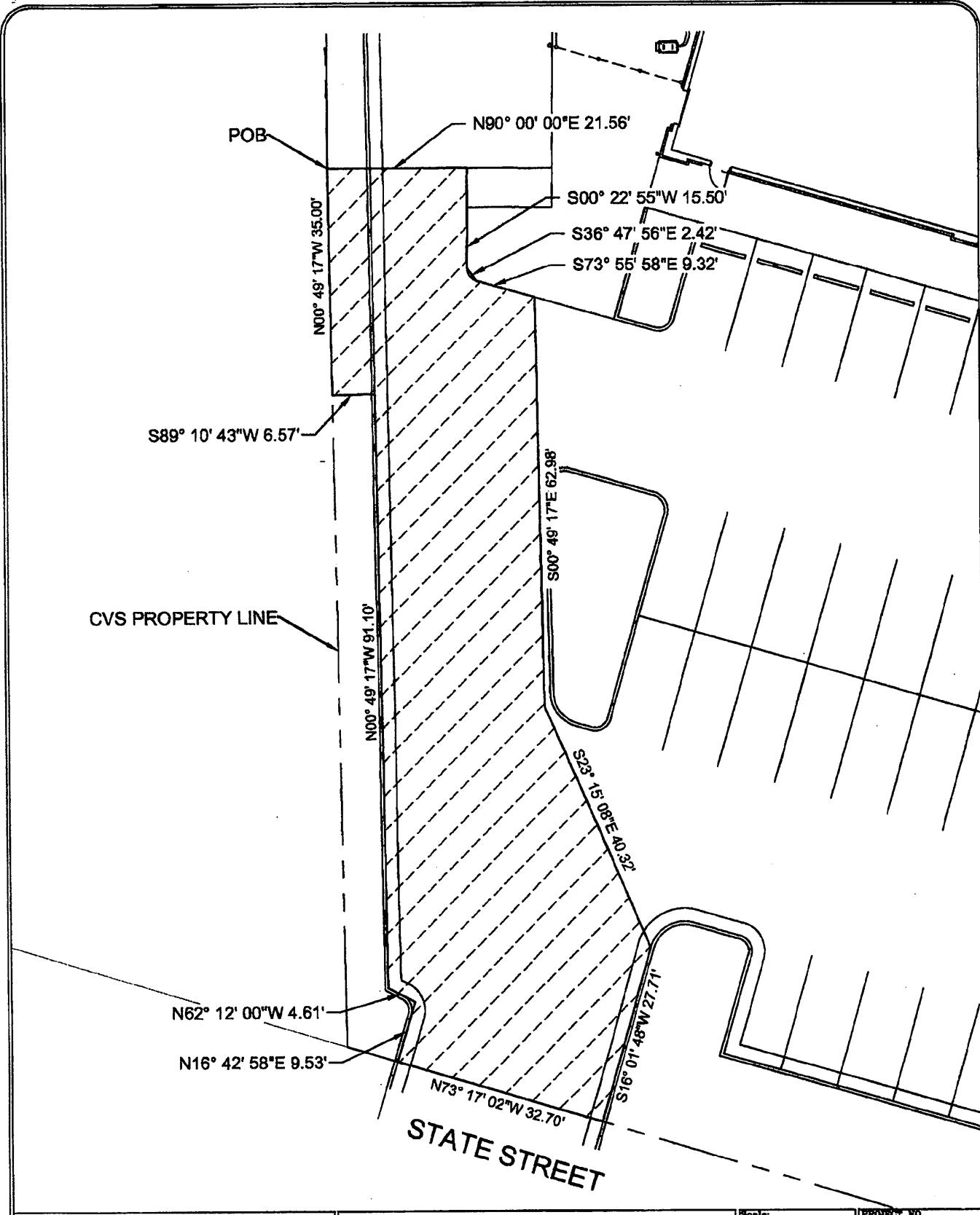
A parcel of land located in the Northwest Quarter of Section 24, Township 5 South, Range 1 East, Salt Lake Base and Meridian, American Fork City, Utah County, Utah, said parcel being more particularly described as follows:

COMMENCING at the North Quarter corner of said Section 24; thence along the Section line North  $89^{\circ}45'02''$  West 1125.53 feet; thence South 891.98 feet to the POINT OF BEGINNING; thence East 21.56 feet; thence South  $00^{\circ}22'55''$  West 15.50 feet; thence South  $36^{\circ}47'56''$  East 2.42 feet; thence South  $73^{\circ}55'58''$  East 9.32 feet; thence South  $00^{\circ}49'17''$  East 62.98 feet; thence South  $23^{\circ}15'08''$  East 40.32 feet; thence South  $16^{\circ}01'48''$  West 27.71 feet, more or less to the North Right-of-Way line of State Street (SR 89); thence along said North Right-of-Way line North  $73^{\circ}17'02''$  West 32.70 feet; thence North  $16^{\circ}42'58''$  East 9.53 feet; thence North  $62^{\circ}12'00''$  West 4.61 feet; thence North  $00^{\circ}49'17''$  West 91.10 feet; thence South  $89^{\circ}10'43''$  West 6.57 feet; thence North  $00^{\circ}49'17''$  West 35.00 feet to the POINT OF BEGINNING.

Contains 4,111 square feet, 0.094 acres

**Exhibit A-1**

**Depiction of Access Easement Area**  
[attached]



**PSOMAS**

4179 Riverboat Road, Suite 200  
 Salt Lake City, Utah 84123  
 (801) 270-5777 (801) 270-5782 (FAX)

CVS AMERICAN FORK  
 ACCESS EASEMENT  
 EXHIBIT (SR-85)

Scale:	1:20
Drawn by:	LB
Checked by:	CEA

PROJECT NO.	8CVS010141
FIGURE #	A-1