

WHEN RECORDED, RETURN TO:

SNELL & WILMER L.L.P.
Attn: Wade R. Budge
15 West South Temple, Suite 1200
Salt Lake City, UT 84101

Affects Parcel Nos. 0QP-0001 through 0QP-0008 and
a portion of Parcel No. 00-0010-1320
portion of

ACCESS AND UTILITY EASEMENT

THIS ACCESS AND UTILITY EASEMENT ("Agreement"), is made and entered into as of the 11th day of September, 2014 (the "**Effective Date**"), by and between **HEBER GATEWAY PLAZA PROPERTY OWNERS ASSOCIATION, INC.**, a Utah nonprofit corporation ("**Grantor**"), and **HSC HEBER CITY, LLC**, an Alabama limited liability company ("**Grantee**"). Grantor and Grantee are sometimes referred to individually as "**Party**" and collectively as the "**Parties**."

RECITALS

- A. Grantor is the owner of the real property described on **Exhibit A ("Grantor Property")** and is duly authorized to enter into this Agreement.
- B. Grantee is the owner of the real property described on **Exhibit B ("Grantee Property")** and is duly authorized to enter into this Agreement.
- C. Grantor is willing to grant certain easements over a portion of the Grantor Property to Grantee in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto hereby agree as follows:

AGREEMENT

1. Easements. Subject to the provisions of this Agreement, Grantor conveys and grants to Grantee:

- (a) Access Easement. A perpetual, non-exclusive and continuous easement and right-of-way appurtenant to the Grantee Property over, upon and across the private roads owned by and managed by Grantor (the "**Access Easement**"), which private roads are described as the Grantor Property herein and labeled as Gateway Drive, 260 East and 380 East on the attached Heber Gateway Plaza subdivision plat attached as **Exhibit C** (the "**Easement Area**"). The purpose of the Access Easement is limited to allowing Grantee and its mortgagees, tenants, agents, contractors, customers, patrons, invitees, licensees and employees, reasonable and shared vehicular and pedestrian access, ingress and egress, to and from the Grantee Property and 1200

South Street and State Highway 40; provided, however, Grantee may not park vehicles on the Easement Area or any Grantor Property and Grantee shall not use the Access Easement for construction or delivery truck access to the Grantee Property.

(b) **Utility Easement.** A perpetual, non-exclusive easement (the “**Utility Easement**”) appurtenant to the Grantee Property within the necessary portion of the Easement Area for installation, construction, maintenance, use, repair, replacement and removal of a utility connection to the private storm sewer drainage lines and systems existing within the Easement Area (the “**Utility Connection**”); together with the right to enter upon the surface or any portion of the Easement Area to implement the foregoing rights. In installing and maintaining its Utility Connection, Grantee shall not damage the existing private storm sewer drainage lines and systems and shall repair the roadway and associated improvements within the Easement Area impacted by Grantee’s work with respect to the Utility Connection.

2. Maintenance Fees, Easement Fee; Maintenance and Repairs of Easement Area.

(a) “**Maintenance Fees**” means out-of-pocket costs reasonably and actually incurred by Grantor, and reserves required by law, for the operation, maintenance, replacement, and repair of the Easement Area, the supervision thereof (but in no event shall costs for such supervision, administration and management, in the aggregate, exceed ten percent (10%) of the total Maintenance Fees), and Grantor’s insurance premiums for the insurance policies required of Grantor by this Agreement. Grantee agrees to pay Grantor, for so long as this Agreement is in effect, an amount equal to ten percent (10%) of the total annual Maintenance Fees (“**Easement Fee**”). The initial annual Easement Fee shall be in the amount of \$4,900.00 and shall be due and payable to Grantor on or before November 30, 2014, and shall be payment in full for the remainder of the 2014 calendar year and the entire 2015 calendar year. Thereafter, the Easement Fee shall be based upon Grantor’s reasonable good faith estimates, subject to readjustments, as provided below. Grantor covenants to only use the Easement Fees for (i) maintenance and repair of the Easement Area as contemplated herein, including snow removal and pavement maintenance; and (ii) meeting the reserve requirements for the private roads as required by Utah Code Ann. §57-8a-211, as may be amended.

(b) Grantor shall, at the beginning of each calendar year, submit to Grantee a reasonably detailed statement indicating Grantor’s annual estimates of Grantee’s Easement Fee for the upcoming year. Grantee shall pay to Grantor, within thirty (30) days after receipt of such statement, Grantee’s Easement Fee. Grantor reserves the right, but not the obligation, to revise Grantor’s estimation of Grantee’s Easement Fee; provided, however, that Grantor may not make more than one (1) revision in any calendar year. Within ninety (90) days following the end of each calendar year, Grantor shall furnish Grantee with a statement, certified as true and correct by a Certified Public Accountant or an officer of Grantor, showing the total Maintenance Fees for the calendar year just expired, the amount of Grantee’s Easement Fee, and payments made by Grantee during such calendar year under this Agreement. Grantor’s statement shall include supporting documentation, including invoices if requested by Grantee, for Maintenance Fees. If Grantee’s Easement Fee for such calendar year exceeds Grantee’s payments as shown on such statement, then Grantee shall, within sixty (60) days after receipt of such statement, pay the difference to Grantor. If the statement indicates an overpayment by Grantee, then Grantee shall be entitled either (i) to receive a refund from Grantor within sixty (60) days after receipt of such statement, or (ii) if Grantor fails timely to pay such refund, to credit such excess against payments becoming due under this Agreement.

(c) Grantee shall have the right, at Grantee's sole cost, to audit, inspect, and copy the books and records of Grantor with respect to any costs or items which are passed through to Grantee upon thirty (30) days' advance written notice by Grantee to Grantor. Grantor shall cooperate with Grantee in providing Grantee reasonable access to its books and records during normal business hours for this purpose. If the audit indicates an overpayment by Grantee, then Grantee shall be entitled either (i) to receive a refund from Grantor within thirty (30) days after receipt of such audit, or (ii) if Grantor fails timely to pay such refund, to credit such excess against payments becoming due under this Agreement.

3. No Interference. Except to the extent reasonably necessary (on a temporary basis) for reasonable construction, for repair and maintenance, for traffic regulation and control or to prevent a public dedication or the accrual of any rights to the public, no fence, gate, wall, barricade or other obstruction, whether temporary or permanent in nature, which limits or impairs the free and unimpeded use of the easements granted in this Agreement shall be constructed or erected, nor shall Grantor in any other manner obstruct or interfere with the use of such rights-of-way and easements.

4. Indemnification. Each Party shall indemnify, defend and hold harmless the other Party and its affiliates, members, managers, agents, tenants and representatives for, from and against all claims, damages, expenses (including, without limitation, reasonable attorneys' fees and reasonable investigative and discovery costs), liabilities and judgments on account of injury to persons, loss of life, or damage to property resulting from the negligent or willful act or omission of the indemnifying Party, its tenants, subtenants, agents, contractors, or employees, arising out of the performance of any of the obligations set forth in this Agreement, the indemnifying Party's use of the Easement Area or Common Parcel B pursuant to the license granted in **Section 10** below, or the indemnifying Party's breach of this Agreement, except to the extent such claims are due solely to the gross negligence or willful act or omission of the other Party or its tenants, subtenants, agents, contractors, or employees. The indemnities provided herein are ones of first defense and payment, not of reimbursement or surety and shall in no way be limited by or to the amount of insurance carried, or required to be carried hereunder. The obligations of this section shall survive the termination of this Agreement.

5. Insurance. Commencing on the first use by Grantee of the Easement Area for the purposes described in **Section 1** hereof and during the term of this Agreement, Grantee and Grantor shall provide and maintain commercial general liability insurance insuring against claims for personal injury, bodily injury or death, and property damage or destruction. The limits of liability of each insurance policy required under the preceding sentence shall be not less than \$1,000,000 for personal injury or bodily injury or death of any one person and \$3,000,000 for personal injury or bodily injury or death in the aggregate. The insurance policy required under this **Section 5** shall insure the performance of Grantor and Grantee of the indemnity agreements and obligations contained herein and shall be written with an insurer licensed to do business in the state of Utah and shall name Grantor and Grantee as an additional insured. Prior to Grantee's first use of the Easement Area, Grantee and Grantor shall provide each other with certificates of insurance which shall indicate all insurance coverage required by the provisions herein and which shall provide that each party shall be provided with thirty (30) days' written notice prior to the cancellation or modification of such policy. So long as Tractor Supply Company, a Delaware corporation ("TSC"), shall hold a fee or leasehold interest in all or any portion of the Grantee Property, TSC shall be named as additional insured under such insurance policies. Such insurance policies shall contain a clause stating that there shall be no reduction, cancellation, or non-renewal of coverage without giving the other party (and TSC so long as TSC shall lease all or any portion of the Grantee Property) thirty (30) days prior written notice. Such insurance shall also be issued by insurers having an A.M. Best rating of at least A- VII, be endorsed to provide that the insurance shall be primary to and not contributory to any similar insurance carried by the Grantor or Grantee, and shall contain a severability of interest clause.

6. Easement Term, Dedication/Abandonment.

(a) Except as otherwise provided in this Agreement, all provisions of this Agreement, including the benefits and burdens, shall run with title to the Grantee Property and the Grantor Property, respectively, and shall be binding upon and inure to the benefit of successors-in-title of the parties and their respective mortgagees, tenants, invitees and licensees; *provided, however*, that this Agreement and all easement rights granted hereunder and obligations imposed hereunder shall automatically terminate if Grantor elects, in its sole and absolute discretion, to dedicate the Easement Area for public use and such dedication is accepted by all applicable and necessary governmental bodies.

(b) In the event Grantee abandons and ceases to use the Easement Area for the purposes herein described for a period of more than two (2) calendar years, then the Grantor may provide Grantee written notice of its intent to terminate the easement herein granted. If Grantee does not recommence use of the Easement Area for the purposes herein described within one hundred eighty (180) days of receipt of such notice, unless a longer time period shall be agreed to by the Grantor, the easement herein granted shall cease and terminate.

7. Private Use. The provisions hereof are not intended to be and do not constitute a dedication for public use, and all rights and easements herein created are private.

8. Remedies. In the event Grantor or Grantee violates any provisions of this Agreement, the injured party shall have, in addition to the right to collect damages, the right to enjoin such violation or threatened violation in any court of competent jurisdiction. In addition to all other remedies available at law or in equity, upon the failure of Grantee or Grantor to cure a breach hereof within thirty (30) days following receipt of written notice thereof from the other party, the non-defaulting party shall have the right to perform such obligation contained in this Agreement on behalf of defaulting party and be reimbursed by the defaulting party upon demand for the reasonable costs thereof. If such breach is of such a character as to require more than thirty (30) days to correct, the defaulting party will not be in default if the defaulting party commences actions to correct such breach within the 30-day period and thereafter, using reasonable diligence, fully cures such breach. Amounts owed and not paid by Grantor or Grantee when due hereunder shall bear interest from the fifth (5th) day after the due date until paid at the rate of six percent (6%) per annum. Notwithstanding the foregoing to the contrary, if the nature of the breach of this Agreement presents an immediate risk of damage to property, injury to persons, interruption of utility service or loss or jeopardizes access, the prior notice requirement of this paragraph shall not apply, and non-defaulting party shall be authorized to take immediate steps to minimize or eliminate such risk, and be reimbursed for the reasonable costs thereof as provided herein. In such event, notice of such action shall be given to Grantee as soon as reasonably practicable under the circumstances.

9. No Barriers Upon Easement Area. No buildings, improvements, fences, walls, curbs, or other barriers shall be constructed or located on the Easement Area which shall unreasonably impair, burden or interfere with the easement rights granted herein. No barricade or other divider will be constructed which would block any access between the Grantee Property and the Easement Area and nothing will be done to prohibit or discourage the free and uninterrupted flow of vehicular traffic within the Easement Area. Any short-term blockages that may be legally necessary to avoid any dedication of such access ways for public use may only occur when TSC's store is not open for business, so long as TSC shall hold a fee or leasehold interest in all or any portion of the Grantee Property. Notwithstanding the foregoing, Grantor shall be entitled to temporarily close a portion of the Easement Area as reasonably required for Grantor to perform maintenance and repairs of the improvements within the Easement Area, but at no time during hours when the TSC store is open for business shall access between 1200 South

Street and the Grantee Property via 380 East and Gateway Drive be denied so long as TSC shall hold a fee or leasehold interest in all or any portion of the Grantee Property.

10. License to Maintain Common Parcel B. Grantor hereby grants to Grantee a license to maintain that certain lot labeled as Common Parcel B on the attached Heber Gateway Plaza subdivision plat attached as **Exhibit C**, which such license shall include the right, but not the obligation, at Grantee's sole cost and expense, to (a) mow and otherwise keep said Common Parcel B clear of brush, trash and other debris, and (b) install and maintain landscaping improvements, including grass and low-lying shrubs (but not trees), with such other improvements as may be approved in advance by Grantor, together with the right to enter upon said Common Parcel B to implement the foregoing rights. The foregoing license shall be revocable in the same manner and on the same terms and conditions as termination of the easements granted by this Agreement. Nothing in this license shall prevent Grantor from allowing Grantor, its members or third parties from utilizing Common Parcel B in any way approved by Grantor, in its sole discretion, provided any such use may not render Common Parcel B to be unsightly.

11. Waiver. No waiver of any default under this Agreement by any Party shall be implied from any omission by any Party to take any action with respect to such default if such default continues or is repeated.

12. Severability. If any term, provision or condition contained in this Agreement shall to any extent be deemed invalid or unenforceable, the remainder of the Agreement shall not be affected thereby, and each remaining term, provision and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

13. Amendment. No modification, waiver, or amendment of any provision of this Agreement shall be made except by a written agreement signed by Grantor and Grantee (and consented to by TSC so long TSC shall lease all or any portion of the Grantee Property), or their respective successors-in-title.

14. Notices. All notices, requests, demands and consents to be made hereunder to the Parties hereto shall be in writing and shall be delivered by (a) established express delivery service which maintains delivery records, (b) hand or (c) registered mail or certified mail, postage prepaid, return receipt requested, through the United States Postal Service, to the addresses shown below or such other address which the Parties may provide to one another in accordance herewith.

To Grantor: Heber Gateway Plaza Owners Association, Inc.
c/o Community Solutions and Sales, LLC
856 East 12300 South, Suite 7
Draper, UT 84020
Attn: Jeff Wheeler

To Grantee: HSC Heber City, LLC
P.O. Box 130
Daphne, AL 36526
Attn: Ray Hix

With Copy to: Rushton, Stakely, Johnston & Garrett, P.A.
Attn: J. Ladd Davis
184 Commerce Street
Montgomery, AL 36104

Notices are effective upon receipt, or upon attempted delivery if delivery is refused or if delivery is impossible because of failure to provide a reasonable means for accomplishing delivery.

15. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which may be assembled into and will constitute one and the same instrument.

16. Entire Agreement. This Agreement which includes the following Exhibits, which are hereby incorporated herein by reference:

- | | |
|------------------|--|
| Exhibit A | Legal Description of Grantor Property |
| Exhibit B | Legal Description of Grantee Property |
| Exhibit C | Heber Gateway Plaza subdivision plat depicting private roads |


This Agreement and such Exhibits constitute the entire agreement between the Parties pertaining to the subject matter contained in this Agreement. All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are superseded by and merged in this Agreement. No supplement, modification or amendment of this Agreement will be binding unless in writing and executed by each Party.

[Signature Page to Follow]

IN WITNESS WHEREOF, this Agreement has been executed as of the Effective Date.

GRANTOR:

HEBER GATEWAY PLAZA PROPERTY OWNERS ASSOCIATION, INC.,
a Utah nonprofit corporation

By: 
Name: Dawn Murphy
Its: President

GRANTEE:

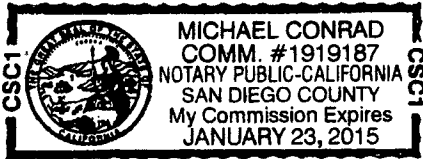
HSC HEBER CITY, LLC,
an Alabama limited liability company

By: _____
Name: _____
Its: _____

STATE OF California)
) ss.
COUNTY OF San Diego)

The foregoing instrument was acknowledged before me this 9 day of September, 2014, by Dawn Murphy, the President of the Heber Gateway Plaza Property Owners Association, Inc., a Utah nonprofit corporation, on behalf of said corporation.

Michael Conrad
Notary Public



STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2014, by _____, the _____ of the HSC Heber City, LLC, an Alabama limited liability company, on behalf of said company.

Notary Public

IN WITNESS WHEREOF, this Agreement has been executed as of the Effective Date.

GRANTOR:

**HEBER GATEWAY PLAZA PROPERTY
OWNERS ASSOCIATION, INC.,**
a Utah nonprofit corporation

By: _____
Name: _____
Its: President

GRANTEE:

HSC HEBER CITY, LLC,
an Alabama limited liability company

By: *[Signature]*
Name: THOMAS S SNEDEKER
Its: Member

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by _____, the President of the Heber Gateway Plaza Property Owners Association, Inc., a Utah nonprofit corporation, on behalf of said corporation.

Notary Public

STATE OF Alabama)
) ss.
COUNTY OF Baldwin)

The foregoing instrument was acknowledged before me this 4 day of september, 2014, by Haymess Snedeker, the member of the HSC Heber City, LLC, an Alabama limited liability company, on behalf of said company.

Julia Ballard
Notary Public



Exhibit A
Legal Description of Grantor Property

An Easement Area over the common areas administered by Grantor and identified as "Private Roads" adjoining Lots 1 through 8 of Heber Gateway Plaza subdivision plat, recorded with the Wasatch County Recorder as Entry No. 329671 on December 13, 2007.

Exhibit B
Legal Description of Grantee Property

A PARCEL OF LAND SITUATE IN THE NORTHWEST QUARTER OF SECTION 08, TOWNSHIP 4 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN, LOCATED IN HEBER CITY, COUNTY OF WASATCH, STATE OF UTAH, SAID PARCEL BEING ALL OF LOT 1, HEBER GATEWAY PLAZA II, RECORDED Sept 12, 2011 IN WASATCH COUNTY, UTAH, AS ENTRY NO. 404392, IN BOOK 1112, AT PAGE 660:

BEGINNING AT A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF 1200 SOUTH STREET. SAID POINT BEING ON THE ARC OF A 5042.00 FOOT NON TANGENT RADIUS CURVE TO THE LEFT (CENTER BEARS NORTH 00°41'59" EAST), SAID POINT ALSO BEING SOUTH 89°58'07" EAST ALONG THE SECTION LINE 1896.28 FEET AND SOUTH 42°54'25" WEST 60.78 FEET FROM A FOUND WASATCH COUNTY ALUMINUM CAP MONUMENT MARKING THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 4 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE EASTERLY ALONG SAID SOUTHERLY RIGHT OF WAY LINE THE FOLLOWING (4) COURSES; SOUTHEASTERLY ALONG THE ARC OF SAID 5042.00 FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF 00°49'42" A DISTANCE OF 72.89 FEET (CHORD BEARS SOUTH 89°42'52" EAST 72.89 FEET), (2) NORTH 89°52'16" EAST 239.69 FEET TO A POINT ON THE ARC OF A 15.00 FOOT NON TANGENT RADIUS CURVE TO THE RIGHT (CENTER BEARS SOUTH 00°06'56" EAST), (3) SOUTHEASTERLY ALONG THE ARC OF A 15.00 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 89°50'50" A DISTANCE OF 23.52 FEET (CHORD BEARS SOUTH 45°12'19" EAST 21.18 FEET), (4) NORTH 89°58'49" EAST 56.82 FEET; THENCE SOUTH 00°14'46" EAST 381.61 FEET, TO A POINT ON THE NORTHERLY LINE EXTENSION OF THE INTERMOUNTAIN HEALTHCARE SUBDIVISION, AS RECORDED WITH THE OFFICE OF THE WASATCH COUNTY RECORDER; THENCE NORTH 89°55'29" WEST ALONG SAID NORTHERLY LINE AND LINE EXTENDED 383.77 FEET THENCE NORTH 00°19'57" WEST 395.83 FEET TO THE POINT OF BEGINNING.

Exhibit C
Heber Gateway Plaza Subdivision Plat Depicting Private Roads

[ATTACHED]

