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Filed By: eCASH  
Jerry M. Houghton, Recorder  
Tooele County Corporation  
For: Cottonwood Title Insurance Agency, Inc.

**When Recorded Mail To:**  
Hix Snedeker Companies  
805 Trione Avenue  
Daphne, AL 36526

Parcel No. 15-037-0-0002

## **DECLARATION OF EASEMENTS AND RESTRICTIVE COVENANTS**

January 7, 2015

**ACCOMODATION RECORDING ONLY.  
COTTONWOOD TITLE INSURANCE AGENCY,  
INC. MAKES NO REPRESENTATION AS TO  
CONDITION OF TITLE, NOR DOES IT ASSUME  
ANY RESPONSIBILITY FOR VALIDITY,  
SUFFICIENCY OR EFFECTS OF DOCUMENT.**

STATE OF UTAH )  
 :  
COUNTY OF TOOELE )

**DECLARATION OF EASEMENTS AND RESTRICTIVE COVENANTS**

**THIS DECLARATION OF EASEMENTS AND RESTRICTIVE COVENANTS** (this "Declaration") is made effective as of the 7th day of January, 2015, by **HSC TOOELE, LLC**, an Alabama limited liability company (hereinafter the "Declarant").

**RECITALS:**

A. Declarant owns certain real property located in Tooele County, Utah, being more particularly described on Exhibit "A" attached hereto and incorporated herein by reference ("Property"). The Property consists of two platted lots described as "Lot 401" and "Lot 402" as identified in that certain Gateway Neighborhood PUD Phase 4 recorded December 17, 2014, in the County Recorder's Office, Tooele County, Utah, as Entry No. 407176 ("Plat"). Any reference herein to "Lot 401" or "Lot 402" shall hereinafter refer to the corresponding lot as identified on the Plat.

B. Declarant desires to establish for the benefit of Declarant, and its successors and assigns in ownership of all or any portion of the Property, certain restrictive covenants perpetual and continuous easements on the Property as more particularly described herein subject to the terms and conditions of this Declaration.

**DECLARATION:**

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, Declarant hereby declares as follows:

1. Easement. Declarant hereby declares, creates and establishes for the benefit of, and GRANTS and CONVEYS to Lot 401, and its respective successors and assigns in ownership of the Lot 401, and anyone claiming by, through, or under it, for the benefit of and appurtenant to Lot 401, the following:

(a) Sewer & Drainage Easement. A non-exclusive perpetual and continuous easement on, over, across, under and through the portion of Lot 402 described on Exhibit "B" attached hereto and incorporated herein by reference (hereinafter referred to as the "Easement Area") for installation, construction, maintenance, use, repair, replacement and removal of (i) sanitary sewer lines and systems, and (ii) storm

sewers, drainage lines and systems; together with the right to enter upon the surface or any portion of the Easement Area to implement the foregoing rights.

- (b) Maintenance and Repairs. Except as set forth in Paragraph 1(c) below, Declarant or its successors and assigns in ownership of the Lot 401 shall perform from time to time, all maintenance, repair and reconstruction of the Easement Area and shall (i) have the obligation to perform the maintenance, repair or reconstruction during the times and in such a manner as to minimize any interference with the operation and use of the Easement Area, (ii) not block access to the Property during times when business is conducted on the Property, (iii) not unreasonably allow any construction materials, equipment or debris to be placed on the Property (other than within the Easement Area as is necessary to accomplish such maintenance, repair or reconstruction), and (iv) restore the Easement Area to good condition, as set forth herein.
- (c) Damages. If Declarant or its successors and assigns in ownership of the Property, or any tenants, subtenants and licensees of all or any portion of Lot 401 or Lot 402, unilaterally damages any portion of the Easement Area, or if the Declarant or its successors and assigns in ownership of Lot 401 or Lot 402 perform, for its sole benefit, any maintenance, repair or reconstruction to any sanitary sewer, storm sewers or drainage lines or related facilities located within the Easement Area, said party shall (i) be solely responsible for all costs associated with the maintenance, repair or reconstruction performed, (ii) have the obligation to perform the maintenance, repair or reconstruction during the times and in such a manner as to minimize any interference with the operation and use of the Easement Area, (iii) use reasonable efforts to minimize construction dust and shall not allow any construction debris to be placed on the other lot, and (iv) restore the Easement Area to its original condition.
- (d) 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 impair, burden or interfere with the easement rights granted herein. No barricade or other divider will be constructed which would block any access over the Easement Area.

2. Restrictive Covenants Applicable to the Property. Declarant hereby creates, establishes and imposes the following restrictions on the ownership, use, and enjoyment of the Property:

- (a) No more than one (1) building shall be constructed or located on each of Lot 401 and Lot 402.
- (b) Any building on Lot 401 and Lot 402 shall not exceed thirty feet ("30") in height as measured from the mean finished elevation of such buildings, inclusive of any mechanical equipment, parapets, chimneys or other architectural features.
- (c) All rooftop mechanical equipment shall be properly screened.

- (d) All parking required for each Lot 401 and Lot 402 shall be contained within each respective lot. Nothing contained within this Declaration shall be construed to grant or convey any cross-access or cross-parking rights on or between Lot 401 and Lot 402.
- (e) During any initial construction of any part of Lot 401 and/or Lot 402, and during any subsequent maintenance, repair or replacement thereof:
  - (i) all construction shall be conducted expeditiously and in such a manner as to not adversely affect business operations conducted on or visibility of the other respective lot within the Property; and
  - (ii) all construction materials, equipment and parking shall be kept neat so as to not detract from business operations on the other respective lot within the Property.
- (f) Until such time as buildings and other improvements are constructed on Lot 401 and Lot 402, appropriate ground cover and erosion control shall be installed, including keeping the grass properly cut, free from weeds and trash, and otherwise neat and attractive in appearance and in a condition that will not detract from business operations of the other respective lot within the Property.

3. Restrictive Covenants Applicable to Lot 402 ONLY. So long as Tractor Supply Company ("TSC"), its subsidiaries, affiliates, successors and assigns, shall lease or own all or any portion of Lot 401 for use as a farm and ranch retail store, the owner of Lot 402, and its tenants and subtenants (the "Lot 402 Operators") shall not sell, lease, rent, occupy or allow any portion of Lot 402 to be occupied, for the purpose of selling or offering for sale those items which support a farm/ranch/rural/do-it-yourself lifestyle including: (a) tractor and equipment repair and maintenance supplies; (b) farm fencing; (c) livestock feeding systems; (d) feed and health/maintenance products for pets or livestock; (e) western wear, outdoor work wear (similar to and specifically including Carhartt products) and boots; (f) horse and rider tack and equipment; (g) bird feed and housing and related products; (h) lawn and garden equipment (including but not limited to, push/riding mowers, mow-n-vacs, garden carts, snow blowers, chippers and shredders, wheel barrows, and log splitters); (i) hardware; (j) power tools; (k) welders and welding supplies; (l) open and closed trailers; (m) 3-point equipment; and/or, (n) truck accessories and trailer accessories (including truck tool boxes, and trailer hitches and connections) (the "Restricted Products"). This restriction shall not prevent the Lot 402 Operators from selling Restricted Products as an incidental part of its other and principal business so long as the total number of square feet devoted by such Lot 402 Operators to the display for sale of Restricted Products does not exceed five percent (5%) of the total number of square feet of space used for merchandise display by such Lot 402 Operators (including one-half (1/2) of the aisle space adjacent to any display area).

4. Insurance and Indemnification.

- (a) The Declarant and its respective successors and assigns in ownership of all or any portion of the Property shall at all times carry and maintain, at their sole cost and

expense, commercial general liability insurance on an occurrence form, including contractual liability, personal and bodily injury, and property damage insurance, with a combined single limit in an amount of not less than \$1,000,000 per occurrence and an aggregate limit of not less than \$2,000,000. Declarant and its respective successors and assigns in ownership of all or any portion of the Property, shall name the other owner as additional insureds under such insurance policy and provide a certificate of insurance evidencing such coverage upon written request. Such insurance shall contain a clause stating that there shall be no reduction, cancellation, or non-renewal of coverage without giving the owner of the other respective lots 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 owners of Lot 401 and Lot 402, and shall contain a severability of interest clause. The obligations herein shall also apply to any tenants, subtenants and licensees of Lot 401 and 402. So long as TSC, its subsidiaries, affiliates, successors and assigns, shall lease or own all or any portion of Lot 401, the owner of Lot 402 shall name TSC as an additional insured to the insurance policies required herein and comply with and provide all information to TSC required in this Paragraph 4(a) to the same extent such compliance is afforded to the owner of Lot 401 hereunder.

- (b) Declarant and its respective successors and assigns in ownership of all or any portion of the Property shall each defend, indemnify and save harmless the other and each of their respective directors, officers, partners, employees, representatives, agents, tenant and assignees from all claims, costs, damages, judgments, expenses, fines, liabilities and losses (including reasonable attorneys' fees, paralegal fees, expert witness fees, consultant fees, and other costs of defense) arising from or as a result of (i) any injury, including death, loss or damage of any kind whatsoever to any person or entity or to the property of any person or entity as shall occur relative to the rights or obligations granted hereunder that is caused by the acts or omissions of the indemnifying party, its agents, employees, tenants or contractors, or (ii) the indemnifying party's failure to perform its obligations under this Declaration. 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. The obligations of this Paragraph 4(b) shall survive the termination of this Declaration.

5. Remedies. In the event that any owner of all or any portion of the Property shall fail to perform its obligations under this Declaration or otherwise breach the terms of this Declaration, any non-defaulting owner of all or any portion of the Property may notify the defaulting party of the breach and may demand such defaulting owner cure or terminate the breach. If such failure or breach is not cured within fifteen (15) days after receipt of such notice, then such non-defaulting party shall have the right to cure the failure or breach, and recover all actual and reasonable costs and expenses related thereto from the defaulting party. Notwithstanding the foregoing, in the event that the failure or breach creates an imminent danger

of damage to persons or properties, or jeopardizes the access to any portion of the Property, no notice shall be required prior to the non-defaulting party commencing such work or commencing a cure. Any monetary amounts due and payable to the non-defaulting party pursuant to this Declaration shall be paid within ten (10) days from the date the defaulting party is notified of the amounts due. It is expressly agreed that no breach of this Declaration shall entitle any party hereto to cancel, rescind or otherwise terminate this Declaration. Such limitation, however, shall not affect in any manner any other rights or remedies which such party may have hereunder by reason of such breach. For so long as TSC leases or owns all or any portion of Lot 401, TSC may enforce the terms of this Agreement against the responsible party or cure any default under the terms of this Agreement against the responsible party.

6. Miscellaneous.

- (a) Declaration. The Property shall be held, sold and conveyed together with and subject to the terms and conditions of this Declaration.
- (b) Constructive Notice and Acceptance. Every person or legal entity who or which will hereafter own or acquire any right, title, interest or estate in or to any portion of the Property, whether or not such interest is reflected upon the public records of Tooele, Utah, will be conclusively deemed to have consented and agreed to each and every term and condition contained herein, whether or not any reference to this Declaration is contained in the document or instrument pursuant to which such person or legal entity will have acquired such right, title, interest or estate in the Property or any portion thereof.
- (c) Effect of Invalidation. If any particular provision of this Declaration is held to be invalid by any court, the validity of such provision will not affect the validity of the remaining provisions hereof.
- (d) Applicable Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Utah.
- (e) No Public Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any property affected hereby, or any portion thereof, to or for the general public or for any public use or purpose whatsoever, it being the intention of the Declarant that this Declaration shall be strictly limited to and for the purposes herein expressed, solely for the benefit of the Declarant. Nothing contained in this Declaration, expressed or implied, shall confer upon any person, other than the Declarant any rights or remedies under or by reason of this Declaration.
- (f) Merger. In the event any party shall now or hereafter own, acquire or otherwise take title to all of the Property, this Declaration shall survive and shall not be terminated or defeated by any doctrine of merger.
- (g) Declarant. All references to Declarant herein shall include Declarant's successors and assigns in ownership of all or any portion of the Property.

- (h) Covenants Running with the Land. The restrictive covenants, and the agreements made herein, shall constitute covenants running with the land.
- (i) Modification. This Declaration and any provision herein contained may be terminated, extended, modified or amended only upon a written agreement between the owner(s) of the Property and TSC, for so long as TSC holds a leasehold interest in Lot 401.

TO HAVE AND TO HOLD unto the Declarant, forever.

[EXECUTION AND ACKNOWLEDGMENT BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed as of the date first set forth above.

HSC TOOELE, LLC,  
an Alabama limited liability company

By: [Signature]  
Its: Member

STATE OF ALABAMA )  
 )SS.  
County of BALDWIN )

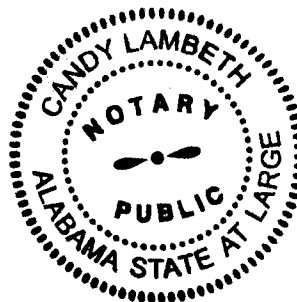
On January 7, 2015, before me, the undersigned Notary Public, personally appeared Haynes S. Snedeker, an Authorized Member of HSC TOOELE, LLC, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

My Commission Expires:  
June 11, 2016

[Signature]  
Notary Public

This instrument was prepared by:  
J. Ladd Davis, Esq.  
Rushton, Stakely, Johnston & Garrett, P.A.  
Post Office Box 270  
Montgomery, Alabama 36101-0270  
(334) 206-3100  
RSJ&G File No. 7681-95





**Exhibit "A"**  
**(Property)**

Lot 401 and Lot 402 as identified in that certain Gateway Neighborhood PUD Phase 4 recorded December 17, 2014, in the County Recorder's Office, Tooele County, Utah, as Entry No. 407176.

**Exhibit "B"**  
**(Easement Area)**

A PARCEL OF LAND SITUATED IN THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 2 SOUTH, RANGE 4 WEST, SALT LAKE BASE AND MERIDIAN, LOCATED IN STANSBURY PARK, COUNTY OF TOOELE, STATE OF UTAH; SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT WHICH LIES NORTH 89°57'10" EAST ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 2 SOUTH, RANGE 4 WEST, SALT LAKE BASE AND MERIDIAN, A DISTANCE OF 1,016.68 FEET, AND NORTH 00°02'50" WEST, A DISTANCE OF 415.63 FEET TO THE POINT OF BEGINNING FROM THE SOUTHWEST CORNER OF SAID SECTION 10, SAID POINT BEING ON THE EASTERLY RIGHT-OF-WAY LINE OF UDOT HAUL ROAD; AND RUNNING THENCE NORTH 50°24'45" EAST, A DISTANCE OF 50.00 FEET; THENCE NORTH 38°34'08" WEST, A DISTANCE OF 50.00 FEET; THENCE SOUTH 50°24'45" WEST, A DISTANCE OF 50.00 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF UDOT HAUL ROAD; THENCE ALONG SAID RIGHT OF WAY SOUTH 38°34'08" EAST, A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING.

CONTAINS: 2,500 SQ FT. OR 0.06 ACRE