



W2972735

When Recorded Return To:
Ogden Commons, LLC
1178 W. Legacy Crossing Blvd., Suite 100
Centerville, UT 84014
61459-41404

E# 2972735 PG 1 OF 9
Leann H. Kilts, WEBER COUNTY RECORDER
02-Apr-19 11:22 AM FEE \$27.00 DEP TN
REC FOR: STEWART TITLE INSURANCE AGENCY OF
ELECTRONICALLY RECORDED

**MUTUAL ACCESS, MAINTENANCE AND EASEMENT AGREEMENT,
WITH USE RESTRICTION**

12-274-0001 and
12-274-0002

This Mutual Access, Maintenance and Easement Agreement (the "Agreement") is executed as of the 28th day of March 2019, by Ogden Commons, LLC, a Utah limited liability company (the "Developer"), whose address is 1178 W. Legacy Crossing Blvd., Suite 110, Centerville, Utah 84014 and TNSI, LLC, a California limited liability company ("TNSI"), whose address is 20350 Stevens Creek Blvd., #308, Cupertino, CA 95014.

A. Developer is the fee owner of that certain real property located in Ogden, Weber County, Utah, being more particularly described on Exhibit A attached hereto and incorporated herein by this reference for all purposes (the "Developer Tract").

B. TNSI is the owner of that certain tract of land which abuts the Developer Tract and is described on Exhibit B attached hereto and incorporated herein by this reference for all purposes (the "TNSI Tract").

C. The parties desire to establish easements and restrictions upon, over and across portions of their respective properties.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree and declare as follows:

1. Shopping Center Restrictions and Easements. Developer and TNSI acknowledge: (a) the Declaration of Easements and Conditions, recorded as entry number 2436058 in the Office of the Weber County Recorder, as amended by that First Amendment recorded as entry number 2476752 in the Office of the Weber County, as amended by that Second Amendment recorded as entry number 2800341 in the Office of the Weber County and as amended by that Third Amendment recorded as entry number 2842912 in the Office of the Weber County (collectively, the "Shopping Center REA"); and (b) the Subdivision Plat, recorded as entry number 2973414 in the Office of the Weber County Recorder, as amended (the "Shopping Center Plat", together with the Shopping Center REA, the "Shopping Center Documents") and agree the Shopping Center REA and Shopping Center Plat burden and benefit the Developer Tract and the TNSI Tract, as applicable. In the event of any conflicts between the Shopping Center Documents and this Agreement, the Shopping Center Documents shall control.

2. Use Restriction; Exclusive Use. In addition to the restrictions on use set forth in the Shopping Center Documents, TNSI agrees: (i) the TNSI Tract may be used for any lawful purpose not restricted by the Shopping Center Documents and/or not conflicting with the then current exclusive uses granted to any Tenant or owner within the Shopping Center. In furtherance of the foregoing, prior to changing the use of the TNSI Tract from its use as of the effective date of this Agreement, and any subsequent changes thereafter, the owner of the TNSI Tract must provide written notice to the owner of the Developer Tract, from time to time, as applicable, indicating the proposed new use of the TNSI Tract. The owner of the Developer Tract shall, within ten (10) business days of receipt of any such notice, confirm the proposed use does not conflict with the then current exclusive uses granted to any Tenant or owner within the Shopping Center. If the proposed use does conflict, the owner of the Developer Tract

shall provide written notice of the conflict to the owner of the TNSI Tract within such ten (10) business day period and the proposed use shall not be permitted without a written waiver from the person or entity holding such exclusive right. The owner of the Developer Tract may enforce this restriction against the owner of the TNSI Tract, and/or the offending user, as applicable.

3. Exclusive Use. The owner of the Developer Tract agrees, so long as the TNSI Tract is being used as a Ross Dress for Less and/or a Petco, the owner of the Developer Tract will not permit any portion of the Developer Tract to be used in a way that would violate the exclusive use clauses of Ross Dress for Less and/or Petco under the terms of their respective leases as of the date of this Agreement. The owner of the TNSI Tract may enforce this restriction against the owner of the Developer Tract, and/or the offending user, as applicable.

4. Easements.

a. Subject to the terms of this Agreement, Developer hereby grants to TNSI, its successors and assigns a non-exclusive, perpetual easement for the limited purposes of vehicular and pedestrian ingress and egress to and from the TNSI Tract over, upon, and across those certain portions of the Developer Tract that are specifically constructed, improved and utilized as sidewalks, access drives, drive aisles or other similar improvements. The foregoing easement is for the benefit of and shall be appurtenant to the TNSI Tract.

b. Subject to the terms of this Agreement, TNSI hereby grants to Developer, and their respective successors and assigns a non-exclusive, perpetual easement for the limited purposes of vehicular and pedestrian ingress and egress to and from the Developer Tract over, upon, and across those certain portions of the TNSI Tract that are specifically constructed, improved and utilized as sidewalks, access drives, drive aisles or other similar improvements. The foregoing easement is for the benefit of and shall be appurtenant to the Developer Tract.

5. Development and Maintenance of Drive Aisles; Common Areas.

a. Pursuant to the Shopping Center Documents, Developer and/or WinCo shall maintain the Shopping Center drive aisles and common areas. In consideration of Developer's maintenance of the Shopping Center drive aisles and all other common areas within the Shopping Center, TNSI shall pay Developer its pro-rata share of the costs of common area maintenance per month payable on the 10th day of each month. The calculation and reconciliation of common area costs and TNSI's prorata share shall be based on the prorata calculations set forth in the Ross Dress for Less and Petco Leases in effect as of the date of this Agreement.

b. Any damage (whether by specific incident or passage of time) to the common areas within the TNSI Tract and/or the Developer Tract abutting the TNSI Tract requiring repair or replacement shall be repaired or replaced by Developer to the quality and condition that existed prior to such damage. TNSI agrees to pay for its proportionate share of replacements made to the adjacent roadways that are partially owned by TNSI. In consideration of Developer's repair and replacement of the common areas, TNSI shall reimburse Developer its pro rata share of the costs of such repair and/or replacement. TNSI's pro rata share shall be its ownership percent of the road that is immediate and adjacent to the TNSI property (e.g. whatever percent of the road surface area that is on the property owned by TNSI).

6. Remedy for Non-Performance. Any amounts which become owing under this Agreement to any party which are not paid when due shall bear interest at the rate of stated below from the date due until paid. In the event either party fails to perform any non-monetary covenant or condition contained in

the Agreement within the time periods allotted in this Agreement, or if absent a time period such party fails to commence to perform any covenant or condition contained in this Agreement within ten (10) business days following receipt of written notice from the other party and thereafter proceed diligently to complete and cure such failure, the other party may, but shall not be required to enter the non-performing party's property and perform the construction, maintenance and/or repair work abovementioned and receive reimbursement therefor. In such event, within ten (10) business days following written notice of same, the non-performing party shall reimburse the other party all reasonable costs and expenses incurred by such other party, as evidenced by paid invoice, in connection with effectuating such cure, plus all interest which shall accrue against such unpaid amount(s) at the rate of interest equal to the prime rate of interest then announced in the Wall Street Journal plus 4% or the highest rate permitted by applicable law, whichever is less, running from the end of the aforesaid ten (10) day period until paid in full. The non-performing party hereby grants to the other party a non-exclusive right of entry and non-exclusive easement and cross, over and under all parts of the non-performing party's tract for all purposes reasonably necessary to enable the performing party (acting directly or through contractors, agents or subcontractors) to perform the terms, provisions or conditions of this Agreement which the non-performing party fails or failed to perform, after notice and time to cure, as aforesaid, but no notice and time to cure need be given in the event of an emergency.

7. Indemnification. Any property owner exercising its rights under this Agreement (the "Indemnifying Owner") agrees to indemnify, defend and hold harmless the other property owner (the "Indemnified Owner") from and against any and all costs, losses, suits, actions, expenses, liabilities, judgments, liens, damages, or claims, including but not limited to reasonable attorneys' fees and cost (collectively "Loss") arising out of the Indemnifying Owner's negligence, breach, or willful misconduct in carrying out or directing such activity, except to the extent caused by the negligence, breach, or willful misconduct of such Indemnified Owner. Notwithstanding the forgoing, TNSI shall not be obligated to indemnify, defend or hold Developer harmless for Loss resulting from a default of this Agreement by Developer and Developer shall not be obligated to indemnify, defend or hold TNSI harmless for Loss resulting from a default of this Agreement by TNSI.

8. Subject to Matters of Record. The easement grants contained herein are expressly subject and subordinate to all outstanding easements, conveyances, liens and other matters of record in the real property records for Weber County, Utah.

9. Running With Land. The easements and the restriction created herein and the covenants, rights, privileges, benefits, duties, obligations and liabilities created hereunder shall run with the land, shall burden the Developer Tract and the TNSI Tract and shall be binding upon Developer and TNSI, their heirs, legal representatives, successors and assigns. This Agreement and the easements, covenants, rights, privileges, benefits, duties, obligations and liabilities created hereunder are subject to all matters currently of record in the county in which the TNSI Tract and the Developer Tract are located.

10. Transfers of Ownership. If, during the existence of this Agreement, Developer or TNSI sells or transfers its ownership of the Developer Tract or the TNSI Tract or any part thereof, then from and after the effective date of such sale or transfer, that party shall be released and discharged from any and all obligations, responsibilities and liabilities under this Agreement and accruing thereafter, insofar as they relate to the parcel so conveyed, and any such transferee, by the acceptance of the transfer of such interest, shall thereupon become subject to the covenants contained herein, insofar as they relate to the parcel so conveyed to the same extent as if such transferee were originally a party hereto. The provisions of this Agreement, insofar as they affect the subsequent owners of the Developer Tract or the TNSI Tract or any portion thereof, may be enforced by the subsequent owner of any portion of the Developer Tract or the TNSI Tract only to the extent the easements granted hereby affect such tract so acquired by each such subsequent owner.

11. No Parking Easements. Nothing contained herein shall be construed to grant any parking easements, privileges or rights.

12. No Dedication to the Public. The easements created herein are solely for benefit of the owners of the TNSI Tract and the Developer Tract, are private and are not intended to grant any rights to the public. Each party agrees that nothing herein shall be construed as giving it any interest in any award or payment made to the other in connection with any exercise of eminent domain or transfer in lieu thereof affecting the other's property.

13. Taxes. Any and all taxes imposed either upon the value of real property or upon any right, privilege or other incident of ownership related to the Developer Tract and the TNSI Tract shall be paid by the legal or equitable owner thereof according to the requirements of law.

14. Amendment. This Agreement and the rights, privileges and benefits arising hereunder or pursuant hereto may be released, terminated, modified, amended or waived only with the written consent of the owner of the TNSI Tract and the owner of the Developer Tract.

15. Severability. If any clause or provision of this Agreement is held to be illegal, invalid or unenforceable under any law applicable to the terms hereof, then the remainder of this Agreement shall not be affected thereby, and in lieu of each such clause or provision of this Agreement that is illegal, invalid or unenforceable, such clause or provision shall be judicially construed and interpreted to be as similar in substance and content to such illegal, invalid or unenforceable clause or provision, as the context thereof would reasonably suggest, so as to thereafter be legal, valid and enforceable.

16. Choice of Law. This Agreement shall be construed in accordance with the laws of the State of Utah, without regards to conflicts of laws principles.

17. No Partnership or Joint Venture. Nothing in this Agreement shall be construed to make the owner of the TNSI Tract and the owner of the Developer Tract partners or joint venturers or render any of such persons or entity liable for the debts and obligations of any other such persons or entity.

18. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original to the same effect as if all parties had executed the same instrument.

19. Multiple Tracts.

a. The Developer Tract contains or may in the future contain more than one tract of land. The easements and rights granted to Developer shall inure to the benefit of and shall be appurtenant to each tract of land comprising the Developer Tract, including, without limitation, any tract created from the further subdivision of the tracts currently comprising the Developer Tract. The owner of any such tract, regardless of whether it owns any other portion of the land comprising the Developer Tract, shall be entitled to exercise and benefit from the easements, covenants, rights, privileges, benefits, duties, obligations and liabilities created hereunder.

b. The TNSI Tract contains or may in the future contain more than one tract of land. The easements and rights granted to TNSI shall inure to the benefit of and shall be appurtenant to each tract of land comprising the TNSI Tract, including, without limitation, any tract created from the further subdivision of the tracts currently comprising the TNSI Tract. The owner of any such tract, regardless of whether it owns any other portion of the land comprising the TNSI Tract, shall be entitled to exercise and benefit from the easements, covenants, rights, privileges, benefits, duties, obligations and liabilities

created hereunder.

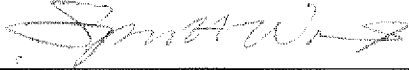
20. Waiver. The failure of either Developer or TNSI to exercise any right given hereunder shall not constitute a waiver of either party's right to exercise such right.

21. Notices. All notices or other communications made pursuant hereto shall be in writing and shall be deemed properly delivered, given or served when (a) personally delivered against receipted copy; (b) mailed by certified or registered mail, return receipt requested, postage prepaid; or (c) sent by recognized overnight express delivery service; to the parties at the addresses set forth in the introductory paragraph. Either party may change its address, and addresses for successors and assigns may be added, for the purposes of this Section by giving five (5) days prior written notice of such change to all other party in the manner provided in this Section.

[SIGNATURES TO FOLLOW]

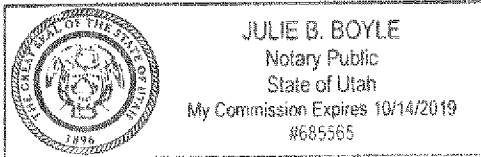
EXECUTED as of date set forth above.

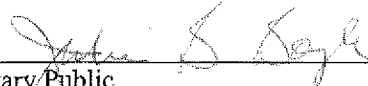
OGDEN COMMONS, LLC,
a Utah limited liability company

By: 
Name: Spencer H. Wright
Title: Manager

State of Utah
County of Weber

On this 1st day of ^{April} March 2019, personally appeared before me, the undersigned Notary Public, personally appeared Spencer H. Wright, Manager of Ogden Commons, LLC, a Utah limited liability company, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged before me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by 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.




Notary Public
My commission expires: 10-14-2019

[SIGNATURES ON FOLLOWING PAGE]

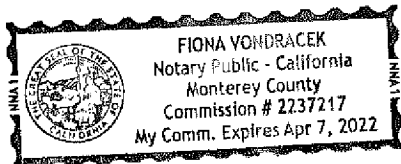
TNSI:

TNSI, LLC,
a California limited liability company

By: TONG KIM Kim
Name: TONG Kim
Title: manager

State of California
County of Monterey

On this 28 day of March 2019, personally appeared before me, the undersigned Notary Public, personally appeared TongPyong Kim, Manager of TNSI, LLC, a California limited liability company, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged before me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by 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.



Fiona Vondracek
Notary Public

My commission expires: 04/07/2022

EXHIBIT "A"
LEGAL DESCRIPTION

File No.: 01459-41404

Lot 2, THE COMMONS AT OGDEN - SECOND AMENDMENT, according to the Official Plat thereof as recorded in the Office of the Weber County Recorder, State of Utah.

Tax ID Number: 12-274-0002

EXHIBIT "8"
LEGAL DESCRIPTION

File No.: 01459-41404

Lot 1, THE COMMONS AT OGDEN - SECOND AMENDMENT, according to the Official Plat thereof as recorded in the Office of the Weber County Recorder, State of Utah.

Tax ID Number: 12-274-0001