

STATE OF UTAH)
:)
COUNTY OF BOX ELDER)

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS (this "Declaration") is made effective as of the 6th day of June, 2014, by **HSC PERRY CITY, LLC**, an Alabama limited liability company (hereinafter the "Declarant").

RECITALS:

A. Declarant owns certain real property located in Perry City, Box Elder 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 1" and "Lot 2" as identified in that certain Plat of Pointe Perry Subdivision Phase 4 recorded June 9, 2014, in the Recorder Office, Box Elder County, Utah, in Entry 336759, Book 1231, page 746 ("Plat"), and attached hereto as Exhibit "B". Any reference herein to "Lot 1" or "Lot 2" shall hereinafter refer to the corresponding lot as identified on the Plat.

B. Declarant desires to establish for the benefit of Declarant certain restrictive covenants 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. **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 1 and Lot 2.
- (b) Any building on Lot 1 and Lot 2 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 1 and Lot 2 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 1 and Lot 2.
- (e) During any initial construction of any part of Lot 1 and/or Lot 2, 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 1 and Lot 2, 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.

2. **Restrictive Covenants Applicable to Lot 1 ONLY.** So long as Tractor Supply Company (“TSC”), its subsidiaries, affiliates, successors and assigns, shall lease or own all or any portion of Lot 2 for use as a farm and ranch retail store, the owner of Lot 1, and its tenants and subtenants (the “Lot 1 Operators”) shall not sell, lease, rent, occupy or allow any portion of Lot 1 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 1 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 1 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 1 Operators (including one-half (1/2) of the aisle space adjacent to any display area).

3. **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.

4. 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 Box Elder County, 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.

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 PERRY CITY, LLC,
an Alabama limited liability company

By: Hay S. Snell

Its: Meather

STATE OF ALABAMA)
)
County of BALDWIN)
)

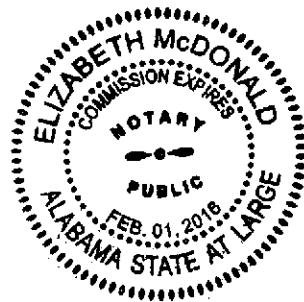
On June 5, 2014, before me, the undersigned Notary Public, personally appeared Haymess Snell, an Authorized Member of **HSC PERRY CITY, LLC**, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and 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:

3/1/16

Elizabeth McDonald
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 1 and Lot 2 as identified in that certain Plat of Pointe Perry Subdivision Phase 4 recorded Jun. 9, 2014, in the Recorder Office, Box Elder County, Utah, in Entry No. 336859, Book 123, page 1496

**Exhibit "B"
(Plat)**

[see attached]

