

WHEN RECORDED RETURN TO:  
Snell & Wilmer L.L.P.  
Attention: Wade Budge  
15 West South Temple, Suite 1200  
Salt Lake City, UT 84101

13319909  
07/06/2020 01:34 PM \$40.00  
Book - 10974 Pg - 280-287  
RASHELLE HOBBS  
RECORDER, SALT LAKE COUNTY, UTAH  
GREGG FLINT  
351 W OPPORTUNITY WY  
DRAPER UT 84020  
BY: DSA, DEPUTY - WI 8 P.

Affecting Parcel ID Nos.: See Exhibit A

**DECLARATION OF RECIPROCAL EASEMENTS**

**THIS DECLARATION OF RECIPROCAL EASEMENTS (“Declaration”)** is made as of July 6, 2020 (“Effective Date”) by **JORDAN COMMONS FUNDING, L.L.C.**, a Utah limited liability company (“Declarant”).

RECITALS

A. Declarant is the owner of “Lot 1” and “Lot 2”, each of which is more particularly described on the attached Exhibit A.

B. The Lots [defined below] were subdivided pursuant to that certain LHM Jordan Commons Sandy Subdivision plat, recorded July 6<sup>th</sup> 2020, as Entry No. 13319905 in the official records of the Salt Lake County Recorder (the “Plat”).

C. Declarant executes this Declaration in order to establish for the benefit of the Lots reciprocal easements, over and through certain areas of the Lots, and certain other matters as more particularly described below.

DECLARATION

NOW, THEREFORE, in consideration of the foregoing premises, Declarant declares as follows:

1. **Definitions.** In addition to the defined terms contained elsewhere in this Declaration, as used in this Declaration, the following defined terms shall have the meaning indicated for each:

- (a) **Building Area** means an area identified on the Plat as “Existing Building”.
- (b) **Lot or Lots** means, individually or collectively, as the context requires, Lot 1 or Lot 2.
- (c) **Lot 1 Parking Facilities** means the commercial parking structure and parking facilities located and constructed, as of the Effective Date and from time to time, on Lot 1.
- (d) **Lot 2 Common Area** means those areas on Lot 2 that are not a Building Area.
- (e) **Owner or Owners** means, individually or collectively, as the context requires, the owner of fee title to all or any portion of the Lots; provided, however, in the event fee title is

held by a person or entity for security purposes only, the Owner of such property shall be the person or entity then entitled to the economic benefits of ownership of such property.

(f) **Permittees** means the respective Owner's successors and assigns, tenants, subtenants, and licensees to all or a portion of a Lot, and its and their respective agents, invitees, customers, employees, and contractors.

(g) **Project** means the Jordan Commons entertainment, restaurant, and office project that Declarant, or its predecessors, have developed and constructed on the Lots.

(h) **Project Accessways** means the private drives, roadways, driveways, walkways, and accessways located and constructed, as of the Effective Date and from time to time, on the Lots.

## 2. **Declaration of Easements.**

(a) **Reciprocal Access Easement.** Declarant declares and grants for the benefit of and appurtenant to each of the Lots a perpetual, non-exclusive, and continuous easement and right-of-way (the "**Reciprocal Access Easement**"), in common with all Lots, over, upon, and across the Project Accessways located within the Project from time to time. The purposes of the Reciprocal Access Easement are limited to (i) vehicular and pedestrian ingress and egress to and from the Lots and the public streets or private roadways adjoining the Project Accessways; and (ii) pedestrian and vehicular access over, upon, and across the Project Accessways;

(b) **Lot 2 Easement.** Declarant declares and grants for the benefit of and appurtenant to Lot 1 a perpetual, non-exclusive, and continuous easement (the "**Lot 2 Easement**"), over, upon, under, and across the Lot 2 Common Area. The purposes of the Lot 2 Easement are limited to inspection, maintenance, repair, replacement, removal, construction and installation of Project Accessways, parking areas, landscaping, utilities and related improvements and facilities necessary to conduct the Common Area Work [defined below] or otherwise serving the Project, together with vehicular and pedestrian access as reasonably necessary to implement the foregoing rights.

(c) **Parking Easement.** Declarant declares and grants for the benefit of and appurtenant to Lot 2 a perpetual non-exclusive access and parking easement over, upon, and across the Lot 1 Parking Facilities (the "**Parking Easement**"). The purposes of the Parking Easement are limited to (i) vehicular and pedestrian ingress and egress to and from Lot 2 and the Lot 1 Parking Facilities, and (ii) vehicle parking in up to **One Thousand Two Hundred Four (1,204)** unreserved parking stalls within the Lot 1 Parking Facilities. The covenants, use restrictions, and requirements of the Parking Easement are set forth in Section below.

3. **Parking Covenants.** By accepting title to Lot 2 or any portion thereof, Lot 2 Owner covenants to Lot 1 Owner that Lot 2 Owner will not (i) permit or suffer the use of the Lot 1 Parking Facilities for any business or purpose other than short-term (under 24 hours) parking of automobiles, (ii) do or permit anything to be done in or about the Lot 1 Parking Facilities, nor bring or keep anything therein, that will in any way increase the existing rate of, or affect any, fire or other insurance thereon or cause a cancellation of any insurance policy covering the Lot 1 Parking Facilities, (iii) cause, maintain, suffer or permit any nuisance in, on, or about the Lot 1 Parking Facilities, (iv) commit or allow to be committed any waste in or upon the Lot 1 Parking Facilities, or (v) do or permit anything to be done in or about the Lot 1 Parking Facilities, nor bring or keep anything thereon, that is or will constitute or create a hazardous waste substance or violate any environmental law. Each Owner shall promptly advise the other

Owner in writing of any environmental concern related to use and occupancy of the Lot 1 Parking Facilities brought to such Owner's attention by any private party or governmental agency. Lot 1 Owner shall have the right to remedy any environmental problem and to conduct any environmental tests reasonably necessary to discover a hazardous waste or other environmental problem and Lot 2 Owner shall indemnify and hold Lot 1 Owner harmless from any and all damages related to Lot 2 Owner's or its Permittees' introduction or creation of an environmental problem or hazardous waste to the Lot 1 Parking Facilities. Lot 1 Owner shall have the right, but not the obligation, to institute a parking management program for the Lot 1 Parking Facilities and, if Lot 1 Owner does so, Lot 2 Owner shall comply with such parking management program, including, without limitation, by causing Lot 2 Owner's Permittees to park in specific area(s) of the Lot 1 Parking Facilities designated by Lot 1 Owner in the parking management program.

4. **Common Area Work.** Lot 1 Owner shall have the right, but not the obligation, to perform or cause to be performed Common Area Work [defined below] on the Lot 2 Common Area. Lot 1 Owner may charge to Lot 2 Owner, and Lot 2 Owner shall pay, on an annual basis (or other regular basis as may be agreed in writing by the Owners), fifty-five percent (55%) (or such other percentage representing Lot 2 Owner's proportionate share as the Owners may agree in writing) of the costs incurred by Lot 1 Owner to perform the Common Area Work for the Project. The Common Area Work may include without limitation, the following (collectively, "**Common Area Work**"):

- (a) Maintaining, repairing, resurfacing, and re-striping the Project Accessways, Lot 1 Parking Facilities and other paved surfaces and parking areas on the Lots;
- (b) Removing snow, ice, and debris, and sweeping to the extent reasonably necessary to keep the Project in a clean and orderly condition;
- (c) Maintaining, repairing, and replacing traffic directional signs, markers, and lines;
- (d) Operating, maintaining, repairing, and replacing lighting facilities (excluding any lighting fixtures attached to any building in a Building Area);
- (e) Maintaining and watering landscaped areas; maintaining, repairing and replacing sprinkler systems and water lines; and replacing shrubs and other landscaping as necessary;
- (f) Maintaining, repairing, and replacing storm drains, drainage facilities, sewers, and other utility lines and facilities not dedicated to the public or conveyed to any public or private utility, which are necessary for the operation of the buildings and improvements in the Project; and
- (g) Inspection and monitoring activities to ensure public safety on the Project.

Upon thirty (30) days' written notice to Lot 1 Owner, Lot 2 Owner, at its cost, may inspect the books and records of Lot 1 Owner with respect to costs of Common Area Work passed through to Lot 2 Owner. If an inspection indicates an overpayment by Lot 2 Owner, then Lot 2 Owner shall be entitled to receive, at Lot 1 Owner's discretion, either a refund from Lot 1 Owner or a credit for such overpayment against future payments due hereunder.

5. **Maintenance Generally; Compliance with Laws and Matters of Record.**

- (a) Except for the maintenance, repair, and replacement obligations expressly set forth in this Declaration, each Owner shall be responsible for the procurement, construction,

maintenance, repair, and replacement of the buildings, improvements, and facilities, within such Owner's respective Lot.

(b) All of the easement rights granted under this Declaration are subject to all easements, restrictions, conditions, reservations and rights of way of record as of the Effective Date, if any. The Owners and their respective Permittees will conform to and will not violate the terms of any covenants, conditions or restrictions of record, which may now or hereafter encumber the Lots. Each of the Owners of the Lots shall, at its sole cost and expense, promptly comply with all local, state or federal laws, statutes, ordinances and governmental rules, regulations, or requirements now in force or which may hereafter be in force with respect to the use of the Project Accessways and the Lot 1 Parking Facilities.

6. **No Interference.** No Owner or its Permittees shall interfere with the other Owner's and its Permittees' use of the easements granted in this Declaration.

7. **Insurance.** Each Owner shall carry and maintain commercial general liability insurance insuring against claims for personal injury, bodily injury or death, and property damage or destruction, with respect to its respective Lot, including without limitation the Lot 1 Parking Facilities, the Lot 2 Common Areas, and the Project Accessways (as applicable), and the effect of this Declaration. 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 \$2,000,000 for personal injury or bodily injury or death in the aggregate. The insurance policy required under this Section shall insure the performance of such Owner's 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 Declarant, so long as Declarant retains rights or obligations under this Declaration, and each Owner as an additional insured. Within thirty (30) days after written request, each Owner shall provide each other Owner with a certificate of insurance indicating all insurance coverage required by the provisions herein. Such insurance policy shall contain a clause stating that there shall be no reduction, modification, cancellation, or non-renewal of coverage without giving the Owners, and Declarant (so long as Declarant retains rights or obligations under this Declaration), 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 other Owners or Declarant, and shall contain a severability of interest clause.

8. **Indemnification.** Each Owner shall indemnify, defend, and hold harmless the other Owner(s) burdened by an easement identified herein and their affiliates, members, managers, agents, tenants, and representatives for, from, and against all claims, damages, expenses (including, without limitation, reasonable attorney 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 Owner or its Permittees, the indemnifying Owner's or its Permittees' default in any of the obligations set forth in this Declaration, the indemnifying Owner's or its Permittees' use of the Project Accessways, the Lot 2 Common Area, or the Lot 1 Parking Facilities, except to the extent such claims are due solely to the gross negligence or willful act or omission of another Owner or its Permittees.

9. **Taxes and Assessments.** Each Owner shall at all times be solely responsible for the property taxes and assessments levied against its Lot and shall not suffer or permit such taxes and assessments to become delinquent.

10. **Default; Remedies.** If any Owner ("Defaulting Owner") fails to perform its obligations under this Declaration, such failure shall constitute a default and legal action may thereafter be instituted

against the Defaulting Owner for any remedy available under this Declaration or applicable law, including, without limitation, specific performance, injunction, or other equitable remedy of the rights and the obligations hereunder. In the event that any Defaulting Owner shall fail to perform its non-monetary obligations under this Declaration or otherwise breach the terms of this Declaration, any non-defaulting Owner may notify the Defaulting Owner in writing and shall specify the breach. If such failure or breach is non-monetary, material, and is not cured within thirty (30) days after receipt of such notice, then such non-defaulting Owner shall have the right to cure the failure or breach, and recover all reasonable costs and expenses actually incurred related thereto from the Defaulting Owner. Notwithstanding the foregoing, in the event that the failure or breach creates an imminent danger or damage to persons or properties, or jeopardizes the access to any portion of the Lots, no notice shall be required prior to the non-defaulting Owner commencing such work to effect a cure. It is expressly agreed that no breach of this Declaration shall entitle any Owner to cancel, rescind, or otherwise terminate this Declaration. Such limitation, however, shall not affect in any manner any other rights or remedies that an Owner may have hereunder by reason of such breach.

11. **Running of Benefits and Burdens; Assignment of Declarant's Rights or Obligations.** All provisions of this Declaration, including the burdens stated and implied, touch, concern, and run with the Lots and are a benefit to the Lots, and are binding upon and inure to the benefit of the successors and assigns of Declarant and the Owners. Notwithstanding the foregoing sentence, the rights and obligations reserved to Declarant under this Declaration are reserved to Declarant and its assigns exclusively, and shall not run with the land. Declarant may assign all or a portion of such rights or obligations to an Owner or a third party, in the form of a document recorded with the Salt Lake County Recorder's Office and referencing this Declaration and the rights or obligations assigned (an "Assignment"). Upon the recordation of an Assignment, Declarant shall be fully released and have no further rights or obligations under this Declaration with respect to those matters addressed by the Assignment. Declarant need not be a fee owner of any portion of the Lots in order to remain the Declarant under this Declaration.

12. **No Public Dedication.** The provisions of this Declaration do not constitute a dedication for public use of any portion of the easements created hereby.

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

14. **Amendment.** Notwithstanding anything to the contrary contained in this Declaration, including this Section, Declarant may amend this Declaration for any purpose whatsoever, and without the consent or approval of any Owners, regardless of whether any such amendment is uniform in nature. Subject to the immediately preceding sentence, no modification, waiver, or amendment of this Declaration shall be made except by written agreement (i) signed and acknowledged by the Owners and recorded in the office of the Recorder of Salt Lake County, Utah, and (ii) consented to by Declarant prior to such recording, so long as Declarant retains rights or obligations under this Declaration. For purposes of consent to the modification, waiver, or amendment of this Declaration under this Section, in the event a Lot is owned by more than one (1) Owner, the majority consent of such multiple Owners of such Lot shall constitute affirmative consent to the modification, waiver, or amendment of this Declaration on behalf of the ownership interests of such Lot.

15. **Liabilities and Obligations.** Except as otherwise specifically provided, the obligations and liabilities of Declarant and any successor Owner hereunder shall apply only to obligations and liabilities that arise while such entity is an Owner and each of such entities shall be released from any

further future obligations or liabilities arising with respect to the Lots, as applicable, after any transfer by it of the Lots, as applicable.

16. **Time of the Essence.** Time is of the essence of this Declaration.

17. **Attorney Fees.** In the event of any action to enforce the provisions of this Declaration, the prevailing party shall be entitled to receive its reasonable costs and attorney fees.

18. **Applicable Law; Construction.** This Declaration shall be construed and interpreted under, and governed and enforced according to, the laws of the State of Utah, without giving effect to its choice of law principles. This Declaration shall be given a reasonable construction so that the Declarant's intentions to provide access to the Lots and parking within the Lot 1 Parking Facilities are implemented. The captions and headings used herein are for convenience of reference only and shall not affect the interpretation of this Declaration.

19. **Entire Declaration.** This Declaration constitutes the Declarant's entire declaration pertaining to the subject matter contained in this Declaration.

*[Signature Page Follows]*



**EXHIBIT A**  
**Legal Description of the Lots**

**Lot 1:**

Lot 1 of the LHM Jordan Commons Sandy Subdivision plat as filed of record on July 6<sup>th</sup>, 2020 as Entry No. 13319905 with the office of the Salt Lake County Recorder.

Parcel No. \_\_\_\_\_

**Lot 2:**

Lot 2 of the LHM Jordan Commons Sandy Subdivision plat as filed of record on July 6<sup>th</sup>, 2020 as Entry No. 13319905 with the office of the Salt Lake County Recorder

Parcel No. \_\_\_\_\_