

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Holland & Hart LLP
Attn: Carl W. Barton, Esq.
222 South Main Street, Suite 2200
Salt Lake City, Utah 84101

Portion of Tax Parcel Nos:
08-16-476-001-0000; 08-16-400-019-0000

13408522
9/28/2020 3:33:00 PM \$40.00
Book - 11027 Pg - 8525-8537
RASHELLE HOBBS
Recorder, Salt Lake County, UT
FIRST AMERICAN NCS
BY: eCASH, DEPUTY - EF 13 P.

(Space above this line for Recorder's use only)

ACCESS EASEMENT AGREEMENT

This Access Easement Agreement (this "*Agreement*") is made and entered into this 28th day of September, 2020 (the "*Effective Date*"), by I-215 COMMERCE CENTER LLC, a Delaware limited liability company ("*Grantor*"), and I-215 COMMERCE CENTER LLC, a Delaware limited liability company ("*Grantee*"). Each of Grantor and Grantee is referred to herein as a "*Party*," and collectively as the "*Parties*."

RECITALS:

A. Grantor is the owner of certain real property located in Salt Lake County, Utah, as more particularly described on Exhibit A attached hereto (the "*Grantor Property*").

B. Grantee is the owner of certain real property located in Salt Lake County, Utah, as more particularly described on Exhibit B attached hereto (the "*Grantee Property*"). The Grantee Property is immediately adjacent to, and located to the north of, the Grantor Property.

C. As of the date hereof, Grantor is under contract to sell the Grantor Property and desires to formally create and retain the access rights described herein in favor of the Grantee Property.

D. The northernmost portion of the Grantor Property includes a private driveway depicted and legally described on Exhibit C attached hereto and incorporated herein by this reference (the "*Easement Area*"). The Easement Area is comprised of the Eastern Easement Area, more particularly described and depicted on Exhibit C attached hereto (the "*Eastern Easement Area*") and Western Easement Area, more particularly described and depicted on Exhibit C attached hereto (the "*Western Easement Area*").

E. A subdivision plat for I-215 Commerce Center Plat 1 (the "*Plat*"), which affects the Grantor Property, was recorded in the official records of the Salt Lake County Recorder's office, on November 22, 2017, in Book 2017P, Page 328, as Entry No. 12665320.

F. The Plat depicts a thirty-eight and a half foot (38.5') foot wide shared access easement ("**Existing Shared Access Easement**") along the northernmost boundary line of the Grantor Property, located on or about the same location as the Easement Area, that was intended to be shared by the Grantor Property and the Grantee Property, however, there is not presently any recorded or unrecorded agreement relating to the rights and obligations in and to the Existing Shared Access Easement.

G. Grantor and Grantee have agreed to enter into this Agreement to (i) create a perpetual, non-exclusive access easement on, over, upon and across the Easement Area and to set forth their agreement with respect to such access easement and related matters, and (ii) relinquish the Existing Shared Access Easement and confirm that the terms and provisions of this Agreement with respect to the Easement Area shall supersede the Existing Shared Access Easement in all respects.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows:

1. Grant of Easement. Grantor hereby grants and conveys to Grantee its successors and assigns, and for the use by its agents, representatives, employees, contractors, licensees, guests, invitees, and tenants (collectively, the "**Permittees**"), subject to the limitations described in Section 2 herein, a perpetual, non-exclusive easement (the "**Easement**") appurtenant to the Grantee Property over, upon and across the Easement Area for uninterrupted vehicular and pedestrian ingress to and egress from the Grantee Property, together with the right to maintain, use, replace and repair roads and related improvements located in the Easement Area. Grantee assumes the entire risk of loss, theft, and injury to persons or property in connection with Grantee's access to, and use of, the Easement Area.

2. Access to Eastern Easement Area. Grantor and Grantee hereby agree that neither Grantee nor its Permittees has the right to use or access the Easement with respect to the Eastern Easement Area, unless and until such time when Grantor removes, destroys or otherwise causes the removal of that certain portion of the fence presently located on the northern portion of the Eastern Easement Area and the gate that presently separates the Western Easement Area from the Eastern Easement Area (collectively, the "**Fence**"). Notwithstanding the foregoing, nothing in this Agreement shall limit Grantee's immediate use and access of the Western Easement Area.

3. Maintenance of Easement Area. The Parties shall jointly keep, maintain, operate, repair, replace, and restore all access drives, surface, curbing, traffic islands and/or all improvements located or to be located within the Easement Area (the "**Access Road**") in good condition and safe order (collectively, the "**Maintenance Costs**"), provided however, that: (a) the Party (or its invitees or agents) causing any damage to the Easement Area or the improvements located therein or thereon shall be solely responsible and liable to the other Party for any damage; and (b) Grantee shall have no obligation to repair, replace, or maintain the Eastern Easement Area and shall not bear any of the Maintenance Costs associated with the Eastern Easement Area that may arise prior to Grantee's right to begin to use and access the Eastern Easement Area pursuant to Section 2 above. Except as otherwise provided herein, all Maintenance Costs shall be charged to and allocated equally among the Grantor and Grantee. The Parties shall mutually agree, which

shall not be unreasonably withheld, conditioned, or delayed, as to the scope of the repairs and replacement prior to commencement of any work, except in an emergency situation, so long as notice of the work conducted is given to the other Party as soon as reasonably possible after such emergency. Grantor shall have the right, at such Grantor's own cost and expense, to relocate any curb cut, access point or other portion of the Access Road; provided, however, that any such reconfiguration, realignment, or relocation may not limit or interfere with Grantee's Easement rights hereunder and does not otherwise obstruct the traffic flow and/or uninterrupted use of the Access Road, as set forth herein, or the Grantee Property.

4. No Parking/Storage. Nothing herein shall be deemed to grant to any Party, their successors or assigns, agents, employees, customers and invitees, the right to park or store any vehicles, trash, landscaping materials, debris or similar property on the Easement Area. Except for the elements constituting the Fence, neither Party shall obstruct, block, or impede the other Party's use and access of the Access Road at any time, except for in an emergency, and such obstruction, block, or impediment shall be removed as soon as reasonably possible after such emergency.

5. Mechanics' Liens. Each Party shall keep the Easement Area free and clear of all liens and claims of liens for labor and services performed on, and materials, supplies or equipment furnished to, such Party in connection with the maintenance and repair obligations under this Agreement. If any such lien arises and encumbers the Easement Area, the Party whose actions are responsible for the occurrence of such lien shall either: (a) satisfy the lien, subject to a good-faith right to contest the amount due in connection therewith; or (b) contest the validity of any lien; provided, that, within thirty (30) days after such Party receives notice of the lien filing and bond around or the lien or otherwise cause the removal of the lien from the Easement Area.

6. Liability Insurance. Each Party hereby covenants and agrees that it shall obtain and shall at all times thereafter maintain at a minimum general liability insurance with respect the Easement Area, naming the other Party as an additional insured, and insuring against claims of bodily injury and property damage occurring on the Easement Area, with minimum liability limits of no less than \$1,000,000 per occurrence and \$2,000,000 aggregate. All insurance may be provided under: (a) an individual policy covering the applicable property; (b) a blanket policy or policies which include other liabilities, properties and locations of such insuring party; or (c) a combination of any of the foregoing insurance programs.

7. Mutual Indemnity. Each Party (the "**Indemnifying Party**") shall indemnify, defend and hold the other Party and its successors and assigns (the "**Indemnified Party**") harmless from and against: (a) all claims, demands, costs, losses, expenses and liability, including reasonable attorneys' fees and cost of suit, arising out of or resulting from the access or use of the Easement Area by the Indemnifying Party and/or its employees, customers, guests, licensees, invitees, tenants, or agents; and (b) any failure of the Indemnifying Party to perform its duties or obligations under this Agreement; provided, however, the foregoing obligation shall not apply to claims or demands to the extent based on the negligence or willful act or omission of the Indemnified Party. The provisions of this Section 7 shall survive any termination of this Agreement.

8. Default. In the event of any alleged failure to perform any obligation under this Agreement ("**Default**"), the non-defaulting Party shall give the alleged defaulting Party written notice thereof, which notice shall include a description of the acts required to cure the same with

reasonable specificity. The defaulting Party shall have a period of thirty (30) days within which to cure such Default, which period shall be extended to the extent reasonably necessary to complete such cure so long as the cure was commenced within thirty (30) days after such notice is given and thereafter prosecuted with due diligence (not to exceed ninety (90) days), and if such Default is not cured within the applicable time periods, then Grantor shall have the right, but not the obligation, in addition to any other rights or remedies available to Grantor, to cure such Default for the account of and at the expense of Grantee. Any prohibited conduct under this Agreement may be enjoined and this Agreement shall be specifically enforceable.

9. Easement Runs with the Land. This Agreement, including the Easement, shall burden and run with the Grantor Property (including the Easement Area) for the benefit of the Grantee Property. This Agreement shall be binding on and inure to the benefit of all persons and entities owning or possessing the Grantor Property, all upon the terms, provisions and conditions set forth herein.

10. Enforcement; Attorneys' Fees. In the event that any Party seeks to enforce the terms of this Agreement against the other Party, whether in suit or otherwise, the Party seeking to enforce this Agreement or substantially prevailing Party in any action shall be entitled to receive all reasonable costs incurred in connection therewith, including reasonable attorneys' fees and costs, from the other Party.

11. No Partnership. None of the terms or provisions of this Agreement shall be deemed to create a partnership between the Parties, nor shall it cause them to be considered joint venturers or members of any joint enterprise.

12. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, then the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby; and in lieu of each such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and which shall be legal, valid and enforceable.

13. Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which, when so executed and delivered, shall be deemed to be an original and all of which shall constitute one and the same instrument.

14. Governing Law. The terms and conditions of this Agreement shall be governed and construed under the laws of the State of Utah.

15. Entire Agreement. This Agreement and the exhibits hereto contain all of the representations and the entire agreement between the Parties with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements between the Parties or any of them with respect to the subject matter hereof are merged herein and replaced by this Agreement. The exhibits and recitals are incorporated herein by this reference.

16. No Dedication. The Easement granted herein shall not be deemed to be a gift or dedication of any portion of the Grantor Property to or for the general public or for any public

purposes whatsoever, it being the intention of the Parties that this Agreement shall be strictly limited to and for the purposes herein expressed.

17. Captions. The headings and captions used in this Agreement are included for convenience only and shall be irrelevant to the construction of any provision of this Agreement.

18. Amendment. The provisions of this Agreement may not be modified, rescinded, terminated or amended in whole or in part only by the Parties hereto by a written instrument duly executed by the Parties hereto, and recorded in the real property records of Salt Lake County, Utah.

19. Non-Merger. Notwithstanding the current, temporary vesting of title to the Grantor Property and Grantee Property in the same party, Grantor and Grantee expressly intend that this Agreement and the Easement are intended to be created and to remain in effect in accordance herewith and that the execution and delivery and recording of this Agreement is not intended to result in any extinguishment or merger of the Easement established hereunder or any other provisions hereof, it being the controlling and dominant intent of the Parties that no such merger or extinguishment shall occur and that the Easement and other provisions of this Agreement shall remain in full force and effect regardless of any current or future commonality of ownership interests in the Grantor Property and Grantee Property.

20. Transfers. The rights and obligations conferred or imposed upon the Parties pursuant to this Agreement shall not be transferred or assigned to any other person or entity without the prior written consent of Licensor, except together with the transfer or conveyance of a Party's respective property subject to the Easement and the terms and conditions of this Agreement..

21. Rights of Lenders. No breach or violation of the covenants herein shall defeat or render invalid the lien of any mortgage, deed of trust or similar instrument now or hereafter encumbering any of the Properties that secures a loan made in good faith and for value by a bona fide third-party lender with respect to the financing of the Properties or any portion thereof or any improvements thereon. This Agreement and all provisions hereof shall, however, be binding upon and effective against any subsequent owner or other occupant of the Properties or portion thereof whose title is acquired by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise, but such subsequent owner shall have a reasonable period of time to cure any violation hereunder.

22. Relinquishment of Existing Shared Access Easement.

a) The Parties hereby acknowledge and agree for themselves and their respective successor and assigns (i) that the terms and provisions of this Agreement with respect to the Easement Area shall supersede the Existing Shared Access Easement as set forth in the Plat and (ii) any and all rights or obligations as may have previously been granted to the Existing Shared Access Easement pursuant to the Plat are hereby relinquished and terminated by the Parties.

b) A second thirty-eight and a half foot (38.5') shared access easement is depicted on the Plat at the boundary line between Lot 1, as shown on the Plat, and the Grantor Parcel (the "***Additional Shared Access Easement***"). The Parties hereby acknowledge and agree for themselves and their respective successor and assigns that the Grantee (i) does not have and access or use rights to the Additional Shared Access Easement and (ii) any and all rights or obligations

as may have previously been granted to Grantee, if any, to the Additional Shared Access Easement pursuant to the Plat are hereby relinquished and terminated.

If there are any inconsistencies or conflicts between this Agreement and the Plat, the terms and conditions of this Agreement shall govern and control.

[Next page is signature page]

EXHIBIT A

**LEGAL DESCRIPTION OF
THE GRANTOR PROPERTY**

LOT 2, I-215 COMMERCE CENTER PLAT 1, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND RECORDED ON NOVEMBER 22, 2017, IN BOOK 2017P, PAGE 328, AS INSTRUMENT NUMBER 12665320 IN THE SALT LAKE COUNTY RECORDER'S OFFICE.

A.P.N. 08-16-476-001-0000.

EXHIBIT B

**LEGAL DESCRIPTION OF
THE GRANTEE PROPERTY**

A parcel of land located in the Southeast Quarter of Section 16, Township 1 North, Range 1 West, Salt Lake Base and Meridian, Salt Lake County, Utah, described as follows:

Beginning at a point on the west line of the East Half of the Southeast Quarter of Section 16, Township 1 North, Range 1 West, Salt Lake Base and Meridian, said point being 89°53'55" West 1,319.75 feet along the South line of said Southeast Quarter to said West line and along said line North 00°02'19" West 1,465.88 feet from the Southeast Corner of said Section 16, and thence continuing along said line North 00°02'19" West 1,173.46 feet to the North line of said Southeast Quarter; thence along said line Norther 89°53'41" East 1,007.97 feet to the West line of Interstate 215; thence along said line South 01°01'05" East 1,175.50 feet; West 1,028.07 feet to the POINT OF BEGINNING. Said parcel contains 1,195,561 square feet or 27.44 acres, more or less.

Also being described as Remainder Parcel, I-215 Commerce Center Plat 1, according to the official plat thereof on file and recorded on November 22, 2017, in Book 2017P, Page 328, as Instrument Number 12665320, in the Salt Lake County Recorder's Office.

A.P.N. 08-16-400-019-0000.

EXHIBIT C

LEGAL DESCRIPTIONS AND ACCOMPANYING MAPS

Easement Area Description:

A 38.50 foot wide permanent, non-exclusive easement located in Lot 2, I-215 Commerce Center Plat 1, a part of the Southeast Quarter of Section 16, Township 1 North, Range 1 West, Salt Lake Base and Meridian, Salt Lake County, Utah, described as follows:

BEGINNING at the Northwest Corner of Lot 2, I-215 Commerce Center Plat 1, and thence along the north line of said Lot 2 East 767.00 feet; thence South 00°00'10" East 38.50 feet to a point 38.50 feet perpendicularly distant from said line; thence parallel to said line West 767.00 feet to the west line of said Lot 2; thence North 00°00'10" West 38.50 feet; to the POINT OF BEGINNING. Said easement encompasses 29,530 square feet or 0.68 acres, more or less.

Eastern Easement Area Description:

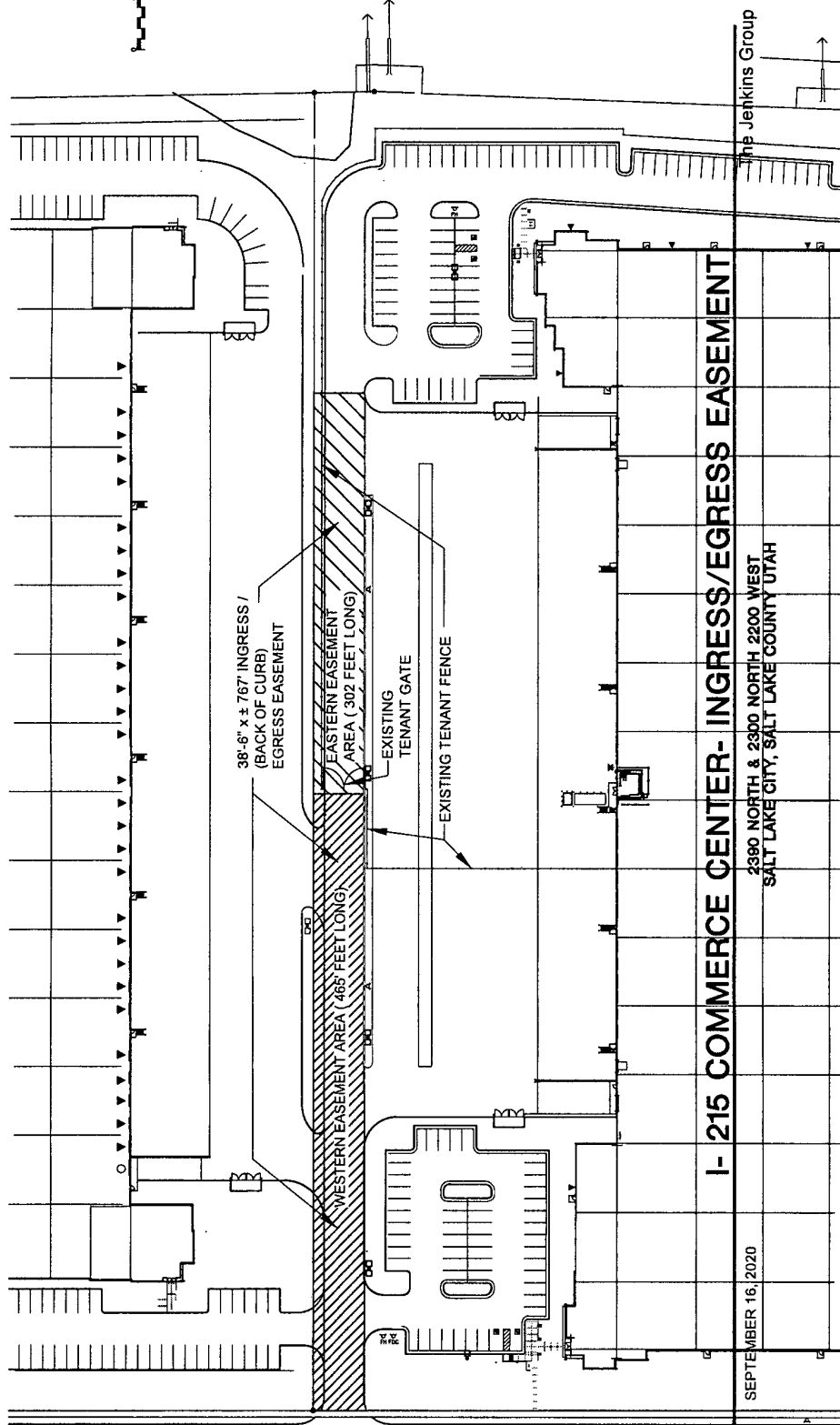
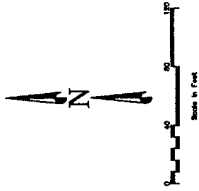
A 38.50 foot wide permanent, non-exclusive easement located in Lot 2, I-215 Commerce Center Plat 1, a part of the Southeast Quarter of Section 16, Township 1 North, Range 1 West, Salt Lake Base and Meridian, Salt Lake County, Utah, described as follows:

BEGINNING at a point at a point on the north line of Lot 2, I-215 Commerce Center Plat 1, said point being East 499.18 feet along said line from the Northwest Corner of said Lot 2, and thence continuing along said line East 302.00 feet; thence South 00°00'10" East 38.50 feet to a point 38.50 feet perpendicularly distant from said line; thence parallel to said line West 302.00 feet; thence North 00°00'10" West 38.50 feet to the POINT OF BEGINNING. Said easement encompasses 11,627 square feet or 0.27 acres, more or less.

Western Easement Area:

A 38.50 foot wide permanent, non-exclusive easement located in Lot 2, I-215 Commerce Center Plat 1, a part of the Southeast Quarter of Section 16, Township 1 North, Range 1 West, Salt Lake Base and Meridian, Salt Lake County, Utah, described as follows:

BEGINNING at the Northwest Corner of Lot 2, I-215 Commerce Center Plat 1, and thence along the north line of said Lot 2, and then along said line East 465.00 feet; thence South 00°00'10" East 38.50 feet to a point 38.50 feet perpendicularly distant from said line; thence parallel to said line West 465.00 feet to the west line of said Lot 2; thence North 00°00'10" West 38.50 feet to the POINT OF BEGINNING. Said easement encompasses 17,903 square feet or 0.41 acres, more or less.



2200 WEST STREET

I- 215 COMMERCE CENTER- INGRESS/EGRESS EASEMENT

2390 NORTH & 2300 NORTH, 2200 WEST
SALT LAKE CITY, SALT LAKE COUNTY UTAH

SEPTEMBER 16, 2020

Jim Jenkins Group

