

GF# 11-125203-AL

## OFFSITE PARKING EASEMENT AGREEMENT

STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF TRAVIS

§

This Offsite Parking Easement Agreement (this "Easement") is entered into as of the Effective Date of this instrument by and between TIMOTHY P. SKAGGS and spouse, BRENDA F. SKAGGS (herein referred to as "Grantor") and JSJMCL, LLC, a Texas limited liability company (herein referred to as "Grantee").

WHEREAS, Grantor is the owner in fee simple of that certain real property described as "Tracts One, Two and Three" in Deed from Nancy Anne Whitaker to Tim Skaggs and wife, Brenda Skaggs, dated July 1, 1993, recorded in/under Volume 12007, Page 1764, of the Real Property Records of Travis County, Texas; **SAVE AND EXCEPT** that certain 2.737 acres of land conveyed in Right of Way Deed by Tim Skaggs and wife, Brenda Skaggs, to the City of Bee Cave, dated January 29, 2009, and recorded in Doc. No. 2009014077 and being corrected in Doc. No. 2009036806, of the Official Public Records of Travis County, Texas; and **SAVE AND EXCEPT** the Grantee Tract herein described and defined (collectively, the "Grantor Property");

WHEREAS, Grantee is (or will become the owner on or about the date hereof) the owner in fee simple of that certain real property described as Lot 1, Block A, HILL COUNTRY INDOOR SUBDIVISION, a subdivision in Travis County, Texas, according to the map or plat thereof recorded on or about the date hereof in the Official Public Records of Travis County, Texas (the "Grantee Property");

WHEREAS, Grantee intends to construct an indoor and outdoor sports recreation facility on, over and across the Grantee Property subject to subdivision, site plan and construction plans and specifications approved therefore by the City of Bee Cave, Texas (collectively the "Grantee's Project")

WHEREAS the City of Bee Cave, as a condition precedent to the granting of subdivision approval and the issuance of a site permit for Grantee Property and Grantee's Project, respectively, requires that Grantee make available a sufficient amount of parking for Grantee's Project;

WHEREAS, Grantor desires to grant and convey, and Grantee desires to accept, a non-exclusive parking easement for the benefit of the Grantee Property (the "Easement Purpose") across and under that portion of the Grantor Property which is part of the easement area depicted in the rendering in Exhibit "A", attached hereto and incorporated herein for all purposes (the "Easement Area") on the terms and conditions set forth herein;

NOW, THEREFORE, for and in consideration of the payment of TEN and NO/100

DOLLARS, and other good and valuable consideration, Grantor hereby has GRANTED, GIVEN and CONVEYED and by these presents does GRANT, GIVE, and CONVEY unto Grantee, its successors and assigns, all those certain limited rights and interests in the nature of a limited, non-exclusive and perpetual easement for the Easement Purpose, over, across, and under the Easement Area on the following terms and conditions:

1. Construction of Parking Area. Within eighteen (18) months of obtaining a site permit for development of Grantee's Project on Grantee's Property, Grantee agrees to construct, at its sole cost and expense, the driveway and parking area (collectively, the "Improvements") in substantial compliance with the design standards attached hereto as Exhibit "B" and made a part hereof. The Improvements shall initially be constructed of hardwood mulch or caliche or such other material approved by the City of Bee Cave. Grantee shall: (a) perform all such construction and work in such a way as to minimize interference with the operation of the Grantor Property, or occupants or licensees thereof; (b) obtain, prior to the commencement of any construction and work for the Improvements, all necessary federal, state and municipal permits, licenses and approvals. In the event Grantee has not constructed the Improvements within eighteen (18) months of obtaining site plan approval therefor, all of Grantee's rights and interest under this Easement shall automatically revert to Grantor and Grantee shall have no further rights under this Easement. A written affidavit by Grantor filed in the Official Public Records of Travis County certifying that Grantee failed to construct the Improvements within the aforementioned period shall suffice as proof of the failure of such condition and the reversion of Grantee's rights and interests under this Easement. Grantee shall keep the Easement Area and Grantor's Property free of mechanics liens and claims resulting from Grantee's construction of the Improvements or any other actions taken by Grantee within the Easement Area.

2. Maintenance, Repairs and Replacement. After construction, Grantee shall solely be responsible for maintaining the Improvements in good repair and condition. In the event Grantor believes the driveway or parking area, or other facilities within the Improvements, or any portion thereof, is in need of repair, maintenance, or replacement, Grantor shall give notice to Grantee to such effect which notice shall describe the maintenance, repair, or replacement activity required. Grantee shall then have ten (10) days to advise Grantor in writing if it contests the claims of Grantor, such contest to be substantiated and accompanied by a written professional opinion of a licensed civil engineer. Grantor and Grantee shall use good faith efforts to agree upon the maintenance, repair or replacement activity required. Grantee's failure to provide such notice timely shall constitute Grantee's agreement to make or perform the repair, maintenance, or replacement (at Grantee's sole cost and expense), which shall commence within thirty (30) days of receipt of notice from Grantor and shall be completed within ninety (90) days thereafter.

3. Parking Easement. Grantor hereby grants and conveys to Grantee a non-exclusive parking easement for vehicular parking within the approximately 75 parking spaces located within the Easement Area and more particularly described and/or depicted on Exhibit "A", attached hereto and incorporated herein for all purposes (the "Parking Area").

4. No Barrier Agreement. Each party hereby agrees, on behalf of itself and its successors and assigns, that it will not erect, construct, or install any signage, buildings, barriers or other improvements on any portion of the Improvements that obstruct or diminish the access of the other party and its successors, assigns, mortgagees, employees, agents, customers, licensees, invitees

and lessees on, over or across the Improvements to and from nearby public thoroughfares, private roadways, driveways, intersections and rights of way.

5. No Dedication. No provision of this Easement shall ever be construed to grant or create any rights whatsoever in or to any portion of the Grantor Property other than the easements, covenants, conditions and restrictions specifically set forth herein. Nothing in this Easement shall ever constitute or be construed as a dedication of any interest herein described to the public or give any member of the public any right whatsoever, and no lien is intended to be created in this instrument.

6. Indemnity and Hold Harmless Agreement. Grantee covenants and agrees to indemnify and hold harmless Grantor and Grantor's heirs, personal representatives, successors and assigns from any and all claims, liability and damages resulting directly or indirectly from failure to perform Grantee's obligations hereunder, which damages shall include reasonable attorney's fees and costs of court. In the event of a breach or threatened breach of this Easement, only the owners of the Grantor Property and the Grantee Property shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach.

7. Entire Agreement. This Easement constitutes the entire agreement between the parties hereto as to the Improvements. The parties do not rely upon any statement, promise or representation not herein expressed, and this Easement once executed and delivered shall not be modified or altered in any respect except by a writing executed and delivered in the same manner as required by this Easement.

8. Modification and Termination. Except as provided in Section 1 above, Easement may be modified, extended, amended or terminated only by written agreement signed by all of the owners of the Grantor Property and the Grantee Property, or their respective successors and assigns, as long as they have any interest as owner of any portion of the Grantor Property or the Grantee Property, respectively. Notwithstanding any provision of this Easement to the contrary, prior to the issuance of a building permit for improvements on either the Grantee Property or the Grantor Property, Grantor and Grantee, and their respective successors and assigns, agree to amend and incorporate the terms of this Easement into a Declaration of Covenants, Conditions and Restrictions ("CC&Rs") herein so called) which shall, among other things, provide that (i) upon the issuance of a building permit for improvements on the Grantor Property, the maintenance obligations set forth above shall be shared on a pro-rata basis between the owner of the Grantee Property and the owner(s) of the Grantor Property, (ii) Grantor shall have the right to relocate the Parking Area, provided that the Parking Area remains adjacent (i.e. only separated by right-of-way) to the Grantee Property. To the extent of a conflict between the terms of this Easement and the CC&Rs, the CC&Rs shall control.

9. Severability. If any provision of this Easement shall be or become invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby.

10. Rights of Successors. The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land underlying the Grantor Property and Grantee Property. This Easement shall bind and inure to the benefit of Grantor, Grantee, and their

respective heirs, representatives, lessees, successors and assigns. The singular number includes the plural and the masculine gender includes the feminine and neuter.

11. No Merger. It is expressly understood and agreed that the parties hereto do not intend that there be, and there shall in no event be, a merger of the dominant and servient tenements represented by the Grantee Property and the Grantor Property, respectively, by virtue of the present or future ownership of any portion of said tenements being vested in the same person(s) or entity, but instead intend that the easement servitudes shall not be extinguished thereby and that said dominant and servient tenements be kept separate.

12. Estoppel Certificates. Grantor (or any mortgagee holding a first lien security interest in any portion of the Grantor Property) may, at any time and from time to time, in connection with the leasing, sale or transfer of the Grantor Property, or in connection with the financing or refinancing of the Grantor Property by any bona fide mortgage, deed of trust or sale-leaseback made in good faith and for value, deliver a written notice to Grantee requesting Grantee to execute a certificate certifying that, to the best of Grantee's knowledge, (i) Grantor is not in default in the performance of its obligations under this Easement, or, if in default, describing the nature and amount or degree of such default and (ii) such other information regarding the status of the obligations under this Easement as may be reasonably requested. Grantee (or any mortgagee holding a first lien security interest in any portion of the Grantee Property) may, at any time and from time to time, in connection with the leasing, sale or transfer of the Grantee Property, or in connection with the financing or refinancing of the Grantee Property by any bona fide mortgage, deed of trust or sale-leaseback made in good faith and for value, deliver a written notice to Grantor requesting Grantor to execute a certificate certifying that, to the best of Grantor's knowledge, (i) Grantee is not in default in the performance of its obligations under this Easement, or, if in default, describing the nature and amount or degree of such default and (ii) such other information regarding the status of the obligations under this Easement as may be reasonably requested. Grantor or Grantee, as the case may be, shall execute and return such certificate within fifteen (15) days following its receipt of a request therefor.

13. Headings. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of intent of this document nor in any way affect the terms and provisions hereof.

14. Easement Not Exclusive. The easements granted herein are not exclusive and Grantor shall have the right to grant such other easements, rights or privileges on, over, under or across Grantor's Property to such persons and for such purposes as Grantor may determine in its sole discretion, provided expressly, however, that such easements, rights, privileges or purposes do not unreasonably interfere with the easements granted herein.

15. Time is of the Essence. Unless otherwise specified, all references to "days" mean calendar days. Business days exclude Saturdays, Sundays, and legal public holidays. If the date for performance of any obligation falls on a Saturday, Sunday, or legal public holiday, the date for performance will be the next following regular business day.

16. Miscellaneous:

(a) Equitable Rights of Enforcement. This Easement may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding

compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties to or those benefited by this Easement; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.

(b) *Binding Effect.* This Easement binds and inures to the benefit of the parties and their respective heirs, successors, and permitted assigns.

(c) *Choice of Law.* This Easement will be construed under the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in the county or counties in which the Easement Area is located.

(d) *Counterparts.* This Easement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

(e) *Waiver of Default.* It is not a waiver of or consent to default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this Easement does not preclude pursuit of other remedies in this Easement or provided by law.

(f) *Further Assurances.* Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this Easement and all transactions contemplated by this Easement.

*Signature Pages to Follow*

EXECUTED on the dates witnessed below, to become effective as of the 28 day of January, 2013 (the "Effective Date" of this Easement).

GRANTOR:

By: Timothy P. Skaggs  
Timothy P. Skaggs

Date executed: 1/28, 2013

By: Brenda F. Skaggs  
Brenda F. Skaggs

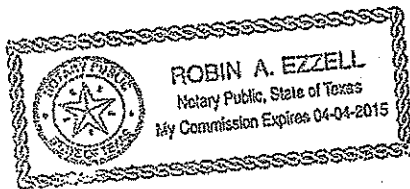
Date executed: 1/28, 2013

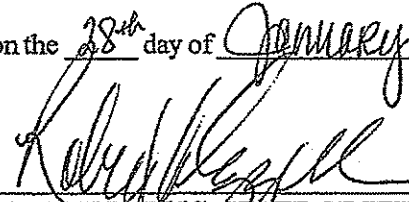
*Grantor's Address for Notice Purposes:*  
13618 West Highway 71  
Bee Cave, Texas 78738

ACKNOWLEDGMENT

STATE OF TEXAS       §  
                                  §  
COUNTY OF TRAVIS   §

This instrument was acknowledged before me on the 28<sup>th</sup> day of January, 2013,  
by Timothy P. Skaggs, and Brenda F. Skaggs.



  
\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

GRANTEE:

JSJMCL, LLC, a Texas limited liability company

By: Joshua McKay  
Joshua McKay, Member

Date executed: 1-28, 2013

By: Christopher Lupton  
Christopher Lupton, Member

Date executed: 1-28, 2013

By: Jeffrey Spillar  
Jeffrey Spillar, Member

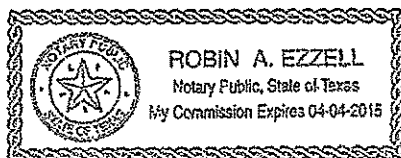
Date executed: 1-28, 2013

Grantee's Address for Notice Purposes:  
c/o Hill County Indoor, L.P.  
11715 Bee Caves Road, Suite 300  
Austin, Texas 78738

ACKNOWLEDGMENTS

STATE OF TEXAS       §  
                                  §  
COUNTY OF TRAVIS   §

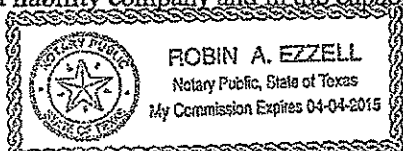
This instrument was acknowledged before me on the 28th day of January, 2013, by Joshua C. McKay, Member of JSJMCL, LLC, a Texas limited liability company, on behalf of said limited liability company and in the capacity stated.

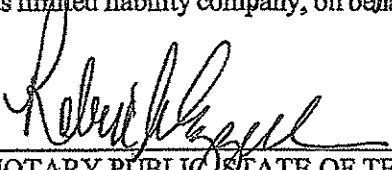


Robin A. Ezzell  
NOTARY PUBLIC, STATE OF TEXAS

STATE OF TEXAS           §  
                                     §  
COUNTY OF TRAVIS   §

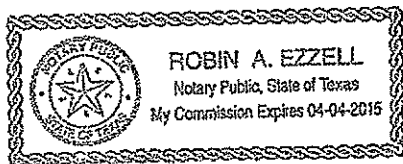
This instrument was acknowledged before me on the 28<sup>th</sup> day of January, 2013,  
by Jeffrey P. Spillar, Member of JSJMCL, LLC, a Texas limited liability company, on behalf of said  
limited liability company and in the capacity stated.




  
NOTARY PUBLIC, STATE OF TEXAS

STATE OF TEXAS           §  
                                     §  
COUNTY OF TRAVIS   §

This instrument was acknowledged before me on the 28<sup>th</sup> day of January, 2013,  
by Christopher Lupton, Member of JSJMCL, LLC, a Texas limited liability company, on behalf of  
said limited liability company and in the capacity stated.



  
NOTARY PUBLIC, STATE OF TEXAS

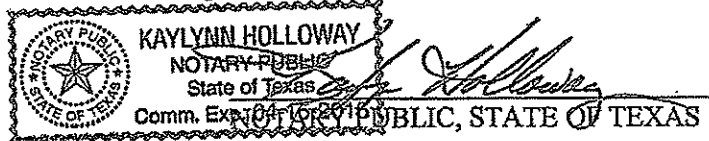
APPROVED AS TO FORM  
AND SUBSTANCE:

THE CITY OF BEE CAVE, TEXAS

By: Caroline Murphy  
Print Name: Caroline Murphy  
Title: Mayor

STATE OF TEXAS       §  
                                  §  
COUNTY OF Travis   §

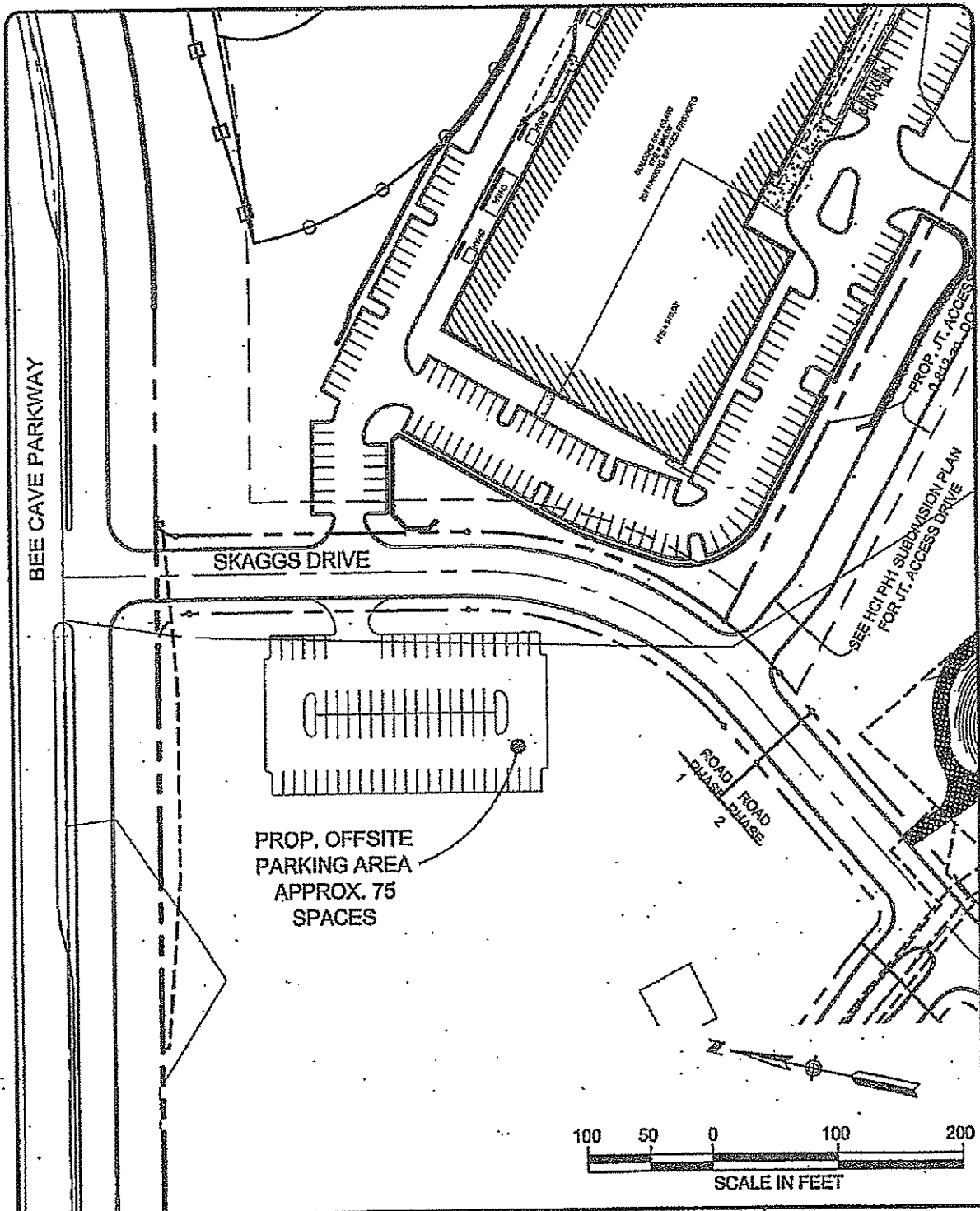
This instrument was acknowledged before me on the 25<sup>th</sup> day of January, 2013,  
by Caroline Murphy, Mayor of the City of Bee Cave, Texas, a  
Texas municipal corporation, on behalf of said corporation and in the capacity stated.



AFTER RECORDING RETURN TO:  
Capital Title Company  
Attn: Monica Middleton  
GF#:11-125203-AM  
6805 Austin Centre Blvd, Suite 127  
Austin, Texas 78731

**EXHIBIT "B"**

**DESIGN STANDARDS OF DRIVEWAY AND PARKING**



**LJA Engineering, Inc.**

5316 Highway 290 West  
Suite 150  
Austin, Texas 78735



Phone 512.439.4700  
Fax 512.439.4716  
FRN - F-1386

## SKAGGS / HCI PARKING AGREEMENT

EXHIBIT A

LOCATION MAP

01 OF 01



**FILED AND RECORDED**  
**OFFICIAL PUBLIC RECORDS**

*Dana Debeauvoir*

DANA DEBEAUVOIR, COUNTY CLERK  
TRAVIS COUNTY, TEXAS

January 30 2013 01:41 PM

FEE: \$ 60.00 2013017832