



W2477171

Recording Requested By And
When Recorded Return To:

EH 2477171 PG 1 OF 8
ERNEST D ROWLEY, WEBER COUNTY RECORDER
14-JUN-10 1002 AM FEE \$1.00 DEP LF
REC FOR: OGDEN CITY

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

THIS TEMPORARY CONSTRUCTION EASEMENT AGREEMENT ("Agreement") is made and entered into this 14th day of June 2010, by and between THE CORPORATION OF THE EPISCOPAL CHURCH IN UTAH, a Utah nonprofit corporation ("Diocese"), and OGDEN CITY, a Utah municipal corporation ("City").

RECITALS:

A. Diocese owns the real property located at 2374 Grant Avenue, Ogden, UT 84401, as more particularly described and depicted on the attached **Exhibit A** ("Diocese Property").

B. City owns the real property adjacent to the Diocese Property upon which a parking terrace ("Parking Terrace") is located, as more particularly described in the attached **Exhibit B** ("City Property").

C. Diocese and City are in the process of defining the following easements (collectively, "Proposed Easement"): (i) a non-exclusive easement over the Diocese Property for the purpose of operating and maintaining an elevator ("Elevator") for the Parking Terrace; and (ii) non-exclusive easement over the Diocese Property for the purpose of maintaining a storm drain line attached to the Parking Terrace and an underground storm drain line not to exceed ten inches (10") inches in diameter ("Storm Drain Line") running from the City Property over the Diocese Property.

D. City desires to commence the installation of the Elevator, Storm Drain, and related improvements referenced in the Proposed Easement (collectively, the "Improvements"). In order to install the Improvements, it is necessary that the City, or its contractors, enter upon and use the Diocese Property (also referred to as "Temporary Easement Property").

E. Diocese is willing to grant to the City a temporary easement over the Temporary Easement Property to facilitate the installation of the Improvements, subject to the terms, covenants and conditions contained in this Agreement.

AGREEMENT:

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Grant of Temporary Easement. Diocese hereby grants to the City a temporary construction easement (the "Temporary Easement") over and across the Temporary Easement Property.

2. Purpose of Easement; Costs. The Temporary Easement shall be used by the City, and its contractors, solely for the purpose of installing the Improvements, including, but not limited to installation of footings, walls and supporting structures, together with electronic controls for the operation of the elevator, installation of the elevator car, and finish work on the outside of the Elevator structure. All work shall be done at the sole cost and expense of the City and in a manner that does not unreasonably interrupt Diocese's normal activities.

3. Commencement, Completion and Termination Dates. This Temporary Easement shall commence on the date the last of the parties signs this Agreement and shall expire upon the first to occur of: (a) the completion of the Improvements; or (b) one hundred twenty (120) days from the commencement date of the Temporary Easement.

4. Notice of Commencement; Insurance. City intends to commence work on the Temporary Easement Property no later than June 1, 2010. Prior to commencing work, the City shall provide Diocese with evidence of builder's risk insurance relating to the work to be performed for the Improvements and any other insurance required by the Proposed Easement. The builder's risk insurance shall name Diocese as an additional insured.

5. Indemnification. City agrees to and shall indemnify and hold harmless Diocese, and its officials, directors, officers, agents, staff and employees, from any and all liability, cost (including attorneys' fees), damage, injury, loss or claim related to: (i) the granting of the easement to the City pursuant to this Agreement; and (ii) the installation of the Improvements on the Diocese Property, including, but not limited to, any damage caused to the Diocese Property or the improvements thereon, by City's use of the Temporary Easement.

6. Liens. Under no circumstances shall the City permit any mechanic's lien, materialmen's lien, or other lien of any kind on the Diocese Property by anyone claiming by reason of any act or omission of the City or any of its employees, agents, representatives, contractors, subcontractors, successors, or assigns, and the City agrees to indemnify, defend, and hold Diocese and Diocese's lenders harmless for, from and against all claims, damages, expenses (including, without limitation, attorneys' fees and reasonable investigative and discovery costs), liabilities and judgments on account of any such liens.

7. Disruption. The City shall use its best efforts to construct the Improvements with as little disruption as is reasonably possible to the Diocese Property.

8. Restoration of Property. The City, at its sole cost and expense, shall restore the Temporary Easement Property that is disturbed during installation of the Improvements to the

condition it was in immediately prior to the commencement of construction of the Improvements.

9. Completion of Permanent Easement. Upon completion of the Elevator and prior to the termination of this Easement, City shall provide Diocese with an as-built survey and legal description of the Elevator Easement for use in the Proposed Easement Document. City shall also provide Diocese with a legal description of the Storm Drain Easement. Based on those descriptions, City shall pay Diocese forty-six dollars and forty-one cents per square foot (\$46.41 sq. ft.) for the area included in the Easements, with said payment to be made within forty-five (45) days of completion of the Improvements.

10. Mitigation of Impact on Diocese. As additional consideration for the granting of this Temporary Easement, and in contemplation that construction of the Improvements will or may disrupt the installation of certain landscaping improvements by Diocese as part of its current construction project, City agrees not to delay the issuance of a Temporary Certificate of Occupancy for Diocese's new improvements based upon lack of completion of landscaping in the area used by City for staging and constructing the Improvements. City shall allow a reasonable time for landscaping to be completed following expiration of this Temporary Easement and City shall also promptly release escrowed funds of Diocese as complete systems are finished and satisfactorily inspected.

11. Notices. Any and all notices and demands by either party hereto to the other party, required or desired to be given hereunder shall be in writing and shall be validly given only if deposited in the United States mail, certified or registered, postage prepaid, return receipt requested, or if made by Federal Express or other delivery service which keeps records of deliveries and attempted deliveries, or if made by facsimile machine (receipt of which is acknowledged or if a copy thereof is delivered the following day by a delivery service which keeps records of deliveries and attempted deliveries.) Service shall be conclusively deemed made on the first business day delivery is attempted or upon receipt, whichever is sooner, and addressed as follows:

To Diocese: Episcopal Diocese of Utah
 P.O. Box 3090
 Salt Lake City, Utah 84110-3090
 Attn: Chancellor
 Facsimile: (801) 322-5096

To City: Ogden City
 Facilities Manager
 2549 Washington Boulevard
 Ogden, Utah 84401
 Facsimile: 801-629-8927

12. Attorneys' Fees. In the event any action is commenced by any party against any other party in connection with this Agreement, including any bankruptcy proceeding, the prevailing party shall be entitled to its costs and expenses, including reasonable attorneys' fees.

13. No Relationship. The parties hereto do not, by this Agreement nor by any parties' acts, become principal and agent, limited or general partners, joint venturers or of any other similar relationship of each other in the conduct of their respective businesses, or otherwise.

14. Incorporation of Recitals and Exhibits. The Recitals at the beginning of this Agreement and the Exhibits attached hereto are hereby incorporated herein by this reference.

15. No Waiver. Failure of a party hereto to insist upon strict performance of any provisions hereof shall not be construed as a waiver for future purposes with respect to any such provision or option. No provision of this instrument shall be deemed to have been waived unless such waiver is in writing and signed by the party alleged to have waived its rights.

16. Entire Agreement. This Agreement sets forth the entire understanding and agreement between the parties, and supersedes all previous communications, negotiations and agreements, whether oral or written, with respect to the subject matter hereof. No addition to or modification of this Agreement shall be binding on any of the parties unless reduced to writing and duly executed and delivered by the parties.

17. Partial Invalidity. If any term, provision, covenant or condition of this Agreement, or any application thereof, is held by a court of competent jurisdiction to be invalid, void or unenforceable, then all terms, provisions, covenants and conditions of this Agreement, and all applications thereof, not held invalid, void or unenforceable, shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

18. Applicable Law. The laws of the State of Utah shall govern the validity, construction, performance and effect of this Agreement.

19. Captions. The captions to the Sections of this Agreement are for convenience only and shall in no way affect the manner in which any provision thereof is construed.

20. Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same agreement.

[Signatures on Following Page]

DATED effective as of the date first above written.

DIOCESE:

THE CORPORATION OF THE EPISCOPAL
CHURCH IN UTAH, a Utah nonprofit corporation

By: Barbara Losse
Name: Barbara Losse
Title: Secretary

CITY:

OGDEN CITY,
a Utah municipal corporation

ed By Matthew R. Godfrey
Matthew R. Godfrey, Mayor



ATTEST:

By: Gandi Maxwell
Ogden City Recorder

APPROVED AS TO FORM:

By: Mark Stutz
Office of Ogden City Attorney

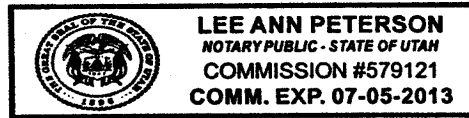
STATE OF UTAH)
 :SS.
COUNTY OF WEBER)

The foregoing instrument was acknowledged before me this 11th day of June, 2010, by Matthew R. Godfrey, the Mayor, and by Cindi Mansell, the City Recorder, of Ogden City, a Utah municipal corporation

Lee Ann Peterson
NOTARY PUBLIC
Residing at: Ogden, Utah

My Commission Expires:

07-05-13



STATE OF UTAH)
 :SS.
COUNTY OF WEBER)

The foregoing instrument was acknowledged before me this 28 day of May, 2010, by Barbara Lasse, the Secretary of The Corporation of the Episcopal Church in Utah, a Utah nonprofit corporation.

Angela Rogers
NOTARY PUBLIC
Residing at: Salt Lake City, UT

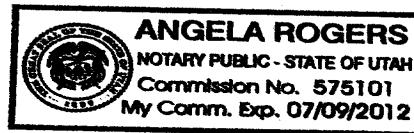


EXHIBIT A

Diocese Property

Parcel 1:

ALL OF LOT 12A, OGDEN CITY ENTERTAINMENT SUBDIVISION-PHASE 2(AMENDED),
OGDEN CITY, WEBER COUNTY, UTAH.

01-099-0009 *td*

Parcel 2:

ALL OF LOT 12B, OGDEN CITY ENTERTAINMENT SUBDIVISION-PHASE 2(AMENDED),
OGDEN CITY, WEBER COUNTY, UTAH.

01-099-0010 *td*

EXHIBIT B

City Property

ALL OF LOT 9, OGDEN CITY ENTERTAINMENT SUBDIVISION-PHASE 2(AMENDED), OGDEN CITY, WEBER COUNTY, UTAH.

01-099-0005 *ad*