

Recording Requested By And
When Recorded Return To:

Attn: _____



W2477172

EH 2477172 PG 1 OF 10
ERNEST D ROWLEY, WEBER COUNTY RECORDER
14-JUN-10 1004 AM FEE \$.00 DEP LF
REC FOR: OGDEN CITY

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("**Agreement**") is made this 11th day of June, 2010 ("**Effective Date**"), by and between Ogden City, a Utah municipal corporation ("**City**"), and The Corporation of the Episcopal Church in Utah, a Utah nonprofit corporation ("**Diocese**").

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 on the attached **Exhibit B** ("**City Property**").
- C. The City desires to obtain, and the Diocese is willing to grant, an easement over the Diocese Property, in the location depicted on the attached **Exhibit C** ("**Elevator Easement Property**"), for operating and maintaining an elevator ("**Elevator**") for the Parking Terrace. The above-ground portion of the elevator, including the elevator shaft, exterior walls, elevator car and connection to the Parking Terrace shall be referred to hereinafter as the "**Hoistway**".
- D. The City also desires to obtain, and the Diocese is willing to grant, an easement over the Diocese Property, in the location depicted on the attached **Exhibit C** ("**Drain Easement Property**") and, together with the Elevator Easement Property, the "**Easement Property**", for maintaining a storm drain line attached to the Parking Terrace and an underground storm drain line not to exceed ten inches (10") in diameter inches in diameter ("**Storm Drain Line**") running from the City Property over the Diocese Property.
- E. Diocese desires to obtain, and the City is willing to grant, an easement over the City Property for accessing and using the Parking Terrace.

AGREEMENT

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

1. Easement for Elevator. Diocese hereby grants to City a non-exclusive easement in, over and upon the Elevator Easement Property for the following purposes: (i) operation, repair, and replacement of the Elevator together with ingress and egress of the general public into the elevator from the Parking Terrace; and (ii) non-motorized ingress and egress over the Elevator Easement Property to maintain the exterior of the Hoistway. Except for the use of the threshold to the elevator and the elevator car within the Hoistway, nothing herein shall be construed to give the general public the right to enter or occupy any of the real property owned by Diocese.

2. Easement for Storm Drain. Diocese hereby grants to City a non-exclusive easement in, over and upon the Drain Easement Property for the purpose of the operation, repair, replacement, and maintenance of an existing storm drain pipe attached to the Parking Terrace and an existing underground Storm Drain Line, together with the right to enter upon the Drain Easement Property for such purposes. . The easement for the Storm Drain Line does not include a right for the City to allow storm water run-off to escape from the various levels of the Parking Terrace and spill over or drain onto the Diocese Property. The City shall create, install and maintain a collection system and other improvements to contain and prevent storm water run-off to escape onto the Diocese Property. The City represents and warrants to Diocese that such containment system is in place and is operational

3. Reservation of Rights over Easement Property. Diocese reserves the right to use the Easement Property for any use not inconsistent with City's permitted use of the Easement Property, including: (i) for pedestrian and vehicular ingress to and egress on and over the Easement Property; (ii) for the placement and maintenance of landscaping, trees, signs, light standards, sidewalks, curbs and gutters, ditches, irrigation pipes and related appurtenances, fences, asphalt roadways and parking lots, utilities, and driveways and other similar improvements that do not interfere with the City's use of the Easement Property; and (iii) to convey or transfer any or all of its interests in the Easement Property to any party at any time, but subject to City's rights and interests under this Agreement.

4. Easement for Parking Terrace. City hereby grants to Diocese and its employees, agents, invitees and licensees, a non-exclusive easement for: (i) vehicular and pedestrian ingress and egress to the Parking Terrace; and (ii) parking vehicles in the parking spaces at the Parking Terrace, subject to the same terms and conditions of entry and use as other members of the general public (e.g., payment of any required fee, limitation on the hours of operation, risk of loss or damage to vehicles or property inside of vehicles, and any other policy or procedure adopted for management of the Parking Terrace).

5. Liability Insurance. The City shall maintain in full force and effect a general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon Easement Property in amounts that are customary and consistent with the types of uses the City will make of the Easement Property, but not less than two million dollars (\$2,000,000.00). The City shall deliver to Diocese a certificate of insurance showing that the City has the insurance required under this Section 5 within five (5) days after request therefor has been made.

6. Maintenance of Elevator Easement Property. City shall, at its sole cost and expense, maintain the Elevator Easement Property in good condition and repair. City may perform

maintenance work on the Hoistway at any time so long as access is made through the Parking Terrace and City avoids making excessive noise or disturbance. In the event City needs to perform maintenance work on the Elevator Easement Property on the exterior of the Hoistway, City shall: (i) provide Diocese with at least thirty (30) days' prior written notice of such work, except in the event of an emergency, when no prior notice shall be necessary; (ii) use good faith efforts to minimize any interference or disruption to Diocese's use and occupancy of the Diocese Property; (iii) perform any such work at its sole cost and expense; (iv) perform such work expediently and in a good and workmanlike manner; and (v) at its sole cost and expense, restore the Elevator Easement Property and/or remaining Diocese Property that is disturbed during such work to the condition it was in immediately prior to the commencement of such work.

7. Maintenance of Drain Easement Property. City shall, at its sole cost and expense, maintain the Storm Drain Line in good condition and repair. In the event City needs to perform maintenance work on the Drain Easement Property, City shall: (i) provide Diocese with at least thirty (30) days' prior written notice of such work, except in the event of an emergency, when no prior notice shall be necessary; (ii) use good faith efforts to minimize any interference or disruption to Diocese's use and occupancy of the Diocese Property; (iii) perform any such work at its sole cost and expense; (iv) perform such work expediently and in a good and workmanlike manner; and (v) at its sole cost and expense, restore the Drain Easement Property and/or remaining Diocese Property that is disturbed during such work to the condition it was in immediately prior to the commencement of such work.

8. Costs. City shall pay all costs of operation, repair, replacement, and maintenance of the Storm Drain Line and Elevator, including any costs required to provide public access from the Elevator to Kiesel Avenue.

9. 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 easements to the City pursuant to this Agreement; and (ii) the operation, repair, replacement, and maintenance of the Easement Property, the Storm Drain Line and the Elevator, including, but not limited to, any damage caused to the Diocese Property or the improvements thereon, by City's use of the Easement Property, the Storm Drain Line, and the Elevator.

10. Covenants to Run with the Land:

(i) Elevator and Storm Drain Line Easement. The easement, rights and interest granted herein with respect to the Diocese Property shall constitute covenants running with the land, and shall burden the Diocese Property, as the servient estate, and benefit the City Property as the dominant estate, and shall be binding upon Diocese, its successors, assigns and any person acquiring, leasing or otherwise owning an interest in the Diocese Property.

(ii) Parking Terrace Easement. The easement, rights and interest granted herein with respect to the City Property shall constitute covenants running with the land, and shall burden the City Property, as the servient estate, and benefit the Diocese Property as the dominant estate, and shall be binding upon the City, its successors, assigns and any person acquiring, leasing or otherwise owning an interest in the City Property.

11. Demolition of Parking Terrace; Termination of Easement. Except when closed for repairs or restoration (which must be pursued with reasonable diligence), in the event that the Parking Terrace is: removed; not available for use by Diocese and its members, guests or invitees on similar terms and conditions as other property owners or tenants of the Ogden City Entertainment Subdivision; closed for a period of six (6) consecutive months or longer; or demolished by the City, then: (i) the City shall promptly, at its sole cost and expense, remove the Elevator and Elevator related improvements erected on the Elevator Easement Property; (ii) in the event of removal or demolition of the Parking Terrace, City shall remove the storm drain line from the Storm Drain Easement); (iii) City shall restore the Easement Property to a condition consistent with the other portions of the Diocese Property; and (iv) all of the easements granted herein shall automatically terminate.

12. 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.

13. 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

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

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

21. 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.

22. 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 and effective as of the Effective Date.

CITY:

Ogden City,
a Utah municipal corporation

By *Matthew R. Godfrey*
Matthew R. Godfrey, Mayor

ATTEST:

By *Audi Mansell*
Ogden City Recorder



APPROVED AS TO FORM:

By *Mach Staff*
Office of Ogden City Attorney

DIOCESE:

The Corporation of the Episcopal Church in Utah,
a Utah nonprofit corporation

By *Barbara Losse*
Name: Barbara Losse
Its Secretary

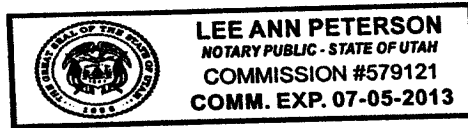
STATE OF UTAH)
 :ss.
COUNTY OF WEBER)

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 Losse, 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

My Commission Expires:

07/09/2012

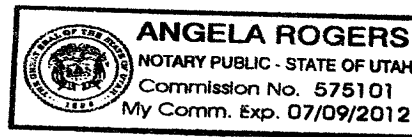


EXHIBIT A
DIOCESE PROPERTY

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

Land Serial No. 01-099-0009



EXHIBIT B
CITY PROPERTY

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

Land Serial No. 01-099-0005 *pd*

EXHIBIT C
EASEMENT PROPERTY

[TO BE PROVIDED WHEN WORK COMPLETED]