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E# 2559189 PG 1 OF 10
ERNEST D ROWLEY, WEBER COUNTY RECORDER
23-JAN-12 153 PM FEE \$1.00 DEP SPY
REC FOR: OGDEN CITY

AERIAL EASEMENT AGREEMENT

The OGDEN CITY REDEVELOPMENT AGENCY, a body politic and political subdivision of the State of Utah, Grantor (Agency), of 2549 Washington Boulevard, Ogden, Utah, 84401, and Junction Center Condominium Owners Association, Inc., a Utah nonprofit corporation (Grantee), of 6322 South 3000 East, #120, Salt Lake City, Utah, 84121, enter into this aerial easement agreement (Agreement) on this 16th day of January, 2012.

RECITALS

Agency is the owner of that certain real estate located at about 2260 Grant Avenue, Ogden, Utah, and more particularly described in **Exhibit A** (the Servient Estate), on which it has constructed and maintains a four level parking structure.

Grantee is a Utah nonprofit corporation that represents all of the owners of condominium units in the Junction Center Condominium, formerly known as The Earnshaw Condominium Project.

Together, the owners own each and every retail and residential condominium unit and all of the undivided interest in the common areas of that certain six story mixed use condominium building located at 339 East 2250 South, Ogden, Weber County, Utah, which is constructed on real property more particularly described in **Exhibit B** (the Dominant Estate).

Grantee desires to use certain air space above the Servient Estate for vehicular and pedestrian access between the upper two levels of Agency's parking structure and the condominium building.

Agency and Grantee desire to limit the use and occupancy of that air space above the Servient Estate needed to provide vehicular access to the second floor of the condominium building and pedestrian access to the third floor of the condominium building.

Grantee has the authority to enter into this Agreement for and on behalf of all of the owners of units in the Junction Center Condominium Project pursuant to the terms of the Declaration of Condominium.

Pursuant to the provisions of Utah Code Ann. §57-8-34(2), the provisions of this Agreement shall be binding upon all unit owners.

NOW THEREFORE, IN CONSIDERATION of ten dollars and other good and valuable consideration, including the covenants, conditions, and agreements contained below, the parties agree as follows:

1. The foregoing recitals are incorporated herein by reference as though fully set forth as agreements of the parties.
2. Agency grants to Grantee a permanent aerial easement (Aerial Easement) in certain air rights above the Servient Estate, as more fully described in **Exhibit C**, for the purpose of installing, repairing, replacing and maintaining vehicular access from the third level of Agency's existing parking structure to the second story of Grantee's building and, as more fully described in **Exhibit D**, for the purpose of providing pedestrian access from the fourth level of Agency's existing parking structure to the third story of Grantee's building, and which may include appurtenant pipes, conduit and wiring deemed necessary or convenient by Grantee for the operation of cooling units located on the parking structure as may be allowed by separate agreement between Agency and Grantee (which together are known as the Aerial Improvements).
3. In attaching the Aerial Improvements to Agency's parking structure, Grantee shall produce and provide any studies, reports, designs, or renderings as Agency shall determine, in its sole discretion, are necessary to ensure the structural integrity of the parking structure and Grantee shall pay Agency's costs to have a third party, of Agency's choosing, evaluate and review the information provided and any modifications thereto.
4. The Aerial Improvements shall be at least 10 feet above the ground level of the Servient Estate and shall not extend higher than 55 feet above the ground level of the Servient Estate.
5. Agency further grants to Grantee reasonable rights of ingress and egress upon the Servient Estate as are necessary for the construction, maintenance, repair or replacement of the Aerial Infrastructure and any required improvements to Agency's parking structure to accommodate the Aerial Infrastructure. This easement shall be permanent unless terminated as provided in this document.
6. The term of the Agreement commences with the execution date of the Agreement and expires in accordance with the provisions contained in paragraphs 12 and 14 below.

7. Subject to the rights of Grantee pursuant to the terms of this Agreement, Grantor shall continue to have the full use and enjoyment of the Servient Estate.
8. Grantee shall be solely responsible for the use and enjoyment of the Easement and shall indemnify and hold Agency harmless from all costs, attorneys' fees and claims of damage to person, property or premises resulting from the installation of the Aerial Infrastructure and the use, occupancy and possession of the air rights over the Premises by Grantee or the rights of ingress and egress over the premises as provided in paragraph 2.
9. Grantee shall provide the Ogden City Recorder's office with a certificate of general liability insurance in the minimum amount of two million dollars (\$2,000,000.00) evidencing Agency as an additional insured on Grantee's comprehensive liability insurance policies prior to the use of any Aerial Infrastructure by Grantee. Furthermore, Grantee shall maintain that certificate in full force, and provide evidence when requested by Agency, for the duration of the Easement.
10. Grantee shall maintain the Aerial Infrastructure in good repair and in safe condition, including any improvements made to Agency's parking structure to accommodate the Aerial Infrastructure; furthermore, Grantee shall also comply with all other laws, ordinances and regulations pertaining to the location, use and occupancy of the Aerial Easement area and the installation and construction of the Aerial Infrastructure.
11. In the event the Servient Estate is subjected to real estate taxation as a consequence of the terms of this Agreement, Grantee, upon receipt of Agency's written notice and demand, shall promptly pay that tax and provide Agency with evidence of that payment. Grantee may however contest any such tax and Agency shall cooperate with Grantee in any such contest of taxes.
12. In the event of the substantial destruction of the Aerial Infrastructure or the condominium building to which such infrastructure is devoted, Grantee shall serve Agency with written notice of Grantee's election whether or not to rebuild the Aerial Infrastructure and of its need to use the air space which is the subject of the Easement within 120 days. If Grantee elects not to rebuild the Aerial Infrastructure or the condominium building served by such infrastructure, or if Grantee does not so elect within the time allowed, or if Grantee does not commence to so rebuild within six (6) months after making its election, the Easement and any rights that Grantee shall possess by virtue of the Agreement shall terminate upon the recordation of an appropriate instrument by Agency.
13. Neither the aerial easement granted by Agency nor any of Grantee's rights described in this agreement impose a legal or equitable duty on Agency to construct or create a replacement parking structure, or any other structure or building, that includes or provides a replacement pedestrian access connection or vehicular access connection to

Grantee's condominium building in the event the existing parking structure is substantially damaged or destroyed, in whole or in part, as a result of any accident or casualty, or in the event the existing parking structure, or any portion thereof, is deemed to be structurally deficient.

14. In the event of Grantee's noncompliance with any of the specific conditions, requirements, or restrictions contained in the Agreement, Grantee, upon receipt of Agency's written notice and demand for compliance, shall provide Agency with evidence of Grantee's compliance within twenty (20) days of said receipt. In the event Grantee fails to submit such evidence of compliance to Agency within the time allowed, the Easement shall cease and terminate without further notice and Agency may record such notice of termination as it deems appropriate.
15. Any rights derived by Grantee pursuant to the Agreement shall be solely for Grantee, its successors and assigns.
16. No provision of the Agreement nor any act of the Agency shall be deemed or construed by any of the parties, or by third persons, to create any relationship of third-party beneficiary, or of principal or agent, or of limited or general partnership, or of joint venture, or of any association or relationship involving the Agency.
17. This Aerial Easement does NOT grant a right to the use of any parking space or spaces in Agency's parking structure nor does it grant any right to access or use any portion of the Servient Estate except for those portions of the parking structure to which the Aerial Infrastructure is physically connected or which provide necessary support for the Aerial Infrastructure.
18. The ability of Grantee, its guests, invitees, agents or representatives to use parking spaces within the parking structure or to access any part of the Servient Estate for vehicular or pedestrian use shall be defined and regulated as provided in a separate agreement between Agency and Grantee.
19. Other than as specifically described in the Aerial Infrastructure, no other use, occupation, or access to the airspace above the Servient Estate is authorized or allowed by virtue of this Agreement.
20. All notices pursuant to the Agreement shall be by certified mail, return receipt requested, addressed to the following:

If to Agency:

Ogden City Redevelopment Agency
Community and Economic Development Director
2549 Washington Boulevard, Suite 420
Ogden, Utah 84401

With a copy to:
Ogden City Attorney
2549 Washington Boulevard, Suite 840
Ogden, Utah 84401

If to Grantee:
Junction Center Condominium Owners Association, Inc.
6322 South 3000 East, #120
Salt Lake City, Utah, 84121

- 21. The terms, conditions, covenants and obligations contained in this agreement shall run with the land and shall be binding on the parties hereto, their successors and assigns, specifically including but not limited to, any owner's association or other common ownership association, the individual members of such associations, and any owner, tenant, lessee, guest, contractor and invitee of a fractional portion of the Dominant Estate.
- 22. The terms of the Agreement shall be construed in accordance with the laws of the State of Utah.


In Witness, the parties here have duly executed the Agreement as of the date written above.

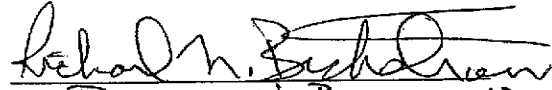
GRANTOR:


GRANTEE:

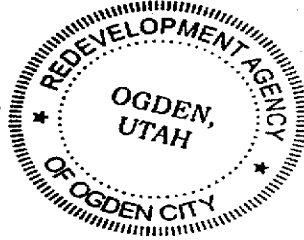
OGDEN CITY REDEVELOPMENT AGENCY,
a body politic and political subdivision of the
State of Utah

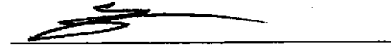
JUNCTION CENTER CONDOMINIUM
OWNERS ASSOCIATION, INC., a Utah
nonprofit corporation,


By: Michael P. Caldwell
Its: Executive Director


By: RICHARD N. BERSTRAND
Its: PRESIDENT

Attest:

Its: City Recorder
Approved as to form:




Agency Counsel

ACKNOWLEDGMENT

STATE OF UTAH)
 : ss.
COUNTY OF WEBER)

On the 19th day of January, 2012, personally appeared before me Michael P. Caldwell, who being by me duly sworn did say that he is the Executive Director of the Ogden City Redevelopment Agency and that within and foregoing instrument was signed in behalf of said Agency, and said Michael P. Caldwell duly acknowledged to me that said Agency executed the same and that the seal affixed is the seal of the Agency.



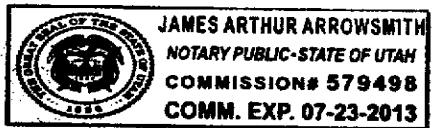
Lee Ann Peterson
Notary Public

My Commission Expires: 07-05-2013

ACKNOWLEDGMENT

STATE OF UTAH)
 :ss
COUNTY OF SALT LAKE)

On this 17th day of January, 2012, personally appeared before me Richard N. Beckstrand, who being by me duly sworn did say that he is the President of Junction Center Condominium Owners Association, Inc., a Utah nonprofit corporation, and that the foregoing instrument was signed in behalf of said corporation by authority of its Management Committee, and acknowledged to me that said corporation executed the same.



James A. Arrowsmith
NOTARY PUBLIC

EXHIBIT A

Ogden City Redevelopment Agency

Servient Estate

**ALL OF LOT 4, OGDEN CITY ENTERTAINMENT SUBDIVISION-PHASE 2
(AMENDED), OGDEN CITY, WEBER COUNTY, UTAH.**

Land Serial No. 01-099-0001.

AS

EXHIBIT B

Dominant Estate

ALL OF LOT 5, OGDEN CITY ENTERTAINMENT SUBDIVISION-PHASE 2,
OGDEN CITY, WEBER COUNTY, UTAH.

Land Serial No. 01-097-0033

01-097-0001 to 0033 ^{cc} ✓

EXHIBIT C

SECOND LEVEL PARKING STRUCTURE ACCESS EASEMENT DESCRIPTION
(PARKING ACCESS BRIDGE)

A part of Lot 4, Ogden City Entertainment Subdivision – Phase 2,
Ogden City, Weber County, Utah;

Beginning at the intersection of the North face of a second level parking access bridge and the East property line of Lot 4, Ogden City Entertainment Subdivision – Phase 2, Ogden City, Weber County, Utah, said point being 85.70 feet more or less, South $1^{\circ}07'12''$ West from the Northeast Corner of said Lot 4, and running thence South $1^{\circ}07'12''$ West 22.42 feet more or less along said East property line to the South face of said second level parking access bridge; thence North $88^{\circ}42'00''$ West along said South face 9.42 feet more or less to an existing parking structure; thence North $1^{\circ}18'00''$ West 22.42 feet more or less to the North face of said second level parking access bridge; thence South $88^{\circ}42'00''$ East along said North face 9.35 feet more or less to the point of beginning.

Land Serial No. 01-099-0001. ^upt A.

EXHIBIT D

THIRD LEVEL PARKING STRUCTURE ACCESS EASEMENT DESCRIPTION
(PEDESTRIAN ACCESS BRIDGE)

A part of Lot 4, Ogden City Entertainment Subdivision – Phase 2,
Ogden City, Weber County, Utah;

Beginning at the intersection of the North face of a third level pedestrian access bridge and the East property line of Lot 4, Ogden City Entertainment Subdivision – Phase 2, Ogden City, Weber County, Utah, said point being 84.87 feet more or less, South 1°07'12" West from the Northeast Corner of said Lot 4, and running thence South 1°07'12" West 12.59 feet more or less along said East property line to the South face of said third level pedestrian access bridge; thence North 88°41'55" West along said South face 10.86 feet more or less to an existing parking structure; thence North 1°17'58" West 12.59 feet more or less to the North face of said third level pedestrian access bridge; thence South 88°41'55" East along said North face 10.82 feet more or less to the point of beginning.

Land Serial No. 01-099-0001. ^{KL} Pt A