



W2378875

E# 2378875 PG 1 OF 6
ERNEST D ROWLEY, WEBER COUNTY RECORDER
08-DEC-08 2:04 PM FEE \$20.00 DEP JC
REC FOR: US TITLE UTAH
ELECTRONICALLY RECORDED

AFTER RECORDING PLEASE RETURN TO:
Olson & Hoggan, P.C.
130 South Main, Ste 200
Logan, UT 84323-0525
Attn: Robert B. Funk

AGREEMENT

THIS AGREEMENT (the "Agreement") is made and entered into, and shall be effective as of the date of bilateral execution by the last party to execute this Agreement (the "Effective Date"), by and between **OGDEN-WASATCH HOLDINGS, LLC**, a Utah limited liability company (the "Owner"), and **KEYBANK NATIONAL ASSOCIATION** ("KeyBank").

RECITALS:

- A. Owner is the owner of a parking facility located at 2432 South Kiesel Avenue, Ogden, Utah, as more particularly described on the attached Exhibit "A" (the "Parking Facility"); and
- B. Owner is also the owner of an office building located adjacent to the Parking Facility at 2475 Washington Boulevard, Ogden, Utah (the "Commercial Building"); and
- C. KeyBank operates a bank branch office and owns real property located adjacent to the Parking Facility; and
- D. The Parking Facility was originally constructed and owned by the Ogden City Redevelopment Agency, formerly known as the Ogden City Neighborhood Development Agency (the "Agency"); however, the Agency has recently transferred fee simple title of the Parking Facility to the Owner by the recordation of a Special Warranty Deed dated November 17, 2008; and
- E. On or about June 8, 1987, the Agency entered into that certain Agreement for Lease, Operation and Maintenance of Parking Facility (the "Original Parking Agreement") by and between the Agency and Boyer-Washington Boulevard Associates ("Boyer"), which was a predecessor owner of the Commercial Building; and
- F. On or about June 8, 1987, Boyer and Commercial Security Bank (the predecessor to KeyBank) entered into a Parking Agreement (the "CSB Parking Agreement"); and
- G. Sometime later in 1987, the Agency and Boyer entered into an Amended and Restated Agreement for Lease, Operation and Maintenance of Parking Facility (the "Amended Parking Agreement"); and

H. On or about March 23, 1988, the Agency and Boyer entered into a Second Amended and Restated Agreement for Lease, Operation and Maintenance of Parking Facility (the "Second Amended Parking Agreement"); and even though it was not a party to this Second Amended Parking Agreement, this document provided certain rights and obligations of KeyBank relating to a portion of the Parking Facility; and

I. On or about December 28, 1992, the Agency, Boyer, and KeyBank entered into a First Amendment and Modification Agreement to Second Amended and Restated Agreement for Lease, Operation and Maintenance of Parking Facility (the "First Amendment"); and

J. On or about September 23, 1999, the Agency, KeyBank, and Lisa A. Kruttschnitt Trust Number 3, Lisa A. Kruttschnitt Trust Number 4, Mark L. Kruttschnitt Trust Number 3, Mark L. Kruttschnitt Trust Number 4, and Limar Ogden Associates, LLC (collectively "Limar"), entered into that certain Second Amendment and Modification Agreement to Second Amended and Restated Agreement for Lease, Operation and Maintenance of Parking Facility (the "Second Amendment") regarding the Parking Facility; and at the time of the Second Amendment, Limar was the owner of the Commercial Building; and

K. Owner subsequently became the owner of the Commercial Building, and has currently leased the Commercial Building to MarketStar Corporation, a Delaware Corporation ("MarketStar"), pursuant to a Commercial Lease Agreement, as amended between the Owner and MarketStar (the "MarketStar Lease"); and

L. Pursuant to the MarketStar Lease, Owner has granted MarketStar use of certain parking stalls within the Parking Facility; and

M. Pursuant to (i) the Original Parking Agreement, (ii) the CSB Parking Agreement, (iii) the Amended Parking Agreement, (iv) the Second Amended Parking Agreement, (v) the First Amendment, and (vi) the Second Amendment (collectively, the "Prior Parking Agreements"), KeyBank has certain rights to park in the Parking Facility and certain obligations to share in the operation and maintenance costs of the Parking Facility; and

N. The Owner and KeyBank now desire to terminate their respective rights and obligations under the Prior Parking Agreements.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

1. Termination of Prior Parking Agreements. With effect from and after the Effective Date, Wasatch and KeyBank hereby agree that the Prior Parking Agreements are hereby terminated, and that each of the Prior Parking Agreements may be removed by Owner, at its sole cost and expense, as an encumbrance against the title to the Parking Facility.

2. Easement Rights. The parties recognize and agree that a portion of the Parking Facility overhangs certain real property owned by KeyBank. KeyBank hereby agrees to grant

the Owner a non-exclusive easement to access such KeyBank property, solely for the purpose of repairing and maintaining the Parking Facility. Such easement and the terms and conditions under which it shall be granted shall be set forth in a separate document, in a form mutually agreeable to both parties.

3. Operating and Maintenance Costs Payments by KeyBank.

Along with its unilateral execution in duplicate of original counterparts of this Agreement, and the return of this Agreement to Owner, KeyBank shall pay Owner by check the total amount of THIRTEEN THOUSAND NINE HUNDRED SEVENTY SIX DOLLARS and 16/100 DOLLARS (\$13,976.16), which sum represents KeyBank's pro rata share of all arrearages of and charges for operating and maintenance costs of the Parking Facility under the Agreement brought current through October 31, 2008. The final reconciliation between the parties with respect to KeyBank's prorata share of operating and maintenance costs of the Parking Facility under the Agreement from November 1, 2008 through the Effective Date of this Agreement (the "Final Payment Reconciliation") shall be settled and reconciled between the parties after the Prior Parking Agreements have been terminated when such costs can be calculated and apportioned.

4. Mutual General Releases.

(A) Excluding the Final Payment Reconciliation, KeyBank, on behalf of itself, its subsidiaries, predecessors, successors, officers, directors, employees, agents, attorneys, shareholders, assigns and affiliated companies hereby releases and discharges Owner, and, as the case may be, its parent, subsidiaries, predecessors, successors, officers, directors, employees, agents, attorneys, shareholders, assigns and affiliated companies, from any and all claims, demands, actions, causes of action and damages of any type whatsoever, if any, whether or not suspected or unsuspected, known or unknown, accrued or unmatured, existing under or arising out of any of the Prior Parking Agreements up through the Effective Date of this Agreement. The foregoing release agreed to by KeyBank specifically excludes any claims that may arise under this Agreement regarding the enforcement or interpretation of this Agreement. KeyBank hereby expressly acknowledges and understands that all future injuries, damages, or claims, if any, arising with respect to the Prior Parking Agreements have been fully contemplated and bargained for, acknowledged and received. The provisions of this Section 4(A) of this Agreement shall survive the expiration or termination of this Agreement.

(B) Excluding the Final Payment Reconciliation, Owner, on behalf of itself, its subsidiaries, predecessors, successors, officers, directors, employees, agents, attorneys, shareholders, assigns and affiliated companies hereby releases and discharges KeyBank, and, as the case may be, its parent, subsidiaries, predecessors, successors, officers, directors, employees, agents, attorneys, shareholders, assigns and affiliated companies, from any and all claims, demands, actions, causes of action and damages of any type whatsoever, if any, whether or not suspected or unsuspected, known or unknown, accrued or unmatured, existing under or arising out of any of the Prior Parking Agreements up through the Effective Date of this Agreement. The foregoing release agreed to by Owner specifically excludes any claims that may arise under this Agreement regarding the enforcement or interpretation of this Agreement. Owner hereby

expressly acknowledges and understands that all future injuries, damages, or claims, if any, arising with respect to the Prior Parking Agreements have been fully contemplated and bargained for, acknowledged and received. The provisions of this Section 4(B) of this Agreement shall survive the expiration or termination of this Agreement.

5. This Agreement shall be binding upon and shall accrue to the benefit of Owner and KeyBank, and each of their respective heirs, assigns, attorneys, legal representatives, officers, directors, partners, employees, agents, shareholders, members, managers, trustees, affiliates, related entities, successors, assigns and nominees.

DATED as of the date of bilateral execution by the last party to execute this Agreement.

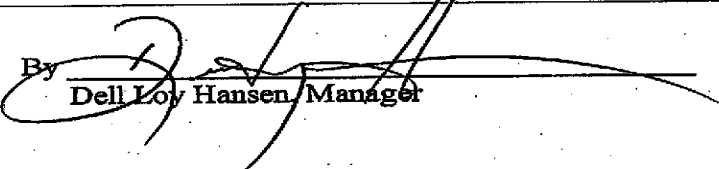
OWNER:

OGDEN-WASATCH HOLDINGS, LLC
A Utah Limited Liability Company

Date of execution:

12/1/2008

By


Dell Loy Hansen, Manager


KEYBANK:

KEYBANK NATIONAL ASSOCIATION

Date of execution:

12/2/2008

By


Mark O. Pass, Vice President

STATE OF UTAH)
 : ss.
County of Salt Lake)

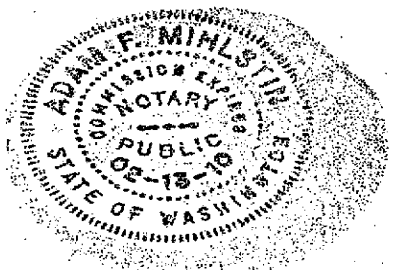
On the 1 day of December, 2008, personally appeared before me Dell Loy Hansen, who, being by me duly sworn, did say that he is the Manager of OGDEN-WASATCH HOLDINGS LLC, and that the said instrument was signed in behalf of said Limited Liability Company by authority of a resolution of the Members or its Operating Agreement, and the aforesaid Manager acknowledged to me that said Limited Liability Company executed the same.



[Handwritten Signature]
NOTARY PUBLIC

STATE OF WASHINGTON)
 : ss.
County of King)

On the 21st day of December, 2008, personally appeared before me Mark O. Pass, who, being by me duly sworn, did say that he is the Vice President of KEYBANK NATIONAL ASSOCIATION, and that the said instrument was signed by him in behalf of said entity and that he has authority to execute the same.



[Handwritten Signature]
NOTARY PUBLIC

EXHIBIT "A"**PARKING FACILITY DESCRIPTION**

Part of Lot 8, Block 25, Plat A, OGDEN CITY SURVEY, Weber County, Utah: Beginning on the East Line of Kiesel Avenue and the South line of said Lot 8; running thence East 100 feet, more or less, thence North 66 feet; thence West 100 feet, more or less, thence South 66 feet to beginning.

And part of Lots 9 and 10, Block 25, Plat A, OGDEN CITY SURVEY, Weber County, Utah: Beginning at a point 30 feet East and 85.5 feet South from the Northwest corner of said Lot 10; running thence East 128 feet, more or less, to the center of Merchants Alley; thence North 58 feet, more or less; thence North 89°04'22" West 26 feet, more or less; thence North 0°57'44" East 95 feet, more or less, to the West line of vacated Merchants Alley; thence Northerly along said West side to the North line of Lot 9; thence West to the East side of Kiesel Avenue; thence South along said East line 217.5 feet, more or less, to the point of beginning.

Together with that portion of vacated Merchants Alley abutting said property on the East.

Situated in Weber County, Utah

Parcel Identification Number: 01-021-0067 & 01-021-0070