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EH 2462388 PG 1 OF 14
ERNEST D ROWLEY, WEBER COUNTY RECORDER
11-MAR-10 814 AM FEE \$45.00 DEP JKC
REC FOR: OLSON & HOGGAN

When recorded please return to:

Robert B. Funk
OLSON & HOGGAN, P.C.
130 South Main, Suite 200
Logan, Utah 84323-0525

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (the "Agreement") is made and entered into this 5th day of March, 2010 by KEYBANK NATIONAL ASSOCIATION, a national banking association (formerly known as COMMERCIAL SECURITY BANK) ("Grantor"), and OGDEN-WASATCH HOLDINGS, LLC, a Utah limited liability company ("Grantee").

RECITALS:

- A. Grantor is the owner of certain real property located in the City of Ogden, County of Weber, State of Utah as more fully described on the attached Exhibit "A" (the "KeyBank Property").
- B. Grantee is the owner of certain real property located in the City of Ogden, County of Weber, State of Utah and adjacent to the KeyBank Property, as more fully described on the attached Exhibit "B" (the "Ogden-Wasatch Property").
- C. There is a three-story parking facility (the "Parking Facility") that is located partially on the Ogden-Wasatch Property and partially on the KeyBank Property. That portion of the Parking Facility that is located on the KeyBank Property is cross hatched and identified on the site plan attached hereto as Exhibit "C" (the "Site Plan").
- D. Grantor has the exclusive right to use and occupy the first story of the Parking Facility located on the KeyBank Property (such area, from the ground to the ceiling of the first level of the Parking Facility) (the "KeyBank Parking Area"), subject to the terms of this Agreement. Grantor has a separate access to the KeyBank Parking Area, that is separate and distinct from the main access to the Parking Facility. Grantee operates a parking garage on the first story (excluding the KeyBank Parking Area), the second story, the third story and on the roof of the Parking Facility (the "Ogden Parking Facility").
- E. In order to operate and maintain the Ogden Parking Facility, Grantee requires the following easements: (i) an easement on and over the KeyBank Parking Area for ingress and egress to and from the Ogden Parking Facility and the public right-of-way known as Merchants Alley (the "Access Easement"), (ii) an easement on and over the KeyBank Parking Area to maintain, repair, inspect, improve and protect the Parking Facility (the "Repair Easement"), and (iii) an easement to operate, maintain, repair, inspect, improve and protect the Ogden Parking Facility that is located above the KeyBank Parking Area on the KeyBank Property (the "Ogden").

Parking Easement” and, together with the Access Easement and the Repair Easement, the “Easements”).

F. Grantor is willing to grant such Easements in favor of Grantee for the purposes described in Recital E, subject to the terms and conditions set forth below.

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, Grantor and Grantee hereby agree as follows:

1. Definitions. In addition to the defined terms described above in the Recitals section of this Agreement, for purposes hereof:

A. The term “Easement Area” or “Easement Areas” is the specific area or areas located on the KeyBank Property, which is burdened by one of the Easements.

B. The term “Grantor” shall include any and all successors or assigns of Grantor as the owner or owners of fee simple title to all or any portion of the KeyBank Property whether by sale, assignment, inheritance, operation of law, foreclosure, or otherwise, but not including the holder of any lien or encumbrance on the KeyBank Property unless and until such holder becomes the record owner thereof.

C. The term the “Grantee” shall include any and all successors or assigns of the Grantee as the owner or owners of fee simple title to all or any portion of the Ogden-Wasatch Property whether by sale, assignment, inheritance, operation of law, foreclosure, or otherwise, but not including the holder of any lien or encumbrance on the Ogden-Wasatch Property unless and until such holder becomes the record owner thereof.

D. The term “Permittees” shall mean the tenants or occupants of either the KeyBank Property or the Ogden-Wasatch Property, and the respective employees, agents, contractors, customers, invitees and licensees of (i) Grantor and Grantee and (ii) such tenants or occupants.

E. The term “Prohibited Repair Hours” shall mean the time period beginning one hour prior to the open of the business located on the KeyBank Property and extending until one hour after the close of the business located on the KeyBank Property. Such Prohibited Repair Hours may be modified from time to time at the reasonable discretion of Grantor.

F. The term “Repair Work” shall have the meaning set forth in Section 3(b) herein.

G. The term “Work Notice” shall have the meaning set forth in Section 3(b) herein.

2. Grant of Easements. Grantor hereby grants, creates and declares for the benefit and use of Grantee and its successors and assigns as the owner of the Ogden-Wasatch Property, subject to the terms and conditions hereof, the Easements on the Easement Areas. The Easements granted herein are non-exclusive easements. Grantor hereby reserves and retains all other property rights in and to the Easement Areas, including without limitation, the right to: (a) construct improvements anywhere on the KeyBank Property including the Easement Areas, (b) locate or re-locate electric, gas and water lines and any other utilities in the Easement Areas, and (c) grant easement rights to other third parties, so long as the actions set forth in (a), (b) and (c) above do not materially interfere with Grantee's permitted use of the Easement Areas. Grantee acknowledges that it is accepting the Easements and the Easement Areas in its present AS-IS condition, with no warranties, express or implied, as to its fitness for any purpose. Grantee further acknowledges that no representations, statements or warranties, express or implied, have been made by or on behalf of Grantor with respect thereto, and Grantor shall in no event be liable for any patent or latent defects. The grant of the Easements is subject and subordinate to: (i) the prior rights of holders of existing liens and encumbrances, easements, rights of way (including but not limited to the rights of any governmental entity and/or the public to access and use the Merchants Alley), licenses, leases, covenants, restrictions, reservations, limitations and conditions of record and to all such matters not of record; (ii) all matters which a current and accurate survey would disclose; (iii) all applicable zoning ordinances; and (iv) all legal highways and rights-of-way.

3. Use of Easements.

(a) The Easements are limited to the permitted uses described in Recital E, subject to the terms and conditions set forth in this Agreement (the "Permitted Uses") and may not be used for any other purpose. Grantee agrees that the Easement Area shall be used in such a manner so as not to unreasonably interfere with, obstruct or delay the conduct and operations of the business of Grantor. Grantee shall not obstruct or interfere in any way with the free flow of pedestrian and vehicular traffic over the KeyBank Property, Merchants Alley or the property owned by Grantor located south and east of Merchants Alley described on Exhibit "D" attached hereto ("Grantor's Other Property"), including without limitation the flow of vehicular traffic to and from: (i) the banking drive through lanes located on Grantor's Other Property and/or (ii) the KeyBank Parking Area. In addition, Grantee shall not use (or allow its Permittees to use) the parking spaces located in the KeyBank Parking Area; provided, however, Grantee shall have no parking enforcement duties relating to the KeyBank Parking Area. Grantee shall not construct any improvements above the Ogden Parking Facility on the KeyBank Property.

(b) Repair Work to Parking Facility. Before Grantee performs any repairs, maintenance, inspections, or improvements to the Parking Facility (the "Repair Work"), Grantee must deliver written notice to Grantor (the "Work Notice") at least 3 business days prior to the commencement of such Repair Work. The Work Notice must include (1) a detailed description of the Repair Work to be performed, (2) the date and time of the commencement of the Repair Work and (3) the date on which the Repair Work is scheduled to be complete. In emergency situations, Grantee shall be required to provide only such advance notice, which may be verbal, as is reasonable under the circumstances. No Repair Work shall occur during the Prohibited Repair Hours, except in the event of an emergency situation where repairs must be implemented

immediately provided that Grantee shall not obstruct or interfere in any way with the free flow of pedestrian and vehicular traffic over the KeyBank Property, Grantor's Other Property or Merchants Alley including without limitation the flow of vehicular traffic to and from the banking drive through lanes located on Grantor's Other Property and/or the KeyBank Parking Area. Grantee shall remove any equipment and/or machinery from the Easement Areas during the Prohibited Repair Hours.

4. Insurance Requirements. Grantee shall maintain at its sole cost (or shall require its authorized agents to obtain) insurance for the Easement Areas, the Parking Facility and such other insurance that may be reasonably required by Grantor. Upon request, Grantee shall provide Grantor insurance certificates evidencing any such insurance required by this Section 4.

5. Maintenance of the Easement Areas. Grantee shall be responsible, at its sole cost and expense, for the repair and maintenance of the Parking Facility and all related utility facilities serving the Parking Facility. Grantee, at its sole cost and expense, shall keep the Parking Facility and all related utility facilities serving the Parking Facility in good condition and repair comparable with other well-maintained parking garages located Ogden, Utah, and shall comply with all applicable laws, ordinances, rules and regulations. Notwithstanding the foregoing, Grantor shall be responsible, at its sole cost and expense, for the repair and maintenance of the KeyBank Parking Area excluding any repairs and/or replacements needed to the structure, foundation and/or ceiling of the KeyBank Parking Area which such repairs shall be the responsibility of Grantee.

6. Indemnification. Grantee hereby agree to indemnify, defend and save Grantor harmless from and against any and all suits, claims, liabilities, and expenses (including, without limitation, reasonable attorneys' fees) relating to accidents, injuries, loss, or damage of or to any person or property arising from or in any manner relating to (i) the use by Grantee and/or its Permittees of the Easement Areas, and (ii) damages resulting from a breach or default by Grantee under this Agreement. Grantor hereby agree to indemnify, defend and save Grantee harmless from and against any and all suits, claims, liabilities, and expenses (including, without limitation, reasonable attorneys' fees) relating to accidents, injuries, loss, or damage of or to any person or property arising from or in any manner relating to (i) the use by Grantor and/or its Permittees of the KeyBank Parking Area, and (ii) damages resulting from a breach or default by Grantor under this Agreement. This Section 6 shall survive any termination of this Agreement. Notwithstanding the foregoing or anything to the contrary in this Agreement, the parties release each other and each other's employees, directors, and agents from any and all liability for any loss of, or damage to, the Parking Facility and the Easement Areas which is caused by or results from risks which are insured against by insurance policies carried by either of the parties or which are required to be insured against under this Agreement, regardless of cause, including the negligence of either party or their respective employees, directors, and agents. The foregoing release shall apply to losses or damages in excess of policy limits and any co-insurance, deductible or self-insured retention. In the event of any inconsistency between the foregoing waiver of subrogation provisions and any other provision of this Agreement, the waiver of subrogation provisions shall be controlling.

7. **Default.** If Grantee fails to comply with any provision of this Agreement, and continues to fail to comply for a period of seven (7) business days after the date that it receives written notice from Grantor specifically describing such failure, then in addition to any other remedy available under this Agreement or at law or equity, Grantor may elect to terminate Grantee's rights under this Agreement by written notice to Grantee, provided that Grantee fails to object, in writing to the existence of such default within such time. In the event that Grantee disputes the existence of a default, in writing, and such notice is delivered to Grantor before seven (7) business days after the date that Grantee receives such notice of default, Grantor shall not have the right to terminate the Grantee's rights under this Agreement unless and until such right is affirmed by a court of competent jurisdiction in the State of Utah. Grantee's obligations accruing under this Agreement prior to or as a result of any such termination shall continue until such obligations are fully satisfied. Notwithstanding the foregoing, a twenty-four hour cure period (after notice) shall be applicable with respect to: (i) the interference of the free flow of pedestrian and vehicular traffic over the KeyBank Property, Merchants Alley or Grantor's Other Property, and (ii) the performance of Repair Work during Prohibited Repair Hours, provided, however, if Grantor has notified Grantee of a violation of (i) or (ii) above twice in a twelve (12) month period, then Grantee shall have no additional notice or cure periods with respect to the violation of (i) or (ii) above.

8. **Grantor's Right to Self-Help.** In the event of any failure by Grantee to perform any term, condition, covenant or obligation of this Agreement on the part of Grantee to be performed within the cure periods specified above in Section 7 above after the date on which Grantee receives from Grantor notice specifically describing such failure (except in emergency situations, which shall require only such advance notice, which may be verbal, as is reasonable under the circumstances), Grantor (in addition to all other remedies to which Grantee may be entitled under this Agreement or at law or in equity) may cure such default by Grantee on behalf of, and at the sole cost and expense of, Grantee. Grantee shall reimburse Grantor for its costs and expenses in connection therewith within thirty (30) days after Grantor's delivery to Grantee of an invoice therefor, and proof of payment by Grantor. Any overdue amount shall bear interest at the legal rate of interest in the State of Utah as approved from time to time by the Utah state legislature.

9. **Election of Remedies.** Grantor shall be entitled to exercise all rights and remedies granted in this Agreement or otherwise available at law or equity, and all such rights and remedies shall be cumulative and Grantor shall be entitled to pursue them separately, successively, or concurrently against Grantee. Grantor, by exercising or failing to exercise any right or remedy, does not waive or release that or any other right or remedy, and the exercise or failure to exercise any of the same shall be nonexclusive.

10. **Benefit and Binding Effect.** This Agreement shall run with and bind the KeyBank Property and the Ogden-Wasatch Property, and all parties having or acquiring any right, title or interest in or to such part of the KeyBank Property or the Ogden-Wasatch Property shall take title subject to this Agreement. These Easements are conveyed for the benefit of Grantee and its successors in interest. Conveyance of title to any portion of the KeyBank Property or the Ogden-Wasatch Property shall not affect the enforceability of this Agreement against any future Owner of either the KeyBank Property or the Ogden-Wasatch Property.

11. Notices. Any notice to be given by any party under this Agreement shall be given in writing and delivered in person or forwarded by a nationally recognized overnight courier (such as Federal Express or UPS) or registered mail, postage prepaid, return receipt requested, at the address indicated below, unless the party giving such notice has been notified, in writing, of a change of address:

Grantor: KeyBank National Association
Attention: Real Estate Asset Manager—PID 2840
P.O. Box 94839
Cleveland, Ohio 44101-4839

With a copy to:

KeyBank National Association
Attn: Law Group – 2nd Floor
127 Public Square
Cleveland, Ohio 44114-1306

Grantee: Ogden-Wasatch Holdings, LLC
Attention: Anita Lockhart
595 South Riverwoods Parkway, Suite 400
Logan, Utah 84321

With a copy to:

Robert B. Funk
OLSON & HOGGAN, P.C.
130 South Main, Suite 200
Logan, Utah 84321

Any such notice shall be deemed effective on the date on which such notice is delivered or on the date delivery is refused.

12. Fee Simple Title. It is hereby expressly agreed that this grant is of easements only and that fee simple title to the KeyBank Property (including the Easement Areas) shall and does remain in Grantor, subject to this Agreement.

13. Destruction of Parking Facility. In the event the Parking Facility is destroyed or rendered substantially unusable for any reason and not repaired or rebuilt by Grantee within two (2) years from the date of such damage, the parties agree that the Easements granted hereunder shall terminate and that fee ownership to the KeyBank Property shall be exclusively vested in

Grantor free and clear of the Easements granted herein and from any other claim, right or interest of Grantee in or to the KeyBank Property.

14. No Rights in Public. Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of the KeyBank Property.

15. Liens. Grantee has no authority or power to cause or permit any lien or encumbrance of any kind whatsoever, whether created by Grantee, operation of law or otherwise, to attach to or be placed upon Grantor's title or interest in the Easement Areas or any other portion of the KeyBank Property, and any and all liens and encumbrances created by Grantee shall attach to Grantee's interest only. Grantee shall not cause or permit any mechanics or materialmen liens to attach to or be placed upon the Easement Areas or any other portion of the KeyBank Property.

16. Counterparts. This Agreement may be executed in any number of counterparts (including facsimile and other electronically transmitted counterparts), each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

17. Paragraph Headings. The paragraph headings of this Agreement are inserted only for convenience and in no way define, limit or describe the scope or intent of this Agreement nor affect its terms and provisions.

18. Governing Law. This Agreement, and all matters relating hereto, including any matter or dispute arising out of the Agreement, shall be interpreted, governed, and enforced according to the laws of the State of Utah, and the parties hereto consent to the jurisdiction of any appropriate court in the State of Utah to resolve such disputes.

19. Severability. In the event that any provision of this Agreement, or any operation contemplated hereunder, is found by a court of competent jurisdiction to be inconsistent with or contrary to any law, ordinance, or regulation, the latter shall be deemed to control and the Agreement shall be regarded as modified accordingly and, in any event, the remainder of this Agreement shall continue in full force and effect.

[Signature Pages Follows]

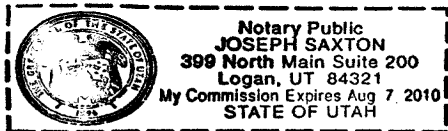
GRANTEE:

OGDEN-WASATCH HOLDINGS, LLC
a Utah Limited Liability Company

By: 
Dell Loy Hansen, Manager

STATE OF UTAH)
 : ss.
County of Cache)

On the 3 day of ~~January~~ February, 2010, 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 its Operating Agreement, and the aforesaid Manager acknowledged to me that said Limited Liability Company executed the same.




NOTARY PUBLIC

EXHIBIT "A"**KEYBANK PROPERTY**

Part of Lots 1 and 10, Block 25, Plat "A", Ogden City Survey:

Beginning at the intersection of the North line of Merchants Alley and the East line of Kiesel Avenue, said point being 301.65 feet North 89°02' West and 99.00 feet North 0°58' East from the Southeast Corner of said Lot 1; running thence South 89°02' East 120.83 feet along said North line to the West line of said Alley; thence North 0°58' East 79.99 feet to a point 4.0 feet South of the South line of existing parking structure; thence North 89°05'53" West 120.83 feet along said line, being 4.0 feet South and parallel to said parking structure to the East line of Kiesel Avenue; thence South 0°58' West 79.85 feet along said East line to the point of beginning.

SUBJECT TO a (24 foot right-of-way): Part of Lot 1, Block 25, Plat "A", Ogden City Survey:

Beginning at a point on the East line of Kiesel Avenue; said point being 301.65 feet North 89°02' West and 91.75 feet North 0°58' East from the Southeast Corner of said Lot 1, running thence North 0°58' East 24.01 feet along said East line; thence South 87°49'04" East 135.86 feet to the East line of Merchants Alley; thence South 0°58' West 24.01 feet along said East line; thence North 87°49'04" West 135.86 feet along the North line of existing building and building line extended to the point of beginning.

Situated in Weber County, Utah.

Parcel Identification Number: 01-021-0004 

EXHIBIT "B"

OGDEN-WASATCH PROPERTY

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: 01-021-0067² & 01-021-0070¹²

EXHIBIT "C"

SITE PLAN

[see attached]

AVE

100.94' 100.94'
ANDROMEDA HOSPITALITY
GROUP, INC
010210085
5,928 SQ FT TU 139
100.95'

MUNICIPAL BUILDING AUTHORITY
OF WEBER COUNTY
010210050
1.22 AC±
TU 139

OGDEN-WASATCH
HOLDINGS LLC
010210067
6500 SQ FT TU 139
100'±
PROJECT REDEVELOPMENT

200'± PROJECT 2

OGDEN-WASATCH
HOLDINGS LLC
010210070
23,538 SQ FT
TU 224

MUNICIPAL BUILDING AUTHORITY
OF WEBER COUNTY
010210068
31,779 SQ FT
TU 224

COMMERCIAL SECURITY BANK
010210004
605 SQ FT TU 224



OGDEN-WASATCH HOLDINGS LLC
010210072
25,152 SQ FT TU 224

OGDEN-WASATCH HOLDINGS LLC
010210078
GRANTEE'S
OTHER
PROPERTY

KEY BANK OF UTAH
010210008 TU 224
KEY BANK OF UTAH
010210007 TU 224
KEY BANK OF UTAH
010210006 TU 224
COMMERCIAL SECURITY BANK
010210005 TU 224

GRANTOR'S
OTHER
PROPERTY

KEY BANK OF UTAH
010210001
TU 224

 PARKING STRUCTURE
 PARKING STRUCTURE
ON GRANTOR'S PROPERTY

STREET

SEE
PAGE
22

WASHINGTON

2453 98.63'
2453 2437 2439 2443
x 83.87'
2445 49.4'
42.576'
30'
48.75'
TU 25
UNITED STATES OF AMERICA
010210010
REDEVELOPMENT
30'

EXHIBIT "D"

Grantor's Other Property

Part of Lot 1, Block 25, Plat A, Ogden City Survey, Beginning at the Southeast Corner of said Block 25, and running thence North 65.5 feet; thence West 85 feet; thence North 15.5 feet; thence West 80 feet; thence North 6 feet; thence West 43.53 feet to a point 121 feet 5 inches East of the west line of said Lot 1; thence South 87 feet to the South line of said Lot 1; thence East 208.58 feet to the place of beginning. (01-021-0001) ✓

Part of Lot 1, Block 25, Plat A, Ogden City Survey, Weber County, Utah: Beginning at a point 100 feet 7.5 inches East of the Southwest Corner of said Lot 1; running thence North 99 feet, thence East 20 feet 9 inches, thence South 99 feet, thence west 20 feet 9 inches to the place of beginning. (01-021-0005) ✓

Part of Lot 1, Block 25, Plat A, Ogden City Survey, Weber County, Utah: Beginning at a point 79 feet 10 inches East of the Southwest Corner of said Lot, and running thence East 20 feet 9.5 inches, thence North 6 rods, thence West 20 feet 9.5 inches, thence South 6 rods to the place of beginning. (01-021-0006) ✓

Part of Lot 1, Block 25, Plat A of Ogden City Survey: Beginning at a point 60 feet and 9 1/2 inches East of the Southwest Corner of said Lot 1, and running thence North 99 feet, thence East 19 feet and 1/2 of an inch, thence South 99 feet, thence West 19 feet and 1/2 of an inch to the point of beginning. (01-021-0007) ✓

Part of Lot 1, Block 25, Plat A, Ogden City Survey, Weber County, Utah: Beginning at a point on the South line of Said Lot 1, 41 feet 9 inches East of the Southwest corner of said Lot, and running thence North 99 feet, thence East 19 feet and 1/2 of an inch, thence South 99 feet, thence West 19 feet and 1/2 of an inch to the place of beginning. (01-021-0008) ✓

Beginning at a point 303.60 feet West from the Southeast corner of Lot 1, Block 25, Plat A, Ogden City Survey, Weber County, Utah; thence North 87 feet, thence East 13.95 feet, thence South 87 feet, thence West 13.95 feet to the place of beginning. (01-021-0009) ✓