



WHEN RECORDED RETURN TO:
Ogden City Redevelopment Agency
c/o Executive Director
2549 Washington Blvd. Suite 900
Salt Lake City, Utah 84401

E# 2508845 PG 1 OF 7
ERNEST D ROWLEY, WEBER COUNTY RECORDER
28-DEC-10 10:49 AM FEE \$22.00 DEP SY
REC FOR: EPEK TITLE INSURANCE AGENCY, L
ELECTRONICALLY RECORDED

SPECIAL WARRANTY DEED

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, OGDEN CITY REDEVELOPMENT AGENCY, a Utah municipal corporation] (“Grantor”), hereby conveys and warrants against all claiming by, through or under it to KEVIN GARN, an individual (“Grantee”), the following real property, including all land and buildings, facilities, fixtures located thereon, and all appurtenances thereto, which real property is located within the City of Ogden, Weber County, Utah, more particularly described as (the “Property”):

All of Lot 8, Ogden City Entertainment Subdivision – Phase 2 (Amended), Ogden City, Weber County, Utah

Weber County Parcel No. 01-099-0004 

WITNESSETH THAT:

WHEREAS, the Grantor is now the record owner of that certain real property which is hereinafter referred to as the Property as more fully described above attached hereto and made a part hereof; and

WHEREAS, the Grantee desires to acquire the Property and the Grantor desires to convey the Property to Grantee, subject to the reservations, restrictions, obligations, and liabilities, if any, of Grantor as set forth herein and

The conveyance of the Property hereby shall be subject to the following reservations, restrictions, easements, and encumbrances:

A. EXCLUSIONS, RESERVATIONS, COVENANTS, AND RESTRICTIONS

1. Grantee is hereby placed on notice that several easements exist on title, which run with the land and is binding on Grantee, its successors and assigns, providing access on and over the Property as more fully set forth in Exhibit A.

The Property is conveyed subject to:

- a. Easements established on, over, under, or across the Property as described above;

b. The provisions of that certain Development Agreement between the Grantor and Grantee, dated 11/30/2010, and recorded in the records of Weber County, State of Utah, concurrently with the recording of this Deed.

B. TO HAVE AND TO HOLD the Property unto the Grantee and its successors and assigns forever, provided that this Deed is made and accepted upon each of the following covenants and conditions, as applicable, which conditions shall be binding upon and enforceable against the Grantee, its successors and assigns, in perpetuity, as follows:

1. "AS IS"

a. The **Property** is conveyed "As Is," "Where Is" without any representation, warranty or guarantee, by the **Grantor** pursuant to applicable law, as to **Environmental Condition** (as defined in paragraph B.3. below), quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the purpose for which intended, and no claim for allowance or deduction upon such grounds will be considered. There is no obligation on the part of the **Grantor** to make any alterations, repairs or additions, and the **Grantor** shall not be liable for any latent or patent defects in the **Property**. The **Grantee** acknowledges that the **Grantor** has made no representation or warranty concerning the condition and state of repair of the **Property** nor any agreement or promise to alter, improve, adapt, or repair any portion of the **Property**, except as otherwise agreed upon by the **Grantor** in writing herein.

2. ENVIRONMENTAL CONDITION

a. As used in this Deed, "**Environmental Condition**" means any condition with respect to the environment (including soil, surface waters, ground waters, stream sediments, and the surface or subsurface strata on, at, in or relating to the **Property**, whether or not the condition is known or unknown, which could or does result in any liability, claim, cost, or order to or against **Grantor** or **Grantee**, their successors or assigns.

b. If, after conveyance of the **Property** to the **Grantee**, **Grantee** discovers an actual or threatened release of a CERCLA hazardous substance on the **Property** (other than asbestos or lead-based paint), or in the event that a hazardous substance is discovered or a pre-existing underground storage tank is found on the **Property** after the date of the conveyance, **Grantee** or its successor or assigns shall be responsible for such release, newly discovered substance, or underground storage tank unless **Grantee** is able to demonstrate that such release, such newly discovered substance, or such underground storage tank was due to **Grantor's** activities, ownership, use or occupation of the **Property**, or the activities of **Grantor's** contractors and/or agents. Nothing in this provision shall be construed to create an additional burden of proof applicable to any administrative or judicial proceeding.

Grantee understands that **Grantor** makes no representations or warranties regarding the **Environmental Condition** of the **Property**, including but not limited to items described or referred to in Paragraphs B.1. "AS IS;" and B.2. ENVIRONMENTAL CONDITION. **Grantee**, on behalf of itself, its successors and assigns, hereby releases **Grantor**, its successors and assigns, from any and all liabilities, claims, or demands related to the condition, including the

Environmental Condition, of the **Property**. Neither **Grantee** nor its successors or assigns shall assert or bring any claim against **Grantor**, its successors or assigns, for any representation, warranty, covenant, or obligation of the United States, the State of Utah, or any of their respective departments, agencies, or political subdivisions.

3. INDEMNIFICATION

a. As consideration for this conveyance, the **Grantee**, its successors and assigns, shall release, indemnify and hold the **Grantor** harmless from any and all claims, liability, loss, cost, environmental contamination, or damage relating to the **Property** and arising out of or resulting from any actions or omissions of the **Grantee**, its successors and assigns, and their respective agents, employees, invitees, contractors, on the **Property** prior to or after the date of this Deed.

4. IMMUNITIES

The **Grantee** is not entitled to any of the immunities which the Ogden City Redevelopment Agency may have had in using the **Property**. The **Grantee** is not exempt from acquiring the necessary permits and authorizations from, or from meeting the requirements of the local, county, and state jurisdictions before using the **Property** for any purpose. The **Property**, immediately after conveyance to the **Grantee**, will be subject to all local, county, and state laws, regulations, and ordinances. The **Grantee** shall comply with the applicable environmental laws and regulations and all other federal, state, and local laws, regulations, and standards that are or may become applicable to the **Grantee's** proposed use of the **Property**. The **Grantee** shall be solely responsible for fulfilling, at its own cost and expense, the requirements of the new governing authorities, independent of any existing permits or usages by the **Grantor**.

5. ENFORCEMENT AND NOTICE REQUIREMENT

a. The provisions of this Deed benefit the governments of the United States, the State of Utah, acting on behalf of the public in general, and the local governments of Weber County and Ogden City, and, therefore, are enforceable, by resort to specific performance or legal process by the United States, the State of Utah, Weber County, **Grantor**, and by the **Grantee**, and their respective successors and assigns. Enforcement of this Deed shall be at the discretion of the parties entitled to enforcement hereof, and any forbearance, delay or omission to exercise their rights under this Deed in the event of a breach of any term of this Deed, shall not be deemed to be a waiver by any such party of such term or of any subsequent breach of the same or any other terms, or of any of the rights of said parties under this Deed. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity.

b. The **Grantee**, its successors or assigns, shall neither transfer the **Property**, or any portion thereof, nor grant any interest, privilege, or license whatsoever in connection with the **Property** without the inclusion, to the extent applicable to the **Property** or any portion thereof, of the environmental protection provisions contained in Paragraphs B.2.

c. The **COVENANTS, CONDITIONS, and RESTRICTIONS** set forth in this Deed are a binding servitude on the **Property** and the burdens and benefits thereof will be deemed to run

with the **Property** in perpetuity. The **Grantee**, its successors and assigns, shall neither transfer nor lease the **Property**, or any portion thereof, nor grant any interest, privilege, or license whatsoever in the **Property** without providing notice of the environmental protection provisions identified above, which apply to the property conveyed, and shall require notice of such environmental protection provisions in all further deeds, transfers, leases, or grants of any interest, privilege, or license, as provided in subparagraph b. above.

d. The obligations imposed in this Paragraph upon the successors or assigns of Grantee shall only extend to the property conveyed to any such successor or assign.

C. PERMITTED ENCUMBRANCES

This conveyance is further subject to the liens and encumbrances listed on Exhibit "A" hereto (the "Permitted Encumbrances"). Except for the Permitted Encumbrances and the other exclusions, reservations, covenants, and restrictions expressly set forth herein, Grantor is conveying the Property to Grantee free and clear of liens, claims, and encumbrances.

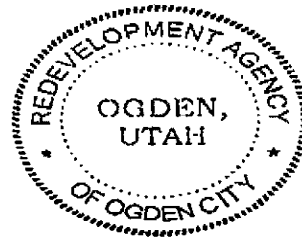
D. USE OF THE PROPERTY

The Property is currently made available by Grantor for the public's use for access purposes. Upon Grantor's execution hereof, Grantor hereby represents, warrants, covenants, and agrees to and with Grantee that such uses shall cease, and that Grantee shall be permitted to use the Property for Grantee's permittees, licensees, invitees and such other persons as Grantee may determine as well as the general public if permitted, and for any other uses or purposes permitted under zoning laws affecting the Property from time to time.

Dated the 13th day of November, 2010

OGDEN CITY REDEVELOPMENT AGENCY,

By: Matthew R. Godfrey
Name: Matthew R. Godfrey
Title: Executive Director



Attest:

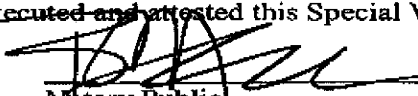
Lee Ann Peterson
City Recorder - Acting

Approved as to form:

Harry R. Williams
City Attorney

STATE OF UTAH)
:ss
COUNTY OF WEBER)

On this 25th day of November, 2010, personally appeared before me Matthew R Godfrey and Cindi Mansell, the Executive Director of OGDEN CITY REDEVELOPMENT AGENCY and the Ogden City Recorder respectively and ~~executed and~~ attested this Special Warranty Deed.



Notary Public
Residing at: Webber County

My commission expires:

11/11/2013
STATE OF UTAH)
:ss
COUNTY OF)

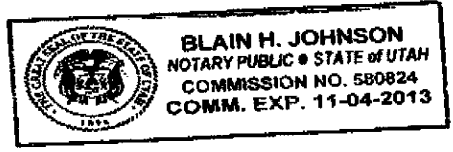


EXHIBIT "A"

The lien of all non-delinquent general real and personal property taxes, not yet due or payable.

Easements for public utilities, easements, building setback lines, restrictions, dedications, offer for dedications if any, conditions of approval and notes and incidental purposes over, along and across said property as shown on the recorded plat of said subdivision.

An Easement from Ogden City Neighborhood Development Agency and Ogden City Mall Company to the City of Ogden for a perpetual Easement and Right of Way for the construction of a sanitary sewer and appurtenant structures on land situated in Weber County, Utah, recorded on June 12, 1979, as Entry No. 779837, in Book 1307, at Page 494 of the Official Records.

A Right of Way and Easement Grant executed by Ernest W. Hahn, Inc., for the Mountain States Telephone and Telegraph Company, a Colorado Corporation, for the right to construct, operate, maintain and remove such communication and other facilities from time to time, as said Grantee may require, recorded February 22, 1980, as Entry No. 803845, in Book 1345, at Page 246 of the Official Records.

A Right of Way and Easement 10 feet in width, 5 feet each side of said centerline for the construction, operation and continued maintenance, repair, alteration, inspection, relocation and replacement of the underground electric transmission and distribution circuits of the Grantee, with the necessary transformers, transformer pads, pull boxes, service pedestals and other facilities related thereto, as created in favor of Utah Power & Light Company by instrument recorded February 9, 1981, as Entry No. 829701, in Book 1376, at Page 184, records of Weber County, Utah.

An EASEMENT executed by Ogden City Mall Company, Grantor, to Utah Power & Light Company, a Corporation, its successors and assigns, Grantee, recorded December 7, 1981 in Book 1394, at Page 182 and re-recorded June 17, 1982 in Book 1404, at Page 1107, Records of Weber County, Utah, which grants a perpetual easement and right of way for the construction, operation and continued maintenance, repair, alteration, inspection, relocation and replacement of the underground electric transmission and distribution circuits of the Grantee, with necessary transformers, transformer pads, pull boxes, service pedestals and other facilities related thereto.

An EASEMENT dated October 20, 1982, executed by Nordstroms, Inc., as Grantor, to Utah Power & Light Company, a Corporation, its successors and assigns, Grantees, recorded October 26, 1982, in Book 1411, Page 1163, Records of Weber County, Utah, which grants a perpetual easement and right of way for the construction, operation and maintenance, repair, alteration, inspection, relocation and replacement of the underground electric transmission and distribution circuits of the Grantee, with the necessary transformers, transformer pads, pull boxes, service pedestals and other facilities related thereto.

A 16.5 foot PUBLIC UTILITY EASEMENT running along the North and Westerly lot lines as may be disclosed on the recorded plat of said subdivision.

Said property is within the boundaries of Ogden and Tax District 93, and is subject to any charges and assessments levied thereunder.

Notes from Plat as may be disclosed on the recorded plat of said subdivision.

Notice of Adoption of Redevelopment Plan entitled "CBD Mall Redevelopment Project," and the terms and conditions thereof, recorded August 16, 1985, as Entry No. 944956, in Book 1473, at Page 1276 of the Official Records of Weber County.

The effects if any, of that certain Ordinance No. 94-3 creating the Central Business Improvement District #1 as disclosed in Book 1701, at Page 1316 of the Official Records.

The effects if any, of that certain Ordinance No. 2000-27, providing for new assessments within the Ogden City, Utah Central Business Improvement District No. 1 such Ordinance becoming effective May 28, 2000, recorded on June 7 2000, as Entry No. 1809915.

The effects if any, of that certain Ordinance No. 2003-83, providing for new assessments within the Ogden City, Utah Central Business Improvement District No. 1, such Ordinance becoming effective January 11, 2004, recorded on January 4, 2004, as Entry No. 2004067, and rerecorded on March 23, 2004, as Entry No. 2019270.

The effects if any, of that certain notice of Interest recorded by Woodbury Corporation, a Utah corporation, and Downtown Properties, a Utah general partnership, on March 25, 2002, as Entry No. 1835640, in Book 2218, at Page 2809.

The effects if any, of that certain Memorandum of Lease and Option to Lease recorded by Ogden City Redevelopment Agency, a body politic and a political subdivision of the State of Utah, and Boyer Ogden Mall, L.C., a Utah limited liability company, on March 1, 2007, as Entry No. 2245549.

The effects if any, of that certain Memorandum of Parking License Agreement recorded by Ogden City Redevelopment Agency, a body politic and a political subdivision of the State of Utah, and Boyer Ogden Mall, L.C., a Utah limited liability company, on March 1, 2007, as Entry No. 2245550.