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16-02/281

## PERPETUAL PARKING EASEMENT AGREEMENT

This PERPETUAL PARKING EASEMENT AGREEMENT (“**Agreement**”) is made and entered into this 8 day of SEPTEMBER, 2016 (“**Effective Date**”), by and between **Washington Commercial, LLC**, a Utah limited liability company (“**Washington**”), of 748 Heritage Park Blvd., Suite 203, Layton City, Davis County, Utah and the **OGDEN CITY REDEVELOPMENT AGENCY**, a Utah political subdivision, with its principal office at 2549 Washington Blvd., Ogden City, Weber County, Utah, together with its successors or assigns (“**Agency**”). Washington and Agency shall hereinafter be collectively referred to as the Parties and sometimes individually as a Party.

### RECITALS:

A. On or about August 2, 2011, Washington and Agency entered into a Development Agreement (“**Development Agreement**”) wherein Washington agreed to develop and improve all of Lot 8B, Ogden City Entertainment Subdivision, Phase 2, Lot 8 First Amendment, Ogden City, Weber County, Utah (“**Lot 8B**”), which was also known as parcel #01-106-0002, and which was formally a part of parcel #01-099-0004, at the Junction in Ogden City. The Development Agreement was recorded on September 2, 2011 as entry number 2540074 in the official records of the Weber County Recorder’s Office.

B. Pursuant to the terms of the Development Agreement and the Grant and Security Agreement attached thereto and recorded as Entry No. 2540074, at Page 54, Washington agreed to build a two level parking structure (“**Parking Terrace**”) upon Lot 8B and to designate and reserve twenty (20) parking stalls for Agency’s, and therefore the Public’s, perpetual right of use in exchange for a \$550,000 grant from the Ogden City Corporation, which amount was paid to Washington.

C. The Development Agreement required that the Parties take all steps necessary to subdivide the Parking Terrace and provide Agency with 20 designated parking stalls.

D. Lot 8B was subsequently subdivided into three separate lots, namely 8C, 8D & 8E. (See the Dedication Plat recorded in Book 74, at Page 27 of records).

E. The Development Agreement was amended pursuant to a Second Amendment to Development Agreement dated December 24, 2012 to (i) remove Lot 8C (Tax I.D. # 01-111-0001) and Lot 8E (Tax I.D. # 01-111-0003) from the sale of Lot 8B and to (ii) eliminate certain obligations under the Development Agreement in exchange for a substantial reduction in the sales price for just Lot 8D (Tax I.D. # 01-111-0002).

F. In accordance with the terms of the Development Agreement, as amended, Washington did build the Parking Terrace upon Lot 8D, which is more fully described on Exhibit A, attached hereto and made a part hereof.

E# 2814041 PG 1 OF 7  
Leann H. Kilts, WEBER COUNTY RECORDER  
09-Sep-16 0843 AM FEE \$22.00 DEP TT  
REC FOR: FOUNDERS TITLE COMPANY - LAYTON  
ELECTRONICALLY RECORDED

G. The Parking Terrace contains 105 parking stalls, 43 covered parking stalls on the ground level ("**Ground-Level Stalls**") and 62 parking stalls on the second level. Washington has installed signage around the perimeter thirty-six (36) parking stalls ("**Perimeter Stalls**"), and there are no signs on the interior 26 parking stalls ("**Interior Stalls**"). The Perimeter Stalls have been used exclusively by patrons of the adjacent Hilton Garden Inn Hotel ("**Patrons**") and the Interior Stalls have been made available to the Agency, City and general public (collectively, the "**Public**") and to Patrons.

H. The Parties now desire to finalize their agreement with respect to the Agency's obligation to convey Lot 8D to Washington and the terms of the Agency's designated 20 parking stalls in the Parking Terrace, the Parties having agreed that the Agency's parking stalls will be adequately secured by the recordation of this Agreement rather than by subdividing the Parking Terrace.

NOW, THEREFORE, the Parties hereto, intending to be legally bound and in consideration of the respective undertakings made and described herein, do agree as follows:

1. Recitals. The above recitals are incorporated herein by reference and made a part hereof.

2. Easement. Subject to the terms and conditions set forth in this Agreement, Washington hereby grants to Agency a perpetual, irrevocable, non-exclusive easement for parking in the Interior Stalls by the Public, together with perpetual, irrevocable, and non-exclusive access of ingress and egress over and across the entrance of the Parking Terrace which fronts on 2250 South Street. The Interior Stalls shall be made available to Patrons for parking when Perimeter Stalls are not available, it being the intent of the Parties that Patrons will first park in the Perimeter Stalls, until full, and then park in the Interior Stalls, as overflow and as needed, without compensation to the Agency.

3. Ground-Level Stalls & Perimeter Stalls. The Parties agree that the Ground-Level Stalls and the Perimeter Stalls are for the exclusive and perpetual use by Patrons and shall not be made available for parking by the Public. The Parties further agree that Washington may install signage designating Ground-Level and Perimeter Stalls as being reserved exclusively for use by Patrons.

4. Maintenance. For so long as this Agreement remains in effect, Washington, or its successors in interest to Lot 8D, agrees to operate and maintain, at its sole cost and expense, the Parking Terrace in reasonably good condition, taking into account the effective age of the Parking Terrace and generally matching the condition of improvements within the Junction area.

5. Obligation to Rebuild. At the end of the useful life of the Parking Terrace, Washington may, at its sole discretion, cost and expense, (i) rebuild the Parking Terrace in similar fashion as the presently existing Parking Terrace, in which event Washington shall provide Agency, and therefore the Public, with a continuing and perpetual, irrevocable, non-exclusive easement for the use of the same number of parking stalls on the second level of the newly constructed Parking Terrace in accordance with all provisions of this Agreement, or, in the

alternative, Washington may (ii) remove the second level of the Parking Terrace and maintain the Ground-Level parking only, in which event Washington agrees to provide the Agency, and therefore the Public, with a continuing and perpetual, irrevocable, non-exclusive easement for the use of 10 Ground-Level parking stalls in accordance with the terms hereof. Should Washington decide to rebuild the Parking Terrace, even after the site has been used as a single level parking lot, by again adding a second level to the Parking Structure, then the terms of subparagraph (i) in this paragraph shall apply and the Agency, and therefore the Public, will have the same parking access to the same, but newly constructed, Interior Stalls.

6. Indemnification. Each of the Parties to this Agreement agrees to defend, hold harmless and indemnify the other Party for the wrongful or negligent acts of its respective employees, agents, volunteers and invitees against any and all liabilities, claims, damages, actions, suits, proceedings, costs and expenses including reasonable counsel fees and expenses of investigation, which arise by reason of any accidents, damages, injuries (including injuries resulting in death) either to persons or property or both; provided, however, that in no event shall the indemnification obligation of the Agency or Ogden City Corporation exceed the amount set forth in the Utah Governmental Immunity Act or similar provision in effect at the time judgment is entered. Personal injury or property damage shall have the same meaning as defined in the Utah Governmental Immunity Act. In no event shall this section be construed with respect to third parties as a waiver of any governmental immunity to which a party is otherwise entitled.

7. Miscellaneous.

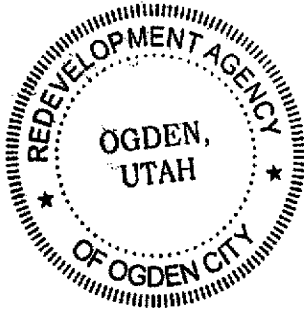
- a. Amendment. Except as otherwise provided herein, no amendment, modification or termination of this Agreement shall be binding unless executed in writing by the Parties.
- b. No Third Party Beneficiaries. This Agreement is only between Washington and the Agency, and is not intended to be, nor shall it be construed as being, for the benefit of any third party. Notwithstanding the forgoing, Ogden City is an intended third party beneficiary and may, in its own name and right, enforce all provisions of this Agreement.
- c. Partial Invalidity. If any term, provision, condition or covenant of this Agreement or the application thereof to any party or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- d. Governing Law. This Agreement shall be governed by, and construed according to, the laws of the State of Utah.
- e. Binding Agreement; Runs with the Land. This Agreement shall run with the land and be binding on, and inure to the benefit of, the Parties and their successors and

assigns. This Agreement, or a written notice of this Agreement, shall be filed of record with the Weber County Recorder's Office against the Parking Terrace.

- f. Interpretation. This Agreement shall be construed according to its fair meaning as if prepared by all parties to this Agreement. Titles and captions are for convenience only and shall not constitute a portion of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.


**SIGNATURES ON FOLLOWING PAGE**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year above written.



**AGENCY:**

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

By:   
Michael P. Caldwell  
Executive Director

**ATTEST:**

  
Agency Secretary

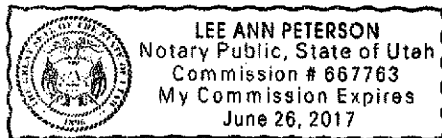
**APPROVED AS TO FORM:**

  
Agency Attorney

STATE OF UTAH            )  
  : SS  
COUNTY OF WEBER        )

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of Sept, 2016 by Michael P. Caldwell, Executive Director of Ogden City Redevelopment Agency.

  
Notary Public



WASHINGTON:

WASHINGTON COMMERCIAL, LLC,  
a Utah limited liability company

By:

K. S. G.

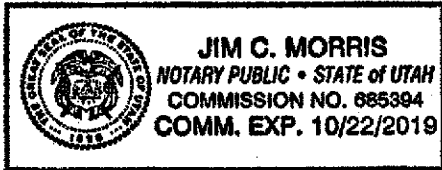
Its:

Manager

STATE OF UTAH )  
COUNTY OF DAVIS ) : SS

The foregoing instrument was acknowledged before me this 8 day of SEPTEMBER, 2016 by KEVIN S. EARN, who did say that (s)he is the MANAGER of Washington Commercial, LLC.

J. C. Morris  
Notary Public



**EXHIBIT A**  
**to**  
**Perpetual Parking Easement Agreement**

All of LOT 8D, OGDEN CITY ENTERTAINMENT SUBDIVISION, PHASE 2, LOT 8B  
FIRST AMENDMENT, OGDEN CITY, WEBER COUNTY, UTAH, according to the official  
plat thereof.

Tax Parcel No. 01-111-0002 