



\*W1957619\*

## AGREEMENT AND MORTGAGE

WHEREAS, Ogden City Corporation and Ogden City Redevelopment Agency (hereinafter called "{Mortgagor}"), whose Address is 2549 Washington Blvd, Ogden UT has applied to, received and accepted from the United States Department of Commerce, Economic Development Administration (EDA), whose address is 1244 Speer Blvd. Suite 632 Denver CO, a grant in the amount of One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00) (Grant Amount) pursuant to a Grant Agreement entered into by the parties on March 20, 2002, and bearing EDA Project Number 05-01-03712 (The Project); and

WHEREAS, pursuant to the application filed by Mortgagor requesting said grant and pursuant to the Grant Agreement, the Grant Amount is to be used for the purpose of making improvements consisting of the renovation of existing parking structure on the real Property described in Exhibit "A", attached hereto and made a part hereof (the Property); and

WHEREAS, any transfer or conveyance of a Project by an EDA Grantee must have the prior written approval of EDA. However, EDA, under authority of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. Section 3121, is not authorized to permit transfer or conveyance of a Project to parties which are not eligible to receive EDA grants unless EDA is repaid its share of the fair market value of the Project or unless the authorized purpose of the EDA grant was to develop land in order to lease it for a specific use, in which case EDA may authorize a lease of the Project if certain conditions are met; and

WHEREAS, the aforesaid grant from EDA provides that the authorized purpose for which the Grant Amount may be used is to develop and improve the Property in order to lease it for a specific use while further providing, *inter alia*, that Mortgagor will not sell, mortgage, or otherwise use or alienate any right to, or interest in the Property, other than by a lease permitted by the Grant Agreement, or use the Property for purposes other than and different from those purposes set forth in the Grant Agreement and the application made by Mortgagor therefore, such alienation or use being prohibited by 13 CFR Part 314, or by 15 CFR Part 24 or by 15 CFR Part 14, Attachment N (The OMB Circular); and

WHEREAS, THE VALUE OF EDA's right to repayment under the terms of 15 CFR Part 24 and 15 CFR Part 14 is difficult to establish; and

WHEREAS, at this time, Mortgagor and EDA desire to establish a value for EDA's share of the Project in the event that the Property is used, transferred or alienated in violation of the Grant Agreement, 15 CFR Part 24, 15 CFR Part 14 or 13 CFR Part 314;

NOW THEREFORE, Mortgagor does hereby mortgage, warrant, grant and convey unto EDA, its successors and assigns, a mortgage on said Property to secure a debt that shall become due and payable by Mortgagor to EDA upon the use, transfer or alienation of the Property in violation of the Grant Agreement or in violation of the regulations set forth in 13 CFR Part 314, 15 CFR Part 24, or 15 CFR Part 14, as such Grant Agreement, regulations or Circular may be amended from time to time, provided, however, that the lien and encumbrance of this AGREEMENT AND MORTGAGE shall terminate and be of no further force and effect fifteen (15) years from the

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DOUG CROFTS, WEBER COUNTY RECORDER  
17-JUL-03 1205 PM FEE \$0.00 DEP TOT  
REC FOR: OGDEN.CITY

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date hereof, which period of years has been established as the useful life of the improvements to the Property. The amount of the lien, encumbrance and debt created by this Agreement shall be the Grant Amount or the amount actually disbursed or an amount determined pursuant to 13 CFR Part 314. Mortgagor does hereby acknowledge that said debt shall accrue and be due and payable upon any use or transfer, or alienation prohibited by the Grant Agreement, 15 CFR Part 24, 15 CFR Part 14, or 13 CFR Part 314, and does, moreover, agree that such debt shall be extinguished only through the full payment thereof to the United States.

Mortgagor further covenants and agrees as follows:

1. Lease of Property

If the Grant Application and Grant Agreement authorize Mortgagor to lease the Property, all lease arrangements must be consistent with the authorized general and special purpose of the grant; said lease arrangements must be consistent with the EDA policies concerning, but not limited to, nondiscrimination and environmental requirements, and that the proposed Lessee is providing adequate consideration to Mortgagor for said lease. Any lease agreements entered into by Mortgagor of the Property shall be subordinate, junior and inferior to this AGREEMENT AND MORTGAGE.

2. Charges; Liens

Mortgagor shall protect the title and possession of the Property, pay when due all taxes, assessments, and other charges fines and impositions now existing or hereafter levied or assessed upon the Property and preserve and maintain the priority of the lien hereby created on the Property including any improvements hereafter made a part of the realty.

3. Hazard Insurance;

Mortgagor shall insure and keep insured all improvements now or hereafter created upon the Property against loss or damage by fire and windstorm and any other hazard or hazards included within the term "extended coverage". The amount of insurance shall be the full insurable value of said improvements. Any insurance proceeds received by the Mortgagor due to loss shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible and the security of this Mortgage is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Mortgage would be impaired, Mortgagor shall use said insurance proceeds to compensate EDA for its share value. EDA's fair share shall be a percentage of said insurance proceeds equal to its grant percentage in the total cost of the grant program for which the damaged or destroyed real property was acquired or improved.

4. Preservation and Maintenance of the Property;

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Mortgagor shall keep the Property in good condition and repair and shall not permit or commit any waste, impairment, or deterioration of the Property

5. Inspection

EDA may make or cause to be made reasonable entries upon and inspection of the Property.

6. Condemnation:

The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for any conveyance in lieu of condemnation shall be used by Mortgagor to compensate EDA for its fair share. EDA's fair share shall be a percentage in the total cost of the grant program for which the condemned property was acquired or improved.

7. Forbearance by EDA Not a Waiver:

Any forbearance by EDA in exercising any right or remedy hereunder, or otherwise affordable by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy hereunder.

8. Recording of Mortgage -- Mortgagee's Copy:

Mortgagor shall record this AGREEMENT AND MORTGAGE in the County where the Property is located, thereby securing to EDA an estate in the Property. Mortgagee shall be furnished a confirmed copy of this Mortgage at the time of execution, and after recordation thereof.

9. Remedies Commutative:

All remedies provided in this Mortgage are distinct and cumulative any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently, or successively.

10. Notice:

Any notice from EDA to Mortgagor provided for in this Mortgage shall be mailed by certified mail to Mortgagor's last known address or at such address as Mortgagor may designate to EDA by certified mail to EDA's address, except for any Notice given to Mortgagor in the manner as may be prescribed by applicable law as provided hereafter in this Mortgage.

11. Breach of Agreement:

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Upon Mortgagor's breach of any covenant or agreement of Mortgagor in this AGREEMENT AND MORTGAGE, EDA, its successors or assigns may declare the entire indebtedness secured hereby immediately due, payable and collectible. This AGREEMENT AND MORTGAGE may be enforced by the Secretary of Commerce of the United States of America, the Assistant Secretary of Commerce for Economic Development or their designees, successors or assigns, by and through a foreclosure action brought either in a United States District Court or in any State Court having jurisdiction. After any breach on the part of Mortgagor, EDA, its designees, successors or assigns shall, upon bill filed or the proper legal proceedings being commenced for the foreclosure of this Mortgage, be entitled, as a matter of right, to the appointment by any competent court, without notice to any party, of a receiver of the rents, issues and profits of the Property, with power to lease and control the Property, and with such other powers as may be deemed necessary.

12. Governing Law; Severability;

This AGREEMENT AND MORTGAGE shall be governed by applicable Federal law and nothing contained herein shall be construed to limit the rights the EDA, its designees, successors or assigns is entitled to under applicable Federal law. In the event that any provision or clause of this instrument conflicts with applicable law, such conflict shall not affect other provisions of this instrument which can be given effect without the conflicting provision, and to this end the provisions of this instrument are declared to be severable.

IN WITNESS THEREOF,  
Mortgagor has hereunto set its hand and seal on this the 8<sup>th</sup> day of July, 2003.

OGDEN CITY CORPORATION

By: Matthew R. Godfrey  
Matthew R. Godfrey  
Mayor

Attest:

Heoria J. Bennett  
City Recorder



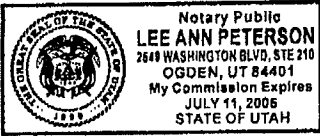
Approved as to Form

Buck Gwener  
Office of City Attorney

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STATE OF UTAH )  
 ) SS.  
COUNTY OF WEBER )

On the 8<sup>th</sup> day of July, 2003, personally appeared before me Matthew R. Godfrey and Gloria Berrett, who being by me duly sworn did say, each for himself or herself, that the said Matthew R. Godfrey is the Mayor, and the said Gloria Berrett is the City Recorder of Ogden City, and that the within and foregoing instrument was signed in behalf of said City by authority and said Matthew R. Godfrey and Gloria Berrett each duly acknowledged to me that said City executed the same.



Lee Ann Peterson  
Notary Public

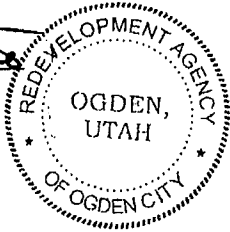
IN WITNESS THEREOF,  
Mortgagor has hereunto set its hand and seal on this the 8<sup>th</sup> day of July, 2003.

OGDEN CITY REDEVELOPMENT AGENCY

By: Matthew R. Godfrey  
Matthew R. Godfrey  
Chief Executive Officer

Attest:

LeRoy Nate Pierce  
LeRoy Nate Pierce  
Chief Administrative Officer



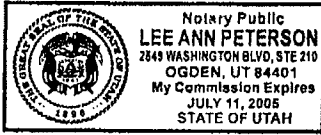
Approved as to Form

Buck Groener  
Office of Agency Attorney

E: 1957619 BK2406 PG1765

STATE OF UTAH )  
 ) SS.  
COUNTY OF WEBER )

On the 8<sup>th</sup> day of July, 2003, personally appeared before me Matthew R. Godfrey and LeRoy Nate Pierce, who being by me duly sworn did say, each for himself or herself, that the said Matthew R. Godfrey is the Chief Executive Officer, and the said LeRoy Nate Pierce is the Chief Administrative Officer of the Ogden City Redevelopment Agency, and that the within and foregoing instrument was signed in behalf of said Agency by authority and said Matthew R. Godfrey and LeRoy Nate Pierce each duly acknowledged to me that said Agency executed the same.



*Lee Ann Peterson*  
Notary Public

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**Exhibit "A"**

01-033-0005 ~~KK~~

PART OF BLOCK 39, PLAT A, OGDEN CITY SURVEY, WEBER COUNTY, UTAH;  
BEGINNING AT A POINT 547.05 FEET NORTH 89D02' WEST AND 49.5 FEET  
SOUTH 0D58' WEST FROM THE SOUTHEAST CORNER OF LOT 1; RUNNING  
THENCE NORTH 0D58' EAST 446.72 FEET; THENCE SOUTH 89D02' EAST 513.75  
FEET; THENCE NORTH 0D58' EAST 264.01 FEET; THENCE NORTH 89D02' WEST  
653.25 FEET; THENCE SOUTH 0D58' WEST 711.54 FEET; THENCE SOUTH 89D02'  
EAST 132.92 FEET TO PLACE OF BEGINNING. CONTAINING 5.46 ACRES, M/L.

01-028-0002 ~~KK~~

PART OF BLOCK 32, PLAT A, OGDEN CITY SURVEY, WEBER COUNTY, UTAH;  
AND VACATED 23RD STREET DESCRIBED AS FOLLOWS: BEGINNING 455.32  
FEET NORTH 89D02' WEST FROM THE SOUTHEAST CORNER OF LOT 1, BLOCK  
32; RUNNING THENCE NORTH 0D58' EAST 455.81 FEET; THENCE NORTH  
89D02' WEST 93 FEET; THENCE NORTH 0D58' EAST 258.29 FEET; THENCE  
NORTH 89D02' WEST 132.92 FEET; THENCE SOUTH 0D58' WEST 581.372 FEET;  
THENCE SOUTH 89D02' EAST 110.17 FEET; THENCE SOUTH 0D58' WEST 132.968  
FEET; THENCE SOUTH 89D02' EAST 114.48 FEET TO THE POINT OF  
BEGINNING.

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