

Ogden Neighborhood Development Agency

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DISPOSITION AND DEVELOPMENT AGREEMENT

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The Ogden Neighborhood Development Agency
Ogden Hotel Associates

DEPT. Paula Cruise

PART NO. PAGE

I. SUBJECT OF AGREEMENT

1.01 Purposes of Agreement..... 1

1.02 Parties to the Agreement..... 1

1.03 Definitions..... 1

II. DISPOSITION OF THE SITE

2.01 Sale and Purchase..... 2

2.02 Developer's Deposit; Letter of Credit..... 2

2.03 Condition of Title..... 3

2.04 Zoning of the Site..... 3

2.05 Taxes and Assessments..... 3

2.06 Physical Condition of the Site..... 3

2.07 Access to Site; Preliminary Work by the Developer..... 4

2.08 Clean Air Act..... 4

2.09 Purchase Price; Manner of Payment..... 4

2.10 Closing..... 4

III. DEVELOPMENT OF THE SITE

3.01 Limitations on Development..... 7

3.02 Agency Approval of Plans, Drawings and Related Documents..... 8

3.03 Rights of Access..... 9

3.04 Schedule of Performance..... 9

3.05 Bodily Injury and Property Damage Insurance..... 10

3.06 Compliance With Laws..... 10

3.07 Taxes, Assessments, Encumbrances and Liens..... 10

3.08 Prohibition Against Transfer of Site or Assignment of Agreement..... 11

3.09 Security For Financing Prior to Issuance of Certificate of Completion..... 12

3.10 Certificate of Completion..... 15

3.11 Amendment to Redevelopment Plan..... 17

IV. USE OF THE SITE

4.01 Uses..... 17

4.02 Obligation to Refrain From Discrimination..... 17

4.03 Parking and Access Agreement..... 18

V. DEFAULT; REMEDIES; TERMINATION

5.01 Definition of Default..... 18

5.02 Notice of Default; Stay of Legal Proceedings..... 19

5.03 Legal Actions..... 19

5.04 Rights and Remedies Are Cumulative..... 19

5.05 Rights of Termination..... 20

5.06 Right of Reentry..... 22

5.07 Survival of Obligations..... 24

Exhibit "B." On the Site and Parcel Map, the Site is divided into three (3) distinct parcels, as follows:

(i) Parcel A is the parcel on which the hotel-convention complex is to be located.

(ii) Parcel B is sometimes separately referred to herein as the "Office Building Site" and is the parcel on which an office building is to be located.

(iii) Parcel C is sometimes separately referred to herein as the "Parking Site." The Parking Site is now owned by the City and used by it as a parking lot.

Parcel D which is identified on the Site and Parcel Map is not part of the Site. It is owned and will be retained by the City for use for parking purposes.

II. DISPOSITION OF THE SITE

2.01 Sale and Purchase. In accordance with and subject to all the terms, covenants and conditions of this Agreement, the Agency agrees to acquire and sell the Site to the Developer, and the Developer agrees to purchase and develop the Site within the time, for the consideration, and subject to the terms, conditions and covenants provided for in this Agreement. The purchase of the Site shall be for the Purchase Price and upon the terms and for the consideration set forth in this Article II.

2.02 Developer's Deposit; Letter of Credit. At the time this Agreement is executed, the Developer shall deposit with the Agency an irrevocable letter of credit in the form attached hereto as Exhibit "H" drawn against Walker Bank & Trust Company, Salt Lake City, Utah, in the amount of One Hundred Thousand Dollars (\$100,000.00) (the "Letter of Credit") and shall pay to the Agency Fifteen Thousand Dollars (\$15,000.00) cash (the "Deposit"). Receipt of the Letter of Credit and the Deposit are hereby acknowledged.

(a) The Deposit shall serve as security for the performance of the obligations of the Developer under this Agreement. The Deposit shall not be subject to draw by the Agency except in the event of termination by the Agency as provided in Section 5.05 (b) or the Deposit may be drawn and used by the Agency to obtain appraisals with respect to the land comprising the Site and as consideration for options to acquire such land. The Agency shall keep accurate current records of all expenditures from the Deposit which records shall be available for inspection by the Developer. The Agency shall be under no obligation to pay or earn interest on the Deposit, but if interest shall accrue or be payable thereon such interest shall be the property of the Developer, and

shall be promptly paid to the Developer. The Deposit shall be applied as a credit to the Developer for the Purchase Price (as defined in Section 2.09 below) of the Site at the time of conveyance of the Site to Developer.

(b) The Letter of Credit shall be held by the Agency as security for the performance of Developer's obligations under this Agreement, retained permanently by the Agency, or returned to the Developer, all pursuant to the provisions of this Agreement. If this Agreement has not been terminated pursuant to Section 5.05 hereof, and if the Letter of Credit has not previously been drawn against pursuant to said Section, the Letter of Credit shall be returned to the Developer by the Agency upon receipt by the Agency of the Purchase Price for the Site.

2.03 Condition of Title. The Agency shall convey to the Developer, or its nominee, fee simple title to the Site free and clear of:

(a) All recorded or unrecorded liens, encumbrances, covenants, conditions, restrictions, assessments, easements, leases, taxes and other defects, except for those matters which Developer approves in writing and, except for general real estate taxes for the current fiscal year not yet due.

(b) Any possession or right of possession except the possession of Developer.

(c) Such other exceptions as are set forth on Exhibit I.

2.04 Zoning of the Site. The Developer acknowledges that the Site is currently zoned in such classification as will permit development, use, operation and maintenance thereof in accordance with the provisions of Articles III and IV of this Agreement.

2.05 Taxes and Assessments. Ad valorem taxes and assessments, if any, with respect to the Site and taxes upon this Agreement or any rights hereunder, levied, assessed or imposed for any period commencing prior to the Closing (as defined in Section 2.10) shall be borne by the Agency. All ad valorem taxes and assessments levied or imposed for any period from and after Closing of the escrow shall be paid by the Developer.

2.06 Physical Condition of the Site. The Site shall be conveyed to the Developer in its then existing condition. The Agency shall have no responsibility to repair, refurbish or demolish existing improvements. It shall be the sole responsibility of Developer prior to the execution of this Agreement to investigate and determine the suitability of the soil and subsurface conditions for the improvements to be constructed by Developer.

2.07 Access to Site; Preliminary Work by the Developer. Prior to the Closing the Developer and its agents and employees shall have the right of access to the Site from time to time at all reasonable times for the purpose of obtaining data, making surveys and soils tests and conducting such other investigation as may be necessary or appropriate to carry out its rights or obligations under this Agreement. The foregoing, notwithstanding the right of the Developer under the preceding sentence shall be derived from and limited by any right of access the Agency has to the Site. The Developer shall hold the Agency harmless for any injury or damages arising out of any activity pursuant to this Section 2.07. The Developer shall have access to all data and information concerning the Site which may be available to the Agency.

2.08 Clean Air Act. The Developer has the obligation to meet and comply with all the requirements, if any, of the Federal Clean Air Act and any Utah, regional or local requirements (collectively "Clean Air Requirements") dealing with air quality standards and the conditions affecting the same which are prerequisite to the construction or use of the improvements as contemplated in the Scope of Development which is attached hereto as Exhibit "E" including, but not by way of limitation, the requirements for a permit for the construction of any parking facilities. The Agency shall provide all reasonable assistance to the Developer in satisfying the foregoing conditions.

2.09 Purchase Price; Manner of Payment. The purchase price (the "Purchase Price") for the Site (i.e., Parcels A, B and C identified on the Site and Parcel Map) shall be \$ 918,492.00. The Purchase Price shall be paid at the Closing as follows:

- (a) An amount equal to the Deposit shall be credited to the Developer.
- (b) The balance of the Purchase Price shall be paid at the Closing.

The Developer is also furnishing additional consideration by agreeing, at its sole cost and expense, to raze and demolish existing structures on Parcels A, B and C and, in connection with the Parking and Access Agreement, to blacktop and landscape Parcel D.

2.10 Closing. The consummation of the transaction in which title to the Site is conveyed to the Developer in exchange for Developer's payment of the Purchase Price to the Agency is referred to herein as the "Closing" and the date on which the Closing occurs is referred to herein as the "Closing Date." The Developer shall be entitled to full possession of the Site from and after the Closing. The Closing shall be consummated through an escrow which is to be established and governed in accordance with the following terms. This Agreement together with the standard escrow instructions of Western States Title Company of Ogden, Utah (the "Escrow Agent") constitutes the joint escrow instructions of the Agency and the Developer, and an executed counterpart of this Agreement shall be delivered to the Escrow Agent upon the opening of escrow. The Agency and the Developer shall provide such additional escrow instructions as shall be necessary and consistent with this Agreement.

(a) The Agency agrees to open an escrow for the conveyance of the Site with the Escrow Agent not later than the date set forth in the Schedule of Performance which is attached hereto as Exhibit "F." The Escrow Agent hereby is empowered to act under this Agreement and upon indicating its acceptance of the provisions of this Section 2.10 in writing, delivered to the Agency and to the Developer within five (5) days after the opening of the escrow, shall carry out its duties as Escrow Agent hereunder. Upon opening escrow the Agency shall deliver to the Escrow Agent:

(i) A warranty deed in form suitable for recording and in form and substance reasonably acceptable to conveying the Site to the Developer.

(ii) A topographic boundary survey of the Site made by a licensed land surveyor.

(iii) A Parking and Access Agreement executed by the City of Ogden in the form attached hereto as Exhibit "G."

(b) Not later than ten (10) days prior to the Closing, the Developer shall deliver to the Escrow Agent:

(i) A copy of its franchise agreement with Hilton Hotels allowing Developer (or its affiliated management company) to operate a Hilton Inn on Parcel A of the Site; and

(ii) If possible, a copy of the executed construction contract or contracts providing for the construction of the improvements in accordance with the Scope of Development as attached hereto as Exhibit "E."

(c) Within one (1) day prior to the Closing, Developer shall deliver to the Escrow Agent the cash portion of the Purchase Price required by Section 2.09(b) above.

(d) At the Closing, the Developer shall pay the following fees, charges and costs promptly after the Escrow Agent has notified the Developer of the amount of such fees, charges and costs:

(i) One-half (1/2) of the fees of the Escrow Agent.

(ii) The cost of recording the warranty deed.

(e) At the Closing, the Agency shall pay in escrow to the Escrow Agent, the following fees, charges and costs promptly after the Escrow Agent

has notified the Agency of the amount of such fees, charges and costs:

(i) All costs, if any, necessary to place the title in the condition for conveyance required by the provisions of this Agreement.

(ii) One-half (1/2) of the escrow fee.

(iii) The premium for the title insurance policy.

(iv) Its pro rata share of real estate taxes and assessments, if any, upon the Site for the portion of the current tax year accruing prior to Closing.

(f) The Escrow Agent shall prorate all real estate taxes and assessments with respect to the Site between the Agency and the Developer as of the Closing Date based upon the latest available assessments and tax rates.

(g) At the Closing, the Agency shall cause to be delivered to the Developer at the Agency's cost and expense an ALTA standard owner's form policy of title insurance, issued by Western States Title Company insuring that the title to the Site is vested in the Developer in the condition required by Section 2.03 of this Agreement. The title insurance policy shall be in the amount of the Purchase Price. Western States Title Company shall provide the Agency with a copy of the title insurance policy.

(h) When the documents, instruments or money described in subsections (a) through (e) above have been delivered to the Escrow Agent, the Escrow Agent has completed the prorations prescribed by subsection (f) above and the Escrow Agent is prepared to issue the title insurance policy described in subsection (g) above, the Escrow Agent shall:

(i) Pay to the Agency the amount delivered by Developer pursuant to subsection (b) above.

(ii) Record the warranty deed described in subsection (a) (1).

(iii) Issue the title insurance policy to Developer.

(i) The following general provisions shall govern the escrow:

(i) All funds received in this escrow shall be deposited by the Escrow Agent in a

general escrow or trust account with any state or national bank doing business in the State of Utah.

(ii) The Escrow Agent shall not be obligated to return any such money, papers or documents except upon the written instructions of both the Agency and the Developer, or until the party entitled thereto has been determined by a final decision of a court of competent and ultimate jurisdiction.

(iii) Any amendment to these escrow instructions shall be in writing and signed by both the Agency and the Developer. At the time of any amendment the Escrow Agent shall be required to agree to carry out its duties as Escrow Agent under such amendment.

(iv) All communications from the Escrow Agent to the Agency or the Developer shall be directed to the addresses and in the manner established in Section 7.01 of this Agreement for notices, demands, and communications between the Agency and the Developer.

(v) The liability of the Escrow Agent under this Agreement is limited to performance of the obligations imposed upon it under Section 2.10 of this Agreement.

(j) If this escrow is not in condition to close before January 31, 1980, either party who then shall have fully performed the acts to be performed before the conveyance of title may, in writing, terminate this Agreement and demand the return of its money, papers or documents. Thereupon all obligations and liabilities of the parties under this Agreement shall cease and terminate. If neither the Agency nor the Developer shall have fully performed with respect to the conveyance before the date established above, no termination or demand for return shall be recognized. If, after the Escrow Agent shall have received such demand to the party or parties at the address of its or their principal place of business, if any, the Escrow Agent shall (i) pay the money to the party or parties who have performed, or (ii) hold all money, papers or documents deposited by mutual agreement of the parties, or upon failure thereof, by a court of competent jurisdiction. If no such demand has been made, the escrow shall be closed as soon as reasonably practicable.

III. DEVELOPMENT OF THE SITE

3.01 ~~Restrictions on Development~~ The Site shall

be improved by Developer in accordance with the Act only with the improvements described in the "Scope of Development" which is attached hereto as Exhibit "E" together with such additional incidental improvements as are required or are desirable therewith.

3.02 Agency Approval of Plans, Drawings and Related Documents. Subject to the limitations and standards imposed on the Agency pursuant to the terms of this Section 3.02, the Agency shall have the right of reasonable architectural review of all plans and specifications for the improvements to be located on the Site and all material changes thereto. The Agency shall approve or disapprove the plans, drawings and related documents referred to in this Section 3.02 within the times established in the "Schedule of Performance," which is attached hereto as Exhibit "F." Failure by the Agency to either so approve or disapprove within the times established in the Schedule of Performance shall be deemed an approval. Any disapproval shall be in writing and shall state in reasonable detail the reasons for disapproval and the changes which the Agency requests to be made. Such reasons and such changes must be consistent with the matters described in the Scope of Development and any items previously approved or deemed approved hereunder by the Agency. The Developer, upon receipt of notice of disapproval shall revise the plans or specifications which have been disapproved and shall resubmit them to the Agency as soon as possible. Plans or specifications approved or deemed approved shall be deemed in all respects to be in accordance with the Redevelopment Plan and the Act. Without limiting the generality of the foregoing, Developer shall submit to the Agency for its approval:

(a) Basic Concept Drawings. Within the time set forth in the Schedule of Performance, the Developer shall prepare and submit to the Agency the Basic Concept Drawings and related documents containing the overall plan for development of the Site. Basic Concept Drawings shall include perspective renderings reflecting design concepts and a site plan showing the general location of improvements as they are to be initially constructed upon the Site and the boundaries of the Site as they relate to existing streets. The Developer and the Agency shall initial and date each page of those drawings and documents. The Site shall be developed as generally established in the Basic Concept Drawings and related documents except as changes may be mutually agreed upon between the Developer and the Agency. Any such changes shall be within the limitations of the Scope of Development.

(b) Construction Drawings and Related Documents. The Developer shall prepare and submit construction drawings and related documents for the entire Site to the Agency for architectural review and written approval as and at the times established in the Schedule of Performance. The construction drawings and related documents shall be submitted in two (2) stages referred to herein

as the "Preliminary" and "Final" Drawings. Preliminary Drawings shall include plans, elevations and sections of the improvements as they are to be initially constructed upon the Site and a description of the structural, mechanical and electrical systems. Final Drawings and plans are hereby defined as those in sufficient detail to obtain a building permit. Approval of progressively more detailed drawings and specifications will be promptly granted by the Agency if such drawings and specifications are not in conflict with drawings or specifications theretofore approved. Any items approved in writing (or deemed approved as provided in this Section 3.02) by the Agency shall not be subject to subsequent disapproval. During the preparation of all drawings and plans, the Agency and the Developer shall hold regular progress meetings to coordinate the preparation of and review of construction plans and related documents by the Agency.

(c) Changes. If the Developer desires to make any substantial change in the Final Drawings after their approval by the Agency, the Developer shall submit the proposed change to the Agency for its approval. If the Final Drawings, as modified by the proposed change, conform to the requirements of this Agreement, the Scope of Development, the Redevelopment Plan and the Act, the Agency shall approve the proposed change and notify the Developer in writing within ten (10) days after the next regularly-scheduled Agency meeting after submission to the Agency. Such change in the Final Drawings shall, in any event, be deemed approved by the Agency unless rejected, in whole or in part, by written notice thereof within said ten (10) days by the Agency to the Developer setting forth in detail the reasons therefor.

3.03 Rights of Access. During the period of construction, representatives of the Agency shall have the reasonable right of access to the Site for the purpose of inspecting construction, performance of the Developer's obligations, or monitoring Developer's performance of the obligations. The Agency may, during such time, require the Developer to provide that such representatives be accompanied by a representative of the Developer. Representatives of the Executive Director shall be accompanied by the Executive Director.

3.04 Commencement of Construction. Construction shall begin within the period of time specified in the Schedule of Construction. Construction shall begin and complete all construction in accordance with the times specified in the Schedule of Construction. The Developer shall be responsible for all improvements on the Site.

Handwritten signature or initials

except for work expressly set forth in this Agreement to be performed by the Agency or others.

3.05 Bodily Injury and Property Damage Insurance.

During any period prior to Closing when the Developer is engaged in preliminary work on the Site pursuant to Section 2.07, and during the period from and after the Closing and ending on the date when a Certificate of Completion has been issued with respect to all of the Site, the Developer shall furnish or cause to be furnished to the Agency duplicate originals or appropriate certificates of bodily injury and property damage insurance policies in the amount of at least \$500,000.00 for any person, \$1,000,000.00 for any occurrence and \$300,000.00 property damage, naming the Agency and the City as co-insureds.

3.06 Compliance With Laws.

(a) Except for those matters required to be complied with by the Agency under the provisions of this Agreement, before commencement of construction or development of any buildings, structures or other work of improvement upon the Site (but not necessarily before the Closing), the Developer shall at its own expense secure or cause to be secured any and all permits which may be required by the City or any other governmental agency having jurisdiction over the Site and such construction, development or work. The Agency shall provide all reasonable assistance to the Developer in securing such permits. In no event shall Developer be obligated to commence construction (the Schedule of Performance notwithstanding) if any such permit is not issued despite good faith effort by the Developer to secure it. In the event there is a delay beyond the usual time for obtaining any such permits due to no fault of the Developer, the entire Schedule of Performance shall be extended by one (1) day for each day of delay.

(b) The Developer shall carry out the construction of the improvements in conformity with all applicable laws, ordinances, regulations and rules, including all applicable federal and state labor standards.

(c) The Developer, for itself and its successors and assigns, agrees that in the construction of the improvements provided for in this Agreement, the Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin.

3.07 Taxes, Assessments, Encumbrances and Liens. The Developer shall pay when due all real estate taxes and assessments on the Site assessed and levied after the Closing. Prior to the recordation of a Certificate of Completion with respect to the Site, the Developer shall not place or allow to be placed on the

Site any mortgage, trust deed, encumbrance or lien not authorized by this Agreement and the Developer shall remove or have removed any levy or attachment made on any such Parcel or portion thereof, or assure the satisfaction thereof within a reasonable time but in any event prior to a sale thereunder. Nothing herein contained shall be deemed to prohibit the Developer from contesting the validity or amounts of any tax assessment, encumbrance or lien nor to limit the remedies available to the Developer in respect thereto.

3.08 Prohibition Against Transfer of Site or Assignment of Agreement.

(a) Assignment of Agreement. The Developer shall not, without first obtaining the prior written consent of the Agency, assign or transfer any or all of its right, title and interest under this Agreement to a third party. Notwithstanding the foregoing provision, the Developer may, without obtaining the prior written consent of the Agency and the trustee, if any, under the Agency Bond Issue (as hereafter defined), assign or transfer all or any part of its right, title and interest hereunder to:

(i) Either of its general partners or any partnership, corporation or other entity which either of its general partners control.

(ii) Any partnership, corporation or other entity which is controlled by the Developer.

For purposes of this Section 3.08, the term "control" means the ownership of fifty percent (50%) or more of all voting stock in a corporation or the ownership of fifty percent (50%) or more in the capital of a partnership. Any assignment or transfer under this Section 3.08(a) shall not terminate, reduce or otherwise affect the Developer's obligations to the Agency under this Agreement. The Developer shall give the Agency prompt written notice of any assignment or transfer pursuant to this Section 3.08(a). All assignments shall continue to be subject to the provisions of this Section 3.08(a).

... prior to the completion of the construction of the Site, the Developer may, at its option, sell, lease, convey or otherwise dispose of the Site or any portion thereof to a third party. In the event the Developer assigns or transfers any part of the Site or any portion thereof to a third party, the provisions of Section 3.08(a)(1) shall apply to the assignee or transferee. In the event of a violation of the provisions of this Section 3.08(a), the Developer shall be liable for the penalties set forth in the following sentence...

(c) Easement and Leasing Exception. The prohibitions set forth in subsections (a) and (b) above shall not be deemed to prevent the granting of easements or permits to facilitate the development of the Site within the Scope of Development or to prohibit or restrict the leasing of any part, or parts of a building or structure on the Site within the Scope of Development if the right to possession of the tenant under the lease is conditioned upon the issuance of a Certificate of Completion by the Agency with respect to the building which the tenant is to occupy. In addition, such prohibitions shall not apply to any portion of the Site subsequent to the recordation of the Certificate of Completion with respect to the improvements upon such portion of the Site.

(d) Developer's Continued Liability. Except in the event of the conveyance described in subsection (c) above, no transfer, assignment, conveyance or other disposition of the Site, any portion thereof or of any or all of Developer's right, title and interest under this Agreement shall be deemed to relieve the Developer or any other party from any obligations under this Agreement as to the Site or portion thereof until completion of development as evidenced by a Certificate of Completion.

3.09 Security For Financing Prior to Issuance of Certificate of Completion.

(a) No Encumbrances Except Mortgages, Deeds of Trust, Sales and Leases-Back or Other Financing for Development. Notwithstanding the provisions of Section 3.08, mortgages, deeds of trust, sales and leases-back or any other form of conveyance required for any reasonable method of financing are permitted before issuance of a Certificate of Completion but only for the purpose of securing loans of funds to be used for financing the acquisition of the Site, the construction of improvements on the Site, or portions thereof and any other expenditures necessary and appropriate to develop the Site. The Developer or any entity permitted under Section 3.01 to acquire an interest in the Site, the Agency and the trustee of any bond issue shall issue in advance of any mortgage, deed of trust, sale or lease-back or other form of financing given to secure any such financing, such instruments and documents as hereinafter collectively are "Required Documents". In the event that the financing is to be provided by one or more of the banks (10) listed in Utah or one of the one hundred (100) largest insurance companies in the United States, the prior written approval of the Agency shall not be required. In all other cases the prior written approval of the

Agency shall be required, which approval shall not be unreasonably withheld. Such lender shall be deemed approved unless rejected in writing by the Agency within ten (10) days after notice thereof to the Agency delivered in the manner set forth in Section 7.01. In any event, the Developer shall promptly notify the Agency of any Financing Document that has been created with respect to the Site or a portion thereof prior to issuance of a Certificate of Completion whether by voluntary act of the Developer or otherwise. Any disapproval by the Agency shall effect an extension of all subsequent dates of the Schedule of Performance by the number of days necessary to obtain a lender satisfactory to the Agency, but only to the extent that the existence of satisfactory financing arrangements which are not in violation hereof is reasonably advisable in accordance with prudent business practices to have been accomplished prior to performing such other actions which are set forth in the Schedule of Performance.

(b) Holder Not Obligated to Construct Improvements. The holder of any Financing Document shall in no way be obligated by the provisions of this Agreement to construct or complete the improvements or to guarantee such construction or completion; nor shall any covenant or any other provision in the deed for the Site be construed so to obligate such holder. Nothing in this Agreement shall be deemed to permit or authorize any such holder to devote the Site to any uses, or to construct thereon any improvements, other than those uses or improvements provided for or authorized by this Agreement, the Redevelopment Plan or the Act.

(c) Notice of Default to Holder of Financing Document; Right to Cure. Whenever the Agency shall deliver any notice or demand to the Developer concerning the Developer's failure to comply with this Agreement in any respect or to complete construction of the improvements as required herein in the manner required in the Scope of Development or in the time prescribed by the Schedule of Performance, the Agency shall at the same time deliver a copy of such notice or demand to each holder of record of any Financing Document. Each such holder shall (insofar as the rights of the Agency are concerned) have the right, at its option, within ninety (90) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to add the cost thereof to the security interest debt and the lien on its security interest or to the obligations of the lessee under any lease-back or of the grantor under any other conveyance for financing. Nothing contained in this Agreement shall be deemed to permit or authorize such holder or other entity to undertake or continue the

construction or completion of the improvements (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed the Developer's obligations hereunder (with respect to the Site or portion thereof as to which the holder or other entity has an interest) to the Agency by written agreement satisfactory to the Agency. The holder or other entity in that event must agree to complete, in the manner provided in this Agreement, the improvements to which the lien or title of such holder relates, and submit evidence satisfactory to the Agency that it has the qualifications and financial responsibility necessary to perform such obligations. Any such holder or other entity properly completing such improvements shall, upon written request made to the Agency, be entitled to a Certificate of Completion from the Agency with respect to such improvements.

(d) Failure of Holder to Complete Improvements. In any case where, three (3) months after default by the Developer in completion of construction of improvements under this Agreement, the holder of any Financing Document has not exercised the option afforded in subsection (c) above to construct, or if it has exercised the option but has not proceeded diligently with construction, the Agency may either: (i) purchase the Financing Documents by payment to the holder of the amount of the unpaid debt, plus any accrued and unpaid interest, or in the case of the lessor under any leaseback or grantee by payment to such lessor or grantee of the purchase price paid for its interest in the Site and the improvements, and any unpaid rent or other charge payable to it under its applicable agreements with its lessee or grantor; or (ii) if the ownership of the Site or portion thereof has vested in the holder, purchase from the holder such interest upon payment to the holder of an amount equal to the sum of the following:

(A) The principal and accrued interest secured by the Financing Document at the time of the default of such holder (less all applicable credits, including those resulting from collection of rents and other income earned during foreclosure proceedings);

(B) All expenses with respect to foreclosure, sale or other disposition;

(C) The amount, if any, by which the fair market value of the Site as determined by a professional management firm or other qualified general appraiser exceeds the value of the Site.

(D) The costs of any improvements made by such holder.

(E) An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the debt secured and evidenced by the Financing Documents and such debt had continued in existence to the date of payment by the Agency.

(e) Right of Agency to Cure Default Under Financing Documents. In the event of the default or breach by the Developer or entity permitted to acquire title under Section 3.08 under any Financing Document of record with respect to the Site or a portion thereof prior to the completion of development, and the holder has not exercised its option to complete the development, the Agency may cure the default prior to completion of any foreclosure, trustee's sale or similar forfeiture. In the event the Agency cures the default it shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the Agency in curing the default. The Agency shall also be entitled to a lien upon the Site or the portion thereof involved to the extent of such costs and expenses. Any such lien shall be subject and subordinate to the Financing Documents previously executed and delivered pursuant to the provisions of this Section 3.09.

(f) Right of Agency to Satisfy Other Liens on the Site After Title Passes. After the Closing and prior to the recordation of a Certificate of Completion and after the Developer has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on the Site or any portion thereof, the Agency shall have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall require the Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Developer in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Site or any portion thereof to forfeiture or sale. Promptly after the resolution of any such dispute the Developer shall reimburse Agency for any sums paid by the Agency to satisfy valid and outstanding liens or encumbrances.

3.10 Certificate of Completion

(a) Time for Issuance of Certificate of Completion. Promptly after completion of all construction and development to be completed by the Developer upon the Site, or upon any portion thereof which has been conveyed to another entity as approved by the Agency or as permitted under

Section 3.08, or has been separately financed under any arrangement permitted under Section 3.09, the Agency shall furnish the Developer, or other entity to which an interest may be transferred under Section 3.08, or to which an interest has been conveyed with approval of the Agency, or other entity having an interest pursuant to a financing arrangement permitted under Section 3.09, with a Certificate of Completion for such portion of the Site upon written request therefor by the Developer or such other entity. The Agency shall not unreasonably withhold any such Certificate of Completion. Such Certificate of Completion shall be, and shall so state, conclusive determination of satisfactory completion of the construction required by this Agreement upon the Site, or portion thereof, and of full compliance with the terms hereof with respect thereto. If the Developer is not in default under this Agreement the Agency shall also furnish the Developer with a Certificate of Completion for portions of the improvements upon a portion of the Site as they are properly completed and ready to use, if such portions are proposed to be conveyed or encumbered separate and apart from the remainder of the Site. It is specifically agreed that each of the following are portions of the Site which, at Developer's option, shall qualify for the issuance of a Certificate of Completion upon completion even though other portions (including others of the following) are not completed: (i) Parcel A, and (ii) Parcel B. After issuance of such Certificate of Completion any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest therein shall not (because of such ownership, purchase, lease or acquisition), incur any obligation or liability under this Agreement, except that such party shall be bound by any covenants contained in the deed, lease, mortgage, deed of trust, contract or other instrument of transfer in accordance with the provisions of Section 4.02 of this Agreement. Neither the Agency nor any other person, after issuance of a Certificate of Completion, shall have any rights, remedies or controls that it would otherwise have or be entitled to exercise under this Agreement with respect to the portion of the Site covered by the Certificate of Completion and the respective rights and obligations of the parties with reference to those set forth in the Warranty Deed. A Certificate of Completion of construction for the improvement and development of all or a portion of the Site shall be in such form as to permit it to be recorded in the Recorder's Office of Weber County.

~~(b) Failure to Issue Certificate of Completion. If the Agency refuses or fails to furnish a Certificate of Completion for the Site or portion~~

thereof after written request from the Developer or other entity or person set forth above entitled to request the same, the Agency shall, within ten (10) days after the next regularly-scheduled Agency meeting after such written request, provide the Developer with a written statement of the reasons why the Agency refuses or fails to furnish a Certificate of Completion. The statement shall also contain the Agency's opinion of the action that must be taken to obtain such Certificate of Completion. If the reason for such refusal is confined to the immediate availability of specific items of materials for landscaping or fine arts, the Agency will issue its Certificate of Completion upon the posting of a bond by the Developer with the Agency in an amount representing a fair value of the work not yet completed. If the Agency shall have failed to consider the issuance of a Certificate of Completion within said ten (10) day period after the next regularly-scheduled Agency meeting, the Developer or such other entity or person shall be deemed entitled to the Certificate of Completion.

3.11 Amendment to Redevelopment Plan. Any subsequent amendments to the Redevelopment Plan by the City which change the uses or development permitted on the Site as proposed in this Agreement or otherwise change the restrictions or controls that apply to the Site or otherwise affect the Developer's obligations or rights with respect to the Site shall require the written consent of the Developer.

IV. USE OF THE SITE

4.01 Uses. The Developer covenants and agrees for itself, its successors, its assigns, that during construction [and thereafter], the Developer, and such successors and assigns, shall devote the Site to the uses specified in the Redevelopment Plan, the Act, the Warranty Deed and the Scope of Development, which is attached hereto as Exhibit "E" which is incorporated herein by this reference.

4.02 Developer to Refrain From Discrimination. There shall be no discrimination on account of sex, race, color, age, handicap, creed, national origin, or ancestry in the sale, lease, sublease, transfer, or conveyance, or enjoyment of the Site, nor shall there be any discrimination on the part of any person claiming under or through it in the sale, lease, sublease, or conveyance, or practices of discrimination in the selection, location, design, construction, or use of the Site or any portion thereof. All deeds, leases or conveyances shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(a) In Deeds.

The grantee hereby covenants by and for himself, his heirs, successors, administrators and

assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of sex, race, color, age, handicap, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

(b) In Leases:

"The lessee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons on account of sex, race, color, age, handicap, creed, national origin or ancestry, in the leasing, subleasing, transferring, use or enjoyment of the land herein leased nor shall the lessee himself, or any person claiming under or through him, establish or permit any such practice or practices of

(c) In Contracts:

"There shall be no discrimination against or segregation of, any person, or group of persons on account of sex, race, color, age, handicap, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land."

4.03 Parking and Access Agreement: Pursuant to the Parking and Access Agreement which is set forth as Exhibit "C," the Developer and its employees, tenants, guests and invitees shall have the right of access across and the right to park on Parcel D and the public will have certain limited rights of access across and the right to park on Parcel C.

V. DEFAULT; REMEDIES; TERMINATION

5.01 Definition of Default. A party shall be in

default hereunder when it has not performed its obligations within the time prescribed by the Schedule of Performance as extended by any other provision of this Agreement.

5.02 Notice of Default; Stay of Legal Proceedings.

If either the Developer or the Agency defaults with respect to any of the provisions of this Agreement, the nondefaulting party shall serve written notice of such default upon the defaulting party. The defaulting party must immediately commence to cure, correct or remedy such failure or delay, and shall proceed diligently to complete such cure, correction or remedy with reasonable diligence. If the default is not cured or commenced to be cured by the defaulting party within ninety (90) days after service of the notice of default, the defaulting party shall be liable to the other party for any damages caused by such default and the nondefaulting party may thereafter (but not before) commence an action for damages against the defaulting party with respect to such default. If the default is not commenced to be cured by the defaulting party within forty-five (45) days of service of the notice of default, the nondefaulting party at its option may thereafter (but not before) commence an action for specific performance of the terms of this Agreement.

5.03 Legal Actions.

(a) Institution of Legal Actions. Subject to the express limitations set forth elsewhere in this Agreement, in addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the District Court of the County of Weber, State of Utah, or in the United States District Court for the District of Utah.

(b) Acceptance of Service of Process.

(i) In the event that any legal action is commenced by the Developer against the Agency, service of process on the Agency shall be made by personal service upon the Chairman, Executive Director or Secretary of the Agency, or in such other manner as may be provided by law.

(ii) In the event that any legal action is commenced by the Agency against the Developer, service of process on the Developer shall be made by personal service upon a partner or a corporate officer of either General Partner of the Developer or in such other manner as may be provided by law, whether made within or without the State of Utah.

5.04 Rights and Remedies are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative and may be exercised by

either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the other party.

5.05 Rights of Termination.

(a) Termination by Developer.

(i) The Developer prior to September 15, 1979 at its option may terminate this Agreement if the Developer shall furnish evidence satisfactory to the Agency that it has been unable, after and despite diligent effort to obtain financing commitments from financial institutions sufficient to enable it to finance the construction of the improvements contemplated to be constructed on the Site under the Scope of Development on or before the date therefor set forth in the Schedule of Performance.

(ii) The Developer at its option may terminate this Agreement if the Agency improperly does not tender conveyance of title to the Site, or possession thereof, in the manner and condition, and by the dates provided in this Agreement, and any such failure is not cured within thirty (30) days after written demand by the Developer.

In the event that Developer terminates this Agreement, the Agency shall return the Deposit and the Letter of Credit and neither party shall have any further rights or liabilities against the other except for damages to the Developer if Developer proves such damages in litigation.

(b) Termination by Agency.

(1) The Agency at its option may terminate this Agreement with respect to the Site if the Developer improperly assigns or attempts to assign the Agreement (or any part thereof) or if the Developer for any rights or interests in the Site of this Agreement to the Agency. The Agency shall be entitled to sue against the Developer for any damages against the Developer if the Agency if the Agency terminates this Agreement.

The Agency may terminate this Agreement if the Developer fails to pay to the Agency the amount of the Deposit as required in the Schedule of Performance. The Agency shall be entitled to sue against the Developer for any damages against the Developer if the Agency terminates this Agreement.

5.06 Right of Reentry.

(a) Creation of Right of Reentry. The Agency shall have the additional right, at its option, to reenter and take possession of the Site or remaining portion thereof, with all improvements thereon, and re-vest in the Agency the estate theretofore conveyed to the Developer, if after conveyance of title and prior to the recordation of the Certificate of Completion with respect to the Site or any portion thereof, the Developer (or its successors in interest with respect to such portion) shall in violation of its (or their) covenants under this Agreement:

(i) Fail to proceed with the construction of the improvements as required by this Agreement for a period of thirty (30) days after written notice thereof from the Agency.

(ii) Abandon or substantially suspend construction of the improvements for a period of thirty (30) days after written notice of such abandonment or suspension from the Agency.

(iii) Transfer, or suffer any improper or involuntary transfer of, the Site or any portion thereof, in violation of the provisions of Section 3.08 of this Agreement.

(b) Limitations on Right of Reentry. Such right to reenter and repossess shall be subject to and be limited by and shall not defeat, render invalid, or limit:

(i) Any mortgage, deed of trust or other conveyance for financing permitted by this Agreement.

(ii) Any rights or interest provided in this Agreement for the protection of the holder of such mortgages, deeds of trust or other security instruments or the lessor under such a sale and lease-back or the grantee under such other conveyance for financing.

The rights established in this Section 5.06 shall not apply to individual parcels of the Site on which the improvements to be constructed thereon have been completed in accordance with this Agreement, and for which a Certificate of Completion has been recorded.

(c) Warranty Deed. The Warranty Deed shall contain appropriate reference and provision to give effect to the Agency's right as set forth in this Section 5.06 under specified circumstances.

prior to recordation of the Certificate of Completion with respect to any portion of the Site, to reenter and take possession of such portion with all improvements thereon and to terminate and revest in the Agency the estate conveyed to the Developer, subject to the foregoing provisions.

(d) Effect of Reentry. Upon the revesting in the Agency of title to the Site or any part thereof as provided in this Section 5.06, the Agency shall, pursuant to its responsibilities under state law, use its best efforts to resell the Site, or such part thereof, as soon as, and in such manner as the Agency shall find feasible and consistent with the objectives of the Act and the Redevelopment Plan, to a qualified and responsible party or parties (as determined by the Agency), who will assume the obligation of making or completing the improvements, or such other improvements in their stead, as shall be satisfactory to the Agency and in accordance with the uses specified for the Site or part thereof, in the Act and the Redevelopment Plan. Upon such resale of the Site, or part thereof, the proceeds thereof shall be applied:

(i) First, to pay principal and interest on any bonds outstanding which have been issued pursuant to Article X hereof.

(ii) Second, to reimburse the Agency, on its own behalf, or on behalf of the City, for all costs and expenses of the Agency in addition to those set forth in subsection (i) above incident to the sale and/or conveyance of the Site, or portions thereof, for all costs and expenses incurred by the Agency, including but not limited to salaries to personnel, in connection with the recapture, management and resale of the Site or portion thereof (but less any income derived by the Agency from the Site or portion thereof in connection with such management), all taxes, assessments, and water and sewer charges with respect to the Site or portion thereof (or, in the event the Site or such portions thereof are exempt from taxation or assessment or such charges during the period of the Agency's ownership to such taxes, assessments, or charges as would have been payable if the Site or such portions thereof were not so exempt); any payments made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the improvements on any part

thereof on the Site or portion thereof; and any amounts otherwise owing the Agency by the Developer and its successor or transferee; and

(iii) Third, to reimburse the Developer, its successor or transferee, up to the amount equal to (1) the sum of the Purchase Price paid to the Agency by the Developer for the Site (or allocable to the portion thereof); (2) the costs incurred for the development of the Site or the portion thereof and for the improvements existing on the Site, or the portion thereof, at the time of the reentry and repossession, less (3) any gains or income withdrawn or made by the Developer from the Site or the portion thereof or the improvements thereon.

Any balance remaining after such reimbursements shall be retained by the Agency as its property. The rights established in this Section 5.06 are to be interpreted in light of the fact that the Agency will convey the Site to the Developer for development pursuant to the Act and the Redevelopment Plan and not for speculation in undeveloped land.

5.07 Survival of Obligations. Notwithstanding any other provision of this Agreement, the obligations and burdens imposed upon Developer hereunder shall not, with respect to any portion of the Site, survive the delivery of a Certificate of Completion with respect to that portion of the Site except for the provisions of Section 4.02 (pertaining to the obligation to refrain from discrimination) and any easement rights granted to the City, the Agency or other governmental agency. In explanation of the foregoing, the remedies granted by Article V shall not be enforceable against or with respect to any real property which has been the subject of a Certificate of Completion.

VI. LOAN BY AGENCY

6.01 Agency Loan. The Agency agrees to loan the Developer the sum of \$_____ to defray the demolition costs with respect to the improvements existing on the Site and the improvements to the Site for the purpose of development. It is understood that the sum of \$_____ to be obtained from a grant from the Department of Housing and Urban Development and the Developer agrees to pay the balance of the cost of the loan. If the Developer acquires the Site in violation of the provisions of this Agreement it will be liable to the Agency for the sum of \$_____ or entitles reasonably diligent third parties to the reasonable evidence of adequate financing for the construction of improvements.

6.02 Closing of Loan. The loan shall be closed within sixty (60) days after the date the Site is conveyed to Developer as set forth in Section 4.01. At the closing of the loan, Developer shall deliver to the Agency a promissory note

(the "Note") in the principal sum of \$500,000.00 in the form attached hereto as Exhibit "C," and a properly executed and acknowledged deed of trust (the "Deed of Trust") in the form attached hereto as Exhibit "D." At the closing of the loan, the Agency shall deliver to the Developer the sum of \$500,000.00 representing the principal evidenced by the Note.

VII. GENERAL PROVISIONS

7.01 Notices, Demands and Communications Between the Parties. Formal notices, demands and communications between the Agency and the Developer shall be deemed sufficiently given in person or if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the following addresses:

AGENCY: 252 25th Street
Ogden, Utah 84401

with copy to: Jack A. Richards, Esq.
2640 Washington Boulevard
Ogden, Utah 84401

DEVELOPER: 515 South 700 East
Salt Lake City, Utah 84102

with copy to: David E. Gee, Esq.
Martineau, Rooker, Larsen & Kimball
1800 Beneficial Life Tower
36 South State Street
Salt Lake City, Utah 84111

Notices, demands and communications shall be deemed delivered on the date delivered in person or on the date postmarked when mailed in the manner set forth in this Section 7.01. A party may change its address for purposes of notice by delivering to the other party notice of such change in the manner provided in this Section 7.01.

7.02 Warranty Against Payment of Consideration for Agreement; Conflict of Interest. The Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers and attorneys. To the best knowledge of Developer, no member, official or employee of the Agency shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law.

7.03 Nonliability of Agency Officials and Employees. No member, official or employee of the Agency shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Agency or for any amount which may become due to the Developer or successor or on any obligation under the terms of this Agreement.

7.04 Enforced Delay, Extension of Time of Performance. In addition to specific provisions regarding extension of time for performance set forth elsewhere in this Agreement,

performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; epidemics; quarantine restrictions; litigation (other than condemnation actions) over which Developer has no control; inability (when Developer is faultless) to secure necessary labor, materials or tools; delays (when Developer is faultless) of any contractor, subcontractor or supplier; acts of the other party; acts or failure to act of any public or governmental agency or entity (other than that acts or failure to act of the Agency shall not excuse performance by the Agency) or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause. If, however, notice by the party claiming such extension is sent to the other party more than thirty (30) days after the commencement of the cause, the period shall commence to run only thirty (30) days prior to the giving of such notice. Times of performance under this Agreement may also be extended by agreement in writing signed by the Agency and the Developer and as otherwise provided in this Agreement.

7.05 Inspection of Books and Records. The Agency has the right, upon not less than seventy-two (72) hours' written notice, at all reasonable times to inspect the books and records of the Developer at the Developer's office, insofar as such books and records pertain to the Site and/or Developer's performance under this Agreement. The Developer also has the right, upon not less than seventy-two (72) hours' written notice, at all reasonable times to inspect the books and records of the Agency at the Agency's office, pertaining to the Site and the Agency's performance under this Agreement.

7.06 Approval by Agency and Developer. Wherever this Agreement requires the Agency or the Developer to approve any contract, document, plan, specification, drawing or other matter, such approval shall not be unreasonably withheld.

7.07 Plans and Data. Where the Developer does not proceed with the purchase and development of the Site, and when this Agreement is terminated pursuant to Section 5.05 hereof for any reason, the Developer shall deliver to the Agency any and all plans and data concerning the Site which are in the possession of Developer to the extent such plans and data are not confidential.

7.08 Entire Agreement, Waivers and Amendments. This Agreement is executed in six (6) duplicate originals, each of which is deemed to be an original. This Agreement includes 28 pages and nine (9) Exhibits. This Agreement incorporates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Agency and of the Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of the Agency and the Developer.

7.09 Severability. In the event that any condition, covenant or other provisions herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

7.10 Exhibits. All Exhibits annexed to this Agreement and the documents to be delivered at or prior to the Closing are expressly made a part of this Agreement as fully as though completely set forth in it. All references to this Agreement, either in the Agreement itself or in any of such writings, shall be deemed to refer to and include this Agreement and all such Exhibits and writings. Any breach of or default under any provisions of any of such writings shall, for all purposes, constitute a breach or default under this Agreement and all other such writings.

VIII. SPECIAL PROVISIONS

8.01 Condemnation Actions. The Agency shall file eminent domain actions on the tracts of real property comprising the Site which the Agency is unable to acquire on a voluntary basis from existing owners. The Agency shall not be required to file any proceedings in eminent domain until and unless Agency bonds have been issued, unless in fact, the Developer has deposited with the Agency such funds to pay any judgments in such actions by the Agency. The Agency shall file such actions within fifteen (15) days after obtaining the funds resulting from the issuance of Agency bonds or within fifteen (15) days after Developer has made funds available, whichever event is earlier. The Agency shall be required to obtain title to all land within the Site on or before the dates set forth in the Schedule of Performance or within one (1) year from the date eminent domain proceedings are commenced, whichever is later. Any moneys advanced by Developer for eminent domain purposes shall be credited against the Purchase Price.

8.02 Coordination with Redevelopment Plan. The Agency and the Developer shall not amend this Agreement in a manner that would violate the Redevelopment Plan or the Act.

IX. TIME FOR ACCEPTANCE OF AGREEMENT BY AGENCY

This Agreement, when executed by the Developer and delivered to the Agency, must be authorized, executed and delivered by the Agency within fifteen (15) days after date of signature by the Developer or this Agreement shall be void, except to the extent that the Developer shall consent in writing to further extension of time for the authorization, execution and delivery of this Agreement. The date of this Agreement shall be the date when the Agreement shall have been signed by the Agency (which date is the date set forth next to the signature on behalf of the Agency).

X. AGENCY FINANCING

The Agency shall use diligent efforts to issue bonds or obtain other financing to finance the Agency's share of Project costs. The Agency shall issue said bonds or obtain such other funds prior to the dates established therefor in the Schedule of Performance, or this Agreement may be terminated pursuant to Section 5.05(b) of this Agreement. It is recognized that the Agency's financing of the transaction contemplated by this Agreement is dependent upon the issuance and sale of tax allocation bonds (the "Agency Bond Issue") pursuant to the provisions of the Act. The issuance of such bonds is contingent upon, among other things, approval as to legality by the Agency's bond counsel, O'Melveny & Myers and certain other customary conditions to the sale and issuance of tax exempt municipal bonds. Developer and Agency mutually agree that they will cooperate in supplying all information to O'Melveny & Myers and other parties involved in the sale and issuance of such bonds considered necessary or advisable to the issuance of the bonds.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth opposite their respective signatures below.

AGENCY:

THE OGDEN NEIGHBORHOOD DEVELOPMENT AGENCY

By [Signature]
Its [Signature]

June 28, 1979

DEVELOPER:

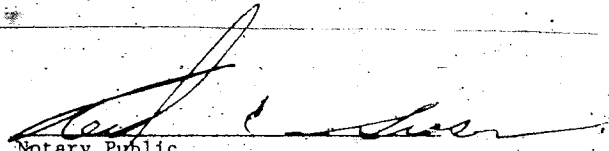
OGDEN HOTEL ASSOCIATES, a Utah general partnership, by BOYER-GARDNER HOTEL PROPERTIES PARTNERSHIP, a Utah general partnership

June 28, 1979

*Sworn Before me this 28th day of June 1979
Judge J. Phillips
State of Utah County of Salt Lake
My Commission Expires 4-17-82*

STATE OF UTAH)
 : ss:
COUNTY OF WEBER).

On the 28th day of June, 1979, A.D. personally appeared before
me A. STEPHEN DIRKS , signing in behalf of THE OGDEN NEIGHBORHOOD
DEVELOPMENT AGENCY, as its Chairman.


Notary Public

Residing at: Ogden, Utah
Commission Expires: 11-5-79

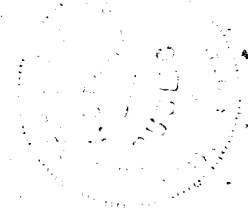


EXHIBIT "A"

OGDEN CITY NEIGHBORHOOD DEVELOPMENT AGENCY

OGDEN, UTAH

REDEVELOPMENT PLAN

FOR THE

25TH STREET REDEVELOPMENT PROJECT

PROJECT NO. 2

April 5, 1979

REDEVELOPMENT PLAN

TABLE OF CONTENTS

PART I REDEVELOPMENT NARRATIVE

	<u>Page</u>
I. (100) INTRODUCTION	1
II. (200) PROJECT AREA BOUNDARIES	1
III. (300) PROPOSED REDEVELOPMENT ACTIONS	2
A. (301) GENERAL	2
B. (302) PROPERTY ACQUISITION	2
1. (303) ACQUISITION OF REAL PROPERTY	2
2. (304) ACQUISITION OF PERSONAL PROPERTY	2
C. (305) PARTICIPATION BY OWNERS AND TENANTS	2
1. (306) TENANT/OWNER PARTICIPATION	3
2. (307) PARTICIPATION AGREEMENTS	3
D. (308) COOPERATION WITH PUBLIC BODIES	3
E. (309) PROPERTY MANAGEMENT	3
F. (310) RELOCATION OF PERSONS DISPLACED BY THE PROJECT	3
1. (311) ASSISTANCE IN FINDING OTHER LOCATIONS	3
2. (312) RELOCATION PAYMENTS	4
G. (313) DEMOLITION CLEARANCE, PUBLIC IMPROVEMENTS, BUILDING AND SITE PREPARATION	4
1. (314) DEMOLITION AND CLEARANCE	4
2. (315) PUBLIC IMPROVEMENTS, PUBLIC FACILITIES AND PUBLIC UTILITIES	4
3. (316) PREPARATION OF BUILDING SITES	4
H. (317) REHABILITATION AND MOVING OF STRUCTURES BY THE AGENCY	4

1.	(318)	REHABILITATION	4
2.	(319)	MOVING OF STRUCTURES	5
I.	(320)	PROPERTY DISPOSITION AND DEVELOPMENT	5
1.	(321)	REAL PROPERTY DISPOSITION AND DEVELOPMENT	5
A.	(322)	GENERAL	5
B.	(323)	PURCHASING AND DEVELOPMENT DOCUMENTS	5
C.	(324)	DEVELOPMENT	6
2.	(325)	PERSONAL PROPERTY DISPOSITION	6
IV.	(400)	USES PERMITTED IN THE PROJECT AREA	6
A.	(401)	MVP	6
B.	(402)	CBD MALL PROJECT	7
C.	(403)	PUBLIC USES	7
1.	(404)	RIGHTS-OF-WAY	7
D.	(405)	PUBLIC, SEMI-PUBLIC, INSTITUTIONAL AND NON-PROFIT USES	7
E.	(406)	GENERAL CONTROLS AND LIMITATIONS	8
1.	(407)	NEW CONSTRUCTION	8
2.	(408)	REHABILITATION	8
3.	(409)	LIMITATION ON THE NUMBER OF BUILDINGS	8
4.	(410)	LIMITATION ON TYPE, SIZE, AND HEIGHT OF BUILDINGS	8
5.	(411)	OPEN SPACES, LANDSCAPING, LIGHT, AIR, AND PRIVACY	8
6.	(412)	SIGNS	9
7.	(413)	UTILITIES	9
8.	(414)	INCOMPATIBLE USES	9
9.	(415)	NONDISCRIMINATION AND NONSEGREGATION	9
10.	(416)	MINOR VARIATIONS	9

F. (417)	DESIGN FOR DEVELOPMENT	10
G. (418)	BUILDING PERMITS	10
V. (500)	METHODS FOR FINANCING THE PROJECT.	10
A. (501)	GENERAL DESCRIPTION OF THE PROPOSED FINANCING METHODS.	10
B. (502)	TAX INCREMENTS	11
VI. (600)	ACTIONS BY THE CITY.	12
VII. (700)	ADMINISTRATION AND ENFORCEMENT OF THE PLAN	13
VIII. (800)	DURATION OF THIS PLAN.	13
IX. (900)	PROCEDURE FOR AMENDMENT.	13

PART II MAP - PROJECT BOUNDARIES

- APPENDIX: (A) REPORT ON PROJECT AREA REDEVELOPMENT PLAN
(B) ORDINANCE ADOPTING REDEVELOPMENT PLAN
(C) 25TH STREET HISTORIC DISTRICT DESIGN GUIDELINES

III. (300) PROPOSED REDEVELOPMENT ACTIONS

A. (301) General

The Agency proposes to eliminate and prevent the spread of blight in the Project Area by:

- (1) Acquisition of certain real property;
- (2) Demolition or removal of certain buildings and improvements;
- (3) Relocation assistance to displaced residential and nonresidential occupants;
- (4) Installation, construction, reconstruction and/or closure of streets, utilities, and other public improvements;
- (5) Disposition of property acquired for uses in accordance with this Plan;
- (6) Redevelopment of land by private enterprise and public agencies for uses in accordance with this Plan.

B. (302) Property Acquisition1. (303) Acquisition of Real Property

Except as specifically exempted herein, the Agency may acquire but is not required to acquire, all real property located in the Hotel Site, by gift, devise, exchange, purchase, eminent domain, or any other lawful method.

It is in the public interest and may be necessary in order to eliminate the conditions requiring redevelopment and in order to execute the Plan, for the power of eminent domain to be employed by the Agency to acquire real property in the Hotel Site.

2. (304) Acquisition of Personal Property

Generally personal property shall not be acquired. However, where necessary in the execution of this Plan, the Agency is authorized to acquire personal property in the Hotel Site by any lawful means.

C. (305) Participation by Owners and Tenants1. (306) Participation by Owners and Tenants

The Agency shall... for certain retail and commercial businesses... of others to

the extent such businesses are appropriate for the development and agree to rental rates and other lease terms consistent with such rental rates and terms to be offered to similar tenants of the project hotel and office building. The preferences shall be first to commercial business in the Ogden Area.

2. (307) Participation Agreements

Each person who becomes a participant shall enter into a binding agreement with the Agency by which the participant agrees to rehabilitate, develop, or use the property in conformance with the Plan and to be subject to the provisions hereof. In such agreements, participants who retain real property shall be required to join in the recordation of such documents as are necessary to make the provisions of this Plan applicable to their properties.

D. (308) Cooperation with Public Bodies

Certain public bodies are authorized by state law to aid and cooperate, with or without consideration, in the planning, undertaking, construction, or operation of this Project. The Agency shall seek the aid and cooperation of such public bodies and shall attempt to coordinate this Plan with the activities of such public bodies in order to accomplish the purposes of redevelopment and the highest public good.

The Agency, by law, is not authorized to acquire real property owned by public bodies without the consent of such public bodies. The Agency, however, will seek the cooperation of all public bodies which own or intend to acquire property in the Project Area. The Agency shall impose on all public bodies the planning and design controls contained in the Plan to insure that present uses and any future development by public bodies will conform to the requirements of this Plan.

E. (309) Property Management

During such time as property, if any, in the Project Area is owned by the Agency, such property shall be under the management and control of the Agency. Such property may be rented or leased by the Agency pending its disposition for redevelopment.

F. (310) Relocation of Persons Displaced by the Project

1. (311) Assistance in Finding Other Locations

The Agency shall assist all persons (including families, business concerns, and others), displaced by the project in finding other locations and facilities. In order to carry out this assistance, the Agency shall provide to persons displaced from their homes, the necessary information, materials and facilities in finding housing that is desirable, available, and meets their financial means, in

reasonably convenient locations, and otherwise suitable to their needs.

2. (312) Relocation Payments

The Agency is authorized to pay moving expenses to residents (including individuals and families) displaced by the Project in amounts not exceeding \$500.00. The Agency is also authorized to pay relocation payments to business concerns for moving expenses where the Agency determines it is in the best interest of the Project. Relocation payments shall be made pursuant to Agency rules and regulations through the Utah State Relocation Act, and only to the extent funds are available for such purposes.

G. (313) Demolition Clearance, Public Improvements, Building and Site Preparation.

1. (314) Demolition Clearance

The Agency is authorized to demolish and clear buildings, structures, and other improvements from any real property in the Hotel Site as necessary to carry out the purposes of this Plan.

2. (315) Public Improvements, Public Facilities, and Public Utilities.

The Agency is authorized to install and construct or to cause to be installed and constructed the public improvements, public facilities, and public utilities (within or outside the Project Area) necessary to carry out the Plan. Such improvements, facilities, and utilities include, but are not limited to, over or underpasses, bridges, streets, curbs, gutters, sidewalks, street lights, sewers, storm drains, traffic signals, electrical systems, natural gas systems, water systems, parks, plazas, playgrounds, telephone systems, motor vehicle parking facilities, and landscaped areas.

3. (316) Preparation of Building Sites

The Agency is authorized to prepare or cause to be prepared as building sites any real property in the Hotel Site.

II. (317) Rehabilitation and Moving of Structures by the Agency.

1. (318) Rehabilitation

The Agency is authorized to rehabilitate or to cause to be rehabilitated any building or structure in the Hotel Site and 25th Street District. The Agency is also authorized and directed to advise, encourage, and assist in the rehabilitation of property in the Hotel Site and 25th Street District, not owned by the Agency.

Rehabilitation within the 25th Street Historic District (see map overlay) will conform to the 25th Street Master Plan and Design Guidelines.

2. (319) Moving of Structures.

As necessary in carrying out this Plan, the Agency is authorized to move or to cause to be moved any standard structure or building to a location within or outside the Hotel Site.

I. (320) Property Disposition and Development

1. (321) Real Property Disposition and Development

A. (322) General.

For the purposes of this Plan, the Agency is authorized to sell, lease, exchange, subdivide, transfer, assign, pledge, encumber by mortgage or deed of trust, or otherwise dispose of any interest in real property.

To the extent permitted by law, the Agency is authorized to dispose of real property by leases or sales.

All real property acquired by the Agency in the Project Area may be sold or leased to public or private persons or entities for development for the uses permitted in the Plan. Real property may be conveyed by the Agency to the City or any other public body without charge.

The Agency shall reserve such powers and controls in the disposition and development documents as may be necessary to prevent transfer, retention, or use of property for speculative purposes and to insure that development is carried out pursuant to this Plan.

All purchasers or lessors of property shall be made obligated to use the property for the purposes designated in this Plan, to begin and complete development of the property within a period of time which the Agency fixes as reasonable, and to comply with other conditions which the Agency deems necessary to carry out the purposes of this Plan.

B. (323) Purchase and Development Documents

To provide adequate safeguards to insure that the provisions of this Plan will be carried out, in the event of a sale, lease, or other disposition of real property sold, leased, or otherwise disposed of in accordance with this Plan, all real property sold, leased, or otherwise disposed of in accordance with this Plan shall be subject to participating in the benefits of the Plan, as well as all property subject to participation in the benefits of the Plan by leases, transfers, or other means, of this Plan by leases, transfers, or other means, in accordance with the provisions of the zoning ordinance, or other restrictions, or other means. Where appropriate, all such sales, leases, or other dispositions thereof shall be recorded in the public records of the County.

The leases, deeds, contracts, agreements, and declaration of restrictions may contain restrictions, covenants running with the land, rights of reverter, conditions subsequent, equitable servitudes, or any other provisions necessary to carry out this Plan.

All property in the Hotel Site is hereby subject to the restriction that there shall be no discrimination or segregation based upon race, color, religion, sex, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of property in the Project Area. All property sold, leased, conveyed, or subject to a participation agreement shall be made expressly subject by appropriate documents to the restriction that all deeds, leases, or contracts for the sale, lease, sublease, or other transfer of land in the Hotel Site shall contain such non-discrimination and non-segregation clauses as are required by law.

C. (324) Development

To the extent now or hereafter permitted by law, the Agency is authorized to pay for, develop, or construct any building, facility, structure, or other improvements either within or without the Hotel Site and 25th Street District for itself or for any public body or public entity to the extent that such improvements would be of benefit to the Hotel Site and 25th Street District.

During the period of development in the Hotel Site and 25th Street District, the Agency shall insure that the provisions of this Plan and of other documents formulated pursuant to this Plan are being observed, and that development of the Project Area is proceeding in accordance with development documents and time schedules.

Development plan, both public and private, shall be submitted to the Agency for approval and architectural review. All development must conform to this Plan and all applicable Federal, State and local laws.

2. (325) Personal Property Disposition

For the purposes of this Plan the Agency is authorized to sell, lease, exchange, transfer, assign, pledge, encumber, or otherwise dispose of personal property.

IV. (400) USES PERMITTED IN THE PROJECT AREA

A. (401) Map

In addition to illustrating the location of the Project Area boundary, the Map (Part II) also illustrates the proposed public rights-of-way and the proposed land uses to be permitted in the Project Area. The 25th Street Historic District as recorded on the National Register of Historic Places is also illustrated.

B. (402) 25th Street Redevelopment Project Area.

The areas shown on the map as the 25th Street Historic District and Hotel Site/ are to be developed as planned commercial developments necessitating site plan approval by the Ogden City Planning Commission and City Council. It is currently anticipated that among the improvements constructed in the Project Area will be a major hotel/convention facility and office building. For the purposes of this project population densities and building densities will not change significantly. It is further anticipated that certain limited amounts of office space and retail space may be included in the Project Area. In addition, certain public parking is expected to be provided. The 25th Street Historic District, as shown on the map, includes properties and improvements of significant architectural and historical value. It is anticipated that the area will be rehabilitated or restored with private and/or public funds, as available.

All improvements, including construction deemed necessary and consistent with this Plan, in addition to that described above, shall be developed in accordance with existing State statutes. All requirements of the City Ordinances now existing or as hereafter amended, shall apply to development of the 25th Street Project. The project will conform to the existing City Master Plan in all respects including but not limited to land use, design and building standards.

C. (403) Public Uses

1. (404) Rights-Of-Way

The principal streets and highways in the Project Area are shown on the Map and are as follows:

Washington Boulevard, Grant Avenue, Kiesel Avenue, Lincoln Avenue, Wall Avenue, 26th Street, 25th Street, 24th Street, and 23rd Street.

Any other streets and alleys in the Project Area may be widened, restricted, altered, abandoned, or closed as necessary for property development of the Project. Additional public streets, alleys and easements may be created in the Project Area as needed for proper development.

The public rights-of-way may be used for vehicular and/or pedestrian traffic as well as for public improvements, public and private utilities, and activities typically found in public rights-of-way.

D. (405) Public, Semi-Public, Institutional and Non-Profit Uses

With the approval of the Agency parking, open space, public and semi-public uses may be interspersed with other uses in any area.

In the Project Area the Agency is authorized to permit the establishment or enlargement of public, semi-public, institutional, or non-profit uses. All

such uses shall conform so far as possible to the provisions of this Plan applicable to the uses in the specific area involved. The Agency shall impose such other reasonable restrictions as are necessary to protect the development and use in the Project Area.

E. (406) General Controls and Limitations within Hotel Site and 25th Street District

All real property in the Hotel Site and 25th Street District is hereby made subject to the controls and requirements of this Plan.

No real property shall be developed, rehabilitated, or otherwise changed after the date of the adoption of the Plan except in conformance with the provisions of this Plan.

1. (407) New Construction

All new construction shall comply with all applicable State and local laws in effect from time to time including, without limitations, the City Building, Electrical, Heating and Ventilating, Housing and Plumbing Codes and the City Zoning Ordinances. The presently established Ogden City Site Review Committee will review all design proposals and working drawings.

2. (408) Rehabilitation

Any existing structure within the Hotel Site which the Agency shall approve for retention and rehabilitation shall be repaired, altered, reconstructed, or rehabilitated in such manner that it will be safe and sound in all physical respects and be attractive in appearance and not detrimental to the surrounding areas. All rehabilitation shall meet existing applicable codes and the most recent Property Rehabilitation Standards. All rehabilitations and/or restoration on structures within the 25th Street Historic District must be in accordance with the attached 25th Street Historic District Design Guidelines.

3. (409) Limitation on the Number of Buildings

The number of buildings in the Hotel Site shall be regulated by the Agency.

4. (410) Limitation on Type, Size, and Height of Buildings

The type, size, and height of buildings shall be as limited by the applicable Federal, State, and local statutes, ordinances and regulations.

5. (411) Open Space, Circulation, Light, Air, and Privacy

The approximate amount of open space to be provided in the Hotel Site is the total of all open space which shall be in the public right-of-way, the public grounds, the public grounds, the public grounds, and all other outdoor areas not permitted to be covered by buildings. All landscape plans shall be submitted to the Agency for review and approval to insure optimum use of living plant materials.

In all areas sufficient space shall be maintained between buildings to provide adequate light, air, and privacy.

6. (412) Signs

All signs shall conform to City sign ordinances as they now exist or are hereafter amended. Design of all new signs shall be submitted to the Agency for review and approval before erection. All signs within the 25th Street Historic District shall conform to the 25th Street Historic District Design Guidelines.

7. (413) Utilities

The Agency shall require that all utilities be placed underground when physically and economically feasible.

8. (414) Incompatible Uses

No use of structure which by reason of appearance, traffic, smoke, glare, noise, odor or similar factors which would be incompatible with the surrounding areas or structures, shall be permitted in any part of the Hotel Site. Within the Hotel Site, except with the approval of the Agency, there shall be no extraction of oil, gas, or other mineral substances, nor any opening or penetration for any purpose connected therewith within 500 feet of the surface.

9. (415) Nondiscrimination and Nonsegregation

There shall be no discrimination or segregation based upon race, color, creed, religion, sex, national origin, or ancestry permitted in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of property in the Hotel Site.

10. (416) Minor Variations

Under exceptional circumstances, the Agency is authorized to permit a variation from the limits, restrictions and controls established by the Plan. In order to permit such variation, the Agency must determine that:

(a) The application of certain provisions of the Plan would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the Plan.

(b) There are exceptional circumstances or conditions applicable to the property or to the intended development of the property which did not apply generally to other properties having the same standards, restrictions, and controls.

(c) Permitting a variation will not be materially detrimental to the public welfare or injurious to property or improvements in the area.

(d) Permitting a variation will not be contrary to the objectives of the Plan.

No variation shall be granted which changes a basic land use or which permits other than a minor departure from the provisions of this Plan. In permitting any such variation, the Agency shall impose such conditions as are necessary to protect the public health, safety, or welfare, and to assure compliance with the purposes of the Plan. Any variation permitted by the Agency hereunder shall not supersede any other approval required under City codes and ordinances.

F. (417) Design for Development within Hotel Site and 25th Street District

Within the limits, restrictions, and controls established in the Plan, the Agency is authorized to establish heights of buildings, land coverage, setback requirements, design criteria, traffic circulation, traffic access, and other development and design control necessary for proper development of both private and public areas within the Hotel Site.

No new improvements shall be constructed and no existing improvements shall be substantially modified, altered, repaired, or rehabilitated except in accordance with architectural, landscape, and site plans submitted to and approved in writing by the Agency. One of the objectives of this Plan is to create an attractive and pleasant environment in the Hotel Site. Therefore, such plans shall give consideration to good design, open space, and other amenities to enhance the aesthetic quality of the Hotel Site. The Agency shall not approve any plans that do not comply with this Plan.

All design work within the 25th Street Historic District shall be undertaken in consideration of the spirit of the existing 25th Street Master Plan and the attached 25th Street Historic District Design Guidelines (appendix C).

G. (418) Building Permits

No permit shall be issued for the construction of any new building or any addition to an existing building in the Hotel Site from the date of adoption of this Plan until the application for such permit has been approved by the Agency and conforms to local codes and ordinances.

V. (500) METHODS FOR FINANCING THE PROJECT

A. (501) General Description of the Proposed Financing Methods

The Agency is authorized to finance the project with financial assistance from the City, State or Wash. property tax increments, interest income, Agency bonds, or any other available source.

-11-

The Agency is authorized to issue bonds if appropriate and feasible in an amount sufficient to finance all or any part of the Project.

~~The Agency is authorized to obtain advances, borrow funds and create indebtedness in carrying out this Plan. The principal and interest on such advances, funds, and indebtedness may be paid from tax increments or any other funds available to the Agency.~~

B. (502) Tax Increments

All taxes levied upon taxable property within the Project Area each year by or for the benefit of the State of Utah, County of Weber, City of Ogden, any district, or other public corporation (hereinafter sometimes called "taxing agencies") (after the effective date of the ordinance approving this Redevelopment Plan, shall be divided as follows:

(1) That portion of the taxes which would be produced by the rate upon which the tax is levied each year by or for each of said taxing agencies upon the total sum of the assessed value of the taxable property in the Redevelopment Project as shown upon the assessment roll used in connection with the taxation of such property by such taxing agency, last equalized prior to the effective date of such ordinance, shall be allocated to and when collected shall be paid into the funds of the respective taxing agencies as taxes by or for said taxing agencies on all other property are paid (for the purpose of allocating taxes levied by or for any taxing agency or agencies which did not include the territory of the Project on the effective date of such ordinance but to which such territory is annexed or otherwise included after such effective date, the assessment roll last equalized on the effective date of said ordinance shall be used in determining the assessed valuation of the taxable property in the Project on said effective date); and

(2) That portion of said levied taxes each year in excess of such amount shall be allocated to and when collected shall be paid into a special fund of the Agency to pay the principal of and interest on bonds, loans, money advances to, or indebtedness (whether funded, refunded, assumed, or otherwise) incurred by the Agency to finance or refinance, in whole or in part, this Redevelopment Project. ~~Unless and until the total assessed value of the taxable property in the Project is shown by the last equalized assessment roll referred to in paragraph (1) hereof, all of the taxes levied and collected upon the taxable property in the Project shall be paid into the funds of the~~

respective taxing agencies. When said bonds, loans, advances and indebtedness, if any, and interest thereon, have been paid, all moneys thereafter received from taxes upon the taxable property in the Project shall be paid into the funds of the respective taxing agencies as taxes on all other property are paid.

The portion of taxes mentioned in paragraph (2) above are hereby irrevocably pledged for the payment of the principal of the interest on the advance of moneys, or making of loans, or the incurring of any indebtedness (whether funded, refunded, assumed, or otherwise) by the Agency to finance or refinance the Project in whole or in part.

The Agency is authorized to make such pledges as to specific advances, loans and indebtedness as appropriate, in carrying out the Project.

VI. (600) ACTIONS BY THE CITY

The City shall aid and cooperate with the Agency in carrying out this Plan and shall take all actions necessary to ensure the continued fulfillment of the purposes of this Plan and to prevent the recurrence or spread in the area of conditions causing blight. Action by the City shall include, but not be limited to, the following:

A. Institution and completion of proceedings for opening, closing, vacating, widening, or changing the grades of streets, alleys, and other public rights-of-way, and for other necessary modifications of the streets, the street layout, and other public rights-of-way in the Project Area. Such action by the City shall include the requirement of abandonment and relocation by the public utility companies of their operations in public rights-of-way as appropriate to carry out this Plan.

B. Institution and completion of proceedings necessary for changes and improvements in publicly-owned public utilities within or affecting the Project Area.

C. Revision of zoning within the Project Area to permit the land uses and development authorized by this Plan.

D. Performance of the above, and of all other functions and services relating to public health, safety, and physical development normally rendered in accordance with a schedule which shall permit the redevelopment of the Project Area to be completed and opened to completion without unnecessary delays.

E. The undertaking and completion of any other proceedings necessary to carry out the Project.

VII. (700) ADMINISTRATION AND ENFORCEMENT OF THE PLAN

The administration and enforcement of this Plan including the preparation and execution of any documents implementing this Plan shall be performed by the Agency and/or the City.

The provisions of this Plan or other documents entered into pursuant to this Plan may also be enforced by court litigation instituted by either the Agency or the City. Such remedies may include, but are not limited to, specific performance, damages, re-entry, injunctions, or any other remedies appropriate to the purposes of this Plan. In addition, any recorded provisions which are expressly for the benefit of owners of property in the Project Area may be enforced by such owners.

VIII. (800) DURATION OF THIS PLAN

The provisions of this Plan shall be effective and the provisions of other documents formulated pursuant to this Plan may be made effective from the date of adoption of this Plan by the City Council, until such further action of said Council is taken to terminate this Plan.

IX. (900) PROCEDURE FOR AMENDMENT

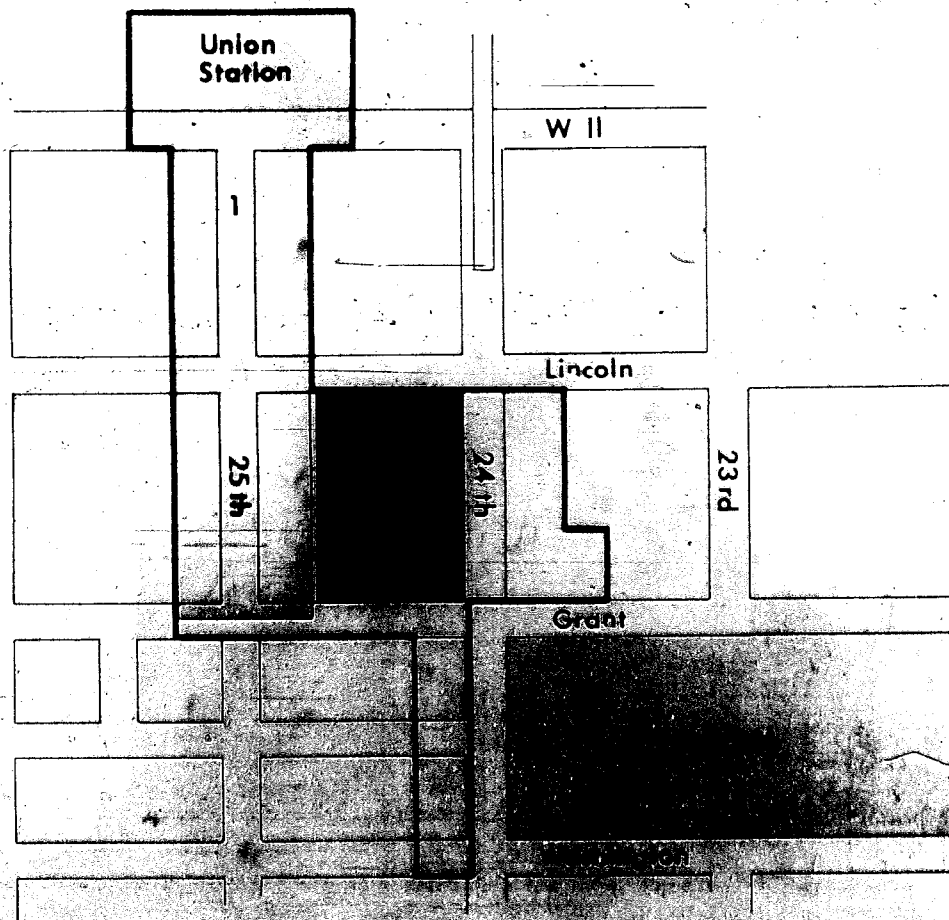
This Plan may be amended by means of the procedure established in Section 11-19-23 of the Utah Neighborhood Development Act (or by any other procedure established by law).

PART II

25th St. Redevelopment Project Area

(IN DARK LINE) _____

- 1. 25th St. Historic Dist.
- 2. Proposed Hotel Site



REPORT ON PROJECT AREA REDEVELOPMENT
 PLAN APPENDIX (A) TO 25TH STREET REDEVELOPMENT PROJECT PLAN,
 PROJECT NO. 2

(1) Reasons for selection of the Project Area.

An in-depth review and selection process was undertaken by the City, Neighborhood Development Agency, Planning Department, Chamber of Commerce, and other public bodies analyzing and taking into account the economic and financial feasibility, environmental factors, relocation problems, physical and capital improvements needed, traffic and circulation problems, and investor-developer preferences. The final Project Area boundaries as described herewith represents the best opportunity to successfully revitalize the 25th Street Commercial Area and thereby assist in the redevelopment of the Central Business District of Ogden, and eliminate certain existing blight and obsolescent land uses. The Ogden Chamber of Commerce completed a Market and Economic Analysis for a Downtown Convention Hotel in November of 1977 done by Real Estate Research Corporation. That study in tandem with an update in November, 1978, indicates a strong market for approximately 300 luxury hotel rooms and convention facilities for 750 persons. The site projected in the Plan was one of two selected by the above analysis.

(2) A description of the physical, social and economic conditions existing in the area.

There presently exists in the area a high percentage of substandard residential and commercial structures, overcrowding, and obsolescent design not conducive to a healthy business climate. The present juxtaposition of structures does not efficiently use the land to its highest and best use both in the commercial and residential sections. There presently exists an unsatisfactory social climate non-conducive to future normal social functions due mainly to environmental factors, both physical and social. Adjacent manufacturing and commercial land uses and heavily traveled traffic arterials have a detrimental effect on the existing residential neighborhood and produce an unsatisfactory social environment. Existing commercial structure and parking facilities are non-conducive to producing a sound economic base in the community, thus causing long term disinvestment in the Project Area and adjacent property. The existing utilities and city public improvements are in need of upgrading. Present design of open spaces and streetscapes are, again, not conducive to a healthy shopping environment.

(3) Financial Analysis

A financial analysis of the proposed redevelopment Plan describing the proposed method of financing and redevelopment of the Project Area.

Estimated Agency Costs	538,472
Less Disposition of Land	382,000
Balance to Fund	1,555,472
Yearly Incremental Revenue	\$ 159,776
Tax Incremental Bonds	1,598,000
Less Capitalized Interest	239,780

Net Bond Funds Available	\$ 1,358,300
Other Agency Funds	298,172
Total Agency Funds Available	1,656,472
Deficit	-0-

(4) Relocation Method

Relocation will take place concurrently with acquisition. Upon the acquisition of the first parcel of property requiring displacement of a residential or business entity the Agency shall provide certain advisory and monetary assistance. The assistance provided will be in the form of moving payments, compensation for damages to any fixtures or personal property and replacement housing payments.

The Agency will maintain a complete vacancy list to include rental rates. Every effort will be made to place the present residential occupants in comparable replacement housing that is within their financial means and adequate to their needs; and relocate business concerns by providing maximum assistance to aid in their satisfactory re-establishment in Ogden City with a minimum of delay and loss of earnings. Relocation will begin in conjunction with the acquisition of the first parcel of property.

(5) An Analysis of the Preliminary Plans

(a) Basis for determination of Land Use Plan Elements: All land uses and densities determined appropriate for the 25th Street Redevelopment Project Plan are in accord with the general guidelines of the Master Plan and the applicable Planning and Zoning Codes of Ogden City. Major circulation routes are not proposed to be revised by the Plan, and existing routes are as provided in the City's Circulation Plan.

(b) Basis for Planning Criteria: Each development proposal will be considered as a planned development and subject to the provisions of applicable ordinances of the City's Master Plan and other applicable codes and ordinances. Planning criteria established in the Plan relative to land uses, densities, circulation, and general circulation systems and need and availability of services are to be provided maximum flexibility in the use of land and to achieve the maximum benefit to the City's land use and circulation system in the 25th Street Master Plan area, including the 25th Street District.

- (c) Conformity with General Plan and Relationship to Local Objectives:
The 25th Street Redevelopment Plan conforms with the Master Plan of Ogden City in that it relates to the definite and local objectives of retaining and promoting an economically healthy and growing Central Business District by providing adequate and desirable locations for redevelopment and uses within an atmosphere which will encourage growth.

The Plan is related to local objectives in that: (1) the land use proposals will strengthen and widen the range of activities within the central areas; (2) order and visual identity, through a variety of design principles, will be provided thus creating a healthy and pleasing environment for shopping, working and living; (3) public improvements will be upgraded in the area thereby eliminating hazards and unsightliness; and adequate off-street parking will be provided in the new development.

- (6) The Planning Commission staff worked closely with the Neighborhood Development Agency staff in the preparation of the proposed Redevelopment Plan. The proposed plan was submitted to each member of the Planning Commission for review. The Planning Commission considered the plan at their February 21, 1979 meeting and approved it unanimously. A copy of the extract from the Planning Commission minutes is attached.

MINUTES OF THE REGULAR SESSION OF THE OGDEN CITY PLANNING COMMISSION HELD MARCH 21, 1979.

BOOK 1316 PAGE 687

MEMBERS PRESENT: Sieman Bowman, Chairman
Ms. Katie Dye, Vice Chairman
Louis M. Howard
Fred Froerer, Jr.
Ms. Virginia Andrews
Bob Behling
C. Robert Sanders
Larry Hunter, City Manager

MEMBERS EXCUSED: Gerald H. Raat

STAFF PRESENT: Chuck Bowen, Assistant Director
Bob Eldard, Associate Planner
Dave VanAllen, Manager, Inspection Services
Tim Blackburn, Corporate Counsel
Linda Stone, Secretary

OTHERS PRESENT: Mrs. William R. Middleton
Scott Parkinson
Roy Sessions
Larry Wintle
Walter E. Mann
Wylthe Mann
Lawrence J. Mayberry
Jay R. Anderson
Ray Carroll
Mark S. Petersen
Ray Citte
Neil Citte
George E. Hall
Floyd C. Noel
Randall Christensen
George McGill
Ester McGill
L.P. Deis
Delores Deis
Hazel M. Deis
John L. Piers
John B. Goddard
Louis R. Jackson

1. Approval of the Minutes of the regular session of the Ogden City Planning Commission held March 7, 1979.

Chairman Bowman noted that in the minutes under consideration, Page Two, paragraph number eight, the reference to the petition from area residents should be changed from "number one" to "number one, two (62)". Chairman Bowman also noted that in paragraph number one, "the parking lot" should be changed to "the power Light Company parking lot". In paragraph number eight, the Planning Commission's recommendation should be changed to "Mr. Dennis Martin". In paragraph number nine, the Planning Commission's recommendation should be changed to "Mr. Dennis Martin". A motion was made, seconded, and carried to approve the minutes of the regular session of the Ogden City Planning Commission held March 7, 1979.

2. Further consideration of the petition from the area residents of the

Scott Parkinson, Director of the Ogden City Planning Agency informed

the Commission that attached to the plan are some guidelines aimed at the design and reconstruction of Twenty-fifth Street. He stated that the purpose of said guidelines is to inform the owners of property on Twenty-fifth Street who are desirous of renovating such properties, what type of design is recommended for the area. He added that at the time when the Landmarks Commission issue is settled, a decision can be made on the enforcement aspects of the guidelines. He added that at this point in time, the guidelines are nothing more than guidelines or suggestions relative to the Twenty-fifth Street renovation project.

A motion was made, seconded and passed unanimously to approve the 25th Street Redevelopment Project Area Plan.

3. Petition #9-79, to rezone the southeast corner of 35th and Harrison Boulevard from R-1-10 to R-4.

Staff reported that this petition for rezoning was received by the City from Mr. Ray Carroll who is desirous of the rezoning in order to facilitate construction of professional offices at the above mentioned location. Staff stated that all property owners and area residents within 500 feet of the proposed rezoning were notified of the time, date, and place of the Planning Commission meeting and invited to attend.

Staff stated that the parcel is immediately contiguous to R-4 zoning on the north and west. The parcel presently has a basement dwelling located on it and the proximity of the house to Harrison Boulevard render the parcel economically unuseable under the existing single family residential zoning designation. Staff reminded the Commission that this same request has been before the Commission several times in the past and the Public Hearings held yielded a substantial turnout of area residents in opposition to the proposed R-4 zoning. Staff stated that at the time of the last rezoning petition for the area the Commission recommended rezoning to R-4 which was overruled by the City Council. Staff stated that from a land use point of view, the Staff recommendation would be rezoning to R-4 to give an economically feasible use to the property, which the property lacks at the present time.

Mr. Ray Carroll informed the Commission that the parcel is presently overgrown with weeds and dry vegetation. He stated that the proposal is inclusive of two small buildings consisting of approximately 2,000 square feet of floor area each. He stated that 34% of the property is designated for landscaping and green area and a six foot fence is proposed around the perimeter of the property.

Commission Member Hunter queried the petitioner as to the material proposed for the fencing as well as the maintenance of the same. Mr. Carroll replied that the fence shall be built with redwood and that the fencing shall be maintained by the owners of the property. He stated that the buildings are intended to be twelve feet high from the ground surface.

Numerous area residents were in attendance at this meeting in opposition to the rezoning. A major concern expressed by those in opposition to the proposal was the possibility of Mr. Carroll building his new office building on the parcel. An unidentified resident expressed concern that Mr. Carroll could feasibly, within the ordinance, develop four stories on the parcel. Mr. Carroll replied that the area doesn't lend itself well to a residential four-story atmosphere due to the existing amount of apartments and houses in the area, which is a sufficient number. Those area residents in opposition to the petition are as follows: Mr. Bliton, Mr. George McGill, Mr. Peter McGill and Mrs. Walter Mann. Reasons cited for opposition were as follows: property devaluation, privacy encroachment and the possible destruction of the existing single family atmosphere in the area.

APPENDIX C

LOWER 25TH STREET HISTORIC DISTRICT DESIGN GUIDELINES

The following design guidelines set criteria and limits for decision making in the restoration of the 25th Street Historic District. It must be pointed out that each building is a part of the whole streetscape, and decisions made for the treatment of individual buildings must consider the context of the surrounding structures. Care must be exercised to ensure a compatible mix of signage, lighting, awning systems, and color schemes. Individual facade rehabilitation design schemes (hereafter referred to as "Master Plans") are being prepared for buildings through the Neighborhood Development Agency. The Agency strongly recommends that owners contact architects and contractors with experience in the restoration of old buildings for guidance in any redesign work that may be warranted and when contracting for the work to be carried out.

In general, all original architectural elements should be repaired if possible rather than replaced. If replacement is necessary, make them as near to original in design as possible. If layers of building materials or signs cover the facade, these should be removed to expose the original character of the facade. All buildings should be recognized as products of their own time. Alterations to create an appearance inconsistent with the actual character of the building is discouraged. This includes "earlying-up" the facade. A good general reference for the restoration of the buildings is the Department of the Interior's, Guidelines for Rehabilitating Old Buildings.

Height:

During the period in which 25th Street achieved its significance (1869 through the 1930's) all buildings were one, two or three stories tall, the majority being two or three stories tall. This pattern persists today. The intact historic buildings are mostly two and three story structures. Many of the existing one story buildings were originally two and three stories tall, but these upper floors were removed after fires. The first stories ranged from ten to sixteen feet in height. Second and third stories were generally ten to twelve feet in height. The maximum height of the tallest existing structure is 45 feet (height of front facade from grade).

New buildings must not exceed either three stories or 45 feet in height. The height of new buildings must be within 15% of the height of the tallest adjoining building, and the new number of stories as the tallest adjoining building. The floor to ceiling height as expressed in front facades must not be less than twelve feet tall. Two story buildings are preferred over one story buildings. Two and three story buildings are equally preferred.

Materials/Textures:

The most commonly used building materials during the historic period were brick, stone, pressed sheet metal, cast iron, wood, glass and floor tile. Original materials and finishes (textures) should be retained and/or restored. New materials should be compatible to existing materials and finishes. Always repair or replace existing brick with new brick of matching color, texture and size. Avoid scarring walls with holes for sign supports, cables, brackets, etc., as much as possible. Replace existing damaged brick with matching new units. Masonry, glass, etc., which was not originally painted should not be painted. Painted metals, woods, etc., should remain painted. Sandblasting will not be permitted, nor will patching with cement or widening of joints or patterns. In all cases, original materials and colors should be retained. If natural stone is not available, matching with cast stone should be considered. Avoid the use of concrete, except for walks and steps, and then only a proper aggregate (sand and small gravel aggregate) not straight Portland Cement. Materials which also exist in facades but which represent non-conforming intrusions include plastic, glass-block, ceramic tile, stucco, aluminum, etc. (Figures 1 & 2).

Colors:

Color is most significantly a part of the total design effect and must be considered with discretion. Little or nothing is gained by the use of strong or loud colors and they will not be permitted on the street. Whenever possible, original paint colors should be determined and duplicated. Colors from earlier and later periods should be avoided. Most colors came from the Victorian Era and were oil based. No pastels or luminescent paints will be allowed. Do not paint materials that have never been, nor were intended to be painted. This includes most brick, some wood, most trim, mortar, etc. Color work on side and rear walls should avoid harsh shifts in effect from front or street walls. A building should be treated as consistently as possible on all sides.

Detailing:

Retain as much of original detailing as possible. Be sure when addressing details that the character of the facade does not suffer in the process and get advice from an experienced architect. Never try to make a building look older than it originally was by using details belonging to a previous period. The same holds true for making it look too new with later detailing. Cornices should be retained. Any new ones should maintain the same proportions, overhang and "feeling". (Figures 1 & 2).

Roof Shapes and Pediments:

All commercial buildings had flat "false front" facades with parapet walls and sometimes decorative pediments. Roofs were "flat" and sloped gradually to the backs of buildings. There were no gabled, hipped, mansard, shed, or any other type roof. These types are unacceptable.

-3-

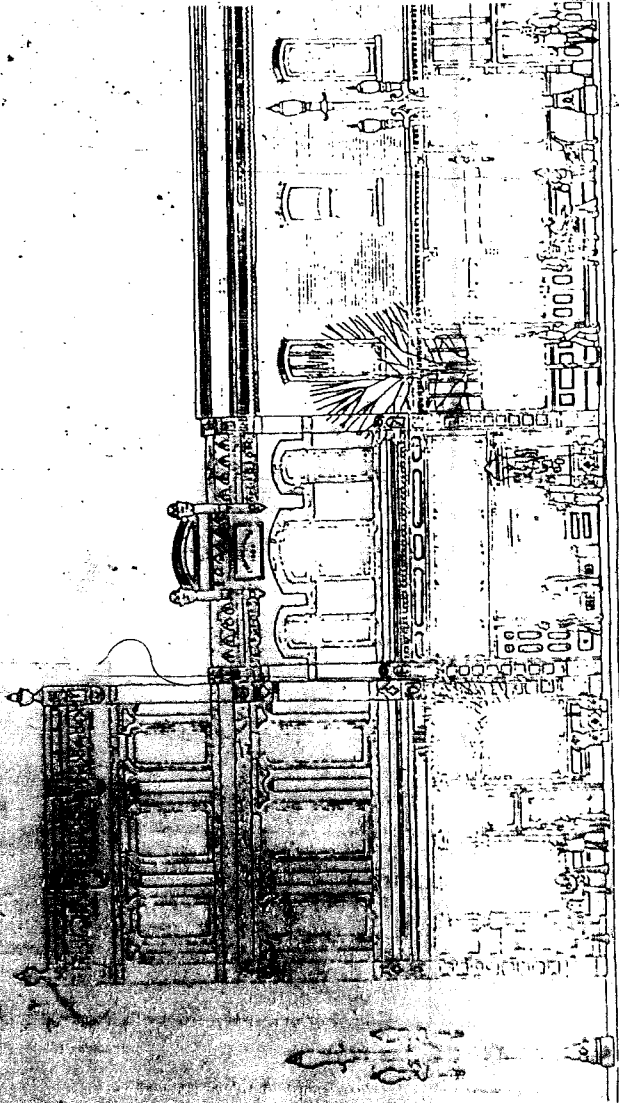


FIGURE 1. Illustration of existing grouping of buildings on

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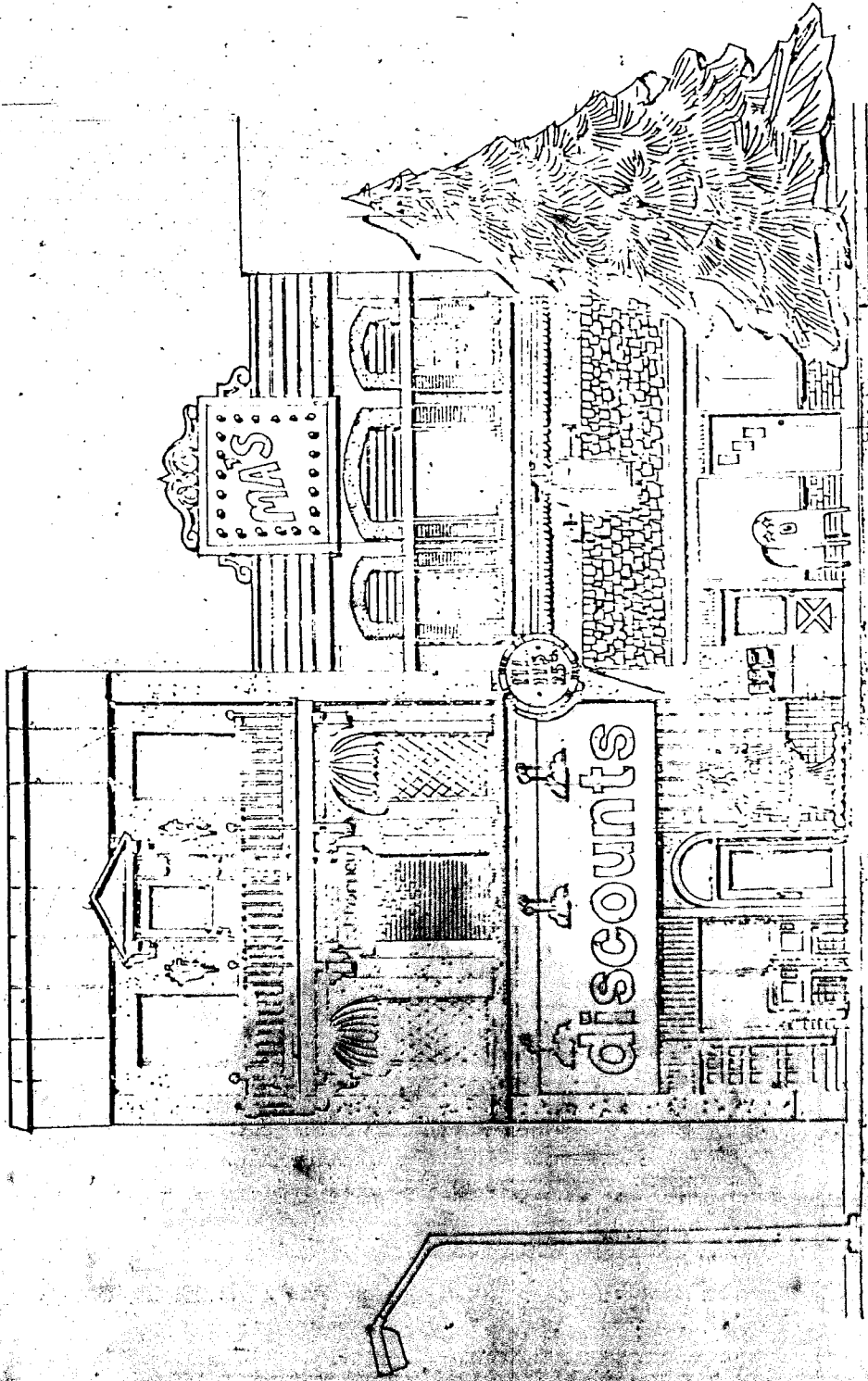


FIGURE 2. Two of the buildings in Figure 1 with incorrect treatments.

Landscaping:

The design of all landscaping, i.e., curb and gutter, lamps, fences, power poles, tables, benches, kiosks, trees and other plantings, planter boxes, etc. will be consistent with the City's Master Plan. Other non-detached objects, i.e., paper boxes, garbage receptacles, free standing signs, chairs and tables, etc. must be approved by the Neighborhood Development Agency. These items, if proposed for sidewalk location, should conform in design to the historic period and should not imperil safety or obstruct traffic flow. Separate guidelines will be developed for design treatment of the backs of buildings.

Rhythm of Solids and Voids:

New buildings and redesign of first floor store fronts should always harmonize with the existing character and rhythm of the area. When developing plans, it is always best to think of that structure as one element in a continuous series of similar structures. A new building should fill the space defined by the adjacent buildings. Vacant lots or small buildings that do not fit their lots disrupt the continuous flow of building facades. Along a street, the repetition from building to building of similarly positioned door and window openings creates a rhythm which could be repeated on the face of a new building. On 25th Street, the first floors tend to be asymmetrical with the upper floors exhibiting a more symmetrical arrangement.

Directional Expression:

Most historic buildings on the street ranged from 20' to 100' in width but had major vertical divisions which visually created sections of 20' to 40' in width. Buildings wider than 60 feet should either be designed to appear as a row of shops with fronts 20' to 30' wide or have major vertical divisions which express bays of a similar width. Most buildings were square or vertically rectangular in proportion. Few were horizontal. Buildings should conform to these design elements. (Figure 3).

Walls of Continuity: (Illustrated by Figure 4)

Setbacks:

Buildings were built with front facades against sidewalks. In remodeling or replacing structures, the new building should be relatively small in scale (fill the space of one or two existing buildings) and front facades which align with existing facades (see Figure 4).

For large scale buildings (more than one block or several lots) exceptions may be made. For example, setbacks for upper floors, may not be required if the building is designed to be a landmark, but may be mandatory in other cases.

Utility Service:

Storage area, exposed machinery installation, service area, truck loading areas, utility structures and similar accessory areas should be screened or setback. Utility and mechanical systems whether on the ground or roof, should be screened or fenced to minimize their visibility and minimize emission of noise, vapor, heat or fumes. Air conditioning units often break up the rhythm of a facade and must be located out of sight. This can be accomplished by locating them on the alley sides of buildings or portions of the roof that are not visible from the street. Central air conditioning systems are recommended. Television antennae must not clutter roof tops; master aerials are encouraged. If a fire escape is a requirement, it should either be placed on the alley wall or be designed and constructed with the same attention demanded by other major alterations.

Automobile Service:

Parking will be consistent with the City's Master Plan and parking access at the backs of buildings will be included in later design guidelines which will address the backs of the buildings.

Signs:

Signs more than any other single feature can detract from even the most attractive storefront and clutter its surroundings. When a building has a lintel (horizontal beam), locate the sign directly on it. If the sign must project from the building, place it just above the lintel. Make the sign simple and direct. No neon or moveable signs will be permitted. If the sign needs lighting in the evening, concealed, subdued lighting will be acceptable. Restraint can often be the most effective way to capture attention, and over-sized, brightly colored signs will not be allowed. Two general guidelines for sign placement are:

- (1) Place the sign where it conceals the least amount of architectural detailings;
- (2) Place the sign where it respects an existing "sign line" established by signs on adjacent buildings. Placing a sign higher or lower than adjacent signs may create visual confusion. (Figure 4)

Signs may be printed on an entry door or in a storefront window, but must be permanent, unobscured and painted directly on the glass. Temporary announcements or signs in windows must be kept to a minimum. Matte or flat finishes are preferred because they increase readability. High contrast is preferred because it is especially compatible with the human eye. High backgrounds with darker letters are preferred. When legibility is concerned, less says more and is more effective. Signs should be designed to absorb the essential information in a few seconds or less as recommended.

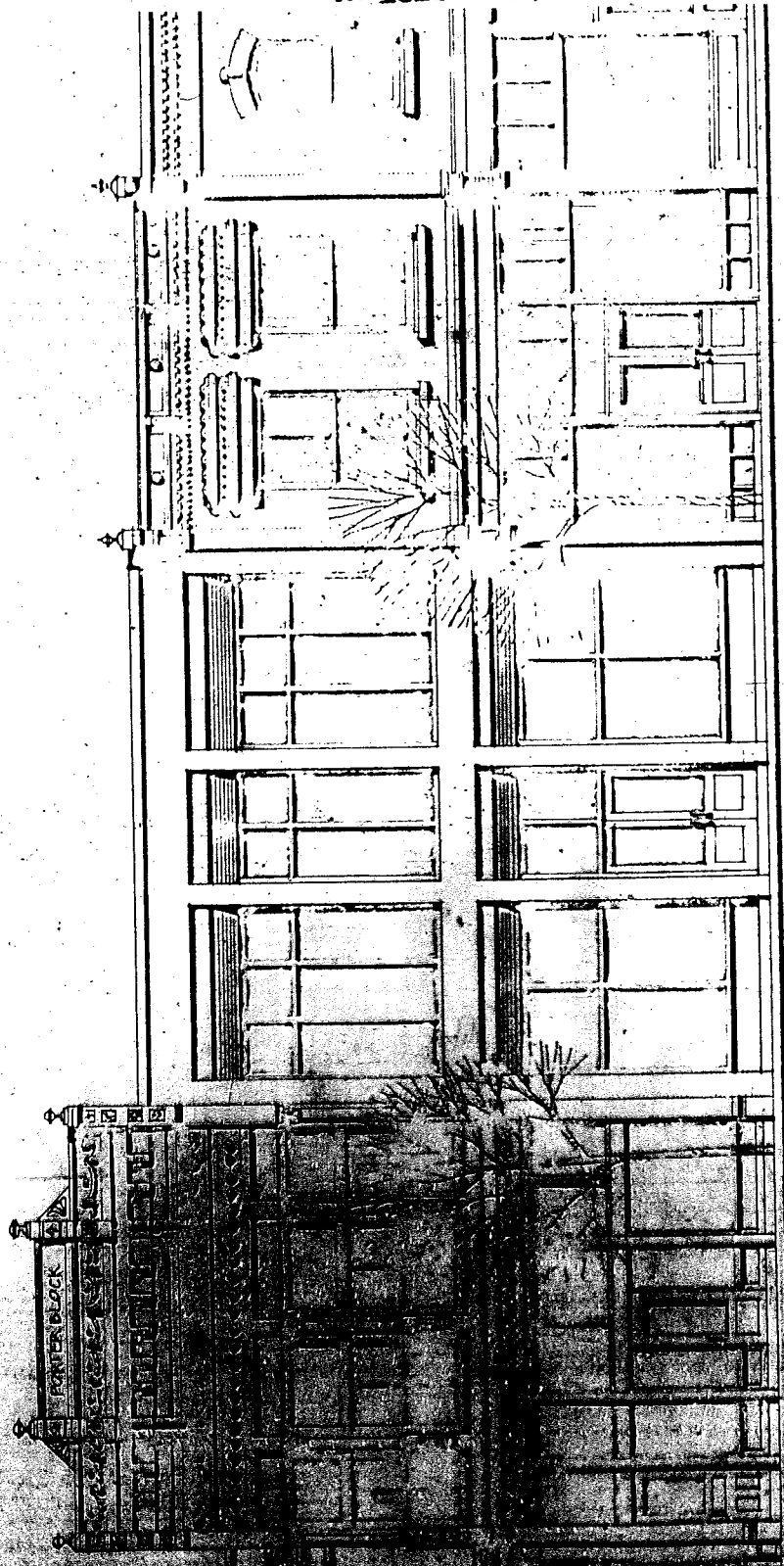


FIGURE 3. Example of sensitive infill.

-8-

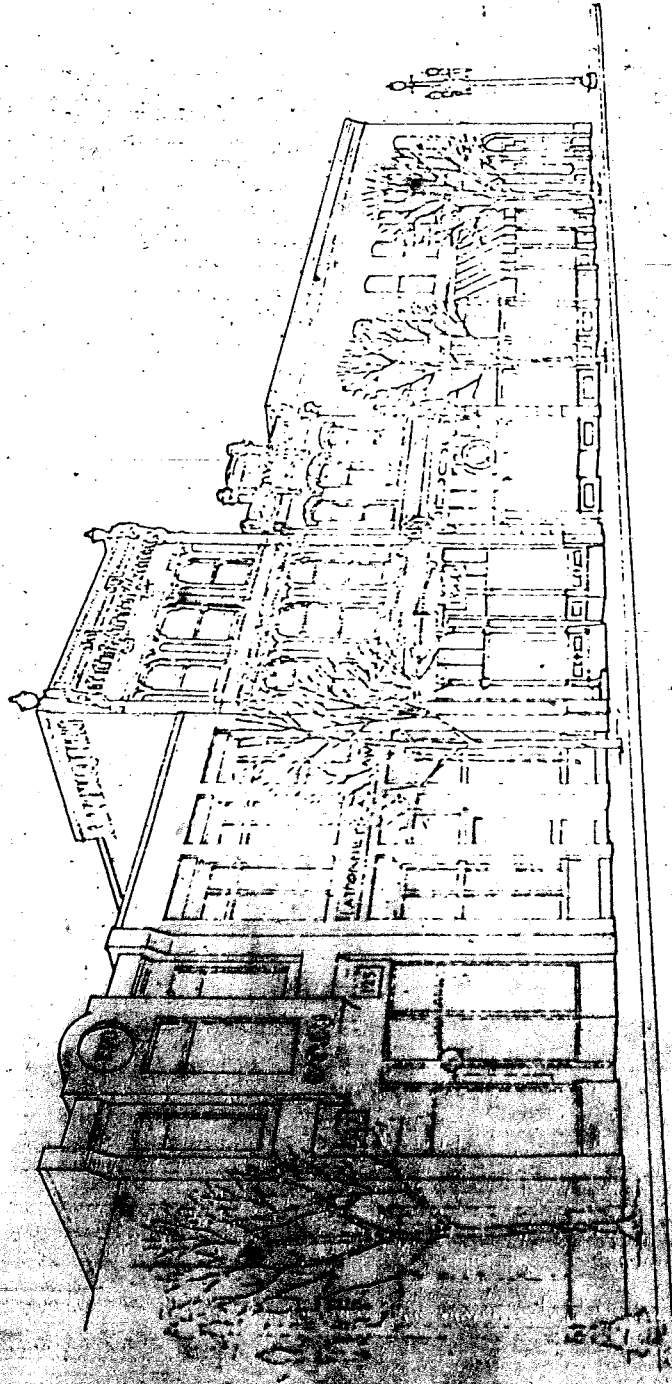


FIGURE 4. Examples of compatible new construction and effective signage.

EXHIBIT "B"

SITE AND PARCEL MAP

DESCRIPTION OF PARCEL "A"

A part of Block 24, Plat A in Ogden City, Weber County, Utah. Beginning at the Northwest corner of said Block 24 and running thence along the North line of said Block 24 South 89°09' East 513 feet; thence South 0°58' West 295 feet; thence South 89°09' East 154 feet to a point on the East line of said Block 24; thence South 0°58' West 88.48 feet along said East line; thence North 89°05'31" West 133.4 feet; thence North 0°58' East 50.575 feet to the Southeast corner of Lot 9 in said Block 24; thence along the South line of Lots 9 and 8 North 89°05'31" West 270.6 feet; thence North 0°58' East 14.75 feet; thence North 89°05'31" West 263 feet to a point on the West line of said Block 24; thence North 0°58' East 317.48 feet to the point of beginning. Containing 179,260 square feet.

DESCRIPTION OF PARCEL "B"

A Part of Block 24, Plat A in Ogden City, Weber County, Utah. Beginning at the Northeast corner of said Block 24; and running thence South 0°58' West 295 feet along the East line of said block; thence North 89°09' West 154 feet; thence North 0°58' East 295 feet to a point on the North line of said block; thence South 89°09' East 154 feet to the point of beginning. Containing 45,430 square feet.

DESCRIPTION OF PARCEL "C"

A part of Block 24, Plat A in Ogden City, Weber County, Utah. Beginning at the Northwest corner of said Block 24 and running thence along the North line of said Block 24 South 89°09' East 513 feet; thence South 0°58' West 295 feet; thence South 89°09' East 154 feet to a point on the East line of said Block 24; thence South 0°58' West 88.48 feet along said East line; thence North 89°05'31" West 133.4 feet; thence North 0°58' East 50.575 feet to the Southeast corner of Lot 9 in said Block 24; thence along the South line of Lots 9 and 8 North 89°05'31" West 270.6 feet; thence North 0°58' East 14.75 feet; thence North 89°05'31" West 263 feet to a point on the West line of said Block 24; thence North 0°58' East 317.48 feet to the point of beginning. Containing 179,260 square feet.

EXHIBIT "B" (Continued)DESCRIPTION OF PARCEL "D"

A part of Block 24, Plat A in Ogden City, Weber County, Utah. Beginning at a point on the West line of said Block 24; said point being South 0°58' West 424.81 feet from the Northwest corner of said Block 24; and running thence South 89°02' East 282 feet; thence South 0°58' West 22.65 feet; thence South 89°02' East 385 feet to a point on the East line of said Block 24; Thence South 0°58' West 51 feet along said East line; thence North 89°02' West 533.6 feet; thence South 0°58' West 21 feet; thence North 89°02' West 133.4 feet to a point on the West line of said Block 24; thence North 0°58' East 94.65 feet to the point of beginning. Containing 43,206 square feet.

The Agency as of the date of this Agreement has not supplied a site and parcel map to the Developer. Not later than July 31, 1979, the Agency shall provide to the Developer a site and parcel map which shall consist of a survey of the four (4) parcels described above. The parties acknowledge that the parcels may differ in certain minor respects from the legal descriptions set forth above. Nevertheless, the Developer shall have the right to approve the final survey and parcel map.

EXHIBIT "C"

DEED OF TRUST NOTE

\$500,000.00

Ogden, Utah, 1979

FOR VALUE RECEIVED, the undersigned (referred to herein as the "Maker") promises to pay to the ODGEN NEIGHBORHOOD REDEVELOPMENT AGENCY, or order, the principal sum of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) with interest thereon at the rate of seven percent (7%) per annum on the unpaid principal balance. Said principal and interest shall be payable at the office of the Ogden Neighborhood Redevelopment Agency, Ogden, Utah, in care of the Ogden City Director of Finance, The Municipal Building, Ogden, Utah 84401, or at such other place as the holder may designate in writing as follows:

- A. Commencing on _____ 1, 19____, and on the first (1st) day of each month thereafter to and including _____ 1, 19____, the Maker shall pay an installment of \$4,468.08.
- B. On _____, 198____, the entire unpaid principal balance, together with any accrued but unpaid interest, shall be due and payable.

If default be made in the payment of any installment under this Note, and if the default is not made good prior to thirty (30) days after delivery of written notice of such default to Maker, the entire principal sum and accrued but unpaid interest shall at once become due and payable without notice at the option of the holder of this Note. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

Maker hereby waives presentment for payment, demand, protest, notice of protest and notice of dishonor, and all defenses on the ground of certainity of time for the payment hereof which may be given by the holder of the note to them or to anyone who has assumed the payment of this note.

This note shall be payable in whole or in part, principal and interest, at any time and without penalty. Any such payment shall be applied first to the interest then accrued, and the remainder to the principal. Each installment(s) of principal and interest shall be credited to the account of the Maker. In the event of any partial payment, the same shall be given to the holder of the note and interest which has been accrued.

Given under the hand and seal of the Maker.

Ogden, Utah
by its
partners: