



01-099-0004

DEVELOPMENT AGREEMENT

E# 2508842 PG 1 OF 28
ERNEST D ROWLEY, WEBER COUNTY RECORDER
28-DEC-10 10:49 AM FEE \$64.00 DEP SY
REC FOR: EPEK TITLE INSURANCE AGENCY, L
ELECTRONICALLY RECORDED

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into by and between the **OGDEN CITY REDEVELOPMENT AGENCY** (the "Agency"), **KEVIN GARN**, an Individual (the "Project Owner"), and **WESTERN STATES LODGING, L.L.C.** a Utah Limited Liability Company, (the Developer).

IN CONSIDERATION of the mutual promises and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

I. GENERAL.

A. **Purpose of Agreement.** The purpose of this Agreement is to establish the terms and conditions for the development of parcel #01-099-0004 at the Junction for the purpose of developing a hotel and parking garage (the "Project"). The development of the Site in accordance with the terms of this Agreement is and will be in the vital and best interests of the City of Ogden (the "City") and the health, safety, morals and welfare of its residents and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements.

1. **Previous Agreements / Merger:** All parties acknowledge that the prior agreement between the parties signed on or about October 20, 2010 pertaining to the subject matter of this Agreement has not been ratified by the RDA board, and is deemed null and void, and is supplanted and replaced by this Agreement.

B. Parties to the Agreement.

1. **The Agency.** The Agency is a public body, corporate and politic, exercising governmental functions and powers and organized and existing under Section 17C-1-101 et seq., Limited Purpose Local Government Entities B Community Development and Renewal Agencies, Utah Code Annotated, 1953, formerly known as the Redevelopment Agencies Act (the "Act").

2. **The Project Owner.** The Project Owner is KEVIN GARN, an Individual. The project owner shall own the proposed project, the land on which the project sits, and oversee the development of the project. The project owner has the ability under this Agreement to identify and designate any Developer he chooses to develop the project. The Project Owner shall have the right to replace Developer by written notice to Agency, along with a signed written addendum to this Agreement designating the new Developer, subject to Agency approval, which shall not be unreasonably withheld.

3. **The Developer.** The Developer is WESTERN STATES LODGING, LLC. Developer hereby appoints David Webster as the sole and exclusive representative of Developer ("Developer's Representative") to represent, speak for and bind Developer in all matters pertaining to this Agreement. Developer shall have the right to replace Developer's Representative by written notice to Agency as described in this Agreement.

2010-605
Retention: Perm

C. **Definitions.** When used herein, the following terms shall have the meanings set forth below:

1. **The Project Plan.** A copy of the Developer's hotel project plan, consistent with the design standards for the Junction, for the above referenced parcel, the "Project Plan", is attached hereto as **Exhibit A**.

2. **The Project Area.** The Project Area will be the southernmost lot of the Site as described below, after Project Owner and /or the Developer subdivide the parcel comprising the Site, and will be where the proposed hotel and parking garage facilities will be built. The parties further contemplate that the Developer will take steps, as outlined in this agreement, to separate the Project Area into condominium units and then convey that portion of the Project Area that is considered the parking garage unit to the Ogden City Redevelopment Agency, for purposes of qualifying for Assessment Area Bonds, which will assist in the financing of this project.

3. **The Site.** The Site is located in the City and within the Central Business District Redevelopment Agency Project Area and consists of approximately 1.79 acres of land (the "Site"). The exact boundaries of the Site are specifically and legally described on the "Site Map" attached hereto as **Exhibit B**. The parties hereto acknowledge that Developer is not currently the owner of the subject parcel making up the Site, but the parties anticipate that the Developer and / or Project Owner will become the owner of the Site for purposes of qualifying for assessment area bonds.

The Site shall be subdivided into two lots by the Project Owner and Developer once title to the Site has been acquired by the Project Owner. The Project Owner and/or Developer shall subdivide the lots by following all Ogden City required processes. The specific lot dimensions within the subdivision boundaries, together with any plats or other required documents shall also be subject to Agency approval. Agency agrees that it will convey title to Project Owner, subject to the conditions outlined in this agreement. It is understood that the proposed hotel project will be developed on the southernmost lot, which shall be defined as the Project Area. It is further understood that the northern lot of the Site shall remain undeveloped for a period not to exceed five years from the date this Agreement is executed. If Project Owner and/or Developer have failed to develop the northern parcel on the site within the five year period described in this paragraph, then that lot shall revert back to the ownership of the Agency. If Project Owner and/or Developer develop the Northern lot, said development shall be subject to Agency approval. Upon reversion, the Project Owner shall be compensated through a reduction, based on a prorated square footage analysis that will result in a purchase price adjustment to the promissory note as referenced in Section III (B)(i).

4. **Tax Increment.** As used in this Agreement, the term "Tax Increment" means the monies which the Agency actually receives from the Project Area pursuant to the provisions of Subsections 17C-1-404 and 17C-2-204 of the Community Development and Renewal Agencies Act (the "Act"), as amended, as a result of the improvements and equipment Developer constructs and installs or causes to be constructed and installed in the Project Area. Tax Increment does not include any property tax monies which the Agency may receive from real or personal property within the Site, but lying outside the geographic boundaries of the Project Area. Tax Increment from the Project Area shall be calculated as prescribed by the Act and may be generally described

as being calculated by subtracting the total base year or pre-development ad valorem real property and personal property taxes, from the total amount of post-development of said taxes of the base year for each year going forward.

5. Tax Increment Year. The term "Tax Increment Year" means a calendar year beginning January 1 (the "tax lien date" when real property is deemed to be assessed for purposes of taxation by the Office of the Weber County Assessor pursuant to law), through and including December 31 of the same calendar year.

6. Improvements and Permitted Uses. The Improvements shall be generally those assets, structures, equipment and other improvements required to complete and operate a hotel. The final design of the hotel shall meet the design requirements of the Agency.

The uses allowed on the Site by Developer are limited to uses as permitted by the Project Plan and all applicable Federal, State, County and Ogden City laws and ordinances (the "Permitted Uses") and are subject to Agency approval.

D. Conditions Precedent. This Agreement, shall not take effect until:

1. Approval by the governing board of the Agency.
2. Execution of the Agreement by the Agency, the Project Owner and the Developer.

II. CONDITION OF THE SITE.

A. Zoning of the Site. The Agency acknowledges that the Site is currently zoned CBDI and such classification will permit the development, use, operation and maintenance of a hotel thereof in accordance with the provisions of Article III and the Permitted Uses.

B. Physical Condition of the Site. It shall be the sole responsibility of Developer prior to the execution of this Agreement to investigate and determine the suitability and adequacy of the Site for the Developer's proposed development and improvements. City and Agency will provide to Developer all copies of any environmental studies in their possession. Reliance by Developer on such studies shall be the sole responsibility of Developer.

III. DEVELOPMENT OF THE SITE AND PROJECT AREA.

A. Development. Project Owner and Developer shall without expense to the Agency, other than as provided for herein, prepare the Site and Project Area for and construct and install all improvements and equipment.

1. Project Owner's and Developer's Condominium Requirement:

On or before January 31, 2011, Project Owner and Developer shall create a condominium project for the Project Area, separating the Project Area into two (2) separate condominium units, one for the hotel itself and one for the parking garage beneath the hotel unit. The parties acknowledge the necessity of this condominium project in order for Project Owner and/or Developer to qualify for potential Assessment Area bonds ("AA Bonds") which shall go towards the funding of the overall project. All terms of the condominium declaration and plat shall be subject to Agency written approval and acceptance prior to recordation. The parties further acknowledge that the condominium process must follow Ogden City code, including proper review and acceptance by all Ogden City departments, commissions and boards. Project Owner and/or Developer shall convey the garage condominium unit to Ogden City Redevelopment Agency by warranty deed no later than January 31, 2011.

B. Land Acquisition: Parties' Responsibilities and Covenants

The Agency shall convey title to the Project Owner for the property comprising the Site as described in Section I.C (2) subject to the following:

1. **Purchase Price:** The Project Owner shall be obligated to pay a purchase price of \$1,500,000.00 to the Agency, its successors or assigns, for purchase of the Site. The payment obligation shall be evidenced by a Promissory Note and secured by a Trust Deed recorded against the Site. (a copy of the Promissory Note and Trust Deed is attached hereto as Exhibit "G"). Amortized payments of the Promissory Note shall begin seven years after the effective date of this Agreement provided Project Owner and/or Developer secures New Market Tax Credits in the amount of \$2,000,000.00 prior to commencement of hotel construction. If Project Owner and / or Developer fails to meet the New Market Tax Credits requirement, the Promissory Note payments shall begin five years after the effective date of this Agreement. As additional consideration for conveyance of the Site by the Agency, Project Owner and/or Developer shall create the condominium project, convey the garage condominium unit, subdivide the Site, and develop the hotel as set forth in this Agreement.

2. **Land Subordination:** The Agency may subordinate its recorded security interest in the Site, or the lots subdivided from the Site, to a lender financing construction and/or providing long term financing for the hotel or other development on the northern lot. The Agency will subordinate its security interest in the Project Area to the construction or long term lender for the hotel improvements in the Project Area. The Agency will also, at a future point in time, subordinate its security interest in the northern lot, to a Project Owner and/or Developers' lender once Project Owner and/or Developer obtain plans and long term financing for any contemplated project on that lot. Project Owner and/or Developer are aware of their obligations to develop this lot under the terms set forth in Section I.C (3).

3. **Repayment of Purchase Obligation/ New Market Tax Credits:** Both parties acknowledge that the Project Owner and/ or the Developer intend to seek New Market Tax Credits in the amount of \$2,000,000.00 to assist them in financing the construction of the hotel. The Project Owner and / or Developer understand that these Credits must be obtained no later than the date they begin construction of the hotel. Repayment terms of the Promissory Note and Trust Deed attached

hereto under Exhibit G are affected by Project Owner's and / or Developer's ability to obtain these credits prior to construction.

The Project Owner and/or the Developer agree to repay the Promissory Note at an interest rate equal to the lesser of Four Percent (4%) or the LIBOR rate, whichever is less, on the date Project Owner and/or Developer is obligated to commence payment on the Promissory Note, amortized over a 180 month period.

The effective date to begin payment on the Note shall be the first day of the 85th month from the effective date of this Agreement, provided Project Owner and/or Developer is successful in obtaining at least \$2,000,000.00 in New Market Tax Credits, no later than June 1, 2011, as referenced under Schedule F. In the event Project Owner and/or Developer obtains New Market Tax Credits, Project Owner and/ or Developer shall not be obligated to pay interest under the Promissory Note attached hereto as Exhibit G during the period of time between the effective date of this Agreement and the effective date that Project Owner and/or Developer are obligated to commence repayment under said Note. .

If Project Owner and/ or Developer are unsuccessful in obtaining at least \$2,000,000.00 in New Market Tax Credits by the date outlined under Schedule F, then the Note payments will begin on the first day of the 61st month from the effective date of this Agreement. During the time between the effective date of this Agreement and the 61st month from the effective date of this Agreement, Project Owner and/or Developer shall pay interest on the Promissory Note attached hereto as Exhibit G at an interest rate equal to the lesser of Four Percent (4%) or the LIBOR rate on the date of execution of this Agreement, whichever is less. . . .

4. Condominium Conveyance to Ogden City Redevelopment Agency: The parties acknowledge that Project Owner and/or Developer shall take all steps to condominiumize the Site as referenced in Section III (A) (i) above. This process shall be subject to written approval by the Agency of all terms of the condominium declaration and plat and any other ancillary documents pertaining to the condominium. The Project Owner and/or Developer shall convey fee simple title in the Parking Garage condominium unit to Ogden City Redevelopment Agency, which conveyance shall be made no later than January 31, 2011 as referenced in Exhibit F to this Agreement. Project Owner and / or Developer shall convey the Parking Garage unit to Ogden Redevelopment Agency., free of any encumbrances other than any pre-existing bond obligations tied to the property.

C. Developer's Undertakings. The nature and extent of Project Owner and the Developer's additional undertakings under this Article III Section B are described on Developer's Additional Undertakings on Exhibit C, attached hereto.

D. Prior to Completion of Developer's Improvements. Project Owner and the Developer shall, without expense to the Agency or public assessment against the Site or Project Area, and prior to the completion of the Developer's Improvements, undertake all of the relocation or extension of utilities as may be required on the Site.

E. Agency's Undertakings. The nature and extent of the Agency's additional undertakings under this Article III Section D are described on Agency's Undertakings on Exhibit D, attached hereto.

F. General Requirements of the Developer.

1. Schematic Drawings and Construction Documents (both preliminary and final) for the Improvements to be constructed by the Developer shall be prepared by a person registered in and by the State of Utah to practice architecture. The Construction Documents shall be in conformity with the Project Plan and this Agreement, including limitations established in the Scope of Development, on Exhibit E, attached hereto, (collectively the "Redevelopment Standards"), and all applicable federal, state and local laws and regulations.

2. The architect retained or to be retained by Developer to design the Improvements shall utilize, as necessary, members of associated design professions, including engineers.

3. The Improvements to be constructed shall be constructed by Developer in strict compliance with Construction Documents and also in strict compliance with all applicable local, state and federal laws and regulations.

G. Issuance of Permits

1. Project Owner and the Developer shall have the responsibility for obtaining all necessary permits and the Developer shall make application for such permits directly to the Ogden City Building Services Division and other appropriate agencies. Developer shall timely, and at least prior to the date scheduled for construction, submit an application for building permits and thereafter diligently pursue such application. If Developer intends to proceed at first with only a Site permit, Developer shall nevertheless timely apply for and thereafter diligently pursue the issuance of the building permits or other intermediate permits to the end that construction may proceed without interruption once it has commenced. Failure to timely file and to diligently pursue issuance of all permits shall be a breach of this Agreement and grounds for termination of this Agreement at the option of the Agency.

The Agency shall provide 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.

2. 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.

3. 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.

H. Times for Construction. Project Owner and Developer agree for themselves, and any of their permitted successors and assigns to the Site and Project Area or any part thereof, that they, and such permitted successors and assigns, shall promptly begin and diligently pursue to completion the redevelopment of the Site and Project Area through the Construction of all contemplated Improvements thereon, and that such construction shall in any event commence and hereafter diligently pursue and shall be completed no later than the dates specified in the Schedule of Performance, on Exhibit F, attached hereto, unless such dates are extended by the Agency or the Developer is unable to undertake or complete the Improvements because of any of the reasons set forth in Article IX Section H.

IV. TAXES AND ASSESSMENTS.

A. Tax Increment Used to Service Bond Payments; Incentive

It is contemplated by the parties that tax increment as set forth in this Agreement will be used to pay debt service on tax increment revenue bonds issued for this project for the benefit of Project Owner. In the event that for any reason the amount of tax increment from the Project Area received by the Agency is insufficient to make periodic payments pursuant to the tax increment bond debt service payment schedule, the Project Owner shall then make payment to the Agency in the amount of the debt service shortfall prior to the payment due date in the bond debt service schedule. The Agency shall allocate Ninety-Five (95%) percent of the tax increment revenue generated from the Project Area for debt service on tax increment revenue bonds issued for this project. Five (5%) percent of the tax increment shall be allocated for Agency administrative purposes.

The Agency will utilize the net new tax increment created by the Project Area to attempt to secure a taxable bond in the amount of Two Million Two Hundred Fifty Thousand Dollars and No Cents (\$2,250,000.00) for the benefit, and as means for mitigating a known funding gap for completing the project under the terms outlined in this agreement. The Agency will convey \$1.5 million of the bond proceeds to Owner to defray the funding gap, and retain the remaining \$750,000.00 for costs associated with building the parking garage. It is acknowledged by the parties that but for this funding gap mitigation the project would not be economically feasible.

B. Tax Increment Payment Schedule; Right to Appeal

Subject to Project Owner and/or the Developer's right to protest or appeal as provided below, through Tax Increment Year 2026, or any extension mutually agreed upon and legally allowed, all ad valorem taxes and assessments levied or imposed on the Project Area, any of the Improvements, and any personal property on the Project Area for any period commencing after acquisition of the Site and Project Area or any portion thereof by Project Owner and/or Developer

shall be paid annually by Project Owner and/or Developer on or before the due date which is currently set by law as November 30th.

Project Owner and/ or the Developer shall have the right to protest or appeal the amount of assessed taxable value levied against the Site and/or Project Area by the County Assessor, State Tax Commission or any lawful entity authorized by law to determine the ad valorem assessment against the Site and/or Project Area, the Improvements, personal property on the Site and/or Project Area, or any portion thereof in the same manner as any other taxpayer as provided by law. Project Owner and/or the Developer shall, however, notify the Agency in writing within ten (10) calendar days of Developer's filing of any protest or appeal to such assessment determination and provide a copy to the Agency of any protest or appeal of such assessment and information submitted as part of the protest or appeal. In addition, Project Owner and/or the Developer shall give to the Agency written notice at least fifteen (15) calendar days prior to the time and date that such protest or appeal is to be heard. The Agency shall have the right, without objection by Project Owner and/or the Developer, to appear at the time and date of such protest or appeal and to present oral or written information or evidence in support of or objection to the amount of assessment which should or should not be assessed against the real or personal property of the Site and/or Project Area and the amount of the Agency's Project Area indebtedness outstanding.

C. Application of Property Tax Obligation to Assessment Area Bond Obligations on Public Parking Garage

It is contemplated by the parties that the Agency shall construct a public parking facility in the Project Area for the benefit and use of the general public, and for further benefit and use of the patrons of the hotel and commercial site contemplated in this Agreement, subject to Ogden Redevelopment Agency and RDA Board approval. The parties acknowledge that the garage will be funded in part, by a taxable Assessment Area ("AA") Bond in the amount of Two Million Two Hundred Fifty Thousand Dollars and No Cents (\$2,250,000.00). Project Owner and Developer and/or its assigns shall be responsible for servicing the bond via annual property tax payments, which are directly tied to the Project Area the project actually sits on. Said assessment shall be paid to the Ogden City Redevelopment Agency. Any property taxes derived from the lot to the north of the hotel site, which will be subdivided from the hotel site land, shall not be used to pay down the assessment. Both parties further acknowledge that the Assessment Area Bond shall be paid over a twenty (20) year period of time, if not earlier. Once the Assessment Area Bond is paid in full, Project Owner and/or Developer or its assigns shall continue to make any additional obligation payments under the attached Promissory Note attached hereto as Exhibit G, as well as any and all property tax obligation payments to the Agency, its successor or assign. This paragraph shall survive the termination of this Agreement. The parties further contemplate that the AA Bond shall cover all operations and maintenance costs associated with the Parking Garage during the time the AA Bond exists. Once the AA Bond is retired, Ogden City Redevelopment Agency, its successors and assigns, shall be responsible for all operations and maintenance costs for the Parking Garage going forward.

V. USE OF THE SITE.

A. Covenants in Agreement. Project Owner and Developer covenant and agree for themselves, and their successors and assigns to or of the Site or any part thereof, that Developer, and such successors and assigns shall:

1. **FIRST:** Devote the Site to, and only to and in accordance with, the uses specified in the Project Plan and this Agreement, as hereafter amended and extended from time to time, but never without the prior written consent of the Agency for uses other than the Permitted Uses, which are the only uses permitted by this Agreement. At the eventual dissolution of the redevelopment area, the Site shall be governed by the remaining municipal codes and any state code restrictions.

2. **SECOND:** Pay when due and on or before the tax payment date all ad valorem taxes or assessments on or relating to the Site or any part thereof, and on any property located on the Site or any part thereof.

3. **THIRD:** Commence promptly the construction and installation of the Improvements on the Site in accordance with this Agreement and the Project Plan and prosecute diligently the construction of the Improvements to completion.

4. **FOURTH:** Not discriminate against any person or group on any unlawful basis in the sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Site or any Improvements. Neither shall Project Owner and/or the Developer themselves, or any person claiming under or through it, 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, sub lessees or vendees in the Site or any Improvements.

5. **FIFTH:** Subdivide the land hereto known as the "Site" into two unequal lots subject to the approval of the Agency, and to take all steps that are required by Ogden City in the subdivision process. Project Owner and/or Developer agree to Subdivide the Site as contemplated under Schedule F attached hereto.

6. **SIXTH:** Take all steps necessary to condominiumize the Project Area once the Site is subdivided and to conform with all steps that are required by Ogden City in the condominium process and subject to the approval of the Agency. Project Owner and/or Developer agree to condominiumize the Project Area and convey their interest in the Parking Garage to Ogden City Redevelopment Agency as outlined in this Agreement under Section III (B)(iv).

B. Enforcement of Covenants. It is intended and agreed that the agreements and covenants provided in this Article V shall be covenants running with the land and without regard to technical classification or designation, legal or otherwise, be to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by the Agency against the Project Owner and the Developer, their successors and assigns, to or of the Site or any part thereof or any interest therein, and any party in possession or occupancy of the Site or any part thereof. The Parties agree that Ogden City Corporation, as a third party beneficiary, and the Agency, as a party, shall both be deemed beneficiaries of the agreements and covenants provided in Section A of

this Article, both for and in their own right and also for the purposes of protecting the interest of the community and other parties, public or private, in whose favor or for whose benefit these agreements and covenants have been provided. The obligations of The Project Owner and the Developer under this Article V shall terminate on and be of no force and effect after December 31, 2026, except that the termination of the covenant numbered SECOND shall in no way be construed to release The Project Owner or the Developer or their successors from their obligation to pay real property or personal property taxes or assessments relating to the Site or any part thereof, and the covenants and agreements contained in covenant numbered FOURTH shall remain in effect without any limitation as to time.

VI. ASSIGNMENT PROVISIONS.

A. Both Project Owner and Developer shall have no right to assign or transfer this agreement without the consent of Agency.

VII. MORTGAGE FINANCING: RIGHTS OF MORTGAGEES.

A. Limitation Upon Encumbrance of Property. Prior to the completion of the Improvements, neither The Project Owner or the Developer nor any successor in interest to the Project Area or any part thereof shall engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Site or the Project Area or Improvements found thereon, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to the Site or Project Area except for the purposes of obtaining funds only to the extent necessary for making the Improvements (i.e., cost of construction, financing, property acquisition, architectural fees, permits, etc., and any other costs in connection with the physical Improvements of constructing a hotel, parking garage and any retail development located on the Site). It is further agreed that the Developer, or successor in interest, shall notify the Agency in advance of any mortgage financing it proposes to enter into with respect to the Site or Project Area and any Improvements thereon and in any event that it shall promptly notify the Agency of any encumbrance or lien that has been created on or attached to the Site, whether by voluntary act of the Developer or otherwise.

B. Mortgagee Not Obligated to Construct. Notwithstanding any of the provisions of this Agreement, the holder of any mortgage authorized by this Agreement, including any such holder who obtains title to the Site or any part thereof as a result of foreclosure proceedings or action in lieu thereof, but not including (1) any other party who thereafter obtains title to the Site or Project Area or such part from or through such holder, or (2) any other purchaser at foreclosure sale other than the holder of the mortgage itself, 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; Provided, that nothing in this section or any other section or provision of this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Site or Project Area or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided or authorized in the Project Plan, as hereafter amended or extended from time to time, and in this Agreement.

C. Copy of Notice of Default to Mortgagee; Mortgagee's Option to Cure Defaults. Whenever the Agency shall deliver or make any notice or demand to The Project Owner or the Developer with respect to any breach or default by the Developer in its obligations or covenants under this Agreement, the Agency shall at the same time deliver to each holder of record of any mortgage authorized by this Agreement a copy of such notice or demand, and each such holder shall insofar as the rights of the Agency are concerned, have the right, at its option, to cure or remedy such breach or default to the extent that it relates to the part of the Site or Project Area covered by its mortgage, and to add the cost thereof to the mortgage debt and the lien of its mortgage; Provided, that if the breach or default is with respect to construction of the Improvements, nothing contained in this section or any other section or provision of this Agreement shall be deemed to permit or authorize such holder, either before or after foreclosure or action in lieu thereto, to undertake or continue the construction or completion of the Improvements, beyond the extent necessary to conserve or protect Improvements or construction already made, without first having expressly assumed the obligation to the Agency to complete, in the manner provided in this Agreement, the Improvements on the Site or Project Area or the part thereof to which the lien or title of such holder relates, and submitted evidence satisfactory to the Agency that it has the qualifications and financial responsibility necessary to perform such obligation. Any such holder who shall properly complete the Improvements relating to the Site or Project Area or applicable part thereof shall be entitled, upon written request made to the City to a certificate of occupancy by the City to such effect, in the manner provided in this Agreement.

D. Mortgage and Holder. For the purpose of this and other sections of this Agreement, the term "mortgagee" shall be deemed to include "beneficiary of deed of trust," or any insurer or guarantor of any obligation or condition secured by such mortgage or deed of trust.

VIII. DEFAULT; REMEDIES; TERMINATION.

A. Definition of Default. A party shall be in default hereunder when it has not performed any one or more of its obligations under this Agreement and within the time prescribed by the Schedule of Performance or other time requirements of this Agreement, as extended by any other applicable provision of this Agreement.

B. Notice of Default; Stay of Legal Proceeding. If either of the Project Owner, the Developer or the Agency defaults with respect to any of the provisions of this Agreement, the non-defaulting party shall send written notice of such default to 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, correct or remedy such failure or delay, and shall proceed diligently to complete such cure within thirty (30) 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 non-defaulting 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 twenty(20) days of service of the notice of default, the non-defaulting party at its option may thereafter (but not before) commence an action for specific performance of the terms of this Agreement.

C. Default under Trust Deed and Promissory Note. Any default under this Agreement, including but not limited to the Project Owner's and Developer's failure to satisfy their obligations to subdivide the site, condominiumize the Project Area, or convey the parking garage condominium unit to Ogden City Redevelopment Agency as provided for herein, shall, in addition to constituting defaults under this Agreement, be considered events of default ("Events of Default") under the Trust Deed and Promissory Note and allow the Agency to pursue any and all available remedies set forth in the Trust Deed and Promissory Note, including foreclosure of the Trust Deed, concurrent with, or as an alternative to any remedy provided for herein.

D. Legal Actions.

1. Institution of Legal Actions. Subject to the express limitations set forth elsewhere in this Agreement, in addition to any other rights or remedies available at law or in equity, 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 purposes 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.

2. Acceptance of Service of Process.

a. In the event that any legal action is commenced by Project Owner or 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.

b. In the event that any legal action is commenced by the Agency against Project Owner or the Developer, service of process on Project Owner and/or the Developer shall be made by personal service upon a corporate officer of the Developer and on Project Owner personally or in such other manner as may be provided by law, whether made within or without the State of Utah.

E. Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties whether provided by law or equity or under this Agreement are cumulative, and the exercise 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.

F. Rights of Termination.

1. Termination by Developer. The Project Owner or the Developer will have the right to terminate this Agreement within 60 days of the effective date of this Agreement if the Developer shall furnish evidence satisfactory to the Agency and the Agency Board 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 in the Project Area under this Agreement on or before the date therefore set forth in the Schedule of Performance. In the event that Developer terminates this Agreement under this

provision prior to receiving any benefit from the Agency, neither party shall have any further rights or liabilities against the other.

2. Termination by Agency. The Agency at its option may terminate this Agreement:

a. If the Project Owner or the Developer improperly assigns or attempts to assign this agreement (or any rights therein) or the Site or Project Area (or any rights therein) in violation of this Agreement. The parties agree however that Garn may assign his interest in this Agreement as long as said assignment is first subject to approval by the Agency.

b. If it determines that the financial assistance requested from the Agency by the Developer for development of the Site and Project Area cannot be met by the Agency from financial resources available to the Agency.

c. If the Developer does not submit Construction Drawings and related documents, as required by this Agreement, and such breach is not cured within thirty (30) days after the date of written demand therefore by the Agency.

Upon any termination under this section E. 2, the Agency shall be relieved of all further responsibility under this Agreement, and the Project Owner and Developer shall fulfill all of their payment obligations under this Agreement.

G. **Survival of Obligations.** The obligations and burdens imposed upon Project Owner and Developer hereunder to complete the Improvements shall, with respect to any portion of the Site, survive the unconditional delivery of a construction Certificate of Completion by the Agency with respect to that portion of the Project Area. All other obligations and burdens imposed upon the Developer under this Agreement shall survive the delivery of the Certificate of Completion.

IX. GENERAL PROVISIONS.

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

IF TO THE AGENCY:

Ogden City Redevelopment Agency
 Attention Executive Director
 2549 Washington Boulevard, Suite 420
 Ogden, Utah 84401-3111
 with copy to:
 Ogden City Attorney
 2549 Washington Boulevard Suite 800
 Ogden, Utah 84401-3111

IF TO DEVELOPER:

Western States Lodging
Attn: David Webster
1018 Atherton Drive
Taylorsville, UT 84123

IF TO PROJECT OWNER

Kevin Garn
748 West Heritage Park Blvd.
Suite #203
Layton, UT 84041

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 Article IX Section A. 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.

B. 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 has or shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law.

C. Conflict of Interest B Agency. No member, official, employee, consultant, or agent of the Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, employee, consultant or agent participate in any decision relating to this Agreement which affects his personal interest or the interests of any corporation, partnership, or association in which he is directly or indirectly interested.

D. Nonliability of Agency Officials and Employees. No member, official, employee, consultant or agent 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 on any obligation under the terms of this Agreement.

E. Attachments/Recitals. All Exhibits and attachments to this Agreement and Recitals are incorporated herein and made a part hereof as if set forth in full and are binding upon the parties.

F. Headings. Any titles of the several parts and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions. "Paragraph" and "Section" may be used interchangeably.

G. Successors and Assigns of Developer. This Agreement shall be binding upon The Project Owner, the Developer and their successors and assigns and where the terms "Project Owner" or "Developer" are used in this Agreement, it shall mean and include the successors and assigns of Project Owner and Developer except that: Agency shall have no obligation under this Agreement to any unapproved successor or assign of Project Owner or Developer where Agency approval of a successor or assign is required by this Agreement.

H. Enforced Delay; Extension of Times 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 Project Owner or Developer has no control; inability (when Project Owner or Developer is faultless) to secure necessary labor, materials or tools; delays (when Project Owner or Developer is faultless) of any contractor, subcontractor or supplier; wrongful acts of the other party; acts or failure to act of any public or governmental agency or entity not a party to this Agreement; or any other causes beyond the control or without the fault of the party claiming an extension of time to perform; Provided, that in order to obtain the benefit of the provisions of this section, within thirty (30) calendar days after the beginning of any such Enforced Delay the party seeking the benefit of this section shall have notified the other party thereof in writing stating the cause or causes for the Enforced Delay. An extension of time of 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. Times of performance under this Agreement may also be extended by agreement in writing signed by the Agency and the Project Owner and/or Developer and as otherwise provided in this Agreement.

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

J. Entire Agreement, Waivers and Amendments. This Agreement is executed in one or more duplicate originals, each of which is deemed to be an original. This Agreement integrates 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 Project Owner and/or the Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of the Agency, the Project Owner and/or the Developer.

K. 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.

L. **Exhibits.** All Exhibits annexed to this Agreement and the documents to be delivered at or prior to the execution of this Agreement 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 such writings shall, for all purposes, constitute a breach or default under this Agreement and all other such writings.

X. **SPECIAL PROVISIONS. Coordination with Project Plan.** The Agency and the Developer and Project Owner shall not amend this Agreement in a manner that would violate the Project Plan or the Act.

XI. **TIME FOR ACCEPTANCE OF AGREEMENT BY AGENCY.** This Agreement, when executed by Project Owner and the Developer and delivered to the Agency, must be authorized, executed and delivered by the Agency within thirty (30) days after date of signature by the Developer and the Project Owner or this Agreement shall be void, except to the extent that the parties shall consent together in writing to any 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).

XII. **MEMORANDUM OF DEVELOPMENT AGREEMENT.** The Agency, Project Owner and Developer agree to execute a Memorandum of Development Agreement or such other appropriate document describing this Agreement and record same in the office of the Weber County Recorder, Ogden, Utah.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

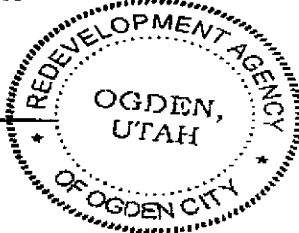
DATE: 11-30-2010

OGDEN CITY REDEVELOPMENT AGENCY

ATTEST: Cindi Mansell
BY Cindi Mansell
Cindi Mansell, Ogden City Recorder

BY Matthew R. Godfrey
Matthew R. Godfrey, Executive Director

Approved As to Form:
[Signature]
Office of Agency Attorney



STATE OF UTAH)
) :ss
COUNTY OF WEBER)

The foregoing Development Agreement was acknowledged before me this 30th day of November, 2010, by Matthew R. Godfrey and Cindi Mansell, who are respectively the mayor and city recorder of Ogden City.



Lee Ann Peterson
NOTARY PUBLIC

DATE: 11-17-2010

PROJECT OWNER: KEVIN GARN
[Signature]

STATE OF UTAH)
 :SS
COUNTY OF SALT LAKE)

The foregoing Development Agreement was acknowledged before me this 11 day of NOVEMBER, 2010, by Kevin Garn, who personally appeared before me, and being duly sworn, on oath, did dispose and say that he is the signers of the foregoing Agreement.



Alisa Draper
NOTARY PUBLIC

DATE: 11/16/10

DEVELOPER: WESTERN STATES LODGING
L.L.C.

BY: David R. Webster
~~David R. Webster~~ Managing Member

STATE OF UTAH)
 :SS
COUNTY OF SALT LAKE)

The foregoing Development Agreement was acknowledged before me this 16 day of NOVEMBER, 2010, by David Webster, who has held himself out to be the Manager of Western States Lodging L.L.C., and who is duly authorized to sign on behalf of Western States Lodging L.L.C.



Alisa Draper
NOTARY PUBLIC

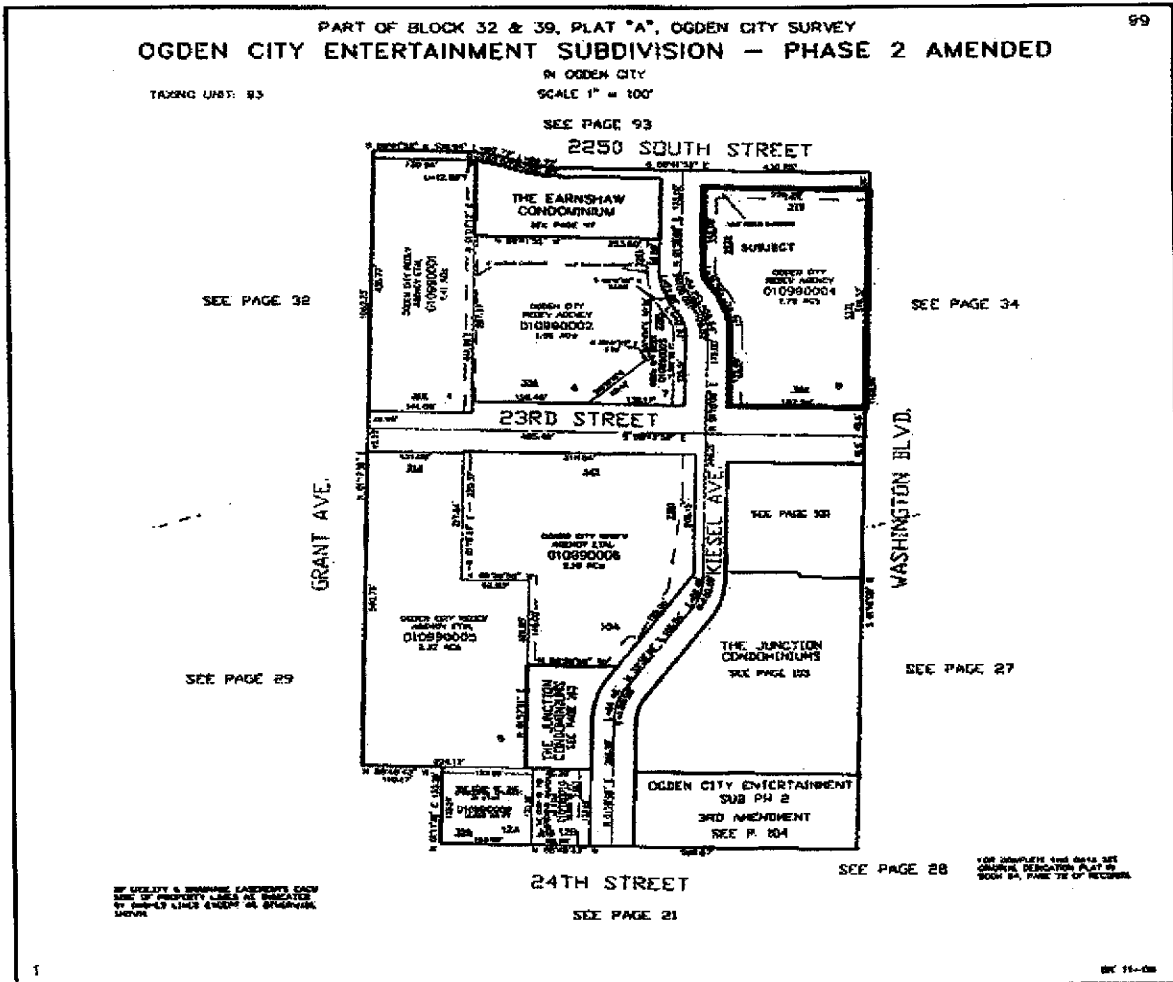
**EXHIBIT A
PROJECT PLAN**

DEVELOPER'S PROJECT PLAN

The following documents are part of the Developer's Project Plan. The documents support the statements and findings incorporated in the Project Plan.

(NOTE: THIS IS A PLACE HOLDER, DEVELOPER SHALL REVIEW AND MEET OBLIGATIONS OF THE AGENCY PROJECT PLAN AND PROVIDE SUFFICIENT EXHIBITS DEMONSTRATING COMPLIANCE OF THE HOTEL PROJECT AND THE AGENCY PROJECT PLAN)

EXHIBIT B SITE MAP



PROPERTY DESCRIPTION
Serial # 01-099-0004 *10*

**ALL OF LOT 8, OGDEN CITY ENTERTAINMENT SUBDIVISION-PHASE 2(AMENDED),
OGDEN CITY, WEBER COUNTY, UTAH.**

EXHIBIT C**PROJECT OWNER'S & DEVELOPER'S ADDITIONAL UNDERTAKINGS**

Project Owner and Developer shall do and perform all of the following:

1. **Construction and Operation of Improvements.** Developer shall, at its expense and within the times set forth in the Schedule of Performance (**Exhibit F**), construct, install, maintain, lease, operate, improve and potentially sell, from the time of completion of the Improvements until at least December 31, 2026 the Improvements on the Site consisting of all items shown or described on the Site Plan and Description of Improvements on **Attachment I**, attached to this **Exhibit C**, and the Scope of Development (**Exhibit E**), including but not limited to:

a. Construction and development of a Hilton Garden Inn together with restaurant and banquet area space.

b. Construct, coordinate or utilize all on-site utilities to include sewer, water, telephone, electric and gas as may be necessary or required to construct and/or acquire for the Project, and as shown or described on the Site Plan and Description of Improvements on **Attachment I**, attached to this **Exhibit C**, and the Scope of Development (**Exhibit E**).

2. **Site Costs.** Developer shall provide to the Agency, an Estimated Schedule of Site & Building Costs, to be included in this Agreement as (**Exhibit F**) **Schedule of Performance**.

3. **Restriction against Parcel Splitting.** Except as provided in **Attachment I** of this **Exhibit C**, and as provided elsewhere in this Agreement, during the period that the Agency will collect tax increment from the Project Area, except as required by the Development Agreement, Project Owner, Developer, or any successor in interest, shall not, without the prior written approval of the City and the Agency: (a) convey the Site, or a portion of the Site, or any real property acquired within the Project Area, in such a way that the parcel of real property would extend outside the Project Area as shown on the County's tax identification system for numbering individual parcels of real property; (b) construct or allow to be constructed any building or structure on the Site, or on any portion of the Project Area, in such a way that the building or structure would extend outside the Project Area as shown on the County's tax identification system for numbering individual parcels of real property. Developer understands that the purpose and intent of this prohibition is to avoid the "splitting" or "joining" of any parcels or real property within the Project Area with those outside the Project Area, or construction of buildings in such a way that the County Assessor or County Auditor could no longer identify, by distinct parcels, the periphery boundaries of the Project Area, and would be required to "apportion" tax increment monies between a parcel of real property, or a building or structure, located in part within the Project Area, and located in part outside the Project Area. Developer understands the importance of honoring the Project Area boundaries and agrees not to take action in the construction of buildings or structures or in the conveyance of real property located within the Site or the Project Area that would result in the "splitting" of a parcel or real property or in the improvements thereon, or would make it difficult for the County Assessor or County Auditor to calculate the amount of tax increment in the Project Area.

4. **Compliance with other Developer Obligations.** Project Owner and Developer shall comply with and perform all of the other obligations of the developer set forth in this Agreement, including those set forth in the Exhibits, and including but not limited to the payment and performance obligations set forth in Agency's Undertakings. (Exhibit D)

5. **Additional Provisions.** It is understood by Project Owner and Developer that

a. The Agency has not computed, nor can it compute the exact amount of Tax Increment from the Improvements to be constructed and installed by Developer on the Site.

b. Project Owner and Developer understand and agrees that:

(1) The Agency is not a taxing agency under Utah law;

(2) The Agency has no power to levy a property tax on real or personal property located within the Site;

(3) The Agency has no power to set a mill levy or rate of tax levy on real or personal property;

(4) The Agency is only entitled to receive tax increment funds from the Site for the period established by law pursuant to the provisions of Sections 17C-1-404 and 17C-2-204 of the Act;

(5) Project Owner and Developer have investigated the provisions of Utah laws governing tax funds and assumes all risk that the Redevelopment Plan and Project Area were properly adopted;

(6) Project Owner and Developer assume the risk that no changes or amendments will be made by the Utah State Legislature in the provisions of the Act of the redevelopment law or any successor law or act which would affect or impair: (a) the Agency's right to receive Tax Increment monies to repay to the Agency the Tax Increment Financing amount; (b) the length of time said Tax Increment monies can be received by the Agency; or (c) the percentage or the amount of Tax Increment monies received or anticipated to be received by the Agency based upon the current statutes. The Utah State Legislature considers proposals which reduce the portion of real property taxes which the State of Utah imposes on all real and personal property within the State. Such proposals, if enacted, could materially reduce the amount of tax increment generated within the Project Area or the Tax Increment from the Site and anticipated to be paid to the Agency.

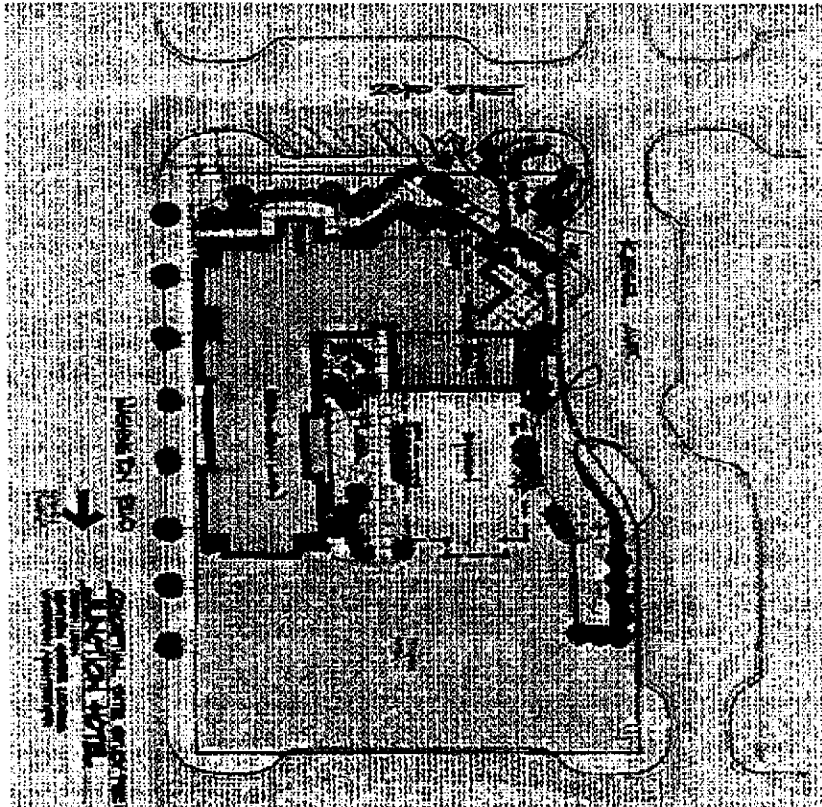
(7) Project Owner and Developer hereby agree to use best efforts to employ local Ogden City contractors and sub-contractors in all aspects of Developer's obligations herein.

**EXHIBIT C
ATTACHMENT I**

SITE PLAN AND DESCRIPTION OF IMPROVEMENTS

The site is defined as all of lot 8, Ogden City Entertainment subdivision-phase 2(amended), Ogden City, Weber County, Utah.

The project will consist of the following:



**MEMORANDUM**

TO: Dave Webster
FROM: Dan Vanzeben
PROJECT: Junction Hotel, Ogden, Utah
SUBJECT: EDA comments
DATE: October 4, 2010

ED-900A.2. The project includes a hotel facility with meeting rooms, pool/spa, exercise area and 110 to 125 guest rooms. It is proposed that the main level of the east side of the structure (facing Washington Blvd.) accommodate approximately 3,700 square feet of retail space. The types of retail businesses anticipated will include Jewelry, Florist, Cakes/Bakery, and other businesses associated with the wedding and reception industry. Parking will be provided in an underground parking structure accommodating 160 stalls.

Copy of conceptual site plan is provided.

It is proposed that construction will be competitive bid with pre-qualified general contractors. We propose a single prime contract for the Hotel and parking structure.

Useful life of the building will be a minimum of 40 years, with regular updating as required by Hotel brand requirements.

Currently planning proposes a design period from October 2010 thru January 2011 with bidding and contract negotiations in February and construction commencing in March. Construction period will be 12 months.

END OF MEMO

EXHIBIT D
AGENCY'S UNDERTAKINGS

Based upon Agency analysis of the development information provided by Developer in the estimated Description of Improvements as set forth on **Exhibit C, Attachment I**, subject to the terms and conditions set forth below, the Agency shall use its best efforts to perform as provided below.

1) Tax Increment Commitment.

The Agency will contribute \$1.5 million in proceeds from the tax increment bond in accordance with this Agreement for the construction of the project as noted in Section IV(A).

2) Agency's Bonding Commitment

The Agency shall make available up to \$3,000,000 of Qualified Recovery Zone (QRZF) Economic Development Bond allocation for the purpose of securing favorable finance terms for development of the parking structure. Subject to availability of funds.

The Agency in cooperation with the State of Utah Private Activity Authority Board shall make available \$9,000,000 in Qualified Recovery Zone Facility Bond allocation to the Developer for the purpose of securing favorable finance terms for development of the Hotel Development. Subject to availability of funds.

The above is contingent on, among other limitation, the ability of the Agency and the Developer to close the bonds by the December 31, 2010 deadline as prescribed by the QRZF program guidelines.

3) Contingency to Agency's Obligations.

The obligations of Agency contained in this Agreement are contingent upon Developer meeting the deadlines as established in Exhibit F and subject to availability of funds.

EXHIBIT E**SCOPE OF DEVELOPMENT**

1. Development and construction of a 120 unit hotel and accompanying retail shops

**MEMORANDUM**

TO: Dave Webster
FROM: Dan VanZeben
PROJECT: Junction Hotel, Ogden, Utah
SUBJECT: EDA comments
DATE: October 4, 2010

HD-900A.2. The project includes a hotel facility with meeting rooms, pool/spa, exercise area and 110 to 125 guest rooms. It is proposed that the main level of the east side of the structure (facing Washington Blvd.) accommodate approximately 8,700 square feet of retail space. The types of retail businesses anticipated will include Jewelry, Florist, Cakes/Bakery, and other businesses associated with the wedding and reception industry. Parking will be provided in an underground parking structure accommodating 160 stalls.

Copy of conceptual site plan is provided.

It is proposed that construction will be competitive bid with pre-qualified general contractors. We propose a single prime contract for the Hotel and parking structure.

Useful life of the building will be a minimum of 40 years, with regular updating as required by Hotel Brand requirements.

Currently planning proposes a design period from October 2010 thru January 2011 with bidding and contract negotiations in February and construction commencing in March. Construction period will be 12 months.

END OF MEMO

EXHIBIT F
SCHEDULE OF PERFORMANCE

1. The estimated development schedule and estimated investment schedule are outlined below.

Substantiate the financial commitment of Project Owner and the Developer by establishing an escrow account under control of the Developer of One Million (\$1,000,000) by November 15, 2010.

Project Owner and/or Developer to provide conditioned letter of commitment from leverage lender including proposed terms by October 21, 2010.

Agency to conduct property closing and convey ownership of the Site to Project Owner and Developer by November 22, 2010.

Project Owner and/or Developer to provide unconditioned letter of commitment from leverage lender by November 30, 2010.

Project Owner and/or Developer to provide completed reviewable plans to Agency by November 30, 2010.

Project Owner and/or Developer to have all hotel / parking garage condominium requirements completed by December 6, 2010.

Project Owner and /or Developer to have all subdivision requirements completed by December 6, 2010.

Project Owner and / or Developer to convey condominium Parking Garage unit to the Ogden City Redevelopment Agency no later than January 31, 2011.

Project Owner and / or Developer to have all required permits in place before January 15, 2011.

Project Owner and / or Developer to have New Market Tax Credits in place on or before June 1, 2011.

Project Owner and/or Developer to commence project construction on or before June 1, 2011.

Project Owner and/or Developer to complete project on or before October 1, 2012.