

01-099-0004



FIRST ADDENDUM TO DEVELOPMENT AGREEMENT

This is an ADDENDUM (Addendum) to that certain DEVELOPMENT AGREEMENT, dated November 16, 2010, between **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).

All defined terms in this Addendum shall have the same meaning as they are defined in the Development Agreement.

WHEREAS, it is contemplated by the parties herein that the Project Owner and/ or the Developer will be pursuing New Market Tax Credits, as described in the Development Agreement, in order to assist in funding the project plan within the project area; and

WHEREAS, the parties have learned that a small possibility exists that the federal government may not extend New Market Tax Credits beyond the current year, 2010; and

WHEREAS, the parties anticipate the New Market Tax Credit program to extend into 2011, but wish to provide contingencies in the event that New Market Tax Credits are not extended by the federal government, and

WHEREAS, the parties also understand that even if New Market Tax Credits are extended into 2011, Project Owner and/or Developer have obstacles to overcome in applying for and acquiring allocations of the credits and then finding an investor to invest in those allocations; and

WHEREAS, Project Owner and/or Developer are highly motivated to obtain New Market Tax Credits in order to capture a positive investment rate on the project itself; and

WHEREAS, all parties acknowledge that the loss of New Market Tax Credits would result in an approximate \$2,600,000.00 shortfall in the funding of the project; and

WHEREAS, all parties acknowledge that it will take a collaboration of funding efforts on the part of all parties involved to make up the difference in shortfall if the New Market Tax Credit program is not extended beyond 2010; and

WHEREAS, the proposed Tax Increment Financing Bond parameters are set at \$3,000,000.00 in an effort to absorb the possibility of some of the shortfall that may result from the potential loss of New Market Tax Credits, if that occurs; and

WHEREAS, the parties understand that the shortfall in funding cannot be made up solely by the parameters set under the Tax Increment Financing Bond, and hence require additional contingency funding commitment from the Project Owner and / or Developer.

NOW THEREFORE, in consideration of the mutual assent afforded by both parties to this addendum, the parties agree, only in the event that New Market Tax Credits are not extended

by the federal legislature beyond 2010, or Project Owner and/or Developer are not able to obtain extended New Market Tax Credits in 2011 despite their best efforts, as follows:

1. **New Market Tax Credits / Best Efforts:** The Project Owner and/or Developer agree that in the event New Market Tax Credits are extended into 2011, they will use their best efforts to obtain those Credits. Best efforts on the part of Project Owner and/or Developer shall include (i) exhausting all resources, contacts, avenues and interests available to Project Owner and/or Developer to acquire an allocation of credits in the necessary amount as contemplated in the Development Agreement; and (ii) exhausting all resources, contacts, avenues and interests available to Project Owner and/or Developer to find and secure an investor for the allocation of credits allotted to them. The Agency shall have unilateral discretion in determining whether Project Owner and/or Developer have met best efforts standards under this section. In the event that the Agency determines that Project Owner and/or Developer have not utilized best efforts under this section, Agency shall not act on the contingencies referenced in section 2 of this addendum and Project Owner and/or Developer shall be responsible instead for covering all of the costs of the New Market Tax Credit shortfall difference themselves.
2. **Tax Increment Financing Bond Obligation Increase:** The Agency agrees, only in the event that New Market Tax Credits are not obtained, as discussed above in Section 1, to increase the Tax Increment Financing obligation referenced in the Development Agreement Section IV(A) by Five Hundred Thousand Dollars and No Cents (\$500,000.00) in order to assist Project Owner and/or Developer in their equity outlay obligations to their lender.
3. **Project Owner and/or Developer Cash Contribution:** The Project Owner and/or Developer shall make up any difference in shortfall in funding as a result of loss of New Market Tax Credits, with the exception of the additional \$500,000.00 in increased Tax Increment referenced in Section 2 above, through cash contribution.

Any and all other terms and conditions of the Development Agreement shall remain the same.

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

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