



\*W2508844\*

E# 2508844 PG 1 OF 8  
ERNEST D ROWLEY, WEBER COUNTY RECORDER  
28-DEC-10 10:49 AM FEE \$24.00 DEP SY  
REC FOR: EPEK TITLE INSURANCE AGENCY, L  
ELECTRONICALLY RECORDED

01-099-0004

**SECOND ADDENDUM TO DEVELOPMENT AGREEMENT**

This is a **SECOND 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 due to some uncertainty surrounding the New Market Tax Credit Issuance and Project Owner and / or Developer's ability to obtain New Market Tax Credits, and understanding the time frame under which Project Owner's lender needs to execute their respective Qualified Recovery Zone Facilities Bond Series, the parties desire to allow Project Owner and/or Developer additional time in any circumstance to begin repayment of their Promissory Note referenced in the Development Agreement in order to assist Project Owner and/ or Developer in meeting their equity outlay obligations to their lender, who will issue the Qualified Recovery Zone Facilities Bonds to Project Owner and/or Developer; and

WHEREAS, the parties also understand that the underground parking structure under the hotel itself will no longer be constructed and that Area Assessment bonds will no longer be needed on the project itself; and

WHEREAS, the parties are aware that in the time between the execution of the Development Agreement and this Addendum, the Project Owner's lender has required that the land described under Section I(C)(3) and Exhibit B of the Development Agreement as the Site, be free of any debt obligation, in order for the lender to consider issuing the monetary amount under the Qualified Recovery Zone Facilities Bond Series necessary to facilitate the contemplated Hotel Project; and

WHEREAS, the parties have identified an alternative substitute collateral source owned by Project Owner, not made a part of the Project Area contemplated under the Development Agreement, which would secure the Agency financially in exchange for Agency's release of lien on the land described under Section I (C)(3) and Exhibit B of the Development Agreement.

NOW THEREFORE, in consideration of the mutual assent afforded by the parties to this addendum, the parties agree in any event as follows:

1. **Promissory Note Repayment Schedule:** Both parties agree that Project Owner shall be obligated to begin repayment of that certain Promissory Note referenced in the Development Agreement as Exhibit G on the 85<sup>th</sup> month regardless of whether they obtain New Market Tax Credits or not. Project Owner and/or Developer shall continue to seek to acquire New Market Tax Credits and shall be obligated to use best efforts to do so. The parties acknowledge however, that by removing the requirement for the Project Owner to begin repayment at an earlier time if New Market Tax Credits are not obtained, Project Owner and/or Developer both increase their equity outlay position with their lender and justify their equity position in the project by delaying payment terms.

As a result, any discussion in the Development Agreement or Promissory Note about Project Owner's obligation to commence repayment of the promissory note in the 61<sup>st</sup> month after entering into said Development Agreement in the event of Project Owner and/or Developer's failure to obtain New Market Tax Credits is hereby amended. Project Owner shall therefore be required to begin repayment of the Promissory Note securing the land sale transaction referenced in the Development Agreement in the 85<sup>th</sup> month after execution of the Development Agreement. Project Owner shall abide by all other terms of the Promissory Note including the obligation to have the Promissory Note paid in full no later than January 1, 2032. The parties agree to amend the Promissory Note so it is consistent with this Addendum.

2. **Sell Back of Lot 8B to Ogden City Redevelopment Agency:** The Project Owner agrees to convey and sell back that portion of land known as Lot 8B or the Northern Lot, which makes up a portion of the Site as defined in the Development Agreement Section I (C)(3), to the Agency, in order to assist Project Owner and/or Developer in their equity outlay obligations to their lender. This sale and re-conveyance shall occur immediately after Project Owner and/or Developer have taken all steps required to subdivide the Site as contemplated under Sections I (C)(3) and III (B)(1) of the Development Agreement. As a condition of the re-conveyance, the Agency shall credit the original Land Purchase Price referenced in Section III (B) (1) of the Development Agreement by Seven Hundred Fifty Thousand Dollars and No Cents (\$750,000.00) to the benefit of the Project Owner who shall simultaneously convey the land known as Lot 8B or the Northern Lot to the Agency via Special Warranty Deed. The parties acknowledge that they intend to negotiate and enter into a lease agreement on the land known as Lot 8B or the Northern Lot, which will obligate the Project Owner and/or Developer to construct surface parking space improvements for the benefit of the project area and general public. In the event that the parties cannot agree to Lease terms, the Agency may develop the land itself or make the land available for sale to any third party buyer.
3. **Substitution of Real Property Collateral:** The parties acknowledge that the land described as the Site under Section I(C)(3) and Exhibit B of the Development Agreement is currently owned by the Project Owner and that the land is secured by a Trust Deed and a Promissory Note obligating Project Owner to repay \$1,500,000.00 to the Agency for that land. The parties also acknowledge that the parties have decided that the Project Owner shall re-convey that portion of the Site known as Lot 8B or the Northern Lot back to the Agency as referenced in Section 2 to this addendum. This will reduce Project Owner's

original debt obligation under the current Promissory Note. The parties agree to reduce the current debt obligation under the original Promissory Note, referenced as Exhibit G to the Development Agreement, to a debt obligation amount of \$750,000.00. The parties further acknowledge that Project Owner's lender has decided that the land dedicated to the Project Area cannot be encumbered with any debt, in order for the lender to approve issuing the monetary amount under the Qualified Recovery Zone Facilities Bond Series necessary to facilitate the contemplated Hotel Project on that land.

In order to meet Project Owner's lender's requirements of debt elimination from the Project Area, Agency agrees to accept substitute collateral and security for the Amended Promissory Note in the form of a first position Trust Deed recorded against another commercial property owned by Project Owner having at least twice the value of the \$750,000.00 debt obligated by the Amended Promissory Note. Therefore, Agency shall cause to be reconveyed to Project Owner the Agency's interest in the Trust Deed previously granted by Project Owner against the Site, in exchange for a substituted Trust Deed securing the Amended Promissory Note to be granted to Agency and recorded against that certain parcel identified by Weber County Tax Records as Parcel No. 06-230-0003, located at 4681 Harrison Blvd., Ogden Utah 84403 and more particularly described as All of Lot 3, South Harrison Commercial Development, Ogden City, Weber County, Utah. The substituted Trust Deed shall be insured by a Lender's Title Policy insuring the Trust Deed in first lien position, free of all encumbrances. The parties acknowledge that property which is the subject of the substituted Trust Deed is owned by North Park Plaza of Provo, Inc., but that the Project Owner is the majority shareholder and can cause the transaction to occur. The Project Owner represents that the substitute collateral property holds at least \$1,500,000.00 of equity, twice the value of the \$750,000.00 debt obligation evidenced by the Amended Promissory Note. The parties agree that they shall take all steps necessary to carry out the substitution of collateral described in this paragraph by December 23, 2010.

Project Owner further agrees that in the event the commercial property value of the substitute commercial property decreases to an amount lower than is necessary to secure Agency's complete interest in the Amended Promissory Note, Project Owner will convey to Agency such additional secured interests against additional commercial properties owned by Project Owner or additional commercial properties owned by any company in which he owns a majority interest, placing the Agency in first or second secured position as equity in those properties allow, in order to secure Agency's complete \$750,000.00 dollar interest.

4. **Loss of Parking Garage /No Area Assessment Designation:** The parties acknowledge that there will no longer be a subterranean parking garage in the Project Area. The parties therefore acknowledge that there is no longer a need for an Area Assessment designation or Area Assessment Bond Issuance. As a result, any discussion about Area Assessment bond issuance or any party obligations related to Area Assessment and condominium requirements associated with the project area shall be deleted in their entirety. Specifically, the following provisions in the Development Agreement will be modified as follows:

- (A) Section I(C)(2) shall read:” 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.”
- (B) Section I(C)(3): all references to Area Assessment shall be stricken.
- (C) Section III(A)(1): Project Owner’s and Developer’s Condominium Requirement shall be stricken in its entirety.
- (D) Section III(B)(1): all references to Area Assessment and condominium creation and conveyance shall be stricken.
- (E) Section III(B)(4): Condominium Conveyance to Ogden City Redevelopment Agency shall be stricken in its entirety.
- (F) Section IV(A): all references to build out of a parking garage and a commitment of funds to that purpose shall be stricken.
- (G) Section IV (C): Application of Property Tax Obligation to Assessment Area Bond Obligations on Public Parking Garage shall be stricken in its entirety.
- (H) Section V(A)(6): all references to condominium obligations by the parties shall be stricken in their entirety.
- (I) Section VIII(C): all references to condominium obligations by the parties shall be stricken in their entirety.
- (J) Schedule F: all references to condominium obligations by Project Owner and/or Developer shall be stricken in their entirety.
5. Exhibit G Changes: The promissory note in Exhibit G shall be amended to reflect a \$750,000.00 debt obligation by Project Owner for the benefit of the Agency (“Amended Promissory Note”), as well as any other changes referenced in Sections 1, 2 and 3 of this Addendum.
6. Development Agreement Section VIII(C) Change: The Heading of this Section shall be amended to state “Default under Trust Deed and Promissory Note or any Amended Promissory Note(s)”. All references to a Promissory Note in this section shall also include reference to any Amended Promissory Note(s) as well.
7. Development Agreement Section IV(A) Change: Due to the elimination of Area Assessment from the Project Area, this Section shall be amended to read as follows:

**"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 One Million Five Hundred Thousand Dollars and No Cents (\$1,500,000.00) for the benefit, and as means for mitigating a known funding gap for completing the project under the terms outlined in this agreement. It is acknowledged by the parties that but for this funding gap mitigation the project would not be economically feasible."

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

**The Remainder of this Page is Left Intentionally Blank**

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

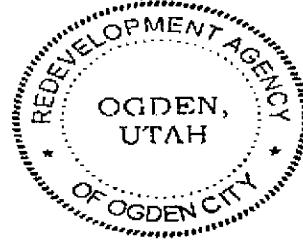
DATE: 12-23-2010

OGDEN CITY REDEVELOPMENT AGENCY

ATTEST:

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

BY Lee Ann Peterson  
Cindi Mansell, Ogden City Recorder Acting



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

STATE OF UTAH )  
  :SS  
COUNTY OF WEBER )

The foregoing First Addendum to Development Agreement was acknowledged before me this 23 day of December, 2010, by Matthew R. Godfrey and Cindi Mansell, who <sup>Lee Ann Peterson</sup> are respectively the Executive Director of Ogden City RDA and city recorder of Ogden City.



Megan Yarrington  
NOTARY PUBLIC

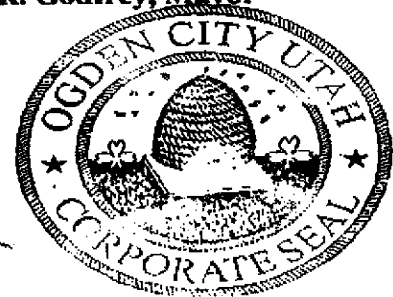
DATE: 12-23-2010

OGDEN CITY

ATTEST:

BY Matthew R. Godfrey  
Matthew R. Godfrey, Mayor

BY Lee Ann Peterson  
Cindi Mansell, Ogden City Recorder Acting



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

STATE OF UTAH )  
  :SS  
COUNTY OF WEBER )

The foregoing First Addendum to Development Agreement was acknowledged before me this 23 day of December, 2010, by Matthew R. Godfrey and Cindi Mansell, who <sup>Lee Ann Peterson</sup> are respectively the mayor and city recorder of Ogden City.



Megan Yarrington  
NOTARY PUBLIC

DATE: 12-21-10

PROJECT OWNER: KEVIN GARN

[Signature]  
\_\_\_\_\_

STATE OF UTAH )  
 )  
:SS  
COUNTY OF SALT LAKE )

The foregoing Addendum to Development Agreement was acknowledged before me this 21 day of December, 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.



[Signature]  
\_\_\_\_\_  
NOTARY PUBLIC

DATE: 12/21/10

DEVELOPER: WESTERN STATES LODGING L.L.C.

BY: [Signature]  
\_\_\_\_\_  
David Webster, Managing Member

STATE OF UTAH )  
 )  
:SS  
COUNTY OF SALT LAKE )

The foregoing Development Agreement was acknowledged before me this 21 day of December, 2010, by David Webster, who has held himself out to be the Managing Member of Western States Lodging L.L.C., and who is duly authorized to sign on behalf of Western States Lodging L.L.C.

[Signature]  
\_\_\_\_\_  
NOTARY PUBLIC



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

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