

77

162



\*W2540074\*

EH 2540074 PG 1 OF 77  
ERNEST D ROWLEY, WEBER COUNTY RECORDER  
02-SEP-11 1158 AM FEE \$162.00 DEP LF  
REC FOR: OGDEN CITY

**DEVELOPMENT AGREEMENT**

On August 2, 2011, 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 WASHINGTON COMMERCIAL, LLC, 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 term and conditions for the development of Lot 8 B in the Ogden City Entertainment Subdivision, also known as parcel #01-106-0002, which was formerly a part of parcel # 01-099-0004 at the Junction in Ogden City, for the purpose of developing 9,000 f<sup>2</sup> or more leasable retail and restaurant space, and for development of a two story parking structure that will accommodate at least 61 stalls on its upper deck and no less than 43 cars at its on-grade street level. 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.

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 – 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. 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. Kevin Garn shall not be able to assign, sell, convey or make any other transfer of title or ownership in the Site or in the Project Area as defined in this Agreement without the express written consent of the Agency's governing Board.

3. The Developer. The Developer is Washington Commercial, 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.

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 retail and restaurant and parking structure project plan, consistent with the design standards for the Junction, for the above referenced parcel, (hereinafter known as the "Project Plan or "the Project"), is attached hereto as **Exhibit A**.

2. The Site. The Site, Lot 8 B is located in the City and within the Central Business District Redevelopment Agency Project Area and consists of approximately 0.893 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**.

Agency agrees that it will convey fee simple title to Project Owner, subject to the conditions outlined in this agreement. It is understood that the Site shall remain undeveloped for a period not to exceed one year from the date this Agreement is executed. If developer has failed to develop the Site within the one year period described in this paragraph, then that parcel of real property shall revert back to the ownership of the City in fee simple. The Developer and Project Owner both agree to take all steps necessary to ensure that ownership is returned to the City in the event that Developer and/or Project Owner cannot begin development within the one (1) year time frame contemplated under this Agreement. Upon revision, if any, the 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).

3. Improvements and Permitted Uses. The Improvements shall be generally those assets and improvements required to complete and operate a parking structure and accompanying commercial structure. The final design of the parking structure and accompanying commercial structure 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").

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

1. Approval by the governing board of the Agency
2. Approval by the Ogden City Council; and
3. Execution of the Agreement by the Agency 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 parking garage and commercial buildings 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 and Project Owner 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 and Project Owner on such studies shall be the sole responsibility of Developer and Project Owner. Developer and Project Owner shall bear any environmental remediation costs, if any, associated with the property.

**III. DEVELOPMENT OF THE SITE.**

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

B. Land Acquisition; Parties Responsibilities and Covenants

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

i) Purchase Price: The Project Owner shall be obligated to pay SEVEN HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS (\$750,000.00) to the Agency for the purchase price of the land referenced herein as the Site. The parties agree that Developer and / or Project Owner shall have up to three years from completion of all improvement construction to pay Agency the full purchase price. The parties further agree that Developer and/or Project Owner shall finish paying Agency under this section no later than July 1 2016. Agency further agrees to subordinate any lienhold position in the property that arises as a result of amounts owed by Developer and/or Project Owner to Agency under this Section, as referenced in Section III(B)(ii) below.

ii) Land Subordination Period: The Agency and Ogden City Corporation will subordinate their interests which have been recorded via Trust Deed or other possessory instrument, in the land currently described as the Site which is more fully described in Section I, C(2) above, to a future lender, for the benefit of the Project Owner and/or Developer, for any loan benefitting the Project Plan only, for a period of up to five years from the date of commencement of construction of the project. The parties contemplate that Agency and/or Ogden City Corporation shall lend Developer and/or Project Owner funds to complete the Project and that in the event additional funds are required to finish construction of the Project, Agency and Ogden City Corporation shall subordinate their lien hold interest in both the loan made to Developer and/or Project Owner (as referenced in Section IV (B) of this Agreement) as well as their interest in the land purchase price. Agency and Ogden City Corporation agree to subordinate their lien hold position to a third party lender for any loan

specifically used to finish construction of the Project as defined in this Agreement. In any event, Developer and/or Project Owner shall, at the end of the time period ending on July 1, 2016, have paid the Agency \$750,000.00 for acquisition of the land, pursuant to the promissory note attached hereto as Exhibit G, and have paid back any outstanding loan from Ogden City Corporation for the purpose of construction of improvements associated with the Project.

iii). Repayment of Purchase Obligation:--The Project Owner and/or the Developer will agree to repay the note at a rate of LIBOR or 4%, whichever is less, as of the effective date of the note, amortized over a 60 month period. A Trust Deed and Note attached hereto as Exhibit G will be signed along with this agreement.

iv) Condominium Conveyance to Ogden City Corp.: The parties both acknowledge that Project Owner and/or Developer shall take all steps to condominiumize the Site to allow for use of 20 parking stalls in favor of the Agency. During the condominium process, Project Owner and/or Developer shall specifically designate twenty (20) certain stalls for Agency's perpetual right of use. Project Owner and / or Developer shall use their best efforts to maintain and make available that portion of the Parking Structure designated for Agency's perpetual use and enjoyment, in first position, free of any encumbrances other than any bond obligation against the Parking Garage as contemplated in this Agreement, or any other ancillary bond obligated by the property already in existence prior to consummation of this Agreement. The parties to this Agreement acknowledge that this is an important step in order for the Agency's loan to Project Owner to qualify for the Public Purpose requirements associated with the Redevelopment Agency statutes made available to Utah redevelopment agencies for development projects. That portion of the Parking Garage shall then remain available for the Agency's perpetual use and enjoyment and shall not be restricted from public access in any way. The parties further agree that all property conveyances anticipated herein shall be conducted and secured by Trust Deed.

C. Developer's Undertakings. The nature and extent of Project Owner's and the Developer's additional undertakings under 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, 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 E are described on Agency's Undertakings on **Exhibit D**, attached hereto.

F. General Requirements and Rights of Agency.

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, at no cost to the Agency. 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 the Developer agrees for themselves, and any of their permitted successors and assigns to the Site or any part thereof, that they, and such permitted successors and assigns, shall promptly begin and diligently prosecute to completion the redevelopment of the Site through the Construction of the 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 PROJECT FUNDING**

**A. Tax Increment**

The parties acknowledge that this project will not benefit from tax increment proceeds.

**B. Project Construction Loans**

The parties acknowledge that Project Owner will enter into two separate construction loans, one with the Agency and one with Ogden City Corporation, along with accompanying security agreements, wherein the Agency and Ogden City Corporation will lend Project Owner funds in order to complete construction of the Project. Project Owner shall be obligated to repay the loan from Ogden City Corporation and shall not be obligated to repay the loan from the Agency. The parties acknowledge that Agency shall instead receive a perpetual public right of access to use twenty (20) parking stalls in the proposed parking structure.

**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.

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 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 the Agency shall be deemed a beneficiary of the agreements and covenants provided in Section A. of this Article, both for and in its 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 Project Owner and the Developer under this Article V shall terminate on and be of no force and effect after July 1, 2016m, except that the termination of the covenant numbered SECOND shall in no way be construed to release 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. Project Owner and Developer shall not have the right to assign or transfer this agreement without the consent of Agency and City.

**VII. MORTGAGE FINANCING: RIGHTS OF MORTGAGEES.**

A. Limitation Upon Encumbrance of Property. Prior to the completion of the Improvements, neither Project Owner or the Developer nor any successor in interest to the Site 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 Improvements, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to the Site 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). 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 and the Improvements 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 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 any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided or authorized in the Redevelopment 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 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 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 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 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 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. 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 Garn 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.

D. 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.

E. Rights of Termination.

1. Termination by Project Owner and/or Developer. Project Owner or the Developer will have the right to terminate this Agreement within 30 days of the effective date of this Agreement if the Project Owner and/ or 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 on the Site 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 Project Owner or the Developer improperly assigns or attempts to assign this agreement (or any rights therein) or the Site (or any rights therein) in violation of this Agreement. The parties agree however that Project Owner 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 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 Developer shall fulfill all of its payment obligations under this Agreement.

F. Survival of Obligations. The obligations and burdens imposed upon Developer hereunder to complete the Improvements shall not, with respect to any portion of the Site, survive the unconditional delivery of a Certificate of Completion by the Agency with respect to that portion of the Site. 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: Tom Christopoulos, Deputy Director  
2549 Washington Boulevard, Suite 420  
Ogden, Utah 84401-3111  
with copy to:  
OgdenCity Attorney

2549 Washington Boulevard Suite800  
Ogden, Utah84401-3111

IF TO PROJECT OWNER and/or DEVELOPER:

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 and/or Project Owner warrant that they have 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 – 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 Project Owner, the Developer and their successors and assigns and where the terms "Garn" or "Developer" are used in this Agreement, it shall mean and include the successors and assigns of Garn and Developer except that: Agency shall have no obligation under this Agreement to any

unapproved successor or assign of Garn 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 Developer is faultless) to secure necessary labor, materials or tools; delays (when 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 Developer and as otherwise provided in this Agreement.

I. 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.

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 Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of the Agency and 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 or this Agreement shall be void, except to the extent that the Developer shall consent 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 describing this Agreement and record same in the office of the Weber County Recorder, Ogden, Utah.

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

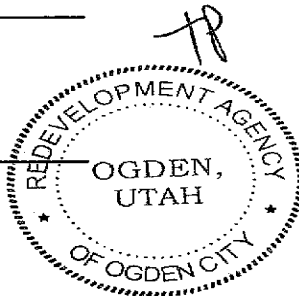
DATE: 8/23/11

OGDEN CITY REDEVELOPMENT AGENCY

ATTEST:  
BY [Signature]  
Ogden City Recorder

BY [Signature]  
Matthew R. Godfrey, Executive Director

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



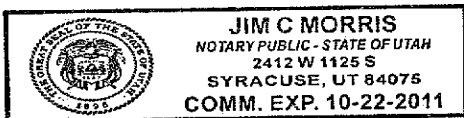
DATE: July 1, 2011

PROJECT OWNER: KEVIN GARN

[Signature]

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

The foregoing Development Agreement was acknowledged before me this 1 day of July, 2011, 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

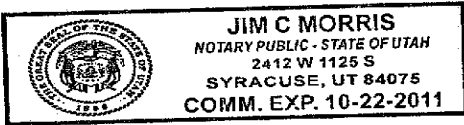
DATE: July 1, 2011

DEVELOPER: WASHINGTON COMMERCIAL LLC

BY: [Signature]  
Kevin Garn, Managing Member

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

The foregoing Development Agreement was acknowledged before me this 1 day of July, 2011, by Kevin Garn, who has held himself out to be the Managing Member of Washington Commercial, LLC and who is duly authorized to sign on behalf of Washington Commercial, LLC.



[Signature]  
NOTARY PUBLIC

DATE: 8-23-11

Affirmed by: OGDEN CITY CORPORATION

ATTEST:  
BY [Signature]  
Ogden City Recorder

BY [Signature]  
Matthew R. Godfrey, Mayor

TP

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



**EXHIBIT A  
PROJECT PLAN**

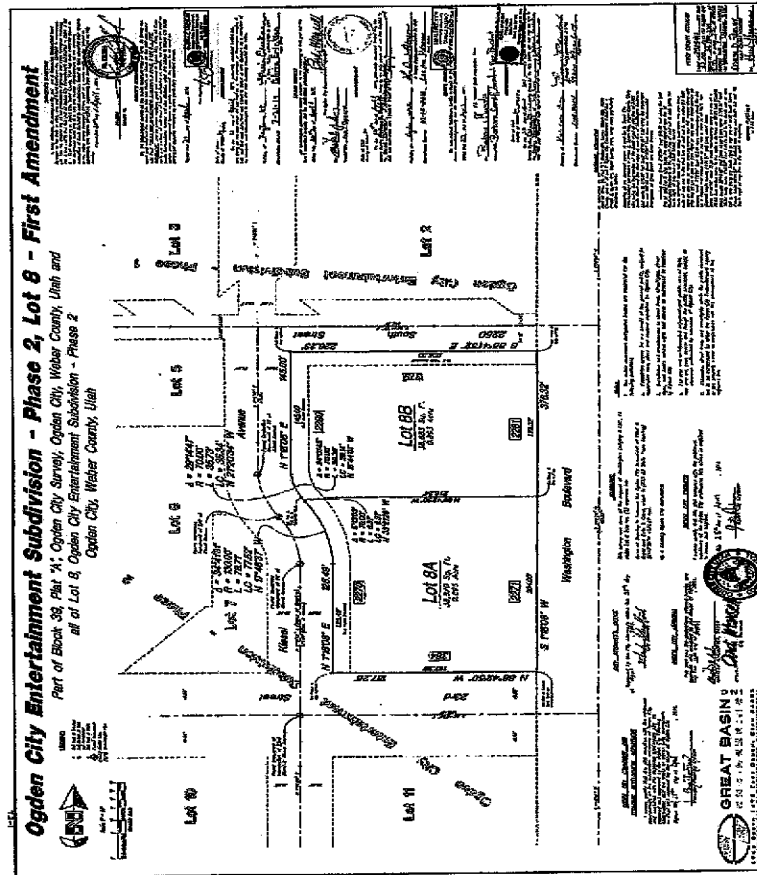
**DEVELOPER'S PROJECT PLAN**

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 # 01-106-0002 formerly known as 01-099-0004

ALL OF LOT 8B, 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. Project Owner and Developer shall, at their 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 July 1 2016 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, development, and maintenance of a 9,000 f<sup>2</sup> retail and restaurant space and a two story parking structure that will accommodate a total of 104 automobiles, 20 stalls being under control of the Agency.

b. Project Owner shall repay a \$550,000.00 thousand dollar loan given to him by the Ogden City Corporation as referenced under Section IV(B) of this Agreement. Developer shall also receive a \$550,000 thousand dollar loan from the Agency, which shall not be repaid by Project Owner. Project Owner shall instead convey to Agency a perpetual public right of access to use twenty (20) parking stalls in the proposed parking structure.

c. Project Owner shall also repay Agency the \$750,000.00 purchase price referenced under Section III (B)(i) of this Agreement, within 3 years after completion of construction of the improvements on the Site. This may be done either by straight cash payoff, or through re-financing the Project and paying off the Agency at that time. As stated under Section III(B)(i) of this Agreement, Developer and/or Project Owner shall pay off these sums no later than July 1, 2016.

d. During that the repayment period referenced in subsections (b) and (c) above, the Project Owner shall pay interest only based on LIBOR +4% on a 20 year term of amortization.

e. 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**, during the period that the Agency will collect tax increment from the Project Area, Project Owner, Developer, or any Agency approved 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 or 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.

5. 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)**

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

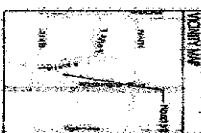
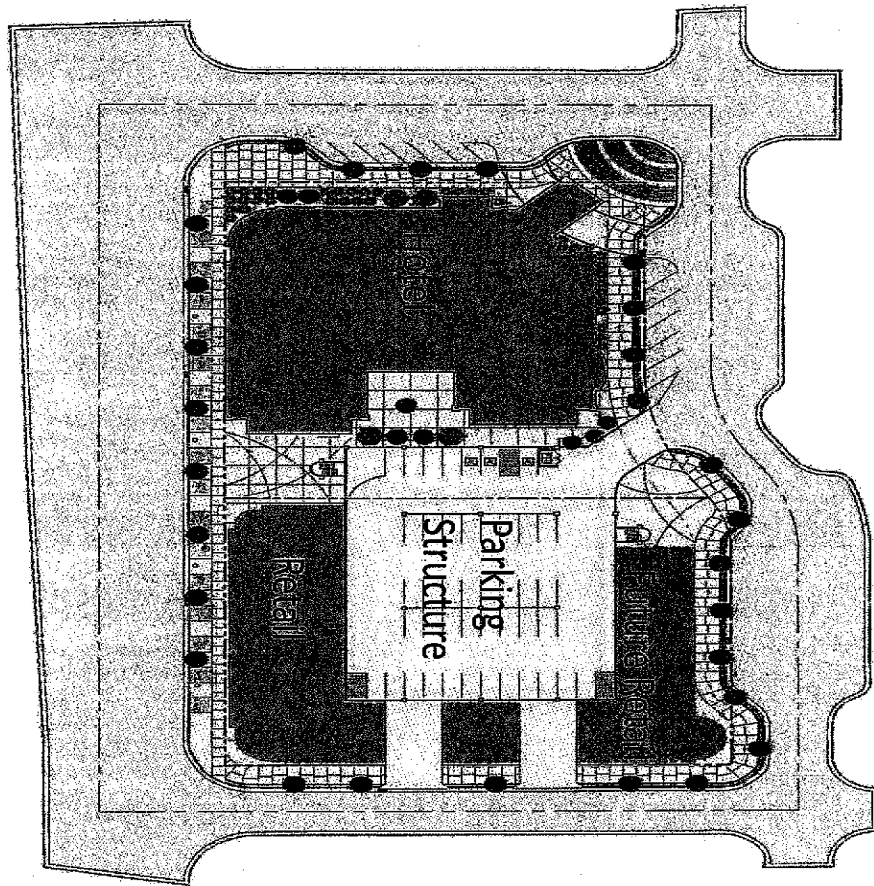
(1) Project Owner and Developer hereby agree to use best efforts to employ local Ogden City contractors and sub-contractors in all aspects of Developer's obligations herein.

**EXHIBIT C**  
**ATTACHMENT I**

**SITE PLAN AND DESCRIPTION OF IMPROVEMENTS**

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

The project will consist of the following:



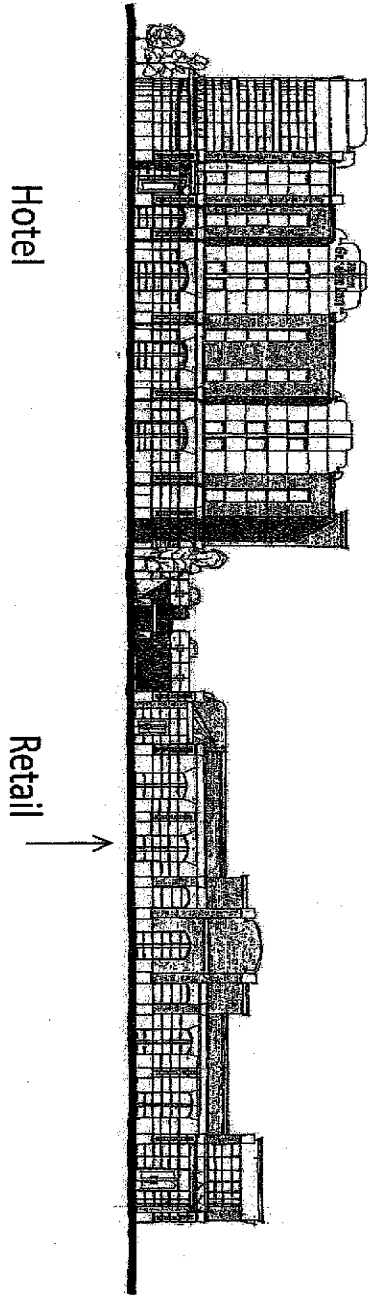
DATE: 08/10/10  
DRAWN BY: AS101  
CHECKED BY: [Signature]  
SCALE: 1/8" = 1'-0"



OWNER: WASHINGTON LODGING, L.L.C.  
PROJECT: JUNCTION HILTON GARDEN INN  
ADDRESS: 2271 WASHINGTON BLVD., OGDEN, UT 84401

DATE: 08/10/10  
DRAWN BY: AS101  
CHECKED BY: [Signature]  
SCALE: 1/8" = 1'-0"





**EXHIBIT D  
AGENCY'S UNDERTAKINGS**

Based upon Agency analysis of the development information provided by Project Owner and 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 perform as provided below.

**1) Loan Commitment.**

The Agency will use best efforts to negotiate a loan from Ogden City Corporation to Project Owner in the amount of Five Hundred Fifty Thousand Dollars (\$ \$550,000.00) for the construction of the project. A copy of the Loan and Security Agreement is included herein as Exhibit D, Attachment I.

**2) Grant Commitment.**

The Agency will also use best efforts to negotiate a grant from Ogden City Corporation to Project Owner for an additional \$550,000.00 towards the construction of the project that will not be repaid by Project Owner. The Agency will contribute \$244,000 toward this grant. This shall be in lieu of Project Owner's ability to participate in tax increment generated from the project. Agency shall instead receive a perpetual public right of access to use twenty (20) parking stalls in the proposed parking structure. A copy of the Grant and Security Agreement is included herein as Exhibit D, Attachment II.

**Attachment I**  
**Loan and Security Agreement**



**LOAN AND SECURITY AGREEMENT**

This Loan and Security Agreement (the "Agreement" or "Loan Agreement") is entered into as of August 22, 2011 by and between KEVIN GARN, an individual (the "Borrower"), with offices at 748 West Heritage Park Blvd. Suite 203 Layton, UT 84041 Layton Utah 84041, and OGDEN CITY CORPORATION, (the "Lender"), with offices at 2549 Washington Boulevard, Suite 400, Ogden, Utah 84401.

**WITNESSETH:**

A. Borrower is an individual who desires to obtain financing for the redevelopment of the Ogden downtown area known as the Junction, specifically that parcel of land known as Lot 8B to provide parking and commercial facilities, that will bolster the economic development presence in downtown Ogden.

B. Lender desires to provide Borrower with the requested financing for its construction project and work with the Borrower to ensure the development of the Project.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein set forth, the parties hereto agree as follows:

**1. The Loan.**

1.1 Subject to the terms and conditions of this Agreement and in reliance on the representations and warranties herein contained (and contained directly or by reference in those documents herein incorporated by reference) the Lender agrees to make a loan (the "Loan") in the aggregate principal amount of Five Hundred Fifty Thousand and no/100 Dollars (\$550,000.00) ("Aggregate Principal Amount") to Borrower. The repayment terms of the Loan will be evidenced by a Promissory Note of even date herewith (the "Note"), a copy of which is attached hereto as Exhibit A.

1.2 (a) The Loan shall be funded by the Lender on August 30, 2011. On August 22, 2011 (the "Closing Date"), Borrower will execute and deliver the Note to the Lender prior to 5:00 PM (Mountain Standard Time).

(b) Lender shall maintain the funds in an escrow account upon which Borrower may request disbursement as they provide verification of construction costs to Lender. Each disbursement shall be subject to the satisfaction of the following terms and conditions (a "Disbursement"): (i) Disbursements in such amounts as requested by Borrower as long as the amount requested is verified by reasonable costs of construction; (ii) each Disbursement shall occur on any business day; (iii) each request for Disbursement shall meet such requirements as to form and content as prescribed by Lender and be accompanied with such additional documentation as required by Lender; (iv) all Disbursements shall be made by transfer of immediately available funds for credit to the Borrower' account identified in the Disbursement Request (as defined below) or this Agreement; (v) no Event of Default (as defined in Section 7) shall have occurred and is continuing; (vi) each representation and warranty made by the Borrower under Section 4 of this Agreement shall continue to be accurate and correct in all material respects; and (vii) the Borrower shall have provided documentation that the proceeds of any prior Disbursements have been used in compliance with paragraph 5.1. The Borrower shall provide Lender with written notice of any requested

Disbursement not less than ten (10) business days prior to the desired date of such Disbursement in the form attached hereto as **Exhibit B** (a "**Disbursement Request**"). The Disbursement Request shall specify the amount requested, requested date of Disbursement, wire transfer instructions for such Disbursement and such other information required in the form of a Disbursement Request, and shall be accompanied by a certificate of an authorized officer of the Borrower confirming that, as of the date of the Disbursement: (i) no Event of Default (as defined in Section 7) has occurred and is continuing; (ii) each representation and warranty made by the Borrower under Section 4 of this Agreement continues to be accurate and correct in all material respects; and (iii) there has been no change in the financial condition of the Borrower since the Closing Date which has or will have an adverse effect on the ability of Borrower to carry out its business as heretofore conducted. Disbursements (as well as the unpaid principal balance owing under the Note) may be evidenced by Lender's internal records or by endorsements to Attachment 1 to the Note reflecting the amount of any individual Disbursement and the aggregate unpaid principal balance under the Note. In the event Lender makes an endorsement to Attachment 1 to the Note, Lender shall furnish a copy of such updated Attachment 1 to the Note to the Borrower. Notwithstanding the Notice provisions set forth in Section 8.4, each Disbursement Request and all of the required documentation and submissions therewith shall be submitted to Lender at such address and in such manner as directed by Lender from time to time.

1.3 All Disbursements shall be repaid substantially as required within each Disbursement Request, and in all cases, all Disbursements shall be repaid no later than the Note Maturity Date as defined in the Note.

1.4 Any language in this Agreement to the contrary notwithstanding, neither the funding of the Loan nor the acceptance of the Note by the Lender shall be deemed to be a waiver by the Lender of any rights, conditions, agreements, warranties or representations in its favor or for its benefit.

1.5 Borrower's Repayment of Loan Obligation: Lender acknowledges that the loan referenced in Section 1.1 above, shall source from City Utility Account funds held by the City, and shall be a true loan to Borrower, that shall in fact be repaid in accordance with this Agreement, any Development Agreement entered into between the parties and any Promissory Note, attached hereto as Exhibit A. The parties further acknowledge that Borrower is committed under Section III (iv) of a certain Development Agreement between Borrower and Ogden City Redevelopment Agency, to condominiumize and dedicate twenty (20) parking stalls located within the Improvements to be constructed, to the Ogden City Redevelopment Agency for dedicated public use. This is an indirect result of Borrower's use of City funds under this Agreement.

## 2. Security for the Loan.

2.1 The Loan shall be secured at all times by the improvements made to the Site located on Lot 8B, Parcel No. 01-099-0004 Weber County Records.

2.2 As security for the full payment of the Loan and timely performance of Borrower's obligations under the Loan Documents, Borrower hereby pledges, transfers and assigns to Lender, and grants to Lender a continuing first priority security interest in and to, the Improvements constructed with the use of the loan proceeds. Borrower agrees to execute, acknowledge, deliver, file or do, at its sole cost and expense, all other acts, financing statements, assignments, notices, agreements or other instruments as Lender may reasonably require in order to perfect and continue

the foregoing first priority security interest, pledge and assignment pursuant to all applicable laws, or otherwise to fully effectuate the rights granted to Lender by this Section

2.3 In furtherance of its security interest in the Deposit Account, Lender shall have the right to file a UCC-1 financing statement and take such other actions it deems necessary to perfect its security interest.

### 3. Conditions to Making Loan on Closing Date and Disbursements.

The Lender's obligation to make the Loan on the Closing Date shall be subject to the prior fulfillment (or waiver, in writing, by the Lender) of the following conditions:

3.1 The Loan, including the planned use of the proceeds there from by Borrower, shall (i) be used solely for costs associated with the construction and development of a parking facility and attached commercial build out located on Lot 8B in the Junction in downtown Ogden City, Utah., (ii) meet all applicable requirements for qualification under the Ogden City Code and International Construction Code; and (iii) shall not violate any applicable law or governmental regulation or subject the Lender to any liability, penalty or onerous condition.

3.2 The representations and warranties of Borrower contained in this Agreement shall be true and correct when made, and shall continue to be true and correct as of the Closing Date with the same effect as though such representations and warranties had been made at and as of such time, and Borrower shall have performed or complied with all covenants, agreements and conditions on its part required to be performed or complied with hereunder at or prior to the Closing Date.

3.3 Borrower shall have delivered to the Lender all such consents, resolutions, minutes or other certificates or documents evidencing that all of the requisite corporate, legislative or administrative action has been taken by Borrower ("Required Consents") to authorize and approve (i) the execution, delivery and performance of this Agreement, the Note, each Disbursement Request and all other documents and agreements executed in connection herewith (collectively, the "Loan Documents") and (ii) each Project for which a Disbursement Request is being made.

3.4 Borrower shall have delivered to the Lender a certificate as to the correctness of Borrower's warranties and representations and non-occurrence of any Event of Default (as that term is defined in Section 7.1) and such evidence of the fulfillment of the conditions specified in this Section 3, as the Lender or its counsel may reasonably request.

3.5 On the Closing Date, all legal matters in connection with this Agreement and the transactions contemplated hereby shall be reasonably satisfactory to counsel for the Lender, the Lender shall have received from its counsel such opinions, if any, as to any transactions contemplated hereby, and the Lender shall have received copies of all other documents which it may reasonably request in connection with such opinions.

3.6 On the Closing Date and as of the date of each Disbursement, there shall have been no change in the business, property, financial condition, or credit rating of Borrower since the date of this Agreement, which has had or will have an adverse effect on the ability of Borrower to (i) carry out its business as heretofore conducted; or (ii) repay the Loan.

In addition to the foregoing conditions set forth in items 3.1 through 3.6, Lender's obligation to make each of the Disbursements shall be subject to the prior fulfillment (or waiver, in writing, by the Lender) of the following conditions:

3.7 The representations and warranties of the Borrower contained in Section 4 or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct on and as of the date of Disbursement, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, and except that for purposes of this Section 3.7, the representations and warranties contained in Section 4.8 shall be deemed to refer to the most recent statements furnished pursuant to Section 5.3.

3.9 No Event of Default shall exist, or would result from such proposed Disbursement.

3.10 Borrower shall have provided Lender copies of all permits, approvals and other documents necessary for the completion of a Project for which a Disbursement is being made.

3.11 Lender shall have received a Disbursement Request in accordance with the requirements hereof.

**4. Representations and Warranties of Borrower.** Borrower represents and warrants that:

4.1 Borrower is an individual residing in Utah, and has full legal right and authority and is associated with a Developer named Washington Lodging, LLC, which company has all necessary licenses and permits required as of the date hereof to undertake and complete the Parking Facility and Commercial Construction Projects contemplated in a Development Agreement between the parties, and to carry out and consummate all transactions contemplated by this Loan Agreement.

4.2 The Loan Documents have been duly authorized by Borrower, and assuming that he has all the requisite power and authority to authorize, execute and deliver and has duly authorized, executed and delivered the Loan Documents, the Loan Documents will constitute the legal, valid and binding obligations of Borrower under applicable law, enforceable in accordance with their respective terms, subject only to bankruptcy, insolvency, reorganization, moratorium or similar laws at the time in effect affecting the enforceability of the rights of creditors generally and to the discretion of courts of applicable jurisdiction to enforce equitable remedies including, without limitation, specific performance and injunctive relief.

4.3 There is no fact that the Borrower has not disclosed to the Lender that materially adversely affects the properties, activities, prospects or condition (financial or otherwise) of the Borrower or the ability of the Borrower to make all Loan repayments and otherwise to observe and perform its duties, covenants, obligations and agreements under the Loan Documents.

4.4 The authorization, execution and delivery of this Loan Documents by Borrower, the observance and performance by Borrower of his duties, covenants, obligations and agreements thereunder and the consummation of the transactions provided for in this Agreement, the compliance by the Borrower with the provisions of this Agreement and the undertaking and completion of the Projects will not result in any breach of any of the terms, conditions or provisions of or constitute a default under or result in the creation or imposition of any lien, charge or other encumbrance upon

any property or assets of the Borrower pursuant to any ordinance or resolution, trust agreement, indenture, mortgage, deed of trust, loan agreement or other instrument and any ordinance, resolution or indenture which authorized outstanding debt obligations to which Borrower is a party or by which Borrower or any of its property or assets may be bound, nor will such action result in any violation of the provisions of any laws, ordinances, resolutions, governmental rules, regulations or court orders to which the Borrower or its properties or operations are subject.

4.5 Borrower has obtained all permits and approvals required to date by any governmental body or officer (and reasonably expects to receive all permits required in the future by any governmental agency) for the making, observance and performance by the Borrower of its duties, covenants, obligations and agreements under the Loan Documents or for the undertaking or completion of the Projects and the financing or refinancing thereof and the Borrower has complied with all applicable provisions of law requiring any notification, declaration, filing or registration with any governmental body or officer in connection with the making, observance and performance by Borrower of its duties, covenants, obligations and agreements under this Agreement or with the undertaking or completion of the Projects and the financing or refinancing thereof. No consent, approval or authorization of, or filing, registration or qualification with any governmental body or officer that has not been obtained is required on the part of Borrower as a condition to the authorization, execution and delivery of this Agreement, the undertaking or completion of the Projects or the consummation of any transaction herein contemplated.

4.6 Borrower is in compliance with all laws, resolutions, ordinances, governmental rules and regulations to which it is subject, the failure to comply with which would materially adversely affect the ability of Borrower to conduct his activities or undertake or complete the Projects in conjunction with Developer Washington Lodging LLC, or the condition (financial or otherwise) of Borrower; and Borrower has obtained or will obtain all licenses, permits, franchises or other governmental authorizations presently necessary for the ownership of its property or for the conduct of its activities which, if not obtained, would materially adversely affect the ability of Borrower to conduct his activities or undertake or complete the Project in conjunction with Developer Washington Lodging LLC or the condition (financial or otherwise) of Borrower.

4.7 Except as set forth in the "Disclosure Schedule" attached hereto as Schedule C and hereby incorporated herein, or in Borrower's Financial Statements (as such term is defined in Section 4.11 hereof), Borrower has good title to his assets and properties free and clear of any lien, charge, encumbrance or security interest, whether or not incurred in the ordinary course of its business, which could materially adversely affect either Borrower's ability to perform its obligations under this Agreement or the use of proceeds of the Loan contemplated hereunder.

4.8 There is no action, suit, investigation or proceeding pending or, to the knowledge of Borrower, threatened, by or before any court or governmental or administrative body or agency which may reasonably be expected to result in a material adverse change in the activities, operations, assets or properties, or in the condition, financial or otherwise, of Borrower, or to impair the ability of Borrower to perform his obligations under this Agreement or the Note, or prevent Borrower's use of the proceeds of the Loan contemplated hereunder. Borrower is not and will not on the Closing Date be in default or alleged to be in default with respect to any judgment, writ, injunction, decree, order, rule or regulation of any court or any governmental or administrative body or agency by which Borrower or its assets or properties are bound.

4.9 Borrower has furnished the Lender with Borrower' Balance Sheets as of [May 30, 2011], together with the related Statements of Support and Revenue, Expenses, Cash Flow and Changes in Fund Balances for the years or periods then ending (collectively, the "Financial Statements"). The Financial Statements are true and correct in all material respects and fairly present the financial position of Borrower as at such dates and the results of its operations for the periods indicated therein in accordance with generally accepted accounting principles.

4.10 Borrower has in full force and effect such insurance coverage and in such amounts as is customarily maintained on such construction projects, including all necessary liability and property insurance on the Project.

4.11 None of the information and documents furnished or to be furnished by Borrower to the Lender in connection with the execution and delivery of this Agreement and consummation of the transactions contemplated hereby, contained or will contain any material misstatement of fact or omitted or will omit to state any material fact required to be stated to make the statements therein not misleading.

4.12 The execution and delivery of this Agreement by Borrower will not confer any rights or privileges upon any third-person or entity not a party hereto.

4.13 Borrower has the absolute right to receive, and will receive, the entire proceeds of the Loan free and clear of any liens, charges, encumbrances or security interests whatsoever, and none of the proceeds, avails or products of or attributable to the Loan, nor any interest or earnings thereon, have been or will be pledged, assigned, hypothecated or otherwise posted or stand as security or collateral for or in connection with any loan, borrowing, note, obligation, guaranty, purchase, sale or other transaction whatsoever (other than as provided in Section 2.2).

4.14 Borrower has received no legal or tax advice or opinions from the Lender concerning any of the transactions or the use of the proceeds of the Loan contemplated hereby.

4.15 Borrower has received no promises or assurances of extensions or forbearance by the Lender which are not contained in this Agreement, the Development Agreement between the parties, or the Note.

5. **Covenants of Borrower.** Borrower covenants and agrees that so long as the Lender shall hold the Note and any principal or interest there under remains unpaid:

5.1 Borrower shall use the proceeds of the Loan and any interest or earnings thereon to solely construct a Parking Facility and attached Commercial Structures on Lot 8B in the Junction in downtown Ogden, Utah. In furtherance of the foregoing, Borrower has established policies and procedures which have been delivered to Lender and approved by Lender and Borrower agrees to follow such policies and procedures in connection with the use of the proceeds of this Loan. Borrower shall not use the proceeds of the Loan or any interest or earning thereon for any other purpose.

Any portion of the Loan not committed to the purposes described herein will be returned to the Lender.

5.2 Borrower shall furnish to the Lender the following:

(a) Disbursement Requests in connection with each Disbursement and all required documentation in connection therewith;

(b) within 90 days after the end of each fiscal year of Borrower, or upon request if needed for regulatory reasons, a narrative report, describing the use of the proceeds of the Loan during the preceding fiscal year, and evaluating the progress of Borrower toward construction and completion of a Parking Facility and Commercial Structures on Lot 8B located in the Junction, in downtown Ogden City, Utah; and

(c) Promptly upon dissemination thereof, copies of all reports made available for public distribution with respect to the activities of Borrower.

5.3 Borrower shall furnish to the Lender: (i) within 180 days after the end of each of each fiscal year, and as of the end of each such year, a financial statement of the Borrower, which shall consist of a balance sheet, an operating statement, cash flow statement and summaries of any changes in financial position and in Borrower' fund balance, as to the specific Project specified in this Agreement, namely the construction of a Parking Facility and adjoining Commercial Structures on Lot 8B at the Junction in downtown Ogden City, Utah. The financial statement shall cover the period of the Borrower's immediately preceding calendar year, which shall be in reasonable detail, prepared in accordance with generally accepted accounting principles uniformly and consistently applied, and shall be certified by independent public accountants selected by Borrower and satisfactory to the Lender, and signed by Borrower; and (ii) any such additional information as the Lender may from time to time reasonably request regarding the financial and business affairs of the Borrower.

5.4 Borrower shall do all things necessary to:

(a) Maintain Borrower' credit rating of 720 FICO or higher.

(b) Comply with all laws and regulations applicable to Borrower, the violation of which would have a material adverse effect on Borrower' ability to perform its obligations under the Loan Documents; and

(c) Obtain and maintain in full force and effect all authorizations, qualifications, consents, approvals, exemptions, franchises, permits and licenses of, and filings with, governments or governmental or administrative bodies or agencies necessary for the carrying on of any material activity or the entering into of any material transaction applicable to Borrower.

5.5 Borrower shall promptly advise the Lender in reasonable detail of the occurrence of any of the following events:

(a) Any proceeding instituted or commenced against Borrower in, by or before any court, governmental or administrative body, department or agency, which proceeding could have a material adverse effect upon the operations, assets or properties of Borrower, or upon the tax-exempt non-private foundation status of Borrower;

(b) Any material adverse change in the condition, financial or otherwise, or operations of Borrower;

- (c) Any change in Borrower' credit rating as set forth in 5.4(a);
- (d) Any substantial change in any contracts or commitments made by Borrower not in the ordinary course of Borrower' business; or
- (e) The occurrence of any Event of Default or any event which upon notice or lapse of time, or both, would constitute an Event of Default.

5.6 Notwithstanding any language elsewhere contained in this Agreement to the contrary, Borrower shall:

- (a) Maintain books and records adequate to provide the information ordinarily required by commercial investors under similar circumstances, including but not limited to the information specified in Sections 5.2 and 5.3;
- (b) Make such books and records available for inspection and copying by the Lender and its agents and representatives at reasonable times and on reasonable notice; and
- (c) Retain such books and records and copies of the reports and statements referred to in Sections 5.2 and 5.3 for a period of at least four (4) years after the Note is fully paid and satisfied.

5.7 Borrower will permit the Lender and such persons as the Lender may designate, at any reasonable time, and from time to time, to examine and make copies of, and abstract from the records and books of account of and to visit the properties of the Borrower and to discuss the affairs, finances and accounts of Borrower with any of the Borrower' officers or directors.

5.8 Borrower will (i) maintain, preserve and protect all of the Projects and the improvements made with respect thereto in good working order and condition, ordinary wear and tear excepted; (ii) make all improvements in accordance with acceptable building standards; (iii) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a material adverse effect; and (iv) use the standard of care typical in the industry in the operation and maintenance of such Projects.

5.9 Borrower will keep in force upon all of the Projects policies of insurance carried with financially sound and reputable insurance companies in such amounts and covering all such risks as shall be customary (but in no case less than the total amount of the unpaid principal balance of the Note) in the industry and will from time to time, on request, furnish to Lender certificates of insurance evidencing such coverage.

5.10 Borrower shall comply in all material respects with the requirements of the Regulations and all other laws and orders, writs, injunctions and decrees applicable to it or to its business or the Projects, except in such instances in which such requirement of law or order, write, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted.

5.11 Borrower shall permit representatives and independent contractors of the Lender to visit and inspect any of the Projects, to examine its financial and operating records, and make copies thereof or abstracts there from, and to discuss its affairs, finances and accounts with its officers, and independent public accountants, all at the expense of the Borrower and at such reasonable times



during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower; provided, however, that when an Event of Default exists the Lender (or any of its representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and without advance notice.

**6. Negative Covenants.** Borrower covenants and agrees that so long as the Lender shall hold the Note and any principal or interest there under remains unpaid that Borrower shall not, directly or indirectly:

6.1 Borrower shall not create, incur, assume or suffer to exist any lien upon any of its Projects, other than the following: (i) liens pursuant to any Loan Document; (ii) liens for taxes not yet due or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP; (iii) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like liens arising in the ordinary course of business which are not overdue for a period of more than 30 days or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person; (iv) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety bonds (other than bonds related to judgments or litigation), performance bonds and other obligations of a like nature incurred in the ordinary course of business; and (v) easements, rights-of-way, restrictions and other similar encumbrances affecting Projects which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person.

6.2 Borrower will not use the proceeds of any Loan or any interest earned thereon for any purpose other than as set forth in Section 5.1

6.3 Borrower will not pledge, assign, hypothecate or otherwise post or place any of the proceeds of the Loan, nor any of the proceeds, avails or products of or attributable to the Loan, nor any interest or earnings thereon, as security or collateral for or in connection with any loan, borrowing, note, obligation, guaranty, purchase, sale or other transaction whatsoever.

6.4 Borrower shall not permit its credit rating to be other than as set forth in Section 5.4 (a).

**7. Default and Remedies.**

7.1 Borrower shall be deemed to be in default under this Agreement if any one or more of the following events (each of which is herein sometimes called an "Event of Default") occurs and is continuing:

(a) Borrower fails to make any principal payment under the Note when due and payable, whether at the stated maturity therefore, the occurrence of any event requiring payment, by declaration of acceleration or otherwise, and such default shall continue un-remedied for 15 days;

(b) Borrower fails to make any payment of interest on the Note on or before the date such payment is due, and such default shall continue un-remedied for 15 days;

(c) Borrower uses any portion of the proceeds of the Loan, or any interest or earnings thereon, other than in a manner specifically authorized in this Agreement;

(d) Any representation or warranty made by Borrower in this Agreement, or in any report, certificate, financial statement or instrument furnished by Borrower in connection with this Agreement or the Loan shall prove to have been false or misleading when made, in any material respect;

(e) Borrower violates or fails to observe or perform any covenant contained in this Agreement;

(f) Borrower violates or fails to observe or perform any covenants contained herein, or any agreement on the part of Borrower to be observed or performed pursuant to this Agreement, and such default shall continue un-remedied for thirty (30) days after such default shall first become actually known to any of the authorized officials of the Borrower;

(g) The maturity of any obligation of Borrower for the payment of borrowed funds shall be accelerated so that the obligation or any portion thereof becomes due and payable prior to its stated maturity date;

(h) Borrower shall be adjudicated as bankrupt or insolvent, and such adjudication shall continue un-discharged or unstated for a period of 30 days; or Borrower shall admit in writing its inability to pay its debts as they mature, or make an assignment for the benefit of creditors, or Borrower shall apply for or consent to the appointment of any receiver, trustee, or similar officer for it or for all or any substantial part of its property; or such receiver, trustee or similar officer shall be appointed without the application or consent of Borrower, as the case may be, and such appointment shall continue un-discharged for a period of 30 days; or Borrower shall institute or consent to (by petition, application, answer or otherwise), any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it; or any such proceeding shall be instituted (by petition, application or otherwise) against Borrower and shall remain un-dismissed or un-stayed for a period of 30 days;

(i) A judgment or judgments for the payment of money (other than any judgment for which indemnity is provided under an existing, valid insurance policy) in excess of an aggregate of \$500,000.00 shall be rendered against Borrower, and the same shall remain un-discharged for a period of thirty (30) consecutive days, during which period execution shall not be effectively stayed nor an action commenced by Borrower, as the case may be, to contest such judgment or judgments;

(j) The occurrence of any attachment or attachments of any Project of Borrower which shall not be discharged within thirty (30) days of the date of such attachment or attachments nor an action commenced to contest such attachment or attachments during said thirty-day period; or

(k) A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of the Loan is impaired.

(l) Lender in good faith believes itself insecure.

7.2 If an Event of Default exists:

(a) At the option of the Lender, the Lender may, by written notice to Borrower, (i) accelerate and declare the Note, and all unpaid principal and accrued interest under such Note, immediately due and payable, whether or not the Note is otherwise due and payable and whether or not the Lender shall have initiated any other action for the collection of the Note, whereupon such Note designated in the Lender's notice shall become immediately due and payable as to principal, interest and any other amounts payable there under, without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived by Borrower, anything contained herein, in the Note, or elsewhere to the contrary notwithstanding, or (ii) require Borrower to provide Lender a letter of credit in an amount equal to the accelerated amount of all unpaid principal and accrued interest under the Note;

(b) The Lender may pursue, in any order or sequence, jointly or singly, in any combination or simultaneously, any and all remedies available at law or in equity, or both, for the collection of any or all of the Note held by the Lender and enforcement of the provisions hereof;

(c) No course of dealing on the part of the Lender or any delay or failure on the part of the Lender to exercise any right under this Agreement or the Note or both, shall operate as a waiver of such right or otherwise prejudice the Lender's rights, powers and remedies under this Agreement or the Note; and

(d) Lender will have no obligation to make any additional advance under this Agreement or the Note.

8. Miscellaneous.

8.1 Notwithstanding any provision to the contrary contained in this Agreement or the Note, the Borrower will pay all amounts payable to the Lender in respect of the principal of and interest on the Note by wire transfer of immediately available funds not later than 12:00 Noon (Utah time) to the account of the Lender, as follows:

Depository Name: Wells Fargo  
ABA Number: 121000248  
Account Number: 1653324994

with sufficient information to identify the source and application of such funds such as loan repayment by Kevin Garn or Washington Lodging (or at such other address or in such other reasonable manner as the Lender may from time to time designate to the Borrower in writing), each such payment being accompanied by sufficient information to identify the source and application thereof, and all without any presentment of the Note by the Lender.

8.2 The respective representations, warranties, obligations and agreements contained herein shall survive the Closing Date.

8.3 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

8.4 All notices, requests, demands, consents, waivers and other communications required or desired to be given under any of the provisions of this Agreement shall be in writing and shall be (i) served in person, (ii) sent by special courier (e.g., Federal Express), fully prepaid or billed to sender, or (iii) mailed by U.S. registered or certified mail, fully postage prepaid, return receipt requested, addressed as follows:

If to Lender:

Ogden City Corporation  
2549 Washington Boulevard, Suite 120  
Ogden, Utah 84401  
Attention: Community Development Manager

with a copy (delivered in person, by courier or by regular mail, postage prepaid) to:

Ogden City Attorney  
2549 Washington Boulevard, Suite 800  
Ogden, UT 84401

If to the Borrower :

Kevin Garn  
748 W. Heritage Park  
Layton Utah 84040

or to such other address as the addressee may have specified in a written notice duly given to the sender in the manner above provided. Any notice, request, demand, consent, waiver or other communication given in accordance with the provisions of this Section 8.4 shall be presumed to have been given or received on the earlier to occur of (x) the date of actual receipt thereof, (y) the third business day following the date of mailing same by U.S. registered or certified mail, or (z) the third business day following delivery thereof to the special courier, as shown on the courier's records, as appropriate. The delivery to or receipt of copies of any such notice, request, demand, consent, waiver or other communication by any persons other than and in addition to Lender or Borrower, as the case may be, is merely an accommodation and is not necessary or required to make effective the giving or receipt thereof by or to Lender or Borrower, as the case may be.

8.5 The preambles of this Agreement are hereby expressly incorporated herein and made a part hereof.

8.6 This Agreement, together with any and all Schedules hereto and documents herein incorporated by reference, constitutes the entire agreement between the parties in respect of the subject matter hereof, and any and all prior negotiations, understandings and agreements between the parties are hereby merged herein. No change, modification or waiver of any provision hereof shall be valid unless in writing and signed by the party to be bound.

8.7 Either party hereto may, by written notice to the other, (i) extend the time for the performance of any of the obligations or other actions of the other party under this Agreement; (ii) waive compliance with any of the conditions or covenants of the other party contained in this

Agreement; or (iii) waive or reduce the required performance of any of the obligations of the other party under this Agreement. Except as provided in the preceding sentence, no action taken pursuant to this Agreement, including without limitation any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance by the other party with any representations, warranties, covenants, conditions or agreements contained in this Agreement. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

8.8 Lender and Borrower are not and will not be engaged in any employer-employee, principal-agent or other similar relationship, nor in any partnership, joint venture or co-venture of any kind. Borrower does not and shall not have any power to, nor shall Borrower attempt, at any time, in any manner, directly or indirectly, to (a) speak for or on behalf of Lender, (b) bind or obligate Lender, or (c) create any obligation on behalf or in the name of Lender.

8.9 Borrower covenants and agrees to at all times save, defend, indemnify and hold harmless Lender, its directors, officers, employees and agents, from and against any and all and all manner of claim, demand, notice, proceeding, suit, action, cause of action, damages, order, decree or judgment claimed, filed, made, asserted or secured against Lender, its directors, officers, employees or agents, by any person or firm, with respect to any actions (or lack of action) by Borrower, or its respective members, directors, officers, employees or agents under this Agreement or the Note, pursuant hereto or thereto or in any way connected herewith or therewith. Borrower's obligations under this Section 8.9 shall survive the expiration of this Agreement or the termination hereof or thereof for any reason whatsoever.

8.10 This Agreement and the legal relations among the parties hereto shall be governed by and construed in accordance with the laws of the State of Utah applicable to contracts made and performed in Utah.

8.11 This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and lawful assigns; provided, however, that none of Borrower's respective rights, privileges, duties, obligations or liabilities hereunder or under the Note, as applicable, shall be assignable by Borrower, as applicable, without the prior written consent of the Lender.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

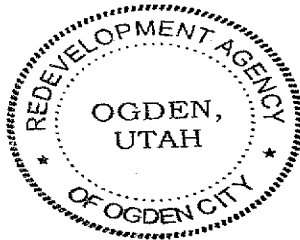
IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

OGDEN CITY REDEVELOPMENT AGENCY

By: *Matthew R. Godfrey*  
Name: Matthew R. Godfrey, Executive Director

Attest: *Pauli Mansell*  
Ogden City Recorder

Approved as to form:  
*[Signature]*  
Corporation Counsel



KEVIN GARN, an Individual

*[Signature]*  
Kevin Garn

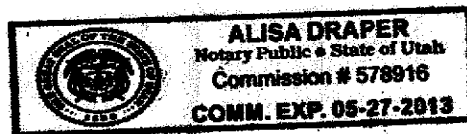
STATE OF UTAH )

COUNTY OF WEBER )

On the 22 day of August, 2011, personally appeared before me Kevin Garn, the signer(s) of the above instrument, who duly acknowledged to me that he executed the same.

*[Signature]*  
Notary Public

My Commission Expires: 2013



EN 2540074 PG 39 OF 77

**EXHIBIT A  
NOTE**

**PROMISSORY NOTE**

**Amount \$550,000.00**

THIS PROMISSORY NOTE is made this 22 day of August, 2011 by and between OGDEN CITY CORPORATION ("Lender") and KEVIN GARN, an individual located at 748 West Heritage Park Blvd. Suite 203 Layton, UT 84041 ("Borrower") as follows:

1. FOR VALUE RECEIVED, the undersigned promises to pay to the order of the Ogden City Corporation (hereinafter called the "Lender"), the sum of FIVE HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS (\$550,000.00) and to pay interest on the unpaid principal amount of this Note from the date hereof under certain circumstances, at the rate of FOUR PERCENT (4%) per annum until paid. Borrower understands that the principal and any accrued interest on this Note will be due and payable no later than the first (1<sup>st</sup>) day of July, 2016, in lawful money of the United States and that Borrower shall be responsible for paying off any remaining sum still owing, if any, to Lender on that date.

All payments required under this Note shall be delivered to the principal office of Ogden City Corporation, c/o Economic Development Director, 2549 Washington Blvd. Suite. 420, Ogden UT 84401 or at such other places as shall be designated by the Lender.

A. INTEREST ACCRUAL

Interest shall accrue on this Note from the date of execution of this Note to July 1, 2016 at a rate of 4% per annum.

2. CONSIDERATION

Both parties acknowledge that Lender has conveyed a sum of \$550,000.00 to Borrowers in order to assist Borrowers in the development and construction of a Parking Terrace structure and accompanying commercial structures as well as other improvements on said parcel. In exchange for that conveyance, Borrower acknowledges his obligations under this Note, a certain Development Agreement signed by Borrower and the Ogden City Redevelopment Agency on August 2, 2011, and a corresponding Trust Deed recorded with the Weber County Recorder's office bearing Borrowers' obligations to pay value, over time, on the loan conveyed to him.

3. RIGHT TO PREPAY NOTE

The undersigned reserve(s) the right to prepay at any time all or any part of the principal amount of this Note without the payment of penalties or premiums. All payments on this Note shall be applied first to the monthly payment, second to late charges, if any, third to the interest, and the remaining balance shall be applied to principal. Except as provided below, all payments on this Note



shall be credited as of the due date thereof without adjustment of interest because paid either before or after such due date.

4. TERMS OF REPAYMENT

Payment may be made in annual installments, amortized over 60 months. Borrower may also wait until a date certain no later than July 1, 2016 to pay off this Note in full. Payment by Borrower shall include all accrued interest from the date of execution of this Note through the date of payoff. All payments shall be in the form of a cashier's check or wire transfer, made payable to Ogden City Corporation.

5. DEFAULT AND LATE PAYMENT PROVISIONS

IN THE EVENT the undersigned shall default in any of the terms and conditions contained in this Note or defaults under the Trust Deed of even date herewith and tied to this Promissory Note, which agreements are incorporated herein by reference, or shall fail to pay the principal amount of this Note when due, and if such failure be subsisting thirty (30) days beyond said due date, the unpaid principal amount of this Note, together with late charges, and together with unpaid and accrued interest, if any, shall at once become due and payable, at the option of the Lender, without notice to the undersigned. Failure of the Lender to exercise such option shall not constitute a waiver of such default. No default shall exist by reason of nonpayment of any required installment of principal so long as the amount of the optional prepayments already made pursuant hereto equals or exceeds the amount of the required installments.

If the principal of this Note is not paid within thirty (30) days of the installment due date, the undersigned shall pay to the Lender a one-time late charge of four percent (4%) on the value of that installment obligation. If this Note be reduced to judgment, such judgment should bear the statutory interest rate on judgments, but not to exceed twelve percent (12%) per annum.

6. SALE, ASSIGNMENT, CONVEYANCE OR TRANSFER OF INTEREST CLAUSE, ETC.

It is understood and agreed by the undersigned that the loan or value which the undersigned received from the Lender, the receipt of which is hereby acknowledged, is a loan made by a municipal corporation for purposes of securing and developing a downtown parking and commercial space project.

The undersigned further covenants and agrees that:

- a. Any conveyance, sale, assignment or transfer of any interest in this Note by the Undersigned to any third party shall be subject to Lender's approval.
- b. In the event that the undersigned sells, conveys, disposes, or assigns any interest in the property used to secure this Note, or makes any inter-vivos transfer of said property, or allows title thereto to become vested in any other person or persons or entities in any manner whatsoever, or if undersigned

shall discontinue its interests of said property, or agrees to do any of the acts specified herein without the express written consent of the Lender being first obtained; or,

- c. In the event that the undersigned or its assignee(s) shall die, become insolvent, become bankrupt, either voluntary or involuntary, or make a general assignment for the benefit of creditors; or if any proceeding for enforcement of a judgment is commenced against the property of undersigned, or other person or entity liable on this Note; or if a petition for any relief under any law relating to the relief of debtors or readjustment of indebtedness shall be filed by undersigned or its assignee(s); or if a writ or order of attachment is issued against any of the property used to secure this title;

then it is understood and agreed by the undersigned that, notwithstanding any other provisions of this Note or the accompanying security instrument used to secure this Note, the entire unpaid balance amount of this Note, together with late charges, shall become immediately due and payable on demand in one lump sum, at the option of the Lender, without notice to the undersigned. Failure of the Lender to exercise such option shall not constitute a waiver of such default.

7. COSTS AND ATTORNEY'S FEES

If suit is instituted by the Lender to recover on this Note, the undersigned agree(s) to pay all costs of such collection including reasonable attorney's fees and court costs.

8. SECURITY

THIS NOTE is secured by a Trust Deed of even date herewith.

7. WAIVER OF DEMAND, PROTEST, AND NOTICE

DEMAND, protest and notice of demand and protest are hereby waived, and the undersigned hereby waives, to the extent authorized by law, any and all homestead and other exemption rights which otherwise would apply to the debt evidenced by this Note.

IN WITNESS WHEREOF, this Note has been duly executed by the undersigned as of this date.

BORROWER:

KEVIN GARN, an Individual

*[Handwritten Signature]*  
\_\_\_\_\_

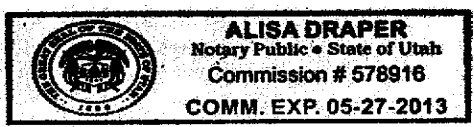
Kevin Garn

STATE OF UTAH )

COUNTY OF WEBER )

On the 22 day of August, 2011, personally appeared before me Kevin Garn, the signer(s) of the above instrument, who duly acknowledged to me that he executed the same.

*[Handwritten Signature]*  
\_\_\_\_\_  
Notary Public



My 2013 Commission expires:

LENDER

OGDEN CITY CORPORATION

*[Handwritten Signature]*  
\_\_\_\_\_  
By: Matthew R. Godfrey  
Its: Mayor

ATTEST

*[Handwritten Signature]*  
\_\_\_\_\_  
Cindi Mansell, Ogden City Recorder



WHEN RECORDED, MAIL TO

**OGDEN CITY CORPORATION  
C/O BUSINESS DEVELOPMENT EXECUTIVE DIRECTOR  
2549 WASHINGTON BLVD., STE 420  
OGDEN, UTAH 84401**

TRUST DEED

THIS TRUST DEED, made this 22 day of August, 2011, between KEVIN GARN, an individual, whose address is 748 West Heritage Park Blvd. Ste. 203, Layton, UT 84041, and WASHINGTON LODGING, LLC., a Utah limited liability company, whose address is 1018 Atherton Drive, Taylorsville, UT 84123, as TRUSTORS, and

EPEK TITLE INSURANCE AGENCY, whose address is 195 25<sup>th</sup> Street, Ogden UT 84401 as TRUSTEE, and OGDEN CITY CORPORATION, Ogden Utah, as BENEFICIARY,

WITNESSETH That Trustors CONVEY AND WARRANT TO TRUSTEE IN TRUST,

WITH POWER OF SALE, the following described property, situated in

Weber County, State of Utah

TAX SERIAL NUMBER: 01-106-0002 formerly a part of a parcel known as tax serial number 01-099-0004

Together with all buildings, fixtures and improvements thereon and all water rights, rights of way, easements, rents, issues, profits, income, tenements, privileges and appurtenances thereunto belonging, now or hereafter used or enjoyed with said property, or any part thereof,

SUBJECT, HOWEVER, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues, and profits;

FOR THE PURPOSE OF SECURING (1) payment of the indebtedness evidenced by a promissory note of August 22, 2011, in the principal sum of Five Hundred Fifty Thousand Dollars and No Cents (\$ 550,000.00) made by Trustor Garn, payable to the order of Beneficiary at the times, in the manner and with interest as therein set forth, and any extensions and/or renewals or modifications thereof (2) the performance of each agreement of Trustors herein contained; (3) the payment of such additional obligations as hereafter may be made to Trustors, or their successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Trust Deed; and (4) the payment of all sums advanced by Beneficiary via conveyance of that certain parcel of land described above, together with interest thereon as herein provided.

TO PROTECT THE SECURITY OF THIS TRUST DEED, TRUSTORS(S) AGREES:

1. To honor and adhere to all commitments required of Trustors under that certain Development Agreement dated August 2, 2011, between the Trustors and the Ogden City Redevelopment Agency and to perform everything they agreed to do according to all provisions of said Development Agreement.

2. To keep said property in good condition and repair; to build all projects contemplated under the above referenced Development Agreement, to promptly complete in a good and workmanlike manner any building which may be constructed thereon, to comply with all laws, covenants and restrictions affecting said property; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law, to do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general but including all provisions under the aforementioned Development Agreement. In relation to the Project Area obligations of Trustors described in the Development Agreement referenced herein, Trustors further agree:

(a) To commence construction promptly and to pursue same with reasonable diligence to completion in accordance with any plans, municipal processes and specifications satisfactory to Beneficiary, and

(b) To allow Beneficiary to inspect said property at all times.

3. To provide and maintain insurance, of such type or types and amounts as Beneficiary may require, on the improvements now existing or hereafter erected or placed on said property. Such insurance shall be carried in companies approved by Beneficiary with loss payable clauses in favor of and in form acceptable to Beneficiary. In event of loss, Trustors shall give immediate notice to Beneficiary, who may make proof of loss, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Beneficiary instead of to Trustors and Beneficiary jointly, and the insurance proceeds, or any part thereof, may be applied by Beneficiary, at its option, to reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged.

4. To deliver to, pay for and maintain with Beneficiary until the indebtedness secured hereby is paid in full, such evidence of title as Beneficiary may require, including abstracts of title or policies of title insurance and any extensions or renewals thereof or supplements thereto.

5. To appear in and defend any action or proceeding purporting to affect the security hereof, the title to said property, or the rights or powers of Beneficiary or Trustee; and should Beneficiary or Trustee elect to also appear in or defend any such action or proceeding, to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum incurred by Beneficiary or Trustee.

6. To pay at least 10 days before delinquency all taxes and assessments affecting said property, including all assessments upon water company stock and all rents, if any, assessments and charges for water, appurtenant to or used in connection with said property, to pay, when due, all encumbrances, charges, and liens with interest on said property or any part thereof, which at any time appear to be prior or superior

hereto; to pay all costs, fees, and expenses of this Trust.

7. Should Trustors fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustors and without releasing Trustors from any obligation hereof, may: Make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights of powers of Beneficiary or Trustee; pay, purchase, contest, or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and in exercising any such powers, incur any liability, expend whatever amounts in its absolute discretion it may deem necessary therefore, including cost of evidence of title, employ counsel, and pay his reasonable fees.

8. To pay immediately and without demand all sums expended hereunder by Beneficiary or Trustee with interest from date of expenditure at the rate of ten per cent (10%) per annum until paid, any expenditures paid by Beneficiary or Trustee in pursuit of their rights under this Trust, and the repayment thereof shall be secured hereby.

IT IS MUTUALLY AGREED THAT:

9. Should said property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, or earthquake, or in any other manner, Beneficiary shall be entitled to all compensation, awards, and other payments or relief thereof, and shall be entitled at its option to commence, appear in and prosecute in its own name, any action or proceeding, or to make any compromise or settlement, in connection with such taking or damage. All such compensation, awards damages, rights of action and proceeds, including the proceeds of any policies of fire and other insurance affecting said property are hereby assigned to Beneficiary, who may, after deducting there from all its expenses, including attorney's fees, apply the same on any indebtedness secured hereby. Trustors agree to execute such further assignments of any compensation, award, damages, and rights of action and proceeds as Beneficiary or Trustee may require.

10. At any time and from time to time upon written request of Beneficiary, payment of its fees and presentation of this Trust Deed and the note for endorsement (in case of full reconveyance, for cancellation and retention), without affecting the liability of any person for the payment of the indebtedness secured hereby Trustee may (a) consent to the making of any map or plat of said property; (b) join in granting any easement or creating any restriction thereon, (c) join in any subordination or other agreement affecting this Trust Deed or the lien or charge thereof; (d) reconvey, without warranty, all or any part of said property. The grantee in any reconveyance may be described as "the person or persons or entities entitled thereto", and the recitals therein of any matters or facts shall be conclusive proof of truthfulness thereof. Trustors agree to pay reasonable Trustee's fees for and of the services mentioned in this paragraph.

11. As additional security, Trustors hereby assign Beneficiary, during the continuance of these trusts, all rents, issues, royalties, increment, assessment and profits, if any, of the property affected by this Trust Deed in accordance with that Development Agreement signed by Trustors and Beneficiary as referenced

herein. Until Trustor Garn shall default in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, Trustors shall have the right to collect all such rents, issues, royalties, and profits earned prior to default as they become due and payable in accordance with that Development Agreement signed by Trustors and Beneficiary as referenced herein. If Trustors shall default as aforesaid, Trustors's right to collect any of such moneys shall cease and Beneficiary shall have the right, with or without taking possession of the property affected hereby, to accelerate the Promissory Note executed in conjunction with this Deed of Trust and demand payment on said Note in full. Beneficiary shall also be entitled to any and all legal remedies under this Deed of Trust tied to any and all provision of the Development Agreement referenced herein, including the right to foreclose on the parcel made the subject of this Deed of Trust, and retain ownership of said parcel. Failure or discontinuance of Beneficiary at any time or from time to time to take any action granted them herein in the event of Trustors's default shall in no way affect any subsequent enforcement by Beneficiary of their rights under this Deed of Trust. Additionally, any default by Trustors of any event or obligation in the Development Agreement referenced herein shall trigger a default under this Deed of Trust and enable Beneficiary to exercise any and all rights attributed to Trustors default under this Deed of Trust including but not limited to foreclosure and specific performance.

12. Upon any default by Trustors hereunder, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court (Trustors hereby consenting to the appointment of Beneficiary as such receiver), and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in its own name sue for or otherwise collect said rents, issues, assessment, increment and profits, including those past due and unpaid, and apply the same upon any indebtedness secured hereby, and in such order as is required by the Development Agreement referenced herein.

13. The entering upon and taking possession of said property, the collection of such rents, issues, assessment, increment and profits, or the proceeds of fire and other insurance policies, or compensation or awards for any taking or damage of said property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

14. The failure on the part of Beneficiary to promptly enforce any right hereunder shall not operate as a waiver of such right and the waiver by Beneficiary of any default shall not constitute a waiver of any other or subsequent default.

15. Time is of the essence hereof. As referenced above, upon default by Trustors in the payment of any indebtedness secured hereby or in the performance of that Development Agreement referenced herein, or in the performance of any term of the Promissory Note referenced herein, all sums secured hereby shall immediately become due and payable at the option of Beneficiary. In the event of such default, Beneficiary may execute or cause Trustee to execute a written notice of default and of election to cause said property to be sold to satisfy the obligations hereof, and Trustee shall file such notice for record in each county wherein said property or some part or parcel thereof is situated. Beneficiary also shall deposit with Trustee, the note and all documents evidencing expenditures secured hereby.

16. After the lapse of such time as may then be required by law following the recordation of said

notice of default, and notice of default and notice of sale having been given as then required by law, Trustee, without demand on Trustors, shall sell said property on the date and at the time and place designated in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine (but subject to any statutory right of Trustors to direct the order in which such property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause he deems expedient, postpone the sale from time to time until it shall be completed and, in every case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; provided, if the sale is postponed for longer than one day beyond the day designated in the notice of sale, notice thereof shall be given in the same manner as the original notice of sale. Trustee shall execute and deliver to the purchaser its Deed conveying said property so sold, but without any covenant or warranty, express or implied. The recitals in the Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale to payment of ( 1) the costs and expenses of exercising the power of sale and of the sale, including the payment of the Trustee's and attorney's fees; (2) cost of any evidence of title procured in connection with such sale and revenue stamps on Trustee's Deed; (3) all sums expended under the terms hereof, not then repaid, with accrued interest at 10% per annum from date of expenditure, (4) all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto, or the Trustee, in its discretion, may deposit the balance of such proceeds with the County Clerk of the county in which the sale took place.

17. As referenced above, upon the occurrence of any default hereunder, Beneficiary shall have the option to declare all sums secured hereby immediately due and payable and foreclose this Trust Deed in the manner provided by law for the foreclosure of mortgages on real property and Beneficiary shall be entitled to recover in such proceeding all costs and expenses incident thereto, including a reasonable attorney's fee in such amount as shall be fixed by the court.

18. DUE ON SALE CLAUSE: If all or any part of the property herein described is transferred without the beneficiary's prior written consent, the beneficiary may require all sums secured hereby immediately due and payable.

19. Beneficiary may appoint a successor trustee at any time by filing for record in the office of the County Recorder of each county in which said property or some part thereof is situated, a substitution of trustee. From the time the substitution is filed for record, the new trustee shall succeed to all the powers, duties, authority and title of the trustee named herein or of any successor trustee. Each such substitution shall be executed and acknowledged, and notice thereof shall be given and proof thereof made, in the manner provided by law.

20. This Trust Deed shall apply to, inure to the benefit of, and bind all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. All obligations of Trustors hereunder are joint and several. The term "Beneficiary" shall mean the owner and holder, including any pledgee, of the note secured hereby. In this Trust Deed, whenever the context requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.



21. Trustee accepts this Trust when this Trust Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Trust Deed or of any action or proceeding in which Trustors, Beneficiary, or Trustee shall be a party, unless brought by Trustee.

22. This Trust Deed shall be construed according to the laws of the State of Utah.

23. The undersigned Trustors request that a copy of any notice of default and of any notice of sale hereunder be mailed to them at the address hereinbefore set forth.

Dated the day and year first above written.

Signature of Trustors

TRUSTOR  
KEVIN GARN

\_\_\_\_\_  
Kevin Garn

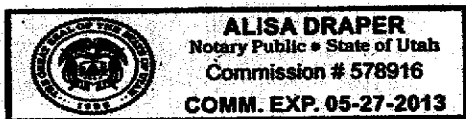
STATE OF UTAH )

COUNTY OF WEBER )

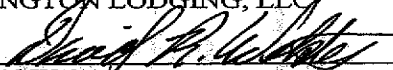
On the 22 day of August 2011, personally appeared before me Kevin Garn, the signer(s) of the above instrument, who duly acknowledged to me that he executed the same.

\_\_\_\_\_  
Notary Public

My Commission Expires: 2013



TRUSTOR  
WASHINGTON LODGING, LLC

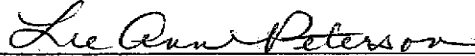


By: David Webster  
Its: Managing Member

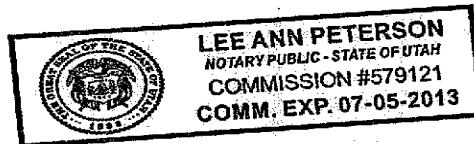
STATE OF UTAH            )  
  )  
COUNTY OF WEBER        )

ss.

On the 22<sup>nd</sup> day of August, 2011, personally appeared before me David Webster who being by me duly sworn says that he is the managing member of Washington Lodging, LLC, the company that executed the above and foregoing instrument and that said instrument was signed in behalf of said company by authority of its by-laws (or by authority of a resolution of its board of directors) and said he acknowledged to me that said company executed the same.



Notary Public



EH 2540074 PG 51 OF 77

**EXHIBIT A  
DISBURSEMENT REQUEST**

**Disbursement Request**

In accordance with the terms and conditions of a Loan and Security agreement with Ogden City Corporation as part of a restaurant and parking Development Agreement I herby respectfully request disbursement of loan funds in the amount of \$\_\_\_\_\_.

Note the following attached:

- 1. Amount requested is verified by reasonable costs of construction as provided in the attached
- 2. Wire transfer instructions for disbursement:  
\_\_\_\_\_
- 3. Statement of remaining unpaid balance of dispersement.
- 4. Date of request. \_\_\_\_\_

Forward to: Ogden City Corporation  
2549 Washington Blvd.  
Ogden, Utah 84401  
Attention: Terrence Bride – Assistant Business Development  
Manager

KEVIN GARN, an Individual

\_\_\_\_\_  
Kevin Garn

STATE OF UTAH )  
COUNTY OF WEBER )

On the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, personally appeared before me Kevin Garn, the signer(s) of the above disbursement request, who duly acknowledged to me that he executed the same.

\_\_\_\_\_  
Notary Public

My Commission Expires:

**Attachment II**  
**Grant and Security Agreement**

### GRANT AND SECURITY AGREEMENT

This Grant and Security Agreement (the "Agreement" or "Grant Agreement") is entered into as of August 22 2011 by and between KEVIN GARN, an individual (the "Grantee"), with offices at 748 West Heritage Park Blvd. Suite 203 Layton, UT 84041 Layton Utah 84041, and OGDEN CITY CORPORATION, (the "Grantor"), with offices at 2549 Washington Boulevard, Suite 400, Ogden, Utah 84401.

#### WITNESSETH:

A. Grantee is an individual who desires to obtain financing for the redevelopment of the Ogden downtown area known as the Junction, specifically that parcel of land known as Lot 8B to provide parking and commercial facilities, that will bolster the economic development presence in downtown Ogden.

B. Grantor desires to provide Grantee with the requested financing for its construction project and work with the Grantee to ensure the development of the Project.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein set forth, the parties hereto agree as follows:

#### 1. The Grant.

1.1 Subject to the terms and conditions of this Agreement and in reliance on the representations and warranties herein contained (and contained directly or by reference in those documents herein incorporated by reference) the Grantor agrees to make a Grant (the "Grant") in the aggregate principal amount of Five Hundred Fifty Thousand and no/100 Dollars (\$550,000.00) ("Aggregate Principal Amount") to Grantee. This obligation will not be repaid by Grantee but disbursement terms shall be memorialized in this Agreement.

1.2 (a) The Grant shall be funded by the Grantor on August 30, 2011. (the "Closing Date"),

(b) Grantor shall maintain the funds in an escrow account upon which Grantee may request disbursement as they provide verification of construction costs to Grantor. Each disbursement shall be subject to the satisfaction of the following terms and conditions (a "Disbursement"): (i) Disbursements in such amounts as requested by Grantee as long as the amount requested is verified by reasonable costs of construction; (ii) each Disbursement shall occur on any business day; (iii) each request for Disbursement shall meet such requirements as to form and content as prescribed by Grantor and be accompanied with such additional documentation as required by Grantor; (iv) all Disbursements shall be made by transfer of immediately available funds for credit to the Grantee' account identified in the Disbursement Request (as defined below) or this Agreement; (v) no Event of Default (as defined in Section 7) shall have occurred and is continuing; (vi) each representation and warranty made by the Grantee under Section 4 of this Agreement shall continue to be accurate and correct in all material respects; and (vii) the Grantee shall have provided documentation that the proceeds of any prior Disbursements have been used in compliance with paragraph 5.1. The Grantee shall provide Grantor with written notice of any requested Disbursement not less than ten (10) business days prior to the desired date of such Disbursement in the form attached hereto as Exhibit A (a "Disbursement Request"). The Disbursement Request shall specify

the amount requested, requested date of Disbursement, wire transfer instructions for such Disbursement and such other information required in the form of a Disbursement Request, and shall be accompanied by a certificate of an authorized officer of the Grantee confirming that, as of the date of the Disbursement: (i) no Event of Default (as defined in Section 7) has occurred and is continuing; (ii) each representation and warranty made by the Grantee under Section 4 of this Agreement continues to be accurate and correct in all material respects; and (iii) there has been no change in the financial condition of the Grantee since the Closing Date which has or will have an adverse effect on the ability of Grantee to carry out its business as heretofore conducted. Disbursements (as well as the unpaid principal balance owing under the Note) may be evidenced by Grantor's internal records or by endorsements to Attachment 1 to the Note reflecting the amount of any individual Disbursement and the aggregate unpaid principal balance under the Note. In the event Grantor makes an endorsement to Attachment 1 to the Note, Grantor shall furnish a copy of such updated Attachment 1 to the Note to the Grantee. Notwithstanding the Notice provisions set forth in Section 8.4, each Disbursement Request and all of the required documentation and submissions therewith shall be submitted to Grantor at such address and in such manner as directed by Grantor from time to time.

1.3 All Disbursements shall be repaid substantially as required within each Disbursement Request, and in all cases, all Disbursements shall be repaid no later than the Note Maturity Date as defined in the Note.

1.4 Any language in this Agreement to the contrary notwithstanding, neither the funding of the Grant nor the acceptance of the Note by the Grantor shall be deemed to be a waiver by the Grantor of any rights, conditions, agreements, warranties or representations in its favor or for its benefit.

1.5 **Grantee's Repayment of Grant Obligation:** Grantor acknowledges that \$306,000.00 of the \$550,000.00 Grant referenced in Section 1.1 above, shall source from Capital Improvement Project funds held by Ogden City, which are used for the specific purpose of funding city capital improvement projects in economically blighted areas of town, and will not be required to be repaid by Grantee under this Agreement. The parties contemplate that the remaining \$244,000.00 Grant obligation, which shall come from other Agency funds, shall not be repaid either in accordance with this Agreement, and any Development Agreement entered into between the parties. The parties further acknowledge that Grantee is committed under Section III(iv) of a certain Development Agreement between Grantee and Ogden City Redevelopment Agency, to condominiumize and give Agency a perpetual Right of Access to twenty (20) parking stalls located within the Improvements to be constructed, to the Ogden City Redevelopment Agency for dedicated public use. This is a direct result of Grantee's use of City Capital Improvement Project funds given to the Agency, as well as Agency funds identified under this Agreement.

## 2. Security for the Grant.

2.1 The Grant shall be secured at all times by the improvements made to the Site located on Lot 8B, Parcel No. 01-106-0002 formerly known as 01-099-0004 Weber County Records. Grantee

2.2 As security for the full payment of the Grant and timely performance of Grantee's obligations under the Grant Documents, Grantee hereby pledges, transfers and assigns to Grantor, and grants to Grantor a continuing first priority security interest in and to, the Improvements

constructed with the use of the Grant proceeds. Grantee agrees to execute, acknowledge, deliver, file or do, at its sole cost and expense, all other acts, financing statements, assignments, notices, agreements or other instruments as Grantor may reasonably require in order to perfect and continue the foregoing first priority security interest, pledge and assignment pursuant to all applicable laws, or otherwise to fully effectuate the rights granted to Grantor by this Section. The parties agree that this security interest will be lifted once the project is completed.

2.3 In furtherance of its security interest in the Deposit Account, Grantor shall have the right to file a UCC-1 financing statement and take such other actions it deems necessary to perfect its security interest.

### 3. Conditions to Making Grant on Closing Date and Disbursements.

The Grantor's obligation to make the Grant on the Closing Date shall be subject to the prior fulfillment (or waiver, in writing, by the Grantor) of the following conditions:

3.1 The Grant, including the planned use of the proceeds there from by Grantee, shall (i) be used solely for costs associated with the construction and development of a parking facility and attached commercial build out located on Lot 8B in the Junction in downtown Ogden City, Utah., (ii) meet all applicable requirements for qualification under the Ogden City Code and International Construction Code; and (iii) shall not violate any applicable law or governmental regulation or subject the Grantor to any liability, penalty or onerous condition.

3.2 The representations and warranties of Grantee contained in this Agreement shall be true and correct when made, and shall continue to be true and correct as of the Closing Date with the same effect as though such representations and warranties had been made at and as of such time, and Grantee shall have performed or complied with all covenants, agreements and conditions on its part required to be performed or complied with hereunder at or prior to the Closing Date.

3.3 Grantee shall have delivered to the Grantor all such consents, resolutions, minutes or other certificates or documents evidencing that all of the requisite corporate, legislative or administrative action has been taken by Grantee ("Required Consents") to authorize and approve (i) the execution, delivery and performance of this Agreement, the Note, each Disbursement Request and all other documents and agreements executed in connection herewith (collectively, the "Grant Documents") and (ii) each Project for which a Disbursement Request is being made.

3.4 Grantee shall have delivered to the Grantor a certificate as to the correctness of Grantee's warranties and representations and non-occurrence of any Event of Default (as that term is defined in Section 7.1) and such evidence of the fulfillment of the conditions specified in this Section 3, as the Grantor or its counsel may reasonably request.

3.5 On the Closing Date, all legal matters in connection with this Agreement and the transactions contemplated hereby shall be reasonably satisfactory to counsel for the Grantor, the Grantor shall have received from its counsel such opinions, if any, as to any transactions contemplated hereby, and the Grantor shall have received copies of all other documents which it may reasonably request in connection with such opinions.

3.6 On the Closing Date and as of the date of each Disbursement, there shall have been no change in the business, property, financial condition, or credit rating of Grantee since the date of



this Agreement, which has had or will have an adverse effect on the ability of Grantee to (i) carry out its business as heretofore conducted; or (ii) repay the Grant.

In addition to the foregoing conditions set forth in items 3.1 through 3.6, Grantor's obligation to make each of the Disbursements shall be subject to the prior fulfillment (or waiver, in writing, by the Grantor) of the following conditions:

3.7 The representations and warranties of the Grantee contained in Section 4 or any other Grant Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct on and as of the date of Disbursement, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, and except that for purposes of this Section 3.7, the representations and warranties contained in Section 4.8 shall be deemed to refer to the most recent statements furnished pursuant to Section 5.3.

3.9 No Event of Default shall exist, or would result from such proposed Disbursement.

3.10 Grantee shall have provided Grantor copies of all permits, approvals and other documents necessary for the completion of a Project for which a Disbursement is being made.

3.11 Grantor shall have received a Disbursement Request in accordance with the requirements hereof.

**4. Representations and Warranties of Grantee.** Grantee represents and warrants that:

4.1 Grantee is an individual residing in Utah, and has full legal right and authority and is associated with a Developer named Washington Lodging, LLC, which company has all necessary licenses and permits required as of the date hereof to undertake and complete the Parking Facility and Commercial Construction Projects contemplated in a Development Agreement between the parties, and to carry out and consummate all transactions contemplated by this Grant Agreement.

4.2 The Grant Documents have been duly authorized by Grantee, and assuming that he has all the requisite power and authority to authorize, execute and deliver and has duly authorized, executed and delivered the Grant Documents, the Grant Documents will constitute the legal, valid and binding obligations of Grantee under applicable law, enforceable in accordance with their respective terms, subject only to bankruptcy, insolvency, reorganization, moratorium or similar laws at the time in effect affecting the enforceability of the rights of creditors generally and to the discretion of courts of applicable jurisdiction to enforce equitable remedies including, without limitation, specific performance and injunctive relief.

4.3 There is no fact that the Grantee has not disclosed to the Grantor that materially adversely affects the properties, activities, prospects or condition (financial or otherwise) of the Grantee or the ability of the Grantee to make all Grant repayments and otherwise to observe and perform its duties, covenants, obligations and agreements under the Grant Documents.

4.4 The authorization, execution and delivery of this Grant Documents by Grantee, the observance and performance by Grantee of his duties, covenants, obligations and agreements thereunder and the consummation of the transactions provided for in this Agreement, the compliance by the Grantee with the provisions of this Agreement and the undertaking and completion of the

Projects will not result in any breach of any of the terms, conditions or provisions of or constitute a default under or result in the creation or imposition of any lien, charge or other encumbrance upon any property or assets of the Grantee pursuant to any ordinance or resolution, trust agreement, indenture, mortgage, deed of trust, Grant agreement or other instrument and any ordinance, resolution or indenture which authorized outstanding debt obligations to which Grantee is a party or by which Grantee or any of its property or assets may be bound, nor will such action result in any violation of the provisions of any laws, ordinances, resolutions, governmental rules, regulations or court orders to which the Grantee or its properties or operations are subject.

4.5 Grantee has obtained all permits and approvals required to date by any governmental body or officer (and reasonably expects to receive all permits required in the future by any governmental agency) for the making, observance and performance by the Grantee of its duties, covenants, obligations and agreements under the Grant Documents or for the undertaking or completion of the Projects and the financing or refinancing thereof and the Grantee has complied with all applicable provisions of law requiring any notification, declaration, filing or registration with any governmental body or officer in connection with the making, observance and performance by Grantee of its duties, covenants, obligations and agreements under this Agreement or with the undertaking or completion of the Projects and the financing or refinancing thereof. No consent, approval or authorization of, or filing, registration or qualification with any governmental body or officer that has not been obtained is required on the part of Grantee as a condition to the authorization, execution and delivery of this Agreement, the undertaking or completion of the Projects or the consummation of any transaction herein contemplated.

4.6 Grantee is in compliance with all laws, resolutions, ordinances, governmental rules and regulations to which it is subject, the failure to comply with which would materially adversely affect the ability of Grantee to conduct his activities or undertake or complete the Projects in conjunction with Developer Washington Lodging LLC, or the condition (financial or otherwise) of Grantee; and Grantee has obtained or will obtain all licenses, permits, franchises or other governmental authorizations presently necessary for the ownership of its property or for the conduct of its activities which, if not obtained, would materially adversely affect the ability of Grantee to conduct his activities or undertake or complete the Project in conjunction with Developer Washington Lodging LLC or the condition (financial or otherwise) of Grantee.

4.7 Except as set forth in the "Disclosure Schedule" attached hereto as Schedule C and hereby incorporated herein, or in Grantee's Financial Statements (as such term is defined in Section 4.11 hereof), Grantee has good title to his assets and properties free and clear of any lien, charge, encumbrance or security interest, whether or not incurred in the ordinary course of its business, which could materially adversely affect either Grantee's ability to perform its obligations under this Agreement or the use of proceeds of the Grant contemplated hereunder.

4.8 There is no action, suit, investigation or proceeding pending or, to the knowledge of Grantee, threatened, by or before any court or governmental or administrative body or agency which may reasonably be expected to result in a material adverse change in the activities, operations, assets or properties, or in the condition, financial or otherwise, of Grantee, or to impair the ability of Grantee to perform his obligations under this Agreement or the Note, or prevent Grantee's use of the proceeds of the Grant contemplated hereunder. Grantee is not and will not on the Closing Date be in default or alleged to be in default with respect to any judgment, writ, injunction, decree, order, rule or regulation of any court or any governmental or administrative body or agency by which Grantee or its assets or properties are bound.

4.9 Grantee has furnished the Grantor with Grantee' Balance Sheets as of [May 30, 2011], together with the related Statements of Support and Revenue, Expenses, Cash Flow and Changes in Fund Balances for the years or periods then ending (collectively, the "Financial Statements"). The Financial Statements are true and correct in all material respects and fairly present the financial position of Grantee as at such dates and the results of its operations for the periods indicated therein in accordance with generally accepted accounting principles.

4.10 Grantee has in full force and affect such insurance coverage and in such amounts as is customarily maintained on such construction projects, including all necessary liability and property insurance on the Project.

4.11 None of the information and documents furnished or to be furnished by Grantee to the Grantor in connection with the execution and delivery of this Agreement and consummation of the transactions contemplated hereby, contained or will contain any material misstatement of fact or omitted or will omit to state any material fact required to be stated to make the statements therein not misleading.

4.12 The execution and delivery of this Agreement by Grantee will not confer any rights or privileges upon any third-person or entity not a party hereto.

4.13 Grantee has the absolute right to receive, and will receive, the entire proceeds of the Grant free and clear of any liens, charges, encumbrances or security interests whatsoever, and none of the proceeds, avails or products of or attributable to the Grant, nor any interest or earnings thereon, have been or will be pledged, assigned, hypothecated or otherwise posted or stand as security or collateral for or in connection with any Grant, borrowing, note, obligation, guaranty, purchase, sale or other transaction whatsoever (other than as provided in Section 2.2).

4.14 Grantee has received no legal or tax advice or opinions from the Grantor concerning any of the transactions or the use of the proceeds of the Grant contemplated hereby.

4.15 Grantee has received no promises or assurances of extensions or forbearance by the Grantor which are not contained in this Agreement, the Development Agreement between the parties, or the Note.

5. **Covenants of Grantee.** Grantee covenants and agrees that so long as the Grantor shall hold the Note and any principal or interest thereunder remains unpaid:

5.1 Grantee shall use the proceeds of the Grant and any interest or earnings thereon to solely construct a Parking Facility and attached Commercial Structures on Lot 8B in the Junction in downtown Ogden, Utah. In furtherance of the foregoing, Grantee has established policies and procedures which have been delivered to Grantor and approved by Grantor and Grantee agrees to follow such policies and procedures in connection with the use of the proceeds of this Grant. Grantee shall not use the proceeds of the Grant or any interest or earning thereon for any other purpose.

Any portion of the Grant not committed to the purposes described herein will be returned to the Grantor.

5.2 Grantee shall furnish to the Grantor the following:

(a) Disbursement Requests in connection with each Disbursement and all required documentation in connection therewith;

(b) within 90 days after the end of each fiscal year of Grantee, or upon request if needed for regulatory reasons, a narrative report, describing the use of the proceeds of the Grant during the preceding fiscal year, and evaluating the progress of Grantee toward construction and completion of a Parking Facility and Commercial Structures on Lot 8B located in the Junction, in downtown Ogden City, Utah; and

(c) Promptly upon dissemination thereof, copies of all reports made available for public distribution with respect to the activities of Grantee.

5.3 Grantee shall furnish to the Grantor: (i) within 180 days after the end of each of each fiscal year, and as of the end of each such year, a financial statement of the Grantee, which shall consist of a balance sheet, an operating statement, cash flow statement and summaries of any changes in financial position and in Grantee' fund balance, as to the specific Project specified in this Agreement, namely the construction of a Parking Facility and adjoining Commercial Structures on Lot 8B at the Junction in downtown Ogden City, Utah. The financial statement shall cover the period of the Grantee's immediately preceding calendar year, which shall be in reasonable detail, prepared in accordance with generally accepted accounting principles uniformly and consistently applied, and shall be certified by independent public accountants selected by Grantee and satisfactory to the Grantor, and signed by Grantee; and (ii) any such additional information as the Grantor may from time to time reasonably request regarding the financial and business affairs of the Grantee.

5.4 Grantee shall do all things necessary to:

(a) Maintain Grantee' credit rating of 720 FICO or higher.

(b) Comply with all laws and regulations applicable to Grantee, the violation of which would have a material adverse effect on Grantee' ability to perform its obligations under the Grant Documents; and

(c) Obtain and maintain in full force and effect all authorizations, qualifications, consents, approvals, exemptions, franchises, permits and licenses of, and filings with, governments or governmental or administrative bodies or agencies necessary for the carrying on of any material activity or the entering into of any material transaction applicable to Grantee.

5.5 Grantee shall promptly advise the Grantor in reasonable detail of the occurrence of any of the following events:

(a) Any proceeding instituted or commenced against Grantee in, by or before any court, governmental or administrative body, department or agency, which proceeding could have a material adverse effect upon the operations, assets or properties of Grantee, or upon the tax-exempt non-private foundation status of Grantee;

(b) Any material adverse change in the condition, financial or otherwise, or operations of Grantee;

- (c) Any change in Grantee' credit rating as set forth in 5.4(a);
- (d) Any substantial change in any contracts or commitments made by Grantee not in the ordinary course of Grantee' business; or
- (e) The occurrence of any Event of Default or any event which upon notice or lapse of time, or both, would constitute an Event of Default.

5.6 Notwithstanding any language elsewhere contained in this Agreement to the contrary, Grantee shall:

- (a) Maintain books and records adequate to provide the information ordinarily required by commercial investors under similar circumstances, including but not limited to the information specified in Sections 5.2 and 5.3;
- (b) Make such books and records available for inspection and copying by the Grantor and its agents and representatives at reasonable times and on reasonable notice; and
- (c) Retain such books and records and copies of the reports and statements referred to in Sections 5.2 and 5.3 for a period of at least four (4) years after the Note is fully paid and satisfied.

5.7 Grantee will permit the Grantor and such persons as the Grantor may designate, at any reasonable time, and from time to time, to examine and make copies of, and abstract from the records and books of account of and to visit the properties of the Grantee and to discuss the affairs, finances and accounts of Grantee with any of the Grantee' officers or directors.

5.8 Grantee will (i) maintain, preserve and protect all of the Projects and the improvements made with respect thereto in good working order and condition, ordinary wear and tear excepted; (ii) make all improvements in accordance with acceptable building standards; (iii) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a material adverse effect; and (iv) use the standard of care typical in the industry in the operation and maintenance of such Projects.

5.9 Grantee will keep in force upon all of the Projects policies of insurance carried with financially sound and reputable insurance companies in such amounts and covering all such risks as shall be customary (but in no case less than the total amount of the unpaid principal balance of the Note) in the industry and will from time to time, on request, furnish to Grantor certificates of insurance evidencing such coverage.

5.10 Grantee shall comply in all material respects with the requirements of the Regulations and all other laws and orders, writs, injunctions and decrees applicable to it or to its business or the Projects, except in such instances in which such requirement of law or order, write, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted.

5.11 Grantee shall permit representatives and independent contractors of the Grantor to visit and inspect any of the Projects, to examine its financial and operating records, and make copies thereof or abstracts there from, and to discuss its affairs, finances and accounts with its officers, and

independent public accountants, all at the expense of the Grantee and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Grantee; provided, however, that when an Event of Default exists the Grantor (or any of its representatives or independent contractors) may do any of the foregoing at the expense of the Grantee at any time during normal business hours and without advance notice.

**6. Negative Covenants.** Grantee covenants and agrees that so long as the Grantor shall hold the Note and any principal or interest thereunder remains unpaid that Grantee shall not, directly or indirectly:

6.1 Grantee shall not create, incur, assume or suffer to exist any lien upon any of its Projects, other than the following: (i) liens pursuant to any Grant Document; (ii) liens for taxes not yet due or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP; (iii) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like liens arising in the ordinary course of business which are not overdue for a period of more than 30 days or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person; (iv) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety bonds (other than bonds related to judgments or litigation), performance bonds and other obligations of a like nature incurred in the ordinary course of business; and (v) easements, rights-of-way, restrictions and other similar encumbrances affecting Projects which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person.

6.2. Grantee will not use the proceeds of any Grant or any interest earned thereon for any purpose other than as set forth in Section 5.1

6.3 Grantee will not pledge, assign, hypothecate or otherwise post or place any of the proceeds of the Grant, nor any of the proceeds, avails or products of or attributable to the Grant, nor any interest or earnings thereon, as security or collateral for or in connection with any Grant, borrowing, note, obligation, guaranty, purchase, sale or other transaction whatsoever.

6.4 Grantee shall not permit its credit rating to be other than as set forth in Section 5.4 (a).

**7. Default and Remedies.**

7.1 Grantee shall be deemed to be in default under this Agreement if any one or more of the following events (each of which is herein sometimes called an "Event of Default") occurs and is continuing:

(a) Grantee uses any portion of the proceeds of the Grant, or any interest or earnings thereon, other than in a manner specifically authorized in this Agreement;

(b) Any representation or warranty made by Grantee in this Agreement, or in any report, certificate, financial statement or instrument furnished by Grantee in connection with

this Agreement or the Grant shall prove to have been false or misleading when made, in any material respect;

(c) Grantee violates or fails to observe or perform any covenant contained in this Agreement;

(d) Grantee violates or fails to observe or perform any covenants contained herein, or any agreement on the part of Grantee to be observed or performed pursuant to this Agreement, and such default shall continue un-remedied for thirty (30) days after such default shall first become actually known to any of the authorized officials of the Grantee;

(e) The maturity of any obligation of Grantee for the payment of borrowed funds shall be accelerated so that the obligation or any portion thereof becomes due and payable prior to its stated maturity date;

(f) Grantee shall be adjudicated as bankrupt or insolvent, and such adjudication shall continue un-discharged or unstated for a period of 30 days; or Grantee shall admit in writing its inability to pay its debts as they mature, or make an assignment for the benefit of creditors, or Grantee shall apply for or consent to the appointment of any receiver, trustee, or similar officer for it or for all or any substantial part of its property; or such receiver, trustee or similar officer shall be appointed without the application or consent of Grantee, as the case may be, and such appointment shall continue un-discharged for a period of 30 days; or Grantee shall institute or consent to (by petition, application, answer or otherwise), any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it; or any such proceeding shall be instituted (by petition, application or otherwise) against Grantee and shall remain un-dismissed or un-stayed for a period of 30 days;

(g) A judgment or judgments for the payment of money (other than any judgment for which indemnity is provided under an existing, valid insurance policy) in excess of an aggregate of \$500,000.00 shall be rendered against Grantee, and the same shall remain un-discharged for a period of thirty (30) consecutive days, during which period execution shall not be effectively stayed nor an action commenced by Grantee, as the case may be, to contest such judgment or judgments;

(h) The occurrence of any attachment or attachments of any Project of Grantee which shall not be discharged within thirty (30) days of the date of such attachment or attachments nor an action commenced to contest such attachment or attachments during said thirty-day period; or

(i) A material adverse change occurs in Grantee's financial condition, or Grantor believes the prospect of payment or performance of the Grant is impaired.

(j) Grantor in good faith believes itself insecure.

7.2 If an Event of Default exists:

(a) At the option of the Grantor, the Grantor may, by written notice to Grantee, (i) accelerate and declare the Note, and all unpaid principal and accrued interest under such

Note, immediately due and payable, whether or not the Note is otherwise due and payable and whether or not the Grantor shall have initiated any other action for the collection of the Note, whereupon such Note designated in the Grantor's notice shall become immediately due and payable as to principal, interest and any other amounts payable there under, without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived by Grantee, anything contained herein, in the Note, or elsewhere to the contrary notwithstanding, or (ii) require Grantee to provide Grantor a letter of credit in an amount equal to the accelerated amount of all unpaid principal and accrued interest under the Note;

(b) No course of dealing on the part of the Grantor or any delay or failure on the part of the Grantor to exercise any right under this Agreement shall operate as a waiver of such right or otherwise prejudice the Grantor's rights, powers and remedies under this Agreement; and

(c) Grantor will have no obligation to make any additional advance under this Agreement.

## 8. Miscellaneous.

8.1 Notwithstanding any provision to the contrary contained in this Agreement or the Note, the Grantee will pay all amounts payable to the Grantor in respect of the principal of and interest on the Note by wire transfer of immediately available funds not later than 12:00 Noon (Utah time) to the account of the Grantor, as follows:

Depository Name: Wells Fargo  
ABA Number: 121 000 248  
Account Number: 165 332 4994

with sufficient information to identify the source and application of such funds such as Grant repayment by Kevin Garn or Washington Lodging (or at such other address or in such other reasonable manner as the Grantor may from time to time designate to the Grantee in writing), each such payment being accompanied by sufficient information to identify the source and application thereof, and all without any presentment of the Note by the Grantor.

8.2 The respective representations, warranties, obligations and agreements contained herein shall survive the Closing Date.

8.3 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

8.4 All notices, requests, demands, consents, waivers and other communications required or desired to be given under any of the provisions of this Agreement shall be in writing and shall be (i) served in person, (ii) sent by special courier (e.g., Federal Express), fully prepaid or billed to sender, or (iii) mailed by U.S. registered or certified mail, fully postage prepaid, return receipt requested, addressed as follows:

If to Grantor:



Ogden City Corporation  
2549 Washington Boulevard, Suite 120  
Ogden, Utah 84401  
Attention: Community Development Manager

with a copy (delivered in person, by courier or by regular mail, postage prepaid) to:

Ogden City Attorney  
2549 Washington Boulevard, Suite 800  
Ogden, UT 84401

If to the Grantee :

Kevin Garn  
748 W. Heritage Park Blvd  
Layton UT 84040

or to such other address as the addressee may have specified in a written notice duly given to the sender in the manner above provided. Any notice, request, demand, consent, waiver or other communication given in accordance with the provisions of this Section 8.4 shall be presumed to have been given or received on the earlier to occur of (x) the date of actual receipt thereof, (y) the third business day following the date of mailing same by U.S. registered or certified mail, or (z) the third business day following delivery thereof to the special courier, as shown on the courier's records, as appropriate. The delivery to or receipt of copies of any such notice, request, demand, consent, waiver or other communication by any persons other than and in addition to Grantor or Grantee, as the case may be, is merely an accommodation and is not necessary or required to make effective the giving or receipt thereof by or to Grantor or Grantee, as the case may be.

8.5 The preambles of this Agreement are hereby expressly incorporated herein and made a part hereof.

8.6 This Agreement, together with any and all Schedules hereto and documents herein incorporated by reference, constitutes the entire agreement between the parties in respect of the subject matter hereof, and any and all prior negotiations, understandings and agreements between the parties are hereby merged herein. No change, modification or waiver of any provision hereof shall be valid unless in writing and signed by the party to be bound.

8.7 Either party hereto may, by written notice to the other, (i) extend the time for the performance of any of the obligations or other actions of the other party under this Agreement; (ii) waive compliance with any of the conditions or covenants of the other party contained in this Agreement; or (iii) waive or reduce the required performance of any of the obligations of the other party under this Agreement. Except as provided in the preceding sentence, no action taken pursuant to this Agreement, including without limitation any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance by the other party with any representations, warranties, covenants, conditions or agreements contained in this Agreement. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

8.8 Grantor and Grantee are not and will not be engaged in any employer-employee, principal-agent or other similar relationship, nor in any partnership, joint venture or co-venture of any kind. Grantee does not and shall not have any power to, nor shall Grantee attempt, at any time, in any manner, directly or indirectly, to (a) speak for or on behalf of Grantor, (b) bind or obligate Grantor, or (c) create any obligation on behalf or in the name of Grantor.

8.9 Grantee covenants and agrees to at all times save, defend, indemnify and hold harmless Grantor, its directors, officers, employees and agents, from and against any and all and all manner of claim, demand, notice, proceeding, suit, action, cause of action, damages, order, decree or judgment claimed, filed, made, asserted or secured against Grantor, its directors, officers, employees or agents, by any person or firm, with respect to any actions (or lack of action) by Grantee, or its respective members, directors, officers, employees or agents under this Agreement or the Note, pursuant hereto or thereto or in any way connected herewith or therewith. Grantee' obligations under this Section 8.9 shall survive the expiration of this Agreement or the termination hereof or thereof for any reason whatsoever.

8.10 This Agreement and the legal relations among the parties hereto shall be governed by and construed in accordance with the laws of the State of Utah applicable to contracts made and performed in Utah.

8.11 This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and lawful assigns; provided, however, that none of Grantee' respective rights, privileges, duties, obligations or liabilities hereunder or under the Note, as applicable, shall be assignable by Grantee, as applicable, without the prior written consent of the Grantor.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

OGDEN CITY CORPORATION

By: *Matthew R. Godfrey*  
Name: Matthew R. Godfrey, Mayor

Attest: *Judi Marshall*  
Ogden City Recorder

Approved as to form:  
*[Signature]*  
Corporation Counsel



KEVIN GARN, an Individual

*[Signature]*  
Kevin Garn

STATE OF UTAH )

COUNTY OF WEBER )

On the 22 day of August, 2011, personally appeared before me Kevin Garn, the signer(s) of the above instrument, who duly acknowledged to me that he executed the same.

*[Signature]*  
Notary Public

My Commission Expires: 2013



EN 2540074 PG 68 OF 77

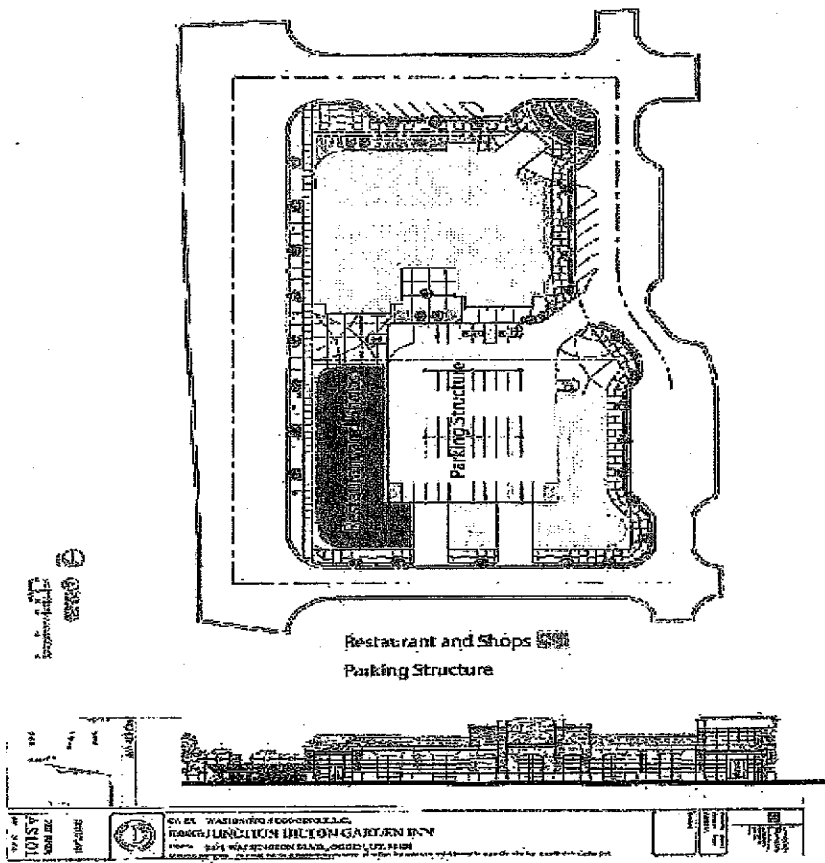
**EXHIBIT A  
DISBURSEMENT REQUEST**

EN 2540074 PG 69 OF 77



**EXHIBIT E**  
**SCOPE OF DEVELOPMENT**

1. Development and construction of a 104 stall parking facility and attached commercial buildings for restaurant and retail shops.



**EXHIBIT F  
SCHEDULE OF PERFORMANCE**

1. The estimated development schedule is outlined below.
  - (A) Project Owner and/or Developer to provide conditioned letter of commitment from construction lender, if any is required, including proposed terms by July 1, 2011.
  - (B) Project Owner and/or Developer to provide unconditioned letter of commitment from lender by July 1, 2011.
  - (C) Project Owner and/or Developer to provide completed reviewable plans by July 30, 2011.
  - (D) Garn and/or Developer to have all parking structure condominium requirements completed by September 15, 2011.
  - (E) Garn and / or Developer to have all required permits in place before July 30, 2011.
  - (F) Developer to commence project construction on or before October 30, 2011.
  - (G) Developer to complete project on or before December 1, 2012.



---

EH 2540074 PG 73 OF 77

**EXHIBIT G  
PROMISSORY NOTE AND TRUST DEED**

**PROMISSORY NOTE**

**Amount \$750,000.00**

THIS PROMISSORY NOTE is made this 22 day of August, 2011 by and between OGDEN CITY REDEVELOPMENT AGENCY ("Lender") and KEVIN GARN, an individual located at 748 West Heritage Park Blvd. Suite 203 Layton, UT 84041 ("Borrower") as follows:

1. FOR VALUE RECEIVED, the undersigned ally promises to pay to the order of the Ogden City Redevelopment Agency (hereinafter called the "Lender"), the sum of SEVEN HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS (\$750,000.00) and to pay interest on the unpaid principal amount of this Note from the date hereof under certain circumstances, at the rate of either FOUR PERCENT (4%) per annum until paid. Borrower understands that the principal and any accrued interest on this Note will be due and payable no later than the first (1<sup>st</sup>) day of July, 2016, in lawful money of the United States and that Borrower shall be responsible for paying off any remaining sum still owing, if any, to Lender on that date.

All payments required under this Note shall be delivered to the principal office of **Ogden City Redevelopment Agency, c/o Executive Director, 2549 Washington Blvd. Suite. 420, Ogden UT 84401** or at such other places as shall be designated by the Lender.

A. INTEREST ACCRUAL

Interest shall accrue on this Note from the date of execution of this Note to July 1, 2016 at a rate of 4% per annum.

2. CONSIDERATION

Both parties acknowledge that Lender has conveyed a parcel of land known on the records of the Weber County Recorder as Lot 8B, or Tax Parcel No. 01-106-0002 formerly a part of Tax Parcel No. 01-099-0004 to Borrower in order for Borrower to develop and build a parking structure and accompanying commercial structures, as well as other improvements on said parcel. In exchange for that conveyance, Borrowers acknowledge their obligations under this Note, a certain Development Agreement signed by the parties on August 2 2011, and a corresponding Trust Deed recorded with the Weber County Recorder's office bearing Borrowers' obligations to pay value, over time, for the land conveyed to him.

3. RIGHT TO PREPAY NOTE

The undersigned reserve(s) the right to prepay at any time all or any part of the principal amount of this Note without the payment of penalties or premiums. All payments on this Note shall be applied first to the monthly payment, second to late charges, if any, third to the interest, and the

remaining balance shall be applied to principal. Except as provided below, all payments on this Note shall be credited as of the due date thereof without adjustment of interest because paid either before or after such due date.

4. TERMS OF REPAYMENT

Payment shall be made in successive monthly installments, amortized over 60 months. Borrower may also wait until a date certain no later than July 1, 2016 to pay off this Note in full. Payment by Borrower shall include all accrued interest from the date of execution of this Note through the date of payoff. All payments shall be in the form of a cashier's check or wire transfer, made payable to the Ogden Redevelopment Agency.

5. DEFAULT AND LATE PAYMENT PROVISIONS

IN THE EVENT the undersigned shall default in any of the terms and conditions contained in this Note or defaults under any provision in the associated Development Agreement signed between the parties dated August 2, 2011, as referenced in but not limited to Section VIII of that document, or defaults under the Trust Deed of even date herewith and tied to this Promissory Note, which agreements are incorporated herein by reference, or shall fail to pay the principal amount of this Note when due, and if such failure be subsisting thirty (30) days beyond said due date, the unpaid principal amount of this Note, together with late charges, and together with unpaid and accrued interest, if any, shall at once become due and payable, at the option of the LENDER, without notice to the undersigned. Failure of the LENDER to exercise such option shall not constitute a waiver of such default. No default shall exist by reason of nonpayment of any required installment of principal so long as the amount of the optional prepayments already made pursuant hereto equals or exceeds the amount of the required installments.

If the principal of this Note is not paid within thirty (30) days of the installment due date, the undersigned shall pay to the Lender a one-time late charge of four percent (4%) on the value of that installment obligation. If this Note be reduced to judgment, such judgment should bear the statutory interest rate on judgments, but not to exceed twelve percent (12%) per annum.

6. SALE, ASSIGNMENT, CONVEYANCE OR TRANSFER OF INTEREST CLAUSE, ETC.

It is understood and agreed by the undersigned that the loan or value which the undersigned received from the LENDER, the receipt of which is hereby acknowledged, is a loan made by a public agency for purposes of acquiring real property known as Lot 8B, or Weber County Parcel No. 01-099-0004, in order to develop a downtown parking and commercial space project

The undersigned further covenants and agrees that:

- a. Any conveyance, sale, assignment or transfer of any interest in this Note by the Undersigned to any third party shall be subject to Lender's approval.

- b. In the event that the undersigned sells, conveys, disposes, or assigns any interest in the property used to secure this Note, or makes any inter-vivos transfer of said property, or allows title thereto to become vested in any other person or persons or entities in any manner whatsoever, or if undersigned shall discontinue its interests of said property, or agrees to do any of the acts specified herein without the express written consent of the Lender being first obtained; or,
- c. In the event that the undersigned or its assignee(s) shall die, become insolvent, become bankrupt, either voluntary or involuntary, or make a general assignment for the benefit of creditors; or if any proceeding for enforcement of a judgment is commenced against the property of undersigned, or other person or entity liable on this Note; or if a petition for any relief under any law relating to the relief of debtors or readjustment of indebtedness shall be filed by undersigned or its assignee(s); or if a writ or order of attachment is issued against any of the property used to secure this title;

then it is understood and agreed by the undersigned that, notwithstanding any other provisions of this Note or the accompanying security instrument used to secure this Note, the entire unpaid balance amount of this Note, together with late charges, shall become immediately due and payable on demand in one lump sum, at the option of the Lender, without notice to the undersigned. Failure of the Lender to exercise such option shall not constitute a waiver of such default.

7. COSTS AND ATTORNEY'S FEES

If suit is instituted by the Lender to recover on this Note, the undersigned agree(s) to pay all costs of such collection including reasonable attorney's fees and court costs.

8. SECURITY

THIS NOTE is secured by a Trust Deed of even date herewith.

THIS NOTE is also subject to the terms and conditions outlined in the Development Agreement signed by all parties to this Note, dated August 2, 2011. The terms and conditions in the Development Agreement referenced herein are incorporated herein and made a part hereof.

7. WAIVER OF DEMAND, PROTEST, AND NOTICE

DEMAND, protest and notice of demand and protest are hereby waived, and the undersigned hereby waives, to the extent authorized by law, any and all homestead and other exemption rights which otherwise would apply to the debt evidenced by this Note.

IN WITNESS WHEREOF, this Note has been duly executed by the undersigned as of this date.

BORROWER:

KEVIN GARN, an Individual

*[Handwritten signature: Kevin Garn]*

Kevin Garn

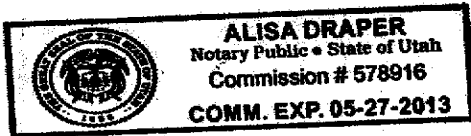
STATE OF UTAH )

COUNTY OF WEBER )

On the 22 day of August, 2011, personally appeared before me Kevin Garn, the signer(s) of the above instrument, who duly acknowledged to me that he executed the same.

*[Handwritten signature: Alisa Draper]*  
Notary Public

My Commission expires:  
2013



LENDER

OGDEN CITY REDEVELOPMENT AGENCY

*[Handwritten signature: Matthew R Godfrey]*  
By: Matthew R Godfrey  
Its: Executive Director

ATTEST

*[Handwritten signature: Cindi Mansell]*  
Cindi Mansell, Ogden City Recorder

