

CITY OF O'FALLON, ILLINOIS

**SHOPPES AT GREEN MOUNT CONFERENCE CENTER
DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into this _____ day of _____, 2007, by and between THE CITY OF O'FALLON, a home rule unit and Illinois municipal corporation located in St. Clair County, Illinois (the "City") and D & D LODGING, LLC, an Illinois Limited Liability Company having a principal office at O'Fallon, Illinois (the "Developer") who will acquire the real property described in **Exhibit A**. (All capitalized terms shall have the meanings ascribed to them in paragraph 1 of this Agreement.)

Recitals

A. The Developer has or will acquire the Property to construct the Development Project in the City and has demonstrated to the City's satisfaction that the Developer has the experience and capacity to complete the Development Project. The Developer and the City have determined that without financial assistance provided under this Agreement that the Development Project would not be feasible and that the Developer would not undertake the Development Project.

B. Subject to the terms and conditions of this Agreement, the City intends to designate the Developer to implement the Development Project. In reliance upon the City's representations and covenants contained in and subject to the terms and conditions of this Agreement, the Developer intends to cause the construction and completion of the Development Project and to enter into construction contracts and other agreements as necessary and upon completion convey the Development Project to the City.

C. This Agreement has been submitted to the Corporate Authorities for consideration and review and the Corporate Authorities have given all notices and taken all actions required to be taken prior to the execution of this Agreement to make this Agreement legally enforceable.

NOW, THEREFORE, by assuring opportunities for development and attracting sound and stable commercial growth; to promote the public interest and to enhance the tax base of the City; and to induce the Developer to undertake the Development Project to serve the purposes of the aforementioned statutes and Constitutional provisions; and in consideration of the Developer's agreement to undertake the Development Project and in consideration of the mutual promises, covenants, stipulations, and agreements contained in this Agreement, the Developer and the City hereby agree as follows:

1. **Definitions.** As used in this Agreement, the following words and terms shall have the following meanings:

"Acquisition Costs": All costs, incurred by Developer, of acquiring the Property, including, but not limited to: cost of land (based on the prorated per square foot price paid by Developer) and improvements, interest, carrying costs, costs of title commitments, reports or policies; surveys; soil and hazardous waste and other site and property-related reports; appraisals; archeological studies; professional fees of any kind or nature, including attorneys' fees, filing fees recording fees, experts' fees, and all litigation costs, and all associated court costs, fees and expenses.

"Certificate of Completion": A document issued by the City in accordance with this Agreement and evidencing the Developer's satisfaction of all obligations and covenants to construct the Development Project in accordance with the approved Construction Plans.

“City”: The City of O’Fallon, St. Clair County, Illinois, an Illinois municipal corporation and home rule unit.

“Corporate Authorities”: The duly elected City Council of the City.

“Construction Plans”: All plans, drawings, specifications, related documents, and construction schedules for the construction of the Improvements, together with all supplements, amendments or corrections, submitted by the Developer and approved by the City in accordance with this Agreement.

“Developer”: D & D Lodging, LLC, an Illinois Limited Liability company, or its successors or assigns.

“Development Costs”: Costs incurred in connection with the Development Project including, but not limited to:

- 1) Acquisition Costs;
- 2) Costs for the clearing and grading of land;
- 3) Costs for installing or constructing the Improvements for the not less than 30,000 square foot Conference Center along with all interior buildout, trim, wall partitions, wall coverings, lights, floor coverings and the enclosed walkway connection to the Hilton Garden Inn hotel;
- 4) All landscaping improvements (i.e. fountains, waterfalls, and plantings) in Lots 12 and 13 of The Shoppes at Green Mount or any Outlots that would be subdivided from said Lots 12 and 13;
- 5) Any and all on-site and off-site Conference Center signage.

“Development Project”: The construction of the Improvements and a conference center of not less than 30,000 square feet, which is to be adjoined to a Hilton Garden Inn hotel which shall have not less than 128-rooms and at Developer’s option a Hampton Inn which, if built, shall not have less than 90 rooms. The Hilton Garden Inn hotel and the optional Hampton Inn hotel are not part of the Development Project.

“Improvements”: All facilities and public improvements necessary to implement the Development Project including, without limitation, sidewalks; construction or improvement of parking lots or facilities; installation and relocation of utilities; construction of retaining structures and installation of stormwater control and detention facilities; landscaping and beautification; lighting; and signage on Lot 12 and at other locations within The Shoppes at Green Mount Development..

“Initiation of Construction”: The commencement of site work and setting the foundation necessary to construct the Improvements.

“Lease Agreement” shall mean the Lease Agreement between the City and the Developer which is attached hereto as **Exhibit B**.

“Property”: The real property situated within the City, excluding public streets and rights of way, which is necessary to construct the Development Project, as described on **Exhibit A**.

2. Contractor. The City hereby hires the Developer as the City’s general contractor to construct the Improvements, provided that nothing contained in this paragraph shall affect the

Developer's obligation to comply with all applicable zoning, building, fire, and safety codes and ordinances of the City, and to pay prevailing wage rates, if and as required by law. The Developer shall have sole responsibility for the selection and employment of all contractors, subcontractors, agents, employees, professionals and other personnel necessary to complete the Development Project and for all contracts or agreements between the Developer and any of the foregoing, including, without limitation, the right to structure construction contracts in one or more "packages" as deemed necessary and convenient in the sole discretion of the Developer. The Developer shall have sole control of the project site.

3. Developer's Performance of the Work. Developer shall initiate construction of the Development Project within six (6) months of the City's final approval of the Construction Plans and shall complete the Development Project within eighteen (18) months after Initiation of Construction; provided that the time for completion shall be extended for delays beyond the control of the Developer, including but not limited to, acts of God, inclement weather, strikes, inability to procure or a general shortage of labor, equipment, facilities, materials, or supplies, lockouts, acts of labor unions, condemnation, court orders, laws, or orders of governmental or military authorities, or other force majeure event as described in paragraph 8.

3.1 Construction Plans. The Developer shall submit for City approval Construction Plans in sufficient completeness and detail to show an architectural design and floor plan similar to that shown on Exhibit D-1 and D-2 and that construction of the Improvements will be in accordance with said plans and will conform to applicable City and State codes. The submittal of the Construction Plans shall also serve as the Developer's application for a building permit to construct the Development Project. The Construction Plans shall be prepared by a professional engineer or architect licensed to practice in the State of Illinois. Construction Plans and all construction practices and procedures with respect to the Improvements shall be in conformity with all applicable state and local laws, ordinances, and regulations. The Development Project and adjoining Hilton Garden Inn Hotel to be constructed shall have an exterior surface as provided in the final plans submitted by the developer to the City and approved by the City. All construction plans shall be processed by the City according to City ordinance to ensure compliance with all City ordinances and codes. Immediately upon approval of the final Construction Plans, the City shall issue a building permit for the Development Project at no additional cost. If the City rejects the Construction Plans, said rejection shall specify any and all deficiencies in or objections to the Construction Plans relating to lack of conformity with this Agreement or with applicable City or State codes, ordinances and regulations; provided that the City's failure to specify deficiencies in the Construction Plans relating to City or State codes, ordinances, and regulations shall not relieve the Developer of the Developer's obligation to perform the Improvements in accordance therewith. Following receipt of the rejection, the Developer shall submit new or corrected Construction Plans within thirty (30) days after the date the Developer receives written notice of the City's deficiencies of or objections to the Construction Plans referred to in the latest such notice. The provisions of this subparagraph relating to approval, rejection and resubmittal of the Construction Plans shall continue to apply to resubmittal of corrected Construction Plans until the Construction Plans have been approved by the City and a building permit for the Development Project issues. Said approval shall not be unreasonably withheld or delayed by the City. The Developer agrees that all construction work by the Developer or its agents or independent contractors shall be in substantial conformity with the Construction Plans as finally approved by the City. The City shall waive any and all inspection fees and permit fees in connection with the Conference Center and the City shall use its best efforts to assist Developer in obtaining the best rate for sewer and water tap in fees for the hotel or hotels constructed by Developer.

3.2 Changes. During the progress of the Development Project and the construction of the Improvements, the Developer may make such reasonable changes, including, without limitation, modification of the construction schedule, including dates of commencement and completion, modification of the areas in which the Improvements are to be performed, expansion or deletion of items, and any and all such other changes as site conditions or orderly development may dictate and as may be in furtherance of the general objectives of the City, provided that the Developer shall first obtain the consent of the City, which consent shall not be unreasonably withheld or delayed, before the Developer makes any such changes.

3.3 Certificate of Completion. Promptly after completion of the Improvements, the Developer shall request, in writing from the City, a Certificate of Completion certifying that the Improvements have been completed in accordance with this Agreement. Upon its acceptance of the Development project, the City shall issue to the Developer a Certificate of Completion. Certification by the City shall be a conclusive determination of the satisfaction of the Developer's construction of the Improvements. The Certificate of Completion provided for by this subparagraph shall be in a form which will enable recordation in the office of the St. Clair County Recorder. If the City shall refuse or fail to provide such certification at any time, the City shall, within thirty (30) days after receiving the written request of the Developer, provide to the Developer a written statement stating in adequate detail in what respects the Developer has failed to complete the Improvements in substantial accord with the provisions of this Agreement or is otherwise in default, and what reasonable measures or acts the Developer must take or perform, in the opinion of the City, to obtain such certification.

4. The Developer shall construct the Development Project according to the terms herein, with the total costs, not to exceed Six Million and 00/100 Dollars (\$6,000,000.00), less the amount paid to Developer for acquisition of the parcel of real estate, pursuant to the parties Agreement For Sale of Real Estate and on which the Development Project is to be constructed. Development Costs in excess of the sum aforesaid, may be reimbursed to Developer by the City subject to mutual agreement. Upon presentation by the Developer of the application and certification for payment signed by the architect and contractor ("AIA Document") setting forth the construction completed and invoices for the construction completed at the time of submittal of the invoices, the City shall, within fifteen (15) days, of its receipt of all such invoices, pay the Developer the amount of the invoices less ten percent (10%) retainage of the invoices unless the City does not approve of the AIA Document for which invoices are submitted or does not approve the invoices. Should the City not approve the AIA Document and or invoices, the City shall, within fifteen (15) days of receipt of such invoices, inform the Developer, in writing, its objections to the AIA Document for which the invoices are submitted or its objection to the invoices. Once the AIA Document and or invoices are approved, the City shall make immediate payment. The presentation of the AIA Document and invoices will not be accompanied by contractor's lien-waivers; however these lien-waivers will be presented to the City within fifteen (15) days of the receipt of payment by the City. Should the Contractor fail to provide the aforementioned documents, no payment will be made to the Contractor until the documents are so provided. Final contractor's lien waiver, final contractor's affidavit and final lien waiver from sub-contractors and suppliers shall be submitted to the City at the time of request for final payment. Final payment, including retainage, shall be paid to Developer at the time of the City's issuance of a Certificate of Completion.

5. Real Estate Contract. Prior to Initiation of Construction and conditioned upon the simultaneous execution of the Lease Agreement, the Developer shall sell, convey and transfer to the City, and the City shall purchase all rights, title and interests in the Property pursuant to the Agreement for the Sale of Real Property incorporated by reference and attached hereto as **Exhibit C**.

6. Assignment. The Developer's rights, duties and obligations under this Agreement shall be assignable to a business entity related to the Developer, upon prior written notice to the City. Any other assignment shall be subject to approval of the City, which approval shall not be unreasonably withheld or delayed; and provided further that the City shall promptly approve any assignment upon a reasonable demonstration of the proposed assignee's experience and capability to undertake and complete the Development Project in accordance with this Agreement.

7. Remedies. Except as otherwise provided in this Agreement, in the event of any default in or breach of any term or conditions of this Agreement by either party, or any successor or assign, the defaulting or breaching party (or successor or assign) shall, upon written notice from the other party, proceed immediately to cure or remedy such default or breach, and, shall, in any event, within fifteen (15) days after receipt of notice, commence to cure or remedy such default. In case such cure or remedy is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the aggrieved party may institute such proceedings as may be necessary or desirable at its option to cure and remedy such default or breach, including, but not limited to damages and proceedings to compel specific performance by the defaulting or breaching party. The defaulting party shall be obligated to pay the non-defaulting party's court costs and reasonable attorney's fees incurred in connection with enforcing or interrupting this Agreement.

8. Force Majeure. Neither the City nor the Developer nor any successor in interest or assign shall be considered in breach or default of their respective obligations under this Agreement, and times for performance of obligations hereunder shall be extended, in the event of any delay caused by force majeure, including, without limitation, damage or destruction by fire or other casualty; condemnation; strike; lockout; civil disorder; war; restrictive government regulations; issuance of any permits and/or legal authorization by any governmental entity (other than the City) necessary for the Developer to proceed with construction; shortage or delay in shipment of material or fuel; acts of God; unusually adverse weather or wet soil conditions; or other causes beyond the parties' reasonable control, including but not limited to, any court order or judgment resulting from any litigation affecting the validity of the Development Project, or this Agreement.

9. Notices. Any notice, demand, or other communication required by this Agreement to be given by either party hereto to the other shall be in writing and shall be sufficiently given or delivered if dispatched by certified United States First Class Mail, postage prepaid, or delivered personally,

(i) In the case of the Developer, to:

D & D Lodging, LLC
1331 Park Plaza Drive
Suite #4
O'Fallon, IL 62269

with a copy to:

Linda Kniepkamp
Greensfelder, Hemker & Gale
12 Wolf Creek
Suite # 100
Swansea, IL 62226

(ii) In the case of the City, to:

City Clerk
City of O'Fallon

City Hall, 255 South Lincoln
O'Fallon, Illinois 62269

with a copy to:

Dale Funk
Attorney at Law
807 West Highway 50
O'Fallon, IL 62269

Or to such other address with respect to either party as that party may, from time to time, designate in writing and forward to the other as provided in this paragraph.

10. Mutual Assistance. The parties agree to take such actions including the execution and delivery of such documents, instruments, petitions and certifications supplemental hereto, and the obtaining of grants of access to and easements over public property as may be necessary, obtaining variance to set back requirements as are reasonably required or appropriate to carry out the terms, provisions and intent of this Agreement and which do not impair the rights of the signing party as they exist under this Agreement, and to aid and assist each other in carrying out said terms, provisions and intent, provided that nothing herein shall be construed to obligate the City, acting as a party hereto to grant municipal permits or other approvals it would not be obligated to grant, acting as a political subdivision, absent this Agreement.

11. Miscellaneous Provisions.

11.1 Inspection. Prior to the completion of the Improvements, the Developer shall allow authorized representatives of the City access to the Development Project site from time to time upon reasonable advance notice for reasonable inspection thereof. This right of inspection shall be in addition to any inspection right of the City as authorized by its building and development code.

11.2 Choice of Law. This Agreement shall be taken and deemed to have been fully executed, made by the parties in and governed by the laws of State of Illinois for all purposes and intents.

11.3 Entire Agreement; Amendment. The parties agree that this Agreement constitutes the entire agreement between the parties and that no other agreements or representations other than those contained in this Agreement have been made by the parties. This Agreement shall be amended only in writing and effective when signed by the authorized agents of the parties.

11.4 Counterparts. This Agreement is executed in multiple counterparts, each of which shall constitute one and the same instrument.

11.5 Severability. In the event any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect, to the extent the remainder can be given effect without the invalid provision.

11.6 Binding on Successors. This contract shall bind and inure to the heirs, successors, administrators and permitted assigns of the parties.

11.7 Prevailing Wage Law. The Developer acknowledges that the Prevailing Wage Act (820 ILCS 130/0.01 *et seq.*) applies to the Development Project. The Developer, unless the City otherwise agrees in writing, will comply with the Prevailing Wage Act related to the Development Project.

12. Representatives Not Personally Liable. No official, agent, employee, or representative of the City shall be personally liable to the Developer in the event of any default or breach by any party under this Agreement, or for any amount which may become due to any party or on any of the obligations under the terms of this Agreement.

13. Representations of the Parties.

13.1 Representations of the City. The City hereby represents and warrants that the City has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms, duties, and obligations of this Agreement, including but not limited to the right, power and authority to issue the Bonds, subject to paragraph 6, and all of the foregoing have been or will be duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the City, enforceable in accordance with its terms.

13.2 Representations of the Developer. The Developer hereby represents and warrants that the Developer has full power under the laws of Illinois to execute and deliver and perform the terms, duties, and obligations of this Agreement, and all of the foregoing has been duly and validly authorized by all necessary corporate proceedings. This Agreement constitutes the legal, valid and binding obligation of the Developer, enforceable in accordance with its terms.

(The remainder of this page intentionally left blank)

IN WITNESS WHEREOF, the City and the Developer have caused this Agreement to be executed in their respective names and caused their respective seals to be affixed thereto, and attested as of the date first above written.

THE CITY OF O'FALLON

(SEAL)

By: _____
Gary Graham
Mayor

Attest:

City Clerk

D & D LODGING, LLC

(SEAL)

By: _____
Darrell G. Shelton
Member

By: _____
Darwin M. Miles
Member

EXHIBIT A

Legal Description of the Property

**PROPERTY DESCRIPTION FOR
PROPOSED LOT 12B**

ALL OF LOT 12B OF THE PROPOSED “ THE SHOPPES AT GREEN MOUNT, 1ST AMENDMENT AND THE NORTH ADJACENT 7.79 ACRES”, AND BEING A PART OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 2 NORTH RANGE 8 WEST OF THE THIRD PRINCIPAL MERIDIAN, ST. CLAIR COUNTY, ILLINOIS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 12 OF “THE SHOPPES AT GREEN MOUNT, REFERENCE BEING HAD TO THE PLAT THEREOF RECORDED IN DOCUMENT NUMBER A01916664 OF THE ST. CLAIR COUNTY LAND RECORDS, THENCE NORTH 89 DEGREES 54 MINUTES 11 SECONDS WEST ALONG THE NORTH LINE OF REGENCY (60.00 FEET WIDE) PARK FOR A DISTANCE OF 223.69 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT; THENCE CONTINUING ALONG SAID NORTH LINE OF REGENCY PARK, NORTH 89 DEGREES 54 MINUTES 11 SECONDS WEST FOR A DISTANCE OF 325.52 FEET; THENCE NORTHWESTERLY ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 270.00 FEET AN ARC LENGTH OF 164.78 FEET; THENCE LEAVING SAID NORTH LINE OF REGENCY PARK, NORTH 34 DEGREES 43 MINUTES 51 SECONDS EAST FOR A DISTANCE OF 53.00 FEET; THENCE NORTH 51 DEGREES 50 MINUTES 51 SECONDS WEST FOR A DISTANCE OF 18.87 FEET; THENCE NORTH 00 DEGREES 05 MINUTES 49 SECONDS EAST FOR A DISTANCE OF 271.49 FEET; THENCE SOUTH 89 DEGREES 54 MINUTES 11 SECONDS EAST FOR A DISTANCE OF 98.44 FEET; THENCE NORTH 00 DEGREES 05 MINUTES 49 SECONDS EAST FOR A DISTANCE OF 246.78 FEET TO THE NORTH LINE OF SAID LOT 12; THENCE SOUTH 89 DEGREES 30 MINUTES 43 SECONDS EAST ALONG SAID NORTH LINE FOR A DISTANCE OF 258.14 FEET; THENCE LEAVING SAID NORTH LINE, SOUTH 00 DEGREES 05 MINUTES 49 SECONDS WEST FOR A DISTANCE OF 245.01 FEET; THENCE SOUTH 89 DEGREES 54 MINUTES 11 SECONDS EAST FOR A DISTANCE OF 46.43 FEET; THENCE SOUTH 00 DEGREES 05 MINUTES 49 SECONDS WEST FOR A DISTANCE OF 186.40 FEET; THENCE SOUTH 89 DEGREES 54 MINUTES 11 SECONDS EAST FOR A DISTANCE OF 62.00 FEET; THENCE SOUTH 00 DEGREES 05 MINUTES 49 SECONDS WEST FOR A DISTANCE OF 189.07 FEET TO THE POINT OF BEGINNING AND CONTAINING 5.16 ACRES MORE OR LESS.

EXHIBIT B

Lease Agreement

EXHIBIT C

Agreement for the Sale of Real Property

EXHIBIT D-2

Floor Plan

