

RESOLUTION NO. 88-041

ADOPTED BY THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

ON DATE OF

May 17, 1988

AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT FOR THE HYATT REGENCY HOTEL PROJECT

BE IT RESOLVED BY THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO:

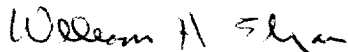
Section 1: The Executive Director is authorized to execute the attached Amendment to the DDA entered into and between the Redevelopment Agency of the City of Sacramento and JB and LE Regency Venture, dated September 16, 1986, providing for development of the Hyatt Regency Sacramento Hotel Project.

Section 2: The Executive Director is further authorized to take such actions and to execute such agreements and documents as required to carry out the terms and provisions of the amendment to the DDA and to make expenditures related thereto, subject to the budget limitation of the Project.



CHAIR

ATTEST:



SECRETARY

0039A

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SECOND AMENDMENT TO DISPOSITION
AND DEVELOPMENT AGREEMENT

This Amendment, made as of May _____, 1988, by and between the Redevelopment Agency of the City of Sacramento, a public body, corporate and public (hereinafter "Agency") and JB and LE Regency Venture, a California Limited Partnership (hereinafter "Redeveloper") amends that certain Disposition and Development Agreement ("the Agreement") between the parties hereto dated September 16, 1986.

In consideration of the mutual promises, obligations and covenants of the Agreement and this Amendment, the parties hereto do hereby amend the Agreement as follows:

1. Section 8(k) of the Disposition and Development Agreement is hereby amended to read as attached hereto as Exhibit "A".

APPROVED AS TO FORM:

REDEVELOPMENT AGENCY OF THE
CITY OF SACRAMENTO

Agency Counsel

BY _____

Chairman

BY _____

Secretary

JB AND LE REGENCY VENTURE,
A California Limited
Partnership

BY _____

President

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(k) Public Improvements

Redeveloper shall construct or have constructed, pursuant to plans and specifications approved by Agency, public improvements (hereinafter the "Public Improvements") upon the premises defined as the public rights-of-way along "K" Street between 12th and 13th Streets (approximately 18 feet wide by 360 feet in length); and along "L" Street from 12th to 13th Streets (approximately 17 feet wide by 400 feet in length) immediately surrounding the hotel project. The Public Improvements shall include curb, gutter, sidewalk, street lighting, landscaping, hard curb, gutter, sidewalk, street lighting, landscaping, hard surface treatment, in accordance with the Preliminary Plan attached as Exhibit "I" and Final Plans and Specifications approved by the Agency. In addition the Redeveloper shall construct or have constructed pursuant to plans and specifications approved by the City of Sacramento attached as Exhibit "J" a fifteen (15) inch sewer replacement and drainage improvements in "K" Street between 12th and 13th Streets.

(i) Joint Construction

The parties mutually acknowledge that engineering design, proper scheduling and coordination of construction and necessary cost efficiency require that construction of the Public Improvements, Hotel, Public Garage, Hotel Garage, commercial space be accomplished by the same contractor. Therefore, it is agreed that the construction of the Public Improvements shall be accomplished by the Redeveloper's contractor provided that, in the selection of said contractor and in determination of the contract amount, Redeveloper shall employ such procedures, provisions and agreements as shall be reasonably necessary in the judgment of the Agency counsel, to comply with applicable law. Notwithstanding any other provision hereto, this provision shall not be deemed or construed to require any illegal act or agreement by Agency.

(ii) Plans and Specifications

Redeveloper shall perform all work on the Public Improvements in strict adherence to the final plans and specifications as approved by the Agency in accordance with this Agreement.

(iii) Cost of Improvements

Agency shall reimburse the Redeveloper for the total cost of the subject Public Improvements and subject sewer/drainage improvements which shall in no event

exceed ONE MILLION THREE HUNDRED AND SEVEN THOUSAND AND NO/100 DOLLARS (\$1,307,000). Subject to the foregoing dollar limitation and to the extent of costs for the Public Improvements are determined by an independent engineer and by an independent certified public accountant designated by the Agency and retained at Redeveloper's sole cost and expense, the total cost for the Public Improvements shall include payment for actual cost of construction of the Public Improvements including labor and materials, paving, tree planters, brick pavers, concrete work, excavation, form work, street lighting fixtures, landscaping, irrigation, mechanical, grading, demolition, site preparation, construction liability insurance, construction project management service's city building permit fees, art commissioned in satisfaction of Art in Public Places requirements and EXCLUDE therefrom (1) costs attributable to those portions adjacent to the hotel utilized solely by Redeveloper and/or the Hotel Operator, provided that if Agency, in its sole and complete discretion is dissatisfied with allocation and/or certification of the aforesaid amount, Agency may designate at Redeveloper's sole determinations shall be final and binding on all parties. The total cost for the sewer/drainage improvements is established at \$57,000.

Upon the completion of construction as defined, herein, the Redeveloper shall convey the completed Public Improvements to the Agency. The Redeveloper agrees to convey and the Lenders agree to release and reconvey the Public Improvements to the Agency and from any and all liens which the Lenders may have against any real or personal property interest of the Agency and/or the Redeveloper.

As to the foregoing Public Improvements, if Agency payment is not sufficient to provide for the completion all or any portion of all such Public Improvements by reason of the dollar limitation above, Redeveloper shall nonetheless complete all such Public Improvements at its own cost and expense.

(iv) Payment for Improvements

Upon acceptance by the Agency and the City of Sacramento of the completed Public Improvements, the Agency shall reimburse the Redeveloper for the total cost of the Public Improvements as per Subpart (k)(iii) of this Section as follows: (1) a \$287,000 cash payment to the Redeveloper; and (2) the balance of the costs for the Public Improvements

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shall be deducted from the payments which are due to the Agency from the Redeveloper pursuant to Article 3, Section 13.02 (1), Parking Operating Agreement of the Ground Lease between the parties, dated October 24, 1986.

In lieu of any interest accruing on the balance of the costs for the Public Improvements, Agency shall convey, in fee, to Redeveloper the Agency-owned property described in Exhibit "_____". Said Agency-owned property having a fair market value equal to or less than the total projected interest that would otherwise accrue on the balance of the costs for Public Improvements.

(v) Construction Representative

Agency shall at Agency's expense, have its representative ("Contract Agent") on the Public Improvements construction sites during all phases of construction. The Contract Agent shall review the work of construction and the materials used in the construction to determine quality and adequacy in accordance with the plans and specifications for the Public Improvements. Each request for progress payment and each change order request made by Redeveloper shall be subject to the written approval of the Contract Agent. The Contract Agent shall review, for his approval and signature, each change order made by Redeveloper. Redeveloper shall, at all times, provide the Contract Agent with full access to the construction site, storage and testing sites related to the construction work and all books, records and documents related to the construction work. Redeveloper's failure to provide such access or Redeveloper's interference with the Contract Agent's performance of his duties shall be a material breach of this Agreement.

(vi) Change Orders

Change orders for construction of the Public Improvements shall be subject to the following:

- (a) Redeveloper and its representatives shall not authorize any change orders that would increase the cost of the project without the prior written consent of the Agency.
- (b) The Agency shall grant or deny any written change order submitted to it by the Redeveloper within two (2) working days. If a change order causes the aggregate amount

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of the change orders for any construction budget line item to exceed the original budget amount for such line item by more than five percent (5%), the Agency shall have thirty (30) days in which to deny or grant such change order and any subsequent change order for such budget line item. If a change order causes the aggregate amount of change orders to exceed the total amount of the original budget by more than five percent (5%), the Agency shall have thirty (30) days in which to deny or grant such change order.

(vii) Public Works Requirements

The contract between Redeveloper and any contractor ("Contractor") for construction of the Public Improvements shall be subject to, and contain appropriate terms in accordance with the following provisions:

(a) Wages

Redeveloper shall pay and cause to be paid prevailing rates of wages, in accordance with Part 7 Article 2 of the California Labor Code (commencing with Section 1770), for all work done in connection with the Public Improvements.

(b) Apprentices

Redeveloper shall comply with, and cause compliance with, provisions regarding employment and compensation of apprentices in accordance with Part 7 Article 2 of the California Labor Code, Section 1777.5, for all work.

(c) Working Hours

Redeveloper shall comply with, and cause compliance with, work hour certification and stipulated damages requirements for public works as set forth in Part 7 Article 3 of the California Labor Code (commencing with Section 1810) for all work.

(d) Worker's Compensation

Redeveloper shall secure and cause to be secured Worker's Compensation insurance as set forth in Division 4, Part 1, Chapter 4 of

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the Labor Code (commencing with Section 3700) for all employees on the work in accordance with Part 7 Article 5 of the California Labor Code (commencing with Section 1860).

(e) Security Deposit in Lieu of Retention

Agency and Redeveloper shall agree that Redeveloper's contractor for the Project may provide security deposits in lieu of retention in accordance with Chapter 13 of Division 5 of Title 1 of the Government Code (commencing with Section 4590).

(f) Payroll Records

In order to provide proof of compliance with the above provisions, Redeveloper shall maintain, and cause all contractors and subcontractors, to maintain full and accurate payroll records during the course of the work and for a period of one (1) year after issuance of certificate of completion on the work.

(g) Preference for Materials

Redeveloper shall comply with, and cause compliance with Division 2 Part 1 Chapter 3 Article 5 of the Public Contracts Code (commencing with Section 3400) regarding preference for materials for all of the work.

(h) Subcontracting

Redeveloper shall comply with, and cause compliance with Division 2 Part 1 Chapter 4 of the Public Contracts Code (commencing with Section 4100) regarding the rights and remedies of subcontractors for all of the work.

(i) Certification

Redeveloper shall provide, and cause to be provided certification that Redeveloper and Redeveloper's contractor has read and acknowledges all of the statutes set forth in this Paragraph, and stipulates to comply therewith.

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(viii)

Agency Requirements

The contract between Redeveloper and Contractor for construction of the Public Improvements shall be subject to, and contain terms in accordance with the following provisions:

(a) Approval of General Contract.

The terms and provisions of the agreement between Redeveloper and Contractor to perform the work of the Public Improvements shall be subject to the prior written approval of the Agency. Such approval shall not be unreasonably withheld.

(b) Minority Business Enterprise/Women Business Enterprise

On all construction pursuant to the Public Improvements, Redeveloper shall comply, or cause compliance with Agency's "Minority Business Enterprise (MBE) and Women's Business Enterprise (WBE) Utilization Plan".

(c) Local Hire

Redeveloper shall use its best efforts to hire, or cause to be hired, for no less than fifty percent (50%) of the cost of the work relating to direct labor of the Public Improvements, local contractors and subcontractors with permanent places of business within the County of Sacramento. To the extent that labor for any portion of the Public Improvements is not available within the County, such portion shall not be included in determining the said percentage. Agency shall have the right to approve the computations as described in the foregoing sentence. If Redeveloper fails to comply with the aforesaid, Redeveloper shall give written justification for such failure including a detailed listing of all efforts made to effect such compliance.

(d) Warranty

If, within one year after the date of substantial completion of the construction of the Public Improvements, any of the work of such construction is found to be defective or

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not in accordance with this Agreement and approved Plans and Specifications, the Redeveloper and Contractor, at their expense, shall correct it promptly after receipt of a written notice from the Agency to do so unless the Agency has previously accepted the condition in writing. If Redeveloper and Contractor fail to promptly cure the defect, Agency shall have the right to effect such cure and to receive reimbursement from Redeveloper for the cost of such cure.

(e) Demolition and Site Preparation

Redeveloper will be responsible for all demolition and site preparation for all portions of the construction of the Public Improvements, the costs for which are to be included in the total cost for the Public Improvements.

(f) Bonds

Prior to commencement of construction of the Public Improvements, the Redeveloper shall obtain public works performance bonds and a labor and materials payment bonds for the Public Improvements in favor of the Agency as a named obligee, in accordance with Public Contracts Code Section 20688.4. Said Bonds shall be in forms substantially the same as American Institute of Architects Form A311 and shall secure faithful performance of the terms of the contract for construction of the Public Improvements, and securing payment of all labor and material suppliers and subcontractors for the work of this Agreement. The bonds shall be written with a surety listed as acceptable to the federal government on its most recent such list of sureties. In lieu of such bonds, Redeveloper may provide cash equivalent or real property security in a form and amount acceptable to and verified and approve by the Agency.

(g) Agency's Completion of Construction

Notwithstanding any other provision of this Agreement if the Redeveloper fails to commence construction of the Public Improvements on the date stated in the Schedule of Performance, or fails to diligently prosecute the construction of the Public Improvements and to substantially

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complete such construction within thirty (30) days following the date stated for substantial completion in the Schedule of Performances unless extended in accordance with this Agreement, the Agency may, upon five (5) days written notice to the Redeveloper, and with or without legal process, take possession of the area of the Public Improvements, remove the Redeveloper and all agents, employees and contractors of the Redeveloper from the Public Improvements, complete the work of construction. All contracts with architects, engineers, contractors, subcontractors, suppliers and other entities related to the construction of the improvement shall be immediately assigned to the Agency upon Agency demand after such failure by Redeveloper.

(ix) Completion of Improvements

The Redeveloper shall complete the subject Public Improvements in accordance with the requirements for completing the hotel project which is twenty-four (24) months after the effective date of this Agreement, not later than October 16, 1988 as per the Schedule of Performance included as Exhibit "E" to this Agreement.

(x) Liquidated Damages

If the Redeveloper should default upon its obligations under this amendment making it necessary for the Agency to terminate this Agreement and to procure another party or parties to construct the Public Improvements substantially under the terms of this Agreement, then the resulting damages suffered by the Agency would be uncertain. Such damages would involve variable factors including the costs of identifying, obtaining and negotiating with such other party; the amount of compensation which such other party would require for the Work; the impact upon the progress of the redevelopment of other properties in the area; and the failure to the Agency to effect its purposes and objectives within a reasonable time, resulting in additional immeasurable damage and loss to the Agency and the community. It is impracticable and extremely difficult to fix the amount of such damages to the Agency, but the Agency is of the opinion, upon the basis of all information available to it, that such damages would be approximately the following:

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(a) Default in construction of the Public Improvements, \$200,000

Therefore, the Agency and the Redeveloper agree in advance that the said sum shall be paid to the Agency upon the occurrence of a default in the construction of the Public Improvements as liquidated damages and not as a penalty, except as otherwise provided herein.

In the event that this subsection should be held to be void for any reason, the Agency shall be entitled to the full extent of damages otherwise provided by law.

Acknowledgement of Liquidated Damages Provisions

The Agency and the Redeveloper agree that the provisions of this subsection, as they relate to liquidated damages if Redeveloper fails to fulfill the terms and conditions of this amendment to the Agreement, are valid and binding between the parties to this Agreement.


APPROVED AS TO FORM:


Agency Counsel

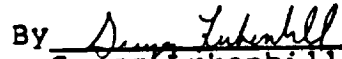
REDEVELOPMENT AGENCY OF THE
CITY OF SACRAMENTO

REDEVELOPER:

JB AND LE REGENCY VENTURE,
A California Limited
Partnership


Joseph Benvenuti, President


CHAIRMAN

By 
Gregg Lukenbill
Vice President

(xi) Liability Insurance

The Redeveloper shall obtain and maintain, and require the contractor and subcontractors to purchase and maintain such insurance as will protect him from the following claims which may result from the construction of the Public

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Improvements by the Redeveloper, any contractor, subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- (a) Claims under workers' compensation benefit acts;
- (b) Claims for damages because of bodily injury, occupational sickness or disease, or death of his employees;
- (c) Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees;
- (d) claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Redeveloper, or (2) by any other person;
- (e) Claims for damages, other than to the Project itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- (f) Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle; and
- (g) Claims for contractual liability arising from the Redevelopers' obligations under this Agreement.

(xii) Liability Insurance Policy Limits

The insurance required by Section 8 subsection (k), Subpart (xi) of this Section shall be written for not less than the following limits of liability:

- (a) Worker's Compensation in the State: Statutory Limits as set forth in Article 1 (commencing with Section 3700) of Chapter 4 of Part 1 of Division 4 of the California Labor Code. Employer's Liability: Not less than \$2,000,000.
- (b) Commercial General Liability, Occurrence Form, Coverages A, B, and C: with a policy limit not less than \$1,000,000 aggregate limits.

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- (c) Comprehensive Automobile Liability for any vehicle used for or in connection with the work (owned, nonowned, hired, leased): \$1,000,000.

(xiii) Builder's "All Risk" Insurance

Redeveloper shall obtain and maintain, or require its contractor to obtain and maintain at all times during the course of construction Builder's Risk Insurance for protection against all loss of, or damage to the Public Improvements or materials, on-site and off-site, to be used in the construction of the Public Improvements to their full insurable value. Said Builder's Risk Insurance shall name the Agency as a loss-payee as its interests may appear, and all subcontractors as their interests may appear. Said insurance shall include fire and extended coverage and "all risk" insurance for physical loss or damage including without duplication of coverage, theft, vandalism and malicious mischief and excepting flood and earthquake damage. The Redeveloper shall be responsible for materials stored on-site or in transit unless supplied by Agency and shall obtain and maintain similar insurance for any of the materials not otherwise covered by the said "all risk" insurance. Said insurance shall have a maximum deductible of TWENTY-FIVE THOUSAND DOLLARS (\$25,000).

The Redeveloper shall obtain and maintain such equipment insurance as required by the contractor or by law which insurance shall insure the interests of the Agency, the Contractor and all subcontractors in said work as their interest may appear.

(xiv) Insurance Provisions

The insurance policies required under this subpart shall include the following provisions:

- (a) The Redeveloper shall name the Agency as named insured on all insurance policies, except the worker's compensation policy. If the Agency gives prior written consent, the Redeveloper may name the Agency as an additional insured on said insurance policies. Agency shall have the right to arbitrarily withhold such consent.

- (b) Each policy of insurance required under this Agreement shall be obtained from a provider licensed to do business in California and having not less than a Best's Insurance Guide current rating of A-XV and shall bear an endorsement precluding cancellation or termination of the policy or reduction in coverage unless the Agency has been give written notice of such intended action at least thirty (30) days prior to its effective date.
- (c) The Redeveloper shall provide to Agency certificates of said insurance prior to commencing the work of this Agreement and shall provide to Agency the policies of said insurance as soon as available.
- (d) If Redeveloper fails to maintain any insurance required by this Agreement, the Agency shall have the right to purchase the insurance and Redeveloper shall promptly reimburse the Agency the full cost of such insurance, the amount of unpaid reimbursement shall be deducted from Redeveloper's Deposit and Redeveloper shall be deemed in default of this Agreement unless Redeveloper then replenishes the Deposit within fifteen (15) days after notice of such deduction.

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