

EXHIBIT D

PROJECT BUDGET — SUMMARY OF PROPOSED EXPENDITURES

Line Item Activity	SOURCES OF FUNDS			
	UDAG Funds	Private Funds	Other Funds	Total Costs
a. Land Acquisition				
b. Streets & Site Improvements				
c. Parking Facilities				
d. Foundations and Platforms				
e. Pedestrian Malls				
f. Water and Sewer Facilities			\$140,000	\$140,000
g. Clearance and Demolition				
h. Relocation of Persons and Businesses				
i. Parking Garage	\$600,000	\$1,000,000		1,600,000
j. Hotel Development	1,600,000	7,925,000		9,525,000
k. Capital Equipment		1,800,000		1,800,000
l. Landscaping		50,000		50,000
m.				
n. Administration	20,000			20,000
o. Subtotal (Sum of lines a. - n.)	2,220,000	10,775,000	140,000	13,135,000
p. Contingencies				
q. Grant Amount (Sum of lines o. + p.)	2,220,000			
r. Program Income (Revenue from UDAG Funds)				
s. TOTAL PROJECT COSTS (Sum of lines q. + r.)	\$2,220,000	\$10,775,000	\$140,000	\$13,135,000

NOT LEGIBLE FOR MICROFILM

BOOK 1955 PAGE 440

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X

CENTRAL BUSINESS DISTRICT REDEVELOPMENT PROJECT

PROVO, UTAH

DOWNTOWN PROVO HOTEL SITE

GALLERY TITLE CO

UTAH COUNTY RECORDER
DEPUTY
PR. ABS. IND.
NINA B. HICLID
DEC 22 1981
11/22/81

1981 DEC 22 AM 9:09

RECORDED AT THE REQUEST OF
GALLERY TITLE CO.

35834

GROUND LEASE AND JOINT DEVELOPMENT AGREEMENT

(Amended as of November 24, 1981)

By and Between

PROVO CITY REDEVELOPMENT AGENCY,

Lessor-Agency

And

PROVO EXCELSIOR LIMITED

Lessee-Developer

BOOK 1955 PAGE 291

10/21/81

TABLE OF CONTENTS

	<u>PAGE</u>
I. [\$100] SUBJECT OF AGREEMENT _____	1
A. [\$101] Purpose of the Agreement _____	1
B. [\$102] The Redevelopment Plan _____	2
C. [\$103] The Project Area _____	2
D. [\$104] The Site _____	2
E. [\$105] Parties to the Agreement _____	3
1. [\$106] The Lessor-Agency _____	3
2. [\$107] The City _____	3
3. [\$108] The Lessee-Developer _____	3
F. [\$109] UDAG Grant Agreement _____	4
II. [\$200] LEASE OF THE HOTEL PARCEL TO LESSEE-DEVELOPER BY THE LESSOR-AGENCY _____	5
A. [\$201] Lease _____	5
B. [\$202] Term of the Lease _____	5
C. [\$203] Option to Renew the Lease _____	5
D. [\$204] Rent _____	6
1. [\$205] Minimum Annual Rent _____	6
2. [\$206] Supplemental Annual Rent _____	6
E. [\$207] Annual Net Income Defined _____	7
F. [\$208] Annual Gross Operating Profit Defined _____	7
G. [\$209] Annual Gross Revenue Defined _____	7
H. [\$210] Lease Year Defined _____	8

	<u>PAGE</u>
I. [\$211] Delinquency In Rental Payments _____	8
J. [\$212] Financial Records _____	8
K. [\$213] Notice, Demand and Set-off of Rents _____	9
L. [\$214] Additional Rent _____	9
M. [\$215] Subordination of Rent or Other Sums _____	10
N. [\$216] Option to Purchase Hotel Parcel _____	11
III. [\$300] CONVEYANCE OF LEASEHOLD INTEREST _____	13
A. [\$301] Lease of Hotel Parcel _____	13
B. [\$302] Conveyance of Leasehold Interest and Delivery of Possession _____	13
C. [\$303] Taxes and Assessments _____	13
D. [\$304] Occupants of Hotel Parcel _____	13
E. [\$305] Zoning on the Site _____	14
F. [\$306] Access to and Entry by Lessee-Developer Upon the Hotel Parcel _____	14
G. [\$307] Submission of Evidence of Equity _____	14
H. [\$308] Condition of Hotel Parcel _____	14
IV. [\$400] JOINT DEVELOPMENT OF THE SITE BY LESSEE- DEVELOPER AND THE LESSOR-AGENCY _____	15
A. [\$401] Scope of Development of the Site _____	15
B. [\$402] Responsibilities of Lessee-Developer _____	15
1. [\$403] Basic Concept Drawings _____	15
2. [\$404] Construction Drawings and Related Documents _____	15
3. [\$405] Approvals of Plans, Drawings and Related Documents _____	16

	<u>PAGE</u>
4. [\$406] Cost of Construction _____	17
5. [\$407] Construction Schedule of Performance _____	17
6. [\$408] Indemnification During Construction; Bodily Injury and Property Damage Insurance _____	17
7. [\$409] City and Other Governmental Agency Permits _____	18
8. [\$410] Right of Access _____	19
9. [\$411] Local, State and Federal Laws _____	19
10. [\$412] Antidiscrimination During Construction _____	19
C. [\$413] Responsibilities of the Lessor-Agency _____	19
D. [\$414] Certificate of Completion _____	20
V. [\$500] USE OF THE SITE AND THE IMPROVEMENTS _____	21
A. [\$501] Use of the Hotel Parcel _____	21
B. [\$502] Management of the Hotel Parcel _____	21
C. [\$503] Obligation to Refrain from Discrimination _____	21
D. [\$504] Rights of Access - Public Improvements and Facilities _____	22
E. [\$505] Quiet Enjoyment _____	22
VI. [\$600] TAXES, ASSESSMENTS AND CHARGES AGAINST HOTEL PARCEL _____	23
A. [\$601] Utilities _____	23
B. [\$602] Taxes and Impositions _____	23

	<u>PAGE</u>
1. [\$603] Payment Generally _____	23
2. [\$604] Payment of Impositions in Installments _____	24
3. [\$605] Lessor-Agency Right to Cure _____	24
4. [\$606] Tax Receipts _____	24
5. [\$607] Limits of Tax Liability _____	25
6. [\$608] Permitted Contests _____	25
C. [\$609] Other Liens _____	26
 VII. [\$700] OWNERSHIP OF AND RESPONSIBILITY FOR IMPROVEMENTS _____	 28
A. [\$701] Ownership During Term _____	28
B. [\$702] Ownership at Termination _____	28
C. [\$703] Maintenance and Repair of Improvements _____	28
D. [\$704] Waste _____	29
E. [\$705] Alteration of Improvements _____	29
F. [\$706] Expansion of Improvements _____	30
G. [\$707] Damage or Destruction _____	30
H. [\$708] Damage or Destruction During Final Years of Term _____	31
I. [\$709] Faithful Performance and Labor and Material (Payment) Bonds; Indemnification _____	31
 VIII. [\$800] PROHIBITION AGAINST ASSIGNMENT, SUBLETTING, AND TRANSFER _____	 33
A. [\$801] Warranty Against Speculation _____	33
B. [\$802] Prohibition Against Change in Ownership or Control of Lessee-Developer _____	33

	<u>PAGE</u>
C. [\$803] Prohibition Against Transfer _____	34
D. [\$804] Proceeds from Transfer _____	35
IX. [\$900] MORTGAGES _____	36
A. [\$901] Leasehold Mortgages _____	36
B. [\$902] Rights and Obligations of Leasehold Mortgagees _____	37
C. [\$903] Lessor-Agency's Right to Cure Lessee-Devel- oper's Defaults on Leasehold Mortgages _____	41
D. [\$904] Additional Rights and Obligations of Leasehold Mortgagee and Agency During Construction Period _____	43
1. [\$905] Leasehold Mortgagee not Obligated to Construct Improvements _____	43
2. [\$906] Leasehold Mortgagee's Right to Complete Improvements _____	43
3. [\$907] Failure of Leasehold Mortgagee to Complete Improvements _____	43
4. [\$908] Right of the Lessor-Agency to Cure Lease- hold Mortgage Default _____	44
E. [\$909] Nonmerger _____	45
F. [\$910] Mortgagee Modifications _____	45
G. [\$911] Subordination of Fee _____	45
H. [\$912] Excess Mortgage Proceeds _____	47
X. [\$1000] INDEMNIFICATION AND INSURANCE _____	48
A. [\$1001] Indemnification _____	48
B. [\$1002] Required Insurance _____	48
C. [\$1003] Definition of "Full Insurable Value" _____	50

	<u>PAGE</u>
D. [§1004] General Insurance Provisions _____	50
E. [§1005] Failure to Maintain Insurance _____	51
F. [§1006] Disposition of Insurance Proceeds Resulting from Loss or Damage to Improvements _____	51
 XI. [§1100] EMINENT DOMAIN _____	 53
 XII. [§1200] DEFAULTS, REMEDIES AND TERMINATION _____	 56
A. [§1201] Defaults - General _____	56
B. [§1202] Legal Actions _____	56
1. [§1203] Institution of Legal Actions _____	56
2. [§1204] Applicable Law _____	56
3. [§1205] Acceptance of Legal Process _____	57
C. [§1206] Rights and Remedies are Cumulative _____	57
D. [§1207] Damages _____	57
E. [§1208] Specific Performance _____	57
F. [§1209] Additional Remedies of the Lessor-Agency _____	58
G. [§1210] Rights of Termination Prior to Commencement of the Lease Term _____	59
1. [§1211] Termination by Lessee-Developer _____	59
2. [§1212] Termination by Lessor-Agency _____	60
H. [§1213] Lessor-Agency Right of Reentry and Termination _____	61
I. [§1214] Attorney's Fees and Court Costs _____	64
J. [§1215] Limitation of Liability _____	64

		<u>PAGE</u>
XIII.	[\$1300] GENERAL PROVISIONS _____	65
	A. [\$1301] Notices, Demands and Communications Between Parties _____	65
	B. [\$1302] Conflict of Interests _____	65
	C. [\$1303] Warranty Against Payment of Consideration for Agreement _____	65
	D. [\$1304] Nonliability of City and Lessor-Agency Officials and Employees _____	65
	E. [\$1305] Enforced Delay; Extension of Times of Performance _____	65
	F. [\$1306] Inspection of Books and Records _____	66
	G. [\$1307] Approval by the City, the Agency and Lessee-Developer _____	66
	H. [\$1308] Plans and Data _____	66
	I. [\$1309] Submission of Documents for Approval _____	67
	J. [\$1310] Broker's Commission _____	67
	K. [\$1311] Compliance with Law _____	67
	L. [\$1312] Effect and Duration of Covenants _____	67
	M. [\$1313] Surrender of Property _____	68
	N. [\$1314] Severability _____	68
	O. [\$1315] Binding Effect _____	68
	P. [\$1316] Recording of Lease _____	68
	Q. [\$1317] Covenant of Parking Availability _____	68
XIV.	[\$1400] ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS _____	70
XV.	[\$1500] TIME FOR ACCEPTANCE OF AGREEMENT BY LESSOR-AGENCY _____	71

ATTACHMENTS

Attachment No.1A	-	Site Map
Attachment No.1B	-	Legal Description of Site
Attachment No.1C	-	Legal Description of Hotel Parcel
Attachment No.2	-	Method of Financing
Attachment No.3	-	Scope of Development
Attachment No.4	-	Certificate of Completion
Attachment No.5	-	Schedule of Performance
Attachment No.6	-	UDAG Grant Agreement

GROUND LEASE AND JOINT DEVELOPMENT AGREEMENT

THIS GROUND LEASE AND JOINT DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between the PROVO CITY REDEVELOPMENT AGENCY ("Lessor-Agency") and PROVO EXCELSIOR LIMITED ("Lessee-Developer"). The Lessor-Agency and the Lessee-Developer agree as follows:

I. [§100] SUBJECT OF AGREEMENT

A. [§101] Purpose of the Agreement

The purpose of this Agreement is to effectuate the Re-development Plan for the Central Business District Redevelopment Project by providing for the development and operation of a full service, high quality hotel facility on a portion of the Project area to be leased by the Lessee-Developer from the Lessor-Agency, and the development of public parking facilities on an adjacent parcel by the Lessor-Agency. The lease of a portion of the hereinafter defined Site and the development and operation of such hotel and parking facilities on the Site pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the Lessor-Agency and the City of Provo, Utah (the "City"), and the health, safety, morals, and welfare of the residents of the City, and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements.

The Lessor-Agency and an entity entitled Provo Plaza, Inc., a California corporation, entered into a Joint Development Agreement dated January 12, 1978 providing for the lease and development of a portion of the Central Business District Redevelopment Project, to effectuate the Redevelopment Plan for the Project. On May 18, 1978 the Lessor-Agency and Provo Plaza, Inc. entered into a First Implementation Agreement to the Joint Development Agreement whereby the ownership and control of Provo Plaza, Inc. was transferred to Robert L. Schwartz. On May 18, 1978 Provo Plaza, Inc., Robert L. Schwartz and Hotel Development Consultants, Inc. assigned and delegated to Plaza Development Incorporated, a Utah corporation, all of their rights and duties under the Joint Development Agreement as changed by the First Implementation Agreement. On May 18, 1978 the Lessor-Agency and Plaza Development Incorporated entered into a Second Implementation Agreement to the Joint Development Agreement to reflect the change of the developer from Provo Plaza, Inc. to Plaza De-

velopment Incorporated as provided in the aforementioned First Implementation Agreement and Assignment and Delegation Agreement, and making certain adjustments relative to such change. On October 12, 1978 the Lessor-Agency and Plaza Development Incorporated entered into a Third Implementation Agreement changing the Revised Schedule of Performance to the Joint Development Agreement. Plaza Development Incorporated has assigned to Lessee-Developer all of its interest in the Project.

This Agreement terminates, supersedes and replaces the Joint Development Agreement of January 12, 1978, the First and Second Implementation Agreements of May 18, 1978, the Assignment and Delegation Agreement of May 18, 1978, and the Third Implementation Agreement of October 12, 1978.

This Agreement was entered into November 4, 1980 and is hereby amended on the date this Agreement as amended is signed by the Lessor-Agency after it has been signed by the Lessee-Developer.

B. [§102] The Redevelopment Plan

This Agreement is subject to the provisions of the Redevelopment Plan which was approved and adopted on November 9, 1976 by Ordinance No. 475, and readopted with larger boundaries on July 18, 1979 by Ordinance No. 711 of the City Commission of the City of Provo. The entire Redevelopment Plan is incorporated into this Agreement by this reference.

C. [§103] The Project Area

The "Project area" is located in the City of Provo, Utah. The exact boundaries of the Project area are specifically described in the Redevelopment Plan.

D. [§104] The Site

The "Site" is that portion of the Project area shown on the "Site Map" attached hereto as Attachment No. 1A and legally described in the "Legal Description of the Site" attached hereto as Attachment No. 1B. Said Attachments 1A and 2B are incorporated herein by this reference.

The Site is comprised of two parcels, the "Hotel Parcel" and the "Parking Parcel." The Hotel Parcel, legally described in the "Legal Description of the Hotel Parcel" attached hereto as Attachment No. 1C and incorporated herein by this reference, is that portion of the Site which will be leased to Lessee-Developer by the Lessor-Agency, and upon which the hotel facility will be constructed. The "Parking Parcel" includes all other portions

of the Site. The boundaries of each Parcel within the Site are indicated on the Site Map and will be more specifically established at the time the plans prepared by Lessee-Developer and approved by the Lessor-Agency fix the location of the Hotel improvements. Wherever used herein, the term "Site" shall mean and include both such Parcels.

Prior to the commencement of the lease term hereunder for the Hotel Parcel, and by mutual agreement of the Agency, the City and Lessee-Developer, the boundaries of the Site or of either of the Parcels comprising the Site may be changed, or the site or either of such Parcels may be divided into more or less parcels.

E. [§105] Parties to the Agreement

1. [§106] The Lessor-Agency

The Lessor-Agency is a public body, corporate and political, exercising governmental functions and powers, and organized and existing under the Utah Neighborhood Development Law, Chapter 19, Title 11, of the Utah Code Annotated, 1953, as amended.

The principal office of the Lessor-Agency is located at 351 West Center Street, Provo, Utah 84601.

2. [§107] The City

The City is a general law city exercising governmental functions and powers, and organized and existing under the laws of the State of Utah.

The principal office of the City is located at City Hall, 359 West Center Street, Provo, Utah 84601.

3. [§108] The Lessee-Developer

The Lessee-Developer is, at the date of signing, a general partnership which includes Robert L. Schwartz, Peter F. Edelman, Henry R. Silverman and Adrian B. Werner as the General Partners. Prior to the "Commencement of the Lease Term" (defined below), the Lessee-Developer will be reconstituted as a Utah limited partnership comprised of the aforementioned individuals as the General Partners, Calvin Klein, Barry Schwartz, Trust for the Benefit of Calvin Klein's Issue and Trust for the Benefit of Barry Schwartz's Issue as the Class

A Limited Partners, and H. Mark Magleby and John K. M. Olsen as the Class B Limited Partners. The principal office of Lessee-Developer for purposes of this Agreement is The Clocktower, Suite 2D, Cottontree Square, 2230 North at University Parkway, Provo, Utah 84604, or such other office of which the General Partners shall notify the Lessor-Agency in writing.

Wherever the term "Lessee-Developer" is used herein, such term shall include any permitted nominee or assignee as herein provided.

F. [§109] UDAG Grant Agreement

The Agreement is subject to the provisions of the UDAG Grant Agreement entered into on October 7, 1980 by the City and the United States Dept. of Housing and Urban Development pursuant to UDAG Grant No. B-80-AA-49-0003, and amended December 17, 1981. The provisions of said UDAG Agreement as amended are attached hereto and made a part hereof as Attachment No. 6 and all promises, commitments, covenants, provisions, representations, warranties, assurances, acknowledgments, or agreements required to be performed by Lessee-Developer in said UDAG Agreement as amended have been or shall be performed by Lessee-Developer.

In accordance with Article IX, Sections 9.04 through 9.11, of the UDAG Agreement, Lessee-Developer hereby represents, warrants, acknowledges and covenants as follows:

1. Lessee-Developer has obtained, or has reasonable assurance from Lessor-Agency that there will be obtained, all federal, state and local governmental approvals and reviews required by law to be obtained by Lessee-Developer for the project.

2. Lessee-Developer acknowledges that the Secretary of Housing and Urban Development or any other official of HUD to whom the Secretary has delegated authority to act with respect to matters covered by this UDAG Agreement (collectively, the "Secretary"), in selecting the Lessor-Agency for the award of this grant, relied in material part upon the assured completion of the activities to be undertaken by the Lessee-Developer in connection with this project; and the Lessee-Developer assures the Lessor-Agency that such activities will be completed by the Lessee-Developer.

3. Lessee-Developer will use its best efforts to create or cause to be created, within 48 months from the date hereof, approximately 180 new job opportunities in connection

BOOK 1955
PAGE 303

with the project, including 149 new job opportunities for persons of low and moderate income. In order to assist and enable the Lessor-Agency to report to the Secretary, as the Secretary may require, the Lessee-Developer consents to report to the Lessor-Agency, as the Lessor-Agency may from time to time require, on the numbers and kinds of such jobs created or caused to be created and filled.

4. Lessee-Developer shall keep and maintain books, records and other documents relating directly to the receipt and disbursements of funds under this UDAG Agreement, and any duly authorized representative of the Secretary or Comptroller General of the United States shall, at all reasonable times, have access to and the right to inspect, copy, audit and examine all such books, records and other documents of the Lessee-Developer until the completion of all close-out procedures respecting this grant, and until the final settlement and conclusion of all issues arising out of this grant or under this UDAG Agreement.

5. Lessee-Developer agrees that any duly authorized representative of the Secretary shall, at all reasonable times, have access to any portion of the project during the same period of time as set forth in paragraph 4 above.

6. Lessee-Developer acknowledges and agrees that no transfer of grant funds to it by the Lessor-Agency shall be or be deemed an assignment of grant funds, and that Lessee-Developer shall neither succeed to any rights, benefits or advantages of the Lessor-Agency under this UDAG Agreement, nor attain any rights, privileges, authorities or interests in or under this UDAG Agreement.

7. During the term of this UDAG Agreement, this Agreement shall not be amended in any material respect without the prior written approval of the Secretary. An amendment shall be deemed "material," within the meaning of this provision, if it cancels or reduces any developmental, construction, job creating or financial obligation of the Lessee-Developer by more than ten (10%) percent, or if it changes the situs or character of any development activity, or if it increases any time for performance by the Lessee-Developer by more than ten (10%) percent; provided, that an increase in any time for performance which does not exceed thirty (30) days, shall not be deemed "material."

8. Lessee-Developer acknowledges that nothing contained in the UDAG Agreement or in this Agreement, nor any act of the Secretary, or of the Lessor-Agency, or of the Lessee-Developer, shall be deemed or construed by any of such parties, or by third persons, to create any relationship of third-party beneficiary, or of principal and agent, or of limited or general partnership, or of joint venture, or of any association or relationship involving the Secretary.

The foregoing representations, warranties, acknowledgements and covenants shall terminate and be deemed of no further force and effect upon the repayment in full of the City-Agency Loan.

II. [\$200] LEASE OF THE HOTEL PARCEL TO LESSEE-DEVELOPER
BY THE LESSOR-AGENCY

A. [\$201] Lease

For and in consideration of the rents, conditions, covenants and agreements set forth herein, the Lessor-Agency hereby leases the Hotel Parcel to Lessee-Developer and Lessee-Developer does hereby take and lease the Hotel Parcel from the Lessor-Agency.

B. [\$202] Term of the Lease

The term of this lease (the "Lease Term") shall be the period of fifty (50) years commencing on November 24, 1981 (the "Commencement of the Lease Term") and terminating at midnight fifty (50) years thereafter, or on the date resulting from an earlier termination as hereinafter set forth. The words "Lease Term" shall also be deemed to include such extended periods of time resulting from the exercise of the renewal options pursuant to §203 below.

C. [\$203] Option to Renew the Lease

The Lessee-Developer may, at its option, renew the Lease for two additional periods of ten years each, subject to all the provisions of this Agreement. Lessee-Developer's right to the option to renew is subject to the following conditions:

1. Lessee-Developer shall give notice to the Lessor-Agency of its intent to renew the lease for the first additional ten year period at least 180 days prior to the end of the existing Lease Term; and Lessee-Developer shall give notice to the Lessor-Agency of its intent to renew for the second additional ten year period at least 180 days prior to the end of the prior ten year period.

2. Lessee-Developer shall not be in default under any provision of this Agreement at the time notice of intent to

renew is given or on the last day of the existing term or renewed term of the lease.

In lieu of executing a new lease for each additional ten year period, each party shall, at the request of the other, endorse on this original Agreement or on a true copy of this original Agreement that party's signature or signatures, the date the option was exercised, and the words "option exercised." Alternatively, each party shall, at the request of the other, execute a memorandum, in recordable form, acknowledging the fact that the option has been exercised and otherwise complying with the requirements of law for an effective memorandum or abstract of lease.

D. [\$204] Rent

1. [\$205] Minimum Annual Rent

Lessee-Developer covenants and agrees to pay to the Lessor-Agency, at the Lessor-Agency's address set forth in Section 106 hereof, or at such place or to such person as the Lessor-Agency may designate in writing by notice to Lessee-Developer, in such coin or currency of the United States as shall at the time of payment be legal tender for the payment of all debts, public or private, an annual basic rental for the Hotel Parcel (hereinafter referred to as the "Minimum Annual Rent") over and above the other additional payments to be made by Lessee-Developer as hereinafter in this Agreement provided, the sum of Five Thousand Three Hundred Dollars (\$5,300.00).

The Minimum Annual Rent shall be paid in equal monthly installments in advance, on the first day of each month during the Lease Term. If the Lease Term commences on a day other than the first day of a calendar month, the first monthly installment of Minimum Annual Rent payable during such Lease Term shall be prorated and shall be paid on the date on which said Lease Term commences.

2. [\$206] Supplemental Annual Rent

In addition to the Minimum Annual Rent, Lessee-Developer agrees to pay Lessor-Agency a Supplemental Annual Rent equal to fifteen percent (15%) of Annual Net Income over Two Hundred Six Thousand Dollars (\$206,000.00) after reimbursement of the aggregate accumulated operating losses (without interest earned, due, or payable) for the first five (5) years of operation, which losses are in addition to Lessee-Developer's initial equity investment and the loss reserve account.

BOOK 1955 PAGE 307

Within one hundred and twenty (120) days after the end of each lease year, Lessee-Developer shall pay to the Lessor-Agency the Supplemental Annual Rent due to the Lessor-Agency under the terms of this Agreement accompanied by a complete report of all Hotel income, operating expenses and debt service for such lease year.

E. [\$207] Annual Net Income Defined

For the purpose of this Agreement and the Supplemental Annual Rent provision in Section 206, "Annual Net Income" shall mean "Annual Gross Operating Profit" less the following items, to the extent paid or accrued: (1) Reserves for Furniture, Fixtures and Equipment (not to exceed 5% of gross room revenues); (2) Property Taxes and Insurance; (3) debt service on Industrial Development Bonds or other construction financing and/or permanent financing (including fixed and incentive components and additional commitment fees, if applicable); (4) Minimum Annual Rent; (5) City-Agency Loan payments; (6) Hotel Incentive Management Fee; and (7) Owner-Management Fee of \$44,000.

F. [\$208] Annual Gross Operating Profit Defined

For the purpose of this Agreement "Annual Gross Operating Profit" (or "AGOP") shall mean "Annual Gross Revenue" less: (1) Departmental Expenses; and (2) Undistributed Operating Expenses (including Administration and General, Marketing, Energy, Property Operations Expenses and Hotel Base Management Fee Expenses).

G. [\$209] Annual Gross Revenue Defined

For the purpose of this Agreement "Annual Gross Revenue" shall mean all revenues and receipts of every kind derived by Lessee-Developer from operating the Hotel including, but not limited to, income (from both cash and credit transactions), after commissions and discounts for prompt or cash payments, from the rental of rooms, stores, offices, exhibit or sales space of every kind, license, lease and concession fees and rentals (not including gross receipts of licensees, lessees and concessionaires), vending machines, health club membership fees, food and beverage sales, wholesale and retail sales of merchandise, service charges, parking fees (but only to the extent such fees are not included within the definition of "Annual Gross Revenues" in the Agreement for Operation, Management and Maintenance of Public Parking Facilities between Lessee-Developer and the City and Lessor-Agency) and charges and proceeds, if any, from business interruption or other loss of income insurance. For the purpose of calculating "Annual Gross Revenue", the cash receipts and disbursements method of accounting shall be utilized.

BOOK 1955 PAGE 308

Annual Gross Revenue shall not include (1) gratuities to Hotel employees, (2) federal, state and municipal excise, sales and use taxes or similar impositions collected by Lessee-Developer directly from patrons or guests or included as part of the sales price of any goods or services, (3) proceeds of loans, secured or unsecured, (4) condemnation awards or payments in lieu thereof, (5) bad debts or (6) insurance proceeds (except for insurance proceeds specifically relating to business interruption or other loss of income).

H. [§ 210] Lease Year Defined

For the purpose of this Agreement and the rental provisions herein, with the exception of the first lease year, "Lease Year" shall mean twelve (12) full calendar months commencing on the first January 1 after the date of commencement of the Lease Term and on each subsequent January 1 for the Lease Term.

I. [§ 211] Delinquency In Rental Payments

The failure of Lessee-Developer to pay the applicable rents within 15 days of the due date shall constitute a default. In the event Lessee-Developer fails to pay the applicable rents within 15 days of the due date, in addition to any other remedy provided by this Agreement, Lessee-Developer shall pay City the delinquent rent and interest on the total delinquent rent at the rate of 1-1/2% over the average prevailing prime rate charged by the three (3) largest commercial banks in Utah on short term unsecured loans to large businesses with the highest credit standing, from the date of first delinquency. Said interest shall accrue from the due date of the rent to the date the rent is received by the Lessor-Agency. It is the intent of this provision that Lessor-Agency shall be compensated by such additional sums for loss resulting from rental delinquency including costs to the Lessor-Agency for servicing the delinquent account. The Lessor-Agency, at its option, may waive any such delinquency compensation required herein, upon written application of Lessee-Developer.

J. [§ 212] Financial Records

Lessee-Developer shall keep full and accurate books and accounts, records, cash receipts, and other pertinent data showing its financial operations. Such books of account, records, cash receipts, and other pertinent data shall be kept for a period of two (2) years after the end of the calendar year to which such items pertain. The Lessor-Agency shall be entitled during such two (2) years to inspect,

examine and to copy at Lessor-Agency's expense Lessee-Developer's books of account, records, cash receipts, and other pertinent data as necessary or appropriate for the purposes of this Agreement. Lessee-Developer shall cooperate fully with the Lessor-Agency in making the inspection. After the expiration of each calendar year during the Lease Term, Lessee-Developer shall obtain, at its own expense, an audit of its receipts and expenses for such calendar year prepared by an independent certified public accountant selected by Lessee-Developer and approved by Lessor-Agency, such approval not to be unreasonably withheld. If the audit shows that there is a deficiency in the payment of any rent, the deficiency shall become immediately due and payable to the Lessor-Agency plus any payments due under Section 211.

K. [\$ 213] Notice, Demand, and Setoff of Rents

The Lessor-Agency and Lessee-Developer intend that Minimum Annual Rent, Supplemental Annual Rent and Additional Rent and all other sums of whatever kind and nature relating to the Site and payable hereunder to or on behalf of the Lessor-Agency, shall be paid without notice or demand, and without setoff, counterclaim, abatement, deferment, suspension, deduction or defense except as otherwise provided by the terms of this Agreement or the Agreement for Operation, Management and Maintenance of Public Parking Facilities between Lessee-Developer and the Lessor-Agency.

L. [\$ 214] Additional Rent

In the event the Hotel Parcel and/or the Improvements thereon, or any possessory interest therein, should at any time be subject to ad valorem taxes or privilege taxes levied, assessed or imposed on such property, Lessee-Developer shall pay taxes upon the assessed value of the entire property, and not merely upon the assessed value of its leasehold interest.

To the extent that ad valorem, privilege or any other tax or assessment levied on the Hotel Parcel is of a lesser amount than would be levied if the Hotel Parcel were in private ownership, Lessee-Developer shall be responsible to pay as additional rent the difference between the taxes and assessments actually levied and the taxes and assessments which would be levied if the Hotel Parcel were privately

owned. The Lessee-Developer shall pay such difference to the Lessor-Agency within thirty (30) days after the taxes for such year become payable to the taxing agencies and in no event later than the delinquency date of such taxes established by law, provided Lessee-Developer has received written notice of the amount to be paid at least 30 days in advance.

M. [\$ 215] Subordination of Rent or Other Sums

The Lessee-Developer hereby covenants and agrees that the Minimum Annual Rent, Supplemental Annual Rent, Additional Rent, and all other sums of whatever kind and nature payable to the Lessor-Agency from the Lessee-Developer under the provisions of this Agreement shall be paid from revenues as provided in this Agreement, pursuant to the priorities set forth in this Section 215, and all other expenses shall be subordinate to such payments except as hereinafter required under this Section 215. To the extent that any item of rent under this Agreement or any payments due under the City-Agency Loan are not paid when due because of these subordination provisions, such amounts shall be deferred (without any interest thereon) and paid at such time as there is sufficient revenue after paying pursuant to the priorities set forth in this Section 215. No deferral pursuant hereto shall be deemed a default under this Agreement.

Minimum Annual Rent. The Minimum Annual Rent provided in Section 205 hereof shall not be subordinate to any other payment or expense.

Repayment of City-Agency Loan. Debt service on the City-Agency Loan to Lessee-Developer provided for in the Method of Financing, Attachment No. 2 to this Agreement, shall be payable out of and subordinated to AGOP reduced by (1) Reserve Fund for Furniture, Fixtures and Equipment (not to exceed 5% of gross room revenues); (2) Property Taxes and Insurance; (3) debt service on Industrial Development Bonds or other construction financing and/or permanent financing (including fixed and incentive components and additional commitment fees, if applicable); and (4) Minimum Annual Rent.

Supplemental Annual Rent. The Supplemental Annual Rent provided for in Section 206 hereof shall be payable out of and subordinated to AGOP reduced by (1) Reserve Fund for Furniture, Fixtures and Equipment (not to exceed 5% of gross room revenues); (2) Property Taxes and Insurance; (3) debt service on Industrial Development Bonds or other construction financing and/or permanent financing (including fixed and incentive components and additional commitment fees, if applicable); (4) Minimum Annual Rent; (5) City-Agency Loan;

(6) Hotel Incentive Management Fee; (7) Owner-Management Fee of \$44,000; and (8) reimbursement of Accumulated Operating Losses for the first five (5) years of Hotel operation as provided in said Section 206.

Additional Rent or Other Sums. The Additional Rent provided for in Section 214 and all other sums payable to the Lessor-Agency shall be payable out of and subordinated to AGOP reduced by (1) Reserve Fund for Furniture, Fixtures and Equipment (not to exceed 5% of gross room revenues); (2) Property Taxes and Insurance; (3) debt service on Industrial Development Bonds or other construction financing and/or permanent financing (including fixed and incentive components and additional commitment fees, if applicable); (4) Minimum Annual Rent; (5) City-Agency Loan; (6) Hotel Incentive Management Fee; (7) Owner-Management Fee of \$44,000; (8) reimbursement of Accumulated Operating Losses for the first five (5) years of Hotel operation; and (9) Supplemental Annual Rent.

Debt Service Limitation. The subordination of (i) debt service on the City-Agency Loan, (ii) Supplemental Annual Rent and (iii) Additional Rent or other sums payable to the Lessor-Agency, to "(3) debt service on the Industrial Development Bonds or other construction financing and/or permanent financing (including fixed and incentive components and additional commitment fees, if applicable)", as provided above in this Section 215, shall be unlimited in amount during the term of Lessee-Developer's construction loan and the first permanent mortgage loan (the "First Permanent Loan"), the proceeds of which are used in whole or in part to repay the construction loan. However, the subordination of such items to debt service on any subsequent mortgage loan shall not exceed the average annual debt service which was paid during the term of the First Permanent Loan. For example, if the average annual debt service paid over the term of the First Permanent Loan was \$1,500,000, and the annual debt service payable on a subsequent financing is \$2,000,000, the items mentioned in (i), (ii) and (iii) above shall be subordinated only to the extent of \$1,500,000 of debt service. If the annual debt service payable on a subsequent financing is \$1,000,000, these same items shall be subordinated to the extent of the full \$1,000,000 of debt service. As used in this Section 215, "debt service" shall not include any balloon payments of principal due on maturity.

N. [§ 216] Option to Purchase Hotel Parcel

1. Lessee-Developer shall have the right, at its sole option, to purchase the Hotel Parcel at any time during the

Lease Term, or within 60 days after the early termination of such Lease Term pursuant to Sections 1006 or 1100 hereof. Title to the Hotel Parcel shall be conveyed to the Lessee-Developer free and clear of all encumbrances, except for (1) outstanding bonds, construction and/or permanent loan mortgages permitted under this Agreement, if any, and (2) any encumbrances which exist or come to exist pursuant to and consistent with this Agreement.

The purchase price for the Hotel Parcel (the "Purchase Price") shall be seven hundred and fifty thousand dollars (\$750,000) if the Lessee-Developer exercises the option to purchase within one year after the Commencement of the Lease Term. During each of the following nine years the Purchase Price for the Hotel Parcel shall be as follows:

<u>Years</u>	<u>Purchase Price</u>
Year 2	\$ 825,000
Year 3	900,000
Year 4	975,000
Year 5	1,050,000
Year 6	1,125,000
Year 7	1,200,000
Year 8	1,275,000
Year 9	1,350,000
Year 10	1,425,000

The Purchase Price for the Hotel Parcel at any time after the tenth (10th) year of the Lease Term shall be equal to its fair market value. Fair market value shall be determined by the following appraisal procedure: The fair market value shall be determined by the Lessee-Developer and Lessor-Agency, if possible, but if they cannot agree within thirty (30) days from Lessee-Developer's notice to Lessor-Agency, then the fair market value shall be determined by a real estate appraiser promptly selected by the Lessee-Developer and a real estate appraiser promptly selected by the Lessor-Agency. If the appointed real estate appraisers cannot agree as to the fair market value within thirty (30) days, the two appraisers shall promptly appoint a third appraiser of their joint choosing. If the two appraisers are unable to select such a third appraiser, such appraiser shall be appointed by the Presiding Judge of the District Court in the County of Utah, State of Utah, at the request of either appraiser or by either the Lessee-Developer or the Lessor-Agency. All appraisers appointed pursuant to the provisions hereof shall be impartial

BOOK 1955 PAGE 313

and unrelated, directly or indirectly, so far as employment of services is concerned, to any of the parties hereto. All appraisers shall meet and determine the fair market value shall then be determined by a majority of the three appraisers, but if a majority cannot agree then the arithmetic average of the two closest of the three final appraisals shall be deemed to be the fair market value. Each party shall bear its own expense except the expense relating to the selection and services of the third appraiser which shall be borne equally by the Lessee-Developer and the Lessor-Agency.

Within ten (10) days after the fair market value has been finally established, Lessee-Developer and Lessor-Agency shall open an escrow for the sale and conveyance of the Hotel Parcel unless within 10 days in writing the Lessee-Developer withdraws its offer to purchase. The escrow shall close, and the Lessor-Agency shall convey by Grant Deed the Hotel Parcel to Lessee-Developer, and Lessee-Developer shall pay the Purchase Price on a date which is sixty (60) days after the escrow has been opened.

Title need not be conveyed at any time when Lessee-Developer is in default in the payment of any rent due under this Agreement.

2. (a) At any time and from time to time during the Lease Term, Lessee-Developer shall also have the right, at its sole option, to make a partial payment or payments towards the Purchase Price for the Hotel Parcel (the amount of any such partial payment being hereinafter referred to as the "Partial Payment Sum"). The Purchase Price at the time of a partial payment shall be computed exactly as provided in Subsection 1 of this Section 216. The Purchase Price as so determined, less the Partial Payment Sum, is hereafter referred to as the "Balance". From and after the date of such partial payment, all Supplemental Annual Rent due and payable hereunder shall be reduced. The reduction in the Supplemental Annual Rent percentage figure shall be computed by multiplying the previous percentage figure by a fraction, the numerator of which is the Partial Payment Sum and the denominator of which is the Purchase Price as determined at that time.

(b) After making a partial payment pursuant to Subsection 2(a), Lessee-Developer shall have the right to make further partial payments or to pay off the entire Balance at any time. At the time of such subsequent payment, the amount of the Balance shall be adjusted in proportion to the increase (or decrease) in the total Purchase Price since the last partial payment. If the next payment is again a partial payment, then all Supplemental Annual Rent due thereafter shall be further reduced by a fraction, the numerator of which is the new Partial Payment Sum and the denominator of which is the Balance (adjusted as aforesaid). Subtracting the new Partial Payment Sum from the adjusted Balance results in a "new Balance", which is also subject to increase (or decrease) in accordance with Subsection 1 above, and which represents the amount still to be paid in order for the Lessee-Developer to obtain fee title to the Hotel Parcel. The foregoing procedures shall continue until the Purchase Price or the outstanding Balance is paid in full.

(c) In order to illustrate these procedures, the following example is provided: Lessee-Developer wishes to make a \$400,000 partial payment in the 7th year of the Lease Term. The Purchase Price at that time would be \$1,200,000. After application of the Partial Payment Sum, the Balance is \$800,000. From the date of payment, Supplemental Annual Rent is reduced by one-third, from 15% to 10%. In the 10th year of the Lease Term, Lessee-Developer wishes to make an additional partial payment, this time in the amount of \$500,000. The previous Balance (\$800,000) must first be increased in proportion to the increase of the Purchase Price on the date of the first partial payment (\$1,200,000) to the date of this second partial payment (\$1,425,000). Since \$1,200,000 is to \$1,425,000, as \$800,000 is to \$950,000, the \$500,000 gets applied to the \$950,000, leaving a new Balance of \$450,000. Supplemental Annual Rent is then further reduced by a fraction equal to \$500,000 divided by \$950,000, resulting in a new rental rate of approximately 4.74%. Finally, in the 15th year Lessee-Developer wishes to pay off the entire Balance of the Purchase Price and obtain fee title to the Hotel Parcel. Assume an appraisal pursuant to Subsection 1 above yields a fair market value for the Hotel Parcel of \$2,000,000. Since \$1,425,000 is to \$2,000,000 as \$450,000 is to \$631,579, \$631,579 must be paid to obtain fee title to the Hotel Parcel.

III. [§ 300] CONVEYANCE OF LEASEHOLD INTEREST

A. [§ 301] Lease of Hotel Parcel

In accordance with and subject to all terms, covenants, and conditions of this Agreement, the Lessor-Agency agrees to lease the Hotel Parcel to Lessee-Developer, and Lessee-Developer agrees to lease and develop the Hotel Parcel within the times, for the consideration, and subject to the terms, conditions and provisions as provided in this Agreement.

B. [§ 302] Conveyance of Leasehold Interest and Delivery of Possession

Subject to any mutually agreed upon extensions of time, which shall not be unreasonably withheld, conveyance of the leasehold interest and delivery of possession to Lessee-Developer of the Hotel Parcel shall be completed on or prior to the closing of Lessee-Developer's construction loan. The Lessor-Agency and Lessee-Developer agree to perform all acts necessary in sufficient time for the leasing of the Hotel Parcel in accordance with the foregoing provisions.

Possession of the Hotel Parcel shall be delivered to the Lessee-Developer concurrently with the conveyance of the leasehold interest, except that access and entry may be granted before Commencement of the Lease Term as permitted pursuant to Section 306 of this Agreement. The Lessee-Developer shall accept the leasehold interest and possession to the Hotel Parcel on or before the date established therefor in this Section 302.

C. [§ 303] Taxes and Assessments

Ad valorem taxes and assessments, if any, on the Site and taxes upon this Agreement or any rights thereunder, levied, assessed, or imposed for any period prior to the conveyance of the leasehold interest in the Hotel Parcel or delivery of possession thereto, shall be borne by the Lessor-Agency. All such ad valorem taxes and assessments, and all payments or privilege taxes, if any, for use of exempt property, levied or imposed on, or with regard to, the Hotel Parcel for any period after such conveyance and delivery of possession shall be paid by Lessee-Developer.

D. [§ 304] Occupants of Hotel Parcel

The leasehold interest in the Hotel Parcel shall be conveyed free of any possession or right of possession except that of the Lessee-Developer.

E. [\$ 305] Zoning of the Site

At the time of the commencement of the term of the leasehold interest in the Hotel Parcel, the Lessor-Agency (at the Lessor-Agency's sole cost and expense) shall cause the zoning of the Site to be such as to permit the development, construction, use, operation, and maintenance of the improvements specified in the Scope of Development (Attachment No. 3) and this Agreement.

F. [\$ 306] Access to and Entry by Lessee-Developer Upon the Hotel Parcel

Prior to the commencement of the term of the leasehold interest in the Hotel Parcel, representatives of the Lessee-Developer shall have the right of access to and entry upon the Site from time to time, at all reasonable times, for the purpose of obtaining data and making surveys and tests necessary to carry out this Agreement. Lessee-Developer agrees to and shall indemnify and hold the Lessor-Agency and the City harmless from any and all injuries or damages arising out of any work or activity of Lessee-Developer, its agents, or its employees.

The Lessor-Agency agrees to provide, or cause to be provided, to Lessee-Developer all data and information pertaining to the Site and available to the Agency and the City when requested by Lessee-Developer.

G. [\$ 307] Submission of Evidence of Equity

Within the time established therefor in the Schedule of Performance (Attachment No. 5), Lessee-Developer shall submit to the Lessor-Agency evidence that Lessee-Developer has the equity necessary for the acquisition and development of the Hotel Parcel in accordance with this Agreement.

H. [\$ 308] Condition of Hotel Parcel

The Hotel Parcel shall be leased in an "as is" condition, with no warranty, express or implied by the City or the Lessor-Agency as to the condition of the soil, its geology, or the presence of known or unknown faults, and possession thereof shall be delivered after completion of any work set forth in the Scope of Development (Attachment No. 3) for the Lessor-Agency to perform. It shall be the sole responsibility of Lessee-Developer at its expense to investigate and determine the soil conditions for the development to be constructed thereon. If the soil conditions are not in all respects entirely suitable for the use or uses to which the Hotel Parcel will be put, then it is the sole responsibility and obligation of the Developer to take such action as may be necessary to place the soil conditions of the Parcel in a condition entirely suitable for its development.

BOOK 1955 PAGE 317

IV. [§400] JOINT DEVELOPMENT OF THE SITE BY LESSEE-DEVELOPER AND THE LESSOR-AGENCY

A. [§401] Scope of Development of the Site

The Site shall be developed by the Lessor-Agency and Lessee-Developer in accordance with and within the limitations established therefor in the "Scope of Development" (Attachment No. 3).

B. [§402] Responsibilities of Lessee-Developer

1. [§403] Basic Concept Drawings

Within the time set forth in the Schedule of Performance (Attachment No. 5) Lessee-Developer shall prepare and submit to the Lessor-Agency Basic Concept Drawings and related documents containing the overall plan for development of the Site. The Basic Concept Drawings will include perspective renderings reflecting design concepts and a site plan showing the general location of improvements (including the Public Parking Facilities) as they are to be initially constructed upon the Site.

The Lessor-Agency shall approve or disapprove all or any of such Basic Concept Drawings within the time set forth in the Schedule of Performance (Attachment No. 5). Lessee-Developer and Lessor-Agency shall initial and date each page of those drawings and documents approved by it and the Site shall be developed as generally established in such approved drawings and documents, except for such changes which may be mutually agreed upon between Lessee-Developer and the Lessor-Agency. Any such changes shall be within the limitations of the Scope of Development (Attachment No. 3).

2. [§404] Construction Drawings and Related Documents

Lessee-Developer shall prepare and submit to the Lessor-Agency construction drawings, landscaping and finish grading plans, and related documents for the Site for architectural review and written approval by the Lessor-Agency, as and at the respective times established therefor in the Schedule of Performance (Attachment No. 5). Such construction drawings and related documents shall be submitted in two stages: Preliminary schematics, and final working drawings. Preliminary schematic drawing shall include plans, elevations and sections of the improvements as they are to be initially constructed upon each Parcel and a description of the structural, mechanical and electrical systems pertaining to such improvements. Final working drawings are hereby defined as those in sufficient detail to obtain a building permit. Approval of pro-

BOOK 1955 PAGE 318

gressively more detailed drawings and specifications will be promptly granted by the respective party to whom such drawings and specifications are submitted if they are not in conflict with drawings or specifications theretofore approved. Any items so submitted and approved in writing by such party shall not be subject to subsequent disapproval.

During the preparation of all drawings and plans, the Lessor-Agency and Lessee-Developer shall hold regular progress meetings to coordinate the preparation of, submission to, and review of construction plans and related documents.

If any revision or corrections of plans approved by the Lessor-Agency or Lessee-Developer (as the case may be) shall be required by any government official, agency, department or bureau having jurisdiction, or any lending institution involved in financing, Lessee-Developer and the Lessor-Agency shall cooperate in efforts to obtain a mutually acceptable alternative.

3. [§405] Approval of Plans, Drawings, and Related Documents

Subject to the terms of this Agreement, the Lessor-Agency shall have the right of reasonable architectural review of all plans and submissions, including any proposed changes therein.

The Lessor-Agency shall approve or disapprove the plans, drawings and related documents referred to in Sections 403 and 404 of this Agreement within the times established in the Schedule of Performance (Attachment No. 5). Failure by the Lessor-Agency to either approve or disapprove within the times established in the Schedule of Performance (Attachment No. 5) shall be deemed an approval. Any disapproval shall state in writing the reasons for disapproval and the changes which the Lessor-Agency requests to be made. Such reasons and such changes must be consistent with the Scope of Development (Attachment No. 3) and any items previously approved or deemed approved hereunder. Lessee-Developer, upon receipt of a disapproval based upon powers reserved by the Lessor-Agency hereunder, shall revise the plans and drawings, and shall resubmit to the Lessor-Agency as soon as possible after receipt of the notice of disapproval. Plans approved shall be deemed in all respects to be in accordance with the Redevelopment Plan for the Project.

If the Lessee-Developer desires to make any substantial change in the final working drawings after their approval by the Lessor-Agency, such proposed change shall be submitted to the Lessor-Agency for approval. If the final working drawings, as modified by the proposed change, conform to the requirements of Section 404 of this Agreement and the Scope of

Development (Attachment No. 3), the proposed change shall be approved and the Lessee-Developer shall be notified in writing within ten (10) days after submission to the Lessor-Agency. Such change in the construction plans shall, in any event, be deemed approved by the Lessor-Agency unless rejected, in whole or in part, by written notice thereof setting forth in detail the reasons therefor, and such rejection shall be made within said ten (10) day period.

4. [\$406] Cost of Construction

The cost of developing the Hotel Parcel and of constructing all improvements thereon, shall be borne by Lessee-Developer, except for work expressly set forth in this Agreement to be performed by the Lessor-Agency or others. The financing of the development of the Site shall be as provided in the "Method of Financing" attached hereto as Attachment No. 2 and incorporated herein by this reference.

5. [\$407] Construction Schedule of Performance

After the conveyance of the leasehold interest in the Hotel Parcel, Lessee-Developer shall promptly begin and thereafter diligently prosecute to completion the construction of the Improvements thereon and the development thereof as provided in the Scope of Development (Attachment No. 3). The Lessee-Developer shall begin and complete all construction and development within the time specified in the "Schedule of Performance" (Attachment No. 5) or within such reasonable extensions thereof as may be granted by the Lessor-Agency. The Schedule of Performance (Attachment No. 5) is subject to revision from time to time as mutually agreed upon in writing between Lessee-Developer and the Lessor-Agency.

During periods of construction, Lessee-Developer shall submit to the Lessor-Agency a written report of the progress of the construction when and as requested by the Lessor-Agency. The report shall be in such form and detail as may be reasonably required by the Lessor-Agency and shall include a reasonable number of construction photographs (if any) taken since the last report by Lessee-Developer.

6. [\$408] Indemnification During Construction;
Bodily Injury and Property Damage
Insurance

During the period of construction on the Hotel Parcel and until such time as the Lessor-Agency has issued a Certificate of Completion with respect to the construction of the

improvements thereon, Lessee-Developer agrees to and shall indemnify and hold the Lessor-Agency and the City harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person which shall occur on the Hotel Parcel and which shall be directly or indirectly caused by any acts done thereon or any errors or omissions of Lessee-Developer or its agents, servants, employees, or contractors. Lessee-Developer shall not be responsible for (and such indemnity shall not apply to) any acts, errors, or omissions of the Lessor-Agency or the City, or their respective agents, servants, employees, or contractors.

During any period prior to Commencement of the Lease Term of the Hotel Parcel when Lessee-Developer is engaged in preliminary work on the Site pursuant to this Agreement, and during the period from the Commencement of the Lease Term and ending on the date when a Certificate of Completion has been issued with respect to all of such Parcel, the Lessee-Developer shall furnish, or cause to be furnished, to the Agency duplicate originals or appropriate certificates of bodily injury and property damage insurance policies in the amount of at least \$500,000.00 for any person, \$1,000,000.00 for any occurrence and \$300,000.00 property damage, naming the Lessor-Agency and the City (if possible) as additional named insureds.

7. [§409] City and Other Governmental Agency Permits

Before commencement of construction or development of any buildings, structures or other work of improvement upon any of the Hotel Parcel (but not necessarily before the conveyance of title), Lessee-Developer shall (at its own expense) secure, or cause to be secured, any and all permits which may be required by the City or any other governmental agency affected by such construction, development or work thereon. The Lessor-Agency shall provide all proper assistance to Lessee-Developer in securing these permits. Lessee-Developer in no event shall be obligated to commence construction (the Schedule of Performance notwithstanding) if any such permit is not issued despite good faith effort by Lessee-Developer. In the event there is a delay beyond the usual time for obtaining any such permits due to no fault of Lessee-Developer, the entire Schedule of Performance (Attachment No. 5) shall be extended to the extent such delay prevents or hinders any action which could not legally or would not in accordance with reasonable business practices be expected to occur before such permit was obtained.

BOOK 1955 PAGE 321

8. [§410] Right of Access

Representatives of the Lessor-Agency and the City shall have the reasonable right of access to the Hotel Parcel without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including but not limited to the inspection of the work being performed in constructing the improvements; provided that such representatives shall first have come to Lessee-Developer's construction office located thereon, have identified themselves, and are accompanied by a representative of Lessee-Developer while on such Parcel. Such representatives of the Lessor-Agency or the City shall be those who are so identified in writing by the Executive Director of the Lessor-Agency. This limitation of access shall not apply to City inspectors or other employees and officers acting within their legal authority.

9. [§411] Local, State and Federal Laws.

Lessee-Developer shall carry out the construction of the improvements on the Hotel Parcel in conformity with all applicable laws.

10. [§412] Antidiscrimination During Construction

Lessee-Developer for itself and its successors and assigns, agrees that in the construction of the improvements provided for in this Agreement, Lessee-Developer will not discriminate against any employee or applicant for employment because of sex, marital status, race, color, religion, creed, ancestry, or national origin, and that Lessee-Developer will comply with all applicable local, state and federal fair employment laws and regulations.

C. [§413] Responsibilities of the Lessor-Agency

The Lessor-Agency, without expense to the Developer or assessment or claim against the Hotel Parcel, shall perform all Lessor-Agency action specified herein and in the Scope of Development (Attachment No. 3) for the Lessor-Agency to perform, within the times specified in the Schedule of Performance (Attachment No. 5). The cost of designing and constructing the Public Parking Facilities on the Parking Parcel and the costs of performing all such other work specified in the Scope of Development (Attachment No. 3) to be performed by the Lessor-Agency, shall be borne by the Lessor-Agency. The financing of the development of the Site shall be as provided in the "Method of Financing" attached hereto as Attachment No. 2.

D. [§414] Certificate of Completion

Promptly after completion of all construction and development by Lessee-Developer of the improvements upon the Hotel Parcel, as required by the Scope of Development (Attachment No. 3), the Lessor-Agency shall furnish Lessee-Developer with a Certificate of Completion therefor, upon written request by Lessee-Developer.

The Lessor-Agency shall not unreasonably withhold any such Certificate of Completion. Such Certificate of Completion shall be, and shall state that it constitutes, conclusive determination of satisfactory completion of the construction and development of the improvements required by this Agreement upon such Parcel, and of full compliance with the terms of this Agreement with respect thereto.

Such Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Lessee-Developer to any holder of a mortgage, nor to any insurer of a mortgage securing money loaned to finance the improvements upon the Hotel Parcel.

Upon issuance of a Certificate of Completion pertaining to the Hotel Parcel, the respective rights and obligations of the parties to this Agreement with reference to the Site shall be limited to those set forth in this Agreement relating to the lease of the Hotel Parcel and those set forth in the operation, management and maintenance agreement for the parking facilities on the Parking Parcel and all of Lessee-Developer's development obligations under this Part IV shall be deemed to have been satisfied and discharged in full. A Certificate of Completion for the entire improvement upon the Hotel Parcel shall be in such form as to permit it to be recorded in the Recorder's Office of Utah County. A "Form of Certificate of Completion" is attached hereto and incorporated herein as Attachment No. 4.

BOOK 1955 PAGE 323

V. [§500] USE OF THE SITE AND THE IMPROVEMENTS

A. [§501] Use of the Hotel Parcel

Lessee-Developer covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Hotel Parcel as follows:

1. During the Lease Term, the Hotel Parcel shall be devoted only to the uses specified both in the Redevelopment Plan and in this Agreement.

2. The Hotel Parcel shall be used for a hotel and hotel related commercial purposes of the magnitudes specified in the Scope of Development, Attachment No. 3 of this Agreement. No changes in use shall be permitted without the written approval of the City and Lessor-Agency.

B. [§502] Management of the Hotel Parcel

The Hotel Parcel and Improvements shall be managed or caused to be managed by the Lessee-Developer in a prudent and business-like manner.

The Lessor-Agency shall have the right of approval (which approval shall not be unreasonably withheld) over any prospective operator and/or franchisor of the Hotel and/or food and beverage operations at all times during the Lease Term. The term "operator", as used in this Section 502, shall mean a person, firm or other entity taking under an operating lease, management contract, license agreement, franchise or other similar arrangement. In determining reasonableness of withholding consent the experience and proven ability of the proposed operator and/or franchisor in the first-class quality, prestigious hotel, restaurant and/or catering business shall be considered, together with financial standing and responsibility.

The Lessor-Agency shall also have the right of approval (which approval shall not be unreasonably withheld) of any such operating lease, management contract, license agreement, franchise or similar documents.

C. [§503] Obligation to Refrain from Discrimination

There shall be no discrimination against or segregation of any person, or group of persons, on account of sex, marital status, race, color, creed, religion, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy,

tenure or enjoyment of the Hotel Parcel or improvements, and the Lessee-Developer itself or any person claiming under or through it shall not 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, subtenants, sublessees, or vendees thereof or any portion thereof.

D. [§504] Rights of Access-Public Improvements and Facilities

The Lessor-Agency and the City for themselves, and other public agencies, at their sole risk and expense, reserve the right to enter the Site or any part thereof at all reasonable times and with as little interference as possible, for the purposes of construction, reconstruction, maintenance, repair or service of any public improvements or public facilities located on the Site. Any such entry upon the Hotel Parcel shall be made only after reasonable notice to Lessee-Developer. The Lessor-Agency, the City or other public agency shall indemnify and hold Lessee-Developer harmless from any claims or liabilities pertaining to any entry. Any damage or injury to the Site resulting from such entry shall be promptly repaired at the sole expense of the public agency responsible for the entry.

E. [§505] Quiet Enjoyment

The parties hereto mutually covenant and agree that Lessee-Developer by keeping and performing the covenants herein contained, shall at all times during the Lease Term, peaceably and quietly have, hold and enjoy the Hotel Parcel and the Improvements.

VI. [\$600] TAXES, ASSESSMENTS AND CHARGES AGAINST HOTEL PARCEL

A. [\$601] Utilities

Lessee-Developer agrees to pay or cause to be paid, as and when they become due and payable, all charges for water, gas, light, heat, telephone, electricity and other utility and communication services rendered or used on or about the Hotel Parcel at all times during the Lease Term.

B. [\$602] Taxes and Impositions

1. [\$603] Payment Generally

Lessee-Developer shall pay or cause to be paid, as and when they become due and payable, and before any fine, penalty, interest or cost may be added thereto, or become due or be imposed by operation of law for the nonpayment thereof, all taxes, assessments, franchises, excises, license and permit fees, and other governmental levies and charges, general and special, ordinary and extraordinary, unforeseen and foreseen, of any kind and nature whatsoever which at any time during the Lease Term may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of, or become a lien on: (1) the Hotel Parcel or any part thereof or any appurtenance thereto; (2) the rent and income received by Lessee-Developer from subtenants, guests or others for the use or occupation of the Hotel Parcel and the improvements thereon; or (3) this transaction or any document to which Lessee-Developer is a party, creating or transferring an interest or estate in the Hotel Parcel. All such taxes, franchises, excises, license and permit fees, and other governmental levies and charges shall hereinafter be referred to as "Impositions", and any of the same shall hereinafter be referred to as an "Imposition". Any Imposition relating to a fiscal period of the taxing authority, a part of which period is included within this Lease Term and a part of which is included in a period of time after the expiration of this Lease Term, shall (whether or not such Imposition shall be assessed, levied, confirmed, imposed upon, become a lien upon the Hotel Parcel, or shall become payable, during this Lease Term) be adjusted between the Lessor-Agency and Lessee-Developer as of the expiration of this Lease Term, so that Lessee-Developer shall pay that portion of such Imposition which that part of such fiscal period included in the period of time before the expiration of this Lease Term bears to such fiscal period, and the Lessor-Agency shall pay the remainder thereof; Lessee-Developer shall not be entitled to receive any apportionment if Lessee-Developer shall be in default in the performance of any of the Lessee-Developer's covenants and agreements as provided in this Agreement.

2. [\$604] Payment of Impositions in Installments

If, by law, any Imposition may at the option of the payer be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Lessee-Developer may exercise the option to pay the same (and any accrued interest on the unpaid balance of such Imposition) in installments and, in such event, shall pay such installments as may become due during this Lease Term as the same respectively become due and before any fine, penalty, further interest or cost may be added thereto; provided, however, that the amount of all installments of any such Imposition, which are to become due and payable after the expiration of this Lease Term, shall be deposited with Lessor-Agency for such payment on the date which shall be one (1) year immediately prior to the date of such expiration.

3. [\$605] Lessor-Agency Right to Cure

If Lessee-Developer, in violation of the provisions of this Agreement, shall fail to pay and to discharge any Imposition, the Lessor-Agency may (but shall not be obligated to) pay or discharge it, and the amount paid by Lessor-Agency and the amount of all costs, expenses, interest and penalties connected therewith, including attorney fees, together with interest at the rate of 1-1/2 percent over the average prevailing prime rate charged by the three (3) largest commercial banks in Utah on short-term unsecured loans to large businesses with the highest credit standing, shall be deemed to be and shall be payable by the Lessee-Developer as additional rent and shall be reimbursed to the Lessor-Agency by Lessee-Developer on demand, provided that Lessee-Developer shall have failed to pay such Imposition within five (5) days after written notice from the Lessor-Agency of its intention to pay.

4. [\$606] Tax Receipts

Lessee-Developer shall furnish to the Lessor-Agency, within forty-five (45) days after the date when any Imposition would become delinquent, official receipts of the appropriate taxing authority or other evidence satisfactory to the Lessor-Agency evidencing payment thereof.

5. [\$607] Limits of Tax Liability

The provisions of this Agreement shall not be deemed to require Lessee-Developer to pay (1) municipal, county, state or federal income or gross receipts or excess profits taxes assessed against the Lessor-Agency, or (2) municipal, county, state or federal capital levy, estate, succession, inheritance, gift, or transfer taxes imposed on the Lessor-Agency, or (3) corporation franchise taxes imposed upon any corporate owner of the fee of the Hotel Parcel; except, however, that Lessee-Developer shall pay all taxes assessed by any governmental authority by virtue of any operation by Lessee-Developer conducted on or out of the Hotel Parcel. It is agreed that in the event the State of Utah or any taxing authority thereunder changes or modifies the system of taxing real estate so as to tax the rental income from real estate in lieu of or in substitution (in whole or in part) for the real estate taxes and so as to impose a liability upon the Lessor-Agency for the amount of such tax, then Lessee-Developer shall be liable under this Agreement for the payment of the taxes so imposed during the Lease Term, or any renewal thereof, to the same extent as though the alternative tax was a tax upon the value of the Hotel Parcel. In order to determine the amount of such alternative tax for which Lessee-Developer shall be liable, the Hotel Parcel shall be considered as if it was the only asset of the Lessor-Agency, and the rent paid hereunder shall be considered as if it were the only income of the Lessor-Agency.

6. [\$608] Permitted Contests

Lessee-Developer shall have the right to contest the validity or the amount, in part or in full, of any Imposition which it is obligated to pay under the provisions of this Agreement. Lessee-Developer agrees that all such proceedings shall be begun without undue delay after any contested item is imposed and shall be prosecuted to final adjudication with reasonable dispatch.

Lessee-Developer shall give the Lessor-Agency prompt notice in writing of any such contest at least ten (10) days before any delinquency occurs. Lessee-Developer may only exercise its right to contest an Imposition hereunder if the subject legal proceedings shall operate to prevent the collection of the Imposition so contested, or the sale of the Hotel Parcel, or any part thereof, to satisfy the same, and only if Lessee-Developer shall, prior to the date such Imposition is due and payable, have given such reasonable security as may be required by the Lessor-Agency from time-to-time in order to insure the payment of such Imposition to prevent

any sale, foreclosure or forfeiture of the Hotel Parcel, or any part thereof, by reason of such nonpayment. In the event of any such contest and the final determination thereof is adverse to Lessee-Developer, Lessee-Developer shall, before any fine, interest, penalty or cost may be added thereto for nonpayment thereof, pay fully and discharge the amounts involved in or affected by such contest, together with any penalties, fines, interest, costs and expenses that may have accrued thereon or that may result from any such contest by Lessee-Developer and, after such payment and discharge by Lessee-Developer, the Lessor-Agency will promptly return to Lessee-Developer such security as the Lessor-Agency shall have received in connection with such contest.

The Lessor-Agency shall cooperate reasonably in any such contest permitted by this Section 608, and shall execute any documents or pleadings reasonably required for such purpose. Any such proceedings to contest the validity or amount of Imposition or to recover back any Imposition paid by Lessee-Developer shall be prosecuted by Lessee-Developer at its sole cost and expense; and Lessee-Developer shall indemnify and save harmless the Lessor-Agency against any and all loss, cost or expense of any kind, including, but not limited to, reasonable attorneys' fees and expenses, which may be imposed upon or incurred by the Lessor-Agency in connection therewith.

C. [§609] Other Liens

Lessee-Developer shall not, directly or indirectly, create or permit to be created or to remain, and will promptly discharge, at its expense, any mortgage, liens, encumbrance or charge on or pledge of the Hotel Parcel or Improvements or fixtures and furnishings, or any part thereof, of Lessee-Developer's interest therein or the rent, additional rent or other sums payable by Lessee-Developer under this Agreement, other than such leasehold mortgages as are permitted pursuant to Section 901. Lessee-Developer shall notify the the Lessor-Agency promptly of any lien or encumbrance which has been created on or attached to the Hotel Parcel or Improvements, or to the Lessee-Developer's leasehold estate therein, whether by act of Lessee-Developer or otherwise. The existence of any mechanic's, laborer's, materialmen's, supplier's or vendor's lien, or any right in respect thereto, shall not constitute a violation of this Section if (i) payment is not yet due upon the contract or for the goods or services in respect to which any such lien has arisen or (ii) the amount allegedly due is disputed and such lien has been bonded.

The Lessor-Agency agrees not to create or suffer to be created any liens or encumbrances on the Site except as may be permitted or required under this Agreement or as may be agreed to in writing by the Lessee-Developer. If any such liens or encumbrances appear in violation hereof, the Lessor-Agency shall discharge the same promptly after notice of their existence.

BOOK 1955 PAGE 330

VII. [§700] OWNERSHIP OF AND RESPONSIBILITY FOR IMPROVEMENTS

A. [§701] Ownership During Term

All Improvements constructed on the Hotel Parcel by Lessee-Developer as permitted or required by this Agreement shall, during the Lease Term, be and remain the property of Lessee-Developer provided, however, that Lessee-Developer shall have no right to waste, destroy, demolish or remove the Improvements; and provided further that Lessee-Developer's rights and powers with respect to the Improvements are subject to the terms and limitations of this Agreement. Fee title to the Improvements, and to any alteration, change or addition thereto, shall remain solely in Lessee-Developer, and Lessee-Developer alone shall be entitled to deduct all depreciation on its tax returns for such Improvements and any alteration, change or addition thereto. The Lessor-Agency and Lessee-Developer covenant for themselves and all persons claiming under or through them that the Improvements are real property.

B. [§702] Ownership at Termination

At the expiration or sooner termination of the Lease Term (except pursuant to Section 216), the Lessor-Agency may, at the Lessor-Agency's election, demand the removal from the Hotel Parcel, at Lessee-Developer's sole cost and expense, of all Improvements, fixtures and furnishings, or of certain Improvements, fixtures and/or furnishings, as specified in the notice provided for below. A demand to take effect at the normal expiration of the Term shall be effected by notice given at least six months before the expiration date. A demand to take effect on any other termination of the Lease Term shall be effectuated by notice given in or concurrently with notice of such termination or within ten (10) days after such termination.

Notwithstanding the foregoing demand, any Improvements, fixtures and/or furnishings not removed by Lessee-Developer within thirty (30) days of the termination of the Lease Term shall be deemed to be abandoned by the Lessee-Developer and shall, without compensation to Lessee-Developer, then become the Lessor-Agency's property, free and clear of all claims to or against them by Lessee-Developer or any third party.

Lessee-Developer shall defend and indemnify the Lessor-Agency against all liability and loss arising from any such claims or from the Lessor-Agency's exercise of the rights conferred by this Section 702.

C. [§703] Maintenance and Repair of Improvements

Lessee-Developer shall be responsible for the operation

BOOK 1955
PAGE 331

and maintenance of the Hotel Parcel and Improvements and all fixtures and furnishings thereon or therein, and all sidewalks and all landscaping in the public right-of-way adjoining the Hotel Parcel, except the arcade access to Center Street, if any, throughout the term hereof without expense to the City or the Lessor-Agency unless otherwise specified herein, and to perform all repairs and replacements necessary to maintain and preserve said Parcel and Improvements and fixtures and furnishings and sidewalks and landscaping in a decent, safe and sanitary condition in a manner satisfactory to the City and the Lessor-Agency and in compliance with all applicable laws. Lessee-Developer agrees that the Lessor-Agency shall not be required to perform any maintenance, repairs, or services or to assume any expense not specifically assumed herein in connection with the Hotel Parcel and Improvements, fixtures and furnishings, and sidewalks and landscaping in the public right-of-way adjoining the Hotel Parcel. The Lessor-Agency will use its best efforts to coordinate the development and beautification of the alley and the arcade between the Hotel Parcel and Center Street to compliment the facade of the Improvements facing the alley and the arcade.

The condition of the Improvements required to be maintained hereunder upon completion of the work of maintenance or repair shall be equal in value, quality and use to the condition of such Improvements before the event giving rise to the work.

D. [\$704] Waste

Lessee-Developer shall not commit or suffer to be committed any waste or impairment of the Hotel Parcel or the Improvements, or any part thereof.

Lessee-Developer agrees to keep the Hotel Parcel and the Improvements clean and clear of refuse and obstructions, and to dispose of all garbage, trash and rubbish in a manner satisfactory to the Lessor-Agency.

E. [\$705] Alteration of Improvements

Lessee-Developer shall not make or permit to be made any alteration of, addition to or change in the Improvements other than routine maintenance, repairs, interior decoration and minor interior alterations, nor demolish all or any part of the Improvements, without the prior written consent of the Lessor-Agency. In requesting such consent, Lessee-Developer shall submit to the Lessor-Agency detailed plans and specifications of the proposed work and an explanation of the need and reasons therefor.

Notwithstanding the prohibition in this Section 705, Lessee-Developer may make such changes, repairs, alterations, improvements, renewals or replacements to the Improvements as are required by reason of any law, ordinance, regulation or order of a competent government authority, or are otherwise required for the continued safe and orderly operation of the Hotel.

F. [\$706] Expansion of Improvements

Lessee-Developer shall not expand the Hotel development without the prior written approval of the Lessor-Agency. Any such approved expansion shall be completed in accordance with the terms of this Agreement and upon completion shall be subject to all of the terms, provisions, conditions and covenants in the Agreement.

G. [\$707] Damage or Destruction

Lessee-Developer agrees to give notice to the Lessor-Agency of any fire or other damage that may occur on the Site or the Improvements within ten days of such fire or damage. If the Improvements on the Hotel Parcel shall be damaged or destroyed by any insurable cause which puts the Improvements into a condition which is not decent, safe and sanitary, Lessee-Developer agrees, to the extent of available insurance proceeds and subject to the provisions of §1006 below, to make or cause to be made full repair of said damage and to restore the Improvements to the condition which existed prior to said damage, or to clear and remove from the Hotel Parcel all debris resulting from said damage and rebuild the Improvements in accordance with plans and specifications previously submitted to the Lessor-Agency and approved in writing in order to replace in kind and scope the Improvements which existed prior to such damage.

Lessee-Developer agrees that preliminary steps toward performing repairs, restoration or replacement of the Improvements shall be commenced by within sixty (60) days and the required repairs, restoration or replacement shall be completed within a reasonable time thereafter. An equitable reduction shall be made in the annual rent requirement for such period or periods that the Improvements are untenable by reason of such damage.

H. [§708] Damage or Destruction During Final Years of Term

Notwithstanding Section 707 to the contrary, in the event of major damage or destruction to the Improvements at any time after the 45th year of the Lease Term, Lessee-Developer shall have the election to terminate this Agreement, provided Lessee-Developer complies with all of the following conditions:

1. Lessee-Developer gives the Lessor-Agency notice of the damage or destruction within ten (10) days after the event causing such damage or destruction.
2. Lessee-Developer is not in default under any provision or condition of this Agreement.
3. All insurance proceeds resulting from the casualty are disposed of in accordance with Section 1006 below.
4. Lessee-Developer delivers possession of the Hotel Parcel to the Lessor-Agency and quitclaims all right, title and interest in the land and Improvements.

Major damage or destruction to the Improvements as used in this Section means such damage or destruction that the cost of restoration will exceed twenty-five percent (25%) of the cost to replace the Improvements on the Hotel Parcel in their entirety.

I. [§709] Faithful Performance and Labor and Material (Payment) Bonds; Indemnification

Lessee-Developer agrees to hold the Lessor-Agency and the City free and harmless, and indemnify the Lessor-Agency and the City against all claims, liabilities, costs and expenses, for labor and materials in connection with all construction, repairs or alterations on the Hotel Parcel and the Improvements, and the cost of defending against such claims, including reasonable attorney's fees.

Lessee-Developer agrees to procure, or cause the procurement of, contractor's bonds covering labor, materials and faithful performance for construction on the Parcel. Each such bond shall be in the amount equal to one hundred percent (100%) of the construction price in the contract entered into by Lessee-Developer and its general contractor. Said bonds and the construction contract must first be approved in

BOOK 1955
PAGE 334

writing as to content and form by the Lessor-Agency. The Lessor-Agency shall not unreasonably withhold such approval. Lessee-Developer shall, prior to commencement of construction, deliver to the Lessor-Agency a certificate from the bonding company issuing the aforesaid bonds, naming the Lessor-Agency and City (if possible) as additional insureds under said bonds.

The foregoing provisions of this Section shall be applicable to construction, repairs or alterations to the Hotel Parcel and the Improvements at all times during the Lease Term.

VIII. [§800] PROHIBITION AGAINST ASSIGNMENT, SUBLETTING,
AND TRANSFER

A. [§801] Warranty Against Speculation

Lessee-Developer hereby represents and warrants that this Agreement is for the purpose of redevelopment of the Site and not for speculation in land holding. The Lessee-Developer further recognizes:

1. The importance of the redevelopment of the Site to the general welfare of the community;
2. The substantial financing and other public aids that have been made available by law and by the government for the purpose of making such redevelopment possible; and
3. The fact that a change in ownership or control of the Lessee-Developer or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership or with respect to the identity of the parties in control of the Lessee-Developer or the degrees thereof, is for practical purposes a transfer or disposition of the Hotel Parcel.

B. [§802] Prohibition Against Change in Ownership or Control of Lessee-Developer

The qualifications and identity of Lessee-Developer, and its principals, are of particular concern to the community and the Lessor-Agency. Lessee-Developer further recognizes that it is because of such qualifications and identity that the Lessor-Agency is entering into this Agreement with Lessee-Developer and, in so doing, the Lessor-Agency is further willing to accept and rely on the obligations of Lessee-Developer for the faithful performance of all undertakings and covenants to be performed hereunder by Lessee-Developer without requiring in addition a surety bond or similar undertaking for such performance of all undertakings and covenants in this Agreement.

Notwithstanding any other provisions hereof, Lessee-Developer reserves the right at its discretion to join and associate with other entities in joint ventures, partnerships or otherwise for the purpose of leasing and developing the Hotel Parcel, or portions of such Parcel; provided that Provo Excelsior Limited, with Robert L. Schwartz and Peter F. Edelman as general partners remain fully responsible to the Lessor-Agency for the performance of this Agreement as pro-

vided herein, and further provided that the Lessor-Agency agrees that such joining or associating does not alter the responsibilities of those principals.

No voluntary or involuntary successor in interest of Lessee-Developer shall acquire any rights or powers under this Agreement, except as provided in this Agreement. Lessee-Developer shall not assign all or any part of this Agreement without prior written approval of the Lessor-Agency.

Lessee-Developer shall promptly notify the Lessor-Agency of any and all changes whatsoever in the identity of the parties associated with Lessee-Developer or the degree thereof, of which it or any of its general partners or officers have been notified or otherwise have knowledge or information. Except as provided in this Agreement, this Agreement may be terminated by the Lessor-Agency if there is any significant change (voluntary or involuntary) in the membership, management or control of Lessee-Developer or its associates (other than such changes occasioned by the death or incapacity of an individual), that has not been approved by the Lessor-Agency at the time of such change. No change in the membership of Lessee-Developer shall be deemed significant provided Robert L. Schwartz and Peter F. Edelman remain as general partners.

C. [\$803] Prohibition Against Transfer

For the foregoing reasons, Lessee-Developer shall not, except as permitted by this Agreement assign or attempt to assign this Agreement or any right herein, nor make any total or partial conveyance, assignment, sublease or transfer in any other mode or form of the whole or any part of the Hotel Parcel or the Improvements thereon, without prior written approval of the Lessor-Agency. Once construction of the Improvements has been completed and the Hotel is open and operating, approval shall not be unreasonably withheld or delayed and shall be given if the proposed conveyee, assignee, sublessee or transferee has, in the reasonable opinion of the Lessor-Agency, the financial capability and overall competence to operate the conveyed, assigned, subleased or transferred obligations and premises. Approval by the Lessor-Agency of any conveyance, assignment, sublease or transfer shall be conditioned upon such conveyee, assignee, sublessee or transferee agreeing in writing to assume the rights and obligations thereby conveyed, assigned, subleased or transferred and to keep and perform all covenants, conditions and provisions of this Agreement which are applicable to rights acquired, from and after the date of such conveyance, assignment, sublease

BOOK 1955
PAGE 337

vided herein, and further provided that the Lessor-Agency agrees that such joining or associating does not alter the responsibilities of those principals.

No voluntary or involuntary successor in interest of Lessee-Developer shall acquire any rights or powers under this Agreement, except as provided in this Agreement. Lessee-Developer shall not assign all or any part of this Agreement without prior written approval of the Lessor-Agency.

Lessee-Developer shall promptly notify the Lessor-Agency of any and all changes whatsoever in the identity of the parties associated with Lessee-Developer or the degree thereof, of which it or any of its general partners or officers have been notified or otherwise have knowledge or information. Except as provided in this Agreement, this Agreement may be terminated by the Lessor-Agency if there is any significant change (voluntary or involuntary) in the membership, management or control of Lessee-Developer or its associates (other than such changes occasioned by the death or incapacity of an individual), that has not been approved by the Lessor-Agency at the time of such change. No change in the membership of Lessee-Developer shall be deemed significant provided Robert L. Schwartz and Peter F. Edelman remain as general partners.

C. [\$803] Prohibition Against Transfer

For the foregoing reasons, Lessee-Developer shall not, except as permitted by this Agreement assign or attempt to assign this Agreement or any right herein, nor make any total or partial conveyance, assignment, sublease or transfer in any other mode or form of the whole or any part of the Hotel Parcel or the Improvements thereon, without prior written approval of the Lessor-Agency. Once construction of the Improvements has been completed and the Hotel is open and operating, approval shall not be unreasonably withheld or delayed and shall be given if the proposed conveyee, assignee, sublessee or transferee has, in the reasonable opinion of the Lessor-Agency, the financial capability and overall competence to operate the conveyed, assigned, subleased or transferred obligations and premises. Approval by the Lessor-Agency of any conveyance, assignment, sublease or transfer shall be conditioned upon such conveyee, assignee, sublessee or transferee agreeing in writing to assume the rights and obligations thereby conveyed, assigned, subleased or transferred and to keep and perform all covenants, conditions and provisions of this Agreement which are applicable to rights acquired, from and after the date of such conveyance, assignment, sublease

BOOK 1955
PAGE 337

or transfer. Upon such assumption, Lessee-Developer shall be released from all liability or responsibility for any obligations, covenants, agreements, acts or omissions arising or occurring from and after the date of such conveyance, assignment, sublease or transfer. Lessee-Developer shall not, however, be released from any liability or responsibility for events or obligations occurring or arising prior to such date, unless such liability was specifically assumed by such conveyee, assignee, sublessee or transferee.

The prohibition against transfer contained hereinabove shall not be deemed to prevent the granting of easements or permits to facilitate the development of the Site, nor shall it prohibit granting any security interests expressly described in this Agreement for financing the development of the Site. The Lessee-Developer may assign this Agreement, without the consent of the Lessor-Agency, as additional security to any leasehold mortgagee permitted under Section 901 below.

In the absence of specific written approval by the Lessor-Agency, no such conveyance, assignment, sublease or transfer of this Agreement or the Hotel Parcel or Improvements (or portion thereof) shall be deemed to relieve Lessee-Developer or any other party from any obligations under this Agreement.

Lessee-Developer shall only convey, assign, sublease or transfer its interest in the Hotel Parcel as a whole and is not permitted to subdivide its interest in the Parcel for the duration of the Lease Term without the prior approval of the Lessor-Agency.

D. [\$804] Proceeds from Transfer

Any net proceeds received or to be received by the Lessee-Developer from (a) a sale or assignment of its interest in this Agreement or (b) a sale, conveyance, assignment, sublease or transfer of the whole or any part of its interest in the Hotel Parcel or the Improvements thereon (any or all of such events being in this Section 804 referred to as a "sale"), shall, before being distributed to the Lessee-Developer, be applied first to the repayment to the Lessor-Agency and the City of any principal and accrued interest outstanding on the City-Agency Loan.

As used in this Section 804, the term "net proceeds" means the cash proceeds received or to be received by Lessee-Developer from any such sale less (i) the costs of such sale,

BOOK 1955
PAGE 338

including brokerage commissions (provided that any commissions to be paid to parties affiliated with the Lessee-Developer or its general partners shall not exceed amounts customarily paid to brokers for comparable transactions involving comparable buildings in the greater Salt Lake City region), (ii) payments to satisfy any mortgage loans or other financing affecting the Hotel Parcel or the Improvements, (iii) repayments of any operating losses previously incurred by Lessee-Developer, and (iv) payment of any other Hotel expenses. Essentially, "net proceeds" refers to Lessee-Developer's net profit on the sale.

No sums shall be applied to the City-Agency Loan pursuant to this Section until received by the Lessee-Developer. In the event that the consideration to be paid for the sale, assignment, transfer, sublease or other event constituting the "sale" is paid over a period of time pursuant to a note or an installment sale, such cash shall be distributed pursuant to this Section only as and when received and no interest payments received by Lessee-Developer shall be included as "net proceeds" (but the interest on the City-Agency Loan continues to accrue until it is repaid).

BOOK 1955
PAGE 339

IX. [§ 900] MORTGAGES

A. [§ 901] Leasehold Mortgages

Notwithstanding Section 803, at any time and from time to time during the Lease Term, Lessee-Developer shall have the right to mortgage, pledge, deed in trust or otherwise encumber this Agreement, or the interest of Lessee-Developer hereunder, in whole or in part, and to assign or pledge the same as security for any debt (the holder of any such mortgage, pledge or other encumbrance, and the beneficiary of any such deed of trust being hereafter referred to as "leasehold mortgagee" and the mortgage, pledge, deed of trust or other instrument hereafter referred to as "leasehold mortgage"), upon and subject to each and all of the following terms and conditions:

1. Except as may be provided in Section 911 below regarding the loan for construction financing, the permitted leasehold mortgage shall cover no interest in any real property other than Lessee-Developer's interest in the Hotel Parcel and Improvements or some portion thereof and any subleases thereon. Any such permitted leasehold mortgage shall be without subordination of the fee simple title of the Lessor-Agency in and to the Hotel Parcel, except with regard to the loan for construction financing as provided in Section 911 below.

2. No such leasehold mortgage shall be binding upon the Lessor-Agency in the enforcement of its rights and remedies herein and by law provided, unless and until a certified copy of the original thereof bearing the date and book and page of recordation thereof and a certified copy of the original note secured by such leasehold mortgage has been delivered to the Lessor-Agency together with written notice of the address of the leasehold mortgagee to which notices may be sent; and in the event of an assignment of such leasehold mortgage, such assignment shall not be binding upon the Lessor-Agency unless and until a certified copy thereof bearing the date and book and page of recordation together with written notice of the address of the assignee thereof to which notices may be sent, have been delivered to the Lessor-Agency.

3. The permitted leasehold mortgage shall contain provisions permitting the disposition and application of the insurance proceeds and condemnation awards in the manner provided in this Agreement.

4. Such permitted leasehold mortgage is to be given only to a responsible bona fide institutional lender. For the purposes hereof the term "institutional lender" shall consist

BOOK 1955
PAGE 340

of any one of the following lending institutions: a commercial or savings bank, or consortium of banks; a trust company; an insurance company; a savings and loan association or consortium of savings and loan institutions; a building and loan association; an educational institution; a pension, retirement or welfare fund; a charity; an endowment fund or foundation, authorized to make loans in the State of Utah.

5. All rights acquired by said leasehold mortgagee under said leasehold mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Agreement, and to all rights of the Lessor-Agency thereunder, none of which covenants, conditions and restrictions is or shall be waived by the Lessor-Agency by reason of the giving by the Lessee-Developer of such leasehold mortgage, except as expressly provided in this Part 900.

Lessee-Developer shall not enter into any leasehold mortgage as permitted hereunder without the prior written approval of the Lessor-Agency, which approval the Lessor-Agency agrees to give if such leasehold mortgage complies with each and all of the terms and conditions referred to in this Section 901, and provided the City-Agency Loan is at all times secured by no less than a second leasehold mortgage lien on the premises.

If Lessee-Developer encumbers its leasehold estate by way of a leasehold mortgage as permitted herein, and should the Lessor-Agency be advised in writing of the name and address of the leasehold mortgagee, then this Agreement shall not be terminated or cancelled on account of any default by the Lessee-Developer in the performance of the terms, covenants or conditions hereof until the Lessor-Agency shall have complied with the provisions of Section 902 as to the leasehold mortgagee's rights to cure and to obtain a new agreement.

B. [§ 902] Rights and Obligations of Leasehold Mortgagees

If Lessee-Developer, or Lessee-Developer's successors or assigns, shall mortgage the leasehold interest herein demised, then, as long as any such leasehold mortgage shall remain unsatisfied of record, the following provisions shall apply:

1. The Lessor-Agency will not cancel, accept a surrender of or modify this Agreement without the prior consent in writing of the leasehold mortgagee.

2. If the holder of any mortgage on the leasehold interest herein demised shall register with the Lessor-Agency

BOOK 1955 PAGE 341

its name and address in writing, no notice of default or notice of termination by Lessor-Agency to Lessee-Developer shall be deemed to have been duly given unless and until a copy thereof has been mailed to the leasehold mortgagee by registered or certified mail at the address registered with the Lessor-Agency.

3. In the event Lessee-Developer shall be in default hereunder, the leasehold mortgagee shall, within the period and otherwise as herein provided, have the right to remedy such default, or cause the same to be remedied, and the Lessor-Agency shall accept such performance by or at the instigation of such leasehold mortgagee as if the same had been done by Lessee-Developer. No default on the part of Lessee-Developer shall be deemed to exist if steps shall in good faith have been commenced promptly by Lessee-Developer or by the leasehold mortgagee to rectify the same and shall be prosecuted to completion with diligence. The leasehold mortgagee shall have thirty (30) days more after the giving of the aforesaid notice of Lessee-Developer's default to it for remedying the default or causing the same to be remedied, as is given Lessee-Developer after notice to it. Lessee-Developer hereby constitutes and appoints the leasehold mortgagee Lessee-Developer's agent and attorney in fact with full power, in the Lessee-Developer's name, place and stead, and at the Lessee-Developer's cost and expense, to enter upon the Hotel Parcel and perform all acts required to be performed herein or in any sublease made hereunder by Lessee-Developer.

4. While any such leasehold mortgage remains unsatisfied of record, and an event or events shall occur which shall entitle the Lessor-Agency to terminate this Agreement, and if before the expiration of sixty (60) days after the date of service of notice of termination under this Agreement, such leasehold mortgagee shall have paid to the Lessor-Agency all rent and additional rent and other payments herein provided for then in default, and shall have complied or shall be engaged in complying with all the other requirements of this Agreement, if any, then in default, then the Lessor-Agency shall not be entitled to terminate this Agreement and any notice of termination theretofore given shall be void and of no effect.

5. In the event of the termination of this Agreement prior to the natural expiration of the then current Lease Term due to default of Lessee-Developer or operation of law, the Lessor-Agency shall mail by registered or certified mail to the leasehold mortgagee written notice of such termination, together with a statement of any and all sums which would at

that time be due under this Agreement then known to Lessor-Agency. Such leasehold mortgagee shall thereupon have the option to obtain a new agreement in accordance with and upon the following terms and conditions:

(a) Upon the written request of the leasehold mortgagee within sixty (60) days after service of the aforementioned notice of termination, the Lessor-Agency shall enter into a new agreement for the Hotel Parcel with such leasehold mortgagee, or its designee, as provided in clause (b) of this paragraph 5.

(b) Such new agreement shall be effective as of the date of termination of this Agreement and shall be for the remainder of the Lease Term at the rent and additional rent and upon the agreements, terms, covenants and conditions thereof (except for such development or construction obligations as have then been satisfied by the Lessee-Developer). Upon the execution of such new agreement, the new Lessee-Developer named therein shall pay any and all sums which would at the time of the execution thereof be due under this Agreement but for the termination as aforesaid, and shall fully otherwise remedy any existing defaults under this Agreement and shall pay all expenses, including but not limited to reasonable attorneys fees, court costs and disbursements incurred by the Lessor-Agency in connection with such defaults and termination, the recovery of possession of the Hotel Parcel and the preparation, execution and delivery of such new agreement, except that with respect to any default which cannot be cured by such new Lessee-Developer until it obtains possession, such new Lessee-Developer shall have a reasonable time after it obtains possession to cure such default. Upon the execution of a new agreement, the Lessor-Agency shall allow the new Lessee-Developer named therein and such lessee-developer shall be entitled to an adjustment in the amount owing to the Lessor-Agency equal to the net income (after deduction of the Lessor-Agency's reasonable expenses in curing such default) derived by the Lessor-Agency from operations on the Hotel Parcel during the period from the date of termination of this Agreement to the date of execution of such new agreement.

6. If the Lessor-Agency elects to terminate this Agreement pursuant to any right of termination resulting from Lessee-Developer's being in default of any provision of this Agreement, then any leasehold mortgagee, in addition to all other rights herein granted such leasehold mortgagee, shall have the right to be subrogated to any and all rights of

BOOK 1955
PAGE 343

Lessee-Developer with respect to curing of any default and shall also have the right to postpone and extend the specified date for termination of this Agreement fixed by the Lessor-Agency in a notice given pursuant to applicable provisions of this Agreement, for a period of not more than twelve (12) months provided such leasehold mortgagee shall:

(a) Promptly cure all defaults which may be cured by the payment of a sum of money and undertake to cure any other existing default of Lessee-Developer excepting the vacation or dismissal of any pending bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the then applicable bankruptcy act or other similar federal and state statutes or laws;

(b) Continue to pay the rent and additional rent during any extension period(s); and

(c) Promptly thereafter initiate steps to acquire Lessee-Developer's interest in this Agreement by foreclosure of its mortgage or otherwise.

Such right shall be exercised by the leasehold mortgagee's giving the Lessor-Agency notice of the exercise of the same within 60 days after service of the notice of termination. If, before the date specified for the termination of this Agreement as extended by such leasehold mortgagee, (1) the leasehold mortgagee shall have obtained possession, and if (2) an assumption in writing of performance and observance of the covenants and conditions herein contained on Lessee-Developer's part to be performed shall be delivered to the Lessor-Agency by the leasehold mortgagee, then and in such event the default under this Agreement shall be removed and the Agreement shall not be cancelled.

7. Any payment to be made or action to be taken by a leasehold mortgagee hereunder as a prerequisite to obtaining a new agreement or keeping this Agreement in effect shall be deemed properly to have been made or taken by the leasehold mortgagee if such payment is made or action taken by a permitted nominee, agent or assignee of the right of such leasehold mortgagee.

8. The parties hereto shall give the leasehold mortgagee notice of any condemnation proceedings affecting the Hotel Parcel. The leasehold mortgagee shall have the right to intervene and be made a party to any such condemnation

proceedings and the parties hereto do hereby consent that the leasehold mortgagee may be made such party or intervenor.

9. No leasehold mortgagee shall become personally liable under the agreements, terms, covenants or conditions of this Agreement unless and until such time as the leasehold mortgagee becomes the owner of the leasehold estate and then only for as long as it remains the owner of the leasehold estate. Upon any assignment of this Agreement by any owner of the leasehold estate whose interest shall have been acquired by, through or under any leasehold mortgage or shall have been derived immediately from any holder thereof, which assignment shall not be subject to the approval of the Lessor-Agency, the assignor shall be relieved of any further liability which may accrue hereunder from and after the date of such assignment provided that the assignee shall execute and deliver to the Lessor-Agency a recordable instrument of assumption wherein such assignee shall assume the rights and obligations of Lessee-Developer and agree to perform and observe all covenants and conditions and provisions in this Agreement as they are applicable to the Lessee-Developer.

10. Anything herein contained to the contrary notwithstanding, the provisions of this Section 902 shall inure only to the benefit of the holders of leasehold mortgages. If the holders of more than one such leasehold mortgage shall make written requests upon the Lessor-Agency in accordance with this Agreement the new agreement shall be entered into pursuant to the request of the holder whose leasehold mortgage shall be prior in lien thereto and thereupon the written requests for a new agreement of each holder of a leasehold mortgage junior in lien shall be and be deemed to be void and of no force or effect. In the event of any dispute or disagreement as to the respective priorities of any such leasehold mortgages, the certification as to such priorities by any reputable title insurance company doing business in Provo, Utah shall be conclusively binding upon all the parties concerned.

C. [§ 903] Lessor-Agency's Right to Cure Lessee-Developer's Defaults on Leasehold Mortgages

Lessee-Developer agrees to have any leasehold mortgage made pursuant to this Agreement provide:

1. That the leasehold mortgagee shall by registered or certified mail and in writing give notice to the Lessor-Agency of the occurrence of any event of default.

2. That the Lessor-Agency shall be given at least twenty (20) days notice of any default before such leasehold mortgagee will accelerate the indebtedness or initiate any mortgage foreclosure action. In the event of any default under the terms of the leasehold mortgage, the Lessor-Agency may cure said default and the leasehold mortgagee shall accept any payment or performance by the Lessor-Agency which is sufficient to cure the default, provided Lessee-Developer is given ten (10) days notice of Lessor-Agency's intention to cure such default. If the Lessor-Agency shall elect to cure such default, Lessee-Developer shall pay the cost thereof to the Lessor-Agency, together with interest thereon at the rate of 1-1/2% over the prevailing prime rate charged by commercial banks in Utah on short term unsecured loans to large businesses with the highest credit standing as additional rent, unless Lessee-Developer shall cure such default within said ten-day period, or (a) compliance requires more than ten (10) days and Lessee-Developer shall have commenced compliance within a reasonable time after such notice and shall have cured such default within thirty (30) days after commencing compliance, or (b) Lessee-Developer shall obtain from the leasehold mortgagee a written extension of time in which to cure such default together with a separate written extension of time granting the Lessor-Agency a reasonable additional time to cure said default if said default is not cured within said extended time and copies thereof are delivered to the Lessor-Agency. Lessee-Developer hereby authorizes the Lessor-Agency in the Lessor-Agency's name without any obligation or duty on the Lessor-Agency to do any act or thing required of or permitted to the Lessee-Developer to prevent any default under said leasehold mortgage or any acceleration thereof, or the taking of any foreclosure or other action to enforce the collection of the indebtedness, and Lessee-Developer agrees to indemnify and hold the Lessor-Agency harmless and to reimburse the Lessor-Agency upon demand for all reasonable costs, charges and expenses incurred by the Lessor-Agency in such connection. If Lessee-Developer at any time shall request any leasehold mortgagee to grant a moratorium on payment, to waive payment or to extend the time for payment, Lessee-Developer shall give the Lessor-Agency written notice thereof by registered or certified mail concurrently with the making of said request and shall further give the Lessor-Agency written notice by registered or certified mail of the granting or denial of said request.

D. [§ 904] Additional Rights and Obligations of Leasehold Mortgagee and Lessor-Agency During Construction Period

1. [§ 905] Leasehold Mortgagee not Obligated to Construct Improvements

Any leasehold mortgagee authorized by this Agreement 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; nor shall any covenant or any other provision in the Agreement for the Hotel Parcel be construed to so obligate such leasehold mortgagee. Nothing in this Agreement shall be deemed to construe, permit, or authorize any such leasehold mortgagee to devote the Hotel Parcel to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

2. [§ 906] Leasehold Mortgagee's Right to Complete Improvements

Whenever the Lessor-Agency shall deliver any notice to Lessee-Developer and the leasehold mortgagee with respect to any breach or default by the Lessee-Developer in completion of construction of the Improvements, such leasehold mortgagee shall, notwithstanding the provisions of Section 902 of this Agreement (insofar as the rights of the Lessor-Agency are concerned), have the right at its option within ninety (90) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to add the cost thereof to the security interest debt and the lien on its security interest. If such leasehold mortgagee undertakes or continues the construction or completion of the Improvements (beyond the extent necessary to conserve or protect the improvements or construction already made) such construction and completion shall be in the manner provided in this Agreement. Any such leasehold mortgagee properly completing such Improvements shall be entitled, upon written request made to the Lessor-Agency, to a Certificate of Completion from the Lessor-Agency.

3. [§ 907] Failure of Leasehold Mortgagee to Complete Improvements

In any case where, six (6) months after default by Lessee-Developer in completion of construction of Improvements under this Agreement, the leasehold mortgagee has not exercised the option to construct, or if it has exercised the option and has

not proceeded diligently with construction, the Lessor-Agency may purchase the leasehold mortgage by payment to the leasehold mortgagee of the amount of the unpaid debt, plus any accrued and unpaid interest. If the ownership of the leasehold interest has vested in the leasehold mortgagee, the Lessor-Agency, if it so desires, shall be entitled to a conveyance of such leasehold interest (including the Improvements) from the leasehold mortgagee to the Lessor-Agency upon payment to the leasehold mortgagee of an amount equal to the sum of the following:

(a) The unpaid mortgage debt at the time the leasehold interest became vested in the leasehold mortgagee (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);

(b) All expenses with respect to foreclosure;

(c) The net expenses, if any (exclusive of general overhead) incurred by the leasehold mortgagee as a direct result of the subsequent management of the Hotel Parcel;

(d) The costs of any improvements made by such leasehold mortgagee;

(e) An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence to the date of payment by the Lessor-Agency.

4. [§ 908] Right of the Lessor-Agency to Cure Leasehold Mortgage Default

In the event of a default or breach by Lessee-Developer of a mortgage instrument with respect to the leasehold interest in the Hotel Parcel or any part thereof, prior to the completion of development, and the leasehold mortgagee has not exercised its option to complete the development, the Lessor-Agency may cure the default prior to completion of any foreclosure. In such event the Lessor-Agency shall be entitled to reimbursement from Lessee-Developer of all costs and expenses incurred by the Lessor-Agency in curing the default. The Lessor-Agency shall also be entitled to a subordinate lien upon the leasehold interest in the Hotel Parcel, or part thereof, to the extent of such costs and disbursements. Any such lien shall be subject to leasehold mortgages executed for the sole purpose of obtaining funds to develop the Hotel Parcel as authorized herein.

E. [§ 909] Nonmerger

There shall be no merger of this Agreement, or of the leasehold estate created thereby, with the fee estate in and to the Hotel Parcel by reason of the fact that this Agreement, or the leasehold estate created thereby, or any interest in either thereof, may be held directly or indirectly by or for the account of any person who shall own the fee estate in and to the Hotel Parcel, or any portion thereof, and no such merger shall occur unless and until all persons at the time having any interest in this Agreement or the leasehold estate, including the leasehold mortgagee and the holder of any mortgage upon the fee estate in and to the Hotel Parcel, shall join in a written instrument effecting such merger.

F. [§ 910] Mortgage Modifications.

All parties to this Agreement recognize and acknowledge the importance to the transactions contemplated herein, and to the fulfillment of the goals envisioned in the Redevelopment Plan, of obtaining construction and permanent loan financing for the Improvements. If a proposed leasehold mortgagee requests any changes or modifications of this Agreement as a condition to making the loan, the parties agree to make such changes or modifications provided they do not materially alter the terms hereof. All discussions and negotiations with respect to such changes shall be conducted in good faith and each party agrees to use its best efforts to resolve any disagreements.

G. [§ 911] Subordination of Fee

(a) The Lessor-Agency hereby covenants and agrees that during the Lease Term the Lessor-Agency shall not mortgage or otherwise create any security or other liens or encumbrances upon or affecting the Hotel Parcel or Improvements at any time, and it shall not mortgage or modify, extend, renew, replace, refinance or otherwise change or affect any mortgage at any time or from time to time created by Lessee-Developer pursuant to this Agreement. These provisions shall not be construed to prevent or excuse the Lessor-Agency from executing and delivering the mortgages and other agreements, instruments and documents referred to in paragraph (b) of this Section 911 in order to enable Lessee-Developer to obtain a loan for construction financing.

(b) If required by the construction lender Lessee-Developer shall have the right at the commencement of the

Lease Term to subject the fee interest of the Lessor-Agency in the Hotel Parcel or any part or parts thereof, to a mortgage securing a loan for construction financing as permitted under Section 901 of this Agreement. If Lessee-Developer shall obtain a commitment for such mortgage, Lessee-Developer shall give the Lessor-Agency written notice thereof and of the closing date therefor, at least fifteen (15) days prior thereto, and the Lessor-Agency agrees that it shall, at or prior to the closing of such mortgage, execute, acknowledge and deliver the mortgage and such other instruments and documents as shall be required or desired by, and in form satisfactory to, the mortgagee in order to effect such subordination. Neither the City nor the Lessor-Agency nor any of its officers or employees shall incur any personal liability to the mortgagee for the repayment of the mortgage indebtedness by reason of such subordination. Lessee-Developer covenants and agrees to make all payments of interest and amortization under any such mortgage and to pay all of the costs and expenses incurred in connection therewith, all of which shall be paid by Lessee-Developer directly to the mortgagee as and when the same shall be due and payable. The Lessor-Agency covenants and agrees that Lessee-Developer alone shall be entitled to all of the proceeds from any such mortgage effectuated pursuant to this Lease, and the Lessor-Agency shall not be entitled to, and shall not receive, and shall have no interest in, such proceeds or any part thereof, except as provided in Section 912 hereof, and each hereby covenants to execute any further documents which may be required by the mortgagee for such purpose.

(c) If the Lessor-Agency shall fail or refuse to execute the documents referred to in paragraph (b) of this Section 911, including but not limited to the mortgage and the documents otherwise indicated herein, then Lessee-Developer shall be entitled to such remedies at law and/or equity to which it may be entitled (including specific performance and declaratory judgment), and in addition thereto, all rent due to Lessor-Agency under the terms of this lease shall abate until Lessor-Agency shall have complied with its obligation under this Section 911.

(d) The parties each covenant to execute, upon request, a proper instrument of subordination evidencing the provisions of this Section 911.

H. [§ 912] Excess Mortgage Proceeds

If any portion of the proceeds from any permanent mortgage loan (excluding the City-Agency Loan) shall not be used to repay any prior construction or permanent financing or to pay any costs incurred in connection with the loan, and is therefore available for distribution to the Lessee-Developer (the "Distributable Portion"), then such Distributable Portion shall, before being distributed to the Lessee-Developer, be applied first to the repayment to the Lessor-Agency and the City of any principal and accrued interest outstanding on the City-Agency Loan.

X. [§ 1000] INDEMNIFICATION AND INSURANCE

A. [§ 1001] Indemnification

Lessee-Developer hereby agrees to indemnify and hold the Lessor-Agency and the City harmless from and against all claims and demands for loss or damage, including property damage, personal injury and wrongful death, arising out of or in connection with the use or occupancy of the Hotel Parcel and Improvements by Lessee-Developer or any other person under Lessee-Developer, or any accident or fire on the Hotel Parcel, or any nuisance made or suffered thereon, or any failure by Lessee-Developer to keep the Hotel Parcel and Improvements or any sidewalks on the Hotel Parcel in a safe condition, and will reimburse the City and Lessor-Agency for all its costs and expenses, including reasonable attorneys' fees incurred in connection with the defense of any such claims, and will hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever on the Hotel Parcel and Improvements at the sole risk of Lessee-Developer and save the Lessor-Agency and City harmless from any loss or damage thereto by any cause whatsoever. The foregoing indemnity shall be inapplicable for any willful act or negligent act of the Lessor-Agency or City, or their agents, servants or employees in the course and scope of their employment.

B. [§ 1002] Required Insurance

During the Lease Term, the Lessee-Developer at its sole cost and expense shall:

1. Keep or cause to be kept a policy or policies of insurance against loss or damage to the Improvements on the Hotel Parcel resulting from fire, earthquake, windstorm, hail, lightning, vandalism, malicious mischief, riot and civil commotion, and such other perils ordinarily included in extended coverage fire insurance policies. Such insurance shall be maintained in an amount not less than one hundred percent (100%) of the full insurable value of the Improvements as defined herein in Section 1003 (such value to include amounts spent for construction of the improvements, architectural and engineering fees, and inspection and supervision).

2. Maintain or cause to be maintained use and occupancy or business interruption or rental income insurance against the perils of fire, earthquake, windstorm, hail, lightning, vandalism and malicious mischief, riot and civil commotion, and such other perils ordinarily included in extended coverage fire insurance policies, in an amount equal to not less than twelve (12) months' rental under this Agreement.

BOOK 1955 PAGE 352

3. Maintain or cause to be maintained public liability insurance, to protect against loss from liability imposed by law for damages on account of personal injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever, resulting directly or indirectly from any act or activities of the Lessor-Agency, City, or Lessee-Developer or under their respective control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person caused directly or indirectly by or from the acts or activities in connection with the Hotel Parcel of the Lessor-Agency, City, or Lessee-Developer or its invitees and sublessees, or any person acting for the Lessor-Agency, City, or Lessee-Developer, or under their respective control or direction.

Such property damage and personal injury insurance shall also provide for and protect the Lessor-Agency and the City against incurring any legal cost in defending claims for alleged loss. Such personal injury and property damage insurance shall be maintained in full force and effect during the entire term of this Lease in the amount of at least \$3,000,000 combined single limit, naming the Lessor-Agency, the City, and their respective officers, employees and consultants, as additional insureds. Lessee-Developer shall be required to obtain liability coverage for the benefit of the City only in the event such coverage can be obtained at no additional cost to the Lessee-Developer.

Lessee-Developer agrees that provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which Lessee-Developer may be held responsible for the payment of damages to persons or property resulting from Lessee-Developer's activities, activities of its invitees and sublessees or the activities of any other person or persons for which Lessee-Developer is otherwise responsible.

4. Maintain or cause to be maintained worker's compensation insurance issued by a responsible carrier authorized under the laws of the State of Utah to insure employers against liability for compensation under such laws now in force in Utah, or any act hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such worker's compensation insurance shall cover all persons employed by Lessee-Developer in connection with the Hotel Parcel and the Improvements and shall cover full liability for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for or on behalf of any person incurring or suffering injury or death in connection with the Hotel Parcel or the Improvements or the operation thereof by the Lessee-Developer.

BOOK 1955
PAGE 353

C. [§ 1003] Definition of "Full Insurable Value"

The term "full insurable value" as used in Section 1002 shall mean the actual replacement cost (including the cost of excavation, foundation and footings below the ground level and without deduction for depreciation) of the Improvements using the items of value set forth above (including the cost of restoring the landscaping and the surface of the Hotel Parcel). To ascertain the amount of coverage required, Lessee-Developer shall cause the full insurable value to be determined from time to time by appraisal by the insurer or by any appraiser mutually acceptable to the Lessor-Agency and the Lessee-Developer, not less often than once every three years.

D. [§ 1004] General Insurance Provisions

All insurance provided under Section 1002 of this Agreement shall be for the benefit of the Lessee-Developer, the Lessor-Agency and the City, to the extent of their respective insurable interests. Said insurance shall also be for the benefit of the leasehold mortgagee, if any.

All insurance provided under Section 1002 shall be periodically reviewed by the parties for the purpose of mutually increasing or decreasing the minimum limits of such insurance, from time to time, to amounts which may be reasonable and customary for similar facilities of like size and operation.

All insurance herein provided for under Section 1002 shall be effected under policies issued by insurers of recognized responsibility licensed or permitted to do business in the State of Utah and approved by the Lessor-Agency.

Any insurance required to be maintained by Lessee-Developer pursuant to Section 1002 may be taken out under a blanket insurance policy or policies covering other premises or properties, and other insureds in addition to the parties hereto; provided, however, that any such policy or policies of blanket insurance shall specify therein, or supplemental written certification from the insurers under such policies shall specify, the amount of insurance allocated to the coverage to be provided under Section 1002 and provided further, that in all other respects, any such blanket policy shall comply with the other provisions of Section 1002.

All policies or certificates of insurance shall provide that such policies or certificates shall not be cancelled or materially changed without at least thirty (30) days prior written notice to the Lessor-Agency.

BOOK 1955 PAGE 354

Copies of such policies shall be deposited with the Lessor-Agency together with appropriate evidence of payment of the premiums therefor; and, at least thirty (30) days prior to expiration of any such policy, copies of renewal policies shall be so deposited.

E. [§ 1005] Failure to Maintain Insurance

If Lessee-Developer fails or refuses to procure or maintain insurance as required by this Agreement, the City or Lessor-Agency shall have the right, at City or Lessor-Agency's election, and without notice, to procure and maintain such insurance. The premiums paid by the City or Lessor-Agency shall be treated as additional rent due from Lessee-Developer, to be paid on the first day of the month following the date on which the premiums were paid. The City or Lessor-Agency shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s).

F. [§ 1006] Disposition of Insurance Proceeds Resulting from Loss or Damage to Improvements

All proceeds of insurance with respect to loss or damages to the Improvements during the Lease Term shall be payable, under the provisions of the policy of insurance, jointly to the Lessee-Developer and the Lessor-Agency and said proceeds shall constitute a trust fund to be used for the restoration, repair or rebuilding of the Improvements in accordance with plans and specifications approved in writing by the Lessor-Agency, provided the proceeds are sufficient for this purpose. To the extent that such proceeds exceed the cost of such restoration, repair or rebuilding, then the balance of such proceeds shall be applied as provided below.

Provided, however, that within the period during which there is an outstanding mortgage or deed of trust upon the Improvements, such proceeds shall be made payable jointly to the mortgagee or beneficiary, if any, the Lessee-Developer and the Lessor-Agency and shall be disposed of jointly by the parties as a trust fund to be applied to reconstruction of the damaged or destroyed Improvements, or at the option of the mortgagee (unless previously waived in the leasehold mortgage) to be applied in reduction of the mortgage (in which event any remaining sums, if sufficient, shall be paid over jointly to Lessee-Developer and the Lessor-Agency to be used for reconstruction of the damaged or destroyed Improvements). To the extent that the insurance proceeds exceed the cost of restoration, repair or rebuilding, then the remaining balance of such proceeds shall be applied as provided below. If the mortgagee applies any portion of the insurance proceeds to

BOOK 1955
PAGE 355

the reduction of its debt, Lessee-Developer shall not be obligated to repair, reconstruct or restore the Improvements if the remaining balance of such proceeds is insufficient for that purpose. Instead, such balance shall be applied as provided in the following paragraph.

In the event that (i) this Agreement is terminated by mutual agreement of the Lessor-Agency, the Lessee-Developer and any leasehold mortgagee, or (ii) this Agreement is terminated by Lessee-Developer pursuant to Section 708 above, or (iii) the insurance proceeds available for this purpose are insufficient to adequately repair, reconstruct or restore the Improvements in accordance with plans and specifications approved by the Lessor-Agency, then, in any such event, this Agreement shall terminate as of the date of such damage or destruction and the insurance proceeds shall be paid over jointly to the Lessor-Agency, Lessee-Developer and leasehold mortgagee, if any, and distributed for the following purposes in the following order of priority:

1. First, to repay all financing secured by leasehold mortgages on the Improvements and the Hotel Parcel (regardless of whether such mortgages are subordinate or superior to the Lessor-Agency's fee interest in the Hotel Parcel), in order of priority of lien.

2. Second, to repay the City-Agency Loan.

3. Third, to any rental payments due to the Lessor-Agency under this Agreement up to the date of termination.

4. Fourth, to the repayment of any tax increment bonds issued in connection with the development of the Site.

5. Fifth, to demolish any portion of the Improvements still standing, to clear away all rubble and to restore the Hotel Parcel to the condition it was in at the time this Agreement was executed, i.e. a blacktopped, striped parking lot.

6. Sixth, any balance of the proceeds shall belong solely to Lessee-Developer.

Lessee-Developer hereby waives (to the extent legally permissible) any claim against the City and the Lessor-Agency for any loss covered by insurance of the type specified in paragraph 1 of Section 1002; and Lessee-Developer shall obtain from its insurance company or companies insuring the Improvements against such loss, a waiver of any right of subrogation that it may have against the City and Lessor-Agency, provided such waiver can be obtained at no additional cost.

XI. [§ 1100] EMINENT DOMAIN

In the event that the Hotel Parcel or the Improvements or any part thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, then, as between the Lessor-Agency, the Lessee-Developer and any mortgagee, if a mortgage is then in effect, the interests of the Lessor-Agency, Lessee-Developer and mortgagee in the award and the effect of the taking upon this Agreement shall be as follows:

1. In the event of the taking of only a part of the Hotel Parcel, leaving the remainder of the Hotel Parcel in such location and in such form, shape and size as to be used effectively and practicably for the conduct thereon of the uses permitted hereunder, this Agreement shall terminate and end as to the portion of the Hotel Parcel so taken as of the date title to such portion vests in the condemning authority, but shall continue in full force and effect as to the portion of the Hotel Parcel not so taken and from and after such date the rental required by this Agreement to be paid by Lessee-Developer to the Lessor-Agency shall be reduced in the proportion which the value of the Hotel Parcel so taken bears to the total value of the Hotel Parcel; provided, however, the Lessor-Agency shall have the right with the consent of Lessee-Developer to substitute like adjacent property (reasonably satisfactory to the Lessee-Developer) and maintain the rent schedule without diminution.

2. In the event of the taking of only a part of the Hotel Parcel, leaving the remainder of the Hotel Parcel in such location, or in such form, shape or reduced size as to render the same not effectively and practicably usable, for the conduct thereon of the uses permitted hereunder, this Agreement and all right, title and interest thereunder shall cease on the date title to the Hotel Parcel or the portion thereof so taken vests in the condemning authority.

3. In the event the entire Hotel Parcel is so taken, this Agreement and all of the right, title and interest thereunder shall cease on the date title to the Hotel Parcel so taken vests in the condemning authority.

4. Promptly after a partial taking and release of the condemnation award or payment, Lessee-Developer shall restore the Improvements, in the manner specified in provisions of this Agreement relating to maintenance, repairs and alterations, so as to place them in a condition suitable for the

BOOK 1955
PAGE 357

uses and purposes for which the Hotel Parcel is leased, to the extent the condemnation award or payment is made available to the Lessee-Developer for such purpose. If the amount of the condemnation award or payment is insufficient to repair, reconstruct or restore the Improvements to a suitable condition, then Lessee-Developer may elect to terminate this Agreement, effective as of the date title vests in the condemning authority. Unless otherwise waived in the mortgage, any mortgagee may (subject to similar rights of prior mortgagees) apply all or a part of the condemnation award or payment in lieu thereof, to the reduction of its indebtedness. If the remaining balance of the award or payment is insufficient to pay for the cost of repairing, reconstructing or restoring the Improvements, Lessee-Developer may again elect to terminate this Agreement.

5. Any condemnation award or payment in lieu thereof shall be paid over jointly to the Lessor-Agency, Lessee-Developer and any leasehold mortgagee and shall be released to Lessee-Developer (subject to the rights of any mortgagees, as mentioned above) to the extent necessary for any repair or restoration of the Improvements, which work shall be done in accordance with plans and specifications approved in writing by the Lessor-Agency. If this Agreement is terminated pursuant to paragraphs 2, 3 or 4 above, or if the amount of the award exceeds the cost of restoration, the proceeds shall be distributed to the following parties in the following order of priority:

A. First, to repay all financing secured by leasehold mortgages on the Improvements and the Hotel Parcel (regardless of whether such mortgages are subordinate or superior to the Lessor-Agency's fee interest in the Hotel Parcel), in order of priority of lien.

B. Second, to repay the City-Agency Loan.

C. Third, to any rental payments due under this Agreement up to the date of termination.

D. Fourth, to the repayment of any tax increment bonds issued in connection with the development of the Site.

E. Fifth, any balance of the proceeds shall be distributed to the Lessor-Agency and Lessee-Developer based on the fair market value of their respective interests in the Hotel Parcel and the Improvements at the time of the taking. The fair market value of the Lessee-Developer's interest shall be based on the value of the unexpired Lease Term, assuming all renewal options were exercised.

BOOK 1955 PAGE 358

6. Notwithstanding the foregoing provisions of this Section, the Lessor-Agency and Lessee-Developer each may, in its discretion and without affecting the validity and existence of this Agreement, and subject to the rights of any mortgagees, transfer their interests in the Hotel Parcel in lieu of condemnation to any authority entitled to exercise the power of eminent domain. In the event of such transfer, Lessee-Developer (or mortgagee if a mortgage is then in effect) and the Lessor-Agency shall retain whatever rights each may have to recover from said condemning authority the fair market value of their respective interests in the Hotel Parcel and the Improvements taken by the condemning authority.

XII. [§ 1200] DEFAULTS, REMEDIES AND TERMINATION

A. [§ 1201] Defaults - General

Subject to the extensions of time set forth in Section 1305, failure or delay by any party to perform any term or provision of this Agreement constitutes a default under this Agreement. The party who so fails or delays must immediately commence to cure, correct, or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence and during any period of curing shall not be in default.

The injured party or parties shall give written notice of default to the party in default, specifying the default complained of by the injured party or parties. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

Except as otherwise expressly provided in this Agreement, any failures or delays by any party in asserting any of its rights or remedies as to any default, shall not operate as a waiver of any default or of any such rights or remedies. Delay by any party in asserting any of its rights and remedies shall not deprive any party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

B. [§ 1202] Legal Actions

1. [§ 1203] Institution of Legal Actions

In addition to any other rights or remedies, any 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 purpose of this Agreement. Such legal actions must be instituted in the District Court of the County of Utah, State of Utah, in any other appropriate court in that county, or in the Federal District Court in Utah.

2. [§ 1204] Applicable Law

The laws of the State of Utah shall govern the interpretation and enforcement of this Agreement.

3. [§ 1205] Acceptance of Legal Process

In the event that any legal action is commenced by Lessee-Developer against the Lessor-Agency, service of process on the Lessor-Agency shall be made by personal service upon the Chairman, Executive Director or Secretary of the Lessor-Agency, or in such other manner as may be provided by law.

In the event that any legal action is commenced by the Lessor-Agency against Lessee-Developer, service of process on Lessee-Developer shall be made by personal service upon the general partner or other lawful agent of Lessee-Developer or in such manner as may be provided by law, and shall be valid whether made within or without the State of Utah.

C. [§ 1206] Rights and Remedies are Cumulative

Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any 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 any other party.

D. [§ 1207] Damages

If any party defaults with regard to any of the provisions of this Agreement, the nondefaulting party or parties shall serve written notice of such default upon the defaulting party. If the default is not commenced to be cured within thirty (30) days after service of the notice of default and is not cured promptly in a continuous and diligent manner within a reasonable period of time after commencement, the defaulting party shall be liable to the nondefaulting party or parties for any damages caused by such default, and the nondefaulting party may thereafter (but not before) commence an action for damages against the defaulting party with respect to such default.

E. [§ 1208] Specific Performance

If any party defaults with regard to any of the provisions of this Agreement, the Lessor-Agency shall serve written notice of such default upon the defaulting party. If the default is not commenced to be cured within thirty (30) days after service of the notice of default and is not cured promptly in a continuous and diligent manner within a reason-

BOOK 1955
PAGE 361

able period of time after commencement, the nondefaulting party or parties, at its option, may thereafter (but not before) commence an action for specific performance of the terms of this Agreement pertaining to such defaults.

F. [§ 1209] Additional Remedies of the Lessor-Agency

If Lessee-Developer defaults with regard to any of the provisions of this Agreement, the Lessor-Agency shall serve written notice of such default upon Lessee-Developer. If the default is not commenced to be cured within thirty (30) days after service of the notice of default and is not cured promptly in a continuous and diligent manner within a reasonable period of time after commencement, the Lessor-Agency, at its option, may thereafter (but not before):

1. Correct or cause to be corrected said default and charge the costs therefor to the account of the Lessee-Developer;
2. Correct or cause to be corrected said default and pay the costs thereof from the proceed of any insurance; or in the event that Lessee-Developer has obtained a faithful performance bond indemnifying the Lessor-Agency, Lessor-Agency may call upon the bonding agent to correct said default and pay the cost thereof;
3. Exercise its right to maintain any and all actions at law or suits in equity to compel Lessee-Developer to correct or cause to be corrected said default;
4. Have a receiver appointed to take possession of the Lessee-Developer's interest in the Hotel Parcel and the Improvements, with power in said receiver to administer Lessee-Developer's interest in the Hotel Parcel and the Improvements, to collect all funds available to Lessee-Developer in connection with its operation and maintenance of the Hotel Parcel and the Improvements; and to perform all other acts consistent with Lessee-Developer's obligation under this Agreement as the court deems proper;
5. Maintain and operate the Hotel Parcel and the Improvements, without terminating the Agreement;
6. Terminate the Agreement pursuant to Section 1213 hereof, by written notice to the Lessee-Developer of its intention to do so.

able period of time after commencement, the nondefaulting party or parties, at its option, may thereafter (but not before) commence an action for specific performance of the terms of this Agreement pertaining to such defaults.

F. [§ 1209] Additional Remedies of the Lessor-Agency

If Lessee-Developer defaults with regard to any of the provisions of this Agreement, the Lessor-Agency shall serve written notice of such default upon Lessee-Developer. If the default is not commenced to be cured within thirty (30) days after service of the notice of default and is not cured promptly in a continuous and diligent manner within a reasonable period of time after commencement, the Lessor-Agency, at its option, may thereafter (but not before):

1. Correct or cause to be corrected said default and charge the costs therefor to the account of the Lessee-Developer;
2. Correct or cause to be corrected said default and pay the costs thereof from the proceed of any insurance; or in the event that Lessee-Developer has obtained a faithful performance bond indemnifying the Lessor-Agency, Lessor-Agency may call upon the bonding agent to correct said default and pay the cost thereof;
3. Exercise its right to maintain any and all actions at law or suits in equity to compel Lessee-Developer to correct or cause to be corrected said default;
4. Have a receiver appointed to take possession of the Lessee-Developer's interest in the Hotel Parcel and the Improvements, with power in said receiver to administer Lessee-Developer's interest in the Hotel Parcel and the Improvements, to collect all funds available to Lessee-Developer in connection with its operation and maintenance of the Hotel Parcel and the Improvements; and to perform all other acts consistent with Lessee-Developer's obligation under this Agreement as the court deems proper;
5. Maintain and operate the Hotel Parcel and the Improvements, without terminating the Agreement;
6. Terminate the Agreement pursuant to Section 1213 hereof, by written notice to the Lessee-Developer of its intention to do so.

The Lessor-Agency reserves, and shall have the right at all times, to enter the Hotel Parcel and the Improvements for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the Hotel Parcel and the Improvements or to inspect the operations conducted thereon. Any such entry shall be made only after reasonable notice to Lessee-Developer. In the event that such entry or inspection by the Lessor-Agency discloses that the Hotel Parcel or the Improvements are not in a decent, safe, and sanitary condition, are damaged, or in disrepair, the Lessor-Agency shall have the right, after thirty (30) days written notice to Lessee-Developer, to have any necessary maintenance or repair work done for and at the expense of Lessee-Developer and Lessee-Developer hereby agrees to pay promptly any and all costs incurred by the Lessor-Agency in having such necessary maintenance or repair work done in order to keep the Hotel Parcel and Improvements in a decent, safe and sanitary condition. Further, if at any time the Lessor-Agency determines that the Hotel Parcel and/or Improvements are not in a decent, safe and sanitary condition the Lessor-Agency may at its sole option, without additional notice, require Lessee-Developer to file with the Lessor-Agency a faithful performance bond to assure prompt correction of any condition which is not decent, safe and sanitary. Said bond shall be in an amount adequate in the opinion of the Lessor-Agency to correct the said unsatisfactory condition. Lessee-Developer shall pay the cost of said bond.

The rights reserved in this Section 1209 shall not create any obligations on the Lessor-Agency or increase obligations imposed on the Lessor-Agency elsewhere in this Agreement and shall not defeat, render invalid or limit:

1. Any mortgage, deed of trust or other financing instruments permitted by this Agreement;
2. Any rights or interests provided for the protection of the holders of such mortgages, deeds of trust or other financing instruments.

G. § 1210 Rights of Termination Prior to Commencement of the Lease Term

1. § 1211 Termination by Lessee-Developer

- (a) Lessee-Developer at its option may terminate

this Agreement if the Lessor-Agency does not grant the leasehold interest in the Hotel Parcel and deliver possession thereof, in the manner and condition, and by the date provided in this Agreement, and such failure is not cured within sixty (60) days after written demand by Lessee-Developer.

2. [§ 1212] Termination by Lessor-Agency

(a) The Lessor-Agency at its option may terminate this Agreement if Lessee-Developer assigns or attempts to assign and/or convey this Agreement (or any rights therein), or the Hotel Parcel (or any rights therein), in violation of this Agreement.

(b) The Lessor-Agency at its option may terminate this Agreement if Lessee-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 therefor by the Lessor-Agency.

(c) The Lessor-Agency at its option may terminate this Agreement if Lessee-Developer does not submit to the Lessor-Agency evidence that Lessee-Developer has financial commitments from financial institutions sufficient to enable Lessee-Developer to finance construction of the improvements to be constructed on the Hotel Parcel under the Scope of Development on or prior to the date set forth therefor in the Schedule of Performance.

(d) The Lessor-Agency at its option may terminate this Agreement if the Lessee-Developer does not accept possession of the Hotel Parcel, in breach hereof, upon delivery of the Hotel Parcel by the Lessor-Agency, and such breach is not cured within thirty (30) days after the date of written demand therefor by the Lessor-Agency.

H. [§ 1213] Lessor-Agency Right of Reentry and Termination

In the event that at any time during the Lease Term of this Agreement, and in violation of this Agreement, Lessee-Developer shall:

1. Fail to commence and/or complete the construction of the Improvements as required by this Agreement.
2. Abandon or substantially suspend construction of the Improvements as required by this Agreement prior to the completion thereof and issuance of a Certificate of Completion therefor by the Lessor-Agency;
3. Use the Hotel Parcel for any purposes other than those provided for in this Agreement;
4. Fail or refuse to pay to the Lessor-Agency when due the applicable rents and other sums required by this Agreement to be paid by Lessee-Developer;
5. Fail or refuse to pay when due any taxes, assessments or other Impositions as required by this Agreement;
6. Make or suffer to be made any voluntary or involuntary conveyance, assignment, sublease or other transfer of the leasehold interest in the Hotel Parcel, or any part thereof, or of the rights of Lessee-Developer under this Agreement, except as specifically provided in this Agreement;
7. Commit or suffer to be committed any waste or impairment of the Hotel Parcel, or the Improvements, or any part thereof;
8. Alter the Improvements in any manner except as expressly permitted by this Agreement;
9. Fail to maintain insurance as required by this Agreement;
10. Fail to make full repair and restoration of the Hotel Parcel and the Improvements in the event of damage or destruction, except as specifically permitted under this Agreement;

11. Engage in any financing except as permitted by the terms of this Agreement, or any other transaction creating any mortgage on the Hotel Parcel or the Improvements, or placing or suffering to be placed thereon any lien or other encumbrance, or suffering any levy or attachment to be made thereon, except as specifically permitted in this Agreement;

12. Fail to perform or comply with any other material terms or provisions hereof;

and any such failure or violation under paragraphs 1-12 above shall not be cured or remedied within sixty (60) days after the date the Lessee-Developer received notice from the Lessor-Agency of such failure or violation (or, if it is not practicable in the opinion of the Lessor-Agency to cure or remedy such failure or violation within such 60-day period, within such longer period as may be specified by the Lessor-Agency in such notice); then, in such event, the Lessor-Agency may, at its option and in addition to any other remedy provided for in this Agreement, reenter and take possession of the Hotel Parcel and terminate this Agreement and revert in the Lessor-Agency the leasehold interest theretofore transferred to Lessee-Developer. The Lessor-Agency's right to reenter and terminate the Agreement hereunder shall be subject to and limited by and shall not defeat, render invalid, or limit:

1. Any mortgage, deed of trust or other financing instruments permitted by this Agreement;

2. Any rights or interests provided for the protection of the holders of such mortgages, deeds of trust or other financing instruments.

Upon the revesting in the Lessor-Agency of the leasehold interest in the Hotel Parcel or any part thereof as provided in this Section, the Lessor-Agency shall, pursuant to its responsibilities under state law, use its best efforts to re-let or sell the Hotel Parcel or part thereof as soon and in such manner as the Lessor-Agency shall find feasible and consistent with the objectives of such law and of the Redevelopment Plan to a qualified and responsible party or parties (as determined by the Lessor-Agency), who will assume the obligation of making or completing the Improvements, or such other improvements in their stead as shall be satisfactory to the Lessor-Agency and in accordance with the uses specified for such Hotel Parcel or part thereof in the Redevelopment Plan, and maintaining and operating the Hotel Parcel and Improvements in accordance with the provisions of this Agreement

BOOK 1955
PAGE 366

or in such other manner as is appropriate (as determined by the Lessor-Agency). Upon such lease or sale of the Hotel Parcel all financing on the Hotel Parcel, including construction loans, permanent loans and then the City-Agency Loan shall first be repaid, and the remaining proceeds, if any, shall be applied:

1. First, to reimburse the Lessor-Agency on its own behalf for all costs and expenses incurred by the Lessor-Agency, including but not limited to salaries of personnel, in connection with the recapture, management and reletting or sale of the Hotel Parcel or part thereof (but less any income derived by the Lessor-Agency from the Hotel Parcel or part thereof in connection with such management); all taxes, assessments, and water and sewer charges with respect to the Hotel Parcel or part thereof (or, in the event the Hotel Parcel is exempt from taxation or assessment or such charges during the period of ownership, to such taxes, assessments, or charges as would have been payable if the Hotel Parcel were not so exempt); any payments made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Lessee-Developer, its successors or transferees; and expenditures made or obligations incurred with respect to the making or completion of the Improvements or any part thereof on the Hotel Parcel or part thereof; and any amounts otherwise owing the Lessor-Agency by the Lessee-Developer and its successor or transferee; and

2. Second, to reimburse the Lessee-Developer, its successor or transferee, up to the amount equal to (1) the costs incurred for the development and operation of the Hotel Parcel and for the improvements existing on the Hotel Parcel at the time of the reentry and repossession, less (2) any prior reimbursement or income withdrawn by the Lessee-Developer from the operations of the Hotel Parcel or the improvements thereon.

Any balance remaining after such reimbursements shall be retained by the Lessor-Agency as its property.

Termination of the Agreement under this Section 1213 shall not relieve Lessee-Developer from the obligation to pay any sum due to the Lessor-Agency or from any claim for damages against Lessee-Developer, including, but not limited to, damages, if any, for loss or rent. The right of termina-

BOOK 1955
PAGE 367

tion provided by this Section 1213 is not exclusive and shall be cumulative to all other rights and remedies possessed by the Lessor-Agency, and nothing contained herein shall be construed so as to defeat any other rights or remedies to which the Lessor-Agency may be entitled.

I. [§ 1214] Attorney's Fees and Court Costs

In the event that either the Lessor-Agency or Lessee-Developer shall bring or commence an action to enforce the terms and conditions of this Agreement or to obtain damages against any party arising from any default under or violation of this Agreement, then the prevailing party shall be entitled to and shall be paid reasonable attorneys' fees and court costs therefor.

J. [§ 1215] Limitation of Liability

It is specifically understood and agreed that there shall be absolutely no personal liability on the part of any party hereto, their successors or assigns, or any individuals, principals, officers, partners or representatives thereof, with respect to any of the terms, covenants and conditions of this Agreement, and each party, its successors and assigns, shall look solely to the equity of the other party in the Hotel Parcel or the Improvements thereon for the satisfaction of each and every remedy of that party in the event of any breach of any terms, covenants and conditions of this Agreement to be performed by a party hereto, such exculpation of personal liability to be absolute and without any exception whatsoever, except that such exculpation of personal liability shall not apply to Lessee-Developer until a Certificate of Completion for the Improvements has been issued by the Lessor-Agency, nor shall it apply to any guarantees given regarding the City-Agency Loan or, as set forth in Section 802 above, to the responsibilities of Robert L. Schwartz or Peter F. Edelman to remain as general partners.

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In the event that either the Lessor-Agency or Lessee-Developer shall bring or commence an action to enforce the terms and conditions of this Agreement or to obtain damages against any party arising from any default under or violation of this Agreement, then the prevailing party shall be entitled to and shall be paid reasonable attorneys' fees and court costs therefor.

J. [§ 1215] Limitation of Liability

It is specifically understood and agreed that there shall be absolutely no personal liability on the part of any party hereto, their successors or assigns, or any individuals, principals, officers, partners or representatives thereof, with respect to any of the terms, covenants and conditions of this Agreement, and each party, its successors and assigns, shall look solely to the equity of the other party in the Hotel Parcel or the Improvements thereon for the satisfaction of each and every remedy of that party in the event of any breach of any terms, covenants and conditions of this Agreement to be performed by a party hereto, such exculpation of personal liability to be absolute and without any exception whatsoever, except that such exculpation of personal liability shall not apply to Lessee-Developer until a Certificate of Completion for the Improvements has been issued by the Lessor-Agency, nor shall it apply to any guarantees given regarding the City-Agency Loan or, as set forth in Section 802 above, to the responsibilities of Robert L. Schwartz or Peter F. Edelman to remain as general partners.

XIII. GENERAL PROVISIONS

A. [§ 1301] Notices, Demands and Communications Between the Parties

Formal notices, demands and communications between the Lessor-Agency and Lessee-Developer shall be deemed sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the Lessor-Agency and Lessee-Developer. Such written notices, demands and communications may be sent in the same manner to such other addresses as each party may from time-to-time designate by mail as provided in this Section.

B. [§ 1302] Conflict of Interests

No member, official or employee of the City or Lessor-Agency 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. [§ 1303] Warranty Against Payment of Consideration for Agreement

Lessee-Developer warrants that it has 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.

D. [§ 1304] Nonliability of City and Lessor-Agency Officials and Employees

No member, official or employee of the City or Lessor-Agency shall be personally liable to Lessee-Developer, or any successor in interest, in the event of any default or breach by the Lessor-Agency, or for any amount which may become due to Lessee-Developer or successor, or on any obligation under the terms of this Agreement.

E. [§ 1305] Enforced Delay; Extension of Times of Performance

In addition to specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes, lock-outs; riots; flood; earthquakes; fires; casualties; acts of God; acts of public enemy; epidemics;

quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation (other than condemnation actions); unusually severe weather; inability (when either party is faultless) of any contractor, subcontractor or supplier; acts of the other party; acts or the failure to act, of any public or governmental agency or entity (other than acts or failure to act of the Lessor-Agency shall not excuse performance by the Lessor-Agency); or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for 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. If, however, notice by the party claiming such extension is sent to the other party more than 30 days after the commencement of the cause, the period shall commence to run only thirty (30) days prior to the giving of such notice. Times of performance under this Agreement may also be extended in writing by the Lessor-Agency and the Lessee-Developer.

F. [§ 1306] Inspection of Books and Records

The Lessor-Agency has the right to inspect the books and records of Lessee-Developer pertaining to the Site as pertinent to the purposes of this Agreement. Lessee-Developer also has the right to inspect the books and records of the Lessor-Agency pertaining to the Site as pertinent to the purposes of this Agreement.

G. [§ 1307] Approvals by the Lessor-Agency and Lessee-Developer

Wherever this Agreement requires the Lessor-Agency and Lessee-Developer to approve any contract, document, plan, proposal, specification, drawing or other matter, such approval shall not be unreasonably withheld.

H. [§ 1308] Plans and Data

Where Lessee-Developer does not proceed with the lease or development of the Hotel Parcel, and when this Agreement is terminated with respect thereto for any reason, Lessee-Developer shall deliver to the Lessor-Agency any and all plans and data concerning the Hotel Parcel which are in the possession of Lessee-Developer to the extent such plans and data are not confidential.

I. [§ 1309] Submission of Documents for Approval

Whenever this Agreement requires one party to submit plans, drawings or other documents to the other party for approval, which shall be deemed approved if not acted on by the receiving party within the time specified in the Agreement, said plans, drawings or other documents shall be accompanied by a letter stating that they are being submitted and will be deemed approved unless rejected within the stated time.

J. [§ 1310] Broker's Commission

Neither the Lessor-Agency nor the City shall be liable for any real estate commissions or brokerage or finders fees which may arise herefrom.

K. [§ 1311] Compliance with Law

Lessee-Developer agrees, at its sole cost and expense, to comply and secure compliance with all the requirements now in force, or which may hereafter be in force, of all municipal, county, State and federal authorities, pertaining to the Hotel Parcel and the Improvements, as well as operations conducted thereon, and to faithfully observe and secure compliance with, in the use of the Hotel Parcel and the Improvements, all applicable county and municipal ordinances and state and federal statutes now in force or which may hereafter be in force, including all laws prohibiting discrimination or segregation in the use, sale, lease or occupancy of the property.

L. [§ 1312] Effect and Duration of Covenants

Except as provided in the following sentence, the covenants, agreements and obligations contained in this Agreement shall be binding on the parties, their successors and assigns, and shall remain in effect until the expiration or sooner termination of the Lease Term, unless a shorter duration is specifically provided herein. Notwithstanding the early termination of the Lease Term as a result of the Lessee-Developer's acquisition of fee title to the Hotel Parcel pursuant to Section 216, the covenants, conditions, obligations and agreements contained in the following Sections shall survive and remain in effect for the time periods specified:

1. Sections 101-109, 501, 503, 504, 910, 1201-1208, 1214, 1215, 1301-1312, 1314-1317, and 1400 shall survive and remain in effect for a period of 70 years from the Commencement of the Lease Term.

BOOK 1955
PAGE 371

2. Sections 401-414, 801-803, and 904-908 shall survive and remain in effect only until a Certificate of Completion has been issued pursuant to Section 414.

3. Section 1001 shall survive and remain in effect only until the later of (a) the issuance of a Certificate of Completion pursuant to Section 414 or (b) the repayment in full of the City-Agency Loan.

4. Sections 804, 903, 912 and 1002(2) and (3) shall survive and remain in effect only until the City-Agency Loan has been repaid in full.

5. Sections 1002(1) and 1003-1006 shall survive and remain in effect only until the later of (a) the repayment in full of the City-Agency Loan or (b) the repayment in full of the tax increment bonds issued by Lessor-Agency in connection with the development of the Site.

The failure of any covenant, condition, obligation or agreement to survive beyond a specific period of time shall not be construed to limit or restrict any obligation of the parties which may exist as a matter of law or by virtue of a separate document or agreement.

M. [§ 1313] Surrender of Property

Upon the expiration or termination of this Agreement pursuant to the terms hereof, it shall be lawful for the Lessor-Agency to reenter and repossess the Hotel Parcel and the Improvements thereon without process of law, and Lessee-Developer, in such event, does hereby waive any demand for possession thereof, and agrees to surrender and deliver the Hotel Parcel and the Improvements thereon peaceably to the Lessor-Agency immediately upon such expiration or termination in good order, condition and repair, except for reasonable wear and tear.

N. [§ 1314] Severability

If any provision of this Agreement shall be adjudged invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

O. [§ 1315] Binding Effect

This Agreement, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

P. [§ 1316] Recording of Lease

This Agreement shall be recorded against the Hotel Parcel upon the Commencement of the Lease Term. The date of the Commencement of the Lease Term shall be either endorsed on this Agreement or set forth in a separate document also to be recorded against the Hotel Parcel.

Q. [§ 1317] Covenant of Parking Availability

At all times in which a hotel is being operated on the Hotel Parcel, the Lessor-Agency covenants and agrees to provide parking on the Parking Parcel for a minimum of 200 automobiles for the exclusive use of Hotel guests, visitors and employees, as set forth in the Turnkey Design and Development Contract and the Agreement for Operation, Management and Maintenance of Public Parking Facilities bearing even date herewith. This covenant shall be binding on the Lessor-

BOOK 1955
PAGE 373

Agency, its successors and assigns, and shall benefit the Lessee-Developer, its successors and assigns, and the Hotel Parcel, and such covenant shall survive and remain in effect until the earlier of (i) the expiration or termination of the Lease Term or (ii), if the Lease Term is terminated early in accordance with Section 216, 70 years from the Commencement of the Lease Term. A covenant to this effect shall be recorded against the Parking Parcel for the benefit of the Hotel Parcel.

BOOK 1955
PAGE 374

XIV. [§ 1400] ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

This Agreement is executed in six (6) duplicate originals each of which is deemed to be an original. This Agreement includes five (5) attachments which constitute the entire understanding and agreement of the parties.

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 Lessor-Agency or the Lessee-Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of the Lessor-Agency and Lessee-Developer.

XV. [S 1500] TIME FOR ACCEPTANCE OF AGREEMENT BY CITY AND AGENCY

This Agreement, when executed by Lessee-Developer and delivered to the Lessor-Agency, must be authorized, executed and delivered by the Lessor-Agency within 45 days after the date of signature by Lessee-Developer, or this Agreement may be withdrawn by Lessee-Developer on written notice to the Lessor-Agency. The date of this Agreement shall be the date when this Agreement shall have been signed by the Lessor-Agency.

PROVO CITY REDEVELOPMENT AGENCY
Lessor-Agency

Date: December 18, 1981

By [Signature]

PROVO EXCELSIOR LIMITED
Lessee-Developer

Date: December 14, 1981

By [Signature]
A General Partner

APPROVED AS TO FORM AND LEGALITY:

THIS 18TH DAY OF DECEMBER 1981

By: [Signature]
City Attorney & Agency
General Counsel

Attest

[Signature]
Director
Provo City RDA.



APPROVED:

EUGENE B. JACOBS
A PROFESSIONAL CORPORATION

By: [Signature]
President
Redevelopment Consultant

BOOK 1955 PAGE 376

SITE MAP

100 NORTH STREET

HOTEL PARCEL

PARKING PARCEL

Alley

Center Street Properties

CENTER STREET

200 WEST STREET

100 WEST STREET

BOOK 1955 PAGE 377

SITE BOUNDARIES



ATTACHMENT NO. 1B

LEGAL DESCRIPTION OF THE SITE

PARKING STRUCTURE SITE

Beginning at the Northeast Corner of Block 68, Plat "A", Provo City Survey of Building Lots, Provo, Utah; thence South along the West right-of-way line of 100 West Street, 266.70 ft.; thence West parallel with the North right-of-way line of Center Street, 120.00 ft.; thence North 266.70 ft. to the South right-of-way line of 100 North Street; thence East along the South right-of-way line of said 100 North Street, 120.00 ft. to the point of beginning.

HOTEL BUILDING SITE

Beginning at a point West along the South Right-of-way line of 100 North Street, Provo, Utah, 120.00 ft. from the Northeast Corner of Block 68, Plat "A", Provo City Survey of Building Lots, Provo, Utah; thence South parallel to the West right-of-way line of 100 West Street, Provo, 266.70 ft.; thence West parallel to the north right-of-way line of Center Street, Provo, 179.91 ft.; thence South 16.50 ft.; thence West parallel with the North right-of-way line of said Center Street, 99.97 ft. to the East right-of-way line of 200 West Street, Provo, Utah; thence North along the East right-of-way line of said 200 West Street, 283.20 ft. to the Northwest Corner of said Block 68, Plat "A", Provo City Survey, and the South right-of-way line of 100 North Street, Provo; thence East along the South right-of-way line of said 100 North Street, 279.88 ft. to the point of beginning.

ATTACHMENT NO. 1C

LEGAL DESCRIPTION OF THE HOTEL PARCEL

Beginning at a point West along the South Right-of-way line of 100 North Street, Provo, Utah, 120.00 ft. from the Northeast Corner of Block 68, Plat "A", Provo City Survey of Building Lots, Provo, Utah; thence South parallel to the West right-of-way line of 100 West Street, Provo, 266.70 ft.; thence West parallel to the north right-of-way line of Center Street, Provo, 179.91 ft.; thence South 16.50 ft.; thence West parallel with the North right-of-way line of said Center Street, 99.97 ft. to the East right-of-way line of 200 West Street, Provo, Utah; thence North along the East right-of-way line of said 200 West Street, 283.20 ft. to the Northwest Corner of said Block 68, Plat "A", Provo City Survey, and the South right-of-way line of 100 North Street, Provo; thence East along the South right-of-way line of said 100 North Street, 279.88 ft. to the point of beginning.

ATTACHMENT NO. 2

METHOD OF FINANCING

I. FINANCING OF HOTEL IMPROVEMENTS

The Hotel Improvements will be financed with a combination of private equity, industrial development bonds (or other construction financing and/or permanent financing), and public financing. Lessee-Developer will expend or cause to be expended a minimum of \$12,025,000 for the development of the Hotel, including hard and soft costs (see Exhibit D of Attachment No. 6).

A. Equity Contribution

Lessee-Developer will make an equity contribution of at least \$2,025,000 to the total private development costs. Said \$2,025,000 shall be contributed at the time of the closing of the construction loan by delivering to the construction lender the following:

<u>Date to be Provided</u>	<u>Amount</u>	<u>Form</u>	<u>Use</u>
1. Commencement of the Lease Term (Commencement to be in November, 1981)	\$125,000	Cash	Cash delivered to the construction lender to be payable and disbursed according to the Schedule of Capital Improvements.
2. Commencement of the Lease Term (Commencement to be in November, 1981)	\$600,000	Cash	Cash delivered to the construction lender to be payable and disbursed according to the Schedule of Capital Improvements.
3. Commencement of the Lease Term (Commencement to be in November, 1981)	\$275,000	Unconditional Letter of Credit	Letter of Credit delivered to the construction lender to be payable and disbursed on or after January 15, 1983 according to the Schedule of Capital Improvements.
4. Commencement of the Lease Term (Commencement to be in November, 1981)	\$475,000	Conditional Letter of Credit	Letter of Credit delivered to the construction lender to be payable and disbursed on or after the issuance by Provo City of the Certificate of Occupancy for the Hotel or April 15, 1983 (whichever is later) according to the Schedule of Capital Improvements.

<u>Date to be Provided</u>	<u>Amount</u>	<u>Form</u>	<u>Use</u>
5. Commencement of the Lease Term (Commencement to be in November, 1981)	\$400,000	Recourse Promissory Note unsecured until January 15, 1983 when it becomes secured by a Conditional Letter or Credit	Note and Letter of Credit delivered to the construction lender to be payable and disbursed on or after January 15, 1984 (but not prior to the disbursement of the \$475,000 described in item No. 4, above) according to the Schedule of Capital Improvements.
6. Commencement of the Lease Term (Commencement to be in November, 1981)	\$150,000	Unsecured Recourse Promissory Note	Note delivered to the construction lender to be payable and disbursed after January 15, 1985.

Total \$2,025,000

All of the promissory notes are to be given by the Class A Limited Partners, as payors, payable to the Lessee-Developer, as payee. All of the promissory notes are to be immediately assigned to the construction lender. All of the promissory notes are to be negotiable.

The letters of credit described above shall be either in favor of the construction lender or in favor of the Lessee-Developer and endorsed to the construction lender. The right of the construction lender to draw on the letters of credit shall be unconditional except for the conditions regarding (1) the Certificate of Occupancy described above and (2) the passage of time to the dates described above. There shall be a reasonable time following the date on which the letter of credit can be drawn for the construction lender to deliver its draft to the issuing bank. The period of time must be acceptable to the construction lender. The letters of credit must be issued by banks acceptable to the construction lender. Lessee-Developer shall have the right of substitution as to the letters of credit so long as the new letter of credit is acceptable in every respect to construction lender.

B. Industrial Development Bonds, Private Construction Financing and Private Permanent Financing

The Lessee-Developer shall obtain private construction financing for construction and development of the Hotel. If the issuance of Industrial Development Bonds becomes feasible at a later date, then at the request of the Lessee-Developer the Lessor-Agency shall cause the City to issue Industrial Development Bonds in an amount not to exceed \$10,000,000 based on the Inducement Resolution adopted by the City on December 9, 1980. The Lessor-Agency and the City shall loan \$1,900,000 to the Lessee-Developer on the basis set forth in Paragraph C below. The Lessee-Developer shall repay the private construction loan, the private permanent loan, the Industrial Development Bonds, and the \$1,900,000 loan. Any other costs shall be funded by equity contributions by the Lessee-Developer.

C. City-Agency Loan to Lessee-Developer

The Lessor-Agency and the City will provide \$1,900,000 to Lessee-Developer as a loan with that sum coming from Urban Development Action Grant (UDAG) funds to meet the Hotel development financing gap. Said Loan shall be for a period of 20 years amortized on the basis of a 30 year period with a balloon payment in the 20th year. The maturity of this loan may be accelerated under certain circumstances set forth in this Agreement. No disbursement of the loan shall be made prior to the Construction Lender receiving \$2,025,000 in equity funds and disbursing \$725,000 of said equity funds for hotel development costs. The loan documents shall provide that the loan funds shall be disbursed on the basis of vouchers submitted by Lessee-Developer, verified by the chief financial officer of the Lessor-Agency and certified by the chief financial officer of Lessee-Developer. Upon receipt of a certified voucher from the Construction Lender for \$175,000, \$175,000 in UDAG funds shall be drawn down from the letter of credit and paid to the Construction Lender. An additional \$185,000 in loan funds shall be made available for disbursement based upon the receipt of vouchers submitted by Lessee-Developer and verified as stated above. The remaining \$1,540,000 of UDAG loan funds shall be disbursed on the basis of \$1.00 of UDAG money for \$1.00 of construction loan proceeds. Interest accrual and payment of the loan shall be as follows:

1. During years 1, 2 and 3 of the loan term, interest shall accrue at the rate of four percent (4%) per annum and added to the loan principal. No payment of principal or interest will be made.

2. In years 4 through 20 interest will accrue at the rate of five percent (5%) per annum and both principal and interest will be paid.

If the rate of return on Lessee-Developer's equity investment exceeds fifteen percent (15%) in any given year, the base interest rate will be increased by one percent (1%) in any such year.

The general partners of Lessee-Developer, Robert L. Schwartz, Peter F. Edelman, Henry R. Silverman, and Adrain B. Werner shall personally guarantee the repayment to the Lessor-Agency and the City of the principal and interest on the \$1,900,000 loan.

The lien of the City-Agency Loan shall be subordinate to the lien of any first mortgage permitted under Part IX of this Agreement (subject to the early repayment obligations described in this Agreement).

II. FINANCING OF PUBLIC PARKING FACILITIES AND OTHER PUBLIC COSTS

A. Ultimate Source of Funds

It is intended that all Lessor-Agency costs under this Agreement are ultimately to be paid from property tax increments, federal grants, the lease rentals from the Hotel Parcel and parking revenues from the Public Parking Facilities.

B. Agency and City Working Capital

The necessary funds to undertake and complete Lessor-Agency and City obligations and responsibilities shall come from Tax Increment Bond Proceeds, an Urban Development Action Grant, Community Development Block Grant Funds, or at the Lessor-Agency's discretion, from any other source.

C. Public Parking Facilities

The funds to construct the Public Parking Facilities shall derive from the proceeds of Lessor-Agency bond issues, UDAG funds, or at the Lessor-Agency's discretion from other sources. Bonds or funds from other sources would ultimately be paid off from tax increments. The Lessor-Agency shall not be required to expend more than \$1,600,000 to construct the Public Parking Facilities. In no event shall the bonds or other funds be secured by a mortgage or other lien on said Facilities.

D. Bond Issues

If bonds are issued, the Lessor-Agency would prepare the issues and offer bonds for sale. The Lessor-Agency agrees to seek to issue bonds at the rate then prevailing for similar issues and Lessor-Agency shall not delay such issues unduly. Notwithstanding the foregoing, the Lessor-Agency reserves the right to obtain funds from other sources and by other means than the issuance of bonds, said funds are to be expended for the purposes outlined above.

III. OPERATION, MANAGEMENT AND MAINTENANCE AGREEMENT OF PARKING PARCEL AND PUBLIC PARKING FACILITIES

The Parking Parcel and the Public Parking Facilities shall be managed, maintained and operated by Lessee-Developer for the Lessor-Agency pursuant to an Operation, Management and Maintenance Agreement with the Lessor-Agency. Said Operation, Management and Maintenance Agreement shall provide the following:

1. The term of the Agreement shall be for 50 years with the right to renew for two additional 10 year periods at Lessee-Developer's option.

2. Lessee-Developer shall receive a management fee of \$1,000.00 per month, or twenty-five percent (25%) of the net profit from the Public Parking Facilities, whichever is greater. The Lessor-Agency shall receive all other revenues from the Public Parking Facilities, after payment of operating expenses.

3. Lessee-Developer shall maintain, manage and operate the Public Parking Facilities.

4. Parking rates will be set by the Lessee-Developer subject to disapproval by the Lessor-Agency, which disapproval cannot be unreasonable.

ATTACHMENT NO. 3

SCOPE OF DEVELOPMENT

The Site shall be designed and developed as an integrated complex in which the buildings will have architectural excellence individually as well as in their identity as a complex. The spaces between buildings shall be designed, landscaped and developed to the same excellence.

I. DEVELOPMENT OF HOTEL PARCEL

A. Hotel Improvements

There shall be developed on the Hotel Parcel a full service, high quality hotel structure with convention and meeting facilities, restaurant, a cocktail lounge, and related and compatible service, recreational and retail facilities customarily located in a hotel development. Upon commencement of the Lease Term of the Hotel Parcel to Lessee-Developer, Lessee-Developer agrees to develop and construct or to cause the development and construction of the following Improvements:

- (1) A 9 story, first-class hotel of approximately 225 rooms with banquet and meeting facilities; a multi-purpose restaurant including cocktail service; supportive services; and related facilities and amenities;
- (2) Landscaping on the Hotel Parcel; and
- (3) All other development required, necessary and/or appropriate for the development, construction and installation of the Improvements described.

B. Architecture and Design

Lessee-Developer shall construct buildings on the Hotel Parcel of high architectural quality with landscaped areas. The structures must be effectively and esthetically designed. The shape, scale of volume, exterior design, and exterior finish of each building must be consonant with, visually related to, physically related to, and an enhancement to each other. Lessee-Developer's plans and proposals submitted to the Lessor-Agency for approval shall describe in reasonable detail the architectural character intended for the Site.

C. Landscaping

Landscaping shall be provided by Lessee-Developer on the Hotel Parcel to integrate this development with adjacent sites within the Project area. Landscaping includes such materials as paving, trees, shrubs, and other plant materials, landscape containers, plaza furniture, top soil, soil preparation, automatic irrigation, landscape and pedestrian lighting, water elements, roof treatment and at Lessee-Developer's option outdoor works of art such as decorative paving.

D. Signs

The size, color, lighting, location, etc. of the signs are of special concern to the Lessor-Agency and are subject to the approval by the Lessor-Agency, which shall not be unreasonably withheld. No signs and signing shall be erected on the exterior of the improvement unless such signs and signing have been submitted to and approved by the Lessor-Agency.

E. Screening

All outdoor storage of materials or equipment shall be enclosed or screened by walls, landscaping, or enclosure to the extent and in the manner required by the Lessor-Agency and in the City's Municipal Code.

F. Utilities

All utilities on the Site shall be underground.

G. Loading Spaces

Loading and unloading space shall be provided as required by the City's Municipal Code. Loading spaces shall be located in a manner to avoid interference with public use of sidewalks and streets. Loading spaces visible from streets shall be landscaped or screened to prevent unsightly or barren appearance. Loading areas shall not front or be within parking areas fronting on streets.

H. Vehicular Access

The placement of vehicular driveways shall be coordinated with the needs of proper traffic flow. The number and location of curb breaks shall be in accordance with the basic concept drawings which shall be approved by the Lessor-Agency.

I. Controls and Restrictions - Miscellaneous

Controls and restrictions consistent with this Agreement including but not limited to minimum size parking spaces, maximum land coverage, minimum and maximum heights of buildings and minimum loading facilities shall be mutually agreed upon by the Lessor-Agency and the Developer prior to commencement of construction.

II. AGENCY IMPROVEMENTS AND RESPONSIBILITIES

A. Offsite Improvements and Improvements on Parking Parcel

On the Parking Parcel and in areas outside of the Site, the Lessor-Agency shall (at its cost) design, construct, and install, or cause to be designed, constructed and installed the following improvements so located and of adequate capacities to serve the buildings and improvements on the Site: Water and sewer facilities.

The locations, capacities, and extent of such improvements shall be determined by the City and the Lessor-Agency and the City and Lessor-Agency shall not be unreasonable in such determinations.

B. Public Parking Facilities

1. Construction

Concurrently with Lessee-Developer's construction on the Hotel Parcel, the Lessor-Agency shall construct or cause to be constructed a public parking structure or structures ("Public Parking Facilities") on the Parking Parcel containing 400 automobile parking spaces, and including paving, grading, drainage, striping, landscaping, landscaping irrigation, lighting, access drives, curbs, signs and graphics, and bridges; and as may be agreed upon by the Lessor-Agency and Lessee-Developer, such other equipment appropriate for the Public Parking Facilities.

The Public Parking Facilities will be interrelated in a design, physical, operational and economic manner with the improvements on the Hotel Parcel. Subject to all the terms and conditions herein, the Lessee-Developer or Provo Excelsior, Inc., at its own expense, shall prepare and complete the Basic Concept Drawings for the Public Parking Facilities. The Lessee-Developer or Provo Excelsior, Inc. shall make recommendations for procedures with respect to the designing and contracting for the construction of the Public Parking Facilities. The Lessor-Agency shall be free to accept or reject any or all of such recommendations and shall be responsible for, and shall

bear all costs of, the preparation of the design drawings (other than Basic Concept Drawings) and the construction of the Public Parking Facilities. It is the intent of the Lessor-Agency that the Public Parking Facilities be constructed by Provo Excelsior, Inc., by a Turnkey Contract to be entered into by the Lessor-Agency and Provo Excelsior, Inc; provided, however, that the Lessor-Agency reserves the right to have the Public Parking Facilities constructed by others if a Turnkey Contract cannot be mutually agreed to by the Lessor-Agency and Provo Excelsior, Inc. If the Public Parking Facilities are constructed by someone other than Provo Excelsior, Inc., or a party affiliated therewith, Lessor-Agency and the City shall indemnify and hold Lessee-Developer harmless from and against any and all damages, losses or costs caused by the failure to complete construction of said Facilities by the time the Hotel has been completed or in the manner contemplated by this Agreement. Such damages, losses or costs shall include, but shall not be deemed limited to, excess interest charges, mortgage commitment extension fees, loss of permanent loan commitment, loss of business and income, etc.

2. Operation, Management and Maintenance of Public Parking Facilities by Lessee-Developer

Lessee-Developer shall operate, manage and maintain to the satisfaction of the Lessor-Agency the Public Parking Facilities subject to controls and conditions to assure the availability of said Facilities for short term parking for patrons of the Hotel and the public. Conditions, restrictions and other provisions relating to the use, operation, maintenance, costs, etc. of the Public Parking Facilities shall be set forth in an Operation, Management and Maintenance Agreement to be agreed to and entered into between the Lessor-Agency and Lessee-Developer. The Lessor-Agency and Lessee-Developer both covenant for themselves, and for their successors and assigns, that for the term of the Operation, Management and Maintenance Agreement the Public Parking Facilities shall be available as follows:

and (1) 200 spaces for parking by patrons of the Hotel;

(2) 200 spaces for parking by the general public.

III. EASEMENTS

The Lessor-Agency and the Lessee-Developer shall grant and permit all necessary and appropriate easements and rights for the development of the Site including but not limited to temporary construction easements and easements and rights of vehicular access, pedestrian access, parking, structural support, sanitary sewers, storm drains, water, electrical power, telephone, natural gas, etc.

ATTACHMENT NO. 4

Recording requested by and
when recorded return to:

PROVO CITY REDEVELOPMENT AGENCY

FORM OF CERTIFICATE OF COMPLETION OF CONSTRUCTION AND DEVELOPMENT

WHEREAS, by a Ground Lease and Joint Development Agreement dated _____, 1981 (hereinafter referred to as the "Agreement"), the PROVO CITY REDEVELOPMENT AGENCY, a public body corporate and politic (hereinafter referred to as the "Lessor-Agency"), and PROVO EXCELSIOR LIMITED, a limited partnership (hereinafter referred to as "Lessee-Developer"), agreed to the lease by Lessee-Developer of certain real property situated in the City of Provo, Utah described as follows and hereinafter referred to as the "Property":

and the development of certain Improvements thereon; and

WHEREAS, Section 414 of the Agreement provides that the Lessor-Agency shall furnish Lessee-Developer with a Certificate of Completion for the Improvements to be developed on the Property upon written request therefor by Lessee-Developer, which Certificate shall be in such form as to permit it to be recorded in the Recorder's Office of Utah County; and

WHEREAS, such Certificate shall be conclusive determination of satisfactory completion of the construction and development required by said Agreement for the Property;

NOW, THEREFORE,

1. As provided in said Agreement, the Lessor-Agency does hereby certify that the construction and development of the Property has been fully and satisfactorily performed and completed, subject to the provisions and covenants of Section 2 below.

2. Lessee-Developer covenants and agrees for itself and all successors in interest:

[List covenants and agreements]

3. Lessee-Developer shall obtain the approval of the Lessor-Agency for any new construction on the Property or substantial modification of the existing development on the Property and such approval shall be obtained prior to the commencement of such construction or modification. Such approval shall be requested through the process of Lessor-Agency plan approvals set forth for the development of the Property in the Agreement.

4. Neither the issuance of this Certificate nor anything contained herein shall relieve Lessee-Developer of any of the obligations of said Agreement as to the Property and as to the balance of the Site described in the Agreement.

5. This Certificate shall not constitute evidence of compliance with or satisfaction of any obligation of Lessee-Developer to any holder of a mortgage or any insurer of a mortgage, securing money loaned to finance the improvements or any part thereof. Nothing contained in this instrument shall modify in any way any provisions of said Agreement or any other document entered into between the parties hereto.

IN WITNESS WHEREOF the Agency has executed this Certificate this ____ day of _____, 19__.

PROVO CITY REDEVELOPMENT AGENCY
Lessor-Agency

By _____

STATE OF UTAH)
) ss.:
COUNTY OF UTAH)

On _____ before me, the undersigned a Notary Public in and for said County and State, personally appeared _____, known to me to be the _____ of the Provo City Redevelopment Agency, Utah and known to me to be the person who executed the within instrument on behalf of said Agency, and acknowledged to me that said Agency executed the same.

Signature of Notary

Name of Notary (Typed or Printed)

ATTACHMENT NO. 5

SCHEDULE OF PERFORMANCE

1. Execution of Agreement (as amended) by the Lessor-Agency. The Agreement (as amended) shall be authorized and executed by Lessor-Agency and delivered to Lessee-Developer. As of November 24, 1981.
2. Parking Agreement. Lessee-Developer and Lessor-Agency shall enter into an Operation, Management and Maintenance Agreement for the Public Parking Facilities. As of November 24, 1981.
3. Submittal of Basic Concept Drawings By Lessee-Developer. Lessee-Developer shall prepare and submit to the Lessor-Agency Basic Concept Drawings for the Site. Previously submitted.
4. Approval by the Lessor-Agency of the Basic Concept Drawings. The Lessor-Agency shall review and approve or disapprove Basic Concept Drawing and related documents. Previously approved.
5. Submittal of Preliminary Schematic Drawings by Lessee-Developer. Lessee-Developer shall prepare and submit Preliminary Schematic Drawings and outline specifications to the Lessor-Agency for review and approval or disapproval. Previously submitted.
6. Lessor-Agency Approval of Preliminary Schematic Drawing. Lessor-Agency shall review and approve or disapprove Preliminary Schematic Drawings. Previously approved.
7. Equity Investment. Lessee-Developer shall produce equity sufficient to finance construction of the Hotel Improvements. At closing of construction loan.
8. Industrial Development Bonds. The Lessor-Agency and Lessee-Developer will seek to have City issue such bonds for financing of Hotel Development. At a later date as requested by Lessee-Developer.

- | | |
|--|---|
| 9. <u>Lessor-Agency Bond Issue or Other Financing for Construction of Public Parking Facilities.</u> Lessor-Agency shall seek to issue bonds and obtain other financing sufficient to finance construction of the Public Parking Facilities. | Closed. |
| 10. <u>Submittal of Final Working Drawings.</u> Lessee-Developer shall prepare and submit final working drawings and specifications to the Lessor-Agency. | Based on construction documents dated November 24, 1981 to be updated through April 30, 1982, with final working drawings and specifications to be submitted on or before April 30, 1982. |
| 11. <u>Approval of Final Working Drawings.</u> Lessor-Agency shall approve or disapprove final working drawings. | Within 5 days after submittal. |
| 12. <u>Commencement and Termination of Lease Term.</u> Lessor-Agency and Lessee-Developer shall execute the Supplement to Agreement legally describing the Hotel Parcel, and setting the dates for commencement and termination of the Lease Term. | Upon the closing of the construction loan. |
| 13. <u>Commencement of Construction - Hotel Improvements.</u> Lessee-Developer shall commence construction of the Hotel Improvements. | Within 30 days from execution of the construction loan documents. |
| 14. <u>Commencement of Construction - Public Parking Facilities and Public Improvements.</u> Lessor-Agency shall commence construction of Public Parking Facilities and Public Improvements. | May 1, 1982. |
| 15. <u>Completion of Construction.</u> Lessee-Developer shall complete construction of the Hotel Improvements, and Lessor-Agency shall complete construction of Public Parking Facilities and Public Improvements. | Within 24 months after commencement of construction of the Hotel Improvements, subject to force majeure. The Public Parking Facilities and Public Improvements shall be completed no later than the Hotel Improvements. |

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
 ASSISTANT SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT
 Office of Urban Development Action Grants

UDAG GRANT AGREEMENT

Urban Development Action Grant
 Under Section 119
 of the
 Housing and Community Development Act of 1974
 (Public Law 93-383, as Amended)

A <u>Name of Recipient:</u> City of Provo, Utah	C <u>UDAG Grant Number:</u> B-80-AA-49-0003
B <u>Address of Recipient:</u> Provo City Commission Offices 351 West Center Street Provo, Utah 84601	D <u>Preliminary Approval Date:</u> January 10, 1980

E <u>Amount of Grant</u> \$2,220,000

UDAG OFFICE USE ONLY

Grant Met D S	G <u>Devel</u> <u>Off</u> D D H	H <u>Typed</u> <u>By</u> D .M	I <u>Date</u> Mo. Day Yr. 0 1 2 3 8 0	J <u>Obligation Date</u> Mo. Day Yr.
Grant Category C I I R	L <u>Effective Date</u> Mo. Day Yr. 1 1 1	M <u>Ratio</u> UDAG PVT 1 : 4.4		

TABLE OF CONTENTS
UDAG GRANT AGREEMENT

<u>INTRODUCTORY</u>		<u>Page</u>
Preamble		1
Recitals		1
<u>ARTICLE I - GENERAL PROVISIONS</u>		<u>Page</u>
Section 1.01	Contents of Agreement	2
Section 1.02	Exhibits Incorporated	2
Section 1.03	General Definitions	2
<u>ARTICLE II - AMOUNT AND AUTHORIZED USES OF GRANT FUNDS</u>		<u>Page</u>
Section 2.01	Grant Assistance Provided	5
Section 2.02	Authorized Uses of Grant Funds	5
Section 2.03	Adjustments to Grant Funds	5
Section 2.04	Recipient's Use of Grant Revenues	5
<u>ARTICLE III - DISBURSEMENT OF GRANT FUNDS</u>		<u>Page</u>
Section 3.01	Letter of Credit Procedures	7
Section 3.02	Incurring Costs for UDAG Funded Activities	8
Section 3.03	Incurring Costs for Non-UDAG Funded Activities	9
Section 3.04	Authorization by the Secretary for the Recipient to Draw Funds	10
Section 3.05	Reimbursement of Costs	10
Section 3.06	Conditions Precedent to Recipient's Draw of Funds Under Letter of Credit	11
<u>ARTICLE IV - COMPLIANCE WITH FEDERAL PROTECTIVE RULES</u>		<u>Page</u>
Section 4.01	Delegation and Acceptance of Responsibilities Under Federal Protective Rules	14
Section 4.02	Environmental Requirements	14
<u>ARTICLE V - REPRESENTATIONS, WARRANTIES AND SPECIFIC OBLIGATIONS</u>		<u>Page</u>
Section 5.01	Recipient's Representations and Warranties	15
Section 5.02	Obligation to Complete UDAG Funded Activities As Scheduled	17
Section 5.03	Obligation to Achieve Projected Jobs	17
Section 5.04	Obligation to Cure Title Defects	18
Section 5.05	Notification and Action Upon Events of Default	18
<u>ARTICLE VI - INSPECTION AND REVIEW</u>		<u>Page</u>
Section 6.01	Duty to Maintain, and Rights to Inspect and Copy, Books, Records and Documents	19
Section 6.02	Site Visits	19
Section 6.03	Duration of Inspection Rights	19
Section 6.04	Reports	19
<u>ARTICLE VII - DEFAULTS AND REMEDIES</u>		<u>Page</u>
Section 7.01	Defaults	20
Section 7.02	Remedies Upon Event of Default and Default	20
<u>ARTICLE VIII - CERTIFICATIONS BY RECIPIENT</u>		<u>Page</u>
Section 8.01	Certifications Upon Draw of Funds	22
Section 8.02	Environmental Certifications	22

TABLE OF CONTENTS - Continued

ARTICLE IX - THIRD PARTY CONTRACT REQUIREMENTS

	<u>Page</u>
Section 9.01	Escrow of Grant Revenues 24
Section 9.02	Grant Revenues Applied To Costs 24
Section 9.03	Grant Revenues for Title I Activities 24
Section 9.04	Assurance of Governmental Approvals 24
Section 9.05	Completion of Project 25
Section 9.06	Assurances of Projected Jobs 25
Section 9.07	Maintaining Records and Right to Inspect 25
Section 9.08	Access to Project 26
Section 9.09	No Assignment or Succession 26
Section 9.10	Secretary Approval of Amendments 26
Section 9.11	Disclaimer of Relationships 27

ARTICLE X - EVIDENTIARY MATERIALS

	<u>Page</u>
Section 10.01	Opinions of Recipient's Attorney 28
Section 10.02	Commitments of Participating Parties - In General 28
Section 10.03	Form of Documentary Evidence - General 29
Section 10.04	Evidence of Contracts - Form 29
Section 10.05	Evidence of Loan Commitment - Form 29
Section 10.06	Evidence of Loans - Form 31
Section 10.07	Evidence of Investor's Equity - Form 31
Section 10.08	Evidence of Finances Satisfactory to Counsel - Form 32
Section 10.09	Anti-Speculation Provisions - Sale of Real Property 32
Section 10.10	Evidence of Title to Real Property - Form 33

ARTICLE XI - MISCELLANEOUS

	<u>Page</u>
Section 11.01	Notices 35
Section 11.02	Assignment 35
Section 11.03	Successors Bound 35
Section 11.04	Remedies Not Impaired 35
Section 11.05	Indemnification 36
Section 11.06	Cumulative Remedies 36
Section 11.07	Severability 36
Section 11.08	Entire Agreement 36
Section 11.09	Execution in Counterparts 36
Section 11.10	Table of Contents; Titles and Headings 36
Section 11.11	Amendment of this Grant Agreement 37
Section 11.12	Disclaimer of Relationships 37
Section 11.13	Governing Law 37
Section 11.14	Waiver by Secretary 37
Section 11.15	Effective Date 37
Section 11.16	Termination of Grant Agreement 38

SCHEDULE OF EXHIBITS

EXHIBIT A	SUPPLEMENTARY PROVISIONS
EXHIBIT B	DESCRIPTION OF UDAG FUNDED ACTIVITIES
EXHIBIT C	DESCRIPTION OF NON-UDAG FUNDED ACTIVITIES
EXHIBIT D	PROJECT BUDGET - SUMMARY OF PROPOSED EXPENDITURES
EXHIBIT E	REQUIRED EVIDENTIARY MATERIALS
EXHIBIT F	PROJECT PERFORMANCE SCHEDULE

P R E A M B L E

1 THIS GRANT AGREEMENT is made and entered into by and between THE
2 SECRETARY OF HOUSING AND URBAN DEVELOPMENT, acting by and through the
3 Assistant Secretary for Community Planning and Development, as representative
4 of the United States of America, and the RECIPIENT.

R E C I T A L S

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9 THE RECIPIENT has applied to the Secretary for grant assistance
10 under the UDAG Program to undertake activities which are consistent with the
11 provisions of Section 119 of the Act and the UDAG Regulations; and
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13 THE SECRETARY, in reliance upon the representations set forth in
14 the Application, has approved the award of grant funds to the Recipient, to
15 be expended by the Recipient in conformity with the requirements and
16 provisions of this Grant Agreement;
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18 IN CONSIDERATION of the mutual promises and covenants contained in
19 this Grant Agreement, the Secretary and the Recipient agree as follows:
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6/79

ARTICLE I

GENERAL PROVISIONS

1 Section 1.01 Contents of Agreement

2 This agreement between the parties hereto relating to the Project
3 shall consist of this Grant Agreement, the Application, and all exhibits hereto,
4 as the same may, from time to time, be amended.

5 Section 1.02 Exhibits Incorporated

6 All exhibits which are referred to in this Grant Agreement and are
7 attached hereto, are incorporated herein and made a part hereof.

8 Section 1.03 General Definitions

9 For all purposes, unless specifically provided otherwise or the
10 context otherwise requires, when used in this Grant Agreement:

11 (1) "Act" means the Housing and Community Development Act of 1974,
12 Pub. L. No. 93-383, as amended.

13 (2) "Application" means the Application For Federal Assistance, and
14 such other submittals by the Recipient, as are specified in Exhibit A to this
15 Grant Agreement.

16 (3) "Default" means any event of default set forth in subsection (a)
17 of Section 7.01 of this Grant Agreement which continues for the period set
18 forth in subsection (b) of said Section 7.01.

19 (4) "Eligible Costs" means costs incurred by the Recipient for
20 purposes authorized by Section 2.02 and more particularly described in
21 Exhibit D to this Grant Agreement, provided that such costs (i) are not
22 incurred in connection with any activity which, under 24 C.F.R. Part 570, as
23 the same may be from time to time amended, is ineligible under the UDAG Program,
24 and (ii) conform to the requirements of Attachment B to Federal Management
25 Circular 74-4 (Cost Principles Applicable to Grants and Contracts with State
26 and Local Government), as the same may be from time to time amended. For
27 purposes of determining the conformity of costs to said Attachment B, all costs
28 set forth in Section C thereof except for "prearrangement costs" and "proposal-
29 costs" (which are eligible only to the extent authorized in Section 570.454 of
30 24 C.F.R. Part 570) may be considered eligible without prior approval of the
31 Secretary.
32

1 (5) "Environmental Conditions" means the conditions imposed by law,
2 applicable regulations and the provisions of Sections 3.02, 3.03, 3.05, 3.06,
3 4.02 and 8.02 of this Grant Agreement which prohibit or limit the commitment
4 and use of grant funds until certain procedural requirements have been completed.

5 (6) "Environmental Requirements" means the requirements described
6 in Sections 4.01 and 4.02 of this Grant Agreement.

7 (7) "Environmental Studies" means all eligible activities necessary
8 to produce an "environmental document", as that term is defined at Section 1508.10
9 of 40 C.F.R. Part 1508, or to comply with the requirements of 24 C.F.R. Part 58,
10 or the requirements of Section 4.01 or 4.02 of this Grant Agreement.

11 (8) "Federal Protective Rules" means all rules which are established
12 by Federal statutes and regulations for the protection of persons or property,
13 or for the protection of things environmental, historic, cultural, flora or
14 fauna.

15 (9) "Grant Revenues", means the UDAG percentage of: (i) any gross
16 income earned from the disposition of real or personal property acquired in
17 whole or in part by the use of grant funds; (ii) the repayment proceeds
18 (including principal and interest) of any loan made in whole or in part by the
19 use of grant funds; and (iii) any gross income from a grant-supported activity
20 where it is specifically declared at Exhibit A to this Grant Agreement that the
21 income from such activity shall be deemed to be Grant Revenues. The "UDAG
22 percentage", means an amount computed by applying the percentage of participation
23 of UDAG funds in the total cost of acquisition of property or in the total amount
24 of a loan, or in the total cost of a grant-supported activity, to the gross
25 income from the disposition of such property, the total repayment proceeds of
26 such loan, or the gross income from such grant-supported activity.

27 (10) "HUD" means the United States Department of Housing and Urban
28 Development.

29 (11) "Letter of Credit" means the letter of credit to be issued or
30 amended by the Department of the Treasury pursuant to Section 3.01 of this
31 Grant Agreement.

1 (12) "Non-UDAG Funded Activities" means those activities not directly
2 assisted with UDAG Program funds, the assured completion of which was relied
3 upon by the Secretary in selecting the Recipient for the award of funds under
4 this Grant Agreement, which activities are more particularly described in
5 Exhibit C to this Grant Agreement.

6 (13) "Participating Party" means any person, firm, corporation or
7 entity identified as such in Exhibit A to this Grant Agreement. Identification
8 as a "Participating Party" signifies that the Secretary, in selecting Recipient
9 for the award of this grant, relied in material part upon a representation that
10 the party so identified will, in consideration of this grant, undertake and
11 complete one or more specified UDAG Funded Activities or Non-UDAG Funded
12 Activities.

13 (14) "Project" means the group of integrally related activities
14 described in Exhibits "B" and "C" to this Grant Agreement which are to be
15 carried out to meet the objectives of the UDAG Program, and includes all UDAG
16 Funded Activities together with all Non-UDAG Funded Activities.

17 (15) "Recipient" means the local governmental entity receiving UDAG
18 Program funds pursuant to this Grant Agreement, as more particularly identified
19 on the cover page to this Grant Agreement.

20 (16) "Secretary" means the Secretary of Housing and Urban Development
21 or any other official of HUD to whom the Secretary has delegated authority to act
22 with respect to matters covered by this Grant Agreement.

23 (17) "UDAG Funded Activities" means those activities to be directly
24 assisted with UDAG Program funds, which activities are more particularly
25 described in Exhibit B to this Grant Agreement.

26 (18) "UDAG Program" means the Urban Development Action Grant Program
27 established by HUD pursuant to Section 119 of the Act.

28 (19) "UDAG Regulations" means the regulations set forth in 24 C.F.R.
29 Part 570, Subpart G, as the same may from time to time be amended.

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ARTICLE II

AMOUNT AND AUTHORIZED USES OF GRANT FUNDS

1 Section 2.01 Grant Assistance Provided

2 In consideration of the various obligations undertaken by the
3 Recipient pursuant to this Grant Agreement, and in consideration of the
4 obligations to be undertaken by Participating Parties, as represented by the
5 Recipient in the Application, the Secretary agrees, subject to the terms and
6 conditions set forth herein, to provide the Recipient with grant funds in the
7 amount specified in Exhibit A to this Grant Agreement.

8 Section 2.02 Authorized Uses of Grant Funds

9 The funds provided to the Recipient pursuant to this Grant Agreement
10 shall be used in connection with the UDAG Funded Activities described and
11 depicted in Exhibit B to this Grant Agreement and shall be so used solely for
12 the authorized purposes described in Exhibit D to this Grant Agreement.

13 Section 2.03 Adjustments to Grant Funds

14 The amount of grant funds which the Secretary has agreed to provide
15 to the Recipient under this Grant Agreement has been determined by the Secretary,
16 in part, in reliance upon the cost estimates of the Recipient with respect to
17 the UDAG Funded Activities set forth in the Application, and in part, in
18 reliance upon the investment estimates of Participating Parties with respect
19 to the Non-UDAG Funded Activities and UDAG Funded Activities set forth in the
20 Application. The Secretary reserves the right to reduce the amount of funds
21 granted under this Grant Agreement (i) to conform to any revision to which the
22 Recipient and the Secretary may agree with respect to Exhibits B, C or D to
23 this Grant Agreement, or (ii) if the actual costs for UDAG Funded Activities
24 are lower than those set forth in Exhibits B or D to this Grant Agreement.

25 Section 2.04 Recipient's Use of Grant Revenues

26 (a) The Secretary shall have the right to require all Grant
27 Revenues received by the Recipient, or by any Participating Party, prior to
28 the completion of all UDAG Funded Activities, to be deposited in escrow
29 under arrangements approved by the Secretary, in order to provide funds to
30 assure completion of the UDAG Funded Activities. The Secretary may exercise
31 said right either by specifying such requirement at Exhibit A to this Grant
32 Agreement, or by separate written instructions to the Recipient delivered

1 at any time prior to the completion of all UDAG Funded Activities and the draw
2 of funds to reimburse costs incurred for such activities.

3 (b) Unless otherwise specifically authorized or required at
4 Exhibit A to this Grant Agreement, all Grant Revenues which are received by the
5 Recipient, or by any Participating Party, during the term of this Grant Agreement
6 and prior to completion of all UDAG Funded Activities, shall be used to
7 reimburse costs incurred for UDAG Funded Activities. Such Grant Revenues shall
8 be so used in place and instead of any draw under the Letter of Credit, to the
9 extent adequate to reimburse costs so incurred.

10 (c) Unless otherwise specifically authorized or required at
11 Exhibit A to this Grant Agreement, all Grant Revenues received by the Recipient,
12 or by any Participating Party, after the completion of all UDAG Funded
13 Activities, shall be used by the Recipient, or by the Participating Party
14 subject to the approval of the Recipient, for community or economic development
15 activities which would be eligible for assistance under Title I of the Act.
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ARTICLE III

DISBURSEMENT OF GRANT FUNDS

1 Section 3.01 Letter of Credit Procedures

2 (a) Promptly after it has become effective and the Secretary has
3 received, from the Recipient, not less than three (3) fully executed copies of
4 this Grant Agreement, the Secretary shall cause a Letter of Credit to be issued
5 to the Recipient by the Department of the Treasury, or shall cause the Letter
6 of Credit previously issued to the Recipient by the Department of the Treasury
7 with respect to the Community Development Block Grant Program under Title I of
8 the Act to be increased, in accordance with procedures established by the
9 Department of the Treasury, in an amount not to exceed the amount of grant funds
10 referenced in Section 2.01 and specified in Exhibit A to this Grant Agreement.

11 (b) The issuance or increase of a Letter of Credit shall not,
12 thereby, authorize the Recipient to use such Letter of Credit or to reimburse
13 any costs out of funds of this grant. The authorization to use the Letter of
14 Credit and to reimburse costs out of grant funds shall be governed by the
15 provisions of Section 3.05 of this Grant Agreement and shall be subject to all
16 conditions precedent to the Recipient's draw of funds which are specified in
17 Section 3.06 of this Grant Agreement. The Recipient shall not draw upon the
18 Letter of Credit unless and until the Secretary has so authorized the Recipient,
19 pursuant to Section 3.04 of this Grant Agreement.

20 (c) The Recipient is authorized to draw funds against the Letter of
21 Credit only in accordance with the provisions of this Grant Agreement and the
22 procedures established by the Secretary and the Department of the Treasury. No
23 payment by the Department of the Treasury of an improper or unauthorized draw
24 to the Recipient shall, to any extent, constitute a waiver of the right of the
25 Secretary subsequently to challenge the validity of such draw, to enforce all
26 rights and remedies set forth in Article VII of this Grant Agreement, or to take
27 corrective or remedial administrative action pursuant to the UDAG Regulations,
28 which action may include, without limitation, suspension or termination of the
29 Recipient's funding under this Grant Agreement.

30 (d) The disposition of any funds provided under this Grant Agreement
31 that remain available under the Letter of Credit following completion of the
32 UDAG Funded Activities or the termination of this Grant Agreement by the

11/10/79

BOOK 1955 PAGE 402

1 Secretary or its termination for any cause shall be in accordance with close-out
2 procedures then in effect or established by the Secretary, and the Recipient
3 shall neither have nor retain any rights whatsoever with respect to such funds
4 by virtue of this Grant Agreement.

5 Section 3.02 Incurring Costs for UDAG Funded Activities

6 (a) This grant and the use of grant funds are conditioned upon the
7 Recipient incurring costs which are to be reimbursed under this grant only in
8 accordance with the authority specified in this Grant Agreement, or otherwise
9 approved by the Secretary in writing. The incurring of costs to be reimbursed
10 out of funds of this grant shall be governed by the following:

11 (1) Eligible administrative costs, including, but not limited
12 to, costs of Environmental Studies, may be incurred before or after the date
13 of this Grant Agreement.

14 (2) Except for eligible administrative costs, including costs
15 of Environmental Studies, and except as specified at paragraph (3) of this
16 subsection (a), below, no costs to be reimbursed out of funds of this grant may
17 be incurred by the Recipient or by any Participating Party, until all of the
18 Environmental Conditions of this Grant Agreement have been fully satisfied,
19 including the issuance by the Secretary of all required environmental releases,
20 in accordance with Section 8.02 of this Grant Agreement.

21 (3) If the Recipient has not satisfied all of the
22 Environmental Conditions, or the Secretary has not issued the required releases,
23 as aforesaid, then, after the effective date of this Grant Agreement and until
24 all of the Environmental Conditions have been satisfied and said releases issued,
25 the only costs to be reimbursed out of grant funds which may be incurred by the
26 Recipient or by Participating Parties (other than for administration and for
27 Environmental Studies) shall be as follows:

28 (i) Eligible Costs for the development of plans or designs,
29 or for the performance of other work necessary to support an application for any
30 Federal, State or local permits, or assistance, or to support an application
31 for debt financing.

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1955 115

1 (ii) Eligible Costs not affecting the environment which,
2 by their nature, in the ordinary course of events, involve critical time
3 limitations or requirements (e.g., long leadtime equipment or material purchase
4 orders; expiring purchase options; solicitations for bids).

5 (iii) Eligible Costs for any other activities which are
6 categorical exclusions or are otherwise exempted from the Environmental
7 Requirements by any provision in 24 C.F.R. Part 58.

8 (4) After the Recipient has satisfied all of the Environmental
9 Conditions and the Secretary has issued the required environmental releases, as
10 aforesaid, then, at any time after the effective date of this Grant Agreement,
11 the Recipient and the Participating Parties may incur Eligible Costs which are
12 to be reimbursed out of funds of this grant.

13 (b) The authorization in subsection (a) of this Section 3.02, above,
14 to incur costs, is not an authorization to reimburse those costs and does not
15 mean or imply that such costs will, in fact, be reimbursed out of grant funds.
16 It means the Recipient and Participating Parties may, voluntarily, and at their
17 own risk, and upon their own credit and expense, incur costs as authorized at
18 said subsection (a), above, but their authority to reimburse or to be reimbursed
19 out of grant funds shall be governed by the provisions of this Grant Agreement
20 applicable to the reimbursement of costs and the release of funds by the
21 Secretary.

22 (c) Neither the Recipient nor any Participating Party shall incur
23 any costs in connection with any UDAG Funded Activity, even though such costs
24 or action will not be reimbursed or funded out of grant funds, unless such costs
25 could be incurred pursuant to subsection (a) of this Section 3.02, above, if such
26 costs were to be reimbursed or funded out of grant funds.

27 Section 3.03 Incurring Costs for Non-UDAG Funded Activities

28 The Recipient shall not incur any costs, in connection with any Non-
29 UDAG Funded Activity, other than any costs which could be incurred pursuant to
30 subsection (a) of Section 3.02, in the case of a UDAG Funded Activity, until all
31 of the Environmental Conditions of this Grant Agreement have been satisfied,
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1 including the issuance by the Secretary of all required environmental releases
2 in accordance with Section 8.02 of this Grant Agreement.

3 Section 3.04 Authorization by the Secretary for the Recipient
4 to Draw Funds

5 (a) If Exhibits E or F to this Grant Agreement do not require or
6 authorize the phasing or staging of the Recipient's draw of funds, then upon a
7 finding by the Secretary that the Recipient has submitted, in a timely manner
8 and in acceptable form and content, all of the evidentiary materials required by
9 this Grant Agreement to be submitted to and accepted by the Secretary; and upon
10 acceptance and approval by the Secretary of said evidentiary materials; and if
11 no event of default has occurred, as defined at subsection (a) of Section 7.01
12 of this Grant Agreement, the Secretary shall promptly issue to the Recipient a
13 written authorization to draw grant funds under the Letter of Credit, for all
14 of the UDAG Funded Activities specified at Exhibit B to this Grant Agreement.

15 (b) If Exhibits E or F to this Grant Agreement do require or
16 authorize the phasing or staging of the Recipient's draw of funds, then upon a
17 finding by the Secretary that the Recipient has submitted, in a timely manner and
18 in acceptable form and content, all of the evidentiary materials specified and
19 required at said Exhibit E to be submitted to and accepted by the Secretary
20 respecting any particular phase or stage of the draw of funds; and upon
21 acceptance and approval by the Secretary of said evidentiary materials; and if
22 no event of default has occurred, as defined at subsection (a) of Section 7.01
23 of this Grant Agreement, the Secretary shall promptly issue to the Recipient
24 a written authorization to draw funds under the Letter of Credit in accordance
25 with any requirements or authorizations described at said Exhibit E respecting
26 the particular phase or stage of the draw of funds.

27 Section 3.05 Reimbursement of Costs

28 (a) No costs shall be reimbursed by the Recipient out of grant funds
29 prior to the issuance by the Secretary of a written authorization to draw funds
30 under the Letter of Credit, pursuant to Section 3.04 of this Grant Agreement.
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1 (b) All evidentiary materials required by this Grant Agreement to be
2 submitted to and approved or accepted by the Secretary, as conditions precedent
3 to the Recipient's authority to reimburse costs, shall be so submitted by the
4 Recipient and approved or accepted by the Secretary before the Secretary will
5 issue any authorization to the Recipient to draw funds under the Letter of
6 Credit.

7 (c) All certifications and other materials required by this Grant
8 Agreement to be submitted to the Secretary as conditions precedent to the
9 Recipient's authority to reimburse costs shall be so submitted by the Recipient
10 prior to any draw of funds under the Letter of Credit.

11 (d) Notwithstanding any of the foregoing subsections (a), (b) and
12 (c) of this Section 3.05, and notwithstanding the issuance by the Secretary of
13 any unconditional authorization to the Recipient to draw funds under the Letter
14 of Credit, the Recipient is prohibited from reimbursing any costs and from
15 drawing any funds under the Letter of Credit, unless and until the Recipient
16 has satisfied all of the Environmental Conditions of this Grant Agreement and
17 the Secretary has issued all of the required environmental releases, in
18 accordance with Section 4.02 of this Grant Agreement.

19 Section 3.06 Conditions Precedent to Recipient's Draw of Funds
20 Under Letter of Credit

21 Prior to the Recipient's reimbursement of any costs with grant funds,
22 and prior to the Recipient's drawing of any grant funds under the Letter of
23 Credit, the following conditions shall have been satisfied:

24 (a) General: Conditions Applicable in All Cases

25 (1) The Recipient shall have satisfied all of the Environmental
26 Conditions of this Grant Agreement.

27 (2) The Secretary shall have issued all of the required
28 environmental releases, in accordance with Section 4.02 of this Grant
29 Agreement.

1 (3) The Recipient shall not have been served by the Secretary
2 with any notice suspending the Recipient's authority to draw funds under the
3 Letter of Credit, pursuant to Section 7.02 of this Grant Agreement, nor be in
4 breach of the Recipient's obligation to report an event of default, pursuant to
5 subsection (a) of Section 5.05 of this Grant Agreement.

6 (b) Specific: Conditions Applicable When Authorization to Draw
7 Funds is Not Phased or Staged

8 (1) The Recipient shall have submitted to the Secretary, no
9 later than the date specified at Exhibit F to this Grant Agreement, all of the
10 evidentiary materials required by Exhibit E to this Grant Agreement to be
11 submitted to and approved or accepted by the Secretary.

12 (2) The Secretary shall have approved and accepted said
13 evidentiary materials and shall have issued to the Recipient a written
14 authorization to draw funds under the Letter of Credit.

15 (3) The Recipient shall have submitted to the Secretary all
16 certifications and other materials required by Section 8.01 of this Grant
17 Agreement to be submitted by the Recipient prior to any draw of funds under the
18 Letter of Credit.

19 (c) Specific: Conditions Applicable When Authorization
20 to Draw Funds is Phased or Staged

21 (1) As to each phase or stage of a draw of funds which is
22 described at Exhibits E or F to this Grant Agreement, the Recipient shall have
23 submitted to the Secretary, no later than the date specified at Exhibit F to
24 this Grant Agreement, all of the evidentiary materials required by Exhibit E to
25 this Grant Agreement to be submitted to and approved or accepted by the
26 Secretary.

27 (2) As to each such phase or stage of a draw of funds, the
28 Secretary shall have approved and accepted said evidentiary materials and
29 shall have issued to the Recipient a written authorization to draw funds under
30 the Letter of Credit to reimburse costs applicable to that phase or stage.
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(3) The Recipient shall have submitted to the Secretary all certifications and other materials required by Section 8.01 of this Grant Agreement to be submitted by the Recipient prior to any draw of funds under the Letter of Credit.

11/22/79

ARTICLE IV
COMPLIANCE WITH FEDERAL PROTECTIVE RULES

1 Section 4.01 Delegation and Acceptance of Responsibilities
2 Under Federal Protective Rules

3 By its execution of this Grant Agreement, the Recipient represents
4 and warrants that it has the legal capacity to assume the responsibilities
5 for compliance with all applicable Federal Protective Rules and agrees and
6 undertakes to assume and carry out all such responsibilities in accordance
7 with all the requirements which are or may be established by the Secretary.

8 Section 4.02 Environmental Requirements

9 (a) The Project which is the subject of this grant is subject to
10 the Environmental Requirements contained in 24 C.F.R. Part 58, as the same may
11 from time to time be amended, and to the requirements of 40 C.F.R. Parts 1500,
12 et seq.

13 (b) The Environmental Requirements contained in 24 C.F.R. Part 58
14 set forth the responsibilities to be assumed and carried out by the Recipient
15 with respect to applicable Federal Protective Rules.

16 (c) No grant funds may be committed by the Recipient, except as
17 provided at Section 3.02 of this Grant Agreement, until all applicable
18 Environmental Requirements have been completed by the Recipient; all required
19 environmental certifications and requests for release of funds have been
20 submitted to the Secretary by the Recipient; and the Secretary has issued all
21 required written environmental releases of funds, as provided at 24 C.F.R.
22 Part 58.

ARTICLE V
REPRESENTATIONS, WARRANTIES, AND SPECIFIC OBLIGATIONS

1 Section 5.01 Recipient's Representations and Warranties

2 The Recipient has, by and through consultations had among all
3 members of the Recipient's governing body, chief executive officer, chief
4 community development officer, chief financial officer, chief clerk, and chief
5 legal officer, and each of them, examined into each of the following and by its
6 execution of this Grant Agreement the Recipient does, upon their information
7 and belief, represent and warrant to the Secretary that:

8 (1) The Recipient is duly organized and validly existing under the
9 laws of the jurisdiction of which the Recipient is a part, and has all requisite
10 power and authority to enter into this Grant Agreement.

11 (2) A resolution, motion or ordinance has been duly adopted, passed
12 or enacted as an official act of the Recipient's governing body, authorizing the
13 execution and delivery of this Grant Agreement by the Recipient and authorizing
14 and directing the person executing this Grant Agreement to do so for and on
15 behalf of the Recipient.

16 (3) This Grant Agreement has been executed and delivered by the
17 Recipient, and by the person executing it for and on behalf of the Recipient,
18 in such manner and form as to comply with all laws of the jurisdiction of which
19 the Recipient is a part, and the Charter and ordinances of the Recipient, which
20 are necessary to be complied with in order to make this Grant Agreement the valid
21 and legally binding act and agreement of the Recipient.

22 (4) Except as set forth in Exhibit A to this Grant Agreement, there
23 is no action, proceeding, or investigation now pending, nor any basis therefor,
24 known or believed to exist by the Recipient, which (i) questions the validity
25 of this Grant Agreement, or any action taken or to be taken under it; or
26 (ii) is likely to result in any material adverse change in the authorities,
27 properties, assets, liabilities, or conditions (financial or otherwise) of the
28 Recipient which would materially and substantially impair the Recipient's
29 ability to perform any of the obligations imposed upon the Recipient by this
30 Grant Agreement.

1 (5) The representations, statements, and other matters contained
2 in the Application were true and complete in all material respects as of the
3 date of filing. Except as set forth in Exhibit A to this Grant Agreement, the
4 Recipient is aware of no event which has occurred since the date of such
5 filing which would require any amendment of the Application (other than an
6 amendment which has been filed with and approved by the Secretary) in order
7 to make such representations, statements, and other matters true and complete
8 in all material respects and not misleading in any material respect. The
9 Recipient is aware of no event or other fact which should have been, and has
10 not been, reported in the Application as material information.

11 (6) The Recipient has obtained or has reasonable assurance that
12 there will be obtained all Federal, State and local government approvals and
13 reviews required by law to be obtained by the Recipient for the Project; and
14 all Participating Parties have obtained, or the Recipient has reasonable
15 assurances there will be obtained by such Participating Parties all such
16 approvals and reviews required by law to be obtained by the Participating Parties
17 for the Project.

18 (7) Insofar as the capacity of the Recipient to carry out any obliga-
19 tion under this Grant Agreement is concerned, (i) the Recipient is not in
20 material violation of its Charter, or any mortgage, indenture, agreement,
21 instrument, judgment, decree, order, statute, rule or regulation and (ii) the
22 execution and performance of this Grant Agreement will not result in any such
23 violation.

24 (8) None of the principal officials, officers, agents or employees
25 of the Recipient is a Participating Party, or owns or controls any substantial
26 interest in any Participating Party, excepting only as shall have been disclosed
27 in the Application, and, as to any such disclosure, the Recipient acknowledges
28 and agrees that the facts set forth at Exhibit A to this Grant Agreement
29 constitute all of the facts concerning such ownership, control or interest
30 which have been disclosed to the Secretary by the Recipient. An interest in
31 a Participating Party is "substantial", within the meaning of this subsection,
32 if it would violate any conflict of interest law of the jurisdiction of which

1 Recipient is a part, in the event Recipient and the Participating Party were to
2 enter into any contract, or if it consists of more than 3% ownership of the
3 Participating Party, or if the official, officer, agent or employee receives
4 more than 5% of his or her total annual income from the Participating Party.

5 Section 5.02 Obligation to Complete UDAG Funded Activities
6 As Scheduled

7 (a) In consideration of the selection of the Recipient for the award
8 of this grant and of the funds provided pursuant to this Grant Agreement, the
9 Recipient undertakes and assures the Secretary, by its execution of this Grant
10 Agreement, that Recipient shall use its best efforts to assure the completion
11 of the UDAG Funded Activities described at Exhibit B to this Grant Agreement
12 within the time periods specified at Exhibit F to this Grant Agreement.

13 (b) The Recipient understands and by its execution of this Grant
14 Agreement agrees that the foregoing undertaking and assurance means that
15 Recipient shall, to the maximum extent permitted by law, use and apply all of
16 its governmental and proprietary powers, including but not limited to those
17 powers governing taxes, other revenues, credit, eminent domain and appropria-
18 tions, if necessary, for the purpose of providing any shortfall between funds
19 available under this grant and otherwise, and funds necessary to complete all
20 of the UDAG Funded Activities described at Exhibit B to this Grant Agreement.

21 Section 5.03 Obligation to Achieve Projected Jobs

22 (a) In approving the Application and in selecting the Recipient for
23 the award of this grant, the Secretary considered certain representations by
24 Recipient to the Secretary that the use of funds of this grant is expected to
25 create a specific number of both temporary and permanent new job opportunities,
26 including a specific number of new permanent job opportunities for persons who,
27 at the time of their employment, will be persons of low or moderate income,
28 within the meaning of Section 570.3 of 24 C.F.R. Part 570, as the same may be
29 from time to time amended.

30 (b) By its execution of this Grant Agreement, the Recipient
31 acknowledges its representations in the Application pertaining to the creation
32 of jobs and obligates itself to use its best efforts to create; or cause to be

1 created, during the existence of this Grant Agreement, the numbers and kinds of
2 jobs represented in the Application as being expected to be created through the
3 use of funds of this grant.

4 (c) By its execution of this Grant Agreement, the Recipient obligates
5 itself to use all powers available to Recipient to enforce the undertakings or
6 assurances of Participating Parties respecting the creation of jobs which are
7 specified at Exhibit A to this Grant Agreement.

8 Section 5.04 Obligation to Cure Title Defects

9 (a) During the term of this Grant Agreement and until completion of
10 all of the UDAG Funded Activities, the Recipient shall use its best efforts to
11 promptly cure, or cause to be cured, any defect in the title to any real
12 property necessary to the completion of said activities, where such defect will
13 or may have any material adverse effect on the use of such real property for the
14 purposes intended under the Grant Agreement.

15 (b) The Recipient understands and by its execution of this Grant
16 Agreement agrees that the foregoing obligation means that the Recipient shall,
17 to the maximum extent permitted by law, use and apply all of its governmental
18 and proprietary powers, including, but not limited to, those powers governing
19 taxes, other revenues, credit, eminent domain and appropriations, if necessary,
20 for the purpose of assuring the availability, free and clear of adverse and
21 inhibiting title defects, of all real property which is necessary to assure and
22 effect the completion of all of the UDAG Funded Activities.

23 Section 5.05 Notification and Action Upon Events of Default

24 (a) The Recipient shall promptly give written notice to the
25 Secretary upon the discovery by the Recipient of any event of default involving
26 any Participating Party, as described at Section 7.01 of this Grant Agreement.

27 (b) Promptly upon the discovery of any such event of default, the
28 Recipient shall vigorously pursue all remedies which are available to the
29 Recipient under any agreement with any Participating Party, or otherwise, to
30 remove or cure such event of default, or to seek redress or relief from its
31 effects and to prevent or mitigate any adverse effects on the Project.

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ARTICLE VI

INSPECTION AND REVIEW

1 Section 6.01 Duty to Maintain, and Rights to Inspect and Copy,
2 Books, Records and Documents

3 (a) Except as otherwise provided in this Section 6.01, the Recipient
4 shall keep and maintain such books, records and other documents as shall be
5 required under rules and regulations now or hereafter applicable to grants made
6 under the UDAG Program, including but not limited to 24 C.F.R. 570.907, and as
7 may be reasonably necessary to reflect and disclose fully the amount and dis-
8 position of the funds provided under this Grant Agreement, the total cost of the
9 UDAG Funded Activities, and the amount and nature of all investments related to
10 the UDAG Funded Activities which are supplied or to be supplied by other sources.

11 (b) All such books, records and other documents shall be available at
12 the offices of the Recipient (except that books, records, and other documents of
13 a Participating Party which are subject to this Section 6.01 may be maintained
14 at the offices of such Participating Party) for inspection, copying, audit and
15 examination at all reasonable times by and duly authorized representative of
16 the Secretary or the Comptroller General of the United States.

17 Section 6.02 Site Visits

18 Any duly authorized representative of the Secretary shall, at all
19 reasonable times, have access to all portions of the Project.

20 Section 6.03 Duration of Inspection Rights

21 The rights of access and inspection described in this Article VI
22 shall continue until the completion of all close-out procedures respecting this
23 grant, and until the final settlement and conclusion of all issues arising out
24 of this grant or under this Grant Agreement.

25 Section 6.04 Reports

26 The Recipient shall promptly furnish to the Secretary all reports
27 required to be filed in accordance with any directives of the Secretary or any
28 statute, rule or regulation of HUD.

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ARTICLE VII

DEFAULTS AND REMEDIES

1 Section 7.01 Defaults

2 (a) An event of default shall consist of any use of grant funds for
3 any purpose other than as authorized at Section 2.02 of this Grant Agreement,
4 without the Secretary's prior written approval, or any other material failure
5 in the performance by, or breach of any covenant, agreement, provision, or
6 warranty of (i) the Recipient, made in this Grant Agreement; or, (ii) the
7 Recipient, made pursuant to any agreement entered into between the Recipient and
8 any Participating Party relating to the Project; or, (iii) any Participating
9 Party, made pursuant to any agreement between such Participating Party and the
10 Recipient relating to the Project; or, (iv) any Participating Party, made pursuant
11 to any agreement between Participating Parties relating to the Project.

12 (b) Continuance of an event of default described in subsection (a) of
13 this Section 7.01 for a period of thirty (30) consecutive days after delivery to
14 the Recipient of a written notice issued by the Secretary specifying such
15 default or breach and requiring it to be remedied shall constitute a Default
16 under this Grant Agreement.

17 Section 7.02 Remedies Upon Event of Default and Default

18 (a) Upon the occurrence of any event of default as described in sub-
19 section (a) of Section 7.01, above, the Secretary may suspend the Recipient's
20 authority to draw any funds under the Letter of Credit at any time by notice
21 to the Recipient. If such event of default is not cured within the time and in
22 the manner described in subsection (b) of said Section 7.01, the Secretary shall
23 have the right to continue such suspension or, at any time thereafter while such
24 Default shall be continuing, to notify the Recipient that the Secretary, by
25 delivery of such notice, is terminating this Grant Agreement. In the event of
26 a termination, the Recipient's authority to draw any funds under the Letter of
27 Credit shall be deemed to have terminated at the time of the notice suspending
28 such authority, and thereafter the Recipient shall have no right, title or
29 interest in or to any funds remaining under the Letter of Credit.
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(b) If an event of default consists of the Recipient's failure to satisfy the conditions of paragraph (1) of subsection (b) or paragraph (1) of subsection (c) of Section 3.06 by the date specified in Exhibit F to this Grant Agreement, the Secretary shall have the right, in the Secretary's sole and absolute discretion and notwithstanding any other provision of this Article VII to terminate this Grant Agreement and the award of UDAG Program funds to which this Grant Agreement relates by delivery of written notice thereof to the Recipient. In the event of such termination, all obligations of the Secretary pursuant to this Grant Agreement and such award shall cease and the Recipient shall neither have nor retain any rights whatsoever with respect to the UDAG Program funds provided under this Grant Agreement or such award.

(c) In case a Default shall have occurred and be continuing, the Secretary may at any time or from time to time proceed to protect and enforce all rights available to the Secretary under this Grant Agreement by suit in equity, action at law, or by any other appropriate proceedings, whether for specific performance of any covenant or agreement contained in this Grant Agreement, or damages, or other relief, or proceed to take any action authorized or permitted under applicable law or regulations.

(d) The rights and remedies available to the Secretary under this Article VII in the event of a suspension or termination of this Grant Agreement, and any related rights and remedies set forth in this Grant Agreement, shall survive such suspension or termination.

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ARTICLE VIII
CERTIFICATIONS BY RECIPIENT

1 Section 8.01 Certifications Upon Draw of Funds

2 Prior to each and every draw of grant funds under the Letter of Credit,
3 the Recipient shall submit to the Secretary a written certification, executed by
4 the chief executive officer of the Recipient, certifying to the Secretary that:

5 (1) All of the representations and warranties of the Recipient as set
6 forth in Section 5.01 of this Grant Agreement continue to be valid, true, and in
7 full force and effect.

8 (2) The Recipient has carried out all of the Recipient's obligations
9 specified at Sections 5.02, 5.03, 5.04 and 5.05 of this Grant Agreement which,
10 by their terms or intent, will be applicable at the time of the draw of grant
11 funds.

12 (3) Upon the submittal of the within certification to the Secretary,
13 all conditions precedent to the Recipient's authority to draw the grant funds
14 shall have been satisfied, in accordance with Section 3.06 of this Grant Agree-
15 ment.

16 (4) The grant funds to be drawn will reimburse Eligible Costs actually
17 incurred by the Recipient, in accordance with the provisions of Exhibits B and D
18 to this Grant Agreement.

19 (5) All Grant Revenues which have been received by the Recipient and
20 by any Participating Party have been deposited or used in accordance with the
21 provisions of Section 2.04 of this Grant Agreement.

22 Section 8.02 Environmental Certifications

23 (a) The Recipient shall submit to the Secretary and the Secretary shall
24 have approved and accepted all certifications relating to compliance with Federal
25 Protective Rules which are required to be so submitted and approved and accepted
26 by the provisions of 24 C.F.R. Part 58, as the same may from time to time be
27 amended, or by any other regulation of the Secretary.

28 (b) The approval of such environmental certifications by the
29 Secretary does not, thereby, authorize the Recipient to draw funds under the
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1 Letter of Credit. The authorization to draw grant funds is subject to the
2 compliance by the Recipient with all other conditions of this Grant Agreement
3 which affect the use of grant funds and to the issuance of the written authori-
4 zation of the Secretary pursuant to Section 3.04 of this Grant Agreement.

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ARTICLE IX

THIRD PARTY CONTRACT REQUIREMENTS

1 Section 9.01 Escrow of Grant Revenues

2 The Recipient shall cause to be included in all contracts with Partici-
3 pating Parties engaged in UDAG Funded Activities, a provision that upon instruc-
4 tion by the Secretary, all Grant Revenues received by the Participating Party,
5 prior to the completion of all UDAG Funded Activities, shall be deposited in
6 escrow under arrangements approved by the Secretary, in order to provide funds to
7 assure the completion of the UDAG Funded Activities.

8 Section 9.02 Grant Revenues Applied to Costs

9 Unless Exhibit A to this Grant Agreement authorizes or requires to the
10 contrary, the Recipient shall cause to be included in all contracts with Partici-
11 pating Parties engaged in UDAG Funded Activities, a provision that all Grant
12 Revenues received by the Participating Party prior to the completion of all UDAG
13 Funded Activities, shall be transmitted to the Recipient for use in reimbursing
14 costs incurred for UDAG Funded Activities.

15 Section 9.03 Grant Revenues for Title I Activities

16 Unless Exhibit A to this Grant Agreement authorizes or requires to the
17 contrary, the Recipient shall cause to be included in all contracts with
18 Participating Parties engaged in UDAG Funded Activities, a provision that all
19 Grant Revenues received by the Participating Party after the completion of all
20 UDAG Funded Activities, shall, at the option of the Recipient, either be
21 transmitted to the Recipient, or used by the Participating Party, subject to the
22 approval of the Recipient, for community and economic development activities
23 which would be eligible for assistance under Title I of the Act.

24 Section 9.04 Assurance of Governmental Approvals

25 The Recipient shall cause to be included in all contracts with
26 Participating Parties and in all contracts between Participating Parties to the
27 Project, a provision in the nature of a representation and warranty that each
28 Participating Party has obtained, or has reasonable assurance that there will be
29 obtained, all Federal, State and local governmental approvals and reviews
30 required by law to be obtained by the Participating Party for the Project.

1 Section 9.05 Completion of Project

2 The Recipient shall cause to be included in all contracts with
3 Participating Parties and in all contracts between Participating Parties to the
4 Project, a representation on the part of each Participating Party that the
5 Participating Party acknowledges that the Secretary, in selecting the Recipient
6 for the award of this grant, relied in material part upon the assured completion
7 of the activities to be undertaken by the Participating Party in connection with
8 the Project; and that the Participating Party assures the Recipient that such
9 activities will be completed by the Participating Party.

10 Section 9.06 Assurances of Projected Jobs

11 The Recipient shall cause to be included in all contracts with
12 Participating Parties, or shall secure in the most legally binding and enforceable
13 form for such assurance available under the laws of Recipient's State, written
14 assurances from each Participating Party, that such Participating Party will use
15 its best efforts to create or cause to be created, within a specified time not
16 exceeding forty-eight (48) months after the date of the assurance, a specified
17 number of new job opportunities, including a specified number of permanent new
18 job opportunities for persons who, at the time of their employment, will be
19 persons of low and moderate income. Each assurance shall state that in order to
20 assist and enable the Recipient to report to the Secretary, as the Secretary may
21 require, the assuring Participating Party consents to report to the Recipient, as
22 the Recipient may from time to time require, on the numbers and kinds of such
23 jobs created or caused to be created and filled. The assurances shall contain
24 such other provisions as may be required by the Recipient to enable the Recipient
25 to comply with any reporting requirements of the Secretary and to cause the
26 assurances to be legally binding and enforceable to the maximum extent available
27 under the applicable law.

28 Section 9.07 Maintaining Records and Rights to Inspect

29 The Recipient shall include in all contracts with Participating Parties
30 receiving, directly or indirectly, funds provided under this Grant Agreement,
31 provisions requiring to the effect that (i) each such Participating Party shall
32 keep and maintain books, records and other documents relating directly to the

1 the receipt and disbursement of such grant funds; and (ii) any duly authorized
2 representative of the Secretary or Comptroller General of the United States shall
3 at all reasonable times, have access to and the right to inspect, copy, audit,
4 and examine all such books, records and other documents of such Participating
5 Party until the completion of all close-out procedures respecting this grant,
6 and until the final settlement and conclusion of all issues arising out of this
7 grant or under this Grant Agreement.

8 Section 9.08 Access to Project

9 The Recipient shall include in all contracts with Participating Parties
10 a provision to the effect that each Participating Party agrees that any duly
11 authorized representative of the Secretary shall, at all reasonable times, have
12 access to any portion of the Project in which such Participating Party is
13 involved. The period of such right to access shall be the same as that set forth
14 in Section 9.07 of this Grant Agreement.

15 Section 9.09 No Assignment or Succession

16 The Recipient shall include in all contracts with Participating Parties
17 receiving, directly or indirectly, funds provided under this Grant Agreement, an
18 acknowledgement and agreement by the Participating Party that no transfer of
19 grant funds by the Recipient to the Participating Party shall be or be deemed an
20 assignment of grant funds, and such Participating Party shall neither succeed
21 to any rights, benefits or advantages of the Recipient under this Grant Agree-
22 ment, nor attain any rights, privileges, authorities or interests in or under
23 this Grant Agreement.

24 Section 9.10 Secretary Approval of Amendments

25 The Recipient shall include in all contracts with Participating
26 Parties and shall cause to be included in all contracts between Participating
27 Parties, which are required to be submitted to and approved or accepted by the
28 Secretary, a provision that during the term of this Grant Agreement such
29 contract shall not be amended in any material respect, after such approval and
30 acceptance, without the prior written approval of the Secretary, and that an
31 amendment shall be deemed "material," within the meaning of said provision, if
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1 it cancels or reduces any developmental, construction, job creating, or financial
2 obligation of any Participating Party by more than ten (10%) percent, or if it
3 changes the situs or character of any development activity, or if it increases
4 any time for performance by any Participating Party by more than ten (10%) per-
5 cent; provided, that an increase in any time for performance which does not
6 exceed thirty (30) days, shall not be deemed "material."

7 Section 9.11 Disclaimer of Relationship

8 The Recipient shall include in all contracts with Participating Parties
9 and in all contracts with any party involving the use of grant funds or connected
10 with the Project, an acknowledgement by all parties to such contracts that no-
11 thing contained in this Grant Agreement, or in the contract between the parties,
12 nor any act of the Secretary, or of the Recipient, or of any of the parties,
13 shall be deemed or construed by any of the parties, or by the third persons, to
14 create any relationship of third-party beneficiary, or of principal and agent,
15 or of limited or general partnership, or of joint venture, or of any association
16 or relationship involving the Secretary.

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ARTICLE X

EVIDENTIARY MATERIALS

1 Section 10.01 Opinions of Recipient's Attorney

2 (a) Whenever, at Exhibit E of this Grant Agreement, or otherwise, the
3 opinion of an attorney is required as part of any evidentiary material to be
4 submitted to the Secretary, the opinion shall be in writing and shall be that of
5 the attorney for the Recipient, unless otherwise specified.

6 (b) In the formulation or rendering of any statement or opinion,
7 Recipient's counsel may rely upon the certification of other persons, or the
8 written statements or opinions of other counsel; provided, that in any such case,
9 Recipient's counsel shall attach a copy of each such certification, statement,
10 or opinion, to the opinion submitted by Recipient's counsel.

11 (c) If, in the formulation and rendering of any statement or opinion,
12 the Recipient's counsel predicates the statement or opinion upon "information and
13 belief," then in all such cases the statement and opinion submitted by Recipient's
14 counsel shall contain, or have attached thereto, a statement or description of all
15 of the information upon which the belief of counsel is predicated.

16 Section 10.02 Commitments of Participating Parties - In General

17 (a) In selecting the Recipient for the award of this grant, the
18 Secretary has relied, in material part, upon the representations of the Recipient
19 that Participating Parties (i) will carry out certain activities connected with
20 the Project; and (ii) will complete those activities; and (iii) have, or will
21 have, the financial capability to assure the carrying out of the activities to
22 their completion; and (iv) will invest, or cause to be invested, a specific
23 value amount in the Project. The Secretary has also relied upon the Recipient's
24 representations that such Participating Parties will, prior to any use of grant
25 funds for the Project, enter into legally binding undertakings evidencing the
26 commitments which were so relied upon by the Secretary.

27 (b) All evidentiary materials to be submitted to, and approved and
28 accepted by, the Secretary, in support of the commitments of Participating Parties,
29 should include, in accordance with the foregoing: (i) the legally binding and
30 enforceable promise of the Participating Party, in unequivocal terms, to under-
31 take and carry out and complete specified activities connected with the Project,
32 and to invest or inject into the Project a specified minimum amount of funds or

1 other form of investment; and (ii) clear and convincing proof that the Partici-
2 pating Party has on hand, or will have available to said party, any finances or
3 other things of value necessary to carry out the promise by completing the
4 activities and making the specified investment in connection with the Project.

5 (c) Evidentiary materials in support of the commitments of Recipient
6 or of Participating Parties, which have been submitted to and approved by the
7 Secretary, shall not thereafter be amended in any material respect, without the
8 prior written approval of the Secretary.

9 Section 10.03 Form of Documentary Evidence - General

10 All documentary evidence of commitments submitted to the Secretary
11 for approval or acceptance shall be in the form of (i) either a duplicate ori-
12 ginal, or (ii) a photographic copy of the fully executed original, of the
13 documents.

14 Section 10.04 Evidence of Contracts - Form

15 (a) Evidence of contractual commitments submitted to the Secretary
16 shall be in the form specified at Section 10.03; shall include all of the docu-
17 ments evidencing the contractual commitment; and shall have attached the written
18 statement and opinion of an attorney, made in accordance with Section 10.01.

19 (b) The attorney's statement shall certify that the documents comply
20 with Section 10.03; that the attorney has examined into the authority of all
21 parties to the documents, and of all persons executing the documents on behalf
22 of the parties; and that said parties and persons were authorized to enter into
23 and execute the documents.

24 (c) The attorney's opinion shall be that the documents constitute a
25 valid and legally enforceable contract under the laws of the Recipient's state
26 and that the documents conform to the provisions of this Grant Agreement,
27 excepting as to any particulars specified in the opinion.

28 Section 10.05 Evidence of Loan Commitment - Form

29 (a) Evidence of loan commitments from private lending institutions
30 shall be in the form specified at Section 10.03; shall include all of the docu-
31 ments evidencing the loan commitment, an acceptance by the borrower, the purposes
32 of the loan, the authorized use of loan funds, and all other terms and conditions

1 of the loan commitment, the acceptance, and the loan; and shall have attached
2 the written statement and opinion of an attorney, made in accordance with
3 Section 10.01.

4 (b) A loan commitment may specify contingencies or conditions which
5 must be satisfied before the closing of the loan, or the disbursement of loan
6 funds, but the commitment shall be an irrevocable commitment, enforceable by the
7 borrower upon satisfaction of all contingencies or conditions.

8 (c) The attorney's statement shall certify that the documents comply
9 with Section 10.03; that the attorney has examined into the authority of all
10 parties to the loan commitment and the acceptance, and of all persons executing
11 the loan commitment and acceptance on behalf of the parties; and that said
12 parties and persons were authorized to make the loan commitment and acceptance.

13 (d) The opinion of the attorney shall be that, subject only to such
14 contingencies and conditions as are expressed in the documents, the lending
15 institution is irrevocably committed to loan, and the borrower to accept upon
16 the terms and conditions specified, the principal amount specified in the loan
17 commitment; and that the loan commitment, and the acceptance, and all of the
18 terms and conditions of the loan commitment, and the loan, are lawful and
19 enforceable under the laws of the Recipient's state; and that the documents
20 conform to the provisions of this Grant Agreement, excepting in any particulars
21 specified in the opinion.

22 (e) If, under the terms of the loan commitment, the making of the
23 loan is contingent upon the happening of any condition precedent, then the
24 acceptance and approval of the commitment, as the evidence required under this
25 Grant Agreement, may be conditioned by the Secretary upon the submittal and
26 acceptance of further evidence that such contingencies have been satisfied, or
27 that the contingencies have been otherwise removed, or that the loan has closed.

28 (f) In all cases wherein evidence of a loan commitment is required to
29 be submitted to the Secretary under this Grant Agreement, evidence of the actual
30 closing of the loan shall be acceptable, in lieu of the foregoing, provided such
31 evidence complies with Section 10.06.

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1 Section 10.06 Evidence of Loans - Form

2 (a) Evidence of a loan having been made or closed shall be in the
3 form specified at Section 10.03; shall be on the letterhead of the lending
4 institution; shall state the principal amount of the loan, its purposes (interim
5 or permanent), and the authorized uses of loan funds; shall describe or identify
6 the security for the loan; shall state the term of the loan; shall identify all
7 parties to the loan; shall be executed by an authorized officer of the lending
8 institution; and shall either be duly notarized, or shall have attached the
9 written statement of an attorney, made in accordance with Section 10.01, certi-
10 fying that the documents comply with Section 10.03, and that the officer of the
11 lending institution was authorized to execute the documents.

12 (b) Evidence of a loan having been made or closed may also be
13 submitted in the form of copies of recorded notes, deeds, bonds, indentures and
14 other documents which may comply with Section 10.03 and which contain sufficient
15 evidence, including evidence of recordation, to enable the Secretary to determine
16 to the satisfaction of the Secretary, the matters specified above at subsection
17 (a) of this Section 10.06 and that the loan has been made or closed.

18 Section 10.07 Evidence of Investor's Equity - Form

19 Whenever, at Exhibit E of this Grant Agreement, or otherwise, a
20 Participating Party is required to provide evidence of equity or equity invest-
21 ment funds in an amount and manner satisfactory and acceptable to a lending
22 institution, such evidence shall be in the form specified at Section 10.03; shall
23 be on the letterhead of the lending institution; shall identify the Participating
24 Party; and shall state that the Participating Party has, on hand, or immediately
25 available to the Participating Party, equity, or equity investment funds, of a
26 value and in an amount satisfactory and acceptable to the lending institution,
27 and that the availability and use of the equity or funds for the activities to be
28 carried out by the Participating Party in connection with the Project, is assured
29 to the satisfaction of the lending institution. The document shall be executed
30 by an authorized officer of the lending institution; and shall either be
31 notarized, or shall have attached the written statement of an attorney, made in
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1 accordance with Section 10.01, that the documents comply with Section 10.03 and that
2 the officer of the lending institution was authorized to execute the same.

3 Section 10.08 Evidence of Finances Satisfactory to Counsel - Form

4 (a) Whenever, at Exhibit E of this Grant Agreement, or otherwise,
5 evidence is required in the form of a statement and opinion of an attorney that a
6 Participating Party will provide a specific amount of finances for purposes of
7 carrying out the commitment of that Participating Party in connection with the
8 Project, such evidence shall be in the form of a written statement and opinion of
9 an attorney made in accordance with Section 10.01.

10 (b) The attorney's statement shall certify that the attorney has ex-
11 amined into the availability to the Participating Party of equity investment funds
12 and/or of debt financing; shall state the amount and the source of equity funds on
13 hand or immediately available to the Participating Party for use in the Project;
14 and shall state the amount and the source of debt financing which is available, or
15 irrevocably committed to the Participating Party for use in the Project. The
16 attorney shall be guided by the provisions of Sections 10.05, 10.06 and 10.07 in
17 making these determinations.

18 (c) The attorney's opinion shall be that the Participating Party has on
19 hand, or immediately available, or irrevocably committed to the Participating
20 Party, for use in carrying out the commitments of the Participating Party to the
21 Project, equity investment funds and/or debt financing in a sum equal to the
22 specified amount of finances required in this Grant Agreement to be invested by
23 that Participating Party.

24 Section 10.09 Anti-Speculation Provisions - Sale of Real Property

25 (a) Whenever, at Exhibit E of this Grant Agreement, or otherwise, a
26 document is required to contain a provision for the prevention or discouragement of
27 speculation in the purchase and sale of property by a purchaser who receives the
28 benefits of the use of grant funds, then, unless otherwise specified, such provision
29 shall comply with Section 10.09.

30 (b) The document shall provide that the purchaser shall not sell the
31 property within a period of three (3) years after the date of the purchase, for

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1 an amount in excess of the purchase price paid, plus the actual costs of any
2 improvements to the property by the purchaser. This provision in the document
3 shall specify that in the event of any attempted sale, in violation of the pro-
4 vision, the Recipient shall be entitled to the ex parte issuance of an injunction
5 restraining such sale. The provision in the document shall provide that the
6 prohibition against sale shall have the same force and effect as a lis pendens.
7 The document shall be in form and substance as to have the effect under the laws
8 of the Recipient's state; shall be executed and authenticated in such manner
9 and form as may be required to authorize its recordation at the place of
10 recordation of deeds, as if a lis pendens; and the document shall be so recorded.

11 (c) The provision in the document may, in conjunction with the fore-
12 going, or in lieu thereof, describe a procedure whereunder, in the event of any
13 sale of the property within the three (3) year period, the amount of grant funds
14 which benefited the purchaser shall be repaid by the purchaser to the Recipient.
15 Such procedure may include a pro-rata reduction of the amount to be repaid,
16 based upon the time elapsing between the date of the initial purchase of the
17 property and its sale by the initial purchaser. The provision should either
18 specify the amount of grant funds which benefited the purchaser, or set forth a
19 formula or agreed method for determining such amount. In any event, the pro-
20 vision shall be contained in a document which is executed and authenticated in
21 such manner and form as may be required to authorize its recordation, as if a
22 lis pendens; and the document shall be so recorded.

23 Section 10.10 Evidence of Title to Real Property - Form

24 (a) Whenever, at Exhibit E of this Grant Agreement, or otherwise, a
25 Participating Party or the Recipient is required to acquire title to real
26 property, and proof of such commitment is required, evidence of such commitment
27 may be in the form of a written statement and opinion of an attorney, made in
28 accordance with Section 10.01.

29 (b) The attorney's statement shall certify that on a specified date,
30 either an original ALTA policy of land or mortgage title insurance, or other
31 records identified in the statement, were examined by the attorney; that said
32 policy or other records identified the Participating Party, or a wholly-owned

1 subsidiary of the Participating Party, or the Recipient (whichever be the case)
2 as the owner of record, in fee simple, of said property.

3 (c) The attorney's opinion shall be that on the date specified by the
4 attorney, the record title to said real property was vested, in fee simple, in
5 the Participating Party, or such subsidiary thereof, or in the Recipient, as the
6 case may be.

7 (d) Proof of title to real property may also be submitted in the form
8 of documents which comply with Section 10.03 and which contain sufficient evi-
9 dence, including evidence of recordation, to enable the Secretary to determine,
10 to the satisfaction of the Secretary, that the Participating Party or the
11 Recipient did acquire the title, as required.

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ARTICLE XI
MISCELLANEOUS

1 Section 11.01 Notices

2 (a) All amendments, notices, requests, objections, waivers, rejections,
3 agreements, approvals, disclosures and consents of any kind made pursuant to this
4 Grant Agreement shall be in writing.

5 (b) Any such communication shall be deemed effective for all purposes
6 as of the date such communication is mailed, postage prepaid, by registered or
7 certified mail, return receipt requested, to be delivered only to the office of
8 the addressee, addressed as follows:

9 (1) Communications to the Secretary, shall be mailed simulta-
10 neously to: The Director, Office of Urban Development Action Grants, U. S.
11 Department of Housing and Urban Development, P. O. Box 23756, L'Enfant Plaza
12 Station, Washington, D. C. 20024; and to: The Area Office Manager, of the HUD
13 Area Office authorized to receive the Application of the Recipient for the grant
14 hereunder; and/or such other persons or at such other addresses as may be fur-
15 nished by the Secretary to the Recipient.

16 (2) Communications to the Recipient, shall be addressed to the
17 Recipient, at the address set forth in Exhibit A to this Grant Agreement, or
18 such other address as may be furnished by the Recipient to the Secretary.

19 Section 11.02 Assignment

20 No right, benefit, or advantage inuring to the Recipient under this
21 Grant Agreement and no burden imposed on the Recipient hereunder may be assigned
22 without the prior written approval of the Secretary. An authorization by the
23 Secretary for the transfer of grant funds by Recipient to a Participating Party
24 shall not be deemed an authorization for an assignment, and such Participating
25 Party shall not succeed to any rights, benefits or advantages of the Recipient
26 hereunder.

27 Section 11.03 Successors Bound

28 This Grant Agreement shall bind, and the rights, benefits and advantages
29 shall inure to, the Recipient's successors.

30 Section 11.04 Remedies Not Impaired

31 No delay or omission of the Secretary in exercising any right or remedy
32 available under this Grant Agreement shall impair any such right or remedy or

1 or constitute a waiver of any event of default, or Default, or an acquiescence
2 therein.

3 Section 11.05 Indemnification

4 To the fullest extent permitted by law, the Recipient at its sole cost
5 and expense, will indemnify, defend, satisfy all judgments, and hold harmless
6 the Secretary and any officers, agents, and employees of HUD, in their capacities
7 as such, from and against all claims, actions, judgments, costs, liabilities,
8 damages, losses, and expenses arising out of or relating to the Project.

9 Section 11.06 Cumulative Remedies

10 Except as otherwise specifically set forth herein, all rights and
11 remedies of the Secretary under this Grant Agreement shall be cumulative.

12 Section 11.07 Severability

13 The invalidity of any Article, Section, subsection, clause or provision
14 of this Grant Agreement shall not affect the validity of the remaining Articles,
15 Sections, subsections, clauses or provisions hereof.

16 Section 11.08 Entire Agreement

17 This Grant Agreement constitutes the entire agreement between the
18 Secretary and the Recipient and supersedes all prior oral and written agreements
19 between the parties hereto with respect to the subject matter hereof. Notwith-
20 standing the provisions of Section 1.01 of this Grant Agreement, in the event
21 of any inconsistency between the provisions of this Grant Agreement, including
22 all exhibits hereto, and anything contained in the Application, as defined at
23 paragraph (2) of Section 1.03, then the provisions of this Grant Agreement shall
24 prevail.

25 Section 11.09 Execution in Counterparts

26 This Grant Agreement may be executed in any number of counterparts.
27 All such counterparts shall be deemed to be originals and together shall con-
28 stitute but one and the same instrument.

29 Section 11.10 Table of Contents; Titles and Headings

30 Any table of contents, the title of the Articles, and the headings of
31 the Sections and subsections set forth herein are not a part of this Grant Agree-

32

1 ment and shall not be deemed to affect the meaning or construction of any of
2 its provisions.

3 Section 11.11 Amendment of this Grant Agreement

4 This Grant Agreement, or any part hereof including its exhibits, may
5 be amended from time to time hereafter only in writing executed by the Secretary
6 and the Recipient.

7 Section 11.12 Disclaimer of Relationships

8 The Recipient acknowledges that the obligation of the Secretary is
9 limited to providing grant funds in the manner and on the terms set forth in
10 this Grant Agreement. Nothing in this Grant Agreement, nor any act of either
11 the Secretary or of the Recipient, shall be deemed or construed by either of
12 them, or by third persons, to create any relationship of third-party beneficiary,
13 or of principal and agent, or of limited or general partnership, or of joint
14 venture, or of any association or relationship whatsoever involving the Secretary.

15 Section 11.13 Governing Law

16 This Grant Agreement as it may affect the rights, remedies, duties,
17 and obligations of the Secretary shall be governed by and construed in accordance
18 with federal law. Insofar as federal law does not apply, the provisions of this
19 Grant Agreement shall be governed by and construed in accordance with the laws
20 of the Recipient's state.

21 Section 11.14 Waiver by Secretary

22 The Secretary reserves and shall have the exclusive right to waive, at
23 the sole discretion of the Secretary, and to the extent permitted by law, any
24 requirement or provision under this Grant Agreement. No act by or on behalf of
25 the Secretary shall be, or be deemed or construed to be, any waiver of any such
26 requirement or provision, unless the same be in writing, signed by the Secretary,
27 and expressly stated to constitute such waiver.

28 Section 11.15 Effective Date

29 (a) This Grant Agreement shall, when executed and dated by the Sec-
30 retary, constitute an offer by the Secretary to the Recipient to make the within
31 grant and to enter into this Grant Agreement. When delivered to the Recipient
32 so executed and dated, the same shall constitute a tender of said offer, which

1 shall be promptly accepted, if at all, by the Recipient. The Secretary may
2 revoke the tender and rescind the offers at any time prior to their acceptance
3 by the Recipient, by written notice of the Secretary to the Recipient, given as
4 specified at Section 11.01 of this Grant Agreement.

5 (b) This Grant Agreement shall be deemed to have been accepted, and
6 shall become effective, as of the date of this Grant Agreement is executed and
7 dated by the Recipient.

8 Section 11.16 Termination of Grant Agreement

9 Unless otherwise terminated by the Secretary pursuant to Article VII
10 of this Grant Agreement, or by the mutual consent of Recipient and the Secretary,
11 this Grant Agreement shall terminate upon the completion of all close-out
12 procedures respecting this grant and the final settlement and conclusion between
13 Recipient and the Secretary of all issues arising out of this grant or under
14 this Grant Agreement.

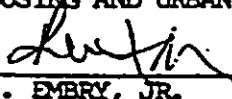
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SIGNATURE PAGE

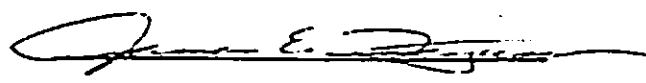
THIS GRANT AGREEMENT is hereby executed and delivered by the Parties hereto on the dates set forth below their respective signatures, as follows:

THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT

By: 
ROBERT C. EMBRY, JR.
Assistant Secretary for Community Planning and Development

Date: 15 1959

THE CITY OF PROVO, UTAH

By: 

Title: Mayor

Date: 11-15-59

IMPORTANT

One (1) fully executed copy of this Grant Agreement must be mailed to the Director, Office of Urban Development Action Grants, and two (2) fully executed copies of this Grant Agreement must be mailed to the HUD Area Office Manager, in accordance with Section 11.01, on the same date executed by Recipient.

EXHIBIT A

SUPPLEMENTARY PROVISIONS

1
2 Rider to Section 1.03(2). In addition to Recipient's Application
3 for Federal Assistance (SF 424), the "Application" shall include the following
4 submittals:

5 1. Letter dated December 18, 1979 from Mayor James Ferguson, City
6 of Provo to Robert Schwartz, Provo Plaza Ventures, Ltd., and letter dated
7 December 19, 1979 from Robert Schwartz to Mayor Ferguson concerning loan of
8 tax increment funds.

9 2. Letter dated December 18, 1979 to Mayor Ferguson from Glen
10 Ellis, City Attorney, concerning City's authority to issue tax increment
11 bonds.

12 3. Letter dated December 14, 1979 from Mayor Ferguson to Robert
13 Schwartz concerning exclusive right to negotiate.

14 4. Letter dated December 11, 1979 from Robert Schwartz to Mayor
15 Ferguson and letter dated December 13, 1979 from Mayor Ferguson to Robert
16 Schwartz concerning land lease, parking garage management and UDAG loan terms.

17 5. Letter dated December 13, 1979 from Kate Funk, Keyser Marston
18 Associates, Inc. to Ronald Madsen, Provo Redevelopment Agency, with attached
19 hotel cash flow and garage revenue/expense estimates.

20 6. Letter of December 12, 1979 from Roger Manfred, CEO of North
21 American Division, Trust House Forte, Inc. to Robert Schwartz, Provo Plaza
22 Ventures Ltd., concerning hotel management commitment.

23 7. Submittals under letter dated December 12, 1979 from Glen
24 Ellis, City Attorney, to Mayor Ferguson concerning tax increment bonds and
25 City ordinance.

26 8. Letter dated December 12, 1979 from Mayor Ferguson to Debbi
27 Hurd, UDAG concerning UDAG loan funds.

28
29 (Continued on page 2)

30 Rider to Section 2.01. The amount of this UDAG grant is:
31 TWO MILLION TWO HUNDRED TWENTY THOUSAND (\$2,220,000) DOLLARS.

32 EXHIBIT A

Page 1 of 3

Revised 6/80

314875-P

BOOK 1955 PAGE 435

Recipient: City of Provo, Utah Grant No. B-80-AA-49-0003

1 Continuation Sheet — Exhibit A

2 9. Letter dated December 5, 1979 from Jim Duffy, Vice President Luther
3 Hill and Associates, Inc., to Ronald Madsen concerning garage cost estimates.

4 10. Letter dated December 11, 1979 from James Iverson, Senior Vice
5 President, Muller and Schroeder Municipals, Inc., to Mayor Ferguson concerning
6 purchase of tax increment bonds.

7 11. Submittals under letter dated December 6, 1979 from Ronald Madsen to
8 Debbi Hurd, UDAG; including revised UDAG forms.

9 12. Letters dated December 4 and 7, 1979 from James Iverson Miller and
10 Schroeder Municipals, Inc. to Mayor Ferguson concerning industrial revenue bond
11 commitments.

12
13 Rider to Section 1.03(12). The term "Participating Party" consists
14 of the following persons, firms, corporations and entities:

15 "PEL" shall mean Provo Excelsior Limited (formerly Provo Plaza
16 Ventures, Ltd.), a Utah Limited Partnership with Robert L. Schwartz as sole
17 general partner.

18 "Miller and Schroeder" shall mean Miller and Schroeder Municipals,
19 Inc., a Minnesota corporation.

20 "Trusthouse" shall mean Trusthouse Forte, Inc., a wholly owned
21 subsidiary of Trust House Forte Ltd. of London, England.

22 "Redevelopment Agency" shall mean Provo City Redevelopment Agency.
23

24
25 Rider to Section 2.04(c). The repayment of the UDAG loan shall be
26 deemed "Grant Revenues" within the meaning of this Grant Agreement and used by
27 the Recipient only for housing activities eligible under Title I of the Act.
28

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32 EXHIBIT A

Page 2 of 3

Revised 6/80

114873-P

BOOK 1955 PAGE 436

Recipient: City of Provo, Utah

Grant No. B-80-AA-49-0003

Continuation Sheet — EXHIBIT A

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Rider to Sections 5.03 and 9.06. The jobs referenced at Section 5.03 and the assurances required at Section 9.06 shall aggregate:

Total Permanent Jobs: 180

Total Permanent Jobs for Low and Moderate Income Persons: 149

Total Permanent Jobs for CETA-Eligible Persons:

Total Permanent Jobs for Minorities:

For Pockets of Poverty Projects only,

Total Permanent Jobs for Low and Moderate Residents

of the Pocket:

Job Requirements shall be completed within 48 Months from Date of Preliminary Approval

Rider to Section 11.01. The address of the Recipient for the purposes of communications relating to this Grant Agreement shall be the following:

Provo City Redevelopment Agency

650 West 100 North Street

Provo, Utah 84601

Rider to Section 1.01

This Grant Agreement, prepared September 20, 1980, is intended by the parties to supercede the prior Grant Agreement executed by the Secretary February 15, 1980.

EXHIBIT A

Revised 6/80

11-475-P

Page 3 of 3

BOOK 1955 PAGE 437

Recipient: City of Provo, Utah Grant No. B-80-AA-49-0003

EXHIBIT B

DESCRIPTION OF UDAG FUNDED ACTIVITIES

Rider to Section 1.03(17). The term "UDAG Funded Activities" shall mean the following:

1. A portion of the UDAG funds in the form of a loan by Recipient to PEL in the amount of \$1,600,000 to partially fund the development of a 225 room hotel. The hotel will be located on Recipient-owned property in downtown Provo, and the land will be leased to PEL.
2. A portion of the UDAG funds in the form of a \$600,000 grant to Recipient to partially fund the construction of a 400 car municipal parking garage to be located adjacent to the hotel described above. The garage will be constructed on Recipient-owned property and will be managed by PEL.
3. Administrative costs not to exceed \$20,000 in regard to items listed in Paragraphs 1 and 2 of Exhibit B above.

EXHIBIT B

Revised 6/80

214073-P

Page 1 of 1

BOOK 1955 PAGE 438

Recipient: City of Provo, Utah Grant No. B-80-AA-49-0003

EXHIBIT C

DESCRIPTION OF NON-UDAG FUNDED ACTIVITIES

Rider to Section 1.03(12). The term "Non-UDAG Funded Activities" shall mean the following:

I

The leasing of the hotel site and the construction by PEL of a 225 room Provo Plaza Hotel with convention facilities, to be located in downtown Provo, at a cost of not less than \$10,775,000 (exclusive of UDAG loan). The hotel will be managed by Trusthouse with a 25% ownership interest in the hotel.

II

The construction by Redevelopment Agency of a 400 car parking garage on Recipient-owned property. The garage will be managed by PEL.

III

(a) Provision of equity funds by PEL, described at Exhibit E XII of this Grant Agreement.

(b) The issuance of industrial revenue bonds, described at Exhibit E X of this Grant Agreement.

(c) The purchase of industrial revenue bonds, described at Exhibit E XI of this Grant Agreement

(d) The issuance of tax increment bonds described at Exhibit E VI of this Grant Agreement.

(e) The purchase of tax increment bonds, described at Exhibit E IX of this Grant Agreement.

IV

The construction by Recipient of water and sewer improvements with \$140,000 funded by Recipient with CDBG funds.

EXHIBIT C

Revised 6/80

Page 1 of 1

BOOK 1955 PAGE 439

EXHIBIT F

PROJECT BUDGET — SUMMARY OF PROPOSED EXPENDITURES

Line Item Activity	SOURCES OF FUNDS			
	UDAG Funds	Private Funds	Other Funds	Total Costs
a. Land Acquisition				
b. Streets & Site Improvements				NOT LEGIBLE FOR MICROFILM
c. Parking Facilities				
d. Foundations and Platforms				
e. Pedestrian Malls				
f. Water and Sewer Facilities			\$140,000	
g. Clearance and Demolition				
h. Relocation of Persons and Businesses				
i. Parking Garage	\$600,000	\$1,000,000		1,600,000
j. Hotel Development	1,600,000	7,925,000		9,525,000
k. Capital Equipment		1,800,000		1,800,000
l. Landscaping		50,000		50,000
m.				
n. Administration	20,000			20,000
o. Subtotal (Sum of lines a. - n.)	2,220,000	10,775,000	140,000	13,135,000
p. Contingencies				
q. Grant Amount (Sum of lines o. + p.)	2,220,000			
r. Program Income (Revenue from UDAG Funds)				
s. TOTAL PROJECT COSTS (Sum of lines o. - r.)	\$2,220,000	\$10,775,000	\$140,000	\$13,135,000

BUOK 1955 PAGE 440

Recipient: City of Provo, Utah

Grant No. B-80-AA-49-0003

EXHIBIT E

REQUIRED EVIDENTIARY MATERIALS

The evidentiary materials to be submitted by the Recipient for the approval of the Secretary shall include the applicable provisions of Article IX of this Grant Agreement and shall consist of the following:

I ✓

(a) All governmental approvals and permits necessary for the commencement of the Recipient and Non-Recipient Activities shall have been obtained.

(b) Evidence of this commitment shall be a written certification for Recipient, signed by the chief executive officer, in accordance with Section 10.02 of this Grant Agreement, that all such governmental approvals and permits have been obtained.

II ✓

(a) Title to all land necessary for the Project, except land to be acquired with Grant Funds, shall be held by Recipient or the appropriate Participating Party.

(b) Evidence of this commitment shall be in accordance with Section 10.10 of this Grant Agreement.

III

(a) The governing body of the Recipient shall, by appropriate resolution or ordinance, approve the construction of a 400 car parking garage.

(b) Evidence of this commitment shall be in the form of a copy of said resolution or ordinance, duly authenticated, in compliance with Section 10.03 of this Grant Agreement and a supporting opinion of Recipient's counsel consistent with Section 10.01 of this Grant Agreement.

IV ✓

(a) The chief executive officer of the Recipient shall certify that all governmental approvals necessary for construction of the garage by Redevelopment Agency and for construction of the hotel by PEL, have been granted by Recipient.

EXHIBIT E

Page 1 of 6

Revised 6/80

31-875-P

BOOK 1955
PAGE 441

Recipient: City of Provo, Utah Grant No. B-80-AA-49-0003

1 Continuation Sheet — Exhibit E

2 (b) Evidence of this commitment shall be in the form of a copy of the
3 certification of the chief executive officer of the Recipient in compliance
4 with Section 10.03 of this Grant Agreement.

5 V

6 (a) Recipient, Redevelopment Agency and PEL shall enter into a contract
7 or contracts to the following legal effect:

8 (1) PEL shall lease hotel site from Recipient consistent with the
9 following:

10 (i) The lease term shall be 50 years with options to renew.

11 (ii) Minimum annual rental by PEL shall be \$5,300; supplemental annual
12 rental by PEL shall be 15% of annual net income over \$206,000 after paying
13 accumulated operating losses for the first 5 years of operation of the hotel,
14 which losses are in addition to the Developer's initial equity investment and
15 the loss reserve account.

16 (2) PEL shall construct a 225 room hotel with convention facilities at a
17 minimum cost of not less than \$11,375,000 (inclusive of UDAG loan).

18 (3) A timeframe for the beginning and completion of the hotel construction
19 by PEL shall be specified consistent with Exhibit F to this Grant Agreement.

20 (4) Recipient and Redevelopment Agency shall commit to loan and PEL shall
21 accept a written loan commitment in the principal amount of \$1,600,000; subject
22 to the following terms and conditions:

23 (i) The purpose of the loan shall be to partially fund the development of
24 a 225 room hotel.

25 (ii) The loan shall be secured by a second mortgage lien on the Hotel and
26 on all improvements connected thereto, subordinated only to the first mortgage
27 of Redevelopment Agency.

28 (iii) There shall be a plan, specified in the loan documents calculated to
29 amortize the UDAG loan within 20 years after the date of making the loan, using
30 a 30 year amortization schedule with equal monthly payments from year 4 to the
31

32 EXHIBIT E

Page 2 of 6

Revised 6/80

114873-P

BOOK 1955 PAGE 442

Recipient: City of Provo, Utah

Grant No. B-80-AA-49-0003

1 Continuation Sheet — Exhibit E

2 end of year 20, at which time the entire unpaid principal balance and accrued
3 interest shall be due and payable.

4 (iv) The loan will provide that payment of principal and interest be
5 deferred for years 1 and 2 of the loan term, with accrued interest at 4% and
6 years 4-20 the loan will be amortized at 5%.

7 (v) The general partner; Robert L. Schwartz and limited partners John
8 Olsen, Mark Magleby and William Taminga shall jointly and severally personally
9 guarantee the repayment of the loan.

10 (vi) If, in any lease year, the Net Cash Flow from the operation of the
11 hotel exceeds a 15% return on equity to PEL, the interest rate on the loan for
12 that loan year only shall be increased to 6% in any such year thereafter. Net
13 Cash Flow (Annual Net Income) for the purposes of this Grant Agreement, shall
14 mean (1) Reserve for FFE not to exceed 5% of gross room revenues; (2) Property
15 taxes and insurance; (3) Industrial development bond payments; (4) Minimum annual
16 rent; (5) Loan payments to Recipient and Redevelopment Agency; (6) Hotel incentive
17 fee and (7) Owner-management fee of \$44,000. Developer shall provide to Recipient
18 an annual certification of an independent, certified public accountant that the
19 Net Cash Flow has been accurately calculated and accounted for, consistent with
20 the terms of this Grant Agreement.

21 (vii) The loan documents shall provide that the loan funds shall be
22 disbursed on the basis of vouchers submitted by PEL, verified by the chief
23 financial officer of Recipient, and certified by chief financial officer of PEL,
24 and shall additionally be disbursed on the basis of percentage of completion of
25 the improvements described at Exhibit C I, as it bears to the total proceeds of
26 the loan. No disbursement of the loan shall be made prior to PEL expending
27 \$1,375,000 of equity funds for development of the hotel.

28 (viii) The loan shall become immediately due and payable upon refinancing
29 or upon sale, transfer, or other disposition of the hotel.
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32 EXHIBIT E

Revised 6/80

114671-P

Page 3 of 6

BOOK 1955 PAGE 443

Recipient: City of Provo, Utah

Grant No. B-80-AA-49-0003

1 Continuation Sheet — Exhibit E

2 (5) The agreement shall include applicable Article IX provisions.

3 (6) The agreement shall specify the procedure to transfer grant funds
4 from Recipient to Redevelopment Agency consistent with this Grant Agreement
5 and Letter of Credit procedures.

6 (7) The Redevelopment Agency shall construct the parking garage as
7 described at Exhibit C II.

8 (8) The agreement shall provide that the UDAG grant for the parking
9 garage shall be disbursed at a rate not to exceed \$1.00 of Action Grant funds
10 for every \$1.60 of bond proceeds disbursed for construction of garage.

11 (b) Evidence of this Agreement shall be in a form consistent with
12 Section 10.04 of this Grant Agreement.

13 VI

14 (a) Recipient, Redevelopment Agency and PEL shall enter into an agreement
15 for the management of the parking garage to the following legal effect:

16 (1) Length of the parking agreement shall be 50 years with two 10 year
17 renewals.

18 (2) PEL shall be responsible for the operation and maintenance of the
19 parking garage at its own cost and expense.

20 (3) PEL shall receive a management fee of \$1,000 per month, or 25% of
21 the net revenues of the parking facility, whichever is greater.

22 (4) Redevelopment Agency shall receive all net revenues over \$1,000 per
23 month or 75% of the net revenues for the parking garage.

24 (b) Evidence of this parking agreement shall be in a form consistent with
25 Section 10.04 of this Grant Agreement.

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32 EXHIBIT E

Page 4 of 6

Revised 6/80

114475-P

BOOK 1955 PAGE 444

Recipient: City of Provo, Utah

Grant No. B-80-AA-49-0003

1 Continuation Sheet — Exhibit E

2 VII

3 (a) Trusthouse and PEL shall enter into a hotel management agreement in
4 which Trusthouse shall unequivacally commit to the management of the Hotel and
5 to the participation in the Hotel's ownership as required by industrial revenue
6 bond financing commitment.

7 (b) Evidence of this hotel management agreement shall be in a form
8 consistent with Section 10.04 of this Grant Agreement.

9 VIII ✓

10 (a) Redevelopment Agency shall authorize the issuance of tax increment
11 bonds in an amount not less than \$1,000,000 to fund the parking facility
12 development described at Exhibit C II of this Grant Agreement.

13 (b) Evidence of this commitment shall be in the form of an authenticated
14 copy of a duly adopted or enacted resolution or ordinance in conformity with
15 Section 10.03 of this Grant Agreement.

16 IX

17 (a) Miller and Schroeder shall irrevocably commit to underwrite not less
18 than \$1,000,000 of tax increment bonds of the Redevelopment Agency for the parking
19 facility development.

20 (b) Evidence of this commitment shall be in a form specified at Section
21 10.05 of this Grant Agreement, as if the commitment to underwrite were the loan
22 commitment therein described.

23 X

24 (a) Recipient shall authorize the issuance of industrial revenue bonds in
25 an amount not less than \$10,000,000 to fund the development of the hotel described
26 at Exhibit C I above.

27 (b) Evidence of this commitment shall be in the form of an authenticated
28 copy of a duly adopted or enacted resolution of the Recipient, in conformity
29 with Section 10.03 of this Grant Agreement, authorizing the issuance of said
30 bonds.

31
32 EXHIBIT E

Revised 6/80

214873-P

Page 5 of 6

BOOK 1955 PAGE 445

Recipient: City of Provo, Utah

Grant No. B-80-AA-49-0003

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Continuation Sheet — Exhibit E

XI

(a) Miller and Schroeder shall irrevocably commit to underwrite not less than \$10,000,000 of industrial revenue bonds of the Recipient for the financing of the hotel development described at Exhibit C I.

(b) Evidence of this commitment shall be in a form specified at Section 10.05 of this Grant Agreement, as if the commitment to underwrite were the loan commitment therein described.

XII

(a) PEL shall provide equity investment not less than \$1,375,000 for the hotel development described at Exhibit C I above.

(b) Evidence of the availability and commitment of said equity shall be in a form consistent with Section 10.07 of this Grant Agreement.

EXHIBIT E

Revised 6/80

31-4373-P

Page 6 of 6

BOOK 1955 PAGE 446

Recipient: City of Provo, Utah

Grant No. B-80-AA-49-0003

EXHIBIT F

PROJECT PERFORMANCE SCHEDULE

I

(a) All of the evidentiary materials required at Exhibit E shall be submitted by Recipient no later than December 30, 1980.

(b) Upon acceptance of the evidentiary materials by the Secretary submitted in accordance with Exhibit F I (a), the Recipient shall be authorized to use not to exceed \$20,000 of grant funds for administration in connection with the hotel/garage project. The remaining grant funds shall be drawn down in accordance with Exhibit E V (a) (4) vii and (8) of this Grant Agreement.

II

(a) PEL shall commence construction of the Hotel on or before March 1, 1980 and shall complete said construction on or before April 1, 1982.

(b) Redevelopment Agency shall commence construction on the parking garage on or before March 1, 1980 and shall complete said construction on or before September 1, 1982.

AMENDMENT TO GRANT AGREEMENT

Urban Development Action Grants

F I N A L

Name of Applicant/Grantee:	Application/Grant No.
Provo, Utah	B-80-AA-49-0003
This Amendment Does Not Affect The Amount of Urban Development Action Grant Funds Approved.	

The above-numbered Grant Agreement between the Secretary of Housing and Urban Development and the above Applicant/Grantee, under Section 119 of the Housing and Community Development Act of 1974, as amended, is hereby amended, as follows:

I

Exhibit A, Rider to Section 1.03(2) is amended by deleting the two Muller and Schroeder Municipals, Inc., submittals numbers 10 and 12, and by renumbering submittal number 11 to submittal number 10 on page 2 of 3.

II

Exhibit A, Rider to Section 1.03(12) is totally deleted and the following language substituted: The term "Participating Party" consists of the following persons, firms, corporations and entities:

"PEL" shall mean Provo Excelsior Limited (formerly Provo Plaza Ventures, Ltd.), a Utah Limited Partnership with Robert L. Schwartz, Peter F. Edelman, Henry R. Silverman and Adrian B. Werner as general partners.

"Trusthouse" shall mean Trusthouse Forte, Inc., a wholly owned subsidiary of Trust House Forte Ltd. of London, England.

"Redevelopment Agency" or "Agency" shall mean Provo Redevelopment Agency.

"FSB" shall mean First Security Bank of Utah, N.A.

"SISCORP" shall mean Savings and Investment Service Corporation.

"Zions" shall mean Zions First National Bank.

"PE, Inc.," shall mean Provo Excelsior, Incorporated, a Utah corporation to be formed by the general partners of "PEL," Messrs. Robert L. Schwartz, Peter F. Edelman, Henry R. Silverman and Adrian B. Werner.

AMENDMENT TO GRANT AGREEMENT

Urban Development Action Grants

F I N A L

Name of Applicant/Grantee:	Application/Grant No.
Provo, Utah	B-80-AA-49-0003
This Amendment Does Not Affect The Amount of Urban Development Action Grant Funds Approved.	

The above-numbered Grant Agreement between the Secretary of Housing and Urban Development and the above Applicant/Grantee, under Section 119 of the Housing and Community Development Act of 1974, as amended, is hereby amended, as follows:

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UDAG AMENDMENT

PROVO, UTAH

B-80-49-0003

2

III

Exhibit B, Rider to Section 1.03(17), number 1. is amended by deleting "\$1,600,000" and substituting "\$1,900,000" on line 5. Furthermore, number 2. is amended by deleting "\$600,000" and substituting "\$300,000" on line 8.

IV

Exhibit C, Rider to Section 1.03(12), I is amended by deleting "\$10,775,000" and substituting "\$12,025,000" on line 7 and by putting a period after "Trusthouse" on line 8 and deleting ". . . with a 25% ownership in the hotel," on lines 8 and 9.

V

Exhibit C, Rider to Section 1.03(12), II is deleted and the following substituted:

"Redevelopment Agency shall contract with PE, Inc., for the construction of a 400-car parking garage on Agency-owned property. The garage will be managed by PEL."

VI

Exhibit C, Rider to Section 1.03(12), III is deleted and the following substituted:

(a) Provision of equity funds by PEL, described at Exhibit E.XIII of this Grant Agreement.

(b) Provision of construction loan by FSB as described at Exhibit E.XI of this Grant Agreement.

(c) Provision of permanent standby loan by SISCORP as described at Exhibit E.XII of this Grant Agreement.

(d) The issuance tax increment bonds by Recipient and the purchase of same by Zions as described at Exhibit E.X of this Grant Agreement.

(e) The use of CDBG funds, described at Exhibit E.XIV of this Grant Agreement.

VII

Exhibit D, the Project Budget, is deleted and the attached Exhibit D is substituted.

VIII

Exhibit E, Required Evidentiary Materials, V through XII, are hereby deleted and the following substituted:

V

(a) Recipient and Redevelopment Agency shall enter into a contract governing the use by Agency of the UDAG funds to the following effect:

(1) Recipient shall authorize Agency to execute the Agreement described in E.VI. below.

(2) Recipient shall make UDAG funds available to Agency and Agency shall agree to disburse UDAG funds in accordance with the provisions of this UDAG Grant Agreement and Letter of Credit procedures.

(3) Agency agrees to enforce provisions of the Agreements described in E.VI and E.VII below.

(4) Agency shall transfer all grant revenues within the meaning of the UDAG Grant Agreement to Recipient.

(5) This Contract shall specifically include all Article IX provisions of this Grant Agreement.

(b) Evidence of this commitment shall be in accordance with Section 10.04 of this Grant Agreement.

VI

(a) Redevelopment Agency and PEL shall enter into a contract or contracts to the following legal effect:

(1) PEL shall lease hotel site from Agency consistent with the following:

(i) The lease term shall be 50 years with options to renew.

(ii) Minimum annual rental by PEL shall be \$5,300; supplemental annual rental by PEL shall be 15% of annual net income over \$206,000 after paying accumulated operating losses for the first 5 years of operation of the hotel, which losses are in addition to the Developer's equity investment and the loss reserve account.

(2) PEL shall construct a 225-room hotel with convention facilities at a minimum cost of not less than \$12,075,000 (inclusive of UDAG loan).

(3) A time frame for the beginning and completion of the hotel construction by PEL shall be specified consistent with Exhibit F to this Grant Agreement.

4

(4) Agency shall commit to loan and PEL shall accept a written loan commitment in the principal amount of \$1,900,000; subject to the following terms and conditions:

(i) The purpose of the loan shall be to partially fund the development of a 225-room hotel.

(ii) The loan shall be secured by a second mortgage lien on the hotel and on all improvements connected thereto, subordinated only to the Construction Loan and to a First Permanent Loan that takes out the Construction Loan.

(iii) There shall be a plan, specified in the loan documents, calculated to amortize the UDAG loan within 20 years after making the loan, using a 30-year amortization schedule with equal monthly payments from year 4 to the end of year 20, at which time the entire unpaid balance and accrued interest shall be due and payable.

(iv) The loan will provide that payment of principal and interest be deferred for years 1 and 2 of the loan term, with accrued interest at 4% and years 4-20 the loan will be amortized at 5%.

(v) The general partners, Robert L. Schwartz, Peter F. Edelman, Henry R. Silverman and Adrian B. Werner, shall jointly and severally personally guarantee the repayment of the loan.

(vi) If, in any lease year, the Net Cash Flow from the operation of the hotel exceeds a 15% return on equity of \$1,475,000 to PEL, the interest rate on the loan for that year only shall be increased to 6% in any such year thereafter. Net Cash Flow (Annual Net Income) for the purposes of this Grant Agreement shall mean Annual Gross Revenue less (1) Reserve for FFE not to exceed 5% of gross room revenues; (2) property taxes and insurance; (3) Debt Service on the First Permanent Loan; (4) minimum annual rent; (5) loan payments to Redevelopment Agency; (6) hotel incentive fee; and (7) owner-management fee of \$44,000. Developer shall provide to Redevelopment Agency an annual certification of an independent, certified public accountant that the Net Cash Flow has been accurately calculated and accounted for, consistent with the terms of this Grant Agreement.

UDAG AMENDMENT

PROVO, UTAH

B-80-49-0003

5

(vii) No disbursement of the loan shall be made prior to ~~the~~ receiving \$2,025,000 in equity funds and disbursing \$725,000 of said equity funds for hotel development costs. The loan documents shall provide that the loan funds shall be disbursed on the basis of vouchers submitted by PEL, verified by the chief financial officer of Agency, and certified by chief financial officer of PEL. Upon receipt of a certified voucher from FSB for \$175,000, \$175,000 in UDAG funds shall be drawn down from the letter of credit and paid to FSB. An additional \$185,000 in UDAG loan funds shall be made available for disbursement based upon the receipt of vouchers submitted by PEL and verified as stated above. The remaining \$1,540,000 of UDAG loan funds shall be disbursed on the basis of \$1.00 of UDAG money for \$1.00 of FSB loan proceeds.

(viii) The loan shall become immediately due and payable upon the sale, transfer, or other disposition of the hotel; or upon refinancing the hotel, provided that, in the event of any refinancing of the permanent first mortgage financing, the loan shall become due and payable only to the extent that the proceeds from said refinancing exceed the actual amount required to pay or prepay the then existing permanent first mortgage financing, including reasonable costs.

(5) The Agreement shall specifically include Articles 9.04 through 9.14 of this Grant Agreement.

(6) The Redevelopment Agency shall contract to construct the parking garage as described at Exhibit C.II.

(b) Evidence of this Agreement shall be in a form consistent with Section 10.04 of this Grant Agreement.

VII

(a) Redevelopment Agency and PE, Inc., shall enter into a Turnkey Agreement for the construction of a 400-car parking garage which shall include provisions consistent with the following:

(1) Agency shall provide funds for construction from the following sources:

- (i) \$300,000 of CDBG funds as provided for in Exhibit E.XIV.
- (ii) \$300,000 of UDAG funds.
- (iii) \$1,000,000 of proceeds from the sale of tax increment bonds.

UDAG AMENDMENT

PROVO, UTAH

B-80-49-0003

6

(1v) Funds shall be disbursed as follows: all CDBG funds shall be expended first. All UDAG funds shall be expended second. Tax increment bond proceeds shall then be expended to complete construction of the parking garage provided for in Exhibit E.VII.

(2) PE, Inc., shall construct a 400-car parking garage.

(3) A time frame for the beginning and completion of construction of the garage shall be specified and shall be consistent with Exhibit F of this Grant Agreement.

(4) The Agreement shall, with the exception of Article 9.06, specifically include Articles 9.04 through 9.11 of this Grant Agreement.

(5) Upon completion of 400-car garage, PE, Inc., shall transfer ownership of garage to Redevelopment Agency.

(6) If HUD does not approve a waiver of OMB A-102, Attachment O's competitive bidding requirements, then this construction agreement shall be null and void and the Redevelopment Agency will seek competitive bids for the construction of the garage. Upon the award of the construction contract in accordance with competitive bidding requirements, then any subsequent contract between the winning contractor and Redevelopment Agency will conform to the requirements of this provision.

(b) Evidence of this Agreement shall be in a form consistent with Section 10.04 of this Grant Agreement.

VIII

(a) Redevelopment Agency and PEL shall enter into an agreement for the management of the parking garage to the following legal effect:

(1) Length of the parking agreement shall be 50 years with two 10-year renewals.

(2) PEL shall be responsible for the operation and maintenance of the parking garage at its own cost and expense.

(3) PEL shall receive a management fee of \$1,000 per month, or 25% of the net revenues of the parking facility, whichever is greater.

(4) Redevelopment Agency shall receive all net revenues over \$1,000 per month or 75% of the net revenues for the parking garage.

(b) Evidence of this parking agreement shall be in a form consistent with Section 10.04 of this Grant Agreement.

IX

(a) Trusthouse and PEL shall enter into a hotel management agreement in which Trusthouse shall unequivocally commit to the management of the hotel.

(b) Evidence of this hotel management agreement shall be in a form consistent with Section 10.04 of this Grant Agreement.

X

(a) Redevelopment Agency shall issue and Zions shall purchase not less than \$1,000,000 of tax increment bonds for the construction of a 400-car parking garage described in C.II. of this Grant Agreement.

(b) Evidence of this shall be in the form of a written certification from the Trustee under the Indenture of Trust respecting such bonds, certifying that said Trustee has on hand or on deposit, not less than \$1,000,000 proceeds of the sale of said bonds and that said amount is available and committed for the financing of the garage.

XI

(a) FSB shall fund a construction loan of not less than \$10,000,000 for PEL to finance the construction of the hotel development described at Exhibit C.I. of this Grant Agreement.

(b) Evidence of this loan having been closed shall be in a form specified at Section 10.06 of this Grant Agreement.

XII

(a) SISCORP shall irrevocably commit to fund a standby loan in the amount of at least \$10,000,000 for the permanent financing for the hotel development described at Exhibit C.I. of this Grant Agreement.

(b) Evidence of this commitment shall be in a form specified at Section 10.05 of this Grant Agreement.

XIII

(a) PEL shall provide equity investment not less than \$2,025,000 for the hotel development described at Exhibit C.I. above.

(b) Evidence of the availability and commitment of said equity shall be in a form consistent with Section 10.07 of this Grant Agreement.

XIV

(a) Provo City shall provide at least \$300,000 of CDBG funds to partially fund construction of the 400-car parking facility.

(b) Evidence of this commitment shall be in the form of an authenticated copy of a duly adopted or enacted resolution or ordinance of the local governing body."

IX

Exhibit F is deleted and the following substituted:

"I

(a) All of the evidentiary materials required at Exhibit F shall be submitted by Recipient no later than December 21, 1981.

(b) Upon acceptance of the evidentiary materials by the Secretary submitted in accordance with Exhibit F.I.(a), the Recipient shall be authorized to use not to exceed \$20,000 of grant funds for administration in connection with the hotel/garage project. The remaining grant funds shall be drawn down in accordance with Exhibit E.VI.(a)(4)(vii) and E.VII.(a)(1)(iv) of this Grant Agreement as amended.

II

(a) PE, Inc., shall commence construction of the hotel on or before December 21, 1981, and shall complete construction on or before May 1, 1983.

(b) PE, Inc., shall commence construction on the 400-car parking garage on or before June 1, 1982, and shall complete construction on or before April 1, 1983."

EXHIBIT D

PROJECT BUDGET -- SUMMARY OF PROPOSED EXPENDITURES

Line Item Activity	SOURCES OF FUNDS			
	UDAG Funds	Private Funds	Other Funds (Specify)	Total
a. Land Acquisition				
b. Relocation of Persons and Businesses				
c. Clearance and Demolition				
d. Streets & Site Improvements				
e. Water and Sewer Facilities			\$140,000	\$140,000
f. Foundations and Platforms				
g. Parking Facilities				
h. Pedestrian Malls				
i. Parking Garage	\$300,000		CDBG-\$300,000 Tax Increment \$1,000,000	\$1,600,000
j. Hotel Development	\$1,900,000	\$10,175,000		\$12,075,000
k. Capital Equipment		\$1,800,000		\$1,800,000
l. Landscaping		\$50,000		\$50,000
m.				
n. Administration	\$20,000			\$20,000
o. Cost Subtotal (Sum of lines a.-n.)	\$2,220,000	\$12,025,000	\$1,440,000	\$15,685,000
p. Contingencies				
q. Totals by Source (Sum of lines o. + p.)	\$2,220,000			\$15,685,000
r. Program Income from Land Disposition	()			()
s. TOTAL PROJECT COSTS (Sum of lines q. + r.)	\$2,220,000	\$12,025,000	\$1,440,000	\$15,685,000

SIGNATURE

The foregoing amendments to the Grant Agreement numbered B-80-AA-49-0003 are hereby authorized and approved.

Date: DEC 17 1981

Secretary of Housing and Urban Development


By: 

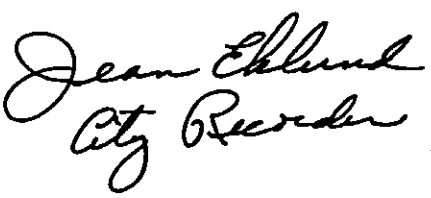
Donald G. Dodge
Deputy Assistant Secretary
for Program Management
Community Planning and Development

ACCEPTANCE

The foregoing amendments to the Grant Agreement numbered B-80-AA-49-0003 and authorized and approved by the Department of Housing and Urban Development, as shown above, are hereby accepted by the Applicant/Grantee.

Date: Dec. 18, 1981

PROVO CITY CORPORATION
BY: 
MAYOR

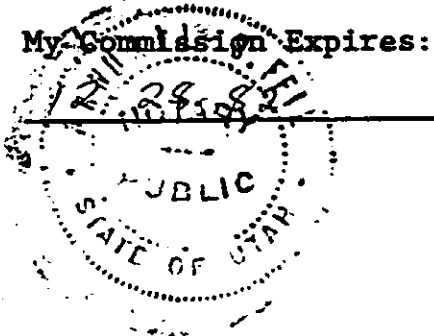
Attest: 
City Recorder

STATE OF UTAH)
 : ss.
COUNTY OF UTAH)

On the 18th day of December, A.D. 1981 personally appeared before me JAMES E. FERGUSON and RONALD MADSEN who being by me duly sworn did say, each for himself, that they are respectively the Chairman and Redevelopment Director of Provo City Redevelopment Agency, and that within the foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of Commissioners and said Chairman and Redevelopment Director each duly acknowledged to me that said agency executed the same and that the seal affixed is the seal of said agency.

Randall S. Feil
NOTARY PUBLIC
Residing at: Salt Lake City, Utah

My Commission Expires: _____



35834

BOOK 1955 PAGE 459