

35839

VALLEY TITLE CO.

CENTRAL BUSINESS DISTRICT  
REDEVELOPMENT PROJECT  
PROVO, UTAH

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VALLEY TITLE CO.

35839

AGREEMENT FOR OPERATION, MANAGEMENT, AND MAINTENANCE  
OF PUBLIC PARKING FACILITIES

By and Between

PROVO CITY REDEVELOPMENT AGENCY,

Agency

And

PROVO EXCELSIOR LIMITED

Parking Operator

BOOK 1955 PAGE 479

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AGREEMENT FOR OPERATION, MANAGEMENT  
AND MAINTENANCE OF PUBLIC PARKING FACILITIES

THIS AGREEMENT (hereinafter called "Parking Agreement") is entered into, by and between the PROVO CITY REDEVELOPMENT AGENCY ("Agency"), and PROVO EXCELSIOR LIMITED ("Parking Operator").

W I T N E S S E T H

WHEREAS, The Agency is implementing the Redevelopment Plan for the Central Business District Redevelopment Project (the "Redevelopment Plan"), 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, Utah (the "City"); and

WHEREAS, the Agency and the Parking Operator (as Lessee-Developer) have entered into a Ground Lease and Joint Development Agreement (the "Hotel Agreement") dated November 24, 1981, for the purpose of (1) the Lessee-Developer leasing from the Lessor-Agency certain real property known as the "Hotel Parcel"; (2) the Lessee-Developer constructing on the Hotel Parcel a full service, first class hotel facility; (3) the Agency constructing on certain real property known as the "Parking Parcel" certain parking facilities composed of structured parking for approximately 400 cars (the "Public Parking Facilities"); and (4) Lessee-Developer as Parking Operator agreeing to operate, manage, and maintain the Public Parking Facilities; and

WHEREAS, the construction of the structured parking will be financed from the proceeds of a tax increment bond issue, Federal UDAG funds, and other sources; and

WHEREAS, the development of the Parking Parcel and the structured parking and the effectuation of the Redevelopment Plan are in the vital and best interest of the City and the health, safety, morals and welfare of its residents and in accord with the public purposes of applicable provisions of federal, state and local laws and requirements; and

WHEREAS, pursuant to and in order to implement the Redevelopment Plan and the Hotel Agreement, the Agency and the Parking Operator desire to enter into this Parking Agreement for the purpose of providing for the operation, management, and maintenance of the Public Parking Facilities on the Parking Parcel and providing for the operation, management, and maintenance by the Parking Operator of approximately 400 structured parking spaces; and

WHEREAS, the construction of the Public Parking Facilities is subject to and contingent upon the construction and operation of the aforementioned hotel.

BOOK 1955 PAGE 480

COPY

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WHEREAS, the construction of the Public Parking Facilities is subject to and contingent upon the construction and operation of the aforementioned hotel.

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NOW, THEREFORE, in consideration of the mutual promises and agreement herein contained, the parties hereto agree as follows:

SECTION I. Parties to the Agreement

A. The Agency

The Agency is a public body, corporate and politic, 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 Agency is located at 351 West Center Street, Provo, Utah 84601.

B. The City

The City is a chartered city exercising governmental functions and powers and organizing and existing under the laws of the State of Utah.

The principal office of the City is located at City Hall, 351 West Center Street, Provo, Utah 84601.

C. The Parking Operator

The Parking Operator is a limited partnership which includes Robert L. Schwartz, Peter F. Edelman, Henry R. Silverman and Adrian B. Werner, as General Partners with the Class A Limited Partners being Calvin Klein, Barry Schwartz, Trust for the Benefit of Calvin Klein's Issue and Trust for the Benefit of Barry Schwartz's Issue, and with the Class B Limited Partners being H. Mark Magleby and John K. M. Olsen. The principal office of the Parking Operator 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 Agency in writing.

Wherever the term "Parking Operator" is used herein, such term shall include any permitted nominee or assignee as herein provided.

SECTION II. Development of the Public Parking Facilities

Subject to the commencement of the term of the Hotel Agreement, the Agency shall be responsible for the construction of approximately 400 structured parking spaces adjacent to the Hotel on the Parking Parcel. The Public Parking Facilities probably will be constructed by Provo Excelsior, Inc. pursuant to a Turnkey Design and Development Contract. The Agency shall not be responsible to the Parking Operator or to the Lessee-Developer under the Hotel Agreement for defects in the construction of the Public Parking Facilities; provided the Agency shall assign all of its rights against the builder and general contractor to the Parking Operator and such rights shall be enforceable by the Parking Operator. The Parking Operator shall look to Provo Excelsior, Inc. regarding such defects, if Provo Excelsior, Inc. is the contractor.

BOOK 1955 PAGE 481

COPY

The Agency also shall not be responsible to the Parking Operator or to the Lessee-Developer under the Hotel Agreement for timely completion of the Public Parking Facilities so long as the work on the Public Parking Facilities has commenced on or before April 1, 1982 and the Contractor for the Public Parking Facilities is Provo Excelsior, Inc.; provided the Agency shall assign all of its rights against the builder and general contractor to the Parking Operator and such rights shall be enforceable by the Parking Operator, and subject to Agency performance of its other obligations under that Turnkey Agreement.

SECTION III. Operation, Management and Maintenance of Public Parking Facilities

The Parking Operator hereby agrees to operate, manage, and maintain the Public Parking Facilities for the Agency and the Agency agrees to have the Parking Operator operate, manage, and maintain the Public Parking Facilities on the terms and conditions hereinafter set forth. The Public Parking Facilities consist of approximately 400 structured parking spaces. The Parking Parcel is shown on the "Site Map" attached hereto and incorporated herein as Attachment No. 1 to this Parking Agreement.

During the term of this Parking Agreement, Parking Operator shall have the responsibility to manage, operate, repair, and maintain the Public Parking Facilities in good order, condition, and repair for parking for the use of members of the public patronizing (and employees of) the Hotel and businesses in the surrounding area. Two hundred parking spaces may be reserved by the Parking Operator solely for the use of Hotel guests, visitors and employees. The responsibility to manage, operate, maintain, and repair shall include maintenance, administration, provision of all required insurance, repairs, and payment of any and all levies and assessments for state, federal or other governmental parking regulations, fees, excises, taxes or levies upon or against the Parking Operator's or Agency's interest therein. The cost of all of the foregoing shall be paid out of operating revenues. The Public Parking Facilities' maintenance shall include but not be limited to: periodic cleaning of all parking areas; maintenance of all signals, signs and safety apparatus; maintenance of all electrical lines and outlets; maintenance of all water pipes; and periodic repair and maintenance of garage floor surfaces including ramps and other public areas; but shall in no event include any replacements, structural repairs, alterations or improvements. The Agency shall be responsible for such replacements, structural repairs, alterations, or improvements only to the extent of insurance proceeds. Nothing herein shall obligate the Parking Operator to pay any debt service on any loans secured by mortgages on the Parking Parcel or the Public Parking Facilities.

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SECTION IV.

Term of Parking Agreement

A. Term of Parking Agreement

The term of this Parking Agreement (the "Parking Agreement Term") shall commence on the earlier of (i) the date on which the Public Parking Facilities have been completed and are available for use for parking purposes as said date shall be designated in written notice given by the Agency to the Parking Operator at least 15 days in advance, or (ii) the date on which the Hotel has been completed and is open for business (the earlier of either (i) or (ii) is hereinafter referred to as the "Commencement Date"). The Parking Agreement Term shall terminate on the date on which the initial 50-year term of the Hotel Agreement will terminate, unless extended or sooner terminated as provided herein, in which case the Parking Agreement Term shall terminate at the end of such extensions or at the time sooner terminated. Within 30 days after the Commencement Date, the parties shall execute an appropriate document, in recordable form, setting forth the Commencement Date and the termination date of the Parking Agreement Term and the Agency shall forthwith record said document in the office of the County Clerk of Utah County, Utah. The words "Parking Agreement Term" shall also be deemed to include such extended periods of time resulting from the exercise of the renewal options below.

B. Option to Renew this Parking Agreement

The Parking Operator may, at its option, renew this Parking Agreement for two (2) additional periods of ten (10) years each, subject to all the provisions of this Parking Agreement. Parking Operator's right to the option to renew is subject to the following conditions:

(1) Parking Operator shall give notice to the Agency of its intent to renew the Parking Agreement for the first additional ten (10) year period at least 180 days prior to the end of the existing term of this Parking Agreement; and Parking Operator shall give notice to the Agency of its intent to renew for the second additional ten (10) year period at least 180 days prior to the end of the prior first ten (10) year period.

(2) Parking Operator shall not be in default under any provision of this Parking Agreement at the time notice of intent to review is given or on the last day of the existing term or renewed term of the Parking Agreement.

(3) Parking Operator shall concurrently exercise its right to renew the Hotel Agreement, or Parking Operator has obtained title to the Hotel Parcel. In lieu of executing a new Parking Agreement for each additional ten (10) year period, each party shall, at the request of the other, endorse on the original Parking Agreement or on a true copy of the original Parking 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 Parking Agreement.

BOOK 1955 PAGE 483

COPY

C. Other Events Affecting Term

Any assignment, transfer, sale, or sublease of the Parking Operator's interest as Lessee-Developer in and to the Hotel Agreement, to which the Agency has consented or which is otherwise in accordance with the terms of the Hotel Agreement, shall be deemed to be an assignment of the Parking Operator's interest in this Parking Agreement to such assignee, transferee or sublessee without further consent of the Agency.

No sale or transfer of the fee interest in and to either the Hotel Parcel or the Parking Parcel shall cause a termination of this Parking Agreement, whether or not such sale or transfer may cause a termination of the Hotel Agreement, unless the Agency and Parking Operator shall agree otherwise in writing.

SECTION V. Use; Covenant of Parking Availability

A. Use

The Public Parking Facilities shall be used by the Parking Operator hereunder to provide public parking for members of the general public patronizing the Hotel and businesses in the surrounding area, however 200 parking spaces may be reserved by the Parking Operator for the exclusive use of Hotel guests, visitors and employees.

B. Covenant of Parking Availability

The Agency covenants, for itself and its successors and assigns, that so long as (1) the Public Parking Facilities are in existence, (2) the Hotel is in existence and operating, (3) this Parking Agreement is in effect, and (4) the Parking Operator is not in default hereunder, the Public Parking Facilities shall be available to the Parking Operator for members of the general public patronizing (and employees of) the Hotel and the businesses in the surrounding area and that 200 parking spaces within the Public Parking Facilities may be reserved by the Parking Operator for the exclusive use of Hotel guests, visitors, and employees. This covenant is subject to any law, regulation or rule of any governmental authority which may restrict or impose conditions upon the operation of parking facilities in general.

C. Dedication of Public Parking Facilities to City

At any time during the Parking Agreement Term, Agency shall have the right to dedicate, assign, convey, or otherwise transfer to the City and or all of its interest in all or any portion of the Public Parking Facilities. Any such dedication, assignment, conveyance, or other transfer shall be subject to the provisions of this Parking Agreement and shall obligate the City to comply with the terms hereof.

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SECTION VI.

Management Fee and Distribution of Revenues From  
Public Parking Facilities

A. Management Fee

As used herein, "Gross Revenues" shall mean all revenues and receipts of every kind collected by Parking Operator from operating the Public Parking Facilities including, but not limited to, income and proceeds (from both cash and credit transactions), after commissions and discounts for prompt or cash payments, from the rental of any and all space within the Public Parking Facilities, from any business interruption or other loss of income insurance (if any), and from any other source or activities within the Public Parking Facilities. "Gross Revenues" shall not include (1) gratuities to employees of Parking Operator or of the Hotel; (2) federal, state or municipal excise, sales or use taxes, or similar impositions collected by the Parking Operator from patrons of the Public Parking Facilities or included as part of any parking fees or rates; (3) proceeds of loans, whether from the Parking Operator to fund operating deficits or from other sources, whether secured or unsecured; (4) condemnation awards or payments in lieu thereof; (5) bad debts; of (6) insurance proceeds (except for insurance proceeds specifically relating to business interruption or other loss of income, if any).

As used herein, "Net Profit" shall mean Gross Revenues less the following expenses: (a) insurance premiums, (b) property taxes (if any), (c) utilities, (d) repairs, (e) routine maintenance, (f) labor, (g) repayment of loans made by Parking Operator to fund operating deficits, and (h) repayment of any deferred Minimum Monthly Fee.

Parking Operator shall operate, manage, and maintain the Public Parking Facilities out of Gross Revenues. Parking Operator shall fund any operating deficits for the expenses listed in (a) through (f) above.

Parking Operator shall receive monthly a management fee, payable out of the Monthly Net Profits; equal to the greater of (i) 25% of the Monthly Net Profit from the Public Parking Facilities, or (ii) \$1,000 (the "Minimum Monthly Fee"). The Agency shall be paid the balance of the Monthly Net Profits, if any. Appropriate adjustments shall be made at the end of each fiscal year of the Parking Operator. To the extent that the Monthly Net Profits for any given month are insufficient to pay to the Parking Operator its Minimum Monthly Fee, the payment of such Fee (or portion thereof) shall be deferred and shall be repayable from time to time as revenues permit.

Parking rates shall be set by the Parking Operator, subject to the reasonable approval of the Agency.

The Agency and Parking Operator agree to keep the Public Parking Facilities free and clear of all liens and encumbrances during the term of this Parking Agreement except for those caused or consented to by the Agency and Parking Operator.



SECTION VII. Additions To and Improvements of the Public Parking Facilities

With the consent of the Parking Operator (which consent shall not be unreasonably withheld) the Agency may, during the term of this Parking Agreement, at its own expense, make or have made: (1) any additions or improvements to the Public Parking Facilities, (2) any attachment of fixtures, structures or signs to the Public Parking Facilities, or (3) any placing of personal property on or in the Public Parking Facilities. These additions, improvements, attachments and placings may be made if: (1) both during and after such work, the utility, operation and use of at least the 200 parking spaces in the Public Parking Facilities reserved for the exclusive use of Hotel guests, visitors, and employees is not impaired or unreasonably interfered with, (2) no such work by the Agency is inconsistent with the appearance or operation of the Hotel according to normal standards of operation thereof, and (3) no such work interferes with the visibility of the Hotel. Title to all such personal property or fixtures shall remain in the Agency or in such person as may be legally entitled thereto.

SECTION VIII. Policies and Rules

The Parking Operator shall establish and maintain such general policies, rules, and regulations for the parking rates, repairs, management, maintenance, operation, and use of the Public Parking Facilities (the "Parking Rules and Regulations") consistent with the provisions of this Parking Agreement, the Hotel Agreement, and the Redevelopment Plan as may be necessary. Such Rules and Regulations and any changes thereto shall be submitted to the Agency prior to their effective date and shall not become effective unless they are approved by action of the Agency (which approval shall not be unreasonably withheld or delayed).

The Public Parking Facilities are being constructed and to be used primarily for the purposes of providing parking for Hotel room guests, banquet attendees, restaurant patrons, and other persons visiting or working in the Hotel or businesses in the surrounding area. The operations of the Public Parking Facilities and the parking rates for the use thereof are to be established to assure that the primary purposes for the Public Parking Facilities are accomplished.

SECTION IX. Indemnification

A. Indemnification

Parking Operator hereby agrees to indemnify and hold harmless the City and the Agency for, from, and against all claims and demands from loss or damage, including property damage, personal injury, and wrongful death arising out of the negligence or any intentional acts or omissions of the Parking Operator, its agents, servants, and employees in the course and scope of their employment, and will reimburse the City and Agency for all its costs and expenses, including reasonable attorney's

BOOK 1955 PAGE 486

COPY

fees incurred in connection with the defense of any such claims. The foregoing indemnity and hold harmless shall be inapplicable for any willful act or omission or negligent act of the City or Agency, or their agents, servants, or employees in the course and scope of their employment.

SECTION X. Insurance

During the Parking Agreement Term, the Parking Operator shall:

1. Maintain or cause to be maintained in full force and effect, the following insurance covering the Public Parking Facilities: comprehensive public liability insurance, including coverage for any accident resulting in personal injury or death of any person and consequential damages arising therefrom, and comprehensive property damage insurance, in the amount of at least \$3,000,000 with respect to bodily injury or death to any one or more persons, and \$500,000 with respect to damage to property. Parking Operator is authorized to increase such amounts at its option.

2. Maintain or cause to be maintained, fire and extended coverage insurance in an amount at least equal to 100% of the replacement cost (as defined below) of the Public Parking Facilities to insure against loss or damage to the Public Parking Facilities resulting from the following perils: fires, wind storm, earthquake, cyclone, tornado, hail, explosion, riot, riot attending a strike, civil commotion, malicious mischief, vandalism, aircraft vehicle, smoke damage, and sprinkler leakage, to the extent such perils are insurable.

3. 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 Parking Operator in connection with the Public Parking Facilities 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 Public Parking Facilities or the operation thereof by Parking Operator.

The term "replacement cost" as used in this Section shall mean the actual cost of replacing the Public Parking Facilities (including amounts for construction, architectural, engineering, legal and administrative fees, and inspection and supervision during construction, and the cost of restoring surface grounds including the cost of restoring trees, plants, and shrubs). Said replacement cost shall be determined from time to time but not less frequently than once in every 36 months.

All insurance provided under this Section shall be periodically reviewed by the parties for the purpose of Parking Operator increasing 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.

BOOK 1955 PAGE 487

COPY

The Parking Operator may carry insurance required to be carried by this Section under a policy or policies covering other property owned by the Parking Operator; provided that such policy or policies allocate to the Public Parking Facilities an amount not less than 100% of the replacement cost of the Public Parking Facilities.

All insurance provided under this Section shall also be for the benefit of the Agency and the City as named insureds.

All insurance herein provided for under this Section shall be effected under policies issued by insurers of recognized responsibility, licensed or permitted to do business in the State of Utah.

Any insurance required to be maintained by Parking Operator 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 and the City; 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. In all other respects, any such blanket policy shall comply with the other provisions of this Section.

All policies or certificates issued by the respective insurers for 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 Parking Operator, the Agency, and the City. Copies of such policies shall be deposited with the Treasurers of the Agency and the City, together with appropriate evidence of payment of the premiums therefor; and, at least thirty (30) days prior to expiration dates of expiring policies or contracts held by said Treasurers, copies of renewal or new policies or contracts or certificates shall be deposited with said Treasurers.

If Parking Operator fails or refuses to produce or maintain insurance as required by this Parking Agreement, the Agency shall have the right, at Agency's election, and without notice, to produce and maintain such insurance. The premiums paid by the Agency shall not be a cost to be subtracted from the gross receipts. The Agency shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s). Parking Operator's failure to provide insurance shall constitute a default. Such failure to provide insurance shall not relieve Parking Operator from any responsibility to maintain or repair the Public Parking Facilities.

All proceeds of insurance with respect to loss or damage to the Public Parking Facilities during the term of this Parking Agreement shall be payable to the Agency to be used for the restoration, repair, or rebuilding of the Public Parking Facilities by the Agency. To the extent that such proceeds exceed the cost of such restoration, repair, or rebuilding, then such proceeds shall first be applied to the repayment of any outstanding loans made by the Parking Operator to fund operating deficits and to pay any deferred Minimum Monthly Fee, and the balance shall belong to the Agency.

In the event the Parking Agreement is terminated by mutual agreement of the Agency and the Parking Operator and the Public Parking Facilities are not reconstructed, repaired or replaced, the insurance proceeds shall be retained by the Agency, after the repayment of any loans by the Parking Operator and any deferred Minimum Monthly Fee.

SECTION XI. Damage or Destruction

In the event of any minor damage to or destruction of the Public Parking Facilities during the Parking Agreement Term, all insurance proceeds shall be paid over to the Agency for repair, restoration and reconstruction of the Public Parking Facilities and the Agency shall promptly undertake to make the necessary repairs, restorations, and/or reconstructions only to the extent of insurance proceeds.

In the event of major damage or destruction to the Public Parking Facilities during the Parking Agreement Term, the Agency shall have the option of terminating this Parking Agreement within 30 days after notice of such damage or destruction. If the Agency does not elect to terminate this Parking Agreement, all insurance proceeds shall be paid over to the Agency for repair, restoration, and reconstruction of the Public Parking Facilities and the Agency shall promptly undertake to make the necessary repairs, restorations, and reconstructions only to the extent of insurance proceeds. If the Agency elects to terminate this Parking Agreement, all operating expenses and management fees shall be adjusted as of the date of such termination and the insurance proceeds shall first be applied to the repayment of any loans by the Parking Operator to fund operating deficits and to pay any deferred Monthly Minimum Fee, and the balance of such proceeds shall belong to the Agency.

The Agency's election to terminate pursuant to this Section XI shall not abrogate the obligation of the Agency under the Hotel Agreement to provide (at a cost not to exceed insurance proceeds) on the Parking Parcel parking facilities for at least 200 cars for the exclusive use of Hotel guests, visitors, and employees under the same terms as are set forth in this Parking Agreement. The Agency shall use the insurance proceeds to provide as many spaces as the insurance proceeds will provide.

Major damage or destruction to the Public Parking Facilities 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 entire Public Parking Facilities. Minor damage or destruction means the cost will not exceed 25% of such cost.

SECTION XII. Eminent Domain

In the event that the Public Parking Facilities and/or Parking Parcel 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 Agency and the Parking Operator, the interests of the Agency and Parking Operator in the award and the effect of the taking upon the Parking Agreement shall be as follows:

(a) In the event of such taking of only a part, leaving the remainder 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 Parking Agreement shall terminate and end as to the portion 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 not so taken.

(b) In the event of the taking of only a portion leaving the remainder 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 Parking Agreement and all right, title, and interest thereunder shall cease on the earliest of the date possession is taken by or title vests in the condemning authority.

(c) In the event the entire Public Parking Facilities is so taken, this Parking Agreement and all of the right, title, and interest thereunder shall cease on the date title so taken vests in the condemning authority.

(d) Promptly after a partial taking pursuant to (a) above, at the Agency's expense, the Agency shall restore the Public Parking Facilities so as to place them in a condition suitable for the uses and purposes of the Public Parking Facilities under this Parking Agreement only to the extent of the compensation received from the condemning agency.

(e) In the event of any taking under subparagraphs (a), (b), or (c) hereinabove, any award of compensation shall belong solely to the Agency, subject to the repayment of any loans made by the Parking Operator and the payment of any deferred Minimum Monthly Fee as discussed in Section X above.

The termination of this Parking Agreement pursuant to this Section XII shall not abrogate the obligation of the Agency and the City under the Hotel Agreement to provide parking facilities for at least 200 cars for the exclusive use of Hotel guests, visitors, and employees under the same terms as are set forth in this Parking Agreement and only at a cost not to exceed the compensation received from the condemning authority. Such alternate parking shall be on the Parking Parcel to the extent that there is a sufficient portion of the Parking Parcel remaining, otherwise the 200 spaces or portion thereof shall be on a site as close to the Hotel Parcel as is possible with the amount of compensation received from the condemning authority. The Agency shall use the amount of compensation received from the condemning authority to provide as many spaces as such compensation proceeds will provide.

SECTION XIII. Assignment, Mortgage, or Pledge of Parking Agreement Interest

A. Prohibited Transfers

Neither this Parking Agreement nor any interest of the Parking Operator herein shall, at any time after the date hereof, without the

prior written consent of the Agency (which consent the Agency agrees not to unreasonably withhold), be mortgaged, pledged, assigned, or transferred by the Parking Operator by voluntary act or by operation of law, or otherwise, except as provided herein. In the event of any permitted assignment, and upon paying to the Agency any sums which may be due hereunder up to the date of such assignment, the assigning Parking Operator 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 assignment.

B. Surrender Upon Termination

Upon the termination of this Parking Agreement for any reason except condemnation and major damages or destruction the Parking Operator agrees that it shall surrender to the Agency the Public Parking Facilities in good order and condition and in a state of repair that is consistent with prudent use and conscientious maintenance, except for reasonable wear and tear, free and clear of liens and encumbrances, if any, created by the Parking Operator.

SECTION XIV. Liens

The Parking Operator agrees to pay, when due, all sums of money that may become due for any labor, services, materials, supplies, or equipment furnished to or for the Parking Operator in, upon, or about the Public Parking Facilities and to hold the Agency harmless with respect to any and all claims for such labor, materials, supplies, or equipment.

SECTION XV. Law Governing

This Parking Agreement shall be governed by the laws of the State of Utah.

SECTION XVI. Notices

All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments, or designations hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party, if sent by United States registered or certified mail, return receipt requested, postage prepaid and addressed to the addresses set forth in Section I. Either party may later designate any other address for such purpose by written notice to the other parties.

SECTION XVII. Default by Parking Operator

A. The parties understand and agree that the purpose of this Parking Agreement is to provide public parking as set forth above and that any failure by the Parking Operator in carrying out the terms and conditions of this Parking Agreement shall constitute a default of this Parking Agreement.

B. In the event that: (1) the Parking Operator shall fail to observe or perform any material terms, covenants or conditions contained herein for a period of sixty (60) days after written notice thereof from the Agency to the Parking Operator; or (2) the Parking Operator shall abandon or vacate the Public Parking Facilities; or (3) the Parking Operator's interest in this Parking Agreement or any part hereof shall be assigned or transferred without the written consent of the Agency, either voluntarily or by operation of law, except as specifically permitted hereunder; or (4) the Parking Operator shall file any petition or institute any proceedings wherein or whereby the Parking Operator asks or seeks or prays to be adjudicated a bankrupt; or to be discharged from any or all of its debts or obligations, or offers to the Parking Operator's creditors to effect a composition or extension of time to pay the Parking Operator's debts, or asks, seeks or prays for reorganization or effect a plan for reorganization, or for a readjustment of the Parking Operator's debts, or for any other similar relief, then and in any of such events, the Parking Operator shall be deemed to be in default hereunder.

C. If the Parking Operator should, after notice of such default, fail to remedy any default or to commence the correction thereof with all reasonable dispatch, not exceeding thirty (30) days (with respect to failure to pay to the Agency its share of the Monthly Net Profit) or not exceeding sixty (60) days (with respect to the failure to observe or perform any other material term, covenant, or condition contained herein), then Agency shall have the right, at its option, without any further demand or notice:

1. To terminate this Parking Agreement to re-enter the Public Parking Facilities and eject all parties in possession therefrom, in which case this Parking Agreement shall terminate, and the Parking Operator shall have no further claim hereunder; or

2. To continue this Parking Agreement in effect for so long as it does not terminate the Parking Operator's right to possession, in which case it may enforce all of its rights and remedies hereunder, including the right to recover fees, revenues, and receipts required to be paid by the Parking Operator as they become due.

D. In the event the Agency terminates this Parking Agreement as hereinbefore provided, the Agency shall be entitled to recover as damages all of the following:

1. Any unpaid fees, revenues, and receipts for the period up to the time when this Parking Agreement is terminated and the Agency obtains possession.

2. Any other amount necessary to compensate the Agency for the detriment proximately caused by the Parking Operator's failure to perform its obligations under this Parking Agreement.

The foregoing remedies of the Agency are in addition to and do not exclude any other remedy of the Agency. Any such reentry shall be allowed by the Parking Operator without hindrance and the Agency shall not be liable for damage for such reentry or guilty of trespass.

Notwithstanding anything herein to the contrary, the Parking Operator shall not be personally liable to either the City or the Agency for any costs or damages resulting from a breach hereof except for those resulting from (i) fraud, (ii) diversion of funds, or (iii) negligence.

SECTION XIX. Notice of Default to Hotel Mortgage, Deed of Trust, or other Security Interest Holders; Right to Cure

A. The Agency shall, upon serving the Parking Operator with a notice of default under this Parking Agreement, simultaneously serve a copy of said Notice upon each mortgagee or secured lender on the Hotel Parcel as shown by the records in the Office of the County Clerk, Utah County, Utah. Mailing, by certified or registered mail, a copy of such notice or demand to such holder as shown by said records shall be in compliance with the preceding sentence. Each such holder shall (insofar as the rights of the Agency are concerned) have the right at its option within sixty (60) days to cure or remedy any such default in accordance with the terms of this Parking Agreement, and the Agency shall accept such performance by or at the instigation of said mortgagee or secured lender as if the same had been done by the Parking Operator.

B. For the purposes of this Section the terms "mortgagee" or "secured lender" of the Hotel Parcel shall include, but not be limited to, holders of security interest in the Parking Operator's interests in the Hotel Parcel land and/or improvements.

C. Anything herein contained notwithstanding, while such mortgagee or secured lender remains unsatisfied of record, if any event or events of default shall occur, which under any provisions of this Parking Agreement shall entitle the Agency to terminate this Parking Agreement, and if before the expiration of sixty (60) days of the date of service of said notice, such mortgagee or secured lender shall have paid to the Agency all fees, revenues, and receipts herein provided for, and then in default, and shall have complied or shall have engaged in the work of complying with all of the other requirements of this Parking Agreement within the time limits prescribed herein, if any are then in default, then in such event Agency shall not be entitled to terminate this Parking Agreement and any notice of termination theretofore given shall be void and of no effect.

D. If the Agency shall elect to terminate this Parking Agreement by reason of any default of the Parking Operator, such mortgagee or secured lender shall be subrogated to any and all rights of the Parking Operator with respect to curing such default, and shall have the right to postpone and extend the specified date for the termination of this Parking Agreement as fixed by the Agency in its notice of termination, for a period of not more than six (6) months, provided such mortgagee or secured lender shall cure or cause to be cured any then existing money defaults and meanwhile pay the fees, receipts, and revenues, and comply with and perform all of the other terms, conditions and provision of this Parking Agreement on the Parking Operator's part to be complied with and performed, and if no further defaults shall occur hereunder during such extended period, and mortgagee or secured lender shall forthwith take

BOOK 1955 PAGE 493

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steps to acquire the Parking Operator's interest herein, the time of said mortgagee or secured lender to comply with the provisions of this Section shall be extended for such period as shall be necessary to complete such steps with due diligence and continuity, provided that during any such extensions no further default by the Parking Operator or mortgagee or secured lender shall be permitted to continue hereunder.

E. The Agency agrees within ten (10) days after the request in writing by the Parking Operator or such mortgagee or secured lender, to furnish the party requesting same with a written statement duly acknowledged of the fact that the Parking Agreement is in full force and effect and that there are no defaults hereunder by the Parking Operator if such is the fact. If any default then exist, the Agency agrees that in such statement it will specify the particular default or defaults which Agency claims to exist.

F. The Agency agrees that in the event of termination of this Parking Agreement by reason of any default by Parking Operator, the holder of any mortgage or trust deed discussed in this Section or its nominee (the mortgagee or trustee) shall be entitled to enter into a new Parking Agreement for the Public Parking Facilities as the new Parking Operator with all of the rights and obligations of the Parking Operator hereunder for the remainder of the term, which new Parking Agreement shall be effective as of the date of such termination and shall be at the fees, receipts, and revenues and upon the terms, provisions, covenants, and agreements as herein contained and subject only to the same conditions of the execution hereof, and to the rights, if any, of any parties then in possession of any part of the Public Parking Facilities, provided:

1. Said mortgagee shall make written request upon Agency for such new Parking Agreement within thirty (30) days after receipt of such notice of termination and such written request shall be accompanied by payment to the Agency of all sums then due to the Agency under this Parking Agreement.

2. Said mortgagee shall pay to the Agency at the time of the execution of the new Parking Agreement any and all sums which would at such time be due under this Parking Agreement but for such termination and in addition thereto any expenses including attorney's fees which the Agency shall have necessarily paid by reason of such default.

3. Said mortgagee or its nominee shall perform and observe all covenants herein contained on the Parking Operator's part to be performed and shall further remedy any other conditions which the Parking Operator was obligated to perform under the terms of this Parking Agreement.

The said mortgagee shall have the same right, title, and interest in and to the Public Parking Facilities as the Parking Operator has under this Parking Agreement.

G. As used in this Parking Agreement, all reference to a "mortgage" shall be deemed to include a Deed of Trust, and all reference to the "holder" of a mortgage or to a "mortgagee" shall be deemed to include the beneficiary and/or trustee under a Deed of Trust.

BOOK 1955 PAGE 494

H. 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 Hotel Improvements. If a proposed mortgagee of the Hotel 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.

SECTION XX. Nondiscrimination

The Parking Operator covenants by and for itself, its administrators and assigns, and all persons claiming under or through it, that this Parking Agreement is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of sex, marital status, race, color, creed, national origin, or ancestry, in the leasing, subleasing, transferring, use, or enjoyment of the Public Parking Facilities nor shall the Parking Operator itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of tenants, lessees, sublessees, subtenants, or vendees thereof or any portion thereof, or in the providing of goods, services, facilities, privileges, advantages, and accommodation.

SECTION XXI. Attorney's Fees and Court Costs

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

SECTION XXII. General Provisions

A. Compliance with Law

Parking Operator agrees, at its sole cost and expense, to comply and secure compliance with the requirements now in force, or which may hereafter be in force, of all municipal, county, state, and federal authorities, pertaining to the Public Parking Facilities as well as operations conducted thereon, and to faithfully observe and secure compliance with, in the use of the Public Parking Facilities, 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, lease, or occupancy of the

property, and to pay before delinquency all taxes, assessments, and fees, if any, assessed or levied upon the Parking Operator or Public Parking Facilities including the land and any and all improvements. Notwithstanding the foregoing, Parking Operator shall not be obligated to make any structural repairs, alterations or improvements to the Public Parking Facilities which might be required under law, regulation or rule. The judgement of any court of competent jurisdiction, or the admission of Parking Operator or any sublessee or permittee in any action or proceeding against them, or any of them, whether the Agency be a party thereto or not, that Parking Operator, sublessee, or permittee has violated any such ordinance or statute in the use of the premises shall be conclusive of that fact as between the Agency and Parking Operator.

B. Entry and Inspection

The Agency reserves and shall have the right at all times to enter the Public Parking Facilities for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the Public Parking Facilities or to inspect the operations conducted thereon. Any such entry shall be made only after reasonable notice to the Parking Operator. In the event that such entry or inspection by the Agency discloses that the Public Parking Facilities is not in a decent, safe, and sanitary condition, is damaged, or in disrepair, the Agency shall have the right after thirty (30) days written notice to Parking Operator, to have any necessary maintenance or repair work done for and at the expense of Parking Operator and hereby agrees to pay promptly any and all cost incurred by the Agency in having such necessary maintenance or repair work done in order to keep the Public Parking Facilities in a decent, safe, and sanitary condition. The rights reserved in this Section shall not create any obligations on the Agency or increase obligations imposed on the Agency elsewhere in this Parking Agreement.

C. Enforced Delay: Extension of Time of Performance

In addition to specific provisions of this Parking Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; floods; earthquakes; fires, casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts of the other party; 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 thirty (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 Parking Agreement may also be extended by the mutual written agreement of the Agency and the Parking Operator.

D. Conflict of Interests

No member, official, or employee of the Agency or City shall have any personal interest, direct or indirect, in this Parking Agreement nor shall any such member, official or employee participate in any decision relating to this Parking Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he is directly or indirectly interested.

E. Nonliability of Officials and Employees of Agency

No member, official, attorney, or employee of the Agency shall be personally liable to the Parking Operator, or any successor in interest, for any amount which may become due to the Parking Operator or successor or on any obligation under the terms of this Parking Agreement.

F. Warranty Against Payment of Consideration for Agreement

The Parking Operator 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 Parking Agreement.

G. Entire Agreement, Waivers and Amendments

This Parking Agreement is executed in five (5) duplicate originals, each of which is deemed to be an original.

This Parking Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supercedes all negotiations or previous agreements between the parties with respect to all or any part of the Public Parking Facilities.

All waivers of the provisions of this Parking Agreement must be in writing and signed by the appropriate authorities of the Agency or the Parking Operator, and all amendments hereto must be in writing and signed by the appropriate authorities of the Agency and the Parking Operator.

The waiver by the Agency of any breach by the Parking Operator of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition hereof.

H. Recordation of Parking Agreement

For the purpose of giving notice of Parking Operator's rights to others dealing with any of the real property referred to in this Parking Agreement, Parking Operator and Agency hereby agree to execute, acknowledge and record this Parking Agreement.

SECTION XXIII. Execution

This Parking Agreement may be simultaneously executed in any number of counterparts, each of which when so executed shall be deemed to

be an original, but all together shall constitute but one and the same Parking Agreement and it is also understood and agreed that separate counterparts of this Parking Agreement may be separately executed by the Agency and the Parking Operator, all with the same full force and effect as though the same counterpart had been executed simultaneously by both the Agency and the Parking Operator.

SECTION XXIV. Validity

If any one or more of the terms, provisions, promises, covenants, conditions, or option provisions of this Parking Agreement shall to any extent be adjudged invalid, unenforceable, void, or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants, conditions, and option provisions of this Parking Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

If for any reason this Parking Agreement shall be held by a court of competent jurisdiction, void, voidable, or unenforceable by the Agency or by the Parking Operator, or if for any reason it is held by such court that the covenants and conditions of the Parking Operator hereunder including the covenant to pay rent hereunder, is unenforceable for the full term hereunder, then and in such event for and in consideration of the right of the Parking Operator to possess, occupy, and use the Public Parking Facilities, which right in such event is hereby granted, this Parking Agreement shall thereupon become, and shall be deemed to be, a Parking Agreement from year to year under which the fees, receipts, and revenues herein specified will be paid by the Parking Operator.

SECTION XXV. Amendments Subject to HUD Consent.

During the term of the UDAG Agreement, this Parking Agreement shall not be amended in any material respect without the prior written approval of the Secretary of the Department of Housing and Urban Development. An amendment shall be deemed "material," within the meaning of this provision, if it cancels or reduces any financial obligation of the Parking Operator by more than ten (10%) percent, or if it increases any time for performance by the Parking Operator 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."

SECTION XXVI. Binding Effect

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

IN WITNESS WHEREOF, the parties hereto have caused this Parking Agreement to be executed and attested by their lawfully authorized officers.

PROVO REDEVELOPMENT AGENCY

Date: December 18, 1981

By: [Signature]

Attest [Signature]

PROVO EXCELSIOR LIMITED

Date: December 14, 1981

By: [Signature]

A General Partner

City Attorney  
APPROVED AS TO FORM AND LEGALITY:

Date: DECEMBER 18, 1981

By: [Signature]



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EXHIBIT A

LEGAL DESCRIPTION OF PARKING PARCEL

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.

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BOOK 1955 PAGE 500

STATE OF NEW YORK )  
 ) : ss  
 COUNTY OF NEW YORK )

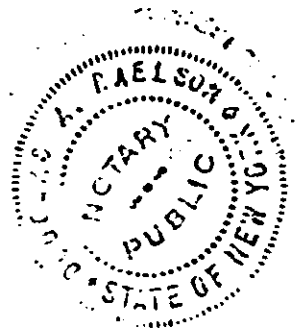
On the 14 day of December, 1981, personally appeared before me PETER F. EDELMAN, one of the general partners of Provo Excelsior Limited, a Utah limited partnership, one of the signers of the foregoing instrument who, upon his oath, acknowledged to me that he executed the same for and on behalf of said limited partnership.

Douglas A. Raelson  
 NOTARY PUBLIC

Residing at: 15 EAST 71 STREET  
NY, NY 10021

My Commission Expires:

DOUGLAS A. RAELSON  
 Notary Public, State of New York  
 No. 4624143  
 Qualified in New York County  
 Term Expires March 30, 1982



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BOOK 1955 PAGE 501

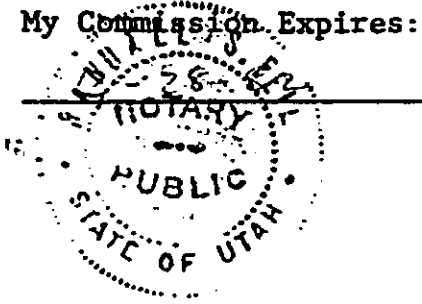


STATE OF UTAH            )  
                                  ): ss.  
COUNTY OF UTAH        )

On the 18<sup>th</sup> 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:



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BOOK 1955 PAGE 502