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CENTRAL BUSINESS DISTRICT REDEVELOPMENT PROJECT
PROVO, UTAH

DOWNTOWN PROVO HOTEL SITE

AMENDED GROUND LEASE
(Amended as of *September 8, 1988*)
By and Between

PROVO CITY REDEVELOPMENT AGENCY,

Lessor

And

SUZANNE BORCHERDS,

Lessee

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ATTACHMENTS

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Attachment No.1B	-	Legal Description of Site
Attachment No.1C	-	Legal Description of Hotel Parcel
Attachment No.2	-	Parking Facility
Attachment No.3	-	Description of Hotel Improvements and Site Requirements

AMENDED GROUND LEASE

THIS AMENDED GROUND LEASE ("Agreement") is entered into by and between the PROVO CITY REDEVELOPMENT AGENCY ("Lessor") and SUZANNE BORCHERDS ("Lessee"). The Lessor and the Lessee agree as follows:

I. [§100] SUBJECT OF AGREEMENT

A. [§101] Purpose and Background of the Agreement

The purpose of this Agreement is to effectuate the Redevelopment Plan for the Central Business District Redevelopment Project by providing for operation of a full service, high quality hotel facility previously erected on a portion of the Project area to be leased by the Lessee from the Lessor. The lease of a portion of the hereinafter defined Site pursuant to this Agreement and the operation of such hotel and the adjoining parking facilities on the Site are in the vital and best interests of the Lessor 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 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 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 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 Development 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 and Plaza Development Incorporated entered into a Third Implementation Agreement changing the Revised Schedule of Performance to the Joint Development Agreement. Plaza Development Incorporated assigned all of its interest in the Project to Provo Excelsior Limited.

On November 4, 1980, the Lessor entered into a Ground Lease and Joint Development Agreement with Provo Excelsior

Limited. That Ground Lease and Joint Development Agreement was amended December 18, 1981. The Ground Lease and Joint Development Agreement, as amended, superseded and replaced 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. The Provo Excelsior Hotel was constructed, and, since its opening in May of 1983, has been operated and maintained by Provo Excelsior Limited pursuant to this Ground Lease and Joint Development agreement, as amended. In December of 1983, in connection with the issuance of the City of Provo City, Utah Industrial Development Revenue Bonds (Provo Excelsior Hotel Project) Series 1983-A and Series 1983-B, certain additional amendments to the Ground Lease and Joint Development were made in a Letter of Understanding dated December 8, 1983.

This Agreement effectuates a further amendment, in its entirety, of the Ground Lease and Joint Development Agreement. Such amendment is being made as part of the consideration of a settlement of litigation involving Provo Excelsior Limited and the Lessor, among many others. This litigation has arisen with respect to alleged defaults under certain financial encumbrances on the assets of Provo Excelsior Limited subject to the Ground Lease and Joint Development Agreement. As part of its obligation under the terms of the settlement, Provo Excelsior Limited has agreed to sell and assign its interest in the Ground Lease and Joint Development Agreement to Suzanne Borchers pursuant to that certain Assets Purchase Agreement dated September 8, 1988 between Suzanne Borchers as Purchaser and Provo Excelsior Limited as Seller (the "Assets Purchase Agreement"). The Lessor in turn has agreed that it consents to Provo Excelsior Limited's assignment of the Ground Lease and Joint Development Agreement, as amended, to Suzanne Borchers, and that effective as of the Final Closing Date of the Escrow established pursuant to Paragraph 3 of the Asset Purchase Agreement (the "Borchers Escrow"), the Ground Lease and Joint Development Agreement, as previously amended, shall be amended in its entirety and replaced by the terms of this Amended Ground Lease, with Suzanne Borchers as Lessee.

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 1B 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 by the Lessor, and upon which the hotel facility has been constructed. The "Parking Parcel" includes all other portions of the Site.

E. [§105] Parties to the Agreement

1. [§106] The Lessor

The Lessor 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 Lessor is located at 152 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

The Lessee is Suzanne Borchers, a married woman who is a resident of the State of Utah. The principal office of Lessee for purposes of this Agreement is 1450 East 300 North, Provo, Utah 84601, or such other office of which she shall notify the Lessor in writing.

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

II. [§200] LEASE OF THE HOTEL PARCEL TO LESSEE BY THE LESSOR

A. [§201] Lease

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

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

1. Lessee shall give notice to the Lessor 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 shall give notice to the Lessor 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 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 Agreement or on a true copy of this 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 covenants and agrees to pay to the Lessor, at the Lessor's address set forth in Section 106 hereof, or at such place or to such person as the Lessor may designate in writing by notice to Lessee, 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 as hereinafter in this Agreement provided, the sum of Five Thousand Three Hundred Dollars (\$5,300.00).

The Minimum Annual Rent for each Lease Year as defined in §210 hereof shall be paid quarterly on the first of January, April, July and October in each such Lease Year during the Lease Term. Minimum Annual Rent payable during any Lease Year in which the remaining Lease Term includes less than a full calendar year shall be computed by dividing the number of days in the Lease Term in the year in question by three hundred sixty-five (365), and multiplying the quotient by Five Thousand Three Hundred Dollars (\$5,300). The resulting amount shall be due and payable on July 1 of the Lease Year in question.

2. [\$206] Supplemental Annual Rent

In addition to the Minimum Annual Rent, Lessee agrees to pay Lessor a Supplemental Annual Rent equal to fifteen percent (15%) of Annual Net Income over Two Hundred Six Thousand Dollars (\$206,000.00).

Within one hundred and twenty (120) days after the end of each lease year, Lessee shall pay to the Lessor the Supplemental Annual Rent due to the Lessor under the terms of this Agreement accompanied by a complete audited 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) Additional Rent; (4) Minimum Annual Rent; and (5) debt service on mortgage financing (including fixed and incentive components and additional commitment fees, if applicable) not to exceed \$1,844,400 (hereinafter referred to as "Permissible Debt Service").

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, and Property Operations Expenses and professional Hotel Management or Franchise costs, if any).

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 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 and the City and Lessor) 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.

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 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 to pay the applicable rents within 15 days of the due date shall constitute a default. In the event Lessee fails to pay the applicable rents within 15 days of the due date, in addition to any other remedy provided by this Agreement, Lessee shall pay Lessor 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. It is the intent of this provision that Lessor shall be compensated by such additional sums for loss resulting from rental delinquency including costs to the Lessor for servicing the delinquent account. The Lessor, at its option, may waive any such delinquency compensation required herein, upon written application of Lessee.

J. [\$212] Financial Records

Lessee 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 shall be entitled during such two (2) years to inspect, examine and to copy at Lessor's expense Lessee's books of account, records, cash receipts, and other pertinent data as necessary or appropriate for the purposes of this Agreement. Lessee shall cooperate fully with the Lessor in making the inspection. Within 120 days after the expiration of each calendar year during the Lease Term, Lessee shall obtain and submit to the Lessor, 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 and approved by Lessor, 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 together with any payments due under Section 211.

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

The Lessor and Lessee intend that Minimum Annual Rent and Supplemental Annual Rent and all other sums of whatever kind and nature relating to the Hotel Parcel and payable hereunder to or on behalf of the Lessor, 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 and the Lessor.

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 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 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 shall pay such difference to the Lessor 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 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 hereby covenants and agrees that the Minimum Annual Rent, Supplemental Annual Rent, and all other sums of whatever kind and nature payable to the Lessor from the Lessee 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 is 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.

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) Additional Rent; (4) Minimum Annual Rent; and (5) Permissible Debt Service.

Additional Rent. The Additional Rent provided for in Section 214 shall be payable out of and subordinated to AGOP reduced only by (1) Reserve Fund for Furniture, Fixtures and Equipment (not to exceed 5% of gross room revenues); (2) Property Taxes; and (3) Minimum Annual Rent.

Other Sums. All other sums payable to Lessor 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) Additional Rent; (4) Minimum Annual Rent; (5) Permitted Debt Service; and (6) Supplemental Annual Rent.

Debt Service Limitation. The limitation of debt service to the amount defined in Section 207 hereof as "Permissible Debt Service" was fixed at an earlier time in the history of this Ground Lease, and the parties have agreed to adhere to this debt limitation, as reflected in the foregoing provisions.

N. [\$216] Option to Purchase Hotel Parcel

1. Lessee 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 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 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>
	\$ 825,000
Year 2	900,000
Year 3	975,000
Year 4	1,050,000
Year 5	1,125,000
Year 6	1,200,000
Year 7	1,275,000
Year 8	1,350,000
Year 9	1,425,000
Year 10	

The Purchase Price for the Hotel Parcel at any time after the tenth (10th) year of the Lease Term (i.e., at any time after January 1, 1991) 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 and Lessor, if possible, but if they cannot agree within thirty (30) days from Lessee's notice to Lessor, then the fair market value shall be determined by a real estate appraiser promptly selected by the Lessee and a real estate appraiser promptly selected by the Lessor. 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 or the Lessor. All appraisers appointed pursuant to the provisions hereof shall be impartial 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 and the Lessor.

Within ten (10) days after the fair market value has been finally established, Lessee and Lessor shall open an escrow for the sale and conveyance of the Hotel Parcel unless within 10 days in writing the Lessee withdraws its offer to purchase. The escrow shall close, and the Lessor shall convey by Grant Deed the Hotel Parcel to Lessee, and Lessee 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 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 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 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 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 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 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 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 agrees to lease the Hotel Parcel to Lessee, and Lessee 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] Right to Leasehold Interest and Delivery of Possession

Subject to any mutually agreed upon extensions of time, which shall not be unreasonably withheld, the Lessee under this Amended Ground Lease shall be entitled to the leasehold interest in and delivery of possession to the Hotel Parcel upon the closing of the transaction contemplated by the Assets Purchase Agreement referred to in Section 101 hereof. The Lessor and Lessee agree to perform all acts necessary for the closing contemplated by the Assets Purchase Agreement in sufficient time for the said closing to occur as scheduled in the Assets Purchase Agreement.

The Lessee 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 Hotel Parcel and Improvements and taxes upon this Agreement, if any, or any rights thereunder, levied, assessed, or imposed during the Lease Term shall be paid by the Lessee or the Lessee's predecessors in interest, as they have mutually agreed in the Assets Purchase Agreement, except that it is understood that the

Lessee under this Amended Ground Lease is not liable for any such taxes or assessments levied, assessed or imposed for any period prior to June 1, 1988. 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 June 1, 1988, shall be paid by Lessee, except as otherwise agreed between Lessee and Lessee's predecessor in interest.

D. [\$304] Occupants of Hotel Parcel

The Lessee shall be entitled to hold the leasehold interest in the Hotel Parcel free of any possession or right of possession except that of the Lessee.

E. [\$305] Zoning of the Site

The zoning of the Site during the Lease Term is and shall remain such as to permit the use, operation and maintenance of the improvements constructed on the Hotel Parcel as a first class, full service hotel, and of the improvements constructed on the Parking Parcel as a public parking structure.

F. [\$306] Access to Information Regarding the Site

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

G. [\$307] Condition of Hotel Parcel and Improvements

The Hotel Parcel and Improvements shall be leased in an "as is" condition, with no warranty, express or implied by the City or the Lessor as to the condition of the hotel structure or any other improvements that have been constructed on the Hotel Parcel, the underlying soil, the geology of the Site, or the presence of known or unknown faults, and possession thereof shall be delivered as specified in §302.

IV. [\$400] RESERVED

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

A. [§501] Use of the Hotel Parcel

Lessee 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 Description of Hotel Improvements and Site Requirements, Attachment No. 3 of this Agreement. No changes in use shall be permitted without the written approval of the City and Lessor.

B. [§502] Management of the Hotel Parcel

The Hotel Parcel and Improvements shall be managed or caused to be managed by the Lessee in a prudent and business-like manner. The Lessee shall exert its best efforts to obtain a nationally recognized professional hotel operator or franchise for the Hotel, or to establish ties to one or more independent national reservation systems, but shall not be required to enter into an agreement with such an operator or system or concerning such a franchise if, in the reasonable judgment of the Lessee, doing so would not be economically feasible. The intent of this provision is to gain the maximally effective national exposure for the Hotel for purposes of increasing business volume.

The Lessor 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 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 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 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. The Lessor, the City or other public agency shall indemnify and hold Lessee 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 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 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 Improvements

1. [\$603] Payment Generally

Lessee 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 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 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 and Lessee as of the expiration of this Lease Term, so that Lessee 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 shall pay the remainder thereof; Lessee shall not be entitled to receive any apportionment if Lessee shall be in default in the performance of any of the Lessee'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 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 for such payment on the date which shall be one (1) year immediately prior to the date of such expiration.

3. [\$605] Lessor Right to Cure

If Lessee, in violation of the provisions of this Agreement, shall fail to pay and to discharge any Imposition, the Lessor may (but shall not be obligated to) pay or discharge it, and the amount paid by Lessor 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 as additional rent and shall be reimbursed to the Lessor by Lessee on demand, provided that Lessee shall have failed to pay such Imposition within five (5) days after written notice from the Lessor of its intention to pay.

4. [\$606] Tax Receipts

Lessee shall furnish to the Lessor, 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 evidencing payment thereof.

5. [\$607] Limits of Tax Liability

The provisions of this Agreement shall not be deemed to require Lessee to pay (1) municipal, county, state or federal income or gross receipts or excess profits taxes assessed against the Lessor, or (2) municipal, county, state or federal capital levy, estate, succession, inheritance, gift, or transfer taxes imposed on the Lessor, or (3) corporation franchise taxes imposed upon any corporate owner of the fee of the Hotel Parcel; except, however, that Lessee shall pay all taxes assessed by any governmental authority by virtue of any operation by Lessee 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 for the amount of such tax, then Lessee 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 shall be liable, the Hotel Parcel shall be considered as if it was the only asset of the Lessor, and the rent paid hereunder shall be considered as if it were the only income of the Lessor.

6. [§608] Permitted Contests

Lessee 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 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 shall give the Lessor prompt notice in writing of any such contest at least ten (10) days before any delinquency occurs. Lessee 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 shall, prior to the date such Imposition is due and payable, have given such reasonable security as may be required by the Lessor 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, Lessee 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 and, after such payment and discharge by Lessee, the Lessor will promptly return to Lessee such security as the Lessor shall have received in connection with such contest.

The Lessor 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 shall be prosecuted by Lessee at its sole cost and expense; and Lessee shall indemnify and save harmless the Lessor 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 in connection therewith.

C. [§609] Other Liens

Lessee 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's interest therein or any rent or other sums payable by Lessee under this Agreement, other than such leasehold mortgages as are permitted pursuant to Section 901. Lessee shall notify the Lessor promptly of any lien or encumbrance which has been created on or attached to the Hotel Parcel or Improvements, or to the Lessee's leasehold estate therein, whether by act of Lessee 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 agrees not to create or suffer to be created any liens or encumbrances on the Hotel Parcel except as may be permitted or required under this Agreement or as may be agreed to in writing by the Lessee. If any such liens or encumbrances appear in violation hereof, the Lessor shall discharge the same promptly after notice of their existence.

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

A. [§701] Ownership During Term

All Improvements constructed on the Hotel Parcel shall, during the Lease Term, be and remain the property of Lessee provided, however, that Lessee shall have no right to waste, destroy, demolish or remove the Improvements; and provided further that Lessee'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, and Lessee alone shall be entitled to deduct all depreciation on its tax returns for such Improvements and any alteration, change or addition thereto. The Lessor and Lessee covenant for themselves and all persons claiming under or through them that the Improvements are real property. The Lessee does not own the fee simple interest in the land underlying the Improvements constructed on the Hotel Parcel.

B. [§702] Ownership at Termination

At the expiration or sooner termination of the Lease Term (except pursuant to Section 216), the Lessor may, at the Lessor's election, demand the removal from the Hotel Parcel, at Lessee'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 give 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 within thirty (30) days of the termination of the Lease Term shall be deemed to be abandoned by the Lessee and shall, without compensation to Lessee, then become the Lessor's property, free and clear of all claims to or against them by Lessee or any third party.

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

C. [§703] Maintenance and Repair of Improvements

Lessee shall be responsible for the operation 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 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 and in compliance with all applicable laws. Lessee agrees that the Lessor 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 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 shall not commit or suffer to be committed any waste or impairment of the Hotel Parcel or the Improvements, or any part thereof.

Lessee 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.

E. [\$705] Alteration of Improvements

Lessee 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. In requesting such consent, Lessee shall submit to the Lessor 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 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 safety and orderly operation of the Hotel.

F. [\$706] Expansion of Improvements

Lessee shall not expand the Hotel development without the prior written approval of the Lessor. 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 agrees to give notice to the Lessor of any fire or other damage that may occur on the Hotel Parcel 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 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 and approved in writing in order to replace in kind and scope the Improvements which existed prior to such damage.

Lessee 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 shall have the election to terminate this Agreement, provided Lessee complies with all of the following conditions:

1. Lessee gives the Lessor notice of the damage or destruction within ten (10) days after the event causing such damage or destruction.
2. Lessee 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 delivers possession of the Hotel Parcel to the Lessor 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 agrees to hold the Lessor and the City free and harmless, and indemnify the Lessor 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.

For projects involving more than Five Thousand dollars (\$5,000), Lessee agrees to procure, or cause the procurement of, contractor's bonds covering labor, materials and faithful performance for construction, if any, on the Hotel Parcel, unless the Agency agrees in writing to waive such procurement. 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 and its general contractor. Said bonds and the construction contract must first be approved in writing as to content and form by the Lessor. The Lessor shall not unreasonably withhold such approval. Lessee shall, prior to commencement of construction, deliver to the Lessor a certificate from the bonding company issuing the aforesaid bonds, naming the Lessor 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 hereby represents and warrants that this Agreement is for the purpose of furthering the aims of the Redevelopment Plan as set forth in Sections 101 and 102 hereof and not for mere speculation in land holding. The Lessee further recognizes:

1. The importance of the redevelopment of the Site to the general welfare of the community;

2. The substantial financing, concessions, and other public aids that have been made available by law and by the government for the purpose of making such redevelopment possible, both at the time of the initial construction of the Hotel and at the time of the settlement of litigation concerning the Hotel in 1988 at the time the Ground Lease and Joint Development Agreement was assigned to Lessor and amended to become this Amended Ground Lease; and

3. The fact that a change in ownership or control of the Lessee 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 party or parties that constitute or control the Lessee 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

The qualifications and identity of Lessee, and its principals, are of particular concern to the City and the Lessor. Lessee further recognizes that it is because of such qualifications and identity that the Lessor is entering into this Agreement with Lessee and, in so doing, the Lessor is further willing to accept and rely on the obligations of Lessee for the faithful performance of all undertakings and covenants to be performed hereunder by Lessee 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 reserves the right at its discretion to join and associate with other entities in joint ventures, partnerships or otherwise for the purpose of leasing, developing, operating and maintaining the Hotel Parcel, or portions of such Parcel; provided that Suzanne Borchers remains fully responsible to the Lessor for the performance of this Agreement as provided herein, and further provided that the Lessor agrees that such joining or associating does not alter the responsibilities of Suzanne Borchers.

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

Lessee shall promptly notify the Lessor of any and all changes whatsoever in the identity of the parties associated with Lessee 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 if there is any significant change (voluntary or involuntary) in the membership, management or control of Lessee or its associates (other than such changes occasioned by the death or incapacity of an individual), that has not been approved by the Lessor at the time of such change. No change in the membership of Lessee shall be deemed

significant provided Suzanne Borchers remains liable for performance of this Agreement.

C. [\$803] Prohibition Against Transfer

For the foregoing reasons, Lessee 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. Such 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, the financial capability and overall competence to operate the conveyed, assigned, subleased or transferred obligations and premises. Approval by the Lessor 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 or transfer. Upon such assumption, Lessee 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 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 use and operation of the Site, nor shall it prohibit granting any security interests expressly allowed in this Agreement for financing purposes. The Lessee may assign this Agreement, without the consent of the Lessor, as additional security to any leasehold mortgagee permitted under Section 901 below.

In the absence of specific written approval by the Lessor, 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 or any other party from any obligations under this Agreement.

Lessee 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 Hotel Parcel for the duration of the Lease Term without the prior approval of the Lessor.

IX. [§900] MORTGAGES

A. [§901] Leasehold Mortgages

Notwithstanding Section 803, at any time and from time to time during the Lease Term, Lessee shall have the right to mortgage, pledge, deed in trust or otherwise encumber this Agreement, or the interest of Lessee 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. Such permitted leasehold mortgage shall cover no interest in any real property other than Lessee'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 in and to the Hotel Parcel.

2. No such leasehold mortgage shall be binding upon the Lessor 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 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 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.

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. Except as otherwise permitted by this Amended Ground Lease, such permitted leasehold mortgages are to be given only to a responsible bona fide institutional lender. For the purposes hereof the term "institutional lender" shall consist 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 thereunder, none of which covenants, conditions and restrictions is or shall be waived by the Lessor by reason of the giving by the Lessee of such leasehold mortgage, except as expressly provided in Sections 900-911 hereof.

Lessee shall not enter into any leasehold mortgage as permitted hereunder without the prior written approval of the Lessor, which approval the Lessor agrees to give if such leasehold mortgage complies with each and all of the terms and conditions referred to in this Section 901.

If Lessee encumbers its leasehold estate by way of a leasehold mortgage as permitted herein, and should the Lessor 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 in the performance of the terms, covenants or conditions hereof until the Lessor 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, or Lessee'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 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 its name and address in writing, no notice of default or notice of termination by Lessor to Lessee 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.

3. In the event Lessee 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 shall accept such performance by or at the instigation of such leasehold mortgagee as if the same had been done by Lessee. No default on the part of Lessee shall be deemed to exist if steps shall in good faith have been commenced promptly by Lessee 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's default to it for remedying the default or causing the same to be remedied, as is given Lessee after notice to it. Lessee hereby constitutes and appoints the leasehold mortgagee Lessee's agent and attorney in fact with full power, in the Lessee's name, place and stead, and at the Lessee'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.

4. While any such leasehold mortgage remains unsatisfied of record, and an event or events shall occur which shall entitle the Lessor 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 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 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 or operation of law, the Lessor 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. 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 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 for the rents specified herein upon the agreements, terms, covenants and conditions thereof. Upon the execution of such new agreement, the new Lessee 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 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 until it obtains possession, such new Lessee shall have a reasonable time after it obtains possession to cure such default. Upon the execution of a new agreement, the Lessor shall allow the new Lessee named therein to have possession and such Lessee shall be entitled to an adjustment in the amount owing to the Lessor equal to the net income (after deduction of the Lessor's reasonable expenses in curing such default) derived by the Lessor 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 elects to terminate this Agreement pursuant to any right of termination resulting from Lessee'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 Lessee 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 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 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 all rents due under this Agreement during any extension period(s); and

(c) Promptly thereafter initiate steps to acquire Lessee'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 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's part to be performed shall be delivered to the Lessor 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, 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 a recordable instrument of assumption wherein such assignee shall assume the rights and obligations of Lessee and agree to perform and observe all covenants and conditions and provisions in this Agreement as they are applicable to the Lessee.

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 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's Right to Cure Lessee's Defaults on Leasehold Mortgages

Lessee 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 of the occurrence of any event of default.

2. That the Lessor 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 may cure said default and the leasehold mortgagee shall accept any payment or performance by the Lessor which is sufficient to cure the default, provided Lessee is given ten (10) days notice of Lessor's intention to cure such default. If the Lessor shall elect to cure such default, Lessee shall pay the cost thereof to the Lessor, 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 shall cure such default within said ten-day period, or (a) compliance requires more than ten (10) days and Lessee 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 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 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. Lessee hereby authorizes the Lessor in the Lessor's name without any obligation

or duty on the Lessor to do any act or thing required of or permitted to the Lessee 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 agrees to indemnify and hold the Lessor harmless and to reimburse the Lessor upon demand for all reasonable costs, charges and expenses incurred by the Lessor in such connection. If Lessee 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 shall give the Lessor written notice thereof by registered or certified mail concurrently with the making of said request and shall further give the Lessor written notice by registered or certified mail of the granting or denial of said request.

D. [\$904] 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.

E. [\$905] 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 long-term permanent loan financing for the Improvements. If a proposed leasehold mortgagee requests any changes or modifications of this Agreement as a condition to making such a loan, the parties agree to cooperate in making 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.

F. [\$906] Mutual Covenants Against Encumbrances

The Lessor hereby covenants and agrees that during the Lease Term the Lessor 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 pursuant to this Agreement. The Lessee covenants that during the Lease Term, the Lessee shall not mortgage or otherwise create any security or other liens or encumbrances upon or affecting the Lessor's fee interest in the Hotel Parcel, provided that nothing herein shall preclude the Lessee from mortgaging or otherwise creating any security or other liens or encumbrances on the Lessee's leasehold interest in the Hotel Parcel as expressly permitted herein.

X. [§1000] INDEMNIFICATION AND INSURANCE

A. [§1001] Indemnification

Lessee hereby agrees to indemnify and hold the Lessor 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 or any other person under Lessee, or any accident or fire on the Hotel Parcel, or any nuisance made or suffered thereon, or any failure by Lessee 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 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 and save the Lessor 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 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 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.

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.

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, City, or Lessee 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, City, or Lessee or its invitees and sublessees, or any person acting for the Lessor, City, or Lessee, or under their respective control or direction.

Such property damage and personal injury insurance shall also provide for and protect the Lessor 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, the City, and their respective officers, employees and consultants, as additional insureds. Lessee 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.

Lessee 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 may be held responsible for the payment of damages to persons or property resulting from Lessee's activities, activities of its invitees and sublessees or the activities of any other person or persons for which Lessee 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 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.

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 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 and the Lessee, 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, the Lessor 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.

Any insurance required to be maintained by Lessee 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.

Copies of such policies shall be deposited with the Lessor 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 fails or refuses to procure or maintain insurance as required by this Agreement, the City or Lessor shall have the right, at City or Lessor's election, and without notice, to procure and maintain such insurance. The premiums paid by the City or Lessor shall be treated as additional rent due from Lessee, to be paid on the first day of the month following the date on which the premiums were paid. The City or Lessor 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 and the Lessor 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, 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 and the Lessor 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 and the Lessor 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 the reduction of its debt, Lessee 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 next following paragraph.

In the event that (i) this Agreement is terminated by mutual agreement of the Lessor, the Lessee and any leasehold mortgagee, or (ii) this Agreement is terminated by Lessee 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, 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, Lessee 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's fee interest in the Hotel Parcel), in order of priority of lien.
2. Second, to any rental payments due to the Lessor under this Agreement up to the date of termination.
3. Third, to the repayment of any tax increment bonds issued in connection with the development of the Site.
4. Fourth, 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 the original Ground Lease and Joint Development Agreement was executed, i.e. a blacktopped, striped parking lot.
5. Fifth, any balance of the proceeds shall belong solely to Lessee.

Lessee hereby waives (to the extent legally permissible) any claim against the City and the Lessor for any loss covered by

insurance of the type specified in paragraph 1 of Section 1002; and Lessee 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, 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, the Lessee and any mortgagee, if a mortgage is then in effect, the interests of the Lessor, Lessee 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 to the Lessor 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 shall have the right with the consent of Lessee to substitute like adjacent property (reasonably satisfactory to the Lessee) 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 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 uses and purposes for which the Hotel Parcel is leased, to the extent the condemnation award or payment is made available to the Lessee 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 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 may again elect to terminate this Agreement.

5. Any condemnation award or payment in lieu thereof shall be paid over jointly to the Lessor, Lessee and any leasehold mortgagee and shall be released to Lessee (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. 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's fee interest in the Hotel Parcel), in order of priority of lien.

B. Second, to any rental payments due under this Agreement up to the date of termination.

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

D. Fourth, any balance of the proceeds shall be distributed to the Lessor and Lessee 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's interest shall be based on the value of the unexpired Lease Term, assuming all renewal options were exercised.

6. Notwithstanding the foregoing provisions of this Section, the Lessor and Lessee 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 (or mortgagee if a mortgage is then in effect) and the Lessor 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 against the Lessor, service of process on the Lessor shall be made by personal service upon the Chairman, Executive Director or Secretary of the Lessor, or in such other manner as may be provided by law.

In the event that any legal action is commenced by the Lessor against Lessee, service of process on Lessee shall be made by personal service upon Lessee or other lawful agent of Lessee or in such manner as may be provided by law, and shall be valid whether made within or without the State of Utah. For purposes of this Amended Ground Lease, Lessee consents to service of process by prepaid registered mail at the address of Lessee's principal office, as specified in Section 108 of this Amended Ground Lease, and waives any right to contest service of process made in this manner.

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 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 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

If Lessee defaults with regard to any of the provisions of this Agreement, the Lessor shall serve written notice of such default upon Lessee. 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, 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;
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 has obtained a faithful performance bond indemnifying the Lessor, Lessor 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 to correct or cause to be corrected said default;
4. Have a receiver appointed to take possession of the Lessee's interest in the Hotel Parcel and the Improvements, with power in said receiver to administer Lessee's interest in the Hotel Parcel and the Improvements, to collect all funds available to Lessee in connection with its operation and maintenance of the Hotel Parcel and the Improvements; and to perform all other acts consistent with Lessee'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 of its intention to do so.

7. Bring an action for an accounting if (but only if) the audited financial statements are not forthcoming as provided in Sections 206 and 212 of this Amended Ground Lease.

The Lessor 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. 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 shall have the right, after thirty (30) days written notice to Lessee, to have any necessary maintenance or repair work done for and at the expense of Lessee and Lessee hereby agrees to pay promptly any and all costs incurred by the Lessor 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 determines that the Hotel Parcel and/or Improvements are not in a decent, safe and sanitary condition the Lessor may at its sole option, without additional notice, require Lessee to file with the Lessor 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 to correct the said unsatisfactory condition. Lessee shall pay the cost of said bond.

The rights reserved in this Section 1209 shall not create any obligations on the Lessor or increase obligations imposed on the Lessor 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] Termination by Lessor

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

H. [§1211] Lessor 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 shall:

1. Use the Hotel Parcel for any purposes other than those provided for in this Agreement;
2. Fail or refuse to pay to the Lessor when due the applicable rents and other sums required by this Agreement to be paid by Lessee;
3. Fail or refuse to pay when due any taxes, assessments or other Impositions as required by this Agreement;
4. 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 under this Agreement, except as specifically provided in this Agreement;
5. Commit or suffer to be committed any waste or impairment of the Hotel Parcel, or the Improvements, or any part thereof;
6. Alter the Improvements in any manner except as expressly permitted by this Agreement;
7. Fail to maintain insurance as required by this Agreement;
8. 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;
9. 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;

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

and any such failure or violation under paragraphs 1-10 above shall not be cured or remedied within sixty (60) days after the date the Lessee received notice from the Lessor of such failure or violation (or, if it is not practicable in the opinion of the Lessor to cure or remedy such failure or violation within such 60-day period, within such longer period as may be specified by the Lessor in such notice); then, in such event, the Lessor 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 re-vest in the Lessor the leasehold interest theretofore transferred to Lessee. The Lessor'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 re-vesting in the Lessor of the leasehold interest in the Hotel Parcel or any part thereof as provided in this Section, the Lessor 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 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), who will assume the obligation of maintaining and operating the Hotel Parcel and Improvements in accordance with the provisions of this Agreement or in such other manner as is appropriate (as determined by the Lessor). Upon such lease or sale of the Hotel Parcel all financing on the Hotel Parcel, including permanent loans shall first be repaid, and the remaining proceeds, if any, shall be applied:

1. First, to reimburse the Lessor on its own behalf for all costs and expenses incurred by the Lessor, 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 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, 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 by the Lessee and its successor or transferee; and

2. Second, to reimburse the Lessee, 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 from the operations of the Hotel Parcel or the improvements thereon.

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

Termination of the Agreement under this Section 1213 shall not relieve Lessee from the obligation to pay any sum due to the Lessor or from any claim for damages against Lessee, including, but not limited to, damages, if any, for loss or rent. The right of termination provided by this Section 1213 is not exclusive and shall be cumulative to all other rights and remedies possessed by the Lessor, and nothing contained herein shall be construed so as to defeat any other rights or remedies to which the Lessor may be entitled.

I. [\$1212] Attorney's Fees and Court Costs

In the event that either the Lessor or Lessee 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. [\$1213] 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

Amended Ground Lease, 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. With respect to this Amended Ground Lease nothing herein shall be construed to alleviate Suzanne Borchers and her husband Victor Borchers of their joint and several personal liability with respect to certain matters more particularly specified to the Assets Purchase Agreement referred to in Section 101 of this Amended Ground Lease.

XIII. [§1300] GENERAL PROVISIONS

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

Formal notices, demands and communications between the Lessor and Lessee shall be deemed sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the Lessor and Lessee as specified in Sections 106 and 108, respectively, of this Amended Ground Lease. 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 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 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 attorneys.

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

No member, official or employee of the City or Lessor shall be personally liable to Lessee, or any successor in interest, in the event of any default or breach by the Lessor, or

for any amount which may become due to Lessee 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 shall not excuse performance by the Lessor); 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 and the Lessee.

F. [\$1306] Inspection of Books and Records

The Lessor has the right to inspect the books and records of Lessee pertaining to the Hotel Parcel as pertinent to the purposes of this Agreement. Lessee also has the right to inspect the books and records of the Lessor pertaining to the Hotel Parcel as pertinent to the purposes of this Agreement.

G. [\$1307] Approvals by the Lessor and Lessee

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

H. [\$1308] Plans and Data

Plans, data, "as-built drawings," and other information regarding the physical structure and arrangement the Hotel Improvements in the possession of either the Lessor or Lessee shall be made available at reasonable times and places when requested of one by the other.

I. [\$1309] Broker's Commission

Neither the Lessor nor the City shall be liable for any real estate commissions or brokerage or finders fees which may arise herefrom. Lessor and Lessee each agrees to indemnify and hold the other harmless from any claim for commissions or brokerage or finders fees based upon any claimed act of the indemnitor.

J. [\$1310] Compliance with Law

Lessee 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.

K. [\$1311] 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'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 101-108, 501, 503, 504, 905, 1201-1208, 1212, 1213, 1301-1311, 1313-1317, and 1400 shall survive and remain in effect for a period of 70 years from the Commencement of the Lease Term.

2. Sections 1002(1) and 1003-1006 shall survive and remain in effect only until the repayment in full of the tax increment bonds issued by Lessor 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.

L. [§1312] Surrender of Property

Upon the expiration or termination of this Agreement pursuant to the terms hereof, it shall be lawful for the Lessor to reenter and repossess the Hotel Parcel and the Improvements thereon without process of law, and Lessee, 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.

M. [§1313] 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.

N. [§1314] 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.

O. [§1315] Recording of This Amended Ground Lease

This Agreement shall be recorded against the Hotel Parcel.

P. [§1316] Covenant of Parking Availability

At all times in which a hotel is being operated on the Hotel Parcel, the Lessor 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 Agreement for Operation, Management and Maintenance of Public Parking Facilities bearing even date herewith. This covenant shall be binding on the Lessor, its successors and assigns, and shall benefit the Lessee, 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.

Q. [§1317] Gender and Plurality

Whenever used herein, the plural and the singular shall be interchangeable and masculine, feminine and neuter genders shall be interchangeable.

XIV. [§1400] ENTIRE AGREEMENT

This Agreement may be executed in counterparts. This Agreement includes three (3) attachments (Attachments 1A, 1B, 1C (which are all part of Attachment No. 1), Attachment No. 2, and Attachment No. 3). This Agreement, including the foregoing attachments, constitutes the entire understanding and agreement of the parties.

This 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 subject matter hereof.

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

XV. [§1500] ESCROW; EFFECTIVE DATE

This Agreement, when executed by Lessee and when authorized and executed by the Lessor, shall be deposited in the Borchers Escrow, and shall be effective as of the Final Closing Date of the Borchers Escrow. The amendment to the Ground Lease and Joint Development Agreement effective as of December 18, 1981

that is reflected and contained herein shall be effective only if the Borchers Escrow closes as provided in the Assets Purchase Agreement.

PROVO CITY REDEVELOPMENT AGENCY

Date: 9-7-88

By Joseph G. Jenkins
Chief Executive Officer

ATTEST:

Date: 9-7-88

Robert W. Clark
Redevelopment Director of
the Provo City Redevelopment
Agency

Date: 9/8/88

By Suzanne Borchers
SUZANNE BORCHERS

City Attorney
APPROVED AS TO FORM AND LEGALITY:

Date: Sept 7, 1988

By Dan J. Breyer

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

On the 8th day of September, 1988, personally appeared before me SUZANNE BORCHERS, one of the signers of the foregoing instrument who, upon her oath, acknowledged to me that she executed the same.

My Commission Expires

9/4/90

Joseph W. Clark
NOTARY PUBLIC

Residing at: Utah

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

On the 11th day of September, 1988, personally appeared before me JOSEPH JENKINS and RONALD MADSEN, who being by me duly sworn did say, each for himself, that they are respectively the Chief Executive Officer and Redevelopment Director of Provo City Redevelopment Agency, and that the within and foregoing instrument was signed in behalf of said Agency by authority of a resolution of its governing board 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.

Betty Briggs
NOTARY PUBLIC
Residing at: Provo, Utah

My Commission Expires:

7-22-91

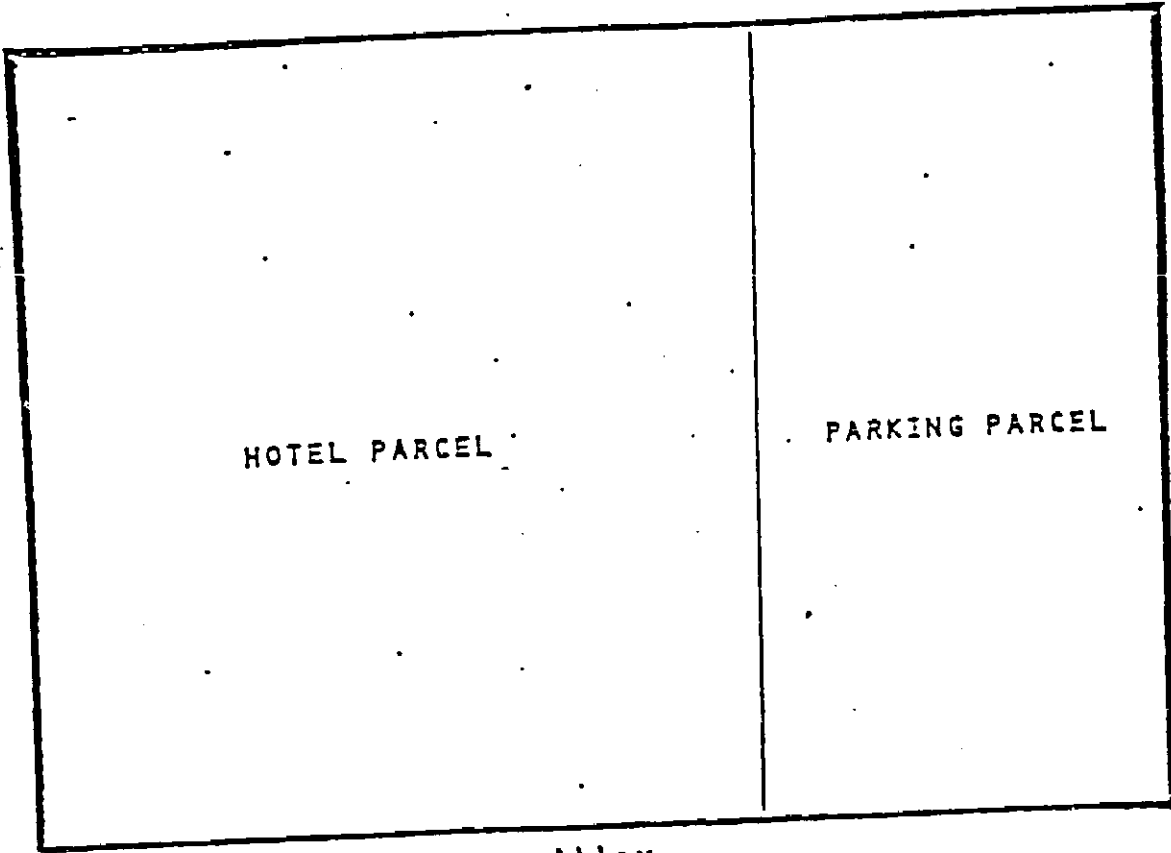
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ATTACHMENT 1A

ENT36310 BK 2561 PG 199

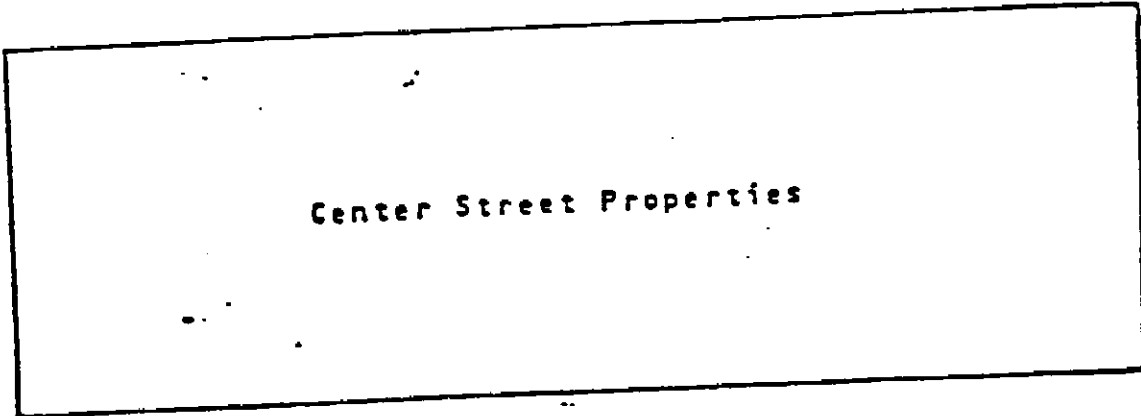
100 NORTH STREET



200 WEST ST.

100 WEST STREET

Alley



Center Street Properties

CENTER STREET

06265E

SITE BOUNDARIES PRO

Ⓜ NORTH

ATTACHMENT NO. 1B

LEGAL DESCRIPTION OF THE SITEPARKING STRUCTURE SITE (AS BUILT):

Beginning at the Northeast Corner of Block 68, Plat "A", Provo City Survey of Building Lots, Provo, Utah; thence South 0°05' West along the West right-of-way line (as constructed) of 100 West Street, Provo, 268.60 feet; thence North 89°51'50" West along a line parallel with the North right-of-way line (as constructed) of Center Street, Provo, 120.00 feet; thence North 0°05' East along a line parallel with the West right-of-way line of said 100 West Street, 268.31 feet; to the South right-of-way line of 100 North Street; thence East along the South right-of-way line (as constructed) of said 100 North Street, 120.00 feet to the point of beginning.

HOTEL BUILDING SITE (AS BUILT):

Beginning at a point West along the South right-of-way line (as constructed) of 100 North Street, Provo, Utah, 120.00 feet from the Northeast Corner of Block 68, Plat "A", Provo City Survey of Building Lots, Provo, Utah; thence South 0°05' West along a line parallel with the West right-of-way line (as constructed) of 100 West Street, Provo, 268.31 feet; thence North 89°51'50" West along a line parallel with the North right-of-way line (as constructed) of Center Street, Provo, 180.27 feet; thence North 0°08'10" West 16.50 feet; thence North 89°51'50" West along a line parallel with the North right-of-way line (as constructed) of said Center Street, 99.97 feet to the East right-of-way line (as constructed) of 200 West Street, Provo; thence North 0°04' East along the East right-of-way line (as constructed) of said 200 West Street, 284.15 feet to the Northwest Corner of said Block 68, Plat "A", Provo City Survey, and the South right-of-way line (as constructed) of said 100 North Street; thence East along the South right-of-way line (as constructed) of said 100 North Street, 280.34 feet to the point of beginning.

ATTACHMENT NO. 1C

LEGAL DESCRIPTION OF THE HOTEL PARCELHOTEL BUILDING SITE (AS BUILT):

Beginning at a point West along the South right-of-way line (as constructed) of 100 North Street, Provo, Utah, 120.00 feet from the Northeast Corner of Block 68, Plat "A", Provo City Survey of Building Lots, Provo, Utah; thence South $0^{\circ}05'$ West along a line parallel with the West right-of-way line (as constructed) of 100 West Street, Provo, 268.31 feet; thence North $89^{\circ}51'50''$ West along a line parallel with the North right-of-way line (as constructed) of Center Street, Provo, 180.27 feet; thence North $0^{\circ}08'10''$ West 16.50 feet; thence North $89^{\circ}51'50''$ West along a line parallel with the North right-of-way line (as constructed) of said Center Street, 99.97 feet to the East right-of-way line (as constructed) of 200 West Street, Provo; thence North $0^{\circ}04'$ East along the East right-of-way line (as constructed) of said 200 West Street, 284.15 feet to the Northwest Corner of said Block 68, Plat "A", Provo City Survey, and the South right-of-way line (as constructed) of said 100 North Street; thence East along the South right-of-way line (as constructed) of said 100 North Street, 280.34 feet to the point of beginning.

ATTACHMENT NO. 2

PARKING FACILITY

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 for the Lessor pursuant to an Amended Operation, Management and Maintenance Agreement with the Lessor (the "Amended Parking Agreement"). Said Amended Parking 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's option.
2. Lessee shall receive a management fee of twenty-five percent (25%) of the net profit from the Public Parking Facilities. The Lessor shall receive all other revenues from the Public Parking Facilities, after payment of operating expenses. Both the Lessee and the Lessor will be required to fund reserve funds as more particularly described in the Parking Agreement before they may use their respective shares of profit for other purposes.
3. Lessee shall maintain, manage and operate the Public Parking Facilities.
4. Parking rates will be set by the Lessee subject to disapproval by the Lessor, which disapproval cannot be unreasonable.

ATTACHMENT NO. 3

DESCRIPTION OF HOTEL IMPROVEMENTS AND SITE REQUIREMENTS

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

I. DEVELOPMENT OF HOTEL PARCEL

A. Hotel Improvements

There has been developed on the Hotel Parcel a full service, high quality hotel structure with convention and meeting facilities, restaurant, a cocktail lounge, a related and compatible service, recreational and retail facilities customarily located in a hotel development. The Hotel Improvements include:

(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, maintenance and operation of the Improvements described.

B. Architecture and Design

The buildings on the Hotel Parcel are of high architectural quality with landscaped areas. The structures have been effectively and aesthetically designed. The shape, scale of volume, exterior design, and exterior finish of each building are consonant with, visually related to, physically related to, and an enhancement to each other.

C. Landscaping

Landscaping has been installed and shall be maintained by Lessee 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'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 and are subject to the approval of lessor, 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. Existing signs as of the date of this Amended Ground Lease have been approved.

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 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 have been approved by Lessor and any additional curb breaks, if any are desired in the future, shall be approved by the Lessor.

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 in existence as of the date of this Amended Ground Lease have been approved by the Lessor, and any changes must be approved by Lessor.

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 has (at its cost) designed, constructed, and installed, water and sewer facilities so located and of adequate capacities to serve the buildings and improvements on the Site.

The locations, capacities, and extent of such improvements were determined by the City and the Lessor and the determination of the City and Lessor in this regard have been reasonable.

B. Public Parking Facilities

Concurrently with the construction of the Hotel on the Hotel Parcel, the Lessor constructed a public parking structure ("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.

The Public Parking Facilities are interrelated in a design, physical, operational and economic manner with the improvements on the Hotel Parcel.

Lessee shall operate, manage and maintain to the satisfaction of the Lessor 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 and Lessee. The Lessor and Lessee 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 and the Lessee shall grant and permit all necessary and appropriate easements and rights for any further 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 draining, water, electrical power, telephone, natural gas, etc.