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CENTRAL BUSINESS DISTRICT
REDEVELOPMENT PROJECT
PROVO, UTAH

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

By and Between

PROVO CITY REDEVELOPMENT AGENCY,
Agency

And

SUZANNE BORCHERDS,
Parking Operator

September 8, 1988
~~August~~

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

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

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

W I T N E S S E T H

WHEREAS, the Agency is implementing the Redevelopment Plan for the Central Business District Redevelopment Project (the "Redevelopment Plan"), approved and adopted on November 9, 1976 by Ordinance No. 475, and readopted with larger boundaries on July 18, 1979 by Ordinance No. 711 of the City Commission of Provo City Corporation; and

WHEREAS, the Agency and Provo Excelsior Limited (as Lessee-Developer) entered into a Ground Lease and Joint Development Agreement, as amended (the "Original Ground Lease") with an effective date of December 18, 1981 for the purpose of (1) the Lessee-Developer leasing from the Lessor-Agency certain real property known as the "Hotel Parcel"; (2) the Lessee-Developer constructing on the Hotel Parcel a full service, first class hotel facility; and (3) the Agency constructing on certain real property known as the "Parking Parcel" a parking facility composed of structured parking for approximately 400 cars (the "Public Parking Facility") using proceeds of a tax increment bond issue, federal CDBG funds, and other sources; and

WHEREAS, the Public Parking Facility, consisting of approximately 400 structured parking spaces has been constructed on the Parking Parcel adjacent to the Hotel Parcel, which Parking Parcel and Hotel Parcel are shown on the Site Map attached hereto and incorporated herein as Attachment No. 1A and are more particularly described as the Parking Structure Site in the Legal Description which is attached hereto and incorporated herein as Attachment No. 1B; and

WHEREAS, Provo Excelsior Limited entered into an Agreement for Operation, Management and Maintenance of Parking Facilities (the "Original Parking Agreement") with an effective date of December 18, 1981; and

WHEREAS, as a result of alleged defaults under certain financial encumbrances on the assets of Provo Excelsior Limited subject to the Original Ground Lease, the Agency, Provo City Corporation (the "City") and Provo Excelsior Limited, among many others, have been involved in litigation; and

WHEREAS, as part of the settlement of said litigation, Provo Excelsior Limited desires to sell and assign all of its right, title and interest in and to the Original Ground Lease and

the Original Parking Agreement to Suzanne Borchers pursuant to that certain Assets Purchase Agreement dated _____, 1988 between Suzanne Borchers as purchaser and Provo Excelsior Limited as seller (the "Assets Purchase Agreement"), and pursuant to that certain Assignment Agreement between Suzanne Borchers as assignee and Provo Excelsior Limited as assignor of even date with the Assets Purchase Agreement (the "Assignment"), and to amend the said Original Ground Lease and Original Parking Agreement effective as of the Final Closing Date of the Escrow established in accordance with Paragraph 3 of the Assets Purchase Agreement (the "Borchers Escrow"); and

WHEREAS, the City and the Agency are willing to consent to the aforesaid assignment and amendment of the Original Ground Lease; and said amendment is reflected and incorporated in that certain Amended Ground Lease dated as of the Final Closing Date of the Borchers Escrow (the "Amended Ground Lease"); and

WHEREAS, the City and the Agency are willing to consent to the aforesaid assignment and amendment of the Original Parking Agreement, and said amendment is reflected and incorporated in this Amended Parking Agreement (the "Amended Parking Agreement") which is to be effective as of the Final Closing Date of the Borchers Escrow; and

WHEREAS, the use, maintenance, and ongoing operation of the Public Parking Facility in the effectuation of the Redevelopment Plan are in the vital and best interest of the City and the health, safety, morals and welfare of its residents and in accord with the public purposes of applicable provisions of federal, state and local laws and requirements;

NOW, THEREFORE, in consideration of the mutual promises and agreement herein contained, the parties hereto agree to the assignment of the Original Parking Agreement to Suzanne Borchers and to the amendment of the Original Parking Agreement as embodied in this Amended Parking Agreement.

SECTION I. PARTIES TO THE AGREEMENT

A. The Agency

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

The principal office of the Agency is located at 152 West Center Street, Provo, Utah 84601.

B. The City

The City is a municipal corporation 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, 351 West Center Street, Provo, Utah 84601.

C. The Parking Operator

The Parking Operator is Suzanne Borchers, a private individual residing in Alpine, Utah. The principal office of the Parking Operator is 1450 East 300 North, Provo, Utah 84601, or such other address of which she shall notify the Agency in writing.

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

SECTION II. CONDITION OF THE PUBLIC PARKING FACILITY

The Parking Operator accepts the Public Parking Facility in an "as is" condition, and shall not hold the Agency or the City responsible for any defects in the construction or present condition of the Public Parking Facility.

SECTION III. OPERATION, MANAGEMENT AND MAINTENANCE OF PUBLIC PARKING FACILITY

The Parking Operator hereby agrees to operate, manage and maintain the Public Parking Facility for the Agency and the Agency agrees to have the Parking Operator operate, manage, and maintain the Public Parking Facility on the terms and conditions hereinafter set forth. Except when the context otherwise requires, the term "Public Parking Facility" as used throughout this Agreement shall mean the structure located on the Parking Parcel as of the effective date of this Amended Parking Agreement or any replacement structure or structures.

During the term of this Amended Parking Agreement, the Parking Operator shall have the right and the responsibility to manage, operate, repair, and maintain the Public Parking Facility in good order, condition, and repair for general public parking and for the use of members of the public patronizing (and employees of) the Hotel and businesses in the surrounding area. Two hundred parkingspaces may be reserved by the Parking Operator solely for the use of Hotel guests, visitors and employees. The responsibility to manage, operate, maintain, and repair shall include: (1) maintenance; (2) administration; (3) provision of all required insurance (except as otherwise provided in Sections VI and X of this Agreement); (4) payment for utilities (except as

otherwise provided in Section VI of this Agreement); (5) repairs; (6) payment of any and all taxes, levies and assessments for state, local, federal or other governmental impositions, including but not limited to ad valorem real property taxes, personal property taxes, and other fees, excises, taxes, levies, or assessments upon or against the Parking Operator's interest in the Public Parking Facility or arising because of this Amended Parking Agreement and any fines, penalties, or interest on the foregoing (collectively referred to herein as "Parking Operator's Tax Liabilities"); and (7) provision of needed labor. The Parking Operator's costs in managing, operating, maintaining, and repairing the Public Parking Facility as just described shall be paid out of operating revenues, as more particularly described in Section VI of this Amended Parking Agreement.

The Public Parking Facility's maintenance shall include but not be limited to: periodic cleaning of all parking areas; maintenance of all parking gates, signals, signs and safety apparatus; maintenance of all electrical lines and outlets; maintenance of all water pipes; and periodic repair and maintenance of garage floor surfaces including ramps and other public areas; but shall in no event include any structural repairs, alterations or improvements. The Agency shall be responsible for such structural repairs, alterations or improvements only to the extent of insurance proceeds. The parties' responsibilities in the event replacement becomes necessary are specified in Section VII of this Agreement. Nothing herein shall obligate the Parking Operator to pay any debt service on any loans to the City or the Agency secured by mortgages on the Parking Parcel or the Public Parking Facility.

SECTION IV. TERM OF PARKING AGREEMENT

A. Term of Parking Agreement

The term of this Amended Parking Agreement (the "Parking Agreement Term") shall commence on the Final Closing Date of the Borchers Escrow (hereinafter referred to as the "Commencement Date"). The Parking Agreement Term shall terminate on the date on which the initial 50-year term of the Original Ground Lease will terminate, unless extended or sooner terminated as provided herein, in which case the Parking Agreement Term shall terminate at the end of such extensions or at the time sooner terminated. The words "Parking Agreement Term" shall also be deemed to include such extended periods of time resulting from the exercise of the renewal options below.

B. Option to Renew this Parking Agreement

The Parking Operator may, at its option, renew this Amended Parking Agreement for two (2) additional periods of ten (10) years each, subject to all the provisions of this Amended

Parking Agreement. Parking Operator's right to the option to renew is subject to the following conditions:

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

(2) Parking Operator must not be in default under any provision of this Amended Parking Agreement at the time notice of intent to renew is given or on the last day of the existing term or renewed term of this Amended Parking Agreement, and this Amended Parking Agreement must not have been terminated.

(3) Parking Operator must have the right to renew the Amended Ground Lease and must concurrently do so, or Parking Operator must have obtained title to the Hotel Parcel. In lieu of executing a new Parking Agreement for each additional ten (10) year period, each party shall, at the request of the other, endorse on an original of this Amended Parking Agreement or on a true copy of this original Amended Parking Agreement that party's signature or signatures, the date the option was exercised, and the words "OPTION EXERCISED". Each party shall, at the request of the other, execute a memorandum, in recordable form, acknowledging the fact that the option has been exercised and otherwise complying with the requirements of law for an effective memorandum or abstract of Parking Agreement.

C. Other Events Affecting Term

The Parking Operator may not assign, transfer or sell its interest in this Amended Parking Agreement without the consent of the Agency, except that any assignment, transfer, sale or sublease of the Parking Operator's interest as Lessee in and to the Amended Ground Lease, to which the Agency has consented or which is otherwise in accordance with the terms of the Amended Ground Lease, shall be deemed to be an assignment of the Parking Operator's interest in this Amended Parking Agreement to such assignee, transferee, purchaser or sublessee without further consent of the Agency. Nothing herein shall be construed to require the Agency to consent to any assignment, transfer, or sale of the Parking Operator's interest in this Amended Parking Agreement to any person or entity if the Parking Operator's interest in the Amended Ground Lease is not being simultaneously assigned, transferred, sold or subleased to the same person or entity.

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

SECTION V. USE; COVENANT OF PARKING AVAILABILITY

A. Use

The Public Parking Facility shall be open to use by the general public. In addition, the Public Parking Facility may be used by the Parking Operator hereunder to provide public parking for members of the general public patronizing (and employees of) the Hotel and businesses in the surrounding area. However, the Parking Operator is entitled to reserve 200 parking spaces for the exclusive use of Hotel guests, visitors and employees. For purposes of apportioning any costs or liabilities between the Parking Operator where the basis for apportionment relates to the number of spaces in the Public Parking Facility, the Parking Operator's share shall be determined on the basis of the 200 parking spaces the Parking Operator is entitled to reserve, or such other figure as the Parking Operator and the Agency mutually agree in writing that the Parking Operator is entitled to reserve, regardless of the number of spaces actually used exclusively by Hotel guests, visitors, and employees.

B. Covenant of Parking Availability

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

C. Dedication of Public Parking Facility to City

At any time during the Parking Agreement Term, Agency shall have the right to dedicate, assign, convey, or otherwise transfer to the City any or all of its interest in all or any portion of the Public Parking Facility. Any such dedication,

assignment, conveyance, or other transfer shall be subject to the provisions of this Amended Parking Agreement and shall obligate the City to comply with the terms hereof.

The City shall have the right to create one or more parking districts in the vicinity of the Public Parking Facility pursuant to the Utah Parking and Business Improvement District Act (Chapter 24 of Title 11 of the Utah Code of 1953, as amended). Such district or districts may or may not include the Public Parking Facility. The Parking Operator shall not object to the creation of any parking district in which the Hotel and the Public Parking Facility are not included. The Parking Operator shall also not object to any parking district so long as any assessments imposed thereby on the Hotel Parcel or the Parking Parcel (as shown and described in Attachment No. 1A and Attachment No. 1B to this Agreement) do not impose a disproportionate share of total cost of the district on the Hotel and the Parking Parcel, taking into account the costs the Parking Operator incurs in fulfilling its obligations under this Amended Parking Agreement and the cost savings accruing to the Parking Operator as a result of participation in the district. With the consent of the Agency, which consent shall not be unreasonably withheld, the Parking Operator may elect to fulfill part or all of its obligations under this Agreement by participation in a parking district. For example, maintenance costs on the Public Parking Facility might be turned over to a parking district, in which case assessments could be imposed on the Hotel, the Hotel Parcel, the Public Parking Facility and/or the Parking Parcel, and the Lessee under the Amended Ground Lease or the Parking Operator would be responsible for the payment of all such assessments. Failure to pay such assessments before they become delinquent shall constitute an event of default under this Amended Parking Agreement. Nothing herein shall be construed as preventing the City from imposing Parking District Assessments on the Hotel Parcel and/or the Parking Parcel as provided in Section VII hereof. The Parking Operator shall cooperate with any system of coordinated Parking District operation and validation, if requested to do so in writing by the City or the Agency, or their duly authorized representative.

SECTION VI. MANAGEMENT FEE AND DISTRIBUTION OF REVENUES FROM PUBLIC PARKING FACILITY

A. Gross Revenues

As used herein, "Gross Revenues" shall mean all revenues and receipts of every kind collected by Parking Operator from operating the Public Parking Facility including, but not limited to, income and proceeds (from both cash and credit transactions), after commissions and discounts for prompt or cash payments, from the rental of any and all space within the Public Parking Facility, from any business interruption or other loss of income

insurance (if any), and from any other source or activities within the Public Parking Facility. "Gross Revenues" shall not include (1) gratuities to employees of Parking Operator or of the Hotel; (2) commissions or discounts for prompt or cash payments; (3) proceeds of loans, whether from the Parking Operator to fund operating deficits or from other sources, whether secured or unsecured; (4) condemnation awards or payments in lieu thereof; (5) bad debts; or (6) insurance proceeds (except for insurance proceeds specifically relating to business interruption or other loss of income, if any).

B. After Expense Revenue, Operating Expenses

As used herein, "After Expense Revenue" shall mean Gross Revenues less Operating Expenses. For purposes of this Agreement, "Operating Expenses" means the following expenses: (a) insurance premiums and expenses; (b) payment of any and all taxes, levies and assessments for state, local, federal or other governmental impositions, including but not limited to ad valorem real property taxes, personal property taxes, sales or use taxes, and other fees, excises, taxes, levies, or assessments upon or against the Parking Operator's or Agency's interest in the Public Parking Facility and any fines, penalties, or interest on the foregoing (collectively referred to as "Parking Operator's Tax Liabilities"); (c) utilities; (d) repairs; (e) routine operations and maintenance; (f) labor; (g) repayment of the principal of loans or advances made by Parking Operator (but not the Parking Operator's predecessor in interest) to fund operating deficits (i.e., deficits that result when expenditures in categories (a) through (f) in this paragraph exceed Gross Revenues); and (h) repayment of loans or advances made or caused to be made by the Agency for insurance ("Agency Insurance Advances") and electricity ("Agency Electricity Advances") as more particularly provided in paragraph (E) of this Section VI. Operating Expenses in categories (a) through (f) are referred to hereinafter as "Pre-Reimbursement Expenses." Operating Expenses in category (g) are referred to hereinafter as "Parking Operator Reimbursement Expenses" and those in category (h) as "Agency Reimbursement Expenses;" categories (g) and (h) are referred to collectively as "Reimbursement Expenses."

C. Net Profit

As used herein, "Net Profit" shall mean After Expense Revenue less required contributions into the Operations and Repair Reserve Fund and the Public Parking Reserve Fund as provided in paragraphs (H) and (I) of this Section VI.

D. Elimination of Minimum Monthly Fee and Deferred Fees

The parties acknowledge and agree that there has never been sufficient revenue from the commencement of the Original Parking Agreement to the effective date of this Amended Parking Agreement to pay the Parking Operator's predecessor in interest the Minimum Monthly Fee as provided in Section VI of the Original Parking Agreement, and neither the Parking Operator nor the Parking Operator's predecessor in interest have any claim to payment of deferred Minimum Monthly Fee as defined in the Original Parking Agreement. The parties have expressly hereby agreed to amend the Original Parking Agreement to eliminate the Minimum Monthly Fee and any liability for deferred Minimum Monthly Fees.

E. Payment of Costs and Funding Operating Deficits Resulting From Operation, Management and Maintenance of the Public Parking Facility

1. Operating Expenses Paid From Gross Revenues. Except as otherwise provided herein, Parking Operator shall pay out of Gross Revenues all costs and expenses incurred in operating, managing, and maintaining the Public Parking Facility.

2. Agency Insurance Advances. During the Parking Agreement Term, the Agency shall maintain, or cause to be maintained, fire and extended coverage property damage insurance in an amount at least equal to 100% of the replacement cost of the Public Parking Facility (as more particularly prescribed in Section X of this Agreement). Amounts advanced or caused to be advanced for this purpose are referred to herein as "Agency Insurance Advances").

3. Monthly Statements. Within thirty (30) days after the end of each calendar month, the Parking Operator shall submit to the Agency a statement of the Gross Revenues, Operating Expenses, After Expense Revenue, Status of Reserve Funds, and Net Profit resulting from operating, managing, and maintaining the Public Parking Facility (the "Monthly Statement"). The Monthly Statement shall show both the figures for the immediately preceding month and year-to-date figures for the current calendar year.

4. Status of Reserve Funds. The statement of the Status of Reserve Funds shall summarize payments to, earnings on, withdrawals from, and month-end balances of the Operations and Repair Reserve Fund and the Public Parking Reserve Fund created pursuant to paragraphs (H) and (I), respectively, of this Section VI.

5. Electricity Advances. To the extent that year-to-date Gross Revenues are less than year-to-date Pre-Reimbursement Expenses (exclusive of Agency Insurance Advances), the Agency shall advance or cause to be advanced an amount (an "Electricity Advance") which, when added to such Electricity Advances made with respect to prior months of the same calendar year, shall equal the lesser of the product of the Agency Percentage multiplied by the year-to-date electricity expense for the Public Parking Facility, or the amount by which year-to-date Pre-Reimbursement Expenses (exclusive of Agency Insurance Advances) exceed year-to-date Gross Revenues. For purposes of this paragraph, the Agency Percentage shall be computed by subtracting the number of spaces the Parking Operator is entitled to reserve in the Public Parking Facility from the total number of spaces in the Public Parking Facility; dividing the difference by the total number of spaces in the Public Parking Facility; and multiplying the quotient by one hundred (100). The Agency shall have the right to make Electricity Advances by arranging to have the Public Parking Facility's account with the local electrical utility credited in the amount of the relevant advance.

6. Parking Operator Advances. Parking Operator shall fund any operating deficits to the extent that Pre-Reimbursement Expenses, less Agency Insurance Advances and Agency Electrical Advances, exceed Gross Revenues. Amounts required in connection with such funding of operating deficits are referred to hereinafter as "Parking Operator Advances."

F. Financial Records and Audits.

The Parking Operator shall keep full and accurate books and accounts, records, cash receipts, and other pertinent data showing the financial operations of the Public Parking Facility. Such books of account, records, cash receipts, and other pertinent data shall be kept for a period of five (5) years after the end of the calendar year to which such items pertain. The Agency shall be entitled during such five (5) years to inspect, examine and to copy at Agency's expense Parking Operator's books of account, records, cash receipts, and other pertinent data as necessary or appropriate for the purposes of this Amended Parking Agreement. Parking Operator shall cooperate fully with the Agency in making the inspection. Within one hundred twenty (120) days after the expiration of each calendar year during the Parking Agreement Term, Parking Operator shall obtain and submit to the Agency, at Parking Operator's own expense, an audit of Parking Operator's receipts and expenses with respect to the Public Parking Facility prepared by an independent certified public accountant licensed in Utah selected by the Parking Operator and approved by the Agency, such approval not to be unreasonably withheld. This audit may be part of the audit required pursuant to § 212 of the Amended Ground Lease. In connection with the annual audit, insurance coverage shall be reviewed by the Agency and the Parking Operator to make

certain that coverage is adequate and in force, as required in Section X of this Amended Parking Agreement.

G. Disposition of Funds; Annual Settlement.

1. Disposition of Funds. Within fifteen (15) days after submission of the independent audit required by this paragraph, or within one hundred thirty-five (135) days after the expiration of each calendar year during the Parking Agreement Term, whichever date is earlier, to the extent that Gross Revenues exceed Pre-Reimbursement Expenses that have already been paid for the preceding calendar year, the Parking Operator shall make the following payments and adjustments in the order specified (proceeding until Gross Revenues are exhausted), to finalize the disposition of Gross Revenues for the preceding year:

- (a) If the product of the Agency Percentage multiplied by actual electrical costs for the preceding year is less than the total of the Agency's Electricity Advances actually made during the prior year, the Agency shall be paid the difference.
- (b) Agency Insurance Advances, Agency Electricity Advances, and Parking Operator Advances for the immediately preceding year and previous years (collectively referred to herein as "Prior Year Advances") shall be reimbursed on the following basis: the total principal amount of Prior Year Advances for each of the Agency and the Parking Operator shall be computed; then each shall be paid the lesser of fifty percent (50%) of remaining Gross Revenues or the total amount of the Advances made by the party who has advanced the least; then the party who has advanced the most shall be paid the lesser of remaining Gross Revenues or the remaining unpaid balance of that party's Prior Year Advances. Neither party shall be entitled to interest on Prior Year Advances.
- (c) The amount of Gross Revenues remaining (if any) after the foregoing payments and adjustments have been made should equal After Expense Revenue. If this is not the case, any additional adjustments that are necessary shall be made.
- (d) The Parking Operator's Share of After Expense Revenue shall be paid into the Operations and Repair Reserve Fund until said fund contains Fifty Thousand Dollars (\$50,000). Any remaining portion of the Parking Operator's Share of After Expense

Revenue constitutes the Parking Operator's Net Profit, and may be retained by the Parking Operator.

- (e) The Agency's Share of After Expense Revenue shall be paid into the Public Parking Reserve Fund until said fund contains one million dollars (\$1,000,000). Any remaining portion of the Agency's Share of After Expense Revenue constitutes the Agency's Net Profit, and shall be paid by the Parking Operator to the Agency.

2. Parking Operator's Share. As used herein, the term "Parking Operator's Share" shall mean fifty percent (50%) from the Commencement Date of this Amended Parking Agreement until December 31, 1991, and thereafter twenty-five percent (25%).

3. Agency's Share. As used herein, the term "Agency's Share" shall mean fifty percent (50%) from the Commencement Date of this Amended Parking Agreement until December 31, 1991, and thereafter seventy-five percent (75%).

4. Annual Settlement. The process of completing the foregoing disposition of funds shall be referred to as the "Annual Settlement". Following the Annual Settlement, Monthly Statements for the calendar year during which the Annual Settlement occurs (i.e., the calendar year following the one to which the Annual Settlement relates) shall be revised as needed to conform with the Annual Settlement. For example, starting balances for year-to-date figures may need to be altered to conform to final determinations made in connection with the annual audit and the Annual Settlement; reserve fund balances may change, etc.

5. No Early Reimbursement of Reimbursement Expenses. Reimbursement of advances for Reimbursement Expenses (Agency Insurance Advances, Agency Electricity Advances, and Parking Operator Advances), if any, whether for the current year, or for previous years, shall be made only at the the Annual Settlement for the year during which they were made, or at succeeding Annual Settlements, unless the parties consent in writing to an earlier reimbursement. Such consent shall not be unreasonably withheld if it appears reasonably certain that sufficient Gross Revenues will be available to make such a reimbursement at the next Annual Settlement.

H. Operations and Repair Reserve Fund.

There shall be created pursuant to this Amended Parking Agreement an Operations and Repair Reserve Fund. This Fund shall be maintained in bank control account with a bank that is acceptable to the Parking Operator and the Agency, qualified to do business in the state of Utah, and independent of both the

Agency and the Parking Operator (the "Operating Fund Bank"). The Parking Operator's Share of After Expense Revenue shall be paid into this Fund each year until the Fund contains Fifty Thousand Dollars (\$50,000), as provided above. Nothing herein shall be construed as precluding the Parking Operator from maintaining amounts in excess of Fifty Thousand Dollars (\$50,000) in the Operations and Repair Reserve Fund. To the extent that earnings on monies in the Operations and Repair Reserve Fund result in a balance in the fund in excess of Fifty Thousand Dollars (\$50,000), such excess may be paid to the Parking Operator as a portion of the Parking Operator's Net Profit without requiring any consent or authorization from the Agency. The Parking Operator may obtain monies from the Operations and Repair Reserve Fund upon submitting to the Operating Fund Bank a draw request signed by an authorized representative of the Parking Operator and of the Agency certifying in writing that:

(1) Gross Revenues on hand at the time of the certification are insufficient to defray Operating Expenses that have been incurred as of the date of the draw request, and that the Operating Expenses to be paid are due and payable and have been incurred in operating, maintaining or repairing the Public Parking Facility, or that the amount requested is needed to contribute toward the Parking Operator's share of replacing the Public Parking Facility ("Replacement Costs"); and

(2) written invoices or bills submitted with the draw request represent true and valid Operating Expenses or Replacement Costs and substantiate all costs for which the draw request is made; and

(3) to the best knowledge of the Agency, as of a date not more than fifteen (15) days before the draw request, no delinquency exists with respect to Parking Operator's Tax Liabilities, and in the reasonable judgment of the Agency, sufficient funds will remain in the Operations and Repair Reserve Fund after making the requested disbursement(s) to pay all Parking Operator's Tax Liabilities that have accrued but are not yet due and payable in the current tax year.

In the event that any of Parking Operator's Tax Liabilities are delinquent, either the Parking Operator or the Agency, without obtaining the consent or any authorization of the other but only after notifying the other, may obtain a check drawn on the Operations and Repair Reserve Fund made payable to the appropriate taxing entity or entities to pay part or all of Parking Operator's Tax Liabilities, but only to the extent a sufficient amount is available in the Fund to do so.

If the Agency does not object in writing to a particular draw request and file the written objection with the Operating Fund Bank within thirty days of receiving the draw request, the Agency shall be deemed to have approved the draw request. The Operating Fund Bank shall make payment on such a draw request only after receiving proof that the Agency was given thirty days to object to the draw request. Proof of delivery by the U.S. Postal Service shall suffice for this purpose.

Nothing herein shall be construed as requiring funds in excess of the amount on deposit in the Operations and Repair Reserve Fund to be paid on any draw request.

All costs of the Operations and Repair Reserve Fund shall be paid either out of monies on deposit in that Fund or by the Parking Operator.

In the event this Amended Parking Agreement is assigned to another party, the Parking Operator's interest in the Operations and Repair Reserve Fund at the time of the assignment shall be assigned to that other party.

I. Public Parking Reserve Fund.

There shall be created pursuant to this Amended Parking Agreement a Public Parking Reserve Fund. This Fund shall be maintained either in a bank control account with a bank that is acceptable to the Parking Operator and the Agency, qualified to do business in the state of Utah, or in an account with the Utah State Treasurer (the "Parking Fund Institution"). The Agency's Share of After Expense Revenue shall be paid into this Fund each year until the Fund contains One Million Dollars (\$1,000,000), as provided above. To the extent that earnings on monies in the Public Parking Reserve Fund result in a balance in the fund in excess of One Million Dollars (\$1,000,000), such excess may be paid to the Agency as a portion of the Agency's Net Profit. Nothing herein shall be construed to preclude the Agency from maintaining amounts in excess of One Million Dollars (\$1,000,000) in the Public Parking Reserve Fund. The Agency may withdraw funds from the Public Parking Reserve Fund upon certifying in writing to the Parking Fund Institution that amounts in the Fund are needed to make payments to prevent default on tax increment bonds issued in furtherance of the Redevelopment Plan (or to meet obligations of the City or the Agency incurred with respect to said bonds), to construct or maintain other parking facilities in Provo, or to pay the Agency's or the City's portion of the costs of building parking facilities designed to replace the Public Parking Facility. The Parking Fund Institution shall thereupon disburse funds from the Public Parking Reserve Fund in the amount that the Agency certifies is needed for the foregoing purposes, or to the extent of the balance remaining in the Public Parking Reserve Fund, whichever is less. Nothing herein shall be construed as

requiring the Agency or the City to contribute toward the replacement cost of the two hundred (200) parking spaces the Parking Operator shall have a right to have constructed on the Parking Parcel in the event that replacement of the Public Parking Facility becomes necessary.

All costs of the Operations and Repair Reserve Fund shall be paid either out of monies on deposit in that Fund or by the Parking Operator.

J. Investment of Monies in Reserve Funds.

Monies on deposit in the Operations and Repair Reserve Fund and the Public Parking Reserve Fund may be invested only in Permitted Investments, which shall mean and include only investments which institutional trustees in the state of Utah are permitted to make pursuant to Chapter 5 of Title 7 of the Utah Code of 1953, as amended. In addition, Permitted Investments shall mean and include only investments to which neither the Parking Operator nor the Agency objects. With respect to the Public Parking Reserve Fund, Permitted Investments shall additionally mean and include only investments or securities which could qualify as legal investments for funds of the Agency under Section 51-7-11 of the Utah Code of 1953, as amended. In addition, all monies held in the aforesaid funds may be invested only subject to the following restrictions:

(a) Monies in the two Funds shall be invested only in obligations which will by their terms mature not later than the earlier of the dates that either the Parking Operator or the Agency reasonably estimates the monies represented by the particular investment will be needed for payment of Operating Expenses, Replacement Costs, or Parking Operator's Tax Liabilities.

(b) Obligations purchased as an investment of monies in either of the two Funds shall be deemed at all times to be a part of such Fund or Funds and any loss resulting from any such authorized investment shall be charged to such fund without liability to the Agency or the members and officers thereof, to the Parking Operator, to the Operating Fund Bank, or to the Parking Fund Institution. The interest accruing on such investments and any gain realized in connection with the respective Funds shall be held and deposited in the respective Funds as provided in this Section VI. For the purpose of determining at any given time the balance in either Fund, any investment constituting a part of the Fund in question shall be valued at the then estimated or appraised market value of such investment.

K. Management Fee.

Parking Operator's Net Profit, if any, shall constitute the Parking Operator's management fee, and Agency shall not be liable to Parking Operator for any additional or other management fees.

L. Parking Rates.

Parking rates shall be set by the Parking Operator, subject to the approval of the Agency, which approval shall not be unreasonably withheld. "Parking rates" as used herein shall mean not only the base parking rate, but all items affecting revenues from the Public Parking Facility, such as commissions allowed and discounts of any kind, including but not limited to discounts for prompt or cash payments. When the Parking Operator desires to change rates, the Agency shall be given written notice of the proposed change in writing. If the Agency does not disapprove the proposed changes within sixty (60) days from the time the proposed change is submitted to the Agency in writing, the proposed change shall be deemed approved. Parking rates shall be reviewed at least annually, at the time of the Annual Settlement or before, and the Agency shall have the right to approve the rates decided upon, which approval shall not be unreasonably withheld.

SECTION VII. ADDITIONS TO, IMPROVEMENTS OF, AND REPLACEMENT OF PARKING FACILITY

A. Additions or Improvements

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

B. Determination of Need for Replacement

The parties acknowledge that prior to the expiration of the Parking Agreement Term, it may become necessary to replace the existing Public Parking Facility because the useful life of the present structure has been exhausted. This determination may be made by the mutual agreement of the Agency and the Parking Operator. The determination might also be made by a court of competent jurisdiction or by a governmental entity responsible to determine whether the structure is fit for use or occupancy. Finally, in the event that only one of the parties believes the useful life of the present structure has been exhausted, and no court or other governmental body has made a determination on this issue, the question of whether a replacement structure is needed shall be referred to a Replacement Assessment Panel consisting of three individuals, each of whom shall be an engineer or other expert on parking structures: one shall be appointed by the Agency, one shall be appointed by the Parking Operator, and one shall be appointed by the appointees of the Agency and the Parking Operator. Either party may request such a Replacement Assessment Panel at any time by filing a request for such a Panel in writing with the other party. This request shall include the name, address, and telephone number of the the requesting party's appointee to the Panel. If the party to whom the request is directed does not notify the requesting party of its appointee within thirty (30) days, the requesting party shall have the right to exercise the requested party's power of appointing a member of the Replacement Assessment Panel. After the appointees of the two parties have been appointed, they shall have a total of sixty days to appoint the third member of the Panel and to make a determination of whether the Public Parking Facility needs to be replaced. The determination of the majority of this Panel shall be binding on the Agency and the Parking Operator. Each party shall pay the fees and costs of the member (or members) of the Panel they appoint, and fifty percent (50%) of the fees and costs of the member appointed by each appointee that they appoint. (That is, they shall each bear the fees and costs of their own appointee and half of the fees and costs of the third member of the panel, except that if one party elects not to appoint a member to the panel, the other party can go through with the appointment of the full Replacement Assessment Panel, and the determination of the resulting Panel will be binding, but that party will be responsible to bear all the fees and costs of the Panel.)

C. Parties' Responsibilities for Replacement

If the parties agree, a court or other governmental body finds, or the Replacement Assessment Panel determines that the Public Parking Facility needs to be replaced, the parties shall cooperate in constructing or directing the construction of a replacement facility or facilities (the "Replacement Parking Facility"), unless both parties agree not to do so. The Agency

and the Parking Operator shall each be responsible for the cost of the Replacement Parking Facility in the same proportion that the number of parking spaces they require to be included bears to the total number of spaces in the Replacement Parking Facility. To the extent either party requires that more than 200 parking spaces be included for its benefit, and the result is that the per-space cost of the resulting structure is higher than it would be for a 400-space garage of equivalent quality, the party requiring the added number of spaces in excess of 200 shall be responsible for the added cost. The Agency may require that fewer than 200 spaces be included in the Replacement Parking Facility if it is unable to obtain sufficient funding for a full 200 stalls in addition to those spaces being required by the Parking Operator. The Parking Operator may require that less than 200 spaces be included in the Replacement Parking Facility, but only if (and to the extent that) the number it requires to be included suffices to meet City parking requirements with respect to a facility such as the Hotel. Both the Agency and the Parking Operator shall exert their best efforts to obtain funding to make it possible to install a replacement parking structure with at least 400 parking spaces. The Agency shall seek funding from all available sources for its share of the Replacement Parking Facility, and shall seek the help of the City to this end, both in applying for funding and, if requested, in establishing a parking district to impose assessments and make bonding at favorable rates possible.

D. Planning and Design of a Replacement Parking Facility

Once the Agency and the Parking Operator have determined how many parking spaces each will require to be included in the Replacement Parking Facility, design work shall commence. As an alternative to specifying a number of parking spaces needed, the Agency and the Parking Operator may specify a maximum amount each is willing to expend in constructing the Replacement Parking Facility, when such funding will be available, and from what source. The preceding sentence shall not be construed to permit the Parking Operator to circumvent its obligation to provide sufficient parking spaces in the Replacement Parking Structure to comply with City parking requirements. The Parking Operator shall then be responsible to develop plans for the Replacement Parking Facility. The Agency shall have the right to approve the plans, which approval shall not be unreasonably withheld.

E. Construction of Replacement Parking Facility

After planning and design is completed, construction contracts shall then be entered into, after complying with applicable public bidding laws, if any, subject to the consent of both the Agency and the Parking Operator. The Agency, the Parking Operator, and the construction contractor shall comply with all applicable City ordinances and requirements in undertaking and

obtaining approvals for the contemplated construction. Appropriate insurance acceptable to the Agency and the Parking Operator shall be obtained to insure each of them against the various risks associated with construction of the Replacement Parking Facility, and it shall be in force before construction commences. From the time that the determination is made that the existing parking structure must be replaced, the Agency and the Parking Operator shall have one year within which to line up the necessary financing for the Replacement Parking Facility. Construction of the Replacement Parking Facility shall be completed within two years from the time that both parties are satisfied that necessary financing is in place to go forward with construction, unless the parties agree that a longer period shall be allowed for construction. Construction of the Replacement Parking Facility shall be planned and managed so as to cause the least possible disruption to operation of the Hotel.

F. Rights of City, Agency, and Parking Operator to Replace,

In the event the Parking Operator does not come forward with the necessary financing for the Replacement Parking Facility as required in paragraph (E) of this Section VII, the City and/or the Agency shall have the right to undertake the design and construction of a Replacement Parking Facility, to create a parking district pursuant to the Utah Parking and Business Improvement District Act to this end (to which Parking Operator shall consent) and to use other available financing sources and techniques, and to assess or charge the Parking Parcel, the Hotel Parcel, the Parking Operator, and/or the Lessor under the Ground Lease for the Parking Operator's share of the costs Replacement Parking Facility, computed by reference to the minimum number of parking spaces needed for the Hotel to comply with city parking regulations, or such larger number of spaces as the Parking Operator desires to be entitled to reserve in the Replacement Parking Facility. In the event the Agency is not able to obtain funds for a Replacement Parking Facility either directly or through the City, the Parking Operator shall have the right to construct a Replacement Parking Facility containing up to 200 parking spaces and, if the Agency consents, a larger number. However, the Parking Operator shall not be entitled to charge the Agency (or the City) for any costs associated with such construction, unless the Agency (or the City) expressly consents to such charge in writing. Nothing in this Amended Parking Agreement shall be construed as a waiver of the right of the City to enforce its parking ordinances, rules and regulations and to require the Lessee under the Amended Ground Lease and the Parking Operator to comply therewith. However, during the period of construction of the Replacement Parking Facility, the Agency shall work with the City in seeking reasonable exceptions from normal City parking requirements and the Parking Operator and the Agency

shall cooperate in identifying temporary alternative parking for the Hotel during construction.

SECTION VIII. PARKING POLICIES, RULES, AND RATES TO REFLECT PURPOSES OF AGREEMENT

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

The Public Parking Facility was built with public funds for the purpose of providing public parking and for the purposes of providing parking for Hotel room guests, banquet attendees, restaurant patrons, and other persons visiting, shopping or working in the Hotel or the surrounding area. The operations of the Public Parking Facility and the parking rates for the use thereof are to be established to assure that the foregoing purposes for the Public Parking Facility are accomplished.

SECTION IX. INDEMNIFICATION

Parking Operator hereby agrees to indemnify and hold harmless the City and the Agency for, from, and against all claims and demands from loss or damage, including property damage, personal injury, and wrongful death arising out of the negligence or any intentional acts or omissions of the Parking Operator, its agents, servants, or employees in the course and scope of their employment, and will reimburse the City and Agency for all its costs and expenses, including reasonable attorney's fees incurred in connection with the defense of any such claims. The foregoing indemnity and hold harmless provision shall be inapplicable for any willful act or omission or negligent act of the City or Agency, or their agents, servants, or employees in the course and scope of their employment.

SECTION X. INSURANCE

During the Parking Agreement Term, the Parking Operator shall:

1. Maintain or cause to be maintained in full force and effect, the following insurance covering the Public Parking Facility: comprehensive public liability insurance, including coverage for any accident resulting in personal injury or death of

any person and consequential damages arising therefrom, and comprehensive property damage insurance, in the amount of at least \$3,000,000 with respect to bodily injury or death to any one or more persons, and \$500,000 with respect to damage to property. Parking Operator is authorized to increase such amounts at its option.

2. Maintain or cause to be maintained worker's compensation insurance issued by a responsible carrier authorized under the laws of the State of Utah to insure employers against liability for compensation under such laws now in force in Utah, or any act hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such worker's compensation insurance shall cover all persons employed by Parking Operator in connection with the Public Parking Facility 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 of suffering injury or death in connection with the Public Parking Facility or the operation thereof by Parking Operator.

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

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

All insurance provided under this Section shall be reviewed annually by the parties for the purpose of Parking Operator increasing the minimum limits of such insurance, from time to time, to amounts which may be reasonable and customary for similar facilities of like size and operation.

The Parking Operator and the Agency may carry (or cause to be carried) insurance required to be carried by this Section under a policy or policies covering other property owned by the Parking Operator, the Agency, or the City; provided that such

policy or policies allocate to the Public Parking Facility an amount not less than 100% of the replacement cost of the Public Parking Facility.

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

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

Any insurance required to be maintained by Parking Operator or the Agency may be taken out under a blanket insurance policy or policies covering other premises or properties, and other insureds in addition to the parties hereto and the City; provided, however, that any such policy or policies of blanket insurance shall specify therein, or supplemental written certification from the insurers under such policies shall specify, the amount of insurance allocated to the coverages to be provided as required herein. In all other respects, any such blanket policy shall comply with the other provisions of this Section.

All policies or certificates issued by the respective insurers for insurance shall provide that such policies or certificates shall not be cancelled or materially changed without at least thirty (30) days prior written notice to the Parking Operator, the Agency, and the City. Copies of such policies shall be deposited with the Treasurers of the Agency and the City, together with appropriate evidence of payment of the premiums therefor; and, at least thirty (30) days prior to expiration dates of expiring policies or contracts held by said Treasurers, copies of renewal or new policies or contracts or certificates shall be deposited with said Treasurers.

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

All proceeds of insurance with respect to loss or damage to the Public Parking Facility during the Parking Agreement Term shall be payable to the Agency to be used for the restoration, repair, or rebuilding, of the Public Parking Facility by the Agency. To the extent that such proceeds exceed the cost of such

restoration, repair, or rebuilding, then such proceeds shall be paid into the Public Parking Reserve Fund or, if One Million Dollars (\$1,000,000) are already in that Fund, to the Agency.

In the event this Amended Parking Agreement is terminated by mutual agreement of the Agency and the Parking Operator and the Public Parking Facility is not reconstructed, repaired or replaced, the insurance proceeds shall be retained by the Agency.

SECTION XI. DAMAGE OR DESTRUCTION

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

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

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

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

SECTION XII. EMINENT DOMAIN

In the event that the Public Parking Facility and/or Parking Parcel or any part thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, then, as between the Agency and the Parking Operator, the interests of the Agency and Parking Operator in the award and the effect of the taking upon this Amended Parking Agreement shall be as follows:

(a) In the event of such taking of only a part, leaving the remainder in such location and in such form, shape, and size as to be used effectively and practicably for the conduct thereon of the uses permitted hereunder, this Amended Parking Agreement shall terminate and end as to the portion so taken as of the date title to such portion vests in the condemning authority but shall continue in full force and effect as to the portion not so taken.

(b) In the event of the taking of only a portion leaving the remainder in such location, or in such form, shape or reduced size as to render the same not effectively and practicably usable, for the conduct thereon of the uses permitted hereunder, this Amended Parking Agreement and all right, title, and interest thereunder shall cease on the earliest of the date possession is taken by or title vests in the condemning authority.

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

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

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

The termination of this Amended Parking Agreement pursuant to this Section XII shall not abrogate the obligation of the Agency and the City under the Amended Ground Lease to provide parking facilities for at least 200 cars for the exclusive use of

Hotel guests, visitors, and employees under the same terms as are set forth in this Amended Parking Agreement, but only to the extent this can be done at a cost not to exceed the compensation received from the condemning authority. Such alternate parking shall be on the Parking Parcel to the extent that there is a sufficient portion of the Parking Parcel remaining; otherwise the 200 spaces or portion thereof shall be on a site as close to the Hotel Parcel as is possible with the amount of compensation received from the condemning authority. The Agency shall use the amount of compensation received from the condemning authority to provide as many spaces as such compensation proceeds will provide.

SECTION XIII. ASSIGNMENT, MORTGAGE, OR PLEDGE OF PARKING AGREEMENT INTEREST

A. Prohibited Transfers

Neither this Amended Parking Agreement nor any interest of the Parking Operator herein shall, at any time after the Commencement Date, without the prior written consent of the Agency (which consent the Agency agrees not to unreasonably withhold), be mortgaged, pledged, assigned, transferred, or sold by the Parking Operator by voluntary act or by operation of law, or otherwise, except as provided herein. In the event of any permitted assignment, and upon paying to the Agency any sums which may be due hereunder up to the date of such assignment, the assigning Parking Operator shall be released from all liability or responsibility for any obligations, covenants, agreements, acts or omissions arising or occurring from and after the date of such assignment. Nothing herein shall be construed to require the Agency to consent to any mortgage, pledge, assignment, transfer, or sale of the Parking Operator's interest in this Amended Parking Agreement to any person or entity if the Parking Operator's interest in the Amended Ground Lease is not being simultaneously assigned, transferred, sold or subleased to the same person or entity, and in such circumstances it shall not be unreasonable for the Agency to withhold its consent from any such mortgage, pledge, assignment, transfer, or sale.

B. Surrender Upon Termination

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

SECTION XIV. LIENS, ENCUMBRANCES

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

The Agency and Parking Operator agree to keep the Public Parking Facility free and clear of all liens, encumbrances, and subleases during the term of this Amended Parking Agreement except for those caused or consented to by both the Agency and Parking Operator. Subleases with individual parkers terminable upon thirty days written notice by the Parking Operator or the Agency are hereby consented to by both parties.

In the event that the Parking Operator, with the consent of the Agency, constructs any improvements or additions on or to the Parking Parcel or the Public Parking Facility (or Replacement Parking Facility) or undertakes repairs as required by this Amended Parking Agreement, the Parking Operator further agrees to hold the Agency and the City free and harmless, and indemnify the Agency and the City against all claims, liabilities, liens, costs and expenses, for labor and materials in connection with all such construction or repairs or alterations on the Parking Parcel and Improvements constructed thereon, and the cost of defending against such claims, including reasonable attorney's fees. Parking Operator agrees to procure, or cause the procurement of, contractor's bonds covering labor, materials and faithful performance for construction, if any, it undertakes on the Parking Parcel, unless the Agency waives this requirement in writing. Each such bond shall be in the amount equal to one hundred percent (100%) of the construction price in the contract entered into by Parking Operator and its general contractor. Said bonds and the construction contract must first be approved in writing as to content and form by the Agency. The Agency shall not unreasonably withhold such approval. The Parking Operator shall, prior to commencement of construction, deliver to the Agency a certificate from the bonding company issuing the aforesaid bonds, naming the Agency and the City (if possible) as additional insureds under said bonds. The provisions of this paragraph shall be applicable to construction, repairs, or alterations to the Public Parking Facility and the Replacement Parking Facility at all times during the Parking Agreement Term, except that all such claims, liabilities, costs and expenses incurred in connection with the construction of the Replacement Parking Facility shall be borne by the respective parties in proportion to their relative responsibility for the costs of said Facility, as more particularly provided in Section VII of this Amended Parking Agreement.

SECTION XV. LAW GOVERNING

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

SECTION XVI. NOTICES

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

SECTION XVII. DEFAULT BY PARKING OPERATOR

A. Events of Default

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

- (1) the Parking Operator shall fail to observe or perform any material terms, covenants or conditions contained herein for a period of sixty (60) days after written notice thereof from the Agency to the Parking Operator; or
- (2) the Parking Operator shall abandon or vacate the Public Parking Facility; or
- (3) the Parking Operator's interest in this Amended Parking Agreement or any part hereof shall be assigned or transferred without the written consent of the Agency, either voluntarily or by operation of law, except as specifically permitted hereunder; or
- (4) fails to pay, meet, or fulfill any governmental obligation or pay any of Parking Operator's Tax Liabilities in a prompt and timely manner so as to avoid any penalty; or
- (5) the Parking Operator (or creditors of the Parking Operator) shall file any petition or institute any proceedings wherein or whereby the Parking Operator is to be adjudicated a bankrupt, or to be discharged from

a any or all of its debts or obligations, or whereby creditors of the Parking Operator are requested or ordered to effect a composition or extension of time to pay the Parking Operator's debts, or whereby the Parking Operator (or creditors of the Parking Operator) asks, seeks or prays for reorganization or to effect a plan for reorganization, or for a readjustment of the Parking Operator's debts, or for any other similar relief; then and in any of such events, the Parking Operator shall be deemed to be in default hereunder.

B. Remedies.

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

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

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

C. Damages

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

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

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

The foregoing remedies of the Agency are in addition to and do not exclude any other remedy of the Agency. Any such

reentry shall be allowed by the Parking Operator without hindrance and the Agency shall not be liable for damage for such reentry or guilty of trespass.

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

SECTION XVIII. NOTICE OF DEFAULT TO HOTEL MORTGAGEE, BENEFICIARY OF DEED OF TRUST, OR OTHER SECURITY INTEREST HOLDERS; RIGHT TO CURE

A. Notice to Hotel Mortgagees

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

B. Mortgagee or Secured Lender

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

C. Mortgagee's Right to Cure

Anything herein contained notwithstanding, while such mortgagee or secured lender remains unsatisfied of record, if any event or events of default of this Amended Parking Agreement shall occur, which under any provisions of this Amended Parking Agreement shall entitle the Agency to terminate this Amended Parking Agreement, and if before the expiration of sixty (60) days of the date of service of said notice, such mortgagee or secured lender shall have paid to the Agency all fees, revenues, and receipts herein provided for, and then in default, and shall have complied or shall have engaged in the work of complying with all of the other requirements of this Amended Parking Agreement within

the time limits prescribed herein, if any are then in default, then in such event Agency shall not be entitled to terminate this Amended Parking Agreement and any notice of termination theretofore give shall be void and of no effect.

D. Mortgagee's Right of Subrogation

If the Agency terminates this Amended Parking Agreement by reason of any default of the Parking Operator, such mortgagee or secured lender shall be subrogated to any and all rights of the Parking Operator with respect to curing such default, and shall have the right to postpone and extend the specified date for the termination of this Amended Parking Agreement as fixed by the Agency in its notice of termination, for a period of not more than six (6) months, provided such mortgagee or secured lender shall cure or cause to be cured any then existing money defaults and meanwhile pay the fees, receipts, and revenues, and comply with and perform all of the other terms, conditions and provision of this Amended Parking Agreement on the Parking Operator's part to be complied with and performed, and if no further defaults shall occur hereunder during such extended period, and mortgagee or secured lender shall forthwith take steps to acquire the Parking Operator's interest herein, the time of said mortgagee or secured lender to comply with the provisions of this Section shall be extended for such period as shall be necessary to complete such steps with due diligence and continuity, provided that during any such extensions no further default by the Parking Operator or mortgagee or secured lender shall be permitted to continue hereunder.

E. Confirmation of No Defaults

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

F. New Parking Agreement

The Agency agrees that in the event of termination of this Amended Parking Agreement by reason of any default by Parking Operator, the holder of any mortgage or trust deed discussed in this Section or its nominee (the mortgagee or trustee) shall be entitled to enter into a new Parking Agreement for the Public Parking Facility as the new Parking Operator with all of the rights and obligations of the Parking Operator hereunder for the remainder of the term, which new Parking Agreement shall be

effective as of the date of such termination and shall be at the fees, receipts, and revenues and upon the terms, provisions, covenants, and agreements as herein contained and subject only to the same conditions of the execution hereof, and to the rights, if any, of any parties then in possession of any part of the Public Parking Facility, provided:

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

2. Said mortgagee shall pay to the Agency at the time of the execution of the new Parking Agreement not only any and all sums which would at such time be due under this Amended Parking Agreement but also sums due because of such termination and in addition thereto any expenses including attorney's fees which the Agency by reason of such default.

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

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

G. Mortgage or Trust Deed

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

SECTION XIX. NONDISCRIMINATION

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

That there shall be no discrimination against or segregation of any person or group of persons, on account of sex, marital status, race, color, creed, national origin, or ancestry, in the leasing, subleasing, transferring, use, or enjoyment of the Public Parking Facility nor shall the Parking Operator itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation

with reference to the selection, location, number, use or occupancy, of tenants, lessees, sublessees, subtenants, or lendeesthereof or any portion thereof, or in the providing of goods, services, facilities, privileges, advantages, and accommodation.

SECTION XX. ATTORNEY'S FEES AND COURT COSTS

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

SECTION XXI. GENERAL PROVISIONS

A. Compliance with Law

Parking Operator agrees, at its sole cost and expense, to comply and secure compliance with the requirements now in force, or which may hereafter be in force, of all municipal, county, state, and federal authorities, pertaining to the Public Parking Facility as well as operations conducted thereon, and to faithfully observe and secure compliance with, in the use of the Public Parking Facility, all applicable county and municipal ordinances and state and federal statutes now in force or which may hereafter be in force, including all laws prohibiting discrimination or segregation in the use, lease, or occupancy of the property, and to pay before delinquency all of Parking Operator's Tax Liabilities and other governmental obligations, if any. Notwithstanding the foregoing, Parking Operator shall not be obligated to make any structural repairs, alterations or improvements to the Public Parking Facility which might be required under law, regulation or rule, except as provided in Section VII of this Amended Parking Agreement. The judgment of any court of competent jurisdiction, or the admission of Parking Operator or any sublessee or permittee in any action or proceeding against them, or any of them, whether the Agency be a party thereto or not, that Parking Operator, sublessee, or permittee has violated any such ordinance or statute in the use of the premises shall be conclusive of that fact as between the Agency and Parking Operator.

B. Entry and Inspection

The Agency reserves and shall have the right at all times to enter the Public Parking Facility (or Replacement Parking Facility) for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the Public Parking Facility (or Replacement Parking Facility) or to inspect

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

C. Enforced Delay: Extension of Time of Performance

In addition to specific provisions of this Amended Parking Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; floods; earthquakes; fires, casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions or priority; third-party litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts of the other party; or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause. Times of performance under this Amended Parking Agreement may also be extended by the mutual written agreement of the Agency and the Parking Operator.

D. Conflict of Interests

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

E. Nonliability of Officials and Employees of Agency

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

F. Warranty Against Payment of Consideration for Agreement

The Parking Operator warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Amended Parking Agreement. Neither the Agency nor the City shall be liable for any commissions or brokerage or finders fees which may arise herefrom. The Agency and the Parking Operator each agrees to hold the other harmless from any claim for commissions or brokerage or finders fees based upon any claimed act of the indemnitor.

G. Entire Agreement, Waivers and Amendments

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

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

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

H. Recordation of Parking Agreement

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

SECTION XXII. EXECUTION

This Amended Parking Agreement may be simultaneously executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but all together shall constitute but one and the same Parking Agreement and it is also understood and agreed that separate counterparts of this Parking Agreement may be separately executed by the Agency and the Parking Operator, all with the same full force and effect as though the same counterpart had been executed simultaneously by both the Agency and the Parking Operator.

SECTION XXIII. SEVERABILITY

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

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

SECTION XXIV. EFFECTIVE DATE

This Agreement shall be effective as of the Final Closing Date of the Borchers Escrow. If the final closing of the Borchers Escrow has not occurred on or before November 1, 1988, either party to this Amended Parking Agreement shall have the right to terminate this Amended Parking Agreement.

SECTION XXV. BINDING EFFECT

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

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

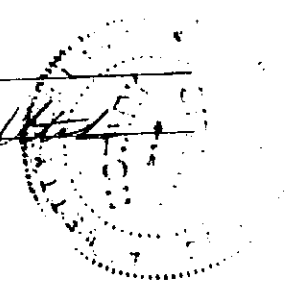
PROVO CITY REDEVELOPMENT AGENCY

Date: 9-7-88

By Joseph G. Jenkins
Chief Executive Officer

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.

Debra Briggs
NOTARY PUBLIC
Residing at: *Provo, Utah*

A circular notary seal for Debra Briggs, Notary Public, Provo, Utah. The seal is partially obscured by the signature and the text "Residing at: Provo, Utah".

My Commission Expires:

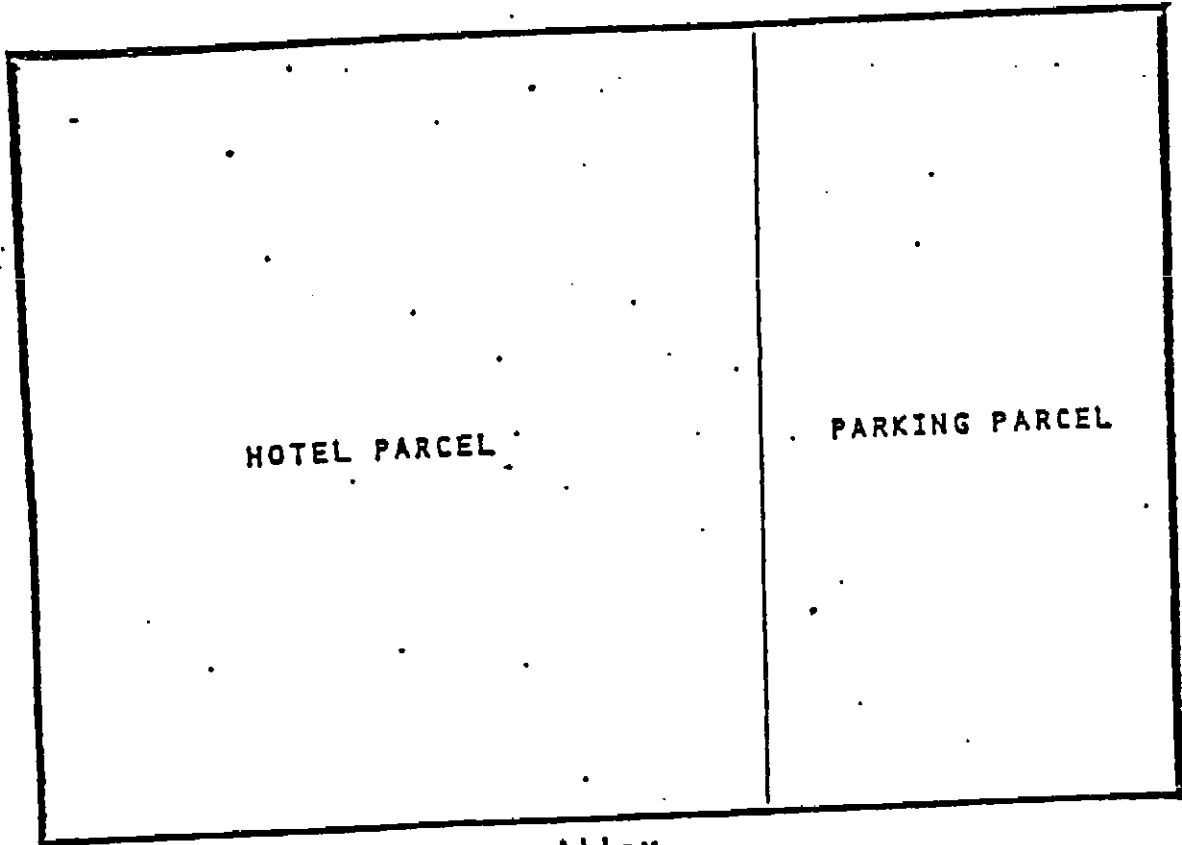
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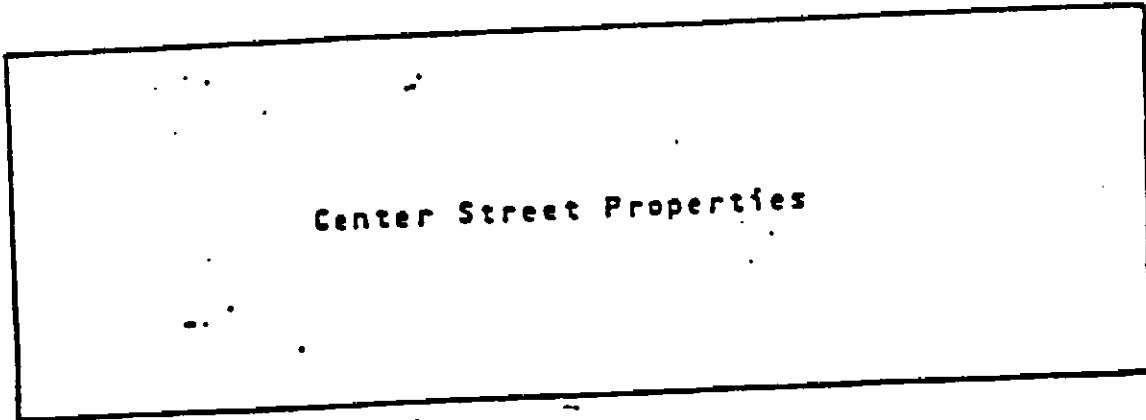
ATTACHMENT 1A

100 NORTH STREET

ENT36311 BK 2561 PG 248



100 WEST STREET



CENTER STREET

SITE BOUNDARIES PRO

062656

Ⓜ NORTH

ATTACHMENT NO. 1B (Legal Description)

LEGAL DESCRIPTION OF THE SITEPARKING PARCEL (AS BUILT)

Beginning at the Northeast Corner of Block 68, Plat "A", Provo City Survey of Building Lots, Provo Utah; thence South $0^{\circ}05'$ West along the West right-of-way line (as constructed) of 100 West Street, Provo, 268.60 feet; thence North $89^{\circ}51'50''$ West along a line parallel with the North right-of-way line (as built) of Center Street, Provo, 120.00 feet; thence North $0^{\circ}05'$ 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 $0^{\circ}05'$ 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 South $0^{\circ}08'10''$ 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.

Reminders for Final Closing

The Date of the Assets Purchase Agreement will need to be inserted in the recitals, circa p. 6.

Remember to include Site Map