

**RECORDED AT THE REQUEST OF,
AND AFTER RECORDING RETURN TO:**

Steven E. Tyler, Esq.
CALLISTER, DUNCAN & NEBEKER
10 East South Temple, Suite 800
Salt Lake City, Utah 84133

ENT 40587 BK 3235 PG 705
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1993 SEP 1 1:14 PM FEE 34.00
RECORDED FOR SECURITY TITLE AND ABSTRACT

Taragon: Parking Agreement
Matter No. 12588

**Assignment of Amended Agreement for
Operation, Management, Maintenance and Replacement of
Public Parking Facilities**

THIS ASSIGNMENT (the "Assignment") is made and entered into this 31st day of August 1993 by **KENNETH A. RUSHTON** ("Trustee"), the duly appointed, qualified and acting trustee of the estate (the "Estate") of Taragon Corporation, debtor ("Debtor") and **PARK HOTELS, L.C.**, a Utah limited liability company whose mailing address is 20 Second Avenue S.W., Rochester, Minnesota 55902 ("Park Hotels").

Recitals:

A. **Ground Lease.** As of 8 September 1988, Provo City Redevelopment Agency (the "Agency") and Suzanne Borchers ("Borchers") entered into an "Amended Ground Lease" (the "Ground Lease"), pursuant to which Agency leased to Borchers certain real property (the "Hotel Parcel") that is located in Utah County, Utah and that is described more particularly as follows:

HOTEL BUILDING SITE:

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

along the South right-of-way line (as constructed) of said 100 North Street, 280.34 feet to the point of beginning.

The Ground Lease was recorded in the records of the Utah County, Utah Recorder on 1 December 1988 as entry no. 36310, book 2561, page 140.

B. **Parking Agreement.** As of 8 September 1988, Agency and Borchers entered into an "Amended Agreement for Operation, Management, Maintenance and Replacement of Public Parking Facilities" (the "**Parking Agreement**"). The Parking Agreement relates to the operation, management and maintenance of a 400-space parking facility (the "**Parking Facility**") that is located adjacent to the Hotel Parcel on certain real property (the "**Parking Parcel**") that is located in Utah County, Utah and that is described more particularly as follows:

PARKING STRUCTURE SITE:

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

The Parking Agreement was recorded in the records of the Utah County, Utah Recorder on 1 December 1988 as entry no. 36311, book 2561, page 207.

C. **Assignment to Debtor.** On or about 31 March 1992, Borchers transferred all of her interest in the Parking Parcel and the Parking Agreement to Debtor. Provo City Corporation, also known as The City of Provo City, Utah (the "**City**") and Agency consented to the assignment to Debtor of the Ground Lease (and inferentially the Parking Agreement) pursuant to a "Consent to Assumption of Lease" dated 7 August 1992.

D. **Bankruptcy.** On 16 April 1992 Debtor filed a petition for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Utah, Central Division (the "**Court**"). An order for relief was thereafter entered in bankruptcy case no. 92C-22664.

E. **Assumption of Parking Agreement.** Pursuant to an order entered by the Court on 4 September 1992, Debtor, as debtor-in-possession, assumed the Parking Agreement.

F. **Confirmation Order and Plan.** Trustee was appointed (and is currently qualified and acting) as the trustee of the Estate pursuant to "Findings of Fact and Conclusions of Law and Order Confirming Mercantile Bank of St. Louis, N.A.'s Plan of Reorganization of Mercantile" (the "**Confirmation Order**") entered by the Court on 30 June 1993. The Confirmation Order confirmed a "Plan of Reorganization of Mercantile Bank of St. Louis, N.A." (the "**Plan**") attached to the Confirmation Order.

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G. **Auction.** Pursuant to the Plan, as confirmed by the Confirmation Order, and a "Notice of Trustee's Intent to Sell Provo Excelsior Hotel, and Request for Offers, and Notice of Hearing" dated 8 July 1993 (the "**Notice**"), Trustee requested offers to purchase Debtor's and Estate's interests in the Ground Lease, the Parking Agreement and related hotel assets (the "**Hotel Project**") in a closed bid auction. Kahler Corporation ("**Kahler**") and BAT Investments, L.C. ("**BAT**") submitted a purchase bid (the "**Bid**"), which was subsequently accepted by Trustee, as reported in that certain "Trustee's Auction Report" dated 27 July 1993 and filed with the Court.

H. **Approval of Sale.** Following a hearing convened on 27 July 1993 pursuant to the Notice, the Court entered that certain "Order Approving Sale of Provo Excelsior Hotel Free and Clear of Liens" (the "**Order**") dated 19 August 1993, a certified copy of which is attached hereto, is marked exhibit A and is incorporated herein by reference. Among other things, the Order approves the sale of the Hotel Project to Kahler and BAT.

I. **Assignment to Park Hotels.** Kahler and BAT have formed Park Hotels for the purpose of acquiring and operating the Hotel Project and have assigned to Park Hotels all of their rights under the Bid to purchase the Hotel Project. This Assignment evidences Trustee's assignment to Park Hotels of Debtor's and Estate's interests under the Parking Agreement, pursuant to the auction sale.

J. **Assignment of Ground Lease.** On or about the date of this Assignment, Trustee has assigned to Park Hotels all of Debtor's and Estate's interests under the Ground Lease.

K. **Consent.** The Parking Agreement, in accordance with its terms, may not be assigned without the consent of City and Agency. City and Agency have consented to Trustee's assignment of the Parking Agreement and the Ground Lease to Park Hotels pursuant to the provisions of a "Consent to Assignment of Amended Ground Lease and Amended Agreement for Operation, Management, Maintenance, and Replacement of Public Parking Facilities" that is dated 13 August 1993; that was signed by City and Agency; and that was recorded in the records of the Utah County, Utah Recorder on 19 August 1993 as entry no. 56591, book 3233, page 601.

Agreement:

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NOW, THEREFORE, for good and valuable consideration, Trustee and Park Hotels hereby agree as follows:

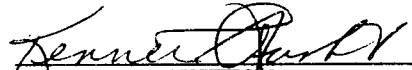
1. **Assignment.** Trustee hereby assigns to Park Hotels all of the right, title and interest of Debtor and Estate in and to (a) the Parking Agreement; and (b) the "Operations and Repair Reserve Fund" and the "Public Parking Reserve Fund" under the Parking Agreement that are being administered by the receiver operating under Trustee's supervision.

2. **Assumption of Obligations.** Park Hotels hereby assumes the rights and obligations of the "Parking Operator" under the Parking Agreement accruing from and after the date of recordation of this Assignment in the records of the Utah County, Utah Recorder.

3. **Sale Free and Clear of Liens and Encumbrances.** Trustee's assignment of Debtor's and Estate's interest in the Parking Agreement to Park Hotels is made pursuant to the Order. The Order provides, among other things, that "the property described in [the] order . . . is . . . sold free and clear of all liens and encumbrances . . ."

4. **Consideration.** As consideration for acquiring Debtor's and Estate's rights in the Hotel Project, Park Hotels has paid Trustee the amount of \$5,900,001.00 and has given certain additional consideration. Trustee hereby acknowledges receipt of such consideration.

5. **Limitation.** Pursuant to the terms of the Notice, this Assignment is made "free and clear of all liens and encumbrances [as set forth in paragraph 3 above] (but otherwise without warranty or assurance) . . ."


KENNETH A. RUSHTON
Trustee of the Estate of Taragon
Corporation

PARK HOTELS, L.C., a Utah
limited liability company

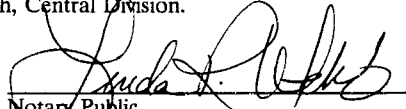
By: KAHLER CORPORATION, a
Delaware corporation and a
member of Park Hotels, L.C.

By: 
HAROLD W. MILNER
President

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

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The foregoing instrument was acknowledged before me this 31st day of August 1993, by **KENNETH A. RUSHTON**, as the duly appointed, qualified and acting trustee of the estate of Taragon Corporation, in bankruptcy case no. 92C-22664 pending in the United States Bankruptcy Court for the District of Utah, Central Division.


Notary Public

My Commission Expires:

8/21/94

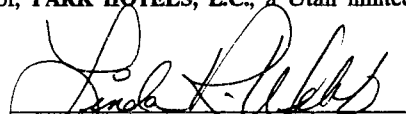
Residing at:

Beautiful, Utah

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



The foregoing instrument was acknowledged before me this 31st day of August 1993, by **HAROLD W. MILNER**, as president of **KAHLER CORPORATION**, a Delaware corporation, as a member of, and on behalf of, **PARK HOTELS, L.C.**, a Utah limited liability company.


Notary Public

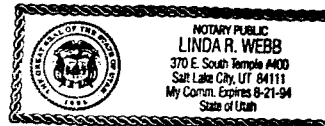
My Commission Expires:

8/21/94

Residing at:

Beautiful, Utah

RHFDX2570.002



I hereby certify that the foregoing is a true and correct copy of the original document on file in the United States Bankruptcy Court for the District of Utah.
Date: 8/29/93
Attest: *A. Fredrickson*
Clerk

AUG 16 1993

OFFICE OF JUDGE
CLERK

MICHAEL N. ZUNDEL #3755
DAVID E. SMOOT #5347
JARDINE, LINEBAUGH, BROWN & DUNN
A Professional Corporation
Attorneys for Kenneth A. Rushton, Trustee
370 East South Temple, Suite 400
Salt Lake City, Utah 84111
Telephone: (801) 532-7700

ENT60587 BK 3235 PG 710

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

In re TARAGON CORPORATION, Debtor.	Case No. 92C-22664 [Chapter 11] ORDER APPROVING SALE OF PROVO EXCELSIOR HOTEL FREE AND CLEAR OF LIENS
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This matter having come before the Court, after notice, on July 27, 1993, upon the Trustee's "Notice of Trustee's Intent to Sell Provo Excelsior Hotel, and Request for Offers and Notice of Hearing"; Michael N. Zundel, Esq. of the firm of Jardine, Linebaugh, Brown & Dunn appearing on behalf of Kenneth A. Rushton, Trustee; Anna W. Drake, Esq. of the firm of Fabian & Clendenin appearing on behalf of Zachary T. Neumeyer, Receiver; Craig Carlile, Esq. of the firm of Ray, Quinney & Nebeker appearing on behalf of the Liquidator of Southern American Insurance Company ("SAIC"); and the Court having been advised by the parties that the Trustee has accepted, subject to Court approval, the joint bid of Kahler Corporation and BAT Investments, L.C. ("Buyer") in the

EXHIBIT A TO ASSIGNMENT OF AMENDED AGREEMENT FOR OPERATION, MANAGEMENT,
MAINTENANCE AND REPLACEMENT OF PUBLIC PARKING FACILITIES

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amount of \$5,900,001.00 and that SAIC has agreed to refrain from submitting a credit bid for the property being auctioned in consideration of the additional sum of \$195,000.00 from Buyer and that the additional consideration shall be credited against the claims of SAIC and Mercantile Bank of St. Louis, N.A. filed in this case (and that an additional \$5,000.00 shall be paid by Buyer to SKB, Inc. for the telephone system at the hotel); the Court being aware that Zachary T. Neumeyer was appointed the receiver (hereinafter the "Receiver") for certain properties of Taragon Corporation in an action which was removed to this Court, captioned Southern American Insurance Company, in liquidation v. Taragon Corporation; Mercantile Bank, N.A.; and Valley Title Company, as trustee, Adversary No. 93PC-2085; and that subsequent to the appointment of the Trustee herein, the Receiver has continued to perform his duties as mandated by the Order Appointing Receiver entered on February 8, 1993 by operating the Provo Excelsior Hotel; the Court having considered the Trustee's auction notice, the auction procedure, the terms of the bid accepted by the Trustee and the representations of counsel and it appearing to the Court that no objections have been filed, that the sale of the Provo Excelsior Hotel pursuant to auction is in the best interests of the estate, and that the Buyer is purchasing the Provo Excelsior Hotel in good faith, and good cause appearing therefor; it is hereby

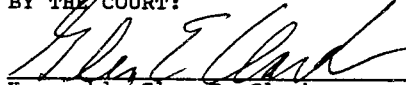
ORDERED, that the Trustee's sale to Buyer or its assigns of the interest of this estate in the real estate described in Exhibit "A" attached hereto and the personal property described in Exhibit "B" attached hereto (collectively the "Property"), be, and the same hereby is, approved; and it is further

ORDERED, that the Property be, and the same hereby is, sold free and clear of all liens and encumbrances, with said liens and encumbrances attaching to the proceeds of sale in their respective priorities; and it is further

ORDERED, that upon the closing of the sale of the Property by the Trustee, the Receiver's duties shall be automatically terminated and an order shall be entered in the action captioned Southern American Insurance Company, in liquidation v. Taragon Corporation; Mercantile Bank, N.A.; and Valley Title Company, as trustee, Adversary Proceeding No. 93PC-2085, upon ex parte motion by the Receiver, memorializing the termination of the receivership.

DATED this 19 of August, 1993.

BY THE COURT:


Honorable Glen E. Clark

Approved as to form:

ENT60587 BK 3235 PG 713

Anna W. Drake
Anna W. Drake, Esq.
FABIAN & CLENDENIN
Attorneys for Receiver,
Zachary T. Neumeyer

Douglas M. Monson
Douglas M. Monson, Esq.
Craig Carlile, Esq.
RAY, QUINNEY & NEBEKER
Attorneys for the Liquidator of
Southern American Insurance Company

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CLERK'S CERTIFICATE OF SERVICE

I hereby certify that on this 19 day of August, 1993,
I served the foregoing ORDER APPROVING SALE OF PROVO EXCELSIOR
HOTEL FREE AND CLEAR OF LIENS, by mailing a true and correct copy
thereof, by first-class United States mail, postage prepaid to the
following:

Michael N. Zundel, Esq.
David E. Smoot, Esq.
JARDINE, LINEBAUGH, BROWN & DUNN
370 East South Temple, Suite 400
Salt Lake City, Utah 84111-1290

Kenneth A. Rushton, Esq.
99 West Main Street, #202
Post Office Box 212
Lehi, Utah 84043

Anna W. Drake, Esq.
FABIAN & CLENDENIN
215 South State, Suite 1200
Salt Lake City, Utah 84111

Craig Carlile, Esq.
RAY, QUINNEY & NEBEKER
92 North University Avenue, Suite 210
Provo, Utah 84601

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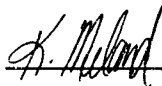


Exhibit A to
Order Approving Sale of Provo Excelsior Hotel
Free and Clear of Liens

ENT 60587 BK 3235 PG 715

Description of Real Property Interests

All of the right, title and interest held by the bankruptcy estate of Taragon Corporation, debtor (the "Debtor"), in the following:

A.1. **Ground Lease.** An "Amended Ground Lease" (the "Ground Lease") that is dated as of 8 September 1988 and that was entered into between Provo City Redevelopment Agency (the "Agency") and Suzanne Borcherds ("Borcherds"), pursuant to which Agency leased to Borcherds certain real property (the "Hotel Parcel") that is located in Utah County, Utah and that is described more particularly as follows:

HOTEL BUILDING SITE:

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

(The Ground Lease was recorded in the records of the Utah County, Utah Recorder on 1 December 1988 as entry no. 36310, book 2561, page 140. On or about 31 March 1992, Borcherds quitclaimed all of her interest in the Hotel Parcel to Debtor pursuant to the provisions of a "Quit-Claim Deed" (the "Quitclaim Deed") that was recorded in the records of the Utah County, Utah Recorder on 1 April 1992 as entry no. 15027, book 2913, page 26.)

A.2. **Improvements.** All real property improvements (the "Improvements") located on the Hotel Parcel.

(Provo Excelsior, Limited ("Provo Excelsior") constructed the Improvements on the Hotel Parcel and owned the Improvements pursuant to a ground lease that was amended in its

entirety by the Ground Lease. Pursuant to a "Special Warranty Deed" that was executed on or about 8 September 1988 and that was recorded in the records of the Utah County, Utah Recorder on 1 December 1988 as entry no. 36306, book 2561, page 125, Provo Excelsior conveyed its interest in the Improvements to Borchers. On or about 31 March 1992, Borchers quitclaimed all of her interest in the Hotel Parcel to Debtor by the Quitclaim Deed.)

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A.3. **Parking Agreement.** An "Amended Agreement for Operation, Management, Maintenance and Replacement of Public Parking Facilities" (the "**Parking Agreement**") that is dated as of 8 September 1988; that was entered into between Agency and Borchers; and that relates to the operation, management and maintenance of a 400-space parking facility that is located adjacent to the Hotel Parcel on certain real property (the "**Parking Parcel**") that is located in Utah County, Utah and that is described more particularly as follows:

PARKING STRUCTURE SITE:

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

(The Parking Agreement was recorded in the records of the Utah County, Utah Recorder on 1 December 1988 as entry no. 36311, book 2561, page 207. On or about 31 March 1992, Borchers quitclaimed all of her interest in the Parking Parcel to Debtor by the Quitclaim Deed.)

A.4. **Declaration.** A "Declaration of Restrictive Covenants and Grant of Reciprocal Easements" (the "**Declaration**") that is dated 24 November 1981; that was entered into by Provo Excelsior and Agency; that relates to the Hotel Parcel and the Parking Parcel; and that was recorded in the records of the Utah County, Utah Recorder on 22 December 1981 as entry no. 35835, book 1955, page 460.

(Pursuant to an "Assignment of Interest in Declaration of Restrictive Covenants and Grant of Reciprocal Easements" that was executed on or about 6/8 September 1988 and that was recorded in the records of the Utah County, Utah Recorder on 1 December 1988 as entry no. 36308, book 2561, page 132, Excelsior assigned its interest under the Declaration to Borchers. On or about 31 March 1992, Borchers quitclaimed all of her interest in the Hotel Parcel and the Parking Parcel to Debtor by the Quitclaim Deed.)

Exhibit B to
Order Approving Sale of Provo Excelsior Hotel
Free and Clear of Liens

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Description of Personal Property Interests

All of the right, title and interest held by the bankruptcy estate of Taragon Corporation, debtor (the "Debtor"), in and to the following personal property that is located in the "Improvements" referred to in exhibit A to the order to which this exhibit is attached (such Improvements being referred to in this exhibit as the "Hotel") or that is related to the Hotel (collectively the "Personal Property"):

- B.1. The tradename "The Excelsior Hotel" and all trademarks and telephone numbers associated with the tradename.
- B.2. Billboards, if any, and signage rights, if any.
- B.3. Food inventory.
- B.4. Mini-bar food inventory.
- B.5. Non-alcoholic beverage inventory.
- B.6. Gift shop merchandise inventory.
- B.7. Uniforms.
- B.8. Operating equipment.
- B.9. -Linen, china, glass and silverware.
- B.10. Maintenance supplies.
- B.11. All other tangible assets associated with the operation of the Hotel.
- B.12. All advanced bookings related to the Hotel, including bookings made pursuant to gift certificates, and guest deposits on hand for such bookings.