

ASSIGNMENT OF  
INTEREST IN ENT36308 BK 2561 PG 132  
DECLARATION OF RESTRICTIVE COVENANTS

AND GRANT OF RECIPROCAL EASEMENTS

RECITALS

ENT 36308 BK 2561 PG 132  
NINA B REID UTAH CO RECORDER BY AT  
1988 DEC 1 2:46 PM FEE 10.50  
RECORDED FOR VALLEY TITLE COMPANY

1. On November 4, 1980, the Provo City Redevelopment Agency (the "Agency") entered into a Ground Lease and Joint Development Agreement with the Provo Excelsior Limited (the "Partnership") for the purpose of developing a first class hotel in downtown Provo. That Ground Lease and Joint Development Agreement was amended December 18, 1981. The Ground Lease and Joint Development Agreement as amended (the "Ground Lease") superseded prior agreements between the Partnership and the Agency.

2. On December 18, 1981, the Agency and the Partnership entered into an Agreement for Operation, Management, and Maintenance of Parking Facilities (the "Parking Agreement"), which provided for the construction of a 400-parking-space garage adjacent to the Hotel (the "Parking Facilities"), and for operation, management, and maintenance of the Parking Facilities by the Partnership.

3. On November 24, 1981, the Agency and the Partnership entered into that certain Declaration of Restrictive Covenants and Grant of Reciprocal Easements (the "Declaration") recorded as Entry No. 35835 in Book 1955, at page 460 of the official records of the County Recorder of Utah County, Utah.

4. The Hotel and Parking Facilities were subsequently constructed. They were opened in May, 1983, and have been operated since that time by the Partnership.

5. Certain litigation has arisen with respect to alleged defaults under certain financial encumbrances on the assets of the Partnership subject to the Ground Lease. As part of its obligation under the terms of that certain Settlement Agreement with Provo Excelsior Limited, Its Current and Former Partners, the City of Provo City, Utah, and the Provo Redevelopment Agency dated *September 8*, 1988 (the "Settlement Agreement"), the Partnership has agreed to sell the Hotel and to assign its interest in the Declaration to Suzanne Borchers pursuant to that certain Assets Purchase Agreement dated *September 8*, 1988 between Suzanne Borchers as Purchaser and the Partnership as Seller (the "Assets Purchase Agreement"). Suzanne Borchers is not a party to or otherwise involved in the aforesaid litigation; however, her purchase of the hotel and assumption of responsibilities under the Ground Lease and the Parking Agreement provides a source of funds that makes settlement of the litigation possible.

6. This assignment is to be deposited in the escrow created pursuant to that certain Escrow Agreement dated September 8, 1988 1988, and referred to in the Settlement Agreement as the Borchers Escrow, and is to be effective only when it is delivered to Suzanne Borchers from escrow on the Final Closing Date of the Borchers Escrow.

ASSIGNMENT

NOW, THEREFORE, in consideration of mutual obligations set forth in the Assets Purchase Agreement, and other good and valuable consideration, the Partnership and Suzanne Borchers agree as follows:

1. The Partnership hereby assigns, effective as of the Final Closing Date of the Borchers Escrow, all of its interest in the Declaration to Suzanne Borchers in accordance with the terms and conditions of the Settlement Agreement and the Assets Purchase Agreement.

2. This assignment shall not be effective until it is delivered to Suzanne Borchers by the escrow agent as part of the final closing of the Borchers Escrow. If final closing of the Borchers Escrow has not occurred by November 30, 1988, the parties shall have the right to cancel this assignment agreement.

PROVO EXCELSIOR LIMITED

By: HRS Provo, Inc. (its  
general partner)

Date: 9/8/88

By: [Signature]  
Henry R. Silverman  
President

Date: 9/8/88

[Signature]  
Suzanne Borchers

STATE OF New York )  
COUNTY OF New York ) :ss

On this 6<sup>th</sup> day of September, 1988, personally appeared before me Henry R. Silverman, who being duly sworn did say that he is president of HRS Provo, Inc., a general partners of Provo Excelsior Limited, a Utah limited partnership, and that the foregoing instrument was signed on behalf of said corporation



## ATTACHMENT NO. 1B

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

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

HOTEL BUILDING SITE (AS BUILT):

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