

Amendment to Agreement for Operation, Management, and Maintenance of Public Parking Facility Facilities

December 1995

The Agreement amends an Agreement entered into September 8, 1988 by and between

Provo City Redevelopment Agency
and
Suzanne Borchards, Parking Facility operator,

and which Agreement has been assigned to Park Hotels, L.C.

Witnesseth,

ENT 90693 BK 3851 PG 776
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
1995 DEC 28 3:07 PM FEE 26.00 BY AC
RECORDED FOR SECURITY TITLE AND ABSTRACT

Whereas, the Provo City Redevelopment "Agency" entered into an Agreement and an Amended Agreement of Operation, Management, Maintenance and Replacement of "Public Parking Facility " with Suzanne Borchards; and

Whereas, Park Hotels, L.C., Utah Limited Liability Corporation acquired the Provo Excelsior Hotel and renamed said hotel Park Hotel; and

Whereas, the Park Hotels, L.C. also acquired the interest that Suzanne Borchards had in the operation, management, maintenance, and replacement of the "Public Parking Facility "; and

Whereas, the Park Hotels, L.C. entered into a new joint development agreement with the "Agency" for the purpose of expanding the Park Hotel.

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 Park Hotels L.C. and to the amendment to the original parking agreement and the Amended Parking Agreement as embodied in this second amendment to the Parking Agreement as follows:

1. The "Operator" at its option shall be able to acquire the "Public Parking Facility" after the year 2005 through the year 2007 at the price of \$250,000.00.

Said option may be exercised by notifying the "Agency" in writing 30 days prior to the date on which the "Operator" desires to acquire title to the "Public Parking Facility". The "Operator" shall pay the purchase price in cash at closing. At closing, the "Agency" shall provide the "Operator" with a Warranty Deed and provide "Operator" with an ALTA standard coverage policy of title insurance with respect to the "Public Parking Facility". Said policy of title insurance shall be in the amount of \$250,000.00 and shall insure that the fee

simple title to the "Public Parking Facility" is vested in the "Operator" subject only to the encumbrances listed on capitalized Exhibit "B" attached hereto and by this reference made part hereof. The "Agency" shall not encumber the title of the parking parcel with any additional encumbrances without the consent of the "Operator". The "Operator" shall not encumber the property without the consent of the "Agency".

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2. The "Operator" shall immediately assume all responsibility for management, maintenance, and repairs, both major and minor repairs, utilities and insurance and any other cost of operating the "Public Parking Facility".

Failure to insure or maintain the "Public Parking Facility" shall constitute a default. Should the "Agency" and "Operator" fail to agree on the level of maintenance necessary to keep the facility in good repair then the two parties shall select a third party to determine if there is a failure to maintain the property according to normal industry standard. The "Operator" shall obtain liability insurance on the "Public Parking Facility" with coverage of not less than \$500,000 per person and \$1,000,000 per incident.

3. The "Operator" shall be required to reinvest any insurance proceeds received from the insurance on the "Public Parking Facility" in the "Public Parking Facility" and shall show the "Agency" as an additional named insured on all insurance policies relating to the "Public Parking Facility".

In the event of the occurrence of major damage to or destruction of the "Public Parking Facility" as described in either Section XI or XII of the Parking Agreement that results in the "Agency" terminating this Agreement, the "Operator" shall have the option of purchasing fee title to the "Public Parking Facility" for a purchase price of \$250,000 plus the amount (determined as of the date of closing) if any debt that has been approved by "Operator" including the current Tax Increment Bond and that is secured by the "Public Parking Facility". The option granted to "Operator" shall be exercised by "Operator" giving "Agency" written notice of "Operator's" intent to acquire the "Public Parking Facility" pursuant to the provisions of this Paragraph 3 within one hundred twenty days of the date on which "Agency" gives "Operator" notice of "Agency's" intent to terminate this Agreement pursuant to either Section XI or XII of the Parking Agreement. At closing, the "Agency" shall provide the "Operator" with a Warranty Deed and provide "Operator" with an ALTA standard coverage policy of title insurance with respect to the "Public parking Facility". Said policy of title insurance shall be in the amount of \$250,000 and shall insure that fee simple title to the "Public Parking Facility" is vested in "Operator" subject only to the encumbrances listed on Exhibit "B" attached hereto and by this reference made a part hereof and such other encumbrances

as may hereafter be consented to or created by "Operator". In the event that "Operator" exercises its option, the "Agency" shall assign to "Operator" all of its interest in any insurance proceeds for the purpose of repairing the "Public Parking Facility".

4. Section IV A of the Parking Agreement is hereby amended by deleting said Section IV A in its entirety and replacing it with the following Section IV A.

A. Term of Parking Agreement

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The term of this Parking Agreement (the "Parking Agreement Term") shall be for a period of fifty (50) years commencing on November 24, 1981 (the "Commencement Date") and terminating at midnight fifty (50) years thereafter, unless extended or sooner terminated as provided herein. The words "Parking Agreement Term" shall also be deemed to include such extended period of time resulting from the exercise of the renewal options set forth below.

5. Any dedication subject to section V C or other transfer shall be subject to the "Operators" option to purchase the "Public Parking Facility".
6. The "Operator", at its option, may acquire the "Public Parking Facility" at a date earlier than above mentioned provided that they pay to the "Agency" the balance of any amount owing and outstanding tax increment bond used to finance the "Public Parking Facility".
7. The operator will provide 120 spaces of public parking in the "Public Parking Facility". This obligation will exist as long as this site is used for parking purposes. Seventy of the 120 parking spaces shall be made available for long term Parking Facility to other businesses in the down town area. The employees of the Provo Park Hotel shall use the hotel allocation for parking and not be counted against the parking spaces available to the public. The balance of the 50 public parking spaces shall be made available on a short term basis to the general public doing business in the down town area. No more than 1/4 of the public parking spaces may be allocated on the top levels.
8. The legal description of the "Public Parking Facility" shall be amended to accommodate the expansion of the Park Hotel and shall read as follows:
(Described in Exhibit A)
9. This amended parking agreement and the terms, provisions, promises, and 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 thereof, the parties hereto have caused this parking agreement to be executed and attested by their lawfully authorized officers.

ENT 90693 BK 3851 PG 779

George O. Stewart
Provo City Redevelopment Agency

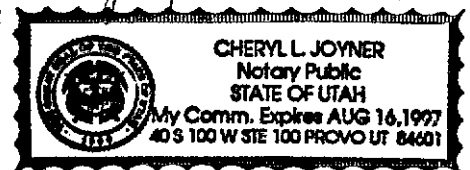
State of Utah)

: ss.

County of Utah)

On the 22 day of December, 1995 personally appeared before me George O. Stewart the signer of the foregoing instrument, who duly acknowledged to me that he executed the same.

Cheryl L. Joyner
Notary Public



Park Hotels, L.C.

State of Utah)

: ss.

County of)

On the _____ day of _____, 19____, personally appeared before me _____, the signer of the foregoing instrument, who duly acknowledged to me that he executed the same.

Notary Public

Amendment to Agreement December, 1995

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shall inure to the benefit of the parties hereto and their respective heirs, successors, and assigns.

In witness thereof, the parties hereto have caused this parking agreement to be executed and attested by their lawfully authorized officers.

ENT 90493 BK 3851 PG 780

Provo City Redevelopment Agency

State of Utah)
 : ss.
County of)

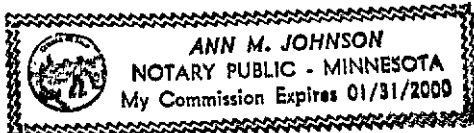
On the day of , 19 , personally appeared before me , the signer of the foregoing instrument, who duly acknowledged to me that he executed the same.

Notary Public

Michael J. Quinn
Park Hotels, L.P. *by its trustee Kahlia Realty Corporation*

State of ~~Utah~~ ^{MINNESOTA})
 : ss.
County of ~~OLMSTED~~)

On the 22 day of December , 1995, personally appeared before me *Michael J. Quinn* , the signer of the foregoing instrument, who duly acknowledged to me that he executed the same.



Ann M. Johnson
Notary Public

EXHIBIT A

ENT 90693 BK 3851 PG 781

LEGAL DESCRIPTION - PARCEL 3 (PARKING)

BEGINNING AT THE NORTHEAST CORNER OF BLOCK 68, PLAT "A", PROVO CITY SURVEY OF BUILDING LOTS, PROVO, UTAH; THENCE SOUTH 0 DEGREES 05' WEST ALONG THE WEST RIGHT OF WAY LINE (AS CONSTRUCTED) OF 100 WEST STREET, PROVO, 268.60 FEET; THENCE NORTH 89 DEGREES 51'50" WEST ALONG A LINE PARALLEL WITH THE NORTH RIGHT OF WAY LINE (AS CONSTRUCTED) OF CENTER STREET, PROVO, 99.97 FEET; THENCE NORTH 12.5 FEET; THENCE WEST 5.03 FEET; THENCE NORTH 18.28 FEET; THENCE WEST 15 FEET; THENCE NORTH 0 DEGREES 05' EAST ALONG A LINE PARALLEL WITH THE WEST RIGHT OF WAY LINE OF SAID 100 WEST STREET, 237.53 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.

EXHIBIT "B"

PERMITTED EXCEPTIONS

ENT 90693 BK 3851 PG 782

- 1. Taxes for the year 1995, now delinquent if not yet paid.
- 2. Special Improvement Taxes, if any, due or to become due Provo City.
- 3. Declaration of Restrictive Covenants and Grant of Reciprocal Easements dated November 24, 1981, executed by Provo Excelsior Limited, a Utah Limited Partnership, by Peter F. Edelman, a General Partner, and Provo City Redevelopment Agency, by James E. Ferguson, Chairman, recorded December 22, 1981, as Entry No. 35835, in Book 1955, at page 460, in the office of the Recorder, Utah County, Utah.
- 4. A perpetual easement and right-of-way over, across and through the following described real property situated in Utah County, State of Utah:

Beginning at a point on the West right-of-way line of 100 West Street, Provo Utah, 132.0 feet North along said right-of-way line from the Southeast corner of Lot 1, Block 68, Plat "A", Provo City Survey of Building Lots, Provo, Utah; thence North 11.8 feet; thence West 99.0 feet; thence South 11.8 feet; thence East 99.0 feet to the point of beginning.

Said easement and right-of-way shall be and remain appurtenant to the following described real property owned by Grantees situated in Utah County, State of Utah to-wit:

Commencing 25 feet West of the Southeast corner of Block 68, Plat "A", Provo City Survey of Building Lots; thence North parallel with the West line of First West Street 100 feet; thence East 25 feet to the West line of First West Street; thence North on the West line of said First West Street 32 feet; thence West at right angles 99 feet; thence South at right angles to the North line of Center Street 132 feet; thence East 74 feet to the place of beginning.

Said Easement dated August 31, 1982, executed by Provo City Corporation, by James E. Ferguson, Mayor, in favor of Benjamin B. Banks and Susan Banks, husband and wife, recorded September 8, 1982, as Entry No. 22324, in Book 2000, Page 623, in the office of the Recorder, Utah County, Utah.

- 5. A Right of Way Easement and the right to construct, operate, maintain and remove such communication and other facilities, from time to time, as said Grantee may require upon, over, under and across the following described land which the Grantor owns or in which the Grantor has any interest to-wit:

An easement 5 feet in width being 2 1/2 feet on each side of the following centerline:

Commencing North 134.5 feet from the Southeast corner of Block 68, Plat "A", Provo City Survey; thence West 137 feet; thence North 30 feet, more or less, to building, situate in County of Utah, State of Utah.

ENT 90673 BK 3851 PG 783

Together with the right of ingress and egress over and across the lands of the Grantor to and from the above described property; by Right of Way Easement dated January 26, 1983, executed by Provo Redevelopment Agency, by Ronald Madsen, Executive Director, in favor of The Mountain States Telephone and Telegraph Company, a Colorado corporation, its successors, assigns, lessees, licensees, and agents, recorded February 23, 1983, as Entry No. 4867, in Book 2031, Page 407, in the office of the Recorder, Utah County, Utah.

6. Notice of Memorandum of Assignment of Parking Rights dated October 11, 1990, by and between Boyer Center Street Ltd., a Utah limited partnership, by its sole General Partner; the Boyer Company, a Utah corporation, by H. Roger Boyer, Chairman, and Valley Bank and Trust Company, by Paul Thurston, Vice President, recorded October 15, 1990, as Entry No. 34173, in Book 2731, at Page 735, in the office of the Recorder, Utah County, Utah.

7. An Amended Ground Lease by and between Provo City Redevelopment Agency as Lessor and Suzanne Borchers as Lessee which was recorded December 1, 1988, as Entry No. 36310, in Book 2561, at Page 140 of Official Records. the interest of Suzanne Borchers passed to Taragon Corporation by way of a Quit Claim Deed recorded on April 1, 1992, as Entry No. 15027, in Book 2913, at Page 26 of Official Records.

The interest of Taragon Corporation has passed to Park Hotels, L.C., a Utah limited liability company by way of an Assignment of Amended Ground Lease recorded on September 1, 1993, as Entry No. 60586, in Book 3235, at Page 693 of Official Records.

8. Amended Agreement for Operation, Management and Maintenance of Public Parking Facilities by and between Provo City Redevelopment Agency and Suzanne Borchers recorded on December 1, 1988, as Entry No. 36311, in Book 2561, at Page 207 of Official Records. The interest of Suzanne Borchers passed to Taragon Corporation by way of Quit-Claim Deed recorded on April 1, 1992 as Entry No. 15027, in Book 2913 at Page 26.

the interest of Taragon Corporation has passed to Park Hotels, L.C., a Utah limited liability company by way of an Assignment of Amended Agreement of Operation, Management, Maintenance and Replacement of Public Parking Facilities recorded on September 1, 1993, as Entry No. 60587, in Book 3235, at Page 705, of Official Records.

9. Financing Statement, wherein Park Hotels, L.C., appear as Debtors, and First Security Bank of Utah, N.A., appear as Secured Party, recorded November 9, 1995, as Entry No.

77544, in Book 3813, Page 799, in the office of the Recorded, Utah County, Utah.

Construction/Term Deed of Trust With Assignment Of Rents and Security Agreement, dated December , 1995, executed by Park Hotels, L.C., a Utah limited liability company, by Kahler Realty Corporation, its member by Michael J. Quinn, Senior Vice President, as Trustor, given to secure the payment of a promissory note in the principal sum of \$16,000,000.00, bearing even date therewith with interest thereon according to the terms of said note, to Security Title & Abstract Co., as Trustee, in favor of First Security Bank of Utah, N.A., as Beneficiary, recorded December 28, 1995, as Entry No. 90691 in Book 3851, at Page 736, in the office of the Recorded, Utah County, Utah.

ENT 90693 BK 3851 PG 784