

PARKING LEASE AND AGREEMENT

THIS PARKING LEASE AND AGREEMENT is made and entered into as of the 12th day of March, 1996 by and between Benedict Commons Condominium Association, a Colorado nonprofit corporation, ("Lessor") whose address is 715 East Hyman Avenue, Aspen, Colorado 81611 and the City of Aspen, Colorado ("Lessee") whose address is 130 South Galena Street, Aspen, Colorado 81611.

WITNESSETH:

WHEREAS; Lessor manages the common elements of the Benedict Commons Condominiums, pursuant to the Condominium Declaration for Benedict Commons Condominiums recorded at Reception Number 39055 of the Pitkin County real property records (the "Declaration"); and,

WHEREAS, the common elements of the Benedict Commons Condominiums includes the parking garage, consisting of the entrance ramp, fifty-eight (58) designated parking spaces, twenty-seven (27) of which are limited common elements appurtenant to the twenty-seven (27) condominium units contained in the Benedict Commons Condominiums, and thirty-one (31) of which are general common elements, and twenty-seven (27) storage bins, all of which are managed by Lessor; and

WHEREAS, pursuant to the Declaration, and the Bylaws for the Benedict Commons Condominium Association ("Bylaws"), the Lessor may grant to Lessee a parking lease for the thirty-one (31) parking spaces located in the underground parking garage of the Benedict Commons Condominiums and identified as general common elements on the condominium map for Benedict Commons Condominiums (the "Lease Premises"), which map is recorded at Reception Number 39055 of the Pitkin County real property records (the "Plat"); and,

WHEREAS, Lessor desires to lease the Lease Premises to Lessee in accordance with the terms and conditions contained in this Parking Lease and Agreement; and,

WHEREAS, Lessee desires to lease from Lessor the Lease Premises in accordance with the terms and conditions contained in this Parking Lease and Agreement:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficient of which is hereby acknowledged, and in further consideration of the terms, conditions, covenants and mutual promises contained herein, the parties hereto agree as follows:

1. Lease of Premises. Lessor does hereby lease to Lessee and Lessee does hereby rent from Lessor the following described Lease Premises:

Thirty-one parking spaces in the parking garage of Benedict Commons Condominiums, defined and described as general common elements of the Condominium Map for Benedict Commons Condominiums which map is recorded at Reception No. 39055 of the Pitkin County real property records attached hereto as Exhibit "A" and by this reference incorporated herein (the "Lease Premises").

2. Term. Unless sooner terminated, as provided herein, the term of the lease shall be ninety-nine years, commencing on the effective date hereof.

3. Use. Lessee shall not occupy or use the Lease Premises nor permit or suffer the same

to be occupied for any purpose except to park vehicles on the Lease Premises in designated parking spaces. Parking upon the Lease Premises shall be open parking only and no development or structures of any nature whatsoever shall be permitted thereon, nor shall Lessee permit more than thirty-one vehicles to park simultaneously on the Lease Premises. Lessee shall use its best efforts to insure that no one parking their vehicle on the Lease Premises with the permission of Lessee parks in parking spaces not included in the Lease Premises. Lessee shall comply with all applicable statutes, ordinances, rules, regulations, orders and requirements relating to the use of the Lease Premises, including any rules and regulations set forth in the Condominium Declaration and/or Rules and Regulations enacted from time to time by Lessor; provided, however, that Lessor shall not enact any Rules or Regulations after the date of this Parking Lease and Agreement that affect or impact Lessee's use of the Lease Premises or the parking garage nor enact any Amendments to the Declaration that affect or impact Lessee's use of the Lease Premises or the parking garage without the prior written consent of the Lessee during the term of the Lease.

4. Access/Operations Plan. Lessor, on behalf of itself and the owners of units in the Benedict Commons Condominiums, hereby reserves the right to access the Lease Premises demised hereunder in order to provide access to such owners and Lessor to the remaining twenty-seven (27) parking spaces and to the storage bins in the parking garage of the Benedict Commons Condominium. Each party covenants that neither one shall impair the other's access to their respective parking spaces in the Benedict Commons Condominium parking garage. Attached hereto as Exhibit B is a plan of operations detailing certain operations of the Parking Garage and Lease Premises. Lessor and Lessee agree that any changes, modifications or amendments to the plan shall be in writing, and executed by both Lessor (with Executive Board approval) and Lessee (with City Council approval).

5. Management, Maintenance and Repair. Lessor agrees to manage and maintain the parking garage, including the Lease Premises, in good repair and condition, including, without limitation, maintenance of the paved area, curbs, drains, lighting, striping, etc. and to keep the parking garage and Lease Premises in a sightly and safe condition. Likewise, Lessor shall pay all charges for gas, electricity and any and all other utility or maintenance charges in or about the parking garage, including the Lease Premises during the term of this Lease.

6. Rent. The rent for the term of this lease shall be a sum equal to 31/58 of the cost of all maintenance, management, repair, gas, electricity and any and all other utility charges, and any and all other costs incurred by Lessor in connection with the parking garage, except maintenance and repair of the storage bins, the cost of which is specifically excluded. Lessor shall include a line item in its annual budget for all maintenance, management, repair, utilities and other costs associated with and incurred by Lessor in the parking garage, broken down into a level of detail mutually acceptable to Lessor and Lessee. Lessee shall have the right to approve the garage line item of any budget before it is finally adopted by the Association. Such budget shall contain a capital reserve for garage repairs, and Lessee shall pay 31/58 of such capital reserves. Any expenses incurred by the Association with regard to the parking garage, to the extent not covered in the approved budget, shall require Lessee approval, unless the expense is in the nature of emergency repairs. Rent payments shall be due within twenty-one (21) days of receipt of a statement of such costs incurred by Lessor, which statements shall be delivered to Lessee at Lessor's convenience, but not more frequently than monthly

7. Storage Bins. The garage space also contains twenty-seven (27) storage bins, which are limited common elements, associated with the individual condominium units. Any costs directly associated with maintenance or repair of these storage bins shall not be included in the garage budget and shall not be included in the amount for which Lessee is responsible for rent. However, all management, electricity and other utility charges or other charges incurred by the Association in the garage shall be included in the garage budget and shall be allocated between Lessor and Lessee, without any deduction for any portion thereof that might otherwise be allocated to the storage bins.

8. Late Charges. The Lessee hereby acknowledges that late payment by Lessee to Lessor of rent or other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which shall be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges and the late charges which may be imposed upon Lessor by terms of any mortgage or trust deed covering the Lease Premises. Accordingly, if any installment of rent or any other sum due from Lessee hereunder shall not be received by Lessor or Lessor's designee on or before twenty-one (21) days after receipt of a statement for such rent, then Lessee shall pay to Lessor a late charge of two (2) percentage points over the prime rate, as stated in the Wall Street Journal from time to time, on such overdue amount. The parties hereby agree that such a late charge will represent a fair and reasonable settlement of the cost that Lessor would incur by reason of the late payment by Lessee. Acceptance of such late charges by Lessor shall in no event constitute a waiver of Lessee's default with respect to such overdue amount, nor prevent Lessor from exercising any of the other rights and remedies granted hereunder unless the entire amount due, plus late charge, is accepted by Lessor. In addition, any sum for which the Lessee shall be obligated to the Lessor, which is not received on the due date thereof, shall bear interest at the rate of two (2) percentage points over the prime rate, as stated in the Wall Street Journal from time to time from and after the due date until paid.

9. Personal and Property Taxes. Lessee shall pay, as additional rent hereunder, all personal property taxes assessed against the personal property used by Lessee and located on the Lease Premises for the term of this lease. Likewise, Lessee shall be responsible for any and all sales, use, withholding and other taxes assessed against the Lease Premises for Lessee's use of the premises and Lessee's prorated portion of real estate taxes for the Lease Premises.

10. Liability Insurance. The Lessee, at its own cost and expense, shall provide and keep in full force for the benefit of the Lessee and the Lessor (as named or additional insured) during the term hereof, general liability insurance for claims of liability arising out of, occasioned by or resulting from an accident or otherwise in or about the Lease Premises, in amounts equal to the monetary limitations contained in the Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., as amended from time to time. The parties understand and agree that Lessee is a member of the Colorado Intergovernmental Risk Sharing Agency (CIRSA) and as such participates in the CIRSA Property/Casualty Pool. Copies of the CIRSA policies and manual are kept at the City Attorney's Office and are available to Lessor for inspection during normal business hours. In the event that Lessee ceases to participate in CIRSA, Lessee shall obtain similar coverage so as to not allow a lapse in insurance coverage equal to or better than that currently provided through CIRSA. To the extent permitted by law, Lessee also agrees to and shall save, hold and keep harmless and indemnify the Lessor from and against any and all payments, expenses, costs, attorneys' fees and/or damage to property or injuries to persons occasioned wholly or in part by or resulting from any acts or omissions by the Lessee or any sublessees, assignees or successors. The parties hereto understand and agree that the City is relying on, and does not waive or intend to waive by any provision of this Lease, the monetary limitations, or any rights, immunities, and protections provided by all the Colorado Governmental Immunities Act, as from time to time amended, or otherwise available to Lessee, its officers, or its employees. If for any reason as a result of Lessee's activities, use, or business, it shall be impossible to obtain fire and other hazard insurance on the buildings and improvements on the Lease Premises, in an amount and with insurance companies acceptable to the Lessor, the Lessor may terminate this Lease and the term hereof, upon giving to Lessee fifteen (15) days notice in writing of the Lessor's intention to do so and upon the expiration of the time provided in said notice, this Lease and the term hereof shall terminate. If by reason of the use of the Lease Premises by the Lessee, Lessor's insurance rates for fire and other hazards shall be increased, the Lessee shall pay, as additional rent, the amounts by which the premiums for such insurance are increased. The Lessee waives all rights of recovery against the Lessor or Lessor's agents, employees or other representatives, for any loss, damages or injury of any nature whatsoever to property or persons for which the Lessee is insured. Each party shall give the other party prompt notice of any claim coming to the knowledge of any party that in any way directly or indirectly affects either party, and both parties shall have the right to participate in the defense of such claim to the extent of its interest.

11. Notice of Cancellation of Insurance Coverage. The above insurance policies shall contain clauses substantially similar to the following:

a. Notwithstanding any other provision in this policy, the insurance afforded hereunder to the Lessor shall be primary as to any other insurance or reinsurance covering the Lessor and such other insurance or reinsurance shall not be required to contribute to any liability until the appropriate limit of liability afforded hereunder is exhausted.

b. This policy may not be canceled or changed until thirty (30) days after receipt by the Lessor of a written notice of such cancellation or change in coverage, as endorsed by receipt of a certified letter, unless such cancellation is a result of nonpayment of premium due, in which case, this policy may not be canceled until ten (10) days after receipt by the Lessor of a written notice of such cancellation, as endorsed by receipt of a certified letter.

12. Damage to Premises. If the Lease Premises shall be so damaged by fire or other catastrophe (which is not caused by the fault or negligence of the Lessee or imputable to the Lessee) as to render said Lease Premises untenantable, the Lessee thereupon shall surrender the Lease Premises to the Lessor. The Lessee shall pay rent, duly apportioned, up to the time of such termination of this Lease. Notwithstanding the foregoing, in lieu of any termination of the Lease, Lessor may elect, at its sole option, within thirty (30) days after the event of such damage, to continue the Lease without regard of such damage, whereupon Lessor shall at its expense make the Lease Premises fit for occupancy and the rent shall be abated only for the period during which the Lessee shall be deprived of the use of said Lease Premises by reason of such damage and the repair thereof. If said Lease Premises, without the fault of the Lessee, shall be slightly damaged by fire or other catastrophe but not so as to render the same untenantable for any substantial period of time, the Lessor, after receiving notice in writing of the occurrence of the injury, shall cause the same to be repaired with reasonable promptness; and in such event, rent shall be proportionately abated, according to the loss of use, until the Lease Premises are substantially restored.

13. Sublease. Lessee shall have the right to sublease any portion or all of the Lease Premises to any third party(ies) at any time and for any term and for any fee within the term of this lease. Any sublease shall be subject to the terms of this lease agreement and any sublessee shall be obligated under the sublease to comply with the rules, regulations and covenants imposed on the Lease Premises by the Benedict Commons Condominium Declarations, Articles, Bylaws and Rules and Regulations enacted by the Benedict Commons Condominium Executive Board from time to time. The Benedict Commons Condominiums shall have the authority to enforce said Rules, Regulations and Covenants against any sublessee of Lessee and any sublease with a sublessee shall make it clear that the Benedict Commons Condominium Association has such authority. Lessee shall deliver a copy of any sublease to Lessor for purposes of management of the Lease Premises by Lessor.

14. Signs. The Lessee shall not place nor allow to be placed any signs of any kind whatsoever, upon, in or about the said Lease Premises or any part thereof, except of a design and structure and in or at such places as may be indicated and consented to by the Lessor in writing, which consent shall not be unreasonably withheld. In case the Lessor or the Lessor's agents, employees or representatives shall deem it necessary to remove any such signs in order to paint or make any repairs, alterations or improvements in or upon the Lease Premises, they shall be replaced at the Lessor's expense when the said repairs, alterations or improvements shall have been completed. Any signs permitted by the Lessor shall at all times conform with all municipal ordinances or other laws and regulations applicable thereto.

15. Compliance with Law. Lessee shall obtain and pay for all permits or licenses that may be required for the operation of the Lease Premises in accordance herewith. A copy of such permits or licenses shall be submitted to Lessor for verification of this requirement prior to occupancy. The Lessee shall promptly comply with all laws, ordinances, rules, regulations, requirements, and directives of the federal, state, and municipal governments or public authorities and of all their departments, bureaus and subdivisions, applicable to and affecting the said Lease Premises, their use and occupancy, and shall promptly comply with all orders, regulations, requirements and directives of the Board of Fire Underwriters or similar authority and of any insurance companies which have issued or are about to issue policies of insurance covering the said Lease Premises and its contents, for the prevention of fire or other casualty, damage or injury, all at Lessee's own cost and expense. Lessee shall not use the Lease Premises for any purposes deemed unlawful, disreputable, or extra hazardous.

16. Default/Termination. In the event of a default by Lessee upon any term or obligation under this Lease including any default hereunder by a sublessee of Lessee, this Lease shall terminate thirty (30) days after written notice of such default is given by Lessor to Lessee, if during such period Lessee has not cured such default, in the event of a monetary default, or, in the event of a non-monetary default, Lessee has not taken such action within the thirty (30) day period which will cure the default within a reasonable period of time thereafter. Upon termination of this Lease, Lessee shall remain liable for such amount as may be in arrears and due to Lessor.

17. Surrender of Premises. At the end of the term of this Lease, Lessee shall surrender the Lease Premises to Lessor in good condition and repair, excepting for reasonable wear and tear and acts of God.

18. Governing Law. This Lease shall be construed and enforced in accordance with the laws of the State of Colorado. In the event of any litigation arising out of this Lease, jurisdiction and venue shall rest with the District Court for Pitkin County.

19. Time of Essence. Time is of the essence with respect to the performance of every provision of this Lease in which the time of performance is a factor.

20. Severability. The terms, conditions, covenants, and provisions of this Lease shall be deemed to be severable. If any clause or provision herein contained shall be adjudged to be invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity of any other clause or provision herein, but such other clauses or provisions shall remain in full force and effect.

21. Notices. All notices required under the terms of this Lease shall be given in person, by facsimile transmission, or by mailing such notices by certified or registered mail, return receipt requested, to the address of the party as shown at the beginning of this Lease, or to such other address as may be designated in writing, which notice of change of address shall be given in the same manner. If not sooner received, any notice given by mail shall conclusively be deemed received three (3) days after the date of certification or registration.

22. Entire Lease. This Lease contains the entire contract between the parties and there are no other agreements, understandings, representations, or warranties except as expressly set forth herein. No additions, changes or modifications, renewals or extensions hereof shall be binding unless reduced to writing and signed by the Lessor and Lessee.

23. References. In all references herein to any parties, persons, entities or corporations, the use of any particular gender or the plural or singular number is intended to include the appropriate gender or number as the text of the within Lease may require.

24. Lessee is an Independent Contractor. This Lease is not a contract of employment. No relationship of employer and employee, joint venture or partnership, exists between Lessor and Lessee or between the Lessor and any employee or agent of the Lessor. Lessee shall at all times be deemed to be an independent contractor. Lessee is not authorized to bind Lessor to any agreements or obligations. The term Lessor when used in this Lease shall mean and include the Executive Board of the Lessor and any other agent or employee of the Lessor designated by the Executive Board with the responsibility of enforcing any of the terms of this Lease.

25. Binding Effect. All the terms, covenants, and conditions herein contained shall be for and shall inure to the benefit of and shall bind the respective parties hereto, and their heirs, executors, administrators, personal or legal representatives, successors and assigns respectively.

26. Option to Purchase Lease Premises. Lessee shall have the option to purchase the Lease Premises from Lessor at any time during the term of this Lease, for no cost, other than the costs incurred to condominiumize the spaces for sale, as described below. To purchase the Lease Premises, they must be condominiumized. In the event Lessee desires to purchase the Lease Premises, it shall so notify Lessor and Lessee shall undertake to condominiumize the Lease Premises. Lessor shall cooperate in any way necessary and assist Lessee in such condominiumization of the Lease Premises, but Lessee shall pay all costs thereof, including without limitation, Lessee's and Lessor's attorney's fees, all land use application fees, consultant's fees, plat amendment and recording fees, Condominium Declaration Amendment fees, and exactions or other fees imposed by the City of Aspen for said condominiumization approval. Upon completion of such condominiumization and payment of all such costs by Lessee, the Lease Premises shall be delivered to Lessee, with no further payment to Lessor.

27. Enforcement/Attorney's Fees. Either party may enforce this instrument by an appropriate action at law or in equity and the prevailing party in any such litigation shall be entitled to recover its costs and attorneys' fees in connection therewith.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year above first written.

LESSEE:

CITY OF ASPEN

By: 

Its: 

LESSOR:

BENEDICT COMMONS CONDOMINIUMS ASSOCIATION

By: 

James L. Curtis
Its: Acting President