

**AGREEMENT RELATING TO  
OPERATION, MAINTENANCE, AND MANAGEMENT  
OF  
THE BLOCK 22 PUBLIC PARKING FACILITY**

**BY AND BETWEEN  
CAPITAL CITY DEVELOPMENT CORPORATION  
AND  
BLOCK 22, LLC**

**February 9, 1998**

**COPY**

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**AGREEMENT RELATING TO  
OPERATION, MAINTENANCE, AND MANAGEMENT  
OF  
THE BLOCK 22 PUBLIC PARKING FACILITY**

THIS AGREEMENT RELATING TO OPERATION, MAINTENANCE, AND MANAGEMENT OF THE BLOCK 22 PUBLIC PARKING FACILITY (the Public Parking Facility) is entered into this 9th day of February, 1998, by and between THE URBAN RENEWAL AGENCY OF THE CITY OF BOISE, also known as and doing business under the style of the CAPITAL CITY DEVELOPMENT CORPORATION, a public body corporate and politic of the State of Idaho (hereinafter the "Agency"), and BLOCK 22, LLC an Idaho limited liability company (hereinafter the "Developer").

**RECITALS**

A. The Agency and Developer have heretofore entered into a Disposition and Development Agreement dated May 9, 1994, a First Implementation Agreement dated October 21, 1994, a Second Implementation Agreement dated February 13, 1995, a Third Implementation Agreement dated January 3, 1996, the Limited Guaranty Agreement dated January 3, 1996, the Air Rights and Ground Easement dated November \_\_, 1996, the Fourth Implementation Agreement dated March \_\_, 1997, and the Fifth Implementation Agreement dated August \_\_, 1997 (collectively referred to as the "DDA"), pursuant to which the Agency agreed to sell and the Developer agreed to purchase and to develop certain real property (the "Site") as a hotel and multi-event facility, residential condominiums, and ancillary uses,

including a health club, restaurants, and sports bar (the "Hotel and Event Center Project"). The DDA included agreements and conditions under which the Agency agreed to sell and the Developer agreed to purchase and develop certain real property included within the boundaries of the Boise Central District Project II(R-5). The DDA set forth the framework within which the parties agreed to cooperate to achieve their mutually consistent goals of the development of a new parking facility (the "Public Parking Facility") supported by necessary public infrastructure within the plans and framework designs adopted by the Agency. The Developer has constructed and completed the Public Parking Facility. Developer and Agency entered into that certain Early Occupancy Agreement dated August \_\_, 1997, which provided, *inter alia*, for the possession and occupancy of the Public Parking Facility, while awaiting formal conveyance of the Public Parking Facility as a unit of the Block 22 Condominiums and the tender of a portion of the purchase price for the Public Parking Facility. As of the effective date of this Agreement the Public Parking Facility is available for possession by the Agency. The remaining improvements associated with the Hotel and Event Center are currently under construction with completion anticipated for the Event Center in early September 1997, the Hotel in January 1998, and the residential condominiums in April 1998.

B. The City of Boise has adopted and approved a document entitled "Boise Central District Urban Renewal Projects I and II, Idaho R-4 and R-5, Urban Renewal Plan Amended and Restated, December 1994, by City Ordinance No. 5026 approved December 6, 1994 (the "Urban Renewal Plan"). The Agency in the Urban Renewal Plan and in its planning processes has recognized the importance of cooperation in order to achieve effective redevelopment in the Boise Urban Renewal Project. Specifically, the Urban Renewal Plan,

the planning processes of the Agency, and the planning principles which underlie them recognize that the provision of an adequate inventory of well-managed parking spaces is critically important to the success of the public and private uses contemplated for the Boise Central District Urban Renewal Project I (R-5) and the public purposes of the redevelopment process. The parties have recognized the importance of convenient and available parking for the Hotel and Event Center, the Boise Centre on the Grove, and other commercial operations in the vicinity of the Public Parking Facility. The DDA set out the obligations of the parties relative to a parking structure to be constructed within the Development Area (as that term is used in the DDA and as it is defined in this Agreement).

C. The DDA further provided that the Agency and the Developer shall enter into a definitive agreement relating to the operation, maintenance, and management of the Public Parking Facility, which agreement is described therein as the "Parking Agreement." Specific elements of the Parking Agreement were described at that place and constitute a portion of the agreements between and among the parties. This Agreement is entered into as that "Parking Agreement" between the parties for the purposes described in the DDA, and it restates certain of the specific agreements of the parties relative to the Public Parking Facility. Pursuant to and in order to implement the Urban Renewal Plan, the DDA, and the agreements of the parties, the parties desire to enter into this Agreement to provide for the operation, maintenance, and management of the Public Parking Facility.

D. The Developer has represented to the Agency, and the Agency acknowledges such representation, that in reliance on the agreements of the parties contained in the DDA, the Developer has developed the Hotel and Event Center based upon availability from the

Agency within the Agency's Public Parking System certain numbers of parking spaces for users of the Hotel and Event Center, as well as the other segments of the general public. The Hotel and Event Center includes the hotel facility, the event center, restaurant, sports bar, and other ancillary uses. The Developer has also agreed in the DDA to develop a portion of the Hotel and Event Center into residential condominiums. It has been recognized in the DDA and in the agreements of the parties contained therein that one (1) space per unit not to exceed ten percent (10%) of the number of parking spaces, within the Public Parking Facility for the exclusive use of the owners of the residential condominiums ("Residential Condominium Owners") will be available to serve those uses ("Residential Condominium Parking Spaces"), and the Agency has agreed that a portion of the parking spaces within the Public Parking Facility will be allocated to serve that residential condominium need.

E. Pursuant to the DDA, the Developer agreed to construct the Public Parking Facility for a Guaranteed Maximum Price for which the Agency agreed to purchase the Public Parking Facility and the streetscape improvements surrounding the Hotel and Event Center.

F. Pursuant to the DDA, the Agency has agreed to purchase the Public Parking Facility and the streetscape improvements for the amount of Five Million Three Hundred Seventy-nine Thousand Eight Hundred Eight-seven Dollars (\$5,379,887). Pursuant to the DDA and Early Occupancy Agreement, \$100,000 of the purchase price has been previously paid, and the Developer hereby acknowledges receipt. The remaining amounts shall be disbursed as set forth in the Early Occupancy Agreement.



G. The Agency has adopted a Parking Management Plan, amended and restated July 1997, which addresses certain parking policies of the Agency as it applies to the Public Parking Facility and other facilities owned by the Agency.

H. The Agency has adopted an Overnight Validation Program and an Event Parking Plan pursuant to the Parking Management Plan which, along with the other General Event parking provisions of the Parking Management Plan, governs the operations of the Public Parking Facility.

I. The Public Parking Facility is expected to be operated either by the Agency or a well-qualified professional parking operator. Moreover, it is contemplated that it will be operated as a part of a system of parking facilities within the Boise downtown area and as is more particularly provided in this Agreement. As was provided in the DDA, parking spaces within the Public Parking Facility shall be managed on a shared basis so as to assure support for the customers and users of the Hotel and Event Center on a defined overnight validation basis while providing available parking for other downtown users as may be available on a "shared parking" basis as provided hereinbelow.

J. The Developer and Agency have entered into an Early Entry Agreement dated August \_\_, 1997, which provides for the Agency to take possession of the Public Parking Facility prior to the actual conveyance of title to the Condominium Unit which constitutes the Public Parking Facility. Under the Early Entry Agreement possession of the Public Parking Facility by the Agency shall occur subject to the Developer's compliance with certain conditions precedent to possession.

K. The Agency has represented to the Developer, and the Developer acknowledges such representation, that in reliance on the agreements of the parties contained in the DDA, the Agency has committed substantial funds to construct the Public Parking Facility and will continue to commit substantial funds to operate, maintain, and manage the Public Parking Facility upon the premise that the Public Parking Facility will remain in use and occupied throughout the term of this Agreement to provide additional parking spaces for use by the general public.

L. In the event the Hotel and Event Center or either one is destroyed and not reconstructed or that a similar parking-intensive use is not located on the Site, the Agency may lose substantial revenue and other consideration necessary to continue the operation of the Public Parking Facility. Therefore, in such event, the Agency shall retain its right to acquire the Site occupied by the Hotel and Event Center by negotiation or eminent domain as allowed by Idaho Code Section 50-2010 or any successor statute. For these reasons, the Agency must reserve its power of eminent domain as authorized by law and would not be entering into this Agreement if it had not reserved its power of eminent domain.

NOW, THEREFORE, the parties hereby agree as follows:

### AGREEMENTS

#### 1. Recitals, Other Agreements, and Definitions

##### 1.1 *Recitals and Other Agreements*

The parties agree that the foregoing recitals are not mere recitations but are covenants of the parties, binding upon them as may be appropriate and a portion of the consideration for the agreements contained herein. It is the intention of the parties that the DDA will continue

to govern the matters treated therein according to its terms. This Agreement, however, will have a term which may extend beyond the terms of those agreements and shall survive any certificate of completion issued pursuant to the DDA. In the event that the DDA should be in express conflict with this Agreement, this Agreement shall control. In areas not related to the subject matter of this Agreement, however, the DDA shall not by implication or inference be amended hereby, excepting to the extent that this Agreement contains representations, definitions, or covenants which are expressly contrary to provisions in the DDA. The term of this Agreement shall be the term agreed upon herein, and this Agreement shall survive any term which may be shorter for the DDA.

### 1.2 *Development Area*

The Development Area, as that term is used in this Agreement, means that area shown on the "Revised Map of the Development Area" attached to this Agreement as Attachment 1 and incorporated herein by reference and as is more particularly described in the revised legal description of the Development Area. The Development Area consists of several parcels of property which are being developed by the Developer and Agency. The parcels are described generally below and are shown on Attachment 1. The parcels are more particularly described in Attachment 2. Generally, the "Development Area" consists of the Public Parking Facility, the hotel facility, including the residential units, the event center, common areas, streetscape improvements, the Encroachment Area, and other complementary uses.

### 1.3 *Site*

(1) The "Hotel Site," as that term is used in this Agreement, means the parcel composed of the subterranean, surface, and air rights of the Site dedicated to development of

a hotel, event center, and residential condominiums by the Developer and which, upon completion, the Developer will occupy and operate the facilities through any subsequent agreements to the DDA. Throughout this Agreement, this facility shall be referred to as the "Hotel and Event Center" but includes the hotel, event center, the residential condominium units, health club, and sports bar. The term "Hotel" when used in this Agreement shall refer only to the hotel portion of the Hotel and Event Center, specifically the 220 rooms/suites devoted for traditional hotel use. The Hotel includes complementary meeting rooms, ball room, health club, and hotel restaurant facilities. The term "Event Center" when used in this Agreement shall refer only to the event center portion of the Hotel and Event Center, the multipurpose event facility accommodating approximately four thousand patrons. The Event Center also includes the sports bar and lounge.

(2) The Public Parking Facility is the parcel composed of the subterranean estate of the Site dedicated to the development as a parking garage (the "Public Parking Facility") on behalf of the Agency and which, upon completion, the Agency will occupy and operate or cause to be operated as more fully described in this Parking Management Agreement.

(3) The "Site" consists of the Hotel Site and the Parking Garage Site.

(4) The "Streetscape Parcels" are those portions of the Development Area retained by the Agency, the City, or other public body dedicated for use as a pedestrian right-of-way

- (a) immediately adjacent to the southern property line of the Site and adjacent to Front Street,
- (b) immediately adjacent to the eastern property line of the Site and adjacent to Capitol Boulevard, and
- (c) immediately adjacent to the northern property line of the Site and upon the U.S. Bank property to which Agency has an easement and upon which the Developer has

constructed certain streetscaping improvements. Such easement has been recorded as Instrument No. \_\_\_\_\_ recorded upon the records of Ada County on \_\_\_\_\_, 199\_\_.

(5) The "Encroachment Area" shall mean that area which contains portions of the Grove owned by the Agency in which the Agency has granted to the Developer an air and ground rights easement to locate improvements on and above the Encroachment Area. The Agency granted such right under an Air and Ground Rights Easement dated November 18, 1996, as recorded as Instrument No. \_\_\_\_\_ recorded upon the records of Ada County on \_\_\_\_\_, 199\_\_.

#### 1.4 *As-Built Resurvey and Revision*

The exact description of the Development Area and of each parcel depicted on Attachment 1 and described in Attachment 2 to this Agreement is derived from and dependent upon plans, drawings, and related documents created in the process of development of the improvements to the Development Area. Upon completion of construction of all of the improvements on each and all of the parcels, the precise boundaries and descriptions of each of the parcels within the Development Area (including the Site and the Agency property, any necessary reciprocal or other easements, and minor encroachment easements) will be surveyed and changed to reflect the final "as built" location and relationship of each and all of the parcels, and an amended revised map of the Site and amended legal descriptions will be substituted in this Agreement. Such resurvey and revisions may occur as a part of a condominium platting and approval. The Developer agrees to cooperate in such resurvey and,

if necessary, platting and approval processes and does consent to pay or participate in all costs thereby incurred.

1.5 *Cross-Reference to Condominium Declaration and Residential Condominium Association*

This Agreement shall be interpreted and implemented in conjunction with the Condominium Declaration to the Block 22 Condominiums. The Condominium Declaration shall govern those issues required under the Idaho Condominium Property Act, title 55, chapter 15, Idaho Code. The Condominium Declaration shall also address use issues involving the Public Parking Facility, Hotel, Event Center, and Common Areas. This Agreement and the Condominium Declaration shall be read in harmony to the greatest extent feasible. Any breach of the Condominium Declaration shall be deemed a default under this Agreement.

The Block 22 Condominium Plat shall identify by Unit number or reference the parcels identified in Sections 1.2 and 1.3.

Agency also agrees to grant to the Boulevard Two Fifty Five Condominium Association (the condominium association for the residential condominium units) for use by the Residential Condominium Owners certain nonexclusive easements providing access over the Public Parking Facility and to certain private storage facilities located adjacent thereto and leased by the Developer to owners of the residential condominiums. The purpose of such nonexclusive easements is to provide for ingress and egress over and across the Public Parking Facility for access to its elevators and its stairways and storage units. Such grant of

nonexclusive easement may be accomplished through the platting process for the Block 22 Condominiums or by any other appropriate instrument.

2. The Public Parking Facility

2.1 *Ownership Construction and Operation*

The Developer has constructed, and the Agency will own, manage, and maintain, the Public Parking Facility. Under the terms of the DDA, Developer is to convey title to the Public Parking Facility as a unit of the Block 22 Condominiums.

2.2 *No Implied Grant*

Nothing herein shall be deemed to have granted to Agency any easement, title, or license in or to the real property of the Hotel Site excepting for the Agency's right and obligation to own, to operate, and to maintain the Public Parking Facility as specifically provided in this Agreement. The Public Parking Facility as it is managed and as it will be managed and operated includes the Residential Condominium Parking Spaces to be used exclusively by the Boulevard Two Fifty Five Condominium Owners located on the floors 13 through 17 of the Hotel Site. The Boulevard Two Fifty Five Condominium Owners have established their own condominium association. There exists or will exist a separate and distinct condominium association for the Hotel Site. The Agency shall have the right and the obligation of operation and maintenance of the Public Parking Facility as provided in this Agreement.

Upon satisfactory completion of the Public Parking Facility in accordance with this Agreement, the DDA, and Developer's delivery of As-Constructed Improvement Plans, the Agency will accept, possess, and own the Public Parking Facility. Except as otherwise expressly provided herein, upon acceptance of the Public Parking Facility, the Agency shall

assume ownership and control of the Public Parking Facility subject to the provisions of the Parking Agreement. Acceptance of the Public Parking Facility shall not be deemed as a waiver of Developer's failure to fully and completely perform the terms and conditions of the DDA or the Early Occupancy Agreement or as a waiver or release of the warranty set forth below.

Developer warrants that the materials and workmanship employed in the construction of the Public Parking Facility shall be good and sound and shall conform to generally accepted standards within the construction industry. Such warranty shall extend for a period of one (1) year after acceptance of the Public Parking Facility by the Agency (unless a longer warranty is issued through the manufacturer of any fixture or equipment, provided nothing herein shall limit the time within which the Agency may bring an action against Developer on account of Developer's failure to construct such improvements in accordance with this Agreement or the Improvement Plans.

### 3. Term and Extensions

This Agreement shall have an initial term of twenty (20) years commencing on the date of possession by the Agency of the Public Parking Facility through either an Early Occupancy Agreement or conveyance by Developer to the Agency of the Public Parking Facility as a unit of the Block 22 Condominiums. This Agreement shall continue and may be extended at the Developer's sole option for successive ten-year terms so long as both the Hotel and Event Center and the Public Parking Facility are in existence. Such extension shall be deemed to be exercised automatically and without further action by Developer unless not later than ninety (90) days prior to the conclusion of the term of this Agreement (or any



extension hereof) the Developer shall notify the Agency that this Agreement shall terminate at the conclusion of such annual term.

#### 4. Parking Space Allocation and Control

##### 4.1 *Parking Allocation*

As set forth in the Facility Operations Program for the Public Parking Facility and as defined in the Parking Management Plan, the Public Parking Facility shall accommodate and allow for the following parking uses:

Short-Term (which includes hourly and daily use);

Overnight Validation;

General Event;

Residential; and

Monthly.

The parking uses for the Public Parking Facility shall be subject to adjustment from time to time as set forth herein and within the Parking Management Plan.

The allocations of parking spaces provided in this Section 4 and which are governed by all of the terms of this Agreement are made within a system of parking garages under the control and jurisdiction of the Agency and that system will be operated in a "shared parking" regimen as described in the Agency's Public Parking Management plan and as more particularly set forth in this Agreement.

##### 4.2 *Tenant and Owner Parking and Parking Validation*

The Developer agrees to support the Agency's efforts to maximize use of parking spaces in the Public Parking Facility by requiring its tenants and their customers and visitors

to avail themselves of that opportunity and participate in the validation program, provided, however, that the Developer is not hereby agreeing that it will cause any spaces or specific percentage of the Public Parking Facility to be allocated. By this Agreement, Developer agrees to participate in the Agency's Validation System as set forth in the Parking Management Plan. Developer shall require its tenants, lessees, sublessees, and other contractual parties of the Hotel and Event Center to participate in the parking validations as defined in the Public Parking Management Plan program. Parking for patrons of the sports bar, health club, hotel restaurant, and banquet rooms may be accommodated through the Agency's short-term parking validation program.

#### 4.3 *Residential Condominium Parking*

One (1) space per Residential Condominium Unit, but no more than ten percent (10%) of the number of parking spaces within the Public Parking Facility, will be allocated and maintained for the Residential Condominium Owners in the area covered by the Parking Lease Agreement between the Agency and the Boulevard Two Fifty Five Condominium Association. The lease of those spaces within the Public Parking Facility shall be governed by the following principles:

- (1) The lease shall at all times comply with those certain covenants contained in that certain Agency Resolution No. 696 providing for the Issuance and Sale of Parking Revenue and Revenue Allocation (Tax Increment) Bonds, Series 1995, dated November 27, 1995, and the Arbitrage and Tax Certificate of the Agency dated December 28, 1995, and any opinion of bond counsel interpreting such covenants including, but not limited to, that certain bond counsel opinion dated December 6, 1996.

(2) Rates for the parking spaces shall be established by the Agency from time to time as governed by the Agency's Parking Management Plan as amended from time to time. At no time shall parking rates be lower than the standard monthly rate charged for monthly parking in the Public Parking Facility or Ninth Street Parking Garage.

(3) Such spaces, and all such spaces, shall be leased to Boulevard Two Fifty Five Condominium Association which has been established for the residential units.

(4) The Boulevard Two Fifty Five Condominium Association may sublease such spaces to the Residential Condominium Owners and may charge such sublessees a higher rate so as to permit it to recover its sublease administration costs, provided, however, that such rate shall not exceed the rate charged to the Condominium Association by more than 2.5 percent.

(5) The Parking Lease shall include all necessary insurance and indemnification provisions.

(6) The Parking Lease shall be entered into by the Agency and Boulevard Two Fifty Five Condominium Association prior to the issuance of an occupancy permit for the residential units in the Hotel and Event Center.

#### *4.4 Parking Financing*

The Developer recognizes that the Public Parking Facility has been financed by the Agency by the issuance of the Series 1995A tax-exempt bonds and that revenue from the Public Parking Facility has been pledged to retire the Series 1995A Bonds. The Agency is obligated to operate its parking facilities in such a manner as to not jeopardize the tax-exempt nature of the financing. Subject to the express obligations contained herein, this Agreement

shall not be deemed to limit the Agency's ability to operate its parking facilities in a manner consistent with its obligations relating to such financing. Nothing contained in this Agreement shall be deemed to limit the Agency's ability and flexibility to operate the Public Parking Facility in that manner. The actual allocation, designation, and availability of the parking spaces shall be at the sole and unilateral discretion of the Agency, except as provided for by the residential parking lease.

#### 4.5 *Event Parking Request Form*

Events taking place at the Event Center and major hotel meeting space/ballroom events will be required to submit a parking request form to the parking operator. The purpose of this notice is to provide the Agency's parking operator with as much information as possible regarding events in the downtown area so that proper planning can be accomplished.

Among the information that is important to the parking operator is the event start and end times and what the estimated peak parking requirements are. Utilizing this information, the operator can ensure proper staffing and stall availability. The event coordinator will be encouraged to contact the parking operator to discuss parking arrangements. Developer agrees to comply with such notice requirements.

#### 4.6 *Reserved Parking Spaces*

Pursuant to the covenants contained within Agency Resolution 696, the Tax Certificate signed by the Agency on December 28, 1995, and that certain opinion of Bond Counsel dated December 6, 1996, the Agency may reserve parking spaces in an amount which does not exceed 10 percent of the number of parking spaces within the Public Parking Facility. Under

the terms of this Agreement one space per residential condominium unit, but no more than 10 percent of the number of parking spaces within the Public Parking Facility have been reserved for residential parking. In the event the number of spaces which constitute 10 percent of the number of parking spaces within the Public Parking Facility exceeds the number of residential condominium units, the Agency agrees to reserve that parking space differential for Developer's use. Such spaces will be located within the Public Parking Facility as agreed to by the Developer and the Agency. The parking rate for such reserved spaces shall be established by the Agency's Parking Management Plan and shall be equal to the monthly rent charged for residential parking use, but no less than the monthly parking rate established for the Ninth Street Garage or the Public Parking Facility.

5. Shared Parking

5.1 *Parking Operation and Management*

The Agency's intention is to operate and manage parking facilities within Boise's Central Business District which are or will be within its control (which are presently contemplated to be the Public Parking Facility, together with the parking structures presently in existence, under construction or planned, which are known generally as the Grove Street Garage (leased by the City of Boise), the Bannock Garage, the Capitol Terrace Garage, the Eastman Garage, the Ninth Street Garage and the projected Front Street Convention Center Garage or parking lot as a system and in a manner so as to maximize parking usage, efficiency, and available parking for all users (commuters, visitor, customer, general event, prepaid event, overnight validation, and residential) within Boise's Central Business District. To that end, the Agency intends to operate those facilities as a single system and to maximize

the use of a parking stall for a variety of parking purposes. Such system is referred to as the "Shared Parking Basis." By that it is meant that parking spaces having primary allocation to one use may be made available to other potential users during times when the demand for the primary use is low so long as full availability to satisfy the demands of the primary use and users during such times is assured. The Agency intends to operate the Public Parking Facility as a part of that system and on that basis.

### *5.2 Times of Operation*

The Agency covenants that it will cause the Public Parking Facility to be operated so as to permit 24-hour a day, 365 days per year.

### *5.3 Overnight Validation Program*

Pursuant to the Parking Management Plan the Agency has adopted an Overnight/Validation Program. The Public Parking Facility shall be operated and managed in order to allow for overnight/validation use within the Public Parking Facility.

As set forth in Section 5.5 of this Agreement, the Parking Management Plan shall be subject to change with the Developer being given certain notices of those changes with the ability to provide input and comment on such changes. The intent of this section is to allow such changes to reflect operational needs without the necessity of a formal amendment to this Agreement.

The Overnight Validation Rate will be established to generate sufficient revenues to pay for operations expenses for the Public Parking Facility and any incremental expenses in other facilities available for overnight/event parking. The rate will be reviewed periodically

(as often as quarterly, if necessary) with appropriate adjustments made based on historical operational expenses and revenues.

Validation for Overnight use will be provided to accommodate downtown overnight customers, users, and hotel guests. Overnight validation stamps may be purchased by businesses and provided to their clientele. The Agency anticipates a different color coding or designation of these validation stamps as opposed to the hourly validation stamps. Overnight validation will be honored at those parking facilities selected by the Agency to accommodate those users.

#### 5.4 *General Event Parking and Prepaid Event Parking*

Pursuant to the Parking Management Plan, the Developer may take advantage of General Event Parking for the Event Center use and, as set forth in Section 4.5 of this Agreement, is required to provide notice of certain events. Likewise, Developer may qualify for prepaid event parking as that term is defined in the Parking Management Plan. However, the primary purpose of the Public Parking Facility as set forth in the Public Parking Management Plan is for short-term, employees daily (as available), overnight validation, employee monthly (as available), and residential parking.

#### 5.5 *Changes to the Parking Management Plan*

Agency agrees to provide Developer written notice of any changes to the Public Parking Management Plan within the time frame set forth in the Public Parking Management Plan (but no less than thirty (30) days' notice) and any adjustments in the overnight validation rate in order to allow the Developer to express comment on the proposed policy and rate

changes. Nothing herein, though, shall limit the discretion and authority of the Agency to adopt changes to the Public Parking Management Plan and to parking rates.

#### *5.6 Initial Overnight Validation Rate*

Developer acknowledges that the initial Overnight Validation Rate has been established at \$1.00. Agency reserves the right to consider changes to the rate as often as quarterly. The Overnight Validation Rate will be established to generate sufficient revenues to pay for operation expenses for the Public Parking Facility and any incremental expenses in other facilities available for overnight validation parking. The rate will be reviewed periodically (as often as quarterly, if necessary) with appropriate adjustments made based on historical operational expenses and revenues. The initial rate for overnight validation rate shall be One Dollar (\$1.00). The Agency reserves the right to review said rate as often as quarterly to ascertain the revenue generated by the rate and the need for adjustments to the rate. The Agency intends to generate sufficient revenue from overnight validation rate parking and other allowed parking use of the Parking Garage to offset the costs of operation and maintenance of the Parking Garage. The Agency agrees to notify the Developer (along with other persons and entities entitled to notice) of such adjustments to the overnight validation rate at least thirty (30) days in advance of any scheduled adoption of a rate increase.

#### *5.7 Valet Parking*

Agency acknowledges that Developer may institute a valet parking system in order to achieve and maintain a four star or equivalent rating of the Hotel. Agency, by this



Agreement, shall allow such valet parking to occur within the Public Parking Facility, provided that the Developer complies with the following conditions:

- a. Such valet parking shall be under the express direction and control of the Developer or by contract of the Developer to a parking operator, which operator may be the Agency's parking operator.
- b. All costs for the valet parking shall be borne by the Developer and not charged or assessed to the Agency under any circumstance.
- c. All valet parkers shall be charged the overnight validation rate or other such rate as the valet parker shall use (for example, short-term hourly for patrons of the hotel restaurant).
- d. Agency shall be indemnified and held harmless for any loss, injury, or damage resulting from such valet parking, and Developer shall defend Agency from any claim asserted as a result of any loss, injury, or damage from such valet parking.

Developer shall be allowed to impose such charges for valet parking as it deems appropriate, except that Developer shall account for the parking charges imposed upon the valet parking user as set forth above. Agency or Agency's Parking Operator shall approve the location and functioning of the valet parking within the Public Parking Facility.

6. Parking Control; Facility Operations Program; Maintenance

6.1 *Parking Control System*

The Agency shall adopt and maintain a parking control system for the Public Parking Facility which is of a kind and quality sufficient to permit it to manage the Public Parking Facility so as to operate it on the Shared Parking Basis provided for in Section 5 of this Agreement. That parking control system shall include equipment which will accommodate residential users, hotel patrons, and other users. Such parking control system will be designed to assure Residential Condominium Users access to the Public Parking Facility at any time of

the day. The parking control system for the Public Parking Facility will also accommodate a validation system for the overnight validation, general event, and daily parking. The Parties agree to cooperate to incorporate a card reader or validation sticker/stamp/card which will accomplish the objectives of this Agreement.

## *6.2 Parking Facilities Operations Program*

The management of the Agency's public parking facility system so as to provide maximum, orderly, and efficient availability of public parking throughout the urban renewal area and to members of the public, including Hotel and Event Center employees, visitors, tenants, customers, and guests, is of the greatest importance to the Developer as well as to the Agency. To that end, the Agency has incorporated certain policies within its Public Parking Management Plan for its public parking system. Those policies and the Parking Management Plan, and their continuity, are fundamental to the Developer's agreement to this Agreement. Those policies include the adoption of the Overnight Validation Parking within the Parking Management Plan.

The Agency will use its best efforts to clearly delineate in its parking management policies those garages in which short-term daily parking has a priority, short-term hourly parking has a priority, long-term parking has a priority, daytime validation has a priority, short-term hourly has a priority, and Overnight Validation Parking has a priority. The Public Parking Facility will be one in which the Agency's management objective and priority will be to encourage visitors, daily, and Overnight Validation Parking use. The Agency will manage its system so as to direct and limit the impact of other parking among all of the parking facilities within its system. The Agency will, through the use of signs, maps, advertising, and

other information and management techniques, direct Overnight Validation Parking to the Public Parking Facility.

The Agency's policy will be to provide individual parking facility users with the opportunity to park their automobiles in facilities which are closest to their destinations within the urban renewal area (subject to the policies adopted relative to convention center event parking) in order to promote the efficient and orderly maximum availability of public parking within the Project Area and the purposes of the Urban Renewal Plan.

The Agency and its parking manager shall meet frequently with the Developer and the other operators of businesses which may purchase Overnight Validation or other validations or are leasing from the Agency within the Agency parking system to confer in order to provide the maximum utilization of the system so as to maximize the opportunity of the general public to park in convenient proximity to its destination within the Project Area.

The Agency shall set its cash price for parking at a rate designed both to maximize the availability of parking for parking patrons of the class of patrons accorded a priority within the several facilities within the Project Area and revenues from the system and each facility within it. The Agency's price structure shall also avoid conflicts between priority classes of users and other parking patrons in any specific facility, including conflicts with Overnight Validation Parking in the Public Parking Facility. The Agency shall also maintain those cash price levels relative to other facilities and in each facility in order to further serve its policies relating to availability of parking in proximity to patrons' destinations and other of its Public Parking Management Plan policies.

### 6.3 *Operation and Maintenance*

The parties understand that, over the course of the term of this Agreement conditions and requirements which relate to the operation and maintenance of the Public Parking Facility may change from those contemplated by the parties at the time of this Agreement and from time to time either of them, the Boulevard Two Fifty Five Condominium Association, or the Block 22 Condominium Association may request changes in the terms of this Agreement or of the Facility Operations Program for the Public Parking Facility, as those terms are defined in the Agency's Parking Management Plan, for the purpose of meeting such changed conditions. They, and each of them, covenant that they shall work together cooperatively to accommodate such requests by changes in the method or manner of operation or maintenance of the Public Parking Facility. It is understood that any resulting amendments to this Agreement or to the Public Parking Management Plan may be appropriately memorialized as revisions to the Public Parking Management Plan which may occur from time to time.

### 6.4 *Parking Equipment and Parking Operator*

The Agency shall provide, at its sole expense (which amount is above the GMP described in Recitals E and F) all signage, ticketing equipment, directional arrows, and the like to implement this Agreement and the Facility Operations Program and shall bear all other costs of operating the Public Parking Facility. Provided, however, any costs of the residential parking access shall be borne by the Developer. Provided, further, any cost attributable to hotel valet parking shall be borne by Developer. The Agency has currently retained AMPCO system parking as its parking operator. The Developer understands that the Agency's parking operator will have the day-to-day responsibility for the operation of the Public Parking

Facility and, therefore, will maintain communication with the parking operator for the purpose of the smooth operation of the Public Parking Facility.

#### 6.5 *Selection of Parking Operator*

Developer acknowledges that under the terms of Resolution 696 and the financing of the Public Parking Facility through the Series 1995A Bonds, the Agency must comply with certain conditions in the frequency of selection of Agency's parking operator and the terms under which the parking operator shall operate and manage the Agency's parking facilities, including the Public Parking Facility. Agency shall provide Developer notice of the Agency's intent to solicit proposals for Agency's parking operator. Nothing herein shall be deemed to require the Agency to request a separate proposal for any one of the Agency's parking facilities, including the Public Parking Facility.

### 7. Operations

#### 7.1 *Operations in General*

The Agency agrees, either by itself or through the services of a parking facility operator, to manage and operate the Public Parking Facility in a professional, economical, and businesslike manner. The Agency agrees to accomplish the following utilizing revenues of the Public Parking Facility as hereinafter provided:

- (1) Provide operational and maintenance supplies as are reasonably necessary to operate the Public Parking Facility.
- (2) Provide bookkeeping and accounting functions such that gross revenues and expenses are individually computed for the Public Parking Facility.

- (3) Contract with parking patrons and bill and collect in accordance with such contracts.
- (4) Sell validation "stamps" and honor said validations in accordance with the validation plan established by the Agency.
- (5) Pay for all utilities, including telephone, gas, water, electricity, sewer, and trash collection.
- (6) Maintain all operating equipment.
- (7) Maintain and furnish a business and ticket sales office in a location within the City of Boise as determined by the Agency.
- (8) Accomplish routine maintenance and repair.
- (9) Provide parking access and the number of parking spaces in compliance with applicable standards of the Americans with Disabilities Act of 1990, as amended.

#### *7.2 Operational Standards*

The Agency will be responsible for the day-to-day maintenance and repair of the Public Parking Facility in a manner that ensures the safe, attractive, and clean operation of all facilities and in accordance with the Parking Management Plan. Such services include cleaning, parking control equipment maintenance, and other shared equipment (including the elevators serving the Public Parking Facility), which maintenance cost shall be shared between the Agency and Developer. The Agency will use the Parking Garage Maintenance Manual, April 1991, as updated, published by the Parking Consultants Council of the National Parking Association, as a guide in providing such services.

### *7.3 Maintenance Obligations of Agency*

The Agency agrees to maintain the Public Parking Facility in good condition and repair and in as safe condition as its operation will reasonably permit and to make all repairs thereto which may be reasonably necessary for this purpose including, but not limited to, the following:

- (1) Maintain all pavement markings, bumper guards, and wheel blocks.
- (2) Maintain all parking equipment, including all gates, barricades, ticket spitters, computers, etc.
- (3) Maintain the premises in a clean, presentable condition and not allow dirt, paper, or trash of any kind to accumulate upon the premises and remove all obstructions from the property and from adjacent driveways.
- (4) Make minor necessary repairs to the structure, plumbing, lighting, and heating systems.
- (5) Maintain and keep in good working order all neon directional, informational, and advertising signs located within or on the exterior of the facility.
- (6) Maintain and keep in good working order all shared equipment including the elevator.

### *7.4 Revenue Amounts*

The Agency shall keep, through the entire term of this Agreement or any extension hereof, all books of account and records customarily used in this type of operation and as from time to time may be required in accordance with generally accepted (governmental) accounting principles (GAAP).

#### *7.5 Tax Accounting Provisions and In-Lieu-of Tax Payment Provisions*

The purpose of the accounting provisions is to determine the revenues generated in the Public Parking Facility and other facilities which are directly related to activities in the Event Center as a possible deduction from the in-lieu-of taxes which Developer has agreed to pay. The Developer's obligation is more fully described in the Limited Guaranty Agreement dated January 5, 1996, between the Agency and the Developer, which is incorporated herein by reference. Generally, the Developer's obligation is described as follows:

In the event the Hotel and Event Center or any improvements thereon or any possessory interest therein should at any time be subject to ad valorem taxes or privilege taxes levied, assessed, or imposed on such Hotel and Event Center, Developer shall pay taxes upon the assessed value of the entire Hotel and Event Center and any improvements thereon, not merely upon the assessed value of its ownership.

To the extent that ad valorem, privilege, or any other taxes or assessments levied on the Hotel and Event Center or any improvements thereon are of a lesser amount than would be levied if the Hotel and Event Center were entirely in private ownership, Developer shall be responsible to pay as in-lieu-of taxes the difference between the taxes and assessments actually levied and the taxes and assessments which would be levied if the Hotel and Event Center were privately owned. Developer shall pay such difference to Agency within thirty (30) days after the taxes for such a year become payable to the taxing agencies and in no event later than the delinquency date of such taxes established by law.

In the event that the assessed value and/or Hotel and Event Center and any buildings or improvements which are now or hereafter located thereon and owned or leased by



Developer, as determined by the tax assessor for the County of Ada, Idaho, and levy rate shall fail to result in the payment of taxes during any year from and after the first full calendar year following occupancy of the Event Center (the occupancy of the Event Center is defined as the issuance of at least a temporary certificate of occupancy, which date of issuance shall be deemed as the "Occupancy Date") in an amount resulting in the distribution to Agency of tax increment proceeds sufficient to allow Agency to pay the required debt service for Agency's Parking Revenue and Revenue Allocation (Tax Increment) Bonds, Series 1995A (the "Bonds") during such year, Developer shall pay to Agency, as additional in-lieu-of tax payments hereunder, within thirty (30) days after demand by Agency therefor, an amount equal to the difference (the "Differential") between the amount of required debt service for the Bonds during such year and the amount of such tax increment proceeds distributed to Agency during such year from the taxes payable by Developer for such year; provided, however, Developer shall not be required to pay a Differential for any year from and after the first full calendar year following the Occupancy Date in excess of an amount which when added to the amount of such tax increment proceeds distributed to Agency during such year from the taxes payable by Developer for such year would exceed the amount set forth opposite such year under the heading entitled "Series 1995A Bonds—Debt Service" in Exhibit A attached hereto; and provided further, however, the terms and provisions of this paragraph shall be of no further force and effect from and after the final redemption or defeasance of the Bonds.

During the partial calendar year subsequent to the Occupancy Date, Agency shall retain from Net Proceeds (as defined in Bond Resolution No. 696 adopted by the Board of

Commissioners of Agency) of the Bonds an amount equal to the Differential for such partial calendar year less any interest earnings from the Hotel Garage Project Construction Fund (as defined in Section 5(2)B of such Bond Resolution); provided, however, the Differential for such partial calendar year shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000).

Any additional in-lieu-of taxes received by Agency pursuant to this section shall be treated by Agency as Incremental Tax Revenues or Unexpended Net Proceeds and Promptly deposited upon receipt into the Debt Service Account of the Bond Fund or the Revenue Allocation Fund, as the case may be, all as defined in and established by such Bond Resolution.

The obligation of the Developer to pay taxes or in-lieu-of tax payments shall continue until the Series 1995A Bonds are retired or redeemed. The in-lieu-of tax payment shall be reduced by the amount of net parking proceeds from the Public Parking Facility serving the Hotel and Event Center plus any increased net parking revenues from the Agency's parking system attributable to events at the Event Center.

This Agreement and the Limited Guaranty Agreement shall be interpreted in concert.

#### *7.6 Agreement Not a Tenancy*

Nothing in this Agreement shall be construed as creating a tenancy between the Developer and the Agency, nor shall the Developer be deemed to have the right of occupancy to the premises or any part thereof.

#### *8. Taxes*

It is the intention of the Developer and the Agency that the Public Parking Facility and its operation be exempt from taxation.

9. Insurance

Agency agrees to maintain insurance on the Public Parking Facility in compliance with the provisions of Resolution No. 696.

10. Default, Remedies, Termination, and Arbitration

10.1 *Defaults in General*

Failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The party who so fails or delays must immediately commence to cure, correct, or remedy such failure or delay and shall complete such cure, correction, or remedy with reasonable diligence and during any period of curing shall not be in default.

The party claiming default shall give written notice of default to the party in default specifying the default complained of. Except as required to protect against further damages and except as otherwise expressly provided in this Agreement, the injured party may not institute proceedings against the party in default until thirty (30) days after giving such notice, said thirty (30) days constituting the period to cure any default. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

It is expressly understood and agreed that each of the covenants, promises, stipulations, and agreements of the parties hereto are an integral and indivisible part of the mutual consideration given by each of the parties to this Agreement and that each covenant, promise, stipulation, and agreement of the parties shall be deemed and construed as material. It is further understood and agreed that failure, refusal, or neglect for any reason whatsoever of either party to perform any of the covenants, promises, stipulations, or agreements to be performed by that party pursuant to the terms and provisions of this Agreement shall constitute a material default on the part of that party, giving to the other party the right to exercise each and every of its remedies reserved in or under, or otherwise the right to enforce, this Agreement in accordance with the provisions of this article and other provisions relating to default in this Agreement. Upon the effective date of the Condominium Declaration and Loan Documents, any reference to default or act of default under provisions of the Condominium Declaration and Loan Documents shall be deemed to be a corresponding and simultaneous default under this Agreement.

For purposes of this Agreement, the term "Loan Documents" shall be deemed to mean those financing documents entered into between the Developer and any financial institution which grants to the financial institution the right to foreclose or acquire through any other recognized means the Hotel and Event Center or the Developer's interest in the Common Areas.

## 10.2 *Legal Actions*

### (a) *Institution of Legal Actions*

In addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Fourth Judicial District Court of the State of Idaho, County of Ada, or in the United States District Court for the District of Idaho. In the event legal action is brought to enforce this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and costs, which shall be included in and as a part of any judgment.

### (b) *Applicable Law*

The laws of the State of Idaho shall govern the interpretation and enforcement of this Agreement.

### (c) *Acceptance of Service of Process*

In the event that any legal action is commenced by the Developer against the Agency, service of process on the Developer shall be made by personal service upon the Chairman of the Agency or in such other manner as may be provided by law.

In the event that any legal action is commenced by the Agency against the Developer, service of process on the Agency shall be made by personal service upon the Developer or in such other manner as may be provided by law and shall be valid whether made within or without the State of Idaho.

(d) *Alternative Dispute Resolution*

If a dispute arises out of or relates to this Agreement or the breach thereof, and if said dispute cannot be settled through direct discussions, the parties agree to first endeavor to settle the dispute in an amicable manner by mediation or other process of structured negotiation under the auspices of a nationally or regionally recognized organization providing such services in the Northwestern States or otherwise, as the parties may mutually agree before resorting to litigation or to arbitration.

10.3 *Rights and Remedies Are Cumulative*

Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the other party. Specifically, the Developer retains all the rights and remedies stated herein without exception.

10.4 *Cost of Curing Breach*

A nondefaulting party may also, at its sole and singular option, cure a breach and sue in any court of proper jurisdiction to collect the reasonable costs incurred by virtue of curing or correcting the defaulting party's breach, including reasonable attorney fees and court costs and such fees and costs on appeal.

10.5 *Damages*

If the Agency or the Developer defaults with regard to any of the provisions of this Agreement, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured or commenced to be cured by the defaulting party

within thirty (30) days after service of notice of default, the defaulting party shall be liable to the other party for any damages caused by such default.

#### 10.6 *Specific Performance*

If the Agency or the Developer defaults under any of the provisions of this Agreement, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not commenced to be cured by the defaulting party within thirty (30) days of service of the notice of default, the nondefaulting party, at the nondefaulting party's option, may institute an action for specific performance of the terms of this Agreement or for other equitable relief.

#### 10.7 *Termination*

In the event the Agency or Developer defaults under any of the provisions of this Agreement, which default is not cured within the cure period set forth in Section 10.1 of this Agreement, the nondefaulting party, at the nondefaulting party's option, may declare this Agreement terminated by providing written notice to the defaulting party. In addition, in the event the Developer defaults under any of the provisions of this Agreement, which default is not cured within the cure period set forth in Section 10.1 of this Agreement, Agency, upon its declaration of termination of this Agreement, shall no longer be required to provide the parking allocation or rates for such parking as described in this Agreement; provided, however, Agency shall comply with the Public Parking Management Plan and the covenants of Resolution 696. Provided, further, termination under this Agreement shall not effect the Parking Lease between the Agency and the Boulevard Two Fifty Five Condominium Association for parking for the residential condominium units.

11. Restriction on Sale of Public Parking Facility

Under the Agency's covenants to Resolution 696 (the Bond Resolution), the Agency may sell portions of the Agency's Parking System (which includes the Public Parking Facility) only under certain conditions and provided the proceeds of such sale meet certain minimum criteria. Developer may inquire of the Agency, from time to time, during the term of this Agreement as to the sale of the Public Parking Facility. In the event the Agency determines it is in the best interests of the Agency to sell the Public Parking Facility and that all of the Agency's covenants and obligations can be met through such sale, the Agency shall provide the Developer notice of intent of such sale, in the same manner and in the same time frame as the Agency would provide any other entity entitled to notice of such sale. Terms of any such sale shall comply with all of the covenants and conditions of the Agency's Resolution 696 and any applicable statute or regulation. Nothing herein shall be deemed to commit the Agency to such sale or the sale of the Public Parking Facility to Developer.

After the retirement or defeasance of the Series 1995 Bonds, the bond covenants will no longer be applicable.

Any such sale shall include an appropriate covenant that will require the Public Parking Facility to be operated in compliance with the Agency's Public Parking Management Plan.

12. Miscellaneous

12.1 *Notice*

All notices, demands, or other communications hereunder shall be in writing and shall be deemed given when personally delivered or if sent by certified or registered mail, postage



prepaid, with proper address as indicated below. The Developer and the Agency may, by notice given each to the other, designate any address or addresses to which notices, certificates, or other communications to them shall be sent when required as contemplated by this Agreement. Until otherwise provided by the respective parties, all notice, certificates, or other communications to them shall be sent when required as contemplated by this Agreement. Until otherwise provided by the respective parties, all notices, demands, and communications to each of them shall be addressed as follows:

To the Agency:

Capital City Development Corporation  
805 West Idaho Street, Suite 200 (83702)  
Post Office Box 987  
Boise, Idaho 83701-0987

To the Developer:

Block 22, LLC  
P.O. Box 27  
Boise, Idaho 83707.

#### 12.2 *Compliance With Laws and Ordinances*

The Agency agrees to operate said facility in compliance with this Agreement, the Parking Management Plan, and all laws and ordinances in effect or which may hereafter be adopted.

#### 12.3 *Descriptive Headings*

The headings used herein are descriptive only and for the convenience of identifying the provisions hereof and are not determinative of the meaning or effect of any of the provisions of this Agreement.

#### 12.4 *Severability*

If any provision of this Agreement shall be invalid or unenforceable, the remainder hereof shall nevertheless continue in full force and effect.

#### 12.5 *Parties in Interest*

All terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and by their respective successors in interest or assigns.

#### 12.6 *Not a Lease*

The parties acknowledge that this Agreement does not constitute a lease of the location, and the Agency assumes no responsibility for taxes, repairs, or upkeep of the Public Parking Facility.

#### 12.7 *Governmental Action*

In the event any governmental authority takes any action which inhibits or adversely affects vehicle ingress to or egress from the location, if a portion of the location shall be acquired or condemned under the threat of eminent domain or any other government power, or if any governmental authority takes any action relating to the parking, fueling, or use of motor vehicles which causes or substantially contributes to a reduction in the use of the parking facilities, the Agency shall have the right to terminate this Agreement by giving thirty (30) days' written notice to Developer or continue its operations on the balance of the location, if any.

#### 12.8 *Inspection of Books and Records*

The Developer has the right, upon notice as provided by law, at all reasonable times, to inspect the books and records of the Agency pertaining to the Public Parking Facility as pertinent to the purposes of this Agreement.

The Agency also has the right, upon notice similar as stated in the previous paragraph, at all reasonable times, to inspect the books and records of the Developer pertaining to the Public Parking Facility as pertinent to the purposes of this Agreement, including revenues generated by the validation system.

#### 12.9 *Amendments to This Agreement*

The Agency and the Developer agree to mutually consider requests for amendments to this Agreement which may be made by any of the parties hereto or bond counsel, parking consultants, insurance consultants, or financial consultants to the Developer or the Agency, provided such requests are consistent with this Agreement and would not substantially alter the basic business terms included herein.

#### 13. Successors and Assigns

No Party shall assign or delegate its obligations under this Agreement without the consent of each other Party hereto, which consent shall not be unreasonably withheld. Except as otherwise set forth in this Agreement, the terms, covenants, conditions, and agreements contained herein shall be binding upon and inure to the benefit of the heirs, personal representatives, successors, and assigns of the Parties hereto. The Developer also agrees to obtain the consent, acknowledgment, or approval, as the case may be, to this Agreement by

a legal holiday recognized by the City of Boise on which the offices of the city are closed for city business.

17. No Third-Party Beneficiary

The provisions of this Agreement are for the exclusive benefit of the parties hereto and not for the benefit of any third person, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any third person, except any provision expressly for the benefit of a mortgagee or lender of the Developer or its successors and assigns.

18. Titles

The paragraph and section headings contained herein are for convenience and reference and are not intended to define or bind the scope of any provisions of this Agreement.

19. Entire Agreement, Waivers, and Amendments

This Agreement is executed in four (4) duplicate originals, each of which is deemed to be an original. This Agreement comprises pages 1 through \_\_, inclusive, and the attachments attached hereto, all of which constitute the entire understanding and agreement of the parties.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

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

20. Effective Date of Agreement

The effective date of this Agreement shall be the date when the Agreement has been signed by both the Developer and the Agency.

IN WITNESS WHEREOF, the Developer and the Agency have caused this Agreement to be executed in their respective corporate names, and their respective corporate seals to be hereunto affixed and attested by their duly authorized officers, all as of:

2.9, 1998. CAPITAL CITY DEVELOPMENT CORPORATION  
"Agency"

By Mary Kate  
Chairman

By Charles W. Bishop  
Secretary

1/16, 1998. BLOCK 22, LLC  
"Developer"

By [Signature]  
Its MEMBER

By WCF for Diamond Holdings, LLC  
Its MEMBER

By \_\_\_\_\_  
Its \_\_\_\_\_

the Hotel Condominium Association and the Boulevard Two Fifty Five Condominium Association.

14. Rights of Mortgagees

As long as the Agency has received notice from the Developer or from any mortgagee, any mortgagee holding a recorded mortgage or deed of trust on the Hotel Site or any portion of it shall receive copies of all notices and communications required to be delivered to the Developer under this Agreement and may, in its sole and absolute discretion, but not as its obligation, cure any default or failure to perform on the part of the Developer and may enforce as if it were the Developer any right to performance by the Agency under this Agreement.

15. Invalidity

If any section, subsection, sentence, clause, or phrase of this Agreement or the application thereof to any party hereto or to any other person or circumstances for reason is held invalid, such provisions shall be deemed severable, and the validity of the remainder of the Agreement or the application of such provision to the other party or to any person or circumstance shall not be affected thereby.

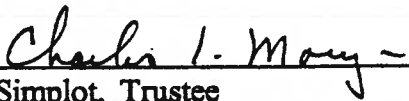
16. Computation of Time

In computing any period of time prescribed or allowed under this Agreement, the date of the act, event, or default from which the designated period of time begins to run shall not be included. The last calendar day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. As used herein, "legal holiday" means

1/14, 1998

"DEVELOPER"  
BLOCK 22, LLC

By: S-Sixteen Limited Partnership, Member  
By: J.R. Simplot, Declaration of  
Revocable Trust, General Partner  
By Charles E. Morey,  
Authorized Agent

  
\_\_\_\_\_  
J.R. Simplot, Trustee  
By: Charles E. Morey,  
Authorized Agent

By: Diamond Holding LLC, Member

  
\_\_\_\_\_  
W. Cord Pereira, Manager

By: WC/WLDC Idaho, L.L.C., Member

  
\_\_\_\_\_  
Jerry Jenkins, Manager

STATE OF IDAHO )  
 ) ss.  
County of Ada )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1998, before me, \_\_\_\_\_, the undersigned notary public in and for said county and state, personally appeared \_\_\_\_\_ and \_\_\_\_\_, known or identified to me to be the Executive Director of the Urban Renewal Agency of Boise City, the public body, corporate and politic, that executed the within and foregoing instrument, and acknowledged to me that he/she executed the same on behalf of said Urban Renewal Agency of Boise City.

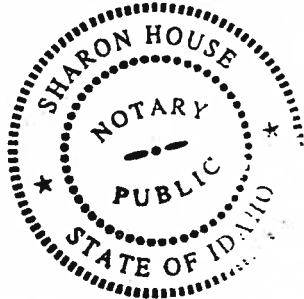
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public for Idaho  
Residing at \_\_\_\_\_  
Commission Expires \_\_\_\_\_

STATE OF IDAHO )  
 ) ss.  
County of Ada )

On this 16th day of January, 1998, before me, Sharon K House, the undersigned notary public in and for said county and state, personally appeared Charles E. Morey, authorized agent for J. R. Simplot, Trustee of the J.R. Simplot Self-Declaration of Revocable Trust which is the General Partner of S-Sixteen Limited Partnership which is a Member of Block 22 LLC, the Developer herein, known or identified to me to be the person that executed the within and foregoing instrument, and acknowledged to me that he has the authority to execute and executed the same on behalf of the J.R. Simplot Self-Declaration of Revocable Trust, S-Sixteen Limited Partnership, and Block 22 LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



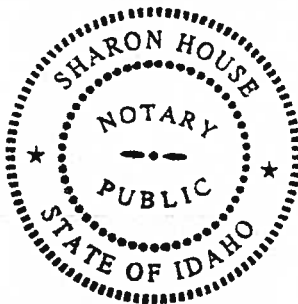
Sharon K House  
Notary Public for Idaho  
Residing at Mendota  
Commission Expires 5/31/03



STATE OF IDAHO )  
 ) ss.  
County of Ada )

On this 16th day of January, 1998, before me Sharon K House  
the undersigned notary public in and for said county and state, personally appeared W. Cord  
Pereira, Manager of Diamond Holding LLC a Member of Block 22 LLC, the Developer  
herein, known or identified to me to be the person that executed the within and foregoing  
instrument, and acknowledged to me that he has the authority to execute and executed the  
same on behalf of Diamond Holding LLC and Block 22 LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal  
the day and year in this certificate first above written.

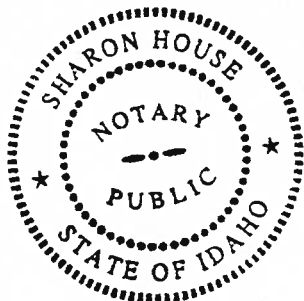


Sharon K House  
Notary Public for Idaho  
Residing at Meridian  
Commission Expires 5/31/03

STATE OF IDAHO )  
 ) ss.  
County of Ada )

On this 16th day of January, 1998, before me Sharon K House  
the undersigned notary public in and for said county and state, personally appeared Jerry  
Jenkins, Manager of WC/WLDC Idaho, L.L.C., a Member of Block 22 LLC, the Developer  
herein, known or identified to me to be the person that executed the within and foregoing  
instrument, and acknowledged to me that he has the authority to execute and executed the  
same on behalf of WC/WLDC Idaho, L.L.C., and Block 22 LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal  
the day and year in this certificate first above written.



Sharon K House  
Notary Public for Idaho  
Residing at Meridian  
Commission Expires 5/31/03

**Attachment C  
PARKING AGREEMENT COMMITMENTS**

**PARKING COMMITMENT**

<u>Project</u>	<u>Garage Commitment</u>	<u>Open Retail</u>	<u>Office</u>	<u>Reserved</u>
Alexander Building		0	0	0
Broadbent Building		0	0	0
First Interstate Center	Ninth - 140 spaces	0	112	28
	Eastman - 37 spaces	0	37	
Mode Building <sup>(4)</sup>	Eastman	150 <sup>(1)</sup>	13 <sup>(2)</sup>	0
Idaho Building		0	0	0
Fidelity Building <sup>(4)</sup>	Capitol Terrace	27 <sup>(1)</sup>	13	0
Capitol Terrace Retail	Capitol Terrace	350	0	0
Union Block Building <sup>(4)</sup>	Capitol Terrace	28 <sup>(1)</sup>	29	0
Capital Plaza	Capitol Terrace	87 <sup>(1)</sup>	55	32 <sup>(3)</sup>
Simplot Building <sup>(4)</sup>	Eastman	23	27	0
Block 22, LLC	Block 22 Parking Facility	0	0	19 <sup>(3)</sup>

<sup>(1)</sup> Part of 350 in Capitol Terrace commitment

<sup>(2)</sup> Only paid 40 percent of total office contribution

<sup>(3)</sup> One space per residential unit not to exceed 10% of the total number of spaces

<sup>(4)</sup> These spaces could be in any of our facilities, but for this purpose, we have assumed the closest facility.

**LONG-TERM PARKING COMMITMENTS PER FACILITY:**

Eastman	77
Capitol terrace	129
Ninth Street	140
Block 22 (Boulevard)	19

US Bank < 40 if called on >

< Revised >

Dec. 6, 2001

Downtown Public Parking System  
Boulevard Garage

The Boulevard Garage is operated to optimize the space usage to accommodate a variety of parking uses.

Monday – Friday 6:30am – 6:30pm.:

Total Stalls	222
Less Valet Parking	41
Less Monthly Parking	26
Less Monthly Tandem	38
Less Reserved Condo	<u>14</u>
Net spaces	103
GH Guest Forecast*	<u>60</u>
Daily\hourly Spaces	43

Event schedules are provided to parking operations by Grove Hotel, Bank of America Centre, and Boise Centre on the Grove. These schedules are reviewed to assist in monitoring the occupancy status of the garage. When the space vacancy reaches the forecasted hotel guest level, the garage is temporarily closed until it is confirmed that all commitments are satisfied.

After 6:30pm Monday – Friday, and on weekends:

After the overnight hotel guest parking has been accommodated the facility is operated on a first come first served basis. In the event the facility is completely full, the full signs are placed until spaces become available for general public use.

*\*Grove Hotel has 250 guest rooms available, it is reported that their occupancy rate is 70%, of these 175 daily reservations, 34% are self park guests (approximately 60). Grove Hotel reports to the garage attendant each morning the number of guests forecasted that day which may adjust the actual*

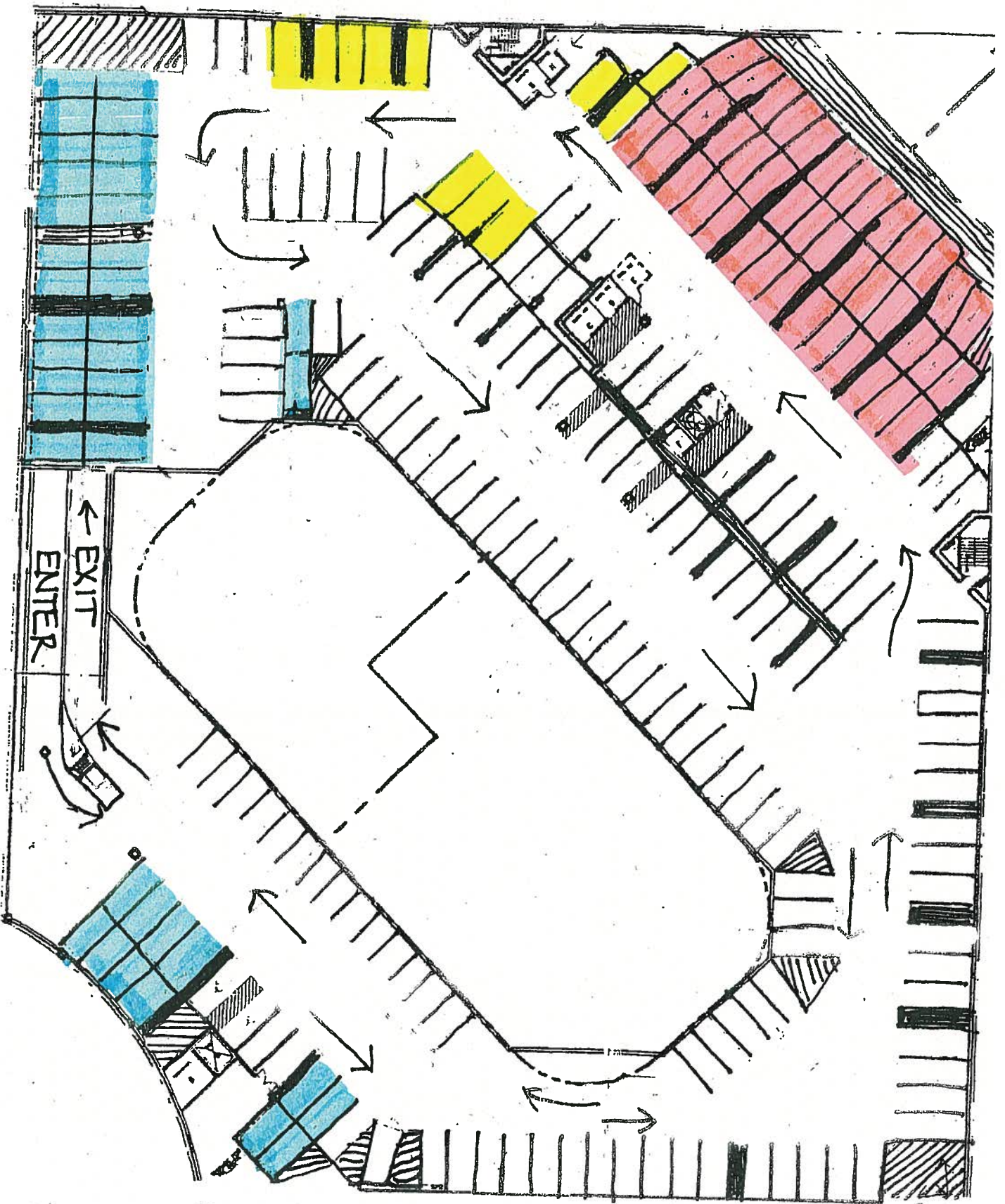
Conclusion:

A review of space availability was completed during November. It was found that the average number of spaces available was 24; during these counts the facility was available to daily\hourly parkers approximately 50% of the time. These dates & times varied due to the fluctuating number of event attendees at various times.

Reserved

Tandem

Valet



Boulevard Garage

ci obs

## USE OF GARAGE SPACE

Of the 224 stalls, use of the space is expected to be roughly as follows:

Valet cars for hotel patrons (including the restaurant, bar and other visitors)

Tandem parking areas to be used FIRST

No self park stalls are to be used to park valet customer cars until all tandem stalls are filled.

Eventually, 21 self park stalls will be sold to the condominium and reserved for 24 hour use by condo customer. These are likely to be located near elevator to condo area.

Up to 72 overnight validated customers for executive suites can be reserved for events in the arena. If the garage fills, The Grove Hotel may valet regular hotel guests and executive suite holders.

Remaining stalls to be used by existing monthlies (eventually phased out) and daily parkers on a first come first served basis.

All revenues to be collected (cash or validation) with the following exceptions:

- 1) Monthly parkers (7 a.m. to 6 p. m. M-F)
- 2) Executive Suite pass holders (processed the same as an overnight validation, but valid on event nights only)