

PARKING SUBLEASE AND AGREEMENT

THIS PARKING SUBLEASE AND AGREEMENT (this "Sublease") is made and entered into as of the 2nd day of July, 2001 by and between the City of Aspen, Colorado ("Sublessor"), whose address is 130 South Galena Street, Aspen, Colorado 81611, and 7th and Main Condominium Association, a Colorado nonprofit corporation ("Sublessee"), whose address is 719 W. Main St. Aspen, CO 81611.

WITNESSETH:

WHEREAS, Benedict Commons Condominium Association, a Colorado nonprofit corporation ("Lessor") manages the common elements of the Benedict Commons Condominiums, pursuant to the Condominium Declaration for Benedict Commons Condominiums recorded at Reception Number 390506 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, in accordance with the Declaration and the Bylaws for the Benedict Commons Condominium Association ("Bylaws"), Lessor leased to Sublessor, pursuant to a Parking Lease and Agreement, dated as of March 12, 1996 between Lessor and Sublessor (the "Lease Agreement"), 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 390505 of the Pitkin County real property records; and,

WHEREAS, Section 13 of the Lease Agreement provides that Sublessor may sublease all or a portion of the Lease Premises; and,

WHEREAS, Sublessor desires to sublease a portion of the Lease Premises to Sublessee in accordance with the terms and conditions contained in this Parking Sublease and Agreement; and,

WHEREAS, Subessee desires to sublease from Sublessor a portion of the Lease Premises in accordance with the terms and conditions contained in this Parking Sublease and Agreement.



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

1. Sublease of Premises. Sublessor does hereby sublease to Sublessee and Sublessee does hereby rent from Sublessor the following described premises:

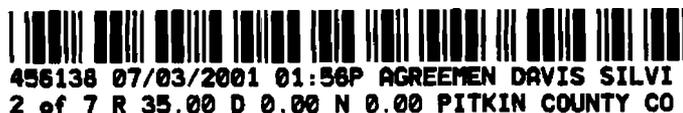
Four parking spaces in the parking garage of Benedict Commons Condominiums, defined and described as general common elements of the Condominium Map for Benedict Commons Condominiums which map is recorded at Reception No. 390505 of the Pitkin County real property records attached hereto as Exhibit "A" and by this reference incorporated herein (the "Sublease Premises").

2. Term. Unless sooner terminated as provided herein, the term of the lease shall commence on the effective date hereof and shall terminate upon the termination of the Lease Agreement. Sublessee may terminate this Sublease at any time upon thirty (30) days prior written notice to Sublessor. If Sublessee terminates this Sublease, Sublessee shall have no further rights, duties or obligations hereunder, except for the payment of any accrued and unpaid amounts owed by Sublessee hereunder and except that Sublessee's indemnity obligations pursuant to Section 10 hereof shall survive termination of this Sublease indefinitely.

3. Use. Sublessee shall not occupy or use the Sublease Premises nor permit or suffer the same to be occupied for any purpose except to park vehicles on the Sublease Premises in designated parking spaces. Parking upon the Sublease Premises shall be open parking only and no development or structures of any nature whatsoever shall be permitted thereon, nor shall Sublessee permit more than four (4) vehicles to park simultaneously on the Sublease Premises. Sublessee shall use its best efforts to insure that no one parking their vehicle on the Sublease Premises with the permission of Sublessee parks in parking spaces not included in the Sublease Premises. Sublessee shall comply with all applicable statutes, ordinances, rules, regulations, orders and requirements relating to the use of the Sublease Premises, including any rules and regulations set forth in the Declaration and/or Rules and Regulations enacted from time to time by Lessor.

4. Access. Sublessor and Sublessee covenant that neither one shall impair the other's access to their respective parking spaces in the Benedict Commons Condominium parking garage.

5. Benedict Commons Documents. This Sublease and Sublessee's use and occupancy of the Sublease Premises are subject to, and Sublessee agrees to be bound by, the terms and provisions of the Lease Agreement and, to the extent relating to the Sublease Premises, the Declaration, Articles of Incorporation ("Articles") and Bylaws of the Benedict Commons Condominiums and the Rules and Regulations enacted by the Benedict Commons Condominium Association's Executive Board from time to time (the "Rules and Regulations"). Sublessee acknowledges and agrees that the Benedict Commons Condominium Association shall have the authority to enforce against Sublessee the rules, regulations and covenants, contained in



the Declaration, Articles, Bylaws and Rules and Regulations.

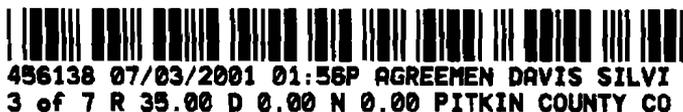
6. Rent. The rent for the term of this Sublease shall be a sum equal to 4/58 of the cost of all maintenance, management, repair, gas, electricity and any and all other utility charges, and any and all other costs incurred by Lessor in connection with the parking garage, except maintenance and repair of the storage bins, the cost of which is specifically excluded.

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 amount for which Sublessee is responsible for rent. However, all management, electricity and other utility charges or other charges incurred by Lessor, in the garage shall be included by Lessor in the garage budget and shall be allocated among Lessor, Sublessor and Sublessee, without any deduction for any portion thereof that might otherwise be allocated to the storage bins.

8. Late Charges. Sublessee hereby acknowledges that late payment by Sublessee to Sublessor of rent or other sums due hereunder will cause Sublessor to incur costs payable to Lessor not contemplated by this Sublease, the exact amount of which shall be extremely difficult to ascertain. Such costs may 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 Sublease Premises. Accordingly, if any installment of rent or any other sum due from Sublessee hereunder shall not be received by Sublessor or Sublessor's designee on or before twenty-one (21) days after receipt of a statement for such rent, then Sublessee shall pay to Sublessor 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 Sublessor would incur by reason of the late payment by Sublessee. Acceptance of such late charges by Sublessor shall in no event constitute a waiver of Sublessee's default with respect to such overdue amount, nor prevent Sublessor from exercising any of the other rights and remedies granted hereunder unless the entire amount due, plus late charge, is accepted by Sublessor. In addition, any sum for which Sublessee shall be obligated to Sublessor, 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. Sublessee shall pay, as additional rent hereunder, all personal property taxes assessed against the personal property used by Sublessee and located on the Sublease Premises for the term of this Sublease. Likewise, Sublessee shall be responsible for any and all sales, use, withholding and other taxes assessed against the Sublease Premises for Sublessee's use of the premises and Sublessee's prorated portion of real estate taxes for the Sublease Premises.

10. Liability Insurance. Sublessee, at its own cost and expense, shall provide and keep in full force for the benefit of the Sublessee, Sublessor and Lessor (as named or additional insureds) during the term hereof, general liability insurance for claims of liability arising out of,

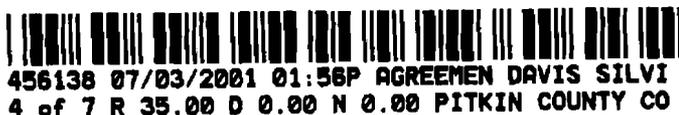


occasioned by or resulting from an accident or otherwise in or about the Sublease Premises, in an amount not less than \$2,500,000.00 for each occurrence including bodily injury and/or property damage. To the extent permitted by law, Sublessee also agrees to and shall save, hold and keep harmless and indemnify Sublessor and 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 Sublessee or any of its sublessees, assignees or successors. If for any reason as a result of Sublessee's activities, use, or business, it shall be impossible to obtain fire and other hazard insurance on the buildings and improvements on the Sublease Premises, in an amount and with insurance companies acceptable to the Lessor, the Sublessor may terminate this Lease and the term hereof, upon giving to Sublessee fifteen (15) days notice in writing of the Sublessor's intention to do so and upon the expiration of the time provided in said notice, this Sublease and the term hereof shall terminate. If by reason of the use of the Sublease Premises by the Sublessee, Sublessor's or Lessor's insurance rates for fire and other hazards shall be increased, the Sublessee shall pay, as additional rent, the amounts by which the premiums for such insurance are increased. The Sublessee waives all rights of recovery against Sublessor, Lessor or their respective agents, employees or other representatives, for any loss, damages or injury of any nature whatsoever to property or persons for which the Sublessee 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 Sublessor and Lessor shall be primary as to any other insurance or reinsurance covering the Sublessor or 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 Sublessor and 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 Sublessor and Lessor of a written notice of such cancellation, as endorsed by receipt of a certified letter.

12. Damage to Premises. If the Sublease Premises shall be so damaged by fire or other catastrophe (which is not caused by the fault or negligence of Sublessee or imputable to Sublessee) as to render the Sublease Premises untenable, Sublessee thereupon shall surrender the Sublease Premises to Sublessor. Sublessee shall pay rent, duly apportioned, up to the time of such termination of this Sublease. Notwithstanding the foregoing, in lieu of any termination of this Sublease, if Lessor elects, at its sole option and expense, within thirty (30) days after the



event of such damage, to make, or cause to be made, the Sublease Premises fit for occupancy, this Sublease shall remain in effect and the rent shall be abated only for the period during which Sublessee shall be deprived of the use of Sublease Premises by reason of such damage and the repair thereof. If the Sublease Premises, without the fault of Sublessee, shall be slightly damaged by fire or other catastrophe but not so as to render the same untenable for any substantial period of time, Sublessor, after receiving notice in writing of the occurrence of the injury, shall cause Lessor to repair the same with reasonable promptness; and in such event, rent shall be proportionately abated, according to the loss of use, until the Sublease Premises are substantially restored.

13. Sublease. Neither the Sublease Premises, nor any portion thereof, may be subleased to any third party(ies) at any time.

14. Signs. Sublessee shall not place nor allow to be placed any signs of any kind whatsoever, upon, in or about the Sublease 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 Sublessor in writing, which consent shall not be unreasonably withheld. In case Sublessor or Sublessor'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 Sublease Premises, they shall be replaced at Sublessor's expense when the said repairs, alterations or improvements shall have been completed. Any signs permitted by Sublessor shall at all times conform with all municipal ordinances or other laws and regulations applicable thereto.

15. Compliance with Law. Sublessee shall obtain and pay for all permits or licenses that may be required for the operation of the Sublease Premises in accordance herewith. A copy of such permits or licenses shall be submitted to Sublessor for verification of this requirement prior to occupancy. Sublessee 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 Sublease 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 Sublease Premises and its contents, for the prevention of fire or other casualty, damage or injury, all at Sublessee's own cost and expense. Sublessee shall not use the Sublease Premises for any purposes deemed unlawful, disreputable, or extra hazardous.

16. Default/Termination. In the event of a default by Sublessee upon any term or obligation under this Sublease including any default hereunder by a sublessee of Sublessee, this Sublease shall terminate thirty (30) days after written notice of such default is given by Sublessor to Sublessee, if during such period Sublessee has not cured such default, in the event of a monetary default, or, in the event of a non-monetary default, Sublessee 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 Sublease, Sublessee shall remain liable for such amount as may be in arrears and due to Sublessor.



17. Surrender of Premises. At the end of the term of this Sublease, Sublessee shall surrender the Sublease Premises to Sublessor 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 Sublease, 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 Sublease in which the time of performance is a factor.

20. Severability. The terms, conditions, covenants, and provisions of this Sublease 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 Sublease 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 Sublease, 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.

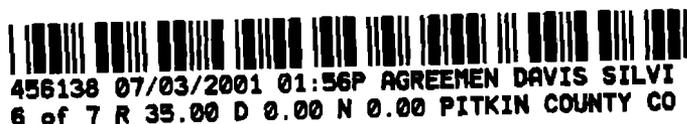
22. Entire Lease. This Sublease contains the entire contract between the parties and there are no other agreements, understandings, representations, or warranties except as expressly set forth herein. No additions, changes or modifications, renewals or extensions hereof shall be binding unless reduced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

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 this Sublease may require.

24. Lessee is an Independent Contractor. This Sublease is not a contract of employment. No relationship of employer and employee, joint venture or partnership, exists between Sublessor and Sublessee or between Sublessor and any employee or agent of Sublessor. Sublessee shall at all times be deemed to be an independent contractor. Sublessee is not authorized to bind Sublessor to any agreements or obligations.

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 parties hereto and their respective successors and assigns.

26. 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 Sublease as of the day and year above first written.

SUBLESSEE:

7TH AND MAIN CONDOMINIUM ASSOCIATION

By: Mary J. Roberts

Name: MARY J. ROBERTS

Title: PRESIDENT

SUBLESSOR:

CITY OF ASPEN

By: Stephan H. Barwick

Name: Stephan H. Barwick

Title: City Manager



456138 07/03/2001 01:56P AGREEMEN DAVIS SILVI
7 of 7 R 35.00 D 0.00 N 0.00 PITKIN COUNTY CO