

**A RESOLUTION**

**Authorizing the City Manager to Enter Into An Amended and Restated Hotel Parking Lease**

WHEREAS, on June 7, 1999, the City Council did adopt Resolution 35-R-99 authorizing the City to enter into a Hotel Parking lease; and

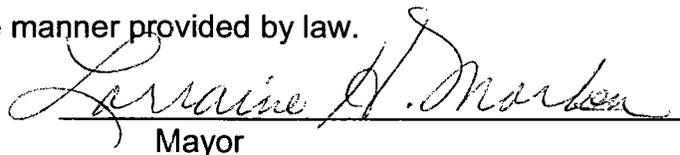
WHEREAS, it is necessary and in the best interests of the City to make certain amendments to said parking lease; and

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: That the City Manager is hereby authorized and directed to sign, and the City Clerk hereby authorized and directed to attest on behalf of the City of Evanston, an Amended and Restated Hotel Parking Lease by and between the City of Evanston and AHC Evanston LLC. Such Agreement shall be in substantial conformity with the Agreement marked as Exhibit A attached hereto and incorporated herein by reference.

SECTION 2: That the City Manager is hereby authorized and directed to negotiate any additional conditions of the lease as may be determined to be in the best interests of the City.

SECTION 3 That this Resolution shall be in full force and effect from and after its passage and approval in the manner provided by law.

  
\_\_\_\_\_  
Mayor

ATTEST:  
  
\_\_\_\_\_  
City Clerk

Adopted: January 24, 2000

**AMENDED AND RESTATED**  
**HOTEL PARKING LEASE**

THIS AMENDED AND RESTATED PARKING LEASE (hereinafter referred to as the "Lease") is made this 26<sup>th</sup> day of January, 2000, by and between the CITY OF EVANSTON, a municipal corporation (hereinafter referred to as "Landlord") and AHC Evanston LLC, a limited liability company (hereinafter referred to as "Tenant").

**W I T N E S S E T H**

WHEREAS, the parties hereto entered in that certain Hotel Parking Lease dated June 24, 1999 pursuant to which the Landlord leased to the Tenant sufficient spaces to satisfy the zoning requirements for the Hotel Parcel (as that term is defined below); and,

WHEREAS, the Landlord and Tenant desire to amend and restate the Hotel Parking Lease in the manner set forth hereinbelow.

Now, therefore, in consideration of the mutual covenants contained herein and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties do hereby agree as follows:

1. **Restatement.** This Amended and Restated Hotel Parking Lease supercedes and replaces the original Hotel Parking Lease dated June 24, 1999, which lease shall be of no further force or effect.
2. **Demise.** Landlord, for and in consideration of Ten Dollars (\$10.00) and the covenants and agreements set forth herein, does hereby lease to Tenant and Tenant hereby takes from Landlord the number of parking spaces (the "Spaces") required to comply with the City of Evanston's Zoning Ordinance, as that ordinance may be modified from time to time for the benefit of the Tenant's real estate, as improved and as legally described on Exhibit A and by this reference incorporated herein (the "Hotel Parcel"). Notwithstanding any of the above, the number of Spaces available to the Tenant hereunder shall in no event be less than one (1) Space within the Garage (as that term is defined below) for each hotel guest room within the Hotel ("Hotel") located upon the Hotel Parcel. Except as provided in paragraph 7.B hereinbelow, the Spaces shall be unassigned, unreserved and unsegregated automobile parking spaces located at the new Public Parking Garage (hereinafter referred to as "Garage") located on the real estate described on Exhibit B hereto and by this reference incorporated herein. Except as provided in paragraph 7.B hereinbelow, the Landlord shall not be required to specifically identify any Spaces as being reserved for the use of the Tenant's invitees. The Spaces shall be used by the Tenant to provide parking for the Hotel Parcel and to maintain compliance with the City of Evanston Zoning Ordinance for the Hotel Parcel. Tenant shall have, as appurtenant to the Spaces, rights to use in common: (a) the common lobbies, corridors, stairways, stairwells, escalators, elevators, of the Garage in common with others, and (b) common walkways, parking areas and driveways necessary for common ingress and egress to the Garage. The availability of Spaces in the Garage is based upon the Planned Development Ordinance (41-O-99).

3. **Term.** The term of the Lease (hereinafter referred to as "Term") shall commence on the day the Hotel opens for business as a Hotel (hereinafter referred to as the "Commencement Date") and shall expire on the fortieth (40<sup>th</sup>) anniversary of the Commencement Date.

4. **Rent.**

A. During those periods when none of the conditions described in Paragraph 4.C below are satisfied, all Hotel users who park in the Garage shall be charged and pay to the City the parking rate that the City charges to the general public for use of the Spaces ("Rent").

B. At any time when either of the conditions set forth in paragraph 4.C below is satisfied, Landlord shall not charge the Tenant or registered Hotel overnight guests ("Guests") any fees or other amounts for use of the Garage or the Spaces by Guests except as provided in paragraph 15 below; however, the Tenant may, in its sole discretion, charge Guests for using the Garage and the Spaces and may retain all such sums so collected for Tenant's sole use.

C. Paragraph 4.B above shall control at any time when the improvements located upon the Hotel Parcel are being operated (i) as a hotel under the name of Hilton Garden Inn, Sheraton Four Points, Wyndam Garden or Marriott Courtyard or under the name of another hotel brand which at the time in question has an equivalent or higher operating standard than the hotel brands mentioned above had on the date of this Lease, or (ii) as a hotel charging an average, nightly, guest room rate equaling or exceeding \$75.00, adjusted as follows. The base \$75.00 room rate shall be adjusted annually on January 1<sup>st</sup> of each year of the Term, as extended, commencing in the year 2003, in the same proportion that the Consumer Price Index for all Urban Consumers ("CPI-U") United States City Average, All Items ("CPI"), which is determined by the Bureau of Labor Statistics, published for the preceding year shall increase or decrease from that index for the year of 2001. In the event the Bureau of Labor Statistics ceases to publish the CPI, the parties shall use another index, appropriately adjusted, which may be published by the United States Department of Labor or other United States agency instead of the Consumer Price Index for all Urban Consumers.

5. **Maintenance.** Landlord shall maintain the Garage in accordance with the level of maintenance it performs for other comparable Garages in the City of Evanston and shall perform all repairs, restoration and maintenance thereto. In the event Landlord finds it necessary to restrict access to the Garage to perform maintenance required hereunder, it will give reasonable prior written notice of such necessity to Tenant, except in case of emergency, provided, however, Landlord shall at all times provide the Spaces. Landlord shall, at its sole cost, keep and maintain the Garage and all sidewalks and parking areas safe, secure, and clean, specifically including, but not by way of limitation, snow and ice clearance, landscaping and removal of waste and refuse matter.

6. **Rules and Regulations.** Tenant agrees to abide by the requirements and regulations relating to the use of the Garage promulgated by Landlord upon not less than thirty (30) days' prior written notice thereof, providing said requirements apply to all users.

7. **Use.**

A. Tenant agrees to limit its use of the Garage to the parking of motorized vehicles for nine (9) passengers or less.

B. Utilizing operational procedures and close communications cooperatively established by Landlord and Tenant and their respective operators, at any time that there are twenty (20) or fewer available Spaces in the Garage for the use of Guests, Landlord shall close the Garage to the general public and all empty Spaces shall be exclusively available to Guests until twenty (20) or more Spaces are again empty and available in the Garage for the use of Guests. In the event the Garage is unable to accommodate all Guests at any time using this procedure, the minimum number of available Spaces which will trigger closure of the Garage to the general public shall be increased in increments of ten (10) Spaces each time the Garage is unable to accommodate all Guests until the optimal level is found where all Guests can be provided with Spaces.

8. **Successors and Assigns.** The rights and obligations of the parties hereto shall inure to the benefit of the parties hereto and each of their successors and assigns. The interest and rights of Tenant hereunder shall be assignable subject to Paragraphs 31 and 44 of the Redevelopment Agreement as amended. The Landlord has approved of the assignment of the Tenant's rights and obligations under this Lease to the "Hotel Purchaser" (as that term is defined in that certain Third Amendment to Development Agreement of even date herewith by and between the Landlord and the Tenant). Landlord agrees that upon assignment of this Lease to the Hotel Purchaser, and assumption of this Lease by the Hotel Purchaser, AHC Evanston LLC shall be permanently relieved of all obligations and liabilities hereunder.

9. **Changes in Zoning Requirements.** In the event the zoning requirements for the Hotel are changed by the action of the Evanston City Council so that the Hotel Parcel is not required to provide the number of spaces leased hereunder, the City may, upon thirty (30) days' written notice, decrease the number of Spaces leased hereunder to the number then required, but in no event less than one (1) parking Space for each hotel guest room located upon the Hotel Parcel. In the event the zoning requirements for the Project are changes by the action of the Evanston City Council so that the Hotel Parcel is required to provide additional parking spaces in excess of the number of Spaces leased hereunder, the Spaces shall be so increased.

10. **Utilities.** Landlord agrees to pay all charges for water, gas, electricity and other utilities incurred in connection with the Garage.

11. **Mortgages.** If Tenant mortgages its leasehold estate created hereby and the mortgagee or holder of the indebtedness secured by the leasehold mortgage or trust deed shall notify Landlord, in the manner provided for the giving of the notice, of the execution of such mortgage or trust deed and name the place for service of notice upon such mortgagee or holder of such indebtedness, then, in such event, Landlord agrees for the benefit of such mortgagee or holder of such indebtedness from time to time, as follows:

(i) Landlord agrees to give any such mortgagee or holder of such indebtedness simultaneously with service on the Tenant, a duplicate of any and all notices of default given by Landlord to Tenant. Such notices shall be given in the manner and shall be subject to the terms of the notice provisions of this Lease.

(ii) Such mortgagees or the holder of such indebtedness shall have the right to perform any of Tenant's covenants under this Lease and to cure any default of Tenant pursuant to terms of this Lease.

(iii) No liability for the payment of Rent or the performance of any Tenant's covenants and agreements shall attach to or be imposed upon any mortgagee or the holder of such indebtedness unless such mortgagee or holder of such indebtedness forecloses its interest and becomes the successor Tenant under this Lease.

(iv) Tenant agrees that any mortgage or security interests it may grant in this leasehold will provide that it is subject to and subordinate to Landlord's estate.

12. Tenant Default.

A. The occurrence of the following shall be an "Event of Default" hereunder:

(i) If Tenant fails to observe or perform any of the other terms, conditions, covenants or agreements of this Lease and such failure shall continue for a period of forty-five (45) days after written notice thereof from Landlord specifying such failure; provided, however, that if such failure cannot reasonably be cured within such forty-five (45) day period, no Event of Default shall be deemed to exist so long as Tenant shall have commenced during the same within such forty-five (45) day period, and shall thereafter diligently and continuously prosecute the same to completion.

B. Upon the occurrence of an Event of Default, by or against Tenant, Landlord shall have the following rights and remedies:

(i) Landlord may, at its option, but shall not be obligated to, after fifteen (15) days prior written notice to Tenant take such action as appropriate to correct or remedy such default (including performing or causing to be performed any of Tenant's obligations hereunder) and all sums expended by Landlord in doing so shall be payable from Tenant to Landlord upon demand.

(ii) In the event of any breach by Tenant of any of the covenants, agreements, terms or conditions in this Agreement, Landlord shall, in addition to the rights and remedies provided hereunder, have the right to invoke any right or remedy allowed at law or in equity or by statute or otherwise.

(iii) Landlord shall not have the remedy of terminating this Lease by any reason of Tenant's default.

13. **Notices.** All notices herein required shall be in writing and shall be served on the parties, either personally or mailed by certified or registered mail, return receipt requested or by expedited messenger, and all such notices shall be deemed received on receipt or if delivery is

refused upon the date of attempted delivery addressed as follows:

If to the Landlord: City of Evanston  
2100 Ridge Avenue  
Evanston, IL 60201  
Attention: City Manager  
Facsimile: (847) 448-8083

With a copy to: Burke and Ryan  
33 N. Dearborn Street – Suite 402  
Chicago, IL 60602  
Facsimile: (312) 236-2556

If to the Tenant: Arthur Hill  
Arthur Hill & Co. LLC  
5 Revere Drive – Suite 300  
Northbrook, IL 60062  
Facsimile: (847) 498-4947

With a copy to: Mark Yates  
Sonnenschein Nath & Rosenthal  
8000 Sears Tower  
Chicago, IL 60606-6404  
Facsimile: (312) 876-7934

Either party (and each assignee of a party) may, by notice, change the addresses set forth above. Facsimile transmission is not authorized as a means of notice under this Lease.

14. **Option.** Tenant shall have the option (“Option”) of renewing this lease for an additional fifty-nine (59) years (the “Option Period”). Written notice of the exercise of said Option shall be provided to Landlord no later than ninety (90) days prior to the expiration of the original Term thereof.

15. **Demolition.** Should the Garage deteriorate so that at anytime during the Option Period it is necessary to demolish said structure and build a new parking structure or to repair said structure in an amount that exceeds Fifty Thousand Dollars (\$50,000.00) in any calendar year (hereinafter referred to as the “New or Remodeled Structure”) in order to provide the Spaces, the Tenant agrees to pay to the Landlord its pro rata share (hereinafter referred to as the “Tenant’s Share”) of the actual out-of-pocket costs incurred by Landlord to construct the New or Remodeled Structure to accommodate the Spaces. Said \$50,000 amount shall be adjusted annually on January 1<sup>st</sup> of each year of the Term, as extended, in the same proportion that the CPI increases or decreases from that index for the year of 2001. The Tenant’s Share shall be equal to a percentage equal to the ratio of the number of the Spaces divided by the total number of parking spaces to be located in the New or Remodeled Structure. The Tenant’s Share shall be paid to the Landlord within thirty (30) days after completion of the New or Remodeled Structure and after presentation to Tenant of evidence reasonably satisfactory to Tenant of all of the actual out-of-pocket costs so incurred by Landlord to Construct the New or Remodeled Structure. Notwithstanding anything herein contained, at such time as the Tenant pays the Tenant’s Share to the Landlord, the Rent shall be reduced to be an amount equal to the Tenant’s percentage of the net amount of annual costs and expenses incurred to operate and maintain the New or Remodeled Structure. Notwithstanding any of the above, no Rent shall be due under this Lease at anytime that either of the conditions set forth in Paragraph 4.C above are satisfied.

16. **Miscellaneous.**

A. **Captions and Attachments.** The headings of sections and paragraphs hereof are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any paragraph of this lease. Exhibits and addenda attached or affixed hereto are deemed a part of this lease and are incorporated herein by reference.

B. **Estoppel Certificates.** The City and the Tenant agree that at any time and from time to time, upon not less than ten (10) days' prior notice by the other party, such party will execute acknowledge and deliver to the other a statement in recordable form certifying that this Lease is unmodified and in full force and effect (or if there have been modifications that the same as so modified are in full force and effect (or if there have been modifications that the same as so modified are in full force and effect and setting forth such modifications) and the date to which the Rent and other charges and obligations hereunder have been paid in advance, if any, it being intended that any such statement delivered pursuant to this Section may be relied upon by any prospective purchaser, Mortgagee, assignee of any mortgagee or assignee of the respective interests under this Lease, made in accordance with the provisions of this Lease.

C. **Governing Law.** The laws of the State of Illinois shall govern the validity, performance and enforcement of this Lease.

D. **Severability.** If any provision of this Lease shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

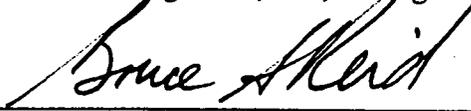
E. **Condition of the Premises.** Tenant's occupancy of the Garage after the Commencement Date shall constitute an acknowledgment by Tenant that, the Garage was, on the date possession was taken, in good order and satisfactory condition.

**IN WITNESS WHEREOF**, the parties hereto have executed this lease this day and year first above written.

**TENANT:**

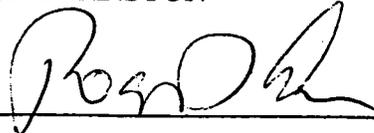
AHC EVANSTON LLC

By: AHC Management, Inc., Manager

By: 

**LANDLORD:**

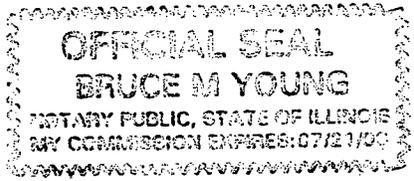
CITY OF EVANSTON

By: 

STATE OF Illinois )  
 )SS  
COUNTY OF Cook )

On this 26<sup>th</sup> day of January, 2000, ~~1999~~, before me personally appeared Roger D. Cunn, to me personally known, who being by me duly sworn, did depose and say that he is the City Manager of CITY OF EVANSTON, a municipal corporation; and that said instrument was executed on behalf of said municipal corporation by authority of its City Manager; and that said City Manager acknowledged before me said instrument to be the free act and deed of said municipal corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Bruce M. Young  
Notary Public

STATE OF Illinois )  
 )SS  
COUNTY OF Cook )

On this 26<sup>th</sup> day of January, 1999, before me personally appeared Bruce A. Reed, to me personally known, who being by me duly sworn, did depose and say that he is the Executive Vice President of AHC MANAGEMENT, INC., the Manager of AHC Evanston LLC, a limited liability company; and that said instrument was executed on behalf of said LLC by authority of its Manager; and that said EVP acknowledged before me said instrument to be the free act and deed of said Manager.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Sara J. McCastrey  
Notary Public