

5-9-80

EASEMENT AGREEMENT

THIS AGREEMENT made and entered into this 28th day of January, 1983, by and between the CITY OF MINNEAPOLIS, a Minnesota municipal corporation (the "City"), and LORING PARK ASSOCIATES LIMITED PARTNERSHIP, a Minnesota limited partnership (the "Partnership");

W I T N E S S E T H :

WHEREAS, the Partnership, by an Assignment and Assumption Agreement dated December 24, 1980, holds the Lessee's interest in that certain Ground Lease dated September 25, 1978, as amended by that certain Amendment to Ground Lease dated February 21, 1979 (the "Ground Lease"), whereby the City, as Lessor, did lease to Mart Plaza Hotel, Inc., a Minnesota corporation which is a predecessor in interest of the Partnership, those certain premises situated in the City of Minneapolis, County of Hennepin, State of Minnesota, which are legally described in Exhibit A attached hereto and by this reference incorporated herein (the "Hotel Parcel"); and

WHEREAS, the Hotel Parcel has been improved with a hotel tower (the "Hotel") and trade mart/exhibition hall (the "Trade Mart") complex owned and operated by the Partnership; and

WHEREAS, the City has constructed immediately adjacent to the Trade Mart, along the southwesterly boundary of the Hotel Parcel, a public parking ramp and exhibition hall facility (the "Ramp") upon those certain premises which are legally described in Exhibit B attached hereto and by this reference incorporated herein (the "Ramp Parcel"); and

WHEREAS, the northeasterly outer wall of the Ramp, which is an in-filled concrete block wall located entirely on the Ramp Parcel (the "Wall"), is immediately adjacent to, but does not make contact with, the southwesterly outer wall of the Trade Mart; and

WHEREAS, the Wall has been penetrated at various points on the ground level (i) by public passages between the exhibition hall areas of the Ramp and Trade Mart and by a public elevator lobby connecting the Ramp and Trade Mart, non-exclusive easements for which are granted in the Ground Lease, and (ii) by an opening, having the approximate dimensions of 22 feet wide by 13 feet high, leading into the transformer room located in the Trade Mart (which opening facilitates dissipation of heat generated therein), an easement for which is granted in that certain Easement Agreement dated July 10, 1980 and filed with the Hennepin County Recorder on August 20, 1980 as Document No. 4582478; and

WHEREAS, subsequently, (i) a tenant of the Partnership in the Trade Mart has penetrated the Wall with a doorway, which frames a roll-down corrugated steel door and opens onto level 8 of the Ramp (the "Door"), and (ii) the Wall has been penetrated at various levels by sanitary, drainage and other pipes, all serving tenants of the Partnership in the Trade Mart (the "Pipes"), which Pipes in turn travel through the Ramp, and the parties hereto desire to enter into an Easement Agreement covering the Door and Pipes; and

WHEREAS, the parties have agreed between themselves that the Partnership may otherwise use the Wall, upon the terms and conditions hereinafter provided;

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt of which each party hereby acknowledges, the parties agree with each other as follows:

1. The City hereby grants and conveys to the Partnership, and to its tenants in the Trade Mart where applicable, the right and an easement:

a. for the Door, as it is depicted in that certain As Built Survey of the Hyatt Regency Hotel prepared by C.E. Coulter & Associates, Inc., dated April 24, 1981 and revised August 24, 1981 (the "Survey"), a copy of which is attached hereto as Exhibit C and by this reference incorporated herein;

b. for the Pipes, as they are depicted in the Survey, or as they are now constructed and in place irrespective of whether they are depicted in the Survey; and

c. otherwise to use the Wall for the purposes and upon the terms and conditions hereinafter provided.

Further, the City agrees (subject to paragraphs 3 and 4 hereof) to keep and retain the Wall for the use of the Partnership. Subject to paragraph 6 hereof, said rights and easements, and said agreement to keep and retain the Wall, shall remain in force for so long as the Ramp shall remain standing.

2. The Partnership shall have the right to fasten flashing to the Wall, provided that the materials to be used and the manner and method of their installation shall have been approved by the City's Engineer, such approval not to be unreasonably withheld. The Partnership may not insert, tie or fasten beams, joists, and other structural elements in or to the Wall, without prior approval of the City. In no case shall the Partnership use the Wall as a "bearing wall."

3. The Partnership shall be responsible for all ordinary and necessary maintenance of the Wall. The Partnership shall also be responsible for maintaining in a proper and safe condition all flashing affixed to the Wall, and for making all necessary repairs and replacements of said flashing. The City shall have no responsibility for any maintenance of the Wall or said flashing, except that if the Partnership provides the City with monies sufficient to pay certain maintenance expenses, then the City hereby agrees to assume responsibility for timely causing such maintenance to be performed.

4. The City shall have no responsibility for repairing or rebuilding the Wall, except that the City shall be responsible for repairing any damage, or rebuilding the Wall due to any damage, resulting from the negligent or intentional act of the City, its agents or employees (excluding the Partnership, Hyatt Minneapolis Corporation, Mart Plaza Hotel, Inc. or any of their agents or employees). In the event the Wall should require repair or rebuilding, other than repair or rebuilding for which the City is responsible hereunder, then, upon receipt of a notice from the City that it deems such repair or rebuilding necessary, the Partnership shall have thirty (30) days in which to elect whether to undertake the same.

a. If the Partnership elects to undertake such repair or rebuilding, then it shall cause the same timely to be accomplished, and shall be responsible for paying the full costs and expenses thereof; provided, however, that if the Partnership provides the City with monies sufficient to pay for such repair or rebuilding, then the City agrees that it will cause the same timely to be accomplished.

b. If the Partnership elects not to undertake such repair or rebuilding, or fails to make any election whatsoever, then the City shall have no further obligation to keep and retain the Wall for the use of the Partnership; provided, however, that if the City has not

yet terminated this Agreement pursuant to Section 6 hereof, then for so long as the Wall remains standing, the Partnership may subsequently repair (or provide the City with monies sufficient then to repair) any then existing damage to the Wall (whether or not such damage was referred to in any such aforesaid notice to repair or rebuild), and the City's obligation hereunder to keep and retain the Wall for the use of the Partnership shall thereupon automatically be revived without the necessity of any further act by either party; provided, further, that nothing herein shall be construed as preventing the City from promptly removing any damaged portion of the Wall which may constitute a present hazard to public safety if Hyatt, after notice from the City, elects not to undertake the repair or rebuilding of that portion of the Wall, or within the thirty (30) day election period makes no election whatsoever.

5. The Partnership agrees to hold harmless and to compensate, indemnify, and defend the City for or from any damages, of whatever nature and description, resulting from lack of weather tightness of the flashing, or from shifting or movement of the Wall.

6. This Agreement may be terminated by the City in the event that any one or more of the following occurs:

a. The Ramp is substantially damaged or destroyed, and the City elects not to repair, restore, or rebuild the same substantially in accordance with the original plans and specifications thereof;

b. The Partnership, or its successors, assigns or transferees, no longer makes use of the Wall for any of the purposes permitted by this Agreement;

c. The Partnership, within thirty (30) days after receipt of such a notice as is specified in Section 4 hereof, elects not to repair or rebuild the Wall or fails to make any election whatsoever;

d. The Partnership defaults in keeping or performing any of the terms, conditions or covenants herein provided;

e. The Ground Lease, or any renewal or extensions thereof, expires or terminates; provided, however, that if the Ground Lease should expire or terminate because the Partnership, or its successor, assign, or transferee, has exercised its option to purchase the Hotel Parcel, this Agreement shall continue to be of full force and effect.

In the event that the City shall decide to terminate this Agreement upon the happening of any of the events listed in subparagraphs 6.a through 6.d, notice of such termination shall be given by the City to the Partnership at least sixty (60) days prior to the effective date of such termination.

7. Any notice hereunder shall be given in the manner provided in the Ground Lease.

8. The parties hereto mutually agree that this Agreement shall be binding upon them and their successors, assigns and transferees (a) for so long as the Ground Lease, or any renewal or extension thereof, shall be in force or (b) for so long as the Ramp shall remain standing should the Partnership, or its successor, assign or transferee, acquire fee title to the Hotel Parcel pursuant to the purchase option contained in the Ground Lease. For so long as this Agreement remains in force, it shall be construed as running with the land, and the benefited parcel shall be the Hotel Parcel and the burdened parcel shall be the Ramp Parcel.

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

CITY OF MINNEAPOLIS

By *Donald Fraser*
Mayor

Approved as to form
Donald H. Linneman
Asst. City Attorney

Attest:

Lyle Lund
Assistant City Clerk

Countersigned:

Mary Des Roches
City Comptroller - Treasurer

LORING PARK ASSOCIATES
LIMITED PARTNERSHIP

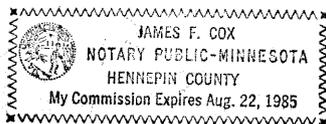
By HYATT MINNEAPOLIS CORPORATION,
Its General Partner

By *[Signature]*
Its *Gen. Part.*

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 28th day of January, 1983 by DONALD FRASER, Mayor, Lyle Lund, Asst., City Clerk, and Mary Des Roches, City Comptroller-Treasurer, all of the City of Minneapolis, a Minnesota municipal corporation, on behalf of said corporation.

James F. Cox
Notary Public



ILLINOIS)
STATE OF MINNESOTA)
COOK) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 19th day of January, 1983, by JAMES T. DIETRICH, the President of the HYATT MINNEAPOLIS CORPORATION, a Delaware corporation, which is the general partner of LORING PARK ASSOCIATES LIMITED PARTNERSHIP, a Minnesota limited partnership, on behalf of said Partnership.

June A. Sutton
Notary Public

THIS INSTRUMENT DRAFTED BY:

This instrument was drafted by
LEONARD, STREET AND DEINARD
510 Marquette Ave.
Mpls., Minn. 55402

That part of Lot 1, Block 6 which lies Northeasterly of the following described line to wit: Beginning at a point on the Easterly line of said Lot 1, Block 6, distant 75.69 feet Northerly of the Southeasterly corner of said Lot 1, Block 6, as measured along said Easterly line thereof, thence Northwesterly to a point on the Northwesterly line of said Lot 1, Block 6, said point being 59.80 feet Southwesterly of the most Northerly corner of said Lot 1, Block 6, as measured along the Northwesterly line of said Lot 1, Block 6, and there terminating; all in LORING PARK DEVELOPMENT FIRST ADDITION.

EXHIBIT A

That part of Lot 1, Block 6, LORING PARK DEVELOPMENT FIRST ADDITION, according to the plat on file and of record in the office of the County Recorder, Hennepin County, Minnesota, lying Southwesterly of the following described line to wit: Beginning at a point on the Easterly line of said Lot 1, distant 97.00 feet Northerly of the Southeasterly corner of said Lot 1, as measured along said Easterly line thereof; thence Northwesterly to a point in the Northwesterly line of said Lot 1, said point being 39.00 feet Southwesterly of the most Northerly corner of said Lot 1, as measured along the Northwesterly line of said Lot 1, and there terminating.

EXHIBIT B