

MINUTE ITEM

This Calendar Item No. C38
was approved as Minute Item
No. C38 by the State Lands
Commission by a vote of 3
to 0 at its 6/11/90
meeting.

CALENDAR ITEM

C 3 8

A 20
S 8

06/11/90
WP 6504 PRC 6504
Horn

APPROVAL OF FORM OF LEASE BETWEEN STATE AND
SAP INVESTMENTS, LIMITED PARTNERSHIP

LESSEE: SAP Investments, Limited Partnership
417 W. Allen Avenue, Suite 112
San Dimas, California 91773

For some time, staff has been negotiating terms for a new lease with Pranav Investments (SAP Investments will be the State's tenant under the proposed lease) for the construction and operation of an approximate 150-room, budget-class hotel on 3.44 acres of filled tidelands in the City of Burlingame, San Mateo County. This site, along with an additional 5.36 acres of vacant land, is currently leased to First South Savings Association, Houston, Texas (leases PRC 6504, 6505, and 6506). As part of this transaction, it is proposed that Pranav Investments will purchase First South's leaseholds whereupon the existing leases will be terminated and the State will issue a new lease to Pranav for the 3.44-acre site. A separate lease, yet to be negotiated, will be issued for the remaining site.

The City of Burlingame is currently preparing an environmental document for the hotel project. It is anticipated that the City will certify the environmental document and approve the project sometime this spring. In anticipation of project approval, Pranav has requested staff to present for approval by the Commission the form of lease that would be used should the Commission approve the project at a later date. The approval of the form of lease requested by Pranav would not constitute authorization to issue a lease, nor a commitment to authorize issuance of a lease, which cannot be granted unless and until the Commission has fully complied with the provisions of the

CALENDAR ITEM NO. **C 3 8** (CONT'D)

California Environmental Quality Act with regard to the development project proposed for the proposed lease premises. Pranav understands that, if the Commission approves the form of lease at this time, it will in no way affect the Commission's deliberations when the development project is brought to the Commission later this year. Approval of the form of lease will enable Pranav to begin financial arrangements for the project.

Because the Commission is a responsible agency under CEQA for this project, it will be reviewing and considering the City's environmental document. As part of this process, the Commission may, as a condition of any project approval, include mitigation as lease covenants, as such might be proposed by staff or included in the environmental document.

Because of the nature of this project, in terms of land use and potential revenue production, staff has deviated substantially from the Commission's standard form of lease. Staff has negotiated a form of lease that incorporates current commercial lease practice. The proposed lease, attached hereto as Exhibit "8", consists of the following major provisions:

AREA, TYPE LAND AND LOCATION:

Approximately 3.44 acres of filled tidelands zoned waterfront commercial along San Francisco Bay in the City of Burlingame, San Mateo County.

LAND USE:

150-room, budget-class hotel (no hotel restaurant) and some small hotel concessions.

TERMS OF PROPOSED LEASE:

Initial period: Forty-nine (49) years beginning the date of execution by the State.

Rent: Minimum \$1,000 per month until January 1, 1992; thereafter, \$3,500 per month for the next five years; thereafter, no less than \$5,900 per month.

Percentage Rental: Beginning January 1, 1997:
Years 01-04 - 4.25% gross receipts
Years 05-09 - 5.00% gross receipts
Years 10-14 - 5.50% gross

CALENDAR ITEM NO. 038 (CONT'D)

Years 15-19 - receipts
6.00% gross
receipts

Years 20 to
end of term - 6.50% gross
receipts

Sublease
revenue: - 10% sublease
revenue

General liability insurance: \$3,000,000
comprehensive, covering all
facets of business activity.

Performance Deposit: \$20,000 initially;
thereafter, increased by
\$250,000 when construction
begins; not to be less than
\$75,000 or the minimum rental
amount, whichever is greater,
after completion of the hotel
construction.

Performance and Labor Bonds: Lessee is acting
as construction manager.
Bonds will be obtained by
subcontractors for all labor
and work provided.

ASSIGNMENTS/SUBLETTING:

State agrees to one future assignment in which
SAP is principal without State approval. State
pre-approves subleases for small hotel
concessions. All other assignments and
encumbrancing requires State approval. State
agrees to encumbrancing of leasehold.

State is to share in appreciated leasehold
value upon sale, majority sublease, or
refinancing after the first ten years.

AB 884:

N/A.

OTHER PERTINENT INFORMATION:

1. Staff has advised Pranav Investments that
it will not consider dividing the property
as proposed, unless and until all the
property is proposed for development and

CALENDAR ITEM NO. C 3 8 (CONT'D)

new leaseholds negotiated. Mr. Pranav has advised staff that it is concluding an agreement in principal with First South Savings for the additional property and will begin the planning and lease renegotiation process soon. The additional property will also be devoted to hotel use.

2. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Regs. 15061), the staff has determined that this activity is exempt from the requirements of the because the activity is not a "project" as defined by CEQA and the State CEQA Guidelines.

Authority: P.R.C. 21065 and 14 Cal. Code Regs. 15378.

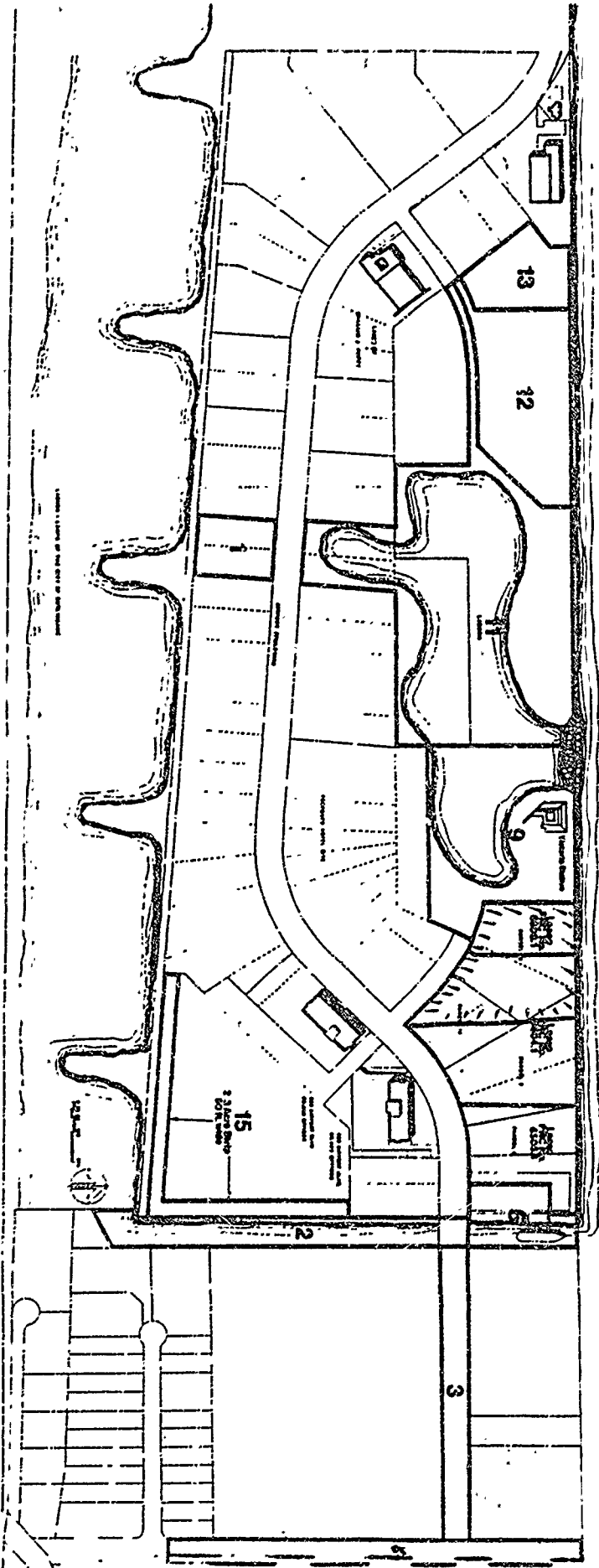
- EXHIBITS:
- A. Site Map.
 - B. Lease Form.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY P.R.C. 21065 AND 14 CAL. CODE REGS. 15378.
2. APPROVE, AS TO FORM ONLY, THE PROPOSED LEASE, AS CONTAINED IN EXHIBIT "B", BETWEEN THE COMMISSION AND SAP INVESTMENTS. THIS APPROVAL DOES NOT CONSTITUTE AUTHORIZATION TO ISSUE ANY LEASE, NOR DOES IT CONSTITUTE A COMMITMENT TO AUTHORIZE THE ISSUANCE OF ANY LEASE, OF STATE-OWNED LANDS FOR THE PROPOSED PROJECT.
3. DECLARE THAT APPROVAL OF THE LEASE FORM HEREIN SHALL IN NO WAY, PREJUDICE OR OTHERWISE, AFFECT THE COMMISSION'S FUTURE DELIBERATIONS AND DECISION RELATIVE TO THE PROPOSED HOTEL PROJECT AND THE REQUIREMENT TO INCLUDE MITIGATION, IF NECESSARY, AS A CONDITION OF PROJECT APPROVAL.

EXHIBIT "A"

SEE EXHIBIT B FOR LEGEND AND NOTES



ANZA PACIFIC CORP.

site

Lot	Area (sq. ft.)	Area (Acres)	Use
1	10,000	0.23	Office
2	20,000	0.46	Office
3	30,000	0.69	Office
4	40,000	0.92	Office
5	50,000	1.15	Office
6	60,000	1.38	Office
7	70,000	1.61	Office
8	80,000	1.84	Office
9	90,000	2.07	Office
10	100,000	2.30	Office
11	110,000	2.53	Office
12	120,000	2.76	Office
13	130,000	3.00	Office
14	140,000	3.23	Office
15	150,000	3.46	Office
16	160,000	3.69	Office
17	170,000	3.92	Office
18	180,000	4.15	Office
19	190,000	4.38	Office
20	200,000	4.61	Office
21	210,000	4.84	Office
22	220,000	5.07	Office
23	230,000	5.30	Office
24	240,000	5.53	Office
25	250,000	5.76	Office
26	260,000	6.00	Office
27	270,000	6.23	Office
28	280,000	6.46	Office
29	290,000	6.69	Office
30	300,000	6.92	Office
31	310,000	7.15	Office
32	320,000	7.38	Office
33	330,000	7.61	Office
34	340,000	7.84	Office
35	350,000	8.07	Office
36	360,000	8.30	Office
37	370,000	8.53	Office
38	380,000	8.76	Office
39	390,000	9.00	Office
40	400,000	9.23	Office
41	410,000	9.46	Office
42	420,000	9.69	Office
43	430,000	9.92	Office
44	440,000	10.15	Office
45	450,000	10.38	Office
46	460,000	10.61	Office
47	470,000	10.84	Office
48	480,000	11.07	Office
49	490,000	11.30	Office
50	500,000	11.53	Office
51	510,000	11.76	Office
52	520,000	12.00	Office
53	530,000	12.23	Office
54	540,000	12.46	Office
55	550,000	12.69	Office
56	560,000	12.92	Office
57	570,000	13.15	Office
58	580,000	13.38	Office
59	590,000	13.61	Office
60	600,000	13.84	Office
61	610,000	14.07	Office
62	620,000	14.30	Office
63	630,000	14.53	Office
64	640,000	14.76	Office
65	650,000	15.00	Office
66	660,000	15.23	Office
67	670,000	15.46	Office
68	680,000	15.69	Office
69	690,000	15.92	Office
70	700,000	16.15	Office
71	710,000	16.38	Office
72	720,000	16.61	Office
73	730,000	16.84	Office
74	740,000	17.07	Office
75	750,000	17.30	Office
76	760,000	17.53	Office
77	770,000	17.76	Office
78	780,000	18.00	Office
79	790,000	18.23	Office
80	800,000	18.46	Office
81	810,000	18.69	Office
82	820,000	18.92	Office
83	830,000	19.15	Office
84	840,000	19.38	Office
85	850,000	19.61	Office
86	860,000	19.84	Office
87	870,000	20.07	Office
88	880,000	20.30	Office
89	890,000	20.53	Office
90	900,000	20.76	Office
91	910,000	21.00	Office
92	920,000	21.23	Office
93	930,000	21.46	Office
94	940,000	21.69	Office
95	950,000	21.92	Office
96	960,000	22.15	Office
97	970,000	22.38	Office
98	980,000	22.61	Office
99	990,000	22.84	Office
100	1,000,000	23.08	Office

EXHIBIT "B"

DRAFT

TABLE OF CONTENTS

DATE _____/_____/_____

Term 1

Possession at Expiration of Lease 1

Right to Succeeding Lease 2

Use of Property 4

Rental 6

Penalty and Interest 8

Performance Deposit 9

Books, Records and Reports 11

Standards of Service; Rates and Charges 12

Condition of Property 13

Construction of Improvements by Lessee 13

Performance and Labor Bonds 16

Maintenance, Repairs and Alterations 18

Fire Insurance 20

Damage or Destruction of Improvements 23

Hold Harmless Agreement and Liability Insurance 24

No Liens 25

Assignment and Subletting 29

Encumbrancing 32

Default and Remedies 40

Arbitration Applicability and Notice 41

Taxes and Assessments 42

Utilities 42

Hazardous Substances 44

Surrender and Holding-Over 44

Waivers 44

Right to Inspect Property 44

CALENDAR PAGE	274	44
MINUTE PAGE	1332	

Agent for Service of Process 44

Trade Names 45

Disposal of Garbage 45

Fumes and Odors 45

Extensions of Time 45

Successors 45

Time of Essence 46

Quiet Possession 46

Eminent Domain 46

Joint and Several Obligations 46

Forfeitures 51

Conservation 52

Discrimination 52

Residential Use 52

Reservations 52

No Warranty of Titles, Conditions or Fitness 53

Entire Agreement 53

Notice 53

Quitclaim 54

Estoppel Certificate 54

Consents and Approvals 54

Short Form Memorandum 55

Conditions Subsequent 55

Lessor's Cooperation in Development 56

Subordination of Lessor's Right to Insurance Proceeds 57

Severability 57

Governing Law 58

. 59

CALENDAR PAGE	275
MINUTE PAGE	1333

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STATE OF CALIFORNIA
STATE LANDS COMMISSION

FOR RECORDERS USE ONLY

RECORDED AT THE REQUEST OF
State of California
State Lands Commission
Document entitled to free
recordation pursuant to
Government Code Section 27383.

DRAFT

WHEN RECORDED MAIL TO
State Lands Commission
1807 - 13th Street
Sacramento, California 95814
Attention: Title Unit

DATE _____/_____/_____

LEASE NO.

THE STATE OF CALIFORNIA, hereinafter referred to as Lessor acting by and through the STATE LANDS COMMISSION (1807 13th Street, Sacramento, California 95814), pursuant to Division 6 of the Public Resources Code and Title 2, Division 3 of the California Code of Regulations, and for consideration specified in this Lease, does hereby lease, demise and let to:

SAP INVESTMENTS, LIMITED PARTNERSHIP
417 W ALLEN AVENUE
SUITE 112
SAN DIMAS, CALIFORNIA 91773

hereinafter referred to as Lessee;

those certain lands described in Exhibit "A" and shown for illustrative purposes on Exhibit "B", (sometimes referred to as Lease Premises or as the Property) both attached hereto and incorporated herein by reference subject to the reservations, terms, covenants and conditions of this Lease.

1. Term. Subject to the provisions of this Lease the term of this Lease shall be forty nine (49) years commencing January 1, 1990 and continuing through and including December 31, 2038 unless sooner terminated as provided herein.
2. Possession at Expiration of Lease. Upon expiration or ~~cessation~~

CALENDAR PAGE	278
MINUTE PAGE	1334

termination of this Lease, Lessor upon written notice may take title to any or all improvements, or Lessor may require Lessee to remove all or any such improvements at its sole expense and risk; or Lessor may itself remove or have removed all or any portion of such improvements at Lessee's sole expense. Lessee shall deliver to Lessor such documentation as may be necessary to convey title to such improvements to Lessor free and clear of any liens, mortgages, loans or any other encumbrances.

2.1 In removing any such improvements Lessee shall restore the Lease Premises as nearly as possible to the conditions existing prior to their installation or construction.

2.2 All such removal and restoration shall be to the satisfaction of Lessor and shall be completed within ninety (90) days after the expiration or sooner termination of this Lease.

2.3 In removing any or all the improvements Lessee shall be required to obtain any permits or other governmental approvals as may then be required by lawful authority.

2.4 Lessor may at any time during the lease term require Lessee to conduct at its own expense and by a contractor approved by Lessor an independent environmental site assessment or inspection for the presence or suspected presence of hazardous wastes, substances or materials as defined under federal, state or local law, regulation or ordinance manufactured, generated, used, placed, disposed, stored or transported on the Lease Premises during the term of the Lease. Lessee shall be responsible for removing or taking other appropriate remedial action regarding such wastes, substances or materials in accordance with applicable federal, state or local law regulation or ordinance.

2.5 Lessee, to the extent provided by existing law, shall not be responsible for such wastes, substances or materials placed on the premises prior to the beginning date of this Lease.

3. Right to Succeeding Lease.

3.1 If the State desires to lease the Property and improvements thereon for use as a hotel after the expiration of the lease term as set forth herein, the State shall notify Lessee in writing not less than thirty-six (36) months prior to the expiration of the term of this Lease and shall set forth in such written notice ("State's Notice") all of the terms and conditions, as determined by the State in its sole discretion, upon which the State will lease the Property and improvements thereon for use as a hotel. Such written notice shall constitute an offer (the "Offer") by the State to lease the Property and improvements thereon to Lessee on the terms set forth therein. Lessee shall have one hundred eighty (180) days after receipt of the State's Notice in which to accept the Offer to lease the Property and improvements on the terms and conditions set forth in the State's Notice. Such acceptance shall be of no force or effect if there are any outstanding notices of default which remain uncured. If Lessee notifies State in writing within such 180-day period that it accepts the State's Offer to lease the Property and improvements thereon, then the State and Lessee shall enter into a Lease on all the terms and conditions set forth in State's Notice and the term of such Lease shall commence immediately upon the expiration of the term of this Lease. If Lessee does not so notify the State within said 180-day period, then Lessee shall be deemed to have rejected the Offer set forth in State's Notice. The right of Lessee to release the Property and improvements thereon pursuant this paragraph 3.1 shall be available to Lessee, if at all, only once and shall terminate upon the expiration of this Lease.

3.2 Upon rejection by Lessee of State's Offer, the State may not, except as set forth in the following sentence, lease the Property and improvements thereon to any third person or entity for use as a hotel after the expiration of the term of this Lease if the terms and conditions of such proposed lease, or any of them, are more favorable to the prospective lessee than the terms and conditions offered to Lessee in the State's Notice. The State may lease the Property and improvements thereon for use as a hotel after the expiration of the term

of this Lease on terms and conditions which are more favorable to the prospective lessee than the terms and conditions offered to Lessee in State's Notice only if the State does so as the result of offering the Property and improvements thereon to the public through a competitive bid or proposal procedure and the terms and conditions of such lease constitute the bid or proposal selected by the State in connection with such procedure. In the event the State elects to conduct such procedures from time to time, Lessee shall be permitted to submit bids or proposals to the State as part of such procedure on the same basis as all other interested persons or entities and Lessee's bids or proposals shall be considered by the State without preference or prejudice, upon the same basis as all other bids and proposals submitted to the State.

3.3 If the State does not make and Lessee does not receive State's Offer to lease the Property and improvements thereon for use as a hotel within the time period set forth in subparagraph 3.2, and in compliance with the other provisions of subparagraph 3.2, then the State shall not lease the Property and the improvements thereon to any third person or entity after expiration of the term of this Lease for use as a hotel without first offering the Property and improvements thereon to Lessee on the terms and conditions of such proposed lease and providing Lessee with a reasonable opportunity to accept such offer and the provisions of this subparagraph 3.3 shall survive the expiration of the original term of this Lease as set forth in paragraph 1 until they are complied with.

3.4 The provisions of Paragraphs 3.1, 3.2, and 3.3 are intended to be severable from the provisions of this Lease regarding the term of this Lease to the extent severance is required pursuant to any provision of paragraph 53 of this Lease.

4. Use of Property.

4.1 Lessee agrees that at all times during the term of this Lease, it

shall continuously use the Property for the planning, construction, establishment, maintenance and operation of a "budget-class", high quality, hotel complex, in conformity with the terms and conditions of this Lease, and consisting of the following: (1) an approximately 150-room guest hotel with suitable amenities; (2) off-street parking facilities; and (3) uses incidental to the uses set forth in (1) and (2). Lessee agrees that in no event shall any guest hotel room be used as a place of permanent residence by any person or for condominiums or time-share purposes. Lessee shall not cease to use the Property for any of the purposes set forth in (1) through (3) except with the prior written consent of the State, or unless and only so long as prevented from such uses by fire, earthquake, war strike or other cause beyond Lessee's control.

4.2 Lessee shall not use or permit the Property or any part thereof, to be used in whole or in part for any purpose other than as hereinbefore set forth except with the prior written consent of the State, nor for any use known by Lessee to be in violation of any present or future laws, ordinances, general rules or regulations at any time applicable thereto of any public or governmental authority, relating to sanitation or the public health, safety or welfare and Lessee hereby expressly agrees at all times during the term of this Lease, at its own cost, to maintain and operate the Property in a clean, wholesome and sanitary condition, and Lessee shall at all times and at no cost or expense to the State faithfully obey and comply with all present and future laws, rules and regulations applicable thereto adopted by federal, state, local or other governmental bodies or departments or officers thereof.

4.3 Lessee understands and agrees that a necessary condition for the granting and continued existence of this Lease is the requirement that Lessee obtain and maintain all permits or other entitlements for use as may be required by lawful authorities.

CALENDAR PAGE	280
MINUTE PAGE	1338

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Rental.

5.1 Interim Rental -- From the effective date of this Lease, until December 31, 1991, the Lessee shall pay to Lessor, in advance, without demand, in lawful money of the United States of America, the sum of one thousand dollars (\$1,000) per month.

5.2 Commencing January 1, 1992 and continuing for the next five (5) years of the Lease term thereafter, the rental shall be forty two thousand dollars (\$42,000) per annum payable monthly, in advance, without demand in lawful money of the United States of America, at the rate of three thousand five hundred dollars (\$3,500) per month.

5.3 Commencing January 1, 1997 and continuing thereafter throughout the remainder of the Lease term, the minimum annual rental shall be an amount equal to seventy percent (70%) of the average total yearly rent paid during the previous five (5) lease year period, payable monthly, without demand, in lawful money of the United States of America, provided however, that in no event shall the minimum annual rental be less than seventy thousand eight hundred dollars (\$70,800).

5.4 Percentage Rental/Gross Receipts -- Beginning January 1, 1997, in addition to the minimum annual rental, Lessee shall pay, on a monthly basis, the amount by which the total of the following percentages of Gross Receipts exceeds the monthly installment of minimum rental then due according to the following schedule:

<u>PERIOD</u>	<u>PERCENTAGE OF GROSS RECEIPTS/CATEGORY</u>
Jan. 1, 1997 - Dec. 31, 2000	4.25% room rentals
Jan. 1, 2001 - Dec. 31, 2005	5.00% room rentals
Jan. 1, 2006 - Dec. 31, 2010	5.50% room rentals
Jan. 1, 2011 - Dec. 31, 2015	6.00% room rentals
Jan. 1, 2016 - end of Lease Term	6.50% room rentals

CALENDAR PAGE	<u>281</u>
MINUTE PAGE	<u>1339</u>

0.2195

Jan. 1, 1997 - end of Lease Term

10% sublease and concession
revenues

The minimum monthly rental due for the month of January 1997 and successive months together with any percentage rental due for that month and each successive month during the remainder of the term of this Lease shall be due and payable to Lessor on or before the 25th day of February, 1997 and the 25th day of each successive month thereafter during the remainder of the Lease term. For example: If the minimum rental for January, 1997 is \$5,900 and Lessee earned gross hotel revenues of \$300,000 for that month; then Lessee would owe Lessor rental in the amount of \$12,750 for the month ($\$300,000 \times 4.25\% = \$12,750$, which amount is greater than the minimum rental for the month) due and payable on February 25, 1997 and similarly for each month thereafter.

5.5 Percentage Rental/Gross Receipts Defined.

Gross Receipts means the gross income derived, received, or charged by Lessee or any sublessee, subtenant, concessionaire, licensee or any other person, partnership, firm or corporation (hereinafter subtenant), operating subject to this Lease for the rental of hotel rooms and facilities, for sales, charges for services, for the use of space made in or on the Property, or from any and all sources of income derived in whole or in part from any business transacted in, at or from the Property both for cash and on credit, whether or not payment is actually made. Deducted from such sales shall be refunds actually made to customers. Gross Receipts shall also include the fair market value of any consideration received by Lessee or any subtenant in addition to or in lieu of cash for any such sale and all revenues derived from the operation of all parking facilities. Provided, however, that the term "Gross Receipts" shall not include:

5.5.1 any sales, excise, room, transaction, privilege, luxury, gross receipts, admission, cabaret or any other similar taxes or charges hereafter imposed by any governmental taxing authorities,

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charged or collected by Lessee or a subtenant;

5.5.2 receipts from the sale of Lessee's or a subtenant's used furniture, fixtures and equipment;

5.5.3 interest, dividends or other income derived from any sums or property held for investment;

5.5.4 the proceeds received from any taking by eminent domain or transfer in lieu thereof of any portion of the Property;

5.5.5 the proceeds of any insurance policy with the exception of business interruption insurance;

5.5.6 gratuities such as "tips" which Lessee or subtenant is obligated to pay over to employees or which are retained by employees for their personal benefit; Lessor acknowledges that Lessee may, in its sole discretion provide goods and services (e.g., meals and cocktails) in connection with the operation of the Hotel either for no charge or at less than market rates and that only the amount actually charged by Lessee in such cases shall be included within the definition of Gross Receipts. Bad debt losses shall not be deducted from Gross Receipts.

5.5.7 Any sums collected directly from hotel patrons or guests as part of the billing for the rental of rooms in the hotel or otherwise, received only in direct reimbursement of sums paid by Lessee for services rendered or goods provided by third parties to hotel patrons (and specifically telephone charges, room services provided by independent contractors, independent contractor deliveries, catering services for banquet and meeting facilities) (but including in Gross Receipts any hotel profit or override on any such due third parties).

5.5.8 Trade discounts offered to travel agents for room bookings.

Any dispute between the State and Lessee as to whether a particular

item of income should be included in Lessee's Gross Receipts pursuant to the provisions of this paragraph five 5 shall be submitted Arbitration pursuant to the provisions of paragraph 21 herein.

6. Penalty and Interest. Any rental or other sum that remains due and unpaid under the terms of this Lease for a period of ten (10) days after it becomes due and payable shall be subject to a penalty for violation of this Lease and for damages, equal to five (5) percent of said rental payment or other sum and shall bear interest as specified in Public Resources Code Section 6224 until said rental and said other sums have been received by the State. The State shall apply any monies received from Lessee first to any accrued penalty and interest charges and then to any other rental or other sums then due. The penalty and interest charges provided by this paragraph are in addition to all other remedies that the State may have that are provided by this Lease or otherwise by law to enforce payment of any rental or other sum that has become due and has not been paid.

7. Performance Deposit.

7.1 On or before the effective date of this Lease, Lessee shall provide the State with, and at all times thereafter maintain, a performance deposit in the initial amount of \$20,000. Beginning January 1, 1992 and for each year thereafter, Lessee shall maintain a performance deposit in an amount equal to \$75,000.

7.2 Prior to the commencement of any construction work, Lessee shall provide the State with an additional performance deposit in the amount of \$250,000 partially guaranteeing the construction of the improvements authorized by this Lease. The performance deposit set forth in this subparagraph shall no longer be required when the hotel has been completed and a final certificate of occupancy has been issued by the City of Burlingame.

7.3 The performance deposit(s) may take one of the forms set out below or some other form acceptable to the Lessor, and shall guarantee

Lessee's full and faithful performance of all the terms, covenants, and conditions of this Lease:

7.3.1 Cash.

7.3.2 A renewable Time Certificate of Deposit from a financial institution authorized to do business in the State of California wherein the principal sum is made payable to State or order. Both the financial institution and the form of the certificate must be approved by State.

7.3.3 A Bond issued by a responsible surety company authorized to do business in California, provided:

7.3.3.1 the Bond is automatically renewable and alteration or termination of Bond shall first require thirty (30) days prior written notice to State;

7.3.3.2 the Bond shall guarantee payment in cash to State of the security deposit amount upon receipt of written demand from Lessor.

7.4 Regardless of the form in which Lessee elects to make said security deposit, all or any portion of the principal sum shall be available unconditionally to State for correcting any default or breach of this Lease by Lessee, his successors or assigns or for payment of expenses incurred by State as a result of the failure of Lessee, his successors or assigns, to faithfully perform all the terms, covenants, and conditions of this Lease.

7.5 Should Lessee elect to assign or provide a Time Certificate of Deposit to fulfill the security deposit requirements of this Lease, the agreement entered into by Lessee with a financial institution to establish the deposit necessary to permit assignment or issuance of a certificate may allow the payment to Lessee or order of interest

accruing on account of said deposit.

7.6 If at any time during the term of this Lease, any rent or any other sum payable to State shall be overdue and unpaid, State may, at State's option, apply any portion of this security deposit to the payment of any overdue rent or any other sums due and payable to State under this Lease.

7.7 Should the entire security deposit or any portion thereof, be appropriated and applied by State for the payment of overdue rent or any such other sum due and payable to State by Lessee, then Lessee shall within thirty (30) days after written demand by State restore said security deposit with the required amount.

7.8 Lessee shall maintain the required security deposit throughout the Lease term. Failure to do so shall be deemed a default and shall be grounds for immediate termination of this Lease.

7.9 The security deposit shall be rebated, reassigned, release or endorsed to Lessee or order, as applicable, at the end of the Lease term, provided Lessee is not then in default and has performed its obligations required to be performed upon termination of this Lease. Interest on the security deposit required hereunder shall accrue for the benefit of Lessee and shall be made available to Lessee from time to time except as the same is required to remedy or cure any default of Lessee; provided, however, that if the security deposit is given in the form of cash then Lessee shall not be entitled to any interest thereon.

8. Books, Records and Reports.

8.1 Commencing twenty-five (25) days after the close of the calendar month in which the hotel opens for business and within twenty-five (25) days after the close of each calendar month thereafter Lessee shall render to the State, an account of its business transactions during the preceding month in connection with the property, setting

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forth in particular its Gross Receipts. Lessee shall keep true and accurate books and records showing all its business transactions in connection with the Property. The State shall have the right, through its representatives and at all reasonable times, to inspect or audit such books and records, including State of California sales tax return records at Lessee's offices. Lessee hereby agrees to make such books and records available to the State or its authorized representatives at Lessee's offices upon request. If Lessee's books and records, or any of them, are not located in the State of California, Lessee shall pay to the State the reasonable and necessary costs incurred by the State in traveling out of state to inspect the books and records, including but not limited to travel, lodging and subsistence costs.

8.2 For each calendar year of this Lease, Lessee shall furnish a written statement directed to the State prepared by the Lessee's chief financial officer certifying that to the best of his knowledge, the rental payments, both minimum and percentage rental, made by Lessee to the State during the preceding calendar year pursuant to the Lease, have been made in accordance with the terms of this Lease and that all revenues upon which such payments, deposits and expenditures are based have been properly reported and considered in making such rental payments, deposits and expenditures. Such statements shall also contain a list of the revenues by month as shown upon the books and records of the Lessee and which were used to compute the rental payments made to the State during the period covered by the statement. Such statement shall be submitted to the State by Lessee not later than ninety (90) days after the end of each such Lease year. Such statement by Lessee's chief financial officer shall contain a statement that such information is accurate under penalty of perjury.

8.3 Lessor reserves the right to require Lessee to furnish a written statement directed to Lessor prepared by an independent certified public accountant, wherein the certified public accountant shall certify whether rental payments, both minimum and percentage rental, made by Lessee to the State during the period reported have been

made in accordance with the terms of this Lease and whether all revenues upon which such payments are based have been properly reported and considered in making such rental payments.

9. Standards of Service; Rates and Charges.

9.1 Lessee shall construct, furnish, maintain and operate said hotel, appropriate amenities and parking facilities, and provide all other services and facilities offered in connection therewith, in a first-class manner and shall furnish and maintain a standard of service at least equal to that of the better class of similar businesses providing similar services and facilities in the City of Burlingame and adjacent communities during the entire term of this Lease at reasonable prices comparable to those prevailing for similar services and facilities in said area and without discrimination. The State shall have reasonable access to and the right to inspect all room rates, rental schedules, parking facility rates and rentals, menus, lists, portions and schedules of rates or prices for services and facilities performed or provided upon the Property.

9.2 The State and Lessee hereby acknowledge and agree that it is to the mutual benefit of the State and Lessee that any rate or price charged by Lessee be not unreasonable nor inappropriate for the services rendered, the product sold, or the facility provided, and that any portion or portions of the product offered by Lessee to the public be not inadequate in size or quantity nor deficient in quality; provided however, Lessee reserves the right in its sole discretion, which shall be reasonably exercised, to charge or permit the charge of rates and prices and to sell or permit the sale of goods and services at either no charge or less than market rates.

9.3 Lessee shall keep said hotel, and ancillary facilities open for business seven (7) days per week and provide services there during such hours of each day as is customary for similar hotels in the Burlingame area.

10. Condition of Property. The taking of possession of the Property by Lessee shall in itself constitute acknowledgement that said Property is in good and tenable condition. Lessee agrees to accept said Property in its then existing condition, "as is", and that the State shall not be obligated to make any improvements, alterations or additions thereto. Lessee acknowledges that it has made a sufficient investigation of the conditions of the property existing immediately prior to the execution of this Lease (or will make such investigation pursuant to Paragraph 50), including without limitation the condition of the soil, and underground water pressure and is satisfied (or will be satisfied pursuant to Paragraph 50) that said Property will safely and feasibly support the type of improvements to be maintained by Lessee upon said Property.

11. Construction of Improvements by Lessee.

11.1 No structures, improvements or facilities shall be constructed, erected or made within the Property without the prior written consent of the State which shall not be unreasonably withheld or delayed. All such structures, improvements and facilities shall be constructed in strict compliance with detailed plans and specifications approved by the responsible government agencies in accordance with good engineering practice.

11.2 Lessee acknowledges that the Hotel covered by this Lease is one part of an overall planned development of State Parcels 6, 7, 8, and 14 of the Anza Airport subdivision. Therefore the design of each structure within this development, including the Hotel, the landscaping, and surrounding paving, should be coordinated so that their overall appearance is harmonious and complementary. To achieve this goal all site plans, exterior architectural design drawings, landscaping and paving plans shall be submitted by Lessee to the State for its approval or disapproval at least sixty (60) days prior to the beginning of construction. The State shall have thirty (30) days after receipt of Lessee's architectural design drawings in which to approve or disapprove them, provided, however, that such disapproval shall not be

unreasonable. If after thirty (30) days the State has neither approved or disapproved the aforementioned architectural design drawings, then they shall be deemed approved.

11.3 Lessee shall proceed with due diligence to obtain all necessary permits and shall begin construction within sixty (60) days of receipt of all non-appealable entitlement permits and satisfaction of all contingencies as set forth in paragraph 50 hereof. In any event Lessee must have substantially commenced construction on the Lease Premises no later than July 1, 1991. Substantially commenced construction shall mean that all foundation work must be completed and passed inspection by local governmental authority. All improvements must be completed and the Hotel and related facilities open for business within twenty four (24) months of the beginning of construction subject to delays as a result of force majeure or other causes beyond Lessee's control. Lessee's failure to substantially commence construction and complete the improvements as provided in this paragraph 11 shall constitute a default of the Lease terms and conditions and shall be subject to the remedies available to Lessor as provided in paragraph 10 and at law, including termination of this Lease. The period of time for Lessee to commence construction shall be extended in the event Lessee is prevented from commencing construction due to litigation brought by Jin Jiang Restaurant Corp., Ltd. concerning a purported thirty-five foot height restriction effecting the Lease Premises.

11.4 On the first day of each month after the effective date of this Lease and continuing until construction of the hotel begins Lessee shall provide Lessor with a report detailing Lessee's efforts in obtaining all required permits or other entitlements for use, financing, environmental clearance, architectural and landscaping design drawings, soils analysis, bidding and contracting for hotel construction and any other information that may be reasonably requested by Lessor.

From and after the date that construction begins on the hotel and continuing until the final certificate of occupancy is issued by the

City of Burlingame Lessee shall provide Lessor with a monthly report which describes construction progress to date including percentage completion, tenant purchases of materials and supplies, contractor/vendor progress payments to date, payables, liens filed/withdrawn, claims filed, accidents on the premises, city inspection reports, status of construction loan, estimated completion date and any other information that may be reasonably requested by Lessor.

11.5 All improvements constructed on the Property by Lessee shall be at Lessee's sole expense. Lessee shall diligently prosecute to completion the construction of the improvements including the installation of all necessary furniture, fixtures and equipment and complete landscaping.

11.6 Lessee shall within one hundred ninety (190) days of completion of said improvements submit to the State a detailed report of Lessee's expenditures for said improvements, equipment, furnishing and trade fixtures, and it is hereby understood and agreed that the State shall have the right, through its representatives and at all reasonable times, to inspect Lessee's books.

12. Performance and Labor Bonds. Prior to the commencement of any construction work hereunder, Lessee, or its contractor, at its own expense, shall furnish to Lessor a bond(s) as follows:

12.1 A surety bond issued by a surety company licensed to transact business in the State of California and satisfactory to the State with Lessee's contractor or contractors, as principals, in a sum not less than one hundred percent (100%) of the total estimated cost of the labor contract or contracts for the construction work, guaranteeing the payment for the labor done thereon of any kind whatsoever and protecting the State from any liability, losses or damages arising therefrom. Lessor will not require any bond for contracts which do not exceed fifty thousand dollars (\$50,000.00).

12.2 Prior to the commencement of construction on the Lease Premises Lessee shall provide Lessor with evidence that Lessee has financing (including equity and/or loan funds) covering 100% of the estimated costs of constructing and completing the hotel project. In the event loaned funds are used to finance construction of the hotel project Lessee shall have obtained Lessor's approval pursuant to paragraphs #18 and #19 of this Lease prior to commencement of construction.

13. Maintenance, Repairs and Alterations.

13.1 Lessee, at its expense, shall perform all maintenance, repairs and alterations, including all painting and maintenance of landscaping, necessary to keep the Property and all improvements therein in first-class order, repair and condition throughout the term of this Lease. In addition, Lessee shall maintain, at its expense, all equipment, furnishings and trade fixtures upon the Property required for the maintenance and operation of a first-class business of the type to be conducted pursuant to Paragraph 4 hereof. Lessee waives the right to make repairs at the expense of the State and the benefit of the provisions of sections 1941 and 1942 of the Civil Code of California relating thereto; and further agrees that if and when any repairs, alterations, additions or betterments shall be made by it as in this paragraph provided, it promptly shall pay for all labor done or materials furnished in that behalf and shall keep said Property and Lessee's possessory interest therein free and clear of any lien or encumbrance of any kind whatsoever, subject to Lessee's right to contest the validity of any lien as provided in Paragraph 17 of this Lease. Should Lessee fail to make any repairs or perform any maintenance work for which it is liable, the State shall have the option to make the same, and Lessee shall immediately reimburse the State for the cost thereof, including the State's administrative overhead. The making of such repairs or performance of maintenance by the State shall in no event be construed as a waiver of the duty of Lessee to make repairs or

perform maintenance as herein provided.

13.2 Lessee agrees to be responsible for and maintain the rip-rap located along the Property in order to prevent damage to the Property.

13.3 Lessee may make alterations, additions, or betterments to the Hotel only after securing the necessary governmental permits. Lessee may not make alterations, additions or betterments that require significant structural or architectural changes or additions to the improvements on the Property, or which will cost more than Five Hundred Thousand Dollars (\$500,000), without first obtaining approval from the State, which shall not be unreasonably withheld or delayed.

13.4 Lessee agrees that it shall institute a quality assurance program and keep reserves sufficient to maintain the Property in a first-class order. Lessee shall deliver to the State copies of all inspection reports and documents describing remedial work made and carried out in connection with Lessee's quality assurance program.

13.5 "First-class order" and "first-class business," as those terms are used herein, shall mean the maintenance, repair, renovation or replacement of buildings, equipment, furniture, fixtures, landscaping and appurtenances necessary to keep the Property in efficient and attractive condition, at least substantially equal in quality to that condition originally represented by the improvements approved by the State and provided by Lessee. The State and Lessee do not intend by the immediately preceding sentence that a property item is not first-class merely because of ordinary and reasonable wear and tear that does not materially and substantially reduce the attractiveness or utility of the item. Said terms also require that Lessee employ Lessee's best efforts to operate or cause to be operated the business conducted on the Property in a manner that will produce at all times the maximum volume of Gross Receipts.

13.6 Lessee shall include in each monthly report of its Gross

Receipts required by this Lease, a detailed statement of the renovations and replacements made during the month covered by the report and the amount of expenditures therefor.

14. Fire Insurance.

14.1 Lessee shall and hereby agrees to maintain, at its own cost and expense, during the entire term of this Lease, a policy or policies of insurance against loss or damage by fire with extended coverage endorsement covering all buildings and improvements placed or erected upon the property in an amount equal to one hundred percent (100%) of the full replacement cost of all such buildings and improvements. The State will be named as an insured and loss payee on all such policies.

14.2 During any time that a leasehold mortgage is in effect with respect to the Property, such policy or policies shall name the Lessee, the State and the mortgagee as insureds as their interest may appear. Losses shall be adjusted with the State and Lessee jointly and, if required by the State, Lessee and the leasehold mortgagee jointly, the proceeds thereof shall be payable to the State, or if the leasehold mortgagee so requires, to the leasehold mortgagee, or to a bank or trust company selected by the leasehold mortgagee. In any event such proceeds shall be held by the State, or the leasehold mortgagee, as the case may be, as trust funds to be used for the purpose of restoring the buildings, facilities and improvements damaged by fire or other casualty, and shall be made available to the Lessee from time to time as Lessee proceeds with the necessary restoration as provided in Paragraph 15 hereof.

14.3 A certificate evidencing such insurance coverage shall be filed with the State upon the commencement of the term of this Lease, and said certificate shall provide that such insurance coverage will not be cancelled or reduced without at least thirty (30) days prior written notice to the State. At least thirty (30) days prior to the expiration of any such policy, a certificate showing that such insurance

coverage has been renewed shall be filed with the State. If such coverage is cancelled or reduced, Lessee shall, within fifteen (15) days after receipt of written notice from the State of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with the State a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. On failure to so file such certificate, the State may without further notice proceed to obtain the required insurance at Lessee's expense and Lessee shall pay to the State the State's cost of procurement of such insurance upon receipt of billing from the State for said cost.

14.4 Lessee shall also carry course of construction insurance, at its own cost and expense, at all times during construction of improvements, and provide to the State prior to commencement of construction a certificate evidencing the same.

14.5 Lessee shall and hereby agrees to maintain, at Lessee's own cost and expense, during the entire term of this Lease a policy or policies of insurance against loss or damage by fire with extended coverage endorsements upon all of its furnishings, fixtures and equipment located in and upon the Property to the full amount of the replacement value thereof. A certificate or certificates evidencing such insurance coverage shall be filed with the State prior to the commencement of the term of this Lease, and said certificate or certificates shall provide that such insurance coverage will not be cancelled or reduced without at least thirty (30) days prior written notice to the State. Lessee agrees that the policy or policies of insurance that Lessee procures and maintains pursuant to this paragraph 14 may be part of Lessee's blanket coverage and shall contain a waiver by the insurer of all rights of subrogation against the State, and Lessee hereby releases the State from any loss covered by Lessee's insurance.

14.6 Lessee shall carry business interruption insurance in an

amount sufficient to pay the minimum annual rent due during the period of any damage or destruction to the improvements to the Property.

15. Damage or Destruction of Improvements.

15.1 If during the term of this Lease the buildings and structures located upon the Property shall be damaged or destroyed by fire or other casualty insured against by the insurance required to be carried pursuant to Paragraph 14 to an extent in excess of fifty (50) percent of the then value thereof, Lessee is hereby granted the privilege, upon giving sixty (60) days written notice to the State (such notice to be given within sixty (60) days after such damage or destruction), to cancel and annul this Lease; provided, however, that if in such case Lessee shall not so elect to cancel and annul this Lease, it hereby agrees with due diligence to restore the Property to a good and tenantable condition. Notwithstanding an election by Lessee to so cancel this Lease under the circumstances set out, the State, within sixty (60) days after Lessee's notice to such effect, may, nevertheless, elect by notice in writing to Lessee to cause Lessee to restore the Property using the proceeds of insurance, afforded under Paragraph 14 hereof, to the extent they are available, in which event Lessee shall prosecute and complete the work of restoration with reasonable diligence, and this Lease shall continue in effect; provided, however that in no event shall Lessee be required to utilize funds of its own (other than the insurance proceeds) to carry out said restoration.

15.2 If in accordance with the provisions of this Paragraph 15 this Lease is cancelled or annulled, Lessee's interest shall be determined by the ratio which the then remaining portion of the term of this Lease bears to the initial term of the Lease, and such ratio shall be applied to the total amount of such insurance proceeds to determine the amount thereof which is payable to Lessee after first deducting from said total insurance proceeds any amount thereof which is payable to any leasehold mortgagee.

15.3 . If during the term of this Lease the buildings and structures located upon the Property shall be damaged or destroyed by a casualty for which no insurance coverage is provided to an extent in excess of twenty-five (25) percent of the then full replacement cost of such improvements, Lessee may elect not to rebuild, if Lessee has advised the State in writing of its intent not to rebuild and restore within sixty (60) days of the date of the loss. In the event that Lessee elects not to rebuild, Lessee shall promptly at no cost or expense to the State clear the Property of all debris, demolish and remove from the Property such improvements as directed by the State and leave the Property in a safe condition. Upon completion of said work this Lease shall terminate.

15.4 In addition to the requirements to repair or rebuild stipulated in this Paragraph 15, all damage and destruction to an extent less than twenty-five (25) percent of the then existing value will be the sole responsibility of the Lessee, who shall promptly repair or restore any such loss unless specifically released from this responsibility by the State.

15.5 Except as otherwise provided herein, responsibility for repair and/or replacement shall be determined solely by the provisions of this Paragraph 15 and will not be modified, reduced or otherwise changed because of any inadequacies of insurance funds provided for in Paragraph 14.

15.6 In the event of damage or destruction, Lessee's obligation to pay the Percentage Rental under Paragraph 5 shall abate until such damage or destruction is repaired. If the damage or destruction is caused by a risk covered by the business interruption insurance required to be carried by Lessee hereunder, then Lessee shall remain obligated to pay the Annual Rental due under Paragraph 5 herein. If the damage or destruction is caused by a risk not covered by the business interruption insurance required to be carried by Lessee hereunder, then payment of the rent otherwise due under Paragraph #5 herein shall be

deferred until the completion of the repair of the damage or destruction at which time Lessee shall commence paying such deferred Minimum Rent, plus interest on such deferred Minimum Rent at the rate of twelve percent (12%) per annum, in equal monthly installments spread equally over a period twice as long in duration as the period of time between the occurrence of the damage or destruction and the completion of the repair thereof.

15.7. Title to Improvements.

15.7.1 All improvements constructed, erected or installed upon the Property shall be the property of Lessee until expiration of the term of this Lease as set forth in Paragraph 1 herein or sooner termination and upon such expiration or termination they shall become the property of the State. The State may at its option require Lessee at no cost to the State to remove and properly dispose of all or any portion of the improvements to the Property as follows:

15.7.2 In the event of termination by expiration of the term of this Lease, if the State gives to Lessee written notice at least one hundred eighty (180) days prior to the expiration date of the term of this Lease of the improvements Lessee shall remove, Lessee shall in said event prior to said expiration date remove said improvements and leave the Property and any remaining improvements in a safe, clean and first-class operating condition; and

15.7.3 In the event of termination on account of Lessee's default, the State shall give to Lessee written notice of the improvements Lessee shall remove together with the notice of forfeiture, and Lessee shall within one hundred eighty (180) days thereafter remove said improvements and leave the Property and any remaining improvements in safe, clean and first-class operating condition.

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15.8 Title to all equipment, furniture, furnishings and trade fixtures placed by Lessee upon the Property shall remain in Lessee, and replacements, substitutions and modifications thereof may be made by Lessee throughout the term of this Lease. And Lessee may remove the same upon termination of this Lease, if Lessee is not then in default under this Lease; provided that Lessee shall repair to the satisfaction of the State any damage to the property and improvements caused by such removal and, provided further, that usual and customary lighting, plumbing, air conditioning and heating fixtures shall remain upon said Property and be surrendered therewith upon termination of this Lease. Any equipment, furniture, furnishings and trade fixtures remaining upon the Property after termination of this Lease shall, at the State's election, become the property of the State.

16. Hold Harmless Agreement and Liability Insurance.

16.1 It is an express covenant of this Lease that the State, its officers, employees and agents shall be free from any and all liabilities and claims for damages and/or suits for or by reason of any death or deaths of or any injury or injuries to any person or persons or damages to property of any kind whatsoever, whether the person or property of Lessee, its agents or employees, or third persons, from any cause or causes whatsoever while in or upon said Property or any part thereof during the term of this Lease or occasioned by any occupancy or use of said Property or any activity carried on by Lessee in connection therewith, and Lessee hereby covenants and agrees to indemnify and to save harmless the State from all liabilities, charges, expenses (including counsel fees) and costs on account of or by reason of any such death or deaths, injury or injuries, liabilities, claims, suits or losses, however occurring, or damages growing out of the same; provided, however, that Lessee shall not be responsible any such death or deaths, injury or injuries, liabilities, claims, suits or losses caused solely by the State's negligent or intentional and wrongful acts or omissions.

16.2 Lessee shall maintain in force during the term of this Lease comprehensive general liability and property damage insurance, including personal injury, products, liquor liability, contractual, and owned and non-owned automobiles, with such coverage and limits as may be reasonably requested by the State from time to time, but in no event for less than the sum of three million dollars (\$3,000,000) combined single limit, and garage keepers' liability coverage, with such coverage and limits as may be reasonably requested by the State from time to time, but in no event for less than the sum of two hundred fifty thousand dollars (\$250,000) per vehicle and one million dollars (\$1,000,000) per occurrence; and Lessee agrees that the State shall be named as an insured under such liability insurance policy or policies.

16.3 All such policies shall be endorsed with a severability of interest or cross-liability endorsement, reading generally as follows: Cross-Liability - In the event of one of the assureds incurring liability to any other of the assureds, this policy shall cover the assured against whom claim is or may be made in the same manner as if separate policies had been issued to each assured. Nothing contained herein shall operate to increase underwriters' limit of liability.

16.4 A certificate or certificates evidencing such insurance coverage shall be filed with the State prior to the commencement of the term of this Lease, and said certificate shall provide that such insurance coverage will not be cancelled or reduced without at least thirty (30) days prior written notice to the State. At least thirty (30) days prior to the expiration of any such policy, a certificate showing that such insurance coverage has been renewed or extended shall be filed with the State. If such coverage is cancelled or reduced, Lessee shall, within fifteen (15) days after receipt of written notice from the State of such cancellation or reduction in coverage but in no event later than the effective date of cancellation or reduction, file with the State a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, the State may

without further notice procure such insurance coverage at Lessee's expense and Lessee shall promptly reimburse the State for such expense.

17. No Liens.

17.1 Except as otherwise expressly provided in this Lease, Lessee shall pay for all labor done or materials furnished in the repair, replacement, development or improvement of the Property by Lessee and shall keep said Property and Lessee's possessory interest therein free and clear of any lien or encumbrance of any kind whatsoever created by Lessee's act or omission. However, Lessee may in good faith and at Lessee's own expense contest the validity of any such asserted lien, claim or demand, provided Lessee has furnished the bond (with a copy to the State) required by California Civil code Section 3143 (or any comparable statute hereafter enacted for providing a bond freeing the Property from the effect of such a lien claim).

18. Assignment and Subletting.

18.1 Except as expressly provided in Paragraph 19 of this Lease, Lessee shall not, either directly or indirectly, assign, hypothecate, encumber or transfer this Lease or any interest in this Lease, or sublet the whole or any part of the Property, or lease the use of same in whole or in part without written consent of the State which shall be not be unreasonably withheld or delayed.

18.2 Lessor acknowledges that Lessee contemplates the subletting or assignment of this lease upon the completion of improvements on the property. For purposes of this agreement completion of improvements shall mean the date on which the notice of completion is filed. In the event of such assignment Lessor agrees to relieve Lessee of any and all of its obligations under this Lease; provided that Lessor shall have approved such assignment as provided for in this paragraph 18. Lessor's consent to such assignment shall not be unreasonably withheld. The assignment/subletting provided for in the preceding three sentences

shall be available to Lessee only once and shall thereafter terminate. The assignment/subletting provided for in this paragraph 18.2 shall not be subject to the provisions of paragraph 18.6. The form of assignment contemplated for use in this subparagraph 18.2 shall be substantially as set forth Exhibit "C" attached hereto and by this reference made apart hereof. In approving the assignment contemplated by this paragraph 18.2 the State shall be governed by the standard of commercial reasonableness as set forth in current case law.

18.3 Neither this Lease nor any interest therein shall be assignable or transferable in proceedings in attachment, garnishment or execution against Lessee, or in voluntary or involuntary proceedings or bankruptcy or insolvency or receivership taken by or against Lessee or by any process of law, and that possession of the whole or any part of the Property shall not be divested from Lessee in such proceedings or by any process of law, without written consent of the State, and any breach of the provisions of this paragraph shall cause this Lease to terminate immediately at the option of the State.

18.4 If the Lessee hereunder is a corporation or any unincorporated association or partnership, the transfer or assignment of any stock or interest in said corporation, association, or partnership in the aggregate exceeding fifty (50) percent shall be deemed an assignment or transfer within the meaning of this Lease and shall require the prior written consent of the State which shall not be unreasonably withheld or delayed. The State's consent to any assignment, transfer or occupation or use shall not be construed or deemed to be a waiver of the restrictions hereinabove contained or to be a consent to any subsequent assignment, transfer or occupation or use by another person.

18.5 If Lessee desires to assign, sublet, encumber or otherwise transfer all or any portion of the Lease Premises, Lessee shall do all of the following:

18.5.1 give prior written notice to Lessor.

18.5.2 provide the name and complete business organization and operational structure of the proposed assignee, sublessee, secured third party or other transferee; and the nature of the use of or interest in the Lease Premises proposed by the assignee, sublessee, secured third party or other transferee. If the proposed assignee, sublessee or secured third party is a general or limited partnership, or a joint venture, provide a copy of the partnership agreement or joint venture agreement, as applicable.

18.5.3 provide the terms and conditions of the proposed assignment, sublease, or encumbrancing or other transfer;

18.5.4 provide financial statements for the two most recently completed fiscal years of the proposed assignee, sublessee, secured party or other transferee; and provide pro forma financial statements showing the projected income, expense and financial condition resulting from use of the lease premises; and

18.5.5 provide such additional or supplemental information as Lessor may reasonably request concerning the proposed assignee, sublessee, secured party or other transferee.

18.5.6 Lessor will evaluate proposed assignees, sublessees, secured third parties and other transferees and grant approval or disapproval according to standards of commercial reasonableness considering the following factors within the context of the proposed use: the proposed party's financial strength and reliability, their business experience and expertise, their personal and business reputation, their managerial and operational skills, their proposed use and projected rental, as well as other relevant factors.

18.5.7 Lessor shall have sixty (60) days from the receipt of all documents and other information required under this provision

to grant or deny its approval of the proposed party.

18.5.8 Upon the express written assumption of all obligations and duties under this Lease by an assignee approved by Lessor, the Lessee shall be released from all liability under this Lease arising after the effective date of assignment and not associated with Lessee's use, possession or occupation of or activities on the Lease Premises.

18.6 Additional Consideration to State.

18.6.1 Lessee and Lessor agree that in the event of a refinancing (where 100%) of the proceeds of the refinancing are not used on the Premises as provided for in paragraph 19.1.4) after the first permanent loan has been secured, Lessee shall pay to Lessor one and one-half percent (1.5%) of any increased loan or encumbrances against the Property over and above the then existing balance(s) of the existing encumbrance(s).

18.6.2 Lessee and Lessor agree that in the event of an assignment or in the event of a majority subletting of the Property, Lessee shall pay to Lessor one and one-half percent (1.5%) of the gross amount paid for the leasehold in connection with an approved assignment of the Lease, or one and one-half percent (1.5%) of any amount paid Lessee in consideration of a sublease of all or a majority portion of the leasehold.

18.6.3 The amount upon which the one and one-half percent (1.5%) shall be based shall be the total consideration resulting from the transaction including total cash payments and the market value of non-cash consideration, including, but not limited to: stocks, bonds, deferred payments, secured and unsecured notes and forebearances regarding claims and judgements.

18.6.4 The sum due Lessor shall be payable in full to Lessor

concurrent with the completion of the transaction be it an assignment, a sublease or a refinancing. Any assignment, subletting or refinancing in violation of the terms and conditions of this paragraph shall be void.

18.6.5 The provisions of this paragraph 18.6 shall not be applicable to any assignment, refinancing or majority sublease during the first ten (10) years of this Lease.

18.7 If the Lessee files a petition or an order for relief is entered against Lessee, under Chapters 7,9,11 or 13 of the Bankruptcy Code (11 USC Sect. 101, et seq.) then the trustee or debtor-in-possession must elect to assume or reject this Lease within sixty (60) days after filing of the petition or appointment of the trustee, or the Lease shall be deemed to have been rejected, and Lessor shall be entitled to immediate possession of the Lease Premises. No election to assume or assign this Lease shall be effective unless it is in writing and unless the trustee or debtor-in-possession has cured all defaults under this Lease (monetary and non-monetary) or has provided Lessor with adequate assurances (1) that within ten (10) days from the date of such assumption or assignment, all monetary defaults under this Lease will be cured; and (2) that within thirty (30) days from the date of such assumption, all non-monetary defaults under this Lease will be cured; and (3) that all provisions of this Lease will be satisfactorily performed in the future.

18.8 Notwithstanding any provision to the contrary in this paragraph #18, the consent of the State shall not be required for any assignment of this Lease and the interest of Lessee hereunder or to any major sublease of the Property or any part thereof if such assignment or sublease is made to an exempt transferee as defined in the following sentence. An "Exempt Transferee" shall mean (a) Pravin Pranav, Ganesh Patel and Nanu Patel; (b) a limited partnership of which Lessee or Pravin Pranav, Ganesh Patel and Nanu Patel, or an entity described in subsection (c) or (d) below, is a general partner; (c) a joint venture

or a general partnership of which Lessee or Pravin Pranav, Ganesh Patel and Nanu Patel are partners or venturers; or (d) a corporation or other entity of which Lessee or Pravin Pranav, Ganesh Patel and Nanu Patel are the owner of at least fifty percent (50%) of the issued and outstanding stock and interest thereof. The assignment/sublease provided for in this paragraph 18.8 shall be available only once and shall thereafter terminate.

19. Encumbrancing.

19.1 Leasehold - Mortgaging. Lessee shall have the right at any time and from time to time to subject the leasehold estate granted hereunder and any or all improvements to the Property, to one or more mortgages (as used elsewhere in this Lease, the term mortgage includes a deed of trust and other real property security interests) as security for a loan or loans or other obligations of Lessee, provided that:

19.1.1 The mortgage and all rights acquired under the mortgage shall be subject and subordinate to each and all of the covenants, conditions, and restrictions stated in this Lease and to all rights and interest of State, except as provided in Paragraph #19.2 and 19.3 of this Lease.

19.1.2 Lessee shall give Lessor prior written notice pursuant to paragraph 45 herein of any such proposed mortgage, accompanied with a true copy of the promissory note or other evidence of indebtedness and the mortgage securing the same together with any other information set forth in paragraph #18 relating to assignments. Lessor shall not unreasonably withhold its consent to the proposed mortgage and shall have no right to object to the terms of the proposed mortgage so long as such terms comply with the provisions of this paragraph #19 and the encumbrancing agreement mentioned in the next sentence. Upon approval by the State, the State, Lessee and the mortgagee shall execute an Agreement and a Consent to Encumbrancing substantially in the form

attached hereto as Exhibit "D" and incorporated herein by reference.

19.1.3 The total amount of indebtedness secured by all such mortgages shall not, in the aggregate, exceed eighty (80%) of the fair market value of the Property as improved at the time the most junior of such mortgages is recorded. For purposes of this paragraph, the fair market value shall be as determined by the beneficiary under such junior mortgage.

19.1.4 The proceeds of any such loans shall be used exclusively for financing the acquisition of the leasehold and construction, maintenance, operation, repair, alteration and reconstruction of the Property and the improvements, (including fixtures, equipment and personal property) on the Property.

19.2 Mortgage Default; Recognition of Mortgagee as Tenant.

19.2.1 If Lessee defaults under the terms of any permitted leasehold mortgage and the mortgagee acquires Lessee's leasehold estate and interest in the improvements to the Property, whether by exercising its power of sale, by judicial foreclosure, by assignment in lieu of foreclosure or otherwise, the State agrees to recognize such mortgagee as the tenant under all the terms and conditions of this Lease conditioned on the following:

19.2.1.1 Payment of all taxes, assessments, insurance and bond premiums required by this Lease to be paid by Lessee are current, or are brought current by mortgagee, and are kept current by mortgagee;

19.2.1.2 Payment of all utility charges are current or are brought current and are kept current by mortgagee;

19.2.1.3 Payment of all rental due from Lessee including

penalty and interest is current or is brought current by Mortgagee, and kept current by Mortgagee;

19.2.1.4 The mortgagee performs all Lessee's other obligations under the Lease.

19.3 Leasehold default; Notice, Cure. With respect to any such permitted leasehold mortgage, Lessor and Lessee agree as follows:

19.3.1 Upon receipt of notice of any leasehold mortgage (together with a copy of the mortgage and the evidence of indebtedness secured by the mortgage), Lessor shall provide any such leasehold mortgagee, concurrently with providing such notices or communications to Lessee hereunder, with copies of any and all notices or other communications from Lessor to Lessee under this Lease wherein the basis for a default by Lessee is described or alleged and any such leasehold mortgagee shall have the same periods as are given to Lessee under this Lease for remedying such default or causing it to be remedied, plus an additional period of 30 days after the expiration thereof.

19.3.2 In the event of any default by Lessee under this Lease, if prior to the expiration of any applicable curative period specified in this Lease, the leasehold mortgagee shall give Lessor written notice that it intends to undertake the curing of such default, or to cause the same to be cured, or to exercise its rights to acquire the leasehold interest of Lessee by foreclosure or otherwise, and shall immediately commence and then proceed with all due diligence to do so, then Lessor shall not terminate or take any action to effect a termination of this Lease or exercise its other remedies thereunder so long as the leasehold mortgagee is with all due diligence and in good faith engaged in the curing of such default or effecting such foreclosure but the leasehold mortgagee shall not be required to continue such foreclosure or other proceedings if such default shall be cured; any such

attempted termination or action to effect termination made or taken so long as Lessee is so acting diligently and in good faith shall be of no force or effect with respect to this Lease. If the leasehold mortgagee cannot effect a transfer of the Lease other than through foreclosure of the leasehold mortgage and the mortgagee is prohibited from commencing or consummating such foreclosure by order of court or rule of law, lessor shall not terminate this Lease so long as the mortgagee diligently and in good faith pursues legal action to be permitted to complete such foreclosure; provided, that the mortgagee shall keep and perform all provisions to be performed by it under the Agreement and Consent to Encumbrancing until such time as this Lease shall be transferred upon foreclosure or by any other means approved herein.

19.4 Except as set forth in Paragraph 19.3.2 with respect to exercising good faith and due diligence to cure Lease defaults or acquire the leasehold, no leasehold mortgagee shall be liable to perform any of the obligations herein imposed on it or Lessee unless it is in possession or ownership of the leasehold estate and the Property and improvements thereon and all of its obligations commencing with such possession or ownership shall terminate upon assignment or other transfer of the leasehold and the improvements in accordance with the provisions of this Lease. Unless any such mortgagee acquires the leasehold and possession and ownership of the property and improvements thereon, the State's sole remedy against the mortgagee for such mortgagee's failure or refusal to comply with the provisions of this Lease shall be to terminate the mortgagee's rights under this Lease and the Agreement and Consent to Encumbrancing of Lease.

19.5 Any leasehold mortgagee may be named as an additional insured or loss payee under any insurance policies carried by Lessee pursuant to this Lease.

19.6 Without limiting any other provision of this Lease, the

provisions of this Paragraph 19 shall inure to the benefit of and bind any assignee or successor of Lessee, including any leasehold mortgage, and Lessor. Any such assignee or successor, including any leasehold mortgagee in possession, shall assume and agree, in writing, to perform all terms, covenants and conditions of this Lease and any amendment to this Lease or new Lease as provided for herein.

19.7 No permitted leasehold mortgage shall purport to amend the terms of this Lease.

20. Default and Remedies.

20.1 Each of the following events shall constitute an event of default by Lessee and a breach of this Lease:

20.1.1 Lessee's failure or omission to pay any rent or other sum payable hereunder on or before the same is due.

20.1.2 Lessee's failure or omission to observe, keep or perform any of the other terms, agreements or conditions contained in this Lease to be performed by Lessee.

20.1.3 Lessee's abandonment or surrender of the Property or of the leasehold estate.

20.1.4 Lessee's assignment contrary to the provisions hereof.

20.1.5 The subjection of any right or interest of Lessee to attachment, execution or other levy, or to seizure under legal process, if not released within sixty (60) days.

20.1.6 The appointment of a receiver to take possession of the Property or of Lessee's interest in the leasehold estate or of Lessee's operation on the premises for any reason, including but not limited to assignment for the benefit of creditors or voluntary

or involuntary receivership:

20.1.6.1 pursuant to any leasehold mortgage permitted by the provisions of this Lease, or

20.1.6.2 instituted by State, the event of default being not the appointment of a receiver at State's instance but the event justifying the receivership, if any.

20.1.7 An assignment by Lessee for the benefit of creditors or the filing of a voluntary or involuntary petition by or against Lessee under any law for the purpose of adjudicating Lessee a bankrupt; or for extending time for payment, adjustment or satisfaction of Lessee's liabilities; or for reorganization, dissolution or arrangement on account of or to prevent bankruptcy or insolvency; unless the assignment or proceeding, and all consequent orders, adjudications, custodies and supervisions are dismissed, vacated or otherwise permanently stayed or terminated within sixty (60) days after the assignment, filing or other initial event.

20.1.8 Uncured default in the payment of any loan secured by a leasehold mortgage permitted by this Lease.

20.1.9 Failure to substantially commence construction on the Premises within the time limits set forth in paragraph 11.

20.2 As a condition to pursuing any remedy for an alleged default by Lessee, the State shall, before pursuing any remedy, give notice of default to Lessee and to all qualifying subtenants and leasehold mortgagees whose names and addresses were previously given to State in a notice or notices from Lessee or any qualifying leasehold mortgagee stating that the notice was for the purpose of notice under this provision. A qualifying subtenant is a subtenant in possession under an existing sublease which is proper under this Lease. A qualifying

leasehold mortgagee is a mortgagee under an existing leasehold mortgage permitted hereunder. Each notice of default shall specify the alleged event of default and the intended remedy.

20.3 If the alleged default is nonpayment of taxes or other sums to be paid by Lessee, Lessee shall have thirty (30) days after notice is given to cure the default. For the cure of any other default, Lessee shall promptly and diligently after notice commence curing the default and shall have thirty (30) days after notice is given to complete the cure or in case of a failure or omission that cannot be cured by the payment of money and cannot be cured within thirty (30) days, such additional time as is reasonably required for the curing of the default.

20.4 If Lessee shall have failed to cure after expiration of the applicable time curing a particular default or before the expiration of that time in the event of emergency, the State may at its election, but is not obligated to, make any payment required of Lessee under this Lease or under any note or other document pertaining to the financing of improvements or fixtures on the Property, or perform or comply with any term, agreement or condition imposed on Lessee hereunder of any such notice or document, and the amount so paid plus the reasonable cost of any such performance or compliance, plus interest on such sum at the highest rate then permitted by law from the date of payment, performance or compliance shall be deemed to be additional rent payable by Lessee on the State's demand. No such payment, performance or compliance shall constitute a waiver of default or of any remedy for default or render State liable for any loss or damage resulting from the same. If any default by Lessee shall continue uncured following receipt of notice of default for the period applicable to the default under the provisions of this Lease, State shall have the following remedies in addition to all rights and remedies provided by law or equity to which State may resort cumulatively or in the alternative:

20.4.1 State may at its election terminate this Lease by giving Lessee notice of termination. On the giving of the notice all

Lessee's rights in the Property and in all improvements shall terminate. Promptly after notice of termination Lessee shall surrender and vacate the Property and all improvements in good condition and State may reenter and take possession of the Property and all remaining improvements and eject all persons in possession or eject some and not others or eject none. In addition to all the rights and remedies of a landlord under Section 1951.2 of the California Civil Code, termination under this subparagraph shall not relieve Lessee from the payment of any sum then due to State or from any claim for damages previously accrued or then occurring against Lessee.

20.4.2 State may at its election reenter the Property and, without terminating this Lease, at any time and from time to time relet the Property and improvements or any parts of them for the account and in the name of Lessee or otherwise. State may at State's election eject all persons or eject some and not others or eject none. Any reletting may be for the remainder of the term or for a longer or shorter period. State may execute any leases made under this provision either in State's name or in Lessee's name and shall be entitled to all rents from the use operation or occupancy of the premises or improvements or both. Lessee shall nevertheless pay to State on the due date specified in this Lease the equivalent of all sums required of Lessee under this Lease, plus State's expenses, less the avails of any reletting or attornment. In addition to all other rights and remedies it may have State shall have all of the rights and remedies of a landlord under Section 1951.4 of the California Civil Code. State may do all things reasonably necessary for such reletting, including repairing, remodeling and renovating of the Property or improvements and Lessee shall reimburse State on demand for all costs incurred by State in connection therewith. If State relets the Property it shall apply any sums received upon such reletting in the following order or priority:

20.4.2.1 to the payment of any indebtedness other than rent due hereunder from Lessee;

20.4.2.2 to the payment of all costs incurred by State in restoring the Property to good order and repair, or in remodeling, renovating or otherwise preparing the Property for reletting;

20.4.2.3 to the payment of all costs (including without limitation any brokerage commissions) incurred by State in reletting the Property;

20.4.2.4 to the payment of rent due and unpaid hereunder;

20.4.2.5 the balance, if any, to the payment of future rent as the same may become due hereunder. No act by or on behalf of State under this provision shall constitute a termination of this Lease unless State gives Lessee notice of termination. Notwithstanding any election by State not to terminate the Lease State may at any time thereafter elect to terminate this Lease for any previous breach or default thereunder by Lessee which remains uncured or for any subsequent breach or default which has not been cured.

20.4.3 State acknowledges that Lessee may acquire personal property and trade fixtures for its operation of the Property through personal property leases or financing arrangements. State will execute such documents as may be reasonably required by any lender or personal property lessor with respect to such personal property and fixtures, acknowledging the priority of the security interest of such personal property lender or lessor with respect to such personal property and fixtures. Subject to the rights of personal property and trade fixture lenders and lessors, State may at its election use Lessee's personal property and trade fixtures or any of such property or fixtures without compensation and

without liability for use or damage or remove them and store them for the account and at the cost of Lessee. Such storage may be in a public or private warehouse or elsewhere. If Lessee shall not immediately pay the cost of storage of such property after the same has been stored for a period of thirty (30) days or more, State may sell any or all thereof at a public or private sale in such a manner and at such times and places as State in its sole discretion may deem proper, without notice to or demand upon Lessee. Lessee waives all claims for damages that may be caused by State's removing or storing or selling the property as herein provided, and Lessee shall indemnify and hold State free and harmless from and against any and all losses, costs and damages. Lessee hereby appoints State as Lessee's attorney-in-fact with the power of substitution and all other rights and powers necessary in order to effectuate the provisions of this Paragraph. The election of one remedy for any one item shall not foreclose an election of any other remedy for another item or for the same item at a later time.

20.4.4 State shall have the right to cause a receiver to be appointed in any action against Lessee to take possession of the Property and/or to collect the rents or profits derived therefrom. The appointment of such receiver shall not constitute an election on the part of State to terminate this Lease unless a written notice of such intention is given to Lessee.

20.4.5 State shall be entitled at its election to each installment of rent or to any combination of installments for any period before termination, plus interest at the highest rate of interest then permitted by law from the due date of each installment.

20.4.6 State shall be entitled at its election to damages which shall include, without limitation, the following sums:

20.4.6.1 All amounts that would have fallen due as rent between the time of termination of this Lease and the time of the claim, judgment or other award, less the avails of all relettings and attornments, plus interest on the balance at the highest rate of interest then permitted by law; and

20.4.6.2 The worth at the time of the claim, judgment or other award of the amount by which the unpaid rent for the balance of the term exceeds the lower of:

20.4.6.2.1 the fair rental value as then encumbered by the Lease and improvements and

20.4.6.2.2 the fair rental value unencumbered by the Lease and improvements. "Worth" as used in this provision is computed by discounting the total at the discount rate of the Federal Reserve Bank of San Francisco at the time of the claim, judgment or award, plus one (1%) percent. Any claim for damages shall be immediately enforceable by State against Lessee by suit and shall be provable in any bankruptcy or insolvency proceedings involving Lessee.

20.5 The provisions of this Paragraph 20.5 are subject to the provisions of Paragraph 19 and the rights of any mortgagee under Paragraph 19 and under any leasehold mortgage made pursuant to Paragraph 19. Lessee assigns to State all subrents and other sums falling due from subtenants, licensees and concessionaires (herein called "subtenants") during any period in which State has the right under this Lease, whether exercised or not, to reenter the Property for Lessee's default and Lessee shall not have any right to such sums during that period. State may at State's election reenter the Property and improvements with or without process of law, without terminating this Lease, and either or both collect these sums or bring action for the recovery of the sums directly from such obligors. State shall receive

and collect all subrents and avails from reletting, applying them in the following order or priority:

20.5.1 to the payment of any indebtedness other than rent due hereunder,

20.5.2 to the payment of all costs incurred by State in restoring the Property to good order and repair, or in remodeling, renovating or otherwise preparing the Property for reletting,

20.5.3 to the payment of rent due and unpaid hereunder, and

20.5.4 the balance, if any, to the payment of future rent as the same may become due hereunder, and

20.5.5 to State's uses and purposes. Lessee shall nevertheless pay to State on the due date specified in this Lease the equivalent of all sums required of Lessee under this Lease, plus State's expenses, less avails of the sums assigned and actually collected under this provision. State may proceed to collect either the assigned sums of Lessee balances or both, of any installment or installments of them, either before or after expiration of the term, but the period of limitation shall not begin to run on Lessee's payments until the due date of the final installment to which State is entitled nor shall it begin to run on the payments of the assigned sums until the due date of the final installment due from the respective obligors.

20.6 No waiver of any breach or default shall constitute a waiver of any other breach or default, whether of the same of any other term, agreement or condition. No waiver, benefit, privilege or service voluntarily given or performed by either party shall give the other any contractual right by custom, estoppel or otherwise. The subsequent acceptance of rent pursuant to this Lease shall not constitute a waiver of any preceding breach or default by Lessee other than default in the

payment of the particular rental payment so accepted regardless of State's knowledge of the preceding breach at the time of accepting the rent, nor shall acceptance of rent or any other payment after termination constitute a reinstatement, extension or renewal of the Lease or revocation of any notice or other act by State.

21. Arbitration Applicability and Notice.

21.1 Arbitration may be required by either State or Lessee for matters for which arbitration is provided in this Lease. For other matters State, in it's sole discretion, may require arbitration by giving a written notice to Lessee describing the matter to be arbitrated; provided, however, that if an action is already pending on any matter concerning which notice is given, the notice is ineffective unless given before the expiration of ten (10) days after service of process on the person given the notice.

21.2 Except as provided to the contrary in this Paragraph 21, the arbitration shall be in conformity with and subject to applicable rules and procedure of the American Arbitration Association. If the American Arbitration Association is not then in existence or for any reason fails or refuses to act the arbitration shall be in conformity with and subject to the then existing provisions of California law relating to arbitration. The arbitrators shall be bound by this Lease. Pleadings in any action pending on the same matter shall, if the arbitration is required or consented to, be deemed amended to limit the issues to those contemplated by the rules prescribed above. Each party shall pay one-half (1/2) the cost of arbitration including arbitrator's fees. The decision and award made by the arbitrator shall be final, binding and conclusive on all parties and, upon application of either party, judgment may be rendered by the Superior Court of the State of California in and for the County of San Mateo or by any other court having jurisdiction.

21.3 There shall be three (3) arbitrators appointed as follows:

21.3.1 Within twenty (20) days after notice requiring arbitration, each party shall appoint one arbitrator and give notice of appointment to the other party.

21.3.2 The two (2) arbitrators shall choose a third arbitrator within fifteen (15) days after appointment of the second.

21.3.3 If either party fails to appoint an arbitrator or if the two (2) arbitrators fail to choose a third, the appointment shall be made by the then presiding judge of the Superior Court of the State of California in and for the County of San Mateo acting in his individual and nonofficial capacity on the application of either party and on five (5) days notice given before commencement of the arbitration hearing, consent to arbitration by the arbitrator appointed by the other party. In that event no further appointments of arbitrators shall be made and any other arbitrators previously appointed shall be dismissed.

21.4 Notwithstanding anything to the contrary in this Paragraph 21 or elsewhere in this Lease, any claim by the State which might result in a judgment of restitution of the Property may not be arbitrated without the consent of Lessee.

22. Taxes and Assessments. The property interest created by this Lease may be subject to property taxation and the Lessee hereunder in whom the possessory interest is vested may be subject to the property taxes levied on such interest. Lessee agrees to pay all lawful taxes, assessments, user fees, service charges, or levies which at any time may be levied by the State, county, city or any tax assessment levying body upon any interest in this Lease or any possessory right which Lessee may have in or to the Property covered hereby by reason of its use or occupancy thereof or otherwise, as well as all taxes, assessments and charges on goods, merchandise, fixtures, appliances, equipment and property owned by it in or about said Property. Lessee shall be responsible for and pay all taxes when

due and no such taxes shall be offset against rental due to the State or offset against Lessee calculation of gross receipts. Lessee may, at no cost to the State, reasonably contest the legal validity or amount of any taxes, assessments, or charges for which Lessee is responsible under this Lease, and institute such proceedings as Lessee considers necessary. The State will allow itself to be joined in such proceedings if it's an indispensable party. Lessee shall at all times protect the State and the Property from any lien for such taxes, assessments and charges. This paragraph shall not be construed to require Lessee to pay any expenses of the State in the event the State is the entity seeking to collect any such taxes, assessments or charges.

23. Utilities. Lessee agrees to pay the cost of any utilities furnished to it in connection with its use and occupation of the Property. The State is not obligated to provide or pay for any utility services, but in the event the State by arrangement with Lessee provides or pays for any utility services, Lessee shall pay the State for such services or reimburse to the State such payment not later than the first day of the calendar month following Lessee's receipt from the State of a billing statement for said services or reimbursement. Any and all other utility services required by Lessee shall be provided by Lessee at its expense.

24. Hazardous Substances. No goods, merchandise or material shall be kept, stored or sold in or on said Property which are in any way explosive or hazardous; and no offensive or dangerous trade, business or occupation shall be carried on therein or thereon, and nothing shall be done on said Property other than as is provided for specifically in this Lease which will increase the rate of or suspend the insurance upon said Property or other structures of the State; and no machinery or apparatus shall be used or operated on said Property which will in any way injure said Property or adjacent buildings; provided, however, that nothing in this paragraph contained shall preclude Lessee from bringing, keeping or using on or about said premises such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its said business, or from carrying on its business in all aspects as is generally usual. Lessee shall be fully responsible for any

hazardous wastes, substances or materials as defined under federal, state or local law, regulation, or ordinance that are manufactured, generated, used, placed, disposed, stored, or transported on the Lease Premises during the Lease term and shall comply with and be bound by all applicable provisions of such federal, state or local law regulation or ordinance dealing with such wastes, substances or materials. Lessee shall notify Lessor immediately in the event of any release or threatened release of any such wastes, substances or materials. To the extent provided by existing law, Lessee shall not be responsible for any such wastes, substances or materials placed on the premises prior to the effective date of this Lease.

25. Surrender and Holding-Over. Lessee covenants that at the expiration of the term of this Lease or upon its earlier termination it will quit and surrender said Property in good state and condition, reasonable wear and tear and damage by the tenants expected. The State shall have the right upon such termination to enter upon and take possession of all said Property. Should Lessee hold over the use of said Property with the State's written consent after this Lease has terminated in any manner, such holding over shall be deemed merely a tenancy from month to month and at rental to be fixed by the State, payable monthly in advance, but otherwise on the same terms and conditions as herein set forth. It is understood and agreed that nothing contained in this Lease shall give Lessee any right to occupy the Property at any time after expiration of the term of this Lease or its earlier termination, and that this Lease shall not create any right in Lessee for relocation assistance or payment from the State upon the expiration of the term of this Lease or upon its earlier termination or upon the termination of any holdover tenancy pursuant to this paragraph. Lessee acknowledges and agrees that upon such expiration or termination it shall not be entitled to any relocation assistance with respect to any relocation of its business or activities upon the expiration of the term of this Lease or upon its earlier termination or upon the termination of any holdover tenancy pursuant to this paragraph.

26. Waivers. No waiver by either party at any time of any of the terms, conditions, covenants or agreements of this Lease or of any forfeiture shall

be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement therein contained, nor of the strict and prompt performance thereof.

27. Right to Inspect Property. After giving advance telephone notice to Lessee (notwithstanding any other notice requirement to the contrary under this Lease), the State or its duly authorized representatives, or agents and other persons acting for it, may enter upon said Property at any and all reasonable times during the term of this Lease for the purpose of determining whether or not Lessee is complying with the terms and conditions hereof or for any other purpose incidental to rights of the State.

28. Agent for Service of Process. It is expressly agreed and understood that if the Lessee is not a resident of this State, or is an association or partnership without a member or partner resident of this State, or is a foreign corporation, then in any such event the Lessee shall file with the State a designation of a natural person residing in the County of San Francisco, State of California, giving his name, residence and business address as his or its agent for the purpose of service of process in a court action between it and the State arising out of or based upon this Lease, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon such Lessee; and it is further expressly agreed, covenanted and stipulated that if for any reason service of such process upon such agent is not possible, then in such event Lessee may be personally serviced with such process out of this State, and that such service shall constitute valid service upon such Lessee; and it is further expressly agreed that Lessee is amenable to the process so served, submits to the jurisdiction of the court so acquired, and waives any and all objection and protest thereto.

29. Trade Names. Any name under which Lessee shall elect to operate the hotel, and other facilities shall be subject to the prior written approval of the State, which approval shall not be unreasonably withheld. Lessee agrees to operate only under the names so approved. Lessee shall not maintain, operate or authorize by franchise any similar facility in the City

of Burlingame or in an area within three (3) miles of the Property under any name or names the same or similar to the name under which the facility constructed hereunder is maintained and operated.

30. Disposal of Garbage. Lessee agrees to handle and dispose of its trash, garbage and refuse in a sanitary manner and not to pile any boxes, cartons, barrels, trash debris or refuse in or about the Property. Lessee shall provide its own facilities within the Property for the cleaning of garbage cans and shall provide an enclosed service yard upon the Property in order that no refuse, contained in boxes, cartons or the like will be visible from any direction outside the Property.

31. Fumes and Odors. Lessee agrees to conduct its operations upon the Property and to use the most modern equipment available so as to reduce to the minimum that is reasonably practicable the emanation from the Property of fumes and odors. No loudspeakers, radios, or other means of broadcasting to be heard outside the Property shall be used by Lessee.

32. Extensions of Time. The State shall have the right to grant reasonable extensions of time to Lessee for any purpose or for the performance of any obligation of Lessee hereunder.

33. Successors. Each and every of the provisions, agreements, terms, covenants and conditions herein contained to be performed, fulfilled, observed and kept shall be binding upon the successors and assigns of the respective parties hereto, and the rights hereunder, and all rights, privileges and benefits arising under this Lease and in favor of either party shall be available in favor of the successor and assigns thereof, respectively; provided no assignment by or through Lessee in violation of the provisions of this Lease shall vest any rights in any such assignee or successor.

34. Time of Essence. Time is expressly declared to be of the essence of this Lease.

35. Quiet Possession. Lessee, upon performing its obligations hereunder, shall have the quiet and undisturbed possession of the Property throughout the term of this Lease.

36. Eminent Domain.

36.1 Definitions. As used in this Lease, "condemnation" means a taking or damaging, including severance damage, by the exercise of any governmental power whether by legal proceedings or otherwise, by a condemnor. "Condemnation" shall also include a voluntary sale or transfer to any condemnor, either under threat of condemnation or while legal proceedings for condemnation are pending or in avoidance of an exercise of eminent domain. The taking shall be considered to take place as of the later of:

36.1.1 the date actual physical possession is taken by the condemnor, or

36.1.2 the date of actual award and apportionment. "Date taking" as used herein shall mean the date the condemnor has the right to possession of the property being condemned. "Condemnor" means any public or quasi-public authority, or private corporation or individual, having the power of condemnation.

36.2 Right to possession. Lessee may continue to occupy the Property and improvements until the condemnor takes actual physical possession thereof. However, at any time following the notice of intended taking, Lessee may elect to deliver possession of the Property before the actual taking, which shall be made by delivering possession of the Property to Lessor on behalf of the condemnor, if Lessor so requests. Such election shall be made by delivery of written notice to Lessor. Lessee shall be required to pay rent up to the date possession of the Property is delivered by Lessee to Lessor or to the condemning authority.

36.3 Total Condemnation. In the event any condemnor condemns or otherwise acquires by actual or threatened proceedings the fee title to the Property, the leasehold interest created by this Lease or the improvements on the Property, or and or all of them, then in such event all sums, including damages and interest, awarded or paid for the fee, the leasehold created by this lease, the improvements constructed on the Property or any or all of the foregoing shall be distributed and disbursed in the following order or priority:

36.3.1 First, to the payment of all real and personal property taxes constituting a lien upon the Property or any part thereof.

36.3.2 Second, to State a sum equal to the value of the premises taken, valued as unimproved land exclusive of improvements and unburdened by all leases and subleases.

36.3.3 Third, the balance due under any note and leasehold mortgage permitted hereunder.

36.3.4 Fourth, to State the value of the reversionary interest in the improvements taken.

36.3.5 Fifth, to Lessee the balance of the award.

Notwithstanding any amounts received by Lessee under subparagraph 36.3.5 above of this paragraph 36, Lessee shall have the absolute right to prosecute Lessee's claim for damages against condemnor as permitted by law including but not limited to an amount equal to any cost of loss that Lessee may sustain due to injury to Lessee's property or in connection with the removal and relocation of Lessee's chattels and trade fixtures and Lessee's loss of goodwill, and to receive and keep all such proceeds awarded to it free from any claim of the State except for a claim for rent or other sums payable to the State under the terms of the Lease which are due and payable.

36.4 Partial Condemnation. In the event proceedings are commenced or taken, on one or more occasions, by any lawful authority to condemn or otherwise acquire by eminent domain less than all of Lessee's leasehold interest in the Property, the improvements on the Property, or any part thereof, or any easement or other right appurtenant to said leasehold interest or said fee interest (a "partial condemnation"), which results in one or more of the following conditions:

36.4.1 The remainder of the premises would not be economically and feasibly usable by Lessee; and/or

36.4.2 A reasonable amount of reconstruction would not make the land and improvements a practical improvement and reasonably suited for the uses and purposes for which the Property is leased hereunder. Then Lessee shall have the option at any time after Lessee receives notice of the intended taking, and prior to 30 days after the condemning authority takes possession of any part of the property or improvements pursuant to such taking or acquisition, to terminate this lease upon giving 15 days written notice to Lessor. Said termination shall be effective and rent shall terminate as of the date possession of the Property is surrendered by Lessee. In the event of such termination by Lessee, any unearned rent shall be refunded to Lessee, the taking shall be deemed to constitute a total condemnation, and the award for the condemnation shall be apportioned in the manner set forth in Paragraph 36 hereof. Should Lessee not elect to so terminate this lease, Lessee shall restore, repair and remodel the Property in a manner suitable for the conduct of Lessee's business on the Property as set forth in this lease. Lessee shall be entitled to a reduction in the minimum annual rent thereafter required to be paid hereunder in proportion to the actual and anticipated reduction in Annual Gross Receipts expected to result from any such taking; the parties acknowledge that no such adjustment of the Percentage Rent shall be required since Percentage Rent is based upon actual Gross Receipts. Lessee shall also be entitled to a reasonable suspension

or diminution of the rent required to be paid hereunder during the time required for any restoration and repair according to the portion of the Property rendered untenable, taking into consideration the time and extent of interference with Lessee's business operations on the Property. Should Lessee not elect to terminate this lease on account of any such partial condemnation, all sums, including damages and interest, awarded for the fee title, the leasehold and the improvements or both, shall promptly be disbursed in the following order of priority:

36.4.2.1 First, to Lessee the cost of restoring the leasehold improvements plus any amount assessed, awarded, paid or incurred to remove or relocate subtenants if not separately paid by condemnor to Lessee.

36.4.2.2 The balance shall be apportioned by applying the formula for apportionment set forth above.

36.5 State as Condemnor. The power reserved to the State Lands Commission upon payment of just compensation to assert its power of eminent domain as to all or a portion of the rights or interests granted by this lease and the power reserved to the State Lands Commission, upon payment pursuant to the provisions of the Public Resources Code or other applicable law, to take all or any of the rights or interests granted by this Lease in furtherance of the public trust shall not be exercised by the State during the term of this Lease. The State Lands Commission agrees to use its best efforts to resist any attempted condemnation or taking by exercise of the public trust initiated by any other division, agency or office of the State, the Federal government or local government or any other condemnor.

36.6 Temporary Taking. On any taking of the temporary use of all of the Property or improvements, or both, which temporary taking ends on or after the date 15 years preceding the date of expiration of the term hereof, Lessee shall be entitled to terminate this lease upon 15

days' prior written notice to Lessor with rent terminating on the date Lessee surrenders possession of the Property to Lessor or to the condemning authority. Should Lessee elect to terminate the lease on account of any such partial taking then the entire balance of the condemnation award shall be the property of the State.

36.7 Notice. Either party receiving any notice of the kinds specified below shall promptly give the other party notice of the receipt, contents and date of the notice received:

36.7.1 Notice of intended taking;

36.7.2 Service of any legal process relating to condemnation of the Property or improvements;

36.7.3 Notice in connection with any proceedings or negotiations with respect to such a condemnation; or

36.7.4 Notice of intent or willingness to make or negotiate private purchase, sale or transfer in lieu of condemnation.

36.8 Representation in Proceedings. Lessor, Lessee and the persons and entities holding under Lessee shall each have the right to represent his or its respective interest in each proceeding or negotiation with respect to a taking or intended taking and to make full proof of his or its claims. State and Lessee each agrees to execute and deliver to the other any instruments that may be required to effectuate or facilitate the provisions of this lease relating to condemnation.

36.9 Restriction of Use. In the event the State or any agency or division thereof, at any time as from time to time, passes, adopts, enacts or enforces any statute, law, rule, ordinance or regulation (all of which are collectively referred to herein as "law") which prohibits, or substantially restricts or delays;

36.9.1 the construction of any improvements which are planned, contemplated or permitted by Lessee or by the Lease, or

36.9.2 the full and complete use of the demised premises, or any part thereof, which may be allowed by this lease, then in such event

36.9.2.1 Lessee shall have the right to cancel and terminate this lease upon 15 days prior written notice to Lessor, if such law is enacted at any time prior to the completion of construction of the Hotel and other improvements, in which event Lessee shall comply with its restoration obligations upon expiration pursuant to Paragraph 2 hereof.

36.9.2.2 The rent Lessee is required to pay hereunder shall be reduced in accordance with the actual and anticipated detriment caused to Lessee's business.

37. Joint and Several Obligations. If the Lessee is composed of more than one party the obligations imposed by this Lease upon Lessee shall be joint and several; provided, however, that this Paragraph 37 is not intended to and shall not subject any such party to any greater liability than it would have under the laws governing liability of entities and the parties comprising or owning them (e.g., the liability of limited partners in a limited partnership to which this Lease is assigned).

38. Forfeitures. It is mutually covenanted, and this Lease is made upon the condition that if Lessee should abandon and cease to use the Property for a period of thirty (30) days at any one time, except when prevented by fire, earthquake, war, strike or other cause beyond its control, then and in any such event, at its option, the State may declare this Lease forfeited, whereupon all improvements of every kind and description shall, at the option of the State, be forfeited to and become the property of the State, and the State may exercise all rights of entry or reentry upon said Property.

39. Conservation. Lessee shall practice conservation of water and other natural resources and shall prevent pollution and harm to the environment in or on the Property.

40. Discrimination. Lessee in its use of the Property shall not discriminate against any person or class of persons on the basis of race, color, creed, national origin, sex, age, or physical handicap.

41. Residential Use. Unless otherwise allowed under this Lease, improvements on the Property shall not be used as a residence or for the purpose of mooring a floating residence, nor for time-share purposes.

42. Reservations.

42.1 State expressly reserves all natural resources in or on the Property, including but not limited to oil, coal, natural gas and other hydrocarbons, minerals, aggregates, timber and geothermal resources as well as the right to grant leases or to do subsurface extraction of such natural resources, however, no extraction of natural resources shall be inconsistent or incompatible with the rights or privileges of Lessee under this Lease nor shall it interfere with or adversely undermine the land or the improvements comprising the Property or Lessee's use and quiet enjoyment of the Property and improvements nor shall it be undertaken without advance written notice to Lessee.

42.2 After telephone notice to Lessee (notwithstanding any notice requirement to the contrary under this Lease), State expressly reserves a right, to go on the Property and all improvements for any purpose associated with this Lease or for carrying out any function required by law, or the rules, regulations or management policies of the State Lands Commission provided that the State shall not exercise such right in a manner which interferes with Lessee's use and quiet enjoyment of the Property. State shall have a right of reasonable access to the Property across Lessee-owned or occupied lands adjacent to the Property for any purpose associated with this Lease so long as such right and the

exercise thereof does not interfere with Lessee's use and quiet enjoyment of the Property.

42.3 State expressly reserves to the public an easement, at a location which is mutually agreeable to the parties, for convenient access across the Property to other State-owned lands located near or adjacent to the Property; however, such easement shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.

43. No Warranty of Titles, Conditions or Fitness. The State does not warrant title, condition or fitness of the Property for the stated or intended use. The State does represent that to the best of its knowledge, except for any exceptions to title revealed in any policy of leasehold title insurance obtained by Lessee in connection with the leasehold granted to Lessee hereunder, there are no preexisting contracts, leases, licenses, easements, encumbrances, options, rights or claims which would adversely affect Lessee's use or occupancy of the Property or the improvements to be constructed thereon.

44. Entire Agreement. This agreement contains the entire agreement of the parties with respect to the matters covered hereby and supersedes all prior arrangements and understandings by and among the parties. No party is authorized to make any representations or warranties except as set forth herein, and no such representations or warranties have been relied upon in connection herewith. No other agreement, statement or promise made by any party hereto which is not contained herein shall be binding or valid.

45. Notice. Any notice required or permitted to be given Lessee shall be in writing and may be given to it at (Address) provided, however, that if Lessee shall give notice in writing to the State of any change in said address, then and in that event such notice shall be given to Lessee at the changed address specified in such notice. Any notice permitted or required to be served upon the State shall be in writing and may be served upon it at 1807 - 13th Street, Sacramento, California 95814; provided, however, that

if the State shall give notice in writing to the Lessee of any change in said address, then and in such event such notice shall be given to the State at such substituted address.

46. Quitclaim. Lessee shall, within ninety (90) days of the expiration or sooner termination of this Lease, execute and deliver to State in a form provided by State a good and sufficient release of all rights under this Lease. Should Lessee fail or refuse to deliver such a release when the State is entitled to same, a written notice by State reciting such failure or refusal shall, from the date of its recordation, be conclusive evidence against Lessee and all other claimants of the termination of this Lease and any rights or interest of Lessee in the Property.

47. Estoppel Certificate. Lessee and State shall, at any time and from time to time during the term hereof and upon not less than thirty (30) days prior request by the other party, execute, acknowledge and deliver to the requesting party a statement in writing certifying:

47.1 that there are no other lease provisions, options, rights or agreements with respect to the Property between State and Lessee except as set forth in this Lease (or if there are, identifying them);

47.2 that this Lease is unmodified and in full force and effect (or if there have been any modifications, that the Lease is in full force and effect except as modified and stating the modifications);

47.3 the name of the person/entity or persons/entities in possession of the Property;

47.4 the date to which the rent and any other charges have been paid in advance;

47.5 that there are no defaults existing (or that defaults exist and the nature of such defaults), and

47.6 any other information which the requesting party may reasonably request. It is intended that such statements may be relied upon by any prospective purchaser, encumbrancer, sublessee of the Property or any portion thereof, or assignee of all or any part of the State's or Lessee's interest under this Lease.

48. Consents and Approvals. Except as otherwise expressly set forth herein, all consents and approvals to be given by the State hereunder shall not be unreasonably withheld or delayed. Except as otherwise provided herein, all consents approvals or disapprovals shall be delivered by the staff of the State Lands Commission within 10 business days after notice requesting the same. Provided, however, that if such consent or approval requires the authorization of the State Lands Commission, then the matter shall be brought on for hearing at the next earliest hearing date consistent with law and notice of disapproval or approval by the State Lands Commission shall be delivered to Lessee within 5 business days after such hearing date.

49. Short Form Memorandum. At the request of either party, the parties shall execute a Short Form Memorandum of Lease in recordable form and sufficient to give constructive notice of this Lease to subsequent purchasers and encumbrancers which may be recorded by the requesting party.

50. Conditions Subsequent. If all the following conditions have not been satisfied by January 1, 1992, then Lessee may elect to terminate this Lease and the State and Lessee shall execute and have recorded an appropriate agreement evidencing termination of this Lease:

50.1 Lessee shall have been granted access to all portions of the Property for physical inspection and Lessee shall have approved the soil condition, utility availability and all other aspects of the Property. During said period, Lessee shall have approved the acceptability of the zoning and all other land use regulations respecting the Property, the availability of financing satisfactory to Lessee for the acquisition of this leasehold and the development and operation of the Hotel.

50.2 Lessee shall receive evidence acceptable to it, either directly from the City of Burlingame, the Bay Conservation and Development Commission ("BCDC") and/or other sources indicating that all necessary land use entitlements, building and other permits, licenses and approvals for the construction and operation of the Hotel (including, without limitation, all required liquor licenses) will be available for the Property in numbers and at times acceptable to it.

50.3 No suit, action or other proceedings shall be pending or threatened before any court or governmental agency in which it is sought to restrain, prohibit or to obtain damages or other relief in connection with this Lease. There shall be no pending or contemplated condemnation (or other proceedings in the nature of eminent domain) against the Property. No material portions of the Property shall have been destroyed or damaged.

50.4 A validation action caused to be instituted by the parties at the election of Lessee, has been completed with a favorable and final judgment or order declaring that this Lease and all its provisions are valid. The State and Lessee shall cooperate in such action to the extent required by Lessee. Lessee shall bear all out of pocket costs and legal fees incurred by Lessee or State in connection with such action.

50.5 A title insurance company acceptable to Lessee shall have issued or agreed to issue to Lessee an extended coverage policy of title insurance insuring the leasehold granted hereunder on a form and in amounts satisfactory to Lessee and with exceptions to coverage acceptable to Lessee.

51. Lessor's Cooperation in Development. Lessor agrees to cooperate fully with Lessee if requested, to obtain any development or other permits with respect to construction of the improvements including the Hotel and further agrees, provided no then uncured event of default exists under this Lease,

to execute and deliver any instruments, easement deeds or similar agreements necessary to make or grant dedications, easements, rights-of-way or the like in, over and to the Property to any governmental authority or agency, adjoining property owner, public or private utility or other similar persons for utility, road, ingress, egress, construction, maintenance or similar purposes, provided that

51.1 such easements, dedications, right-of-way and the like reasonably relate to the financing, development, construction, maintenance or operation of the Hotel and

51.2 Lessor shall incur no personal liability in connection therewith (and Lessee agrees to indemnify and hold harmless Lessor against and from any and all loss, cost, damage or liability in connection therewith).

52. Subordination of Lessor's Right to Insurance Proceeds.

Notwithstanding any provision in Paragraph 19 or elsewhere in this Lease to the contrary, Lessor agrees that in the event of any insured damage or destruction with respect to the Property or any improvements thereon, Lessor hereby subordinates its right to any proceeds in connection therewith to the right to such proceeds of any leasehold mortgagee with an interest in the Property and the improvements, provided that such leasehold mortgagee shall disburse said sums only for the purposes of the reconstruction of any improvements on the Property (and providing such reconstruction is reasonably possible).

53. Severability. In the event of any conflict between any provision (or portion thereof) of this Lease and any law contrary to which the parties have no right to contract, the latter shall prevail but the provision (or portion thereof) of this Lease which is affected shall be limited and curtailed only and to the least extent necessary to bring it within the requirements of the law and no other provision (or portion thereof) of this Lease shall otherwise be affected.

54. Governing Law. This Lease shall be governed by the law of the State

of California.

The submission of this Lease by Lessor, its agent or representative for examination by Lessee does not constitute an option or offer to lease the premises upon the terms and conditions contained herein or a reservation of the premises in favor of Lessee; it being specifically intended hereby that this lease shall only become effective when duly executed on behalf of the State Lands Commission of the State of California and delivery of a fully executed counterpart to Lessee.

IN WITNESS WHEREOF, the parties have executed this Lease as of the effective date set forth in paragraph 1 of this Lease.

LESSEE

LESSOR

by: _____

STATE OF CALIFORNIA
STATE LANDS COMMISSION

Title: _____

By: _____

Title: _____

Execution of this document was authorized by the State Lands Commission on:
(Date)

(Acknowledgement)