

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

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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

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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. 038 (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.

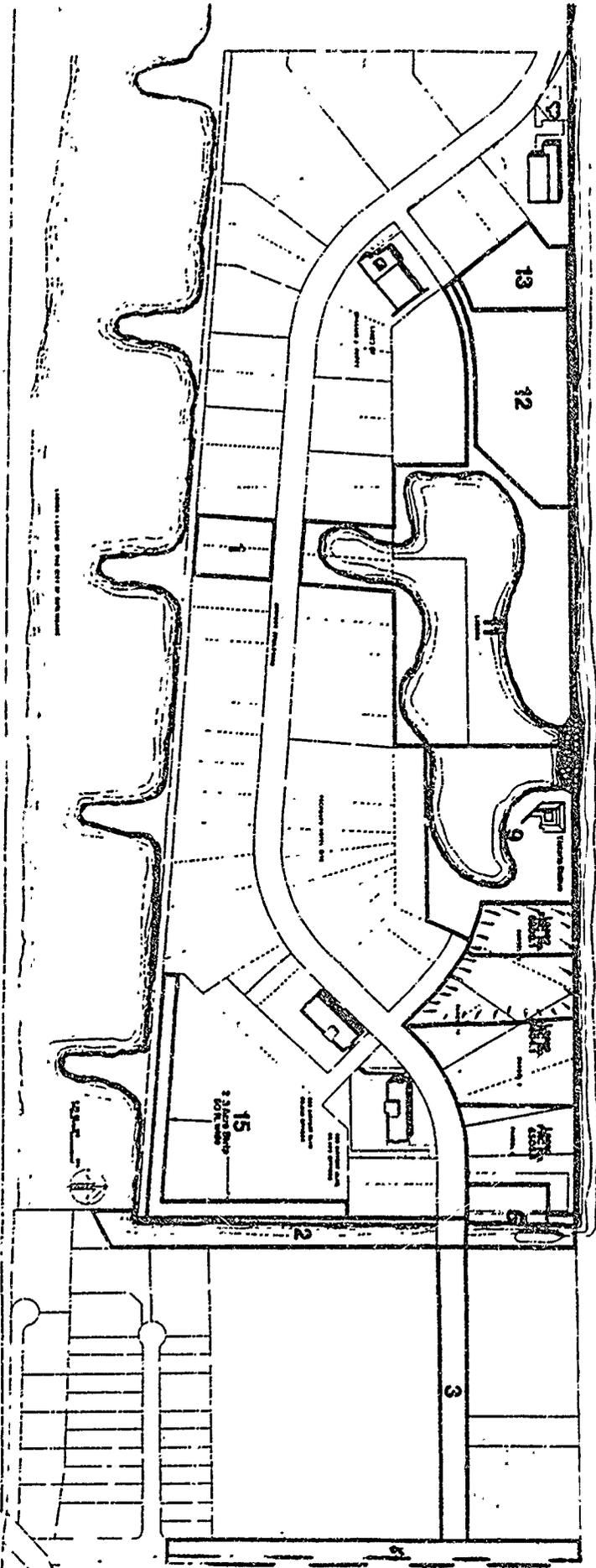
EXHIBITS: A. Site Map.
 B. Lease Form.

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"

THE STATE OF CALIFORNIA, COUNTY OF ...



ANZA PACIFIC CORP.

site

Lot	Area (Acres)	Area (Sq. Ft.)	Area (Sq. Ft.)
1	1.11	47,916	47,916
2	1.11	47,916	47,916
3	1.11	47,916	47,916
4	1.11	47,916	47,916
5	1.11	47,916	47,916
6	1.11	47,916	47,916
7	1.11	47,916	47,916
8	1.11	47,916	47,916
9	1.11	47,916	47,916
10	1.11	47,916	47,916
11	1.11	47,916	47,916
12	1.11	47,916	47,916
13	1.11	47,916	47,916
14	1.11	47,916	47,916
15	2.24	97,832	97,832
Total	15.00	647,100	647,100

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EXHIBIT "B"

DRAFT

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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 27583.

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 sooner

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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.

2. 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.

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

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,

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