

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 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 of 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 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 on 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)