



# **SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY**



25

September 12, 1986



Redevelopment Agency  
of the City of Sacramento  
Sacramento, California

Honorable Members in Session:

SUBJECT: Proposed Disposition and Development Agreement for  
Property Located at 12th/13th/K/L Streets in Merged  
Downtown Redevelopment Project Area

## SUMMARY

This report regards consideration of a proposed Disposition and Development Agreement (DDA) with JB and LE Regency Venture for disposition of the property located at 12th/13th/K/L Streets in the Merged Downtown Redevelopment Project Area.

The staff recommends the Redevelopment Agency proceed to approve the proposed Disposition and Development Agreement (DDA) only if the following written evidences have been submitted to the Agency on or prior to September 16, 1986 and are found to be acceptable and consistent with the provisions of the proposed DDA by the Agency: (1) construction and permanent financing; (2) hotel management agreement with Hyatt Corporation; (3) equity participation; (4) good faith deposit of \$250,000; (5) control of assets of Cook Hotel Associates; and (6) formation of JB and LE Regency Venture and Kings Capitol Venture, Inc. In addition, the documents listed in Exhibit VIII must be completed prior to staff recommending proceeding with the proposed DDA.

Should the proposed DDA be approved the staff also recommends approval of the Agreement and Authorization to Enter Upon Land attached as Exhibit VII.

If the provisions indicated above and discussed in detail later in this report are not complied with on or prior to September 16, 1986, the staff does not recommend proceeding with consideration of the proposed DDA.

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## BACKGROUND

On June 10, 1986, by Resolution 86-028 the Redevelopment Agency approved an Amended and Restated Disposition/Development Agreement including: (1) assignment of the interest of Cook Regency Corporation, a California corporation, as Redeveloper to Kings Capitol Hyatt, a California limited partnership; (2) approving evidence of construction and permanent financing from Mera Bank, a federal savings bank, of Phoenix, Arizona; (3) authorizing the Executive Director to receive, review and approve evidence of equity funding; (4) authorizing Chair and Secretary of the Agency to execute amended and restated Ground Lease; (5) approving a revised Schedule of Performance; (6) approving and Agreement and Authorization to Enter Upon Land; and (7) approving a revised requirement for the Art in Public Places Program.

On August 14, 1986, by Resolution 86-047 the Redevelopment Agency approved immediate rescission and termination of the Amended and Restated Disposition/Development Agreement dated June 10, 1986 pursuant to California law and Article VII of Part II of the Amended and Restated Disposition and Development Agreement dated June 10, 1986, due to failure to: provide information as to the ownership of the development entity as it directly effected the existing construction and permanent loan commitment, and equity participation; comply with conditions subsequent to the Assignment approved by the Agency on June 10, 1986 specifically certifications by Cook Regency Corporation ("the Assignor") and by an independent certified public accountant satisfactory to the Executive Director of the Agency to the effect that the consideration received by the Assignor from the Redeveloper did not exceed the actual costs of such interest to the Assignor; and certifications by the Redeveloper and by an independent certified public accountant satisfactory to the Executive Director demonstrating that the current assets of the Redeveloper equaled or exceed the equity contribution required of the Redeveloper by the financing commitment approved by the Agency on June 10, 1986.

On August 29, 1986, the Agency received a letter (see Exhibit I) from Kings Capitol Regency, Inc. indicating that as of August 29, 1986 all of the partners of Cook Hotel Associates executed agreements relating to their past partnership disputes relevant to the Sacramento Hyatt Regency project. The letter further indicated the subject agreements resulted in substantially all the assets of Cook Hotel Associates relating to the hotel project would be immediately acquired by a newly formed California limited partnership know as JB and LE Regency Venture. The

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letter included a request for the Agency to initiate proceedings under which the Redevelopment Agency of the City of Sacramento would consider a proposal to enter into a Disposition and Development Agreement with JB and LE Regency Venture for the property in the block bounded by 12th/13th/K/L Streets on the terms and conditions identical to those contained in the previous DDA assigned to Kings Capitol Hyatt on June 10, 1986.

On August 29, 1986 based on the subject letter, the staff prepared a proposed DDA based on the identical substantive terms and conditions as the previous DDA assigned to Kings Capitol Hyatt on June 10, 1986 and including several technical, grammatic and clarification changes. A copy of the proposed DDA is attached as Exhibit II. Staff also prepared a report required by Section 33433 of the Health and Safety Code of the State of California which relates to the proposed disposition of property (see Exhibit III). In addition, staff had published a public notice on September 2 and 9, 1986 indicating a public hearing on the proposed DDA would be held on September 16, 1986 at 7:30 p.m. by the Redevelopment Agency of the City of Sacramento (see Exhibit IV).

On September 2, 1986, the Agency sent a letter to JB and LE Regency Venture (see Exhibit V) regarding the actions described above and indicating it is imperative the Agency receive written evidence of the following items prior to 7:30 p.m. on September 16, 1986: (1) executed loan commitment for construction and permanent financing; (2) executed hotel management agreement with the Hyatt Corporation; (3) equity participation; (4) control of the assets of Cook Hotel Associates; (5) partnership formation of JB and LE Regency Venture; and (6) a good faith deposit of \$250,000. The Agency must receive these items as indicated in order to proceed with consideration of the proposed DDA.

The following is a summary of the status of efforts of JB and LE Regency Venture regarding the major components of the proposed project:

1. Hotel Management Agreement

The proposed developer has indicated to the Agency that the Hyatt Corporation has agreed to an assignment of the previous hotel management agreement with Cook Regency Corporation (general partner of Cook Hotel Associates) to JB

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and LE Regency Venture conditioned on JB and LE Regency Venture closing escrow on the purchase of Cook Hotel Associates assists as indicated in the August 29, 1986 letter from Kings Capitol Venture, Inc. Coinciding with the subject assignment would be the execution of an Amended and Restated Management Agreement between the Hyatt Corporation and the proposed developer.

## **2. Construction/Permanent Financing**

The proposed developer has indicated to the Agency that a formal loan commitment for \$49 million in both construction and permanent financing is being secured from Mera Bank, a Federal Savings Bank and Citicorp Real Estate, Inc., a Delaware Corporation. The anticipated construction loan commitment is for a twenty-four (24) month period and the permanent loan is a "mini-perm for a period of five (5) years.

## **3. Partnership**

JB and LE Regency Venture, a California limited partnership is the proposed developer, comprised of Kings Capitol Regency, Inc., as general partner; with Joseph Benvenuti, Gregg Lukenbill, Frank Lukenbill, Robert A. Cook and James Clifton as limited partners.

Kings Capitol Regency, Inc. is a California corporation, consisting of Joseph Benvenuti and Gregg Lukenbill.

## **4. Equity Participation**

The proposed developer has indicated the required equity participation as a requirement of the Mera Bank and Citicorp loan commitment, is in place. The equity requirement of six million (\$6,000,000) in the form of cash to be expended during the construction period and \$4.0 million in the form of a letter of credit for an operating loss reserve, for a total of \$10.0 million.

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## **5. Final Construction Plans**

JB and LE Regency Venture has acquired the design and final building construction plans, as well as the contract with Ellerbe Associates, Architects. The foundation permit is ready to issue. The structural plans are reviewed and a series of minor corrections need to be made so that full building permit could be ready to issue in approximately 2-3 weeks.

## **SCHEDULE OF PERFORMANCE**

Attached as Exhibit VI is the proposed Schedule of Performance. The proposed dates within the Schedule of Performance for submission of evidence of construction/permanent financing; evidence of equity participation; and completion/submission of final construction plans would revise the deadline for commencement of construction to October 16, 1986 and completion of construction by October 14, 1988.

Although the proposed Schedule of Performance allows twenty-four (24) months for completion, the proposed developer has informed the Agency the project is likely to be completed in an eighteen to twenty month period.

## **AGREEMENT AND AUTHORIZATION TO ENTER UPON LAND**

On June 10, 1986, the Redevelopment Agency approved an Agreement and Authorization to Enter Upon Land for the purpose of allowing the developer to commence soil, engineering and geotechnical testing and other constructed related preparation activities to prior to execution of the Ground Lease and close of escrow for the project. Some of the testing and other construction related preparation activities were completed by the previous developer.

The proposed developer has requested a similar agreement with the Agency which would provide for early access and entry to the subject site. Such entry would be at the developers' own risk pending close of escrow and prior to actual transfer of leasehold and possession to the developer for the very limited purposes of conducting and performing soil, geologic and engineering

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investigations and tests, including the installation of test piles, and for no other purposes. Attached as Exhibit VII is the subject Agreement. The Agreement requires the items noted above be at the developers' sole cost and expense; the work to be undertaken not necessitate an exception to a standard ATLA coverage title policy to be subsequently issued in connection with improvements upon the property as attested by a title company; and insurance provision and a payment to the Agency of \$400 a day beginning October 17, 1986 for the period of time construction of the project does not commence after October 16, 1986. This agreement is also subject to the lender's approval.

Some of the site preparation activity would be performed by the proposed developer for the Agency in that such activity would be the responsibility of the Agency for preparation of property for redevelopment in accordance with Part II, Article I, Section 101 of the proposed Disposition/Development Agreement. Specifically, the Agency is responsible to: (1) complete the filling of the former basement area of the Bank of America Building at 12th and K Streets; (2) remove the asphalt paving on the property currently used as a surface parking lot; and (3) remove any public utility lines in the abandoned alley right of way if, and only if, such removal is necessary for excavation and/or construction purposes. These items would complete the Agency's obligations for preparation of the property for redevelopment.

The cost for the items referenced above will be verified by a civil engineer of the City, Agency or a third party retained by the Agency at the Agency's sole cost. After verification, a reasonable cost for such items would be paid to the developer by the Agency.

If the written evidence of construction/permanent financing is submitted by the developer as indicated by September 16, 1986, and with the completion of the final construction plans, it would then be appropriate to proceed with the agreement and authorization to enter upon the land in accordance with the agreement attached as Exhibit VII.

## FINANCIAL DATA

The charts included in Exhibit III set forth the proposed project costs, public investment/participation, and revenue information relative to the proposed DDA.

The one-time public investment/participation would be \$4.0 million for the Agency owned 305 parking spaces in the subject

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parking garage. The estimated annual net public investment/participation is proposed to be approximately \$1,175,000, \$1,115,000 and \$745,000, in years one, five and ten, respectively.

The source of revenue for the annual payment per Article 12, Section 12.03 of the proposed Ground Lease would be the Agency Parking Facility Fund (approximately \$1.0 million) and City Parking Fund (approximately \$475,000). The effect of the use of such revenue for this project would be the reduced availability of City Parking Fund monies by the proposed amount for other capitol improvement projects, either repairs, improvements or new projects.

Over the first ten years of operation, the proposed project requirement for net public investment/participation (including parking lease/operations arrangement, debt service payment on \$4.0 million in bonds for construction of Agency owned portion of the subject parking structure) would be \$13.3 million. However, the public revenue (including Ground Lease, property tax, transient occupancy tax, sales tax and utility users tax payments) totals approximately \$28.8 million, and represents a better than 2:1 ratio of public revenue to public investment over the first ten years of operation.

Under the proposed DDA, the Agency would retain ownership of the subject property and lease it to the developer for a fifty-five (55) year term. After the ninth operating year, the developer would have the option to purchase the land at fair market value. The Agency paid \$8.450 million for the subject site in 1983. Based on a cursory analysis of an income approach to value, it is estimated the property would be worth \$12 - \$13.0 million in ten years.

## POLICY IMPLICATIONS

On May 31, 1983, the Redevelopment Agency adopted, by Resolution 83-045, operational policies and procedures for disposition of Agency owned property. These policies indicate that Agency owned land is to be initially advertised through a Request for Proposal process.

The developer's proposed DDA represents an opportunity for the Agency to achieve the development of the hotel upon the same developmental timetable and upon the same substantive terms and conditions as would have been achieved by the previous developer. In addition, no other method or procedure for

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disposition would result in the construction of the hotel upon the same developmental timetable or upon the same terms and conditions as the proposed DDA. Based on these reasons, the staff recommends the Agency find and determine that the present circumstances necessitate a variance from the operational policies of the Agency for disposition of Agency owned land as set forth in Redevelopment Agency Resolution No. 83-045.

## **ENVIRONMENTAL REVIEW**

The proposed actions do not require additional environmental review in accordance with the California Environmental Quality Action (CEQA).

## **VOTE AND RECOMMENDATION OF SACRAMENTO HOUSING AND REDEVELOPMENT COMMISSION**

It is anticipated at a regularly scheduled meeting on September 15, 1986, the Sacramento Housing and Redevelopment Commission will adopt a motion recommending the proposed actions. The Redevelopment Agency will be advised of the Commission's actions at the September 16, 1986 Agency meeting.

## **RECOMMENDATION**

The staff recommends the Redevelopment Agency proceed to approve the proposed Disposition and Development Agreement (DDA) only if the following written evidences have been submitted to the Agency on or prior to September 16, 1986 and are found to be acceptable and consistent with the provisions of the proposed DDA by the Agency: (1) construction and permanent financing; (2) hotel management agreement with Hyatt Corporation; (3) equity participation; (4) good faith deposit of \$250,000; (5) control of assets of Cook Hotel Associates; and (6) formation of JB and LE Regency Venture and Kings Capitol Venture, Inc. In addition, the documents listed in Exhibit VIII must be completed prior to staff recommending proceeding with the proposed DDA.

The proposed DDA includes revised Schedule of Performance, proposed Ground Lease and following attachments to the Ground Lease: (1) Public Garage Purchase and Sales Agreement; (2) Progress Disbursement Agreement; (3) Parking Structure Maintenance and Operations Agreement; and (4) Agreement and Grants of Easements.



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Should the proposed DDA be approved the staff also recommends approval of the Agreement and Authorization to Enter Upon Land attached as Exhibit VII.

If the provisions set forth above are not complied with on or prior to September 16, 1986, the staff does not recommend proceeding with consideration of the proposed DDA.

Respectfully submitted,

*William H. Edgar*  
WILLIAM H. EDGAR  
Executive Director

RECOMMEND APPROVAL:

*Walter J. Slipe*  
\_\_\_\_\_  
WALTER J. SLIPE  
City Manager

02310

# KINGS CAPITOL REGENCY, INC.

EXHIBIT I

2102 Evergreen  
Sacramento, CA 95815  
Telephone: (916) 929-3003

August 29, 1986

William H. Edgar  
Executive Director  
Sacramento Housing and Redevelopment Agency  
630 I Street  
Sacramento, CA

HAND DELIVERED

Dear Mr. Edgar:

I am writing to advise you that on this date all of the partners of Cook Hotel Associates executed agreements relating to their past partnership disputes relevant to the Sacramento Hyatt Regency Project.

It is contemplated by those agreements that substantially all of the assets of Cook Hotel Associates relating to the hotel project will be immediately acquired by a newly formed California limited partnership known as JB AND LE REGENCY VENTURE. Kings Capitol Regency, Inc., will be the general partner of the limited partnership. I am the President and chief financial officer of the corporation and Gregg Lukenbill is its Vice President and Secretary. Mr. Lukenbill and I own a controlling interest in the new corporation.

Limited partners in the new partnership are myself, my wife, Gregg Lukenbill, Frank Lukenbill and Robert A. Cook and James Clifton.

Austin Ditter, Jr., and Regency, Inc., will not participate in the new limited partnership and have agreed to sell their limited partnership interests in Cook Hotel Associates to Messrs. Lukenbill and Lukenbill, Mr. Cook, and myself.

I am writing on behalf of JB AND LE REGENCY VENTURE to request that the Agency immediately initiate proceedings under which a new Development and Disposition Agreement can be awarded to that partnership on the terms and conditions identical to those contained in the DDA awarded to Kings Capitol Hyatt on June 10, 1986.

The partners are anxious to proceed with the Hyatt Regency Project as expeditiously as possible and I thereby request that consideration of this proposal be scheduled for hearing by the Agency at the earliest possible date.

We will provide you with further information concerning this application early next week.

Very truly yours,

By: 

JOSEPH BENVENUTI

JB: jb

cc: Honorable Anne Rudin  
Walter Slipe

EXHIBIT II

PROPOSED DISPOSITION AND DEVELOPMENT AGREEMENT  
Dated as of September 16, 1986

Copy on file with Agency Clerk  
Redevelopment Agency of the City of Sacramento  
630 I Street  
Sacramento, California 95814

September 2, 1986

INFORMATION REPORT AS PER  
SECTION 33433 of the HEALTH AND SAFETY CODE  
OF THE STATE OF CALIFORNIA

The following is an information report regarding a proposal to enter into a Disposition and Development Agreement with JB and LE Regency Venture, a California limited partnership for disposition of the property on the block bounded by 12th/13th/K/L Streets in the Merged Downtown Redevelopment Project Area as required by Section 33433 of the Health and Safety Code of the State of California. The Redevelopment Agency of the City of Sacramento will consider the subject proposal at a public hearing on September 16, 1986 at 7:30 p.m. in the City Council Chambers, City Hall located at 915 I Street, Sacramento, California.

A. PROPOSED LAND LEASE

A copy of the proposed Disposition and Development Agreement, including the proposed Ground Lease is attached to this report as Exhibit I. Also, an information fact sheet on the proposed project and a summary of proposed business arrangement for the proposed Ground Lease are attached as Exhibits II and III, respectively.

B. COST OF AGREEMENT

(1) Direct Agency Costs:

.. Land Acquisition	\$ 8,450,000
.. Site Preparation (Demolition/ Relocation)	150,000
.. Project Costs (Appraisals; legal fees; title costs; consultants; staff; property management; etc.	<u>400,000</u>
Subtotal	\$ 9,000,000
.. Off-site improvements (new curb, gutter, sidewalk; street lighting as part of proposed project)	\$ 100,000
.. Public parking (Agency to finance/own 305 spaces of the 631 space parking structure)	<u>\$ 4,000,000</u>
Total	\$13,100,000

(2) Agency Financing Costs:

The \$4.0 million in funding for the 305 spaces of public parking as noted above was secured through a Tax Allocation Bond sale in October 1985. The debt service on the \$4.0 million is approximately \$360,000 annually for twenty-five (25) years for a total of \$9.0 million.

(3) Public Investment/Public Revenue:

Based on the proposed business arrangement and May 1984 Laventhol & Horwath market feasibility study, attached as Exhibit IV and V are chart which set forth the proposed public investment costs and public revenues derived from the proposed project.

Over the first ten years of operation, the project requirement for net public investment/participation (including parking lease/operations arrangement, debt service payment on \$4.0 million in bonds for construction of Agency owned portion of the subject parking structure) would be \$13.3 million. However, the public revenue (including Ground Lease, property tax, transient occupancy tax, sales tax and utility users tax payments) totals approximately \$28.8 million, and represents a better than 2:1 ratio of public revenue to public investment over the first ten years of operation.

C. ESTIMATED VALUE OF THE INTEREST TO BE LEASED

In March 1983, the appraised value of the subject property was established at \$5,805,000. The Agency purchased the subject property for \$8,450,000 in March 1984 through negotiated sales agreements with the then current owners. The Agency has not conducted an "after development" or "highest use" appraisal.

Under the DDA, the Agency retains ownership to the subject property and leases it to the developer for a fifty-five (55) year term. After the ninth operating year, the developer does have the option to purchase the land at fair market value. The Agency paid \$8.450 million for the subject site in 1983. Based on a cursory analysis of an income approach to value, it is estimated the property would be worth \$12 - \$13.0 million in ten years.

D. LEASE PAYMENTS

During the term of the Ground Lease which is fifty-five (55) years, the Lessor would make annual payments of 2% of the total gross revenue in operating years one through ten; and 3% of the total gross revenue for operating years eleven through fifty-five. The total payments that would be made under these terms with the operating pro-forma assumptions as set forth in the Laventhol & Horwath market feasibility study dated May 1984, would be \$271,500,000 or \$12,890,000 in terms of present value.

The difference between the fair market value of the interest to be leased, would be necessary to effectuate purposes of the adopted Redevelopment Plan. The proposed development as described earlier in this report has an estimated total development cost of \$59 million (plus \$4.0 million for the Agency owned public parking). Based on \$59.0 million the cost per room is approximately \$115,000. Standards in the hospitality industry indicate appropriate room rates should be based on \$1.00 per \$1,000 of room cost or for the proposed project approximately \$115.00 in room rate. The May 1984 Laventhol and Horwath market feasibility study indicates the proposed hotel to have an opening room rate of \$86.00 and a stabilized year (3rd operating year) room rate of \$106.00. The difference therefore, necessitates a below market land lease transaction in order to allow development of a high quality major convention hotel, yet reduce land lease costs so that there would be appropriate return on equity to the developer and the operating pro-forma has a proper positive bottom line figure beginning in the stabilized year.

For further information regarding this report or the subject proposal, please contact Andrew J. Plescia, Deputy Executive Director, Sacramento Housing and Redevelopment Agency at (916) 440-1333.

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WILLIAM H. EDGAR  
Executive Director

INFORMATION FACT SHEET

Proposed Developer: JB and LE Regency Venture  
Location: Block bounded by 12th/13th/K/L Streets  
Project Description:

Hotel

Number of rooms 508  
Gross building area + 378,000 square feet

Leasehold

Gross building area + 28,000 square feet

Parking

Number of spaces 631 (305 public and 326 hotel use)  
Gross building area + 195,000 square feet

Estimated Project Cost: \$63.0 million

Proposed Project Financing: \$49.0 million - permanent loan  
10.0 million - developer equity  
4.0 million - Housing & Redevelopment Agency  
Participation  
\$63.0 million



SUMMARY OF PROPOSED  
BUSINESS ARRANGEMENT

1. Ground Lease

Term: 55 year term; plus two (2) ten year options to extend

Option to Purchase: Option for developer to purchase land from Agency after the ninth (9th) operating year at appraised fair market value

Annual Payment 2% of total gross revenue in years one through ten; and 3% of total gross revenue for years eleven through fifty-five;

Subordination: Agency ground lease is subordinate to major debt holder and hotel basic management fee;

Cash flow priority in accordance with ground lease is as follows:

- a. Principal and interest payments and hotel basic management fee;
- b. Fifteen percent (15%) return on equity to Developer (equity);
- c. Agency Ground Lease payment (current year);
- d. Hotel incentive management fee;
- e. Agency minimum parking payment (after first five (5) operational years); and
- f. Agency payments for supplemental parking payment, minimum parking payments (first five years), alternative parking payment, and payment of all cumulative balances on Ground Lease and parking payments.

2. Parking Agreement.

Development/  
Ownership:

Developer to construct the 631 space above grade parking structure; Agency will finance and own 305 spaces - developer will finance and own 326 spaces

Lease/Operation:

Agency to lease the 326 spaces (developer owned) from developer;

Agency lease shall have term equal to ground lease and any option term thereof;

Developer to operate entire parking structure under agreement with the Agency providing 305 spaces for public use; and

Agreement shall terminate automatically upon sale, unqualified refinance or transfer of the hotel or the purchase of the land by the Developer.

Lease Payments:

Agency to pay \$1.475M per annum net to the developer for leases of the 326 spaces;

For the 326 spaces, the Developer to pay to the Agency the greater of (1) \$150,000, or (2) 25% of net cash flow per annum;

For the first five operational years, the \$150,000 minimum payment is subordinate to the Developer's return on equity; and

For the 305 spaces the Developer to pay to the Agency, the net revenue determined by average gross revenue of all City-owned parking structures minus Developer certified operating costs for the 305 spaces..

## Proposed Public Investment and Project Cost

### Project Cost

Hotel, Retail, Parking	\$ 63.0 M
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### Financing

Lender	\$ 49.0 M (2)
Equity	10.0 M
Public Investment/Participation	<u>4.0 M (1)</u>
TOTAL	\$ 63.0 M

### Public Investment/Participation

One Time	\$ 4.0 M (1)
Estimated Annual:	
Year 1	\$1,175,000 (3)
Year 5	1,115,000 (3)
Year 10	745,000 (3)

### Public Investment/Participation Versus Public Revenue for Years One through Ten

Investment (4)	\$ 13.3 M
Revenue (5)	28.8 M

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- (1) Funding for 305 space public parking portion of proposed parking structure; funding from 1985 Downtown Tax Allocation Bond sale proceeds in October 1985.
- (2) Parking lease arrangement between developer and the Agency will yield positive cash flow to the developer which will support approximately \$7.0 M in net additional financing for the project (see (3) below).

- (3) These figures relate to the parking lease/operations arrangement between the developer and the Agency, and represent the estimated difference between the proposed annual Agency lease payment (\$1,475,000) to the developer; and developer lease payment (\$150,000 or 25% of pre-tax cash flow which ever is greater) to the Agency, and projected annual net revenue from the Agency owned portion of the parking structure.
- (4) Represents estimated net public investment as result of parking lease/operations arrangement per (2) and (3) above, respectively, and debt service payment on \$4.0 M in bonds for construction of Agency owned portion of the subject parking structure.
- (5) Represents estimated net public revenue hotel including ground lease, property tax, transient occupancy tax, sales tax and utility users tax payments.

PROPOSED PUBLIC SECTOR REVENUE SUMMARY

(000's)

	<u>AGENCY</u>			<u>CITY</u>				<u>TOTAL</u>
	<u>Land Lease</u>	<u>Prop. Tax</u>	<u>Total Agency</u>	<u>Transient Occupancy</u>	<u>Sales Tax</u>	<u>Utility Tax</u>	<u>Total City</u>	<u>Grand Total</u>
Year 1	\$374	\$202	\$576	\$1,005	\$103	\$13	\$1,121	\$1,697
Year 2	445	403	848	1,221	138	14	1,373	2,221
Year 3	522	411	933	1,466	153	15	1,634	2,567
Year 4	554	419	973	1,555	163	16	1,734	2,707
Year 5	587	428	1,015	1,648	173	17	1,838	2,853
Year 6	622	436	1,058	1,747	183	18	1,948	3,006
Year 7	659	445	1,104	1,852	194	19	2,065	3,169
Year 8	699	454	1,153	1,963	206	20	2,189	3,342
Year 9	741	463	1,204	2,081	218	21	2,320	3,524
Year 10	785	472	1,287	2,206	231	23	2,460	3,717

# **PUBLIC NOTICE**

## **Notice of Hearing and Information On Proposed Disposition of Land in the Merged Downtown Sacramento Redevelopment Project**

NOTICE IS HEREBY GIVEN that the REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO will consider a proposal to enter into a Disposition and Development Agreement with JB and LE Regency Venture, a California limited partnership, for the disposal of the herein described real property on or after September 16, 1986, and that the Agency will hold a public hearing on a proposed Disposition and Development Agreement on September 16, 1986 at 7:30 p.m. in the City Council Chambers, City Hall located at 915 I Street, Sacramento, California, pursuant to Sections 33431 and 33433 of the Health and Safety Code of the State of California.

Any persons or organizations desiring to be heard on the proposed land disposition will be afforded an opportunity to be heard at said hearing.

The property subject to the Disposition and Development Agreement is that property located in the block bounded by 12th and 13th Streets, "K" and "L" Streets in the City of Sacramento, ASSESSOR's Parcel Number 006-112-22.

The proposed developer plans to construct a 508 room major convention hotel of 378,000 square feet; commercial retail leasehold space of 28,000 square feet; and a 631 space above-grade parking structure of 195,000 square feet.

A copy of the proposed agreement and report required by Section 33433 of the Health and Safety Code of the State of California relating to this proposed disposition will be available for public inspection on September 2, 1986 at the following address:

**Agency Clerk's Office  
Sacramento Housing and  
Redevelopment Agency  
630 I Street  
Sacramento, CA 95831**

**WILLIAM H. EDGAR  
Executive Director  
Redevelopment Agency of  
the City of Sacramento**



**SACRAMENTO  
HOUSING AND REDEVELOPMENT  
AGENCY**



September 2, 1986

Mr. Joseph Benvenuti, President  
JB and LE Regency Venture  
2102 Evergreen  
Sacramento, CA 95815

SUBJECT: Capitol Center Hyatt Hotel Project

Dear Mr. ~~Benvenuti~~: Joe

We are in receipt of your letter dated August 29, 1986 regarding the subject project.

Based on that letter, the Agency staff has initiated proceedings under which the Redevelopment Agency of the City of Sacramento will consider a proposal to enter into a Disposition and Development Agreement (DDA) with JB and LE Regency Venture, for the property located in the block bounded by 12th/13th/K/L Streets on the terms and conditions identical to those contained in the previous DDA assigned to Kings Capitol Hyatt on June 10, 1986.

The proposed DDA has been prepared by staff based on the terms and conditions as indicated above. The only revisions relate to the name of the development entity and dates of execution and performance. Staff has also prepared a report required by Section 33433 of the Health and Safety Code of the State of California which relates to the proposed disposition of property. In addition, staff has published a public notice indicating a hearing on the proposed DDA will be held on September 16, 1986 at 7:30 p.m. by the Redevelopment Agency of the City of Sacramento. The matter will also be considered by the Sacramento Housing and Redevelopment Commission on September 15, 1986 at 6:00 p.m. A copy of the proposed DDA, Section 33433 report and public notice is attached for your information and reference.

# SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY

Mr. Benvenuti  
September 2, 1986  
Page Two

As a reminder, it is imperative the Agency receive written evidence of the following items from you prior to 7:30 p.m. on September 16, 1986: (1) executed loan commitment for construction and permanent financing; (2) executed hotel management agreement with the Hyatt Corporation; (3) equity participation; (4) control of the assets of Cook Hotel Associates; (5) partnership formation of JB and LE Regency Venture; and (6) a good faith deposit of \$250,000. The Agency must receive these items as indicated in order to proceed with consideration of the proposed DDA.

The staff report for the subject matter will be completed and distributed on Friday, September 12, 1986. We will provide you with copies at that time.

Please contact us should you have any questions or need additional information.

Sincerely,

BLL

WILLIAM H. EDGAR  
Executive Director

WHE/AJP/drn

Attachments

cc: Walt Slipe  
Gregg Lukenbill  
Frank Lukenbill  
Robert A. Cook  
James Clifton  
David McMurtry  
Richard Hyde  
Brent Bleier

02170



## EXHIBIT "E"

SCHEDULE OF PERFORMANCE

- |   |   |
|---|---|
| 1. Redeveloper shall submit an executed hotel management agreement with the Hyatt Corporation to the Agency.  | On the effective date of the Agreement, September 16, 1986.   |
| 2. Redeveloper shall submit a written commitment for construction and permanent financing to the Agency.  | On the effective date of the Agreement, September 16, 1986.   |
| 3. Redeveloper shall prepare and submit a written commitment for equity participation to the Agency.  | On the effective date of the Agreement, September 16, 1986.   |
| 4. Redeveloper shall prepare and submit Final Construction Plans to the Agency and City Building Division.  | On the effective date of the Agreement, September 16, 1986.   |
| 5. Agency shall approve or disapprove Redeveloper's Evidence of Construction and Permanent Finance.*  | Within thirty (30) days after submission of such Evidence of Construction and Permanent Financing, not later than October 16, 1986. |
| 6. The Agency shall deposit the Lease for the property into escrow.*  | Not later than October 1, 1986.   |
| 7. The Agency and City Building Division shall approve or disapprove Redeveloper's Final Building Construction Plans.*                              | Within thirty (30) days after submission of such Final Construction Plans, not later than October 16, 1986.                         |
| 8. Agency and Redeveloper shall deposit all fees, premiums, costs or other charges and execute and submit all documents necessary to close escrow.* | Within fifteen (15) days after the Agency deposits the Lease into escrow, not later than October 16, 1986.                          |

## SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY

- |   |  |
|---|--|
| 9. Redeveloper shall submit the executed Ground Lease Agreement with the Agency.                  | Not later than October 16, 1986.   |
| 10. Redeveloper shall commence construction of the building improvements on the subject property. | Not later than October 16, 1986.   |
| 11. Redeveloper shall complete construction of the improvements on the property.                  | Within twenty-five (25) months after the effective date of the Agreement, not later than October 14, 1986. |

- 
- \* If the Agency fails to perform its responsibilities within the time specified in Items 5, 6, 7 and 8 and if Redeveloper has timely performed prior to such agency failure, Redeveloper's time for performance shall be increased by the number of days Agency's performance exceeds the time specified.

## AGREEMENT AND AUTHORIZATION TO ENTER UPON LAND

THIS AGREEMENT, entered into this 16th day of SEPTEMBER, 1986, by and between REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO, a public body, corporate and politic (hereinafter referred to as the ("AGENCY")), and JB AND LE REGENCY VENTURE, a California limited partnership (hereinafter referred to as the "REDEVELOPER").

### Recitals

A. AGENCY and REDEVELOPER have entered into a Disposition and Development Agreement ("the DDA") as of September 16, 1986, under which DDA REDEVELOPER agreed to lease from AGENCY and redevelop a portion of the block bounded by K, L, 12th and 13th Streets ("the Property") said property being more particularly described as follows:

"All that land situated in the State of California, County of Sacramento, City of Sacramento, described as follows:

All that certain real property lying within the block bounded by 12th, 13th, "K", and "L" Streets of the City of Sacramento, according to the official plat thereof,

Excepting therefrom the AGENCY garage parcel as identified in Section 8(h) of the Disposition and Development Agreement, which parcel shall be more particularly described in a parcel map to be recorded prior to recordation of the Ground Lease attached to the aforesaid DDA as Exhibit "A"; and

Further excepting therefrom all that portion of Lot 10 in said block described as follows:

Beginning at the point of intersection of the East line of said 12th Street with the North line of said "L" Street, said point being the Southeast corner of said Lot 10; thence from said point beginning, along the east line of said 12th Street, Northerly 79.50 feet; thence along a line parallel with and 79.50 feet Northerly from the North line of said "L" Street Easterly 42.00 feet; thence along a line parallel with and 42.00 Easterly from the East line of said 12th Street Southerly 79.50 feet to the North line of said "L" Street; thence

AGREEMENT AND AUTHORIZATION TO ENTER UPON LAND

along the North line of said "L" Street Westerly 42.00 feet to the point of beginning."

B. REDEVELOPER desires to enter upon the Property at its own risk pending the close of escrow and prior to actual transfer of leasehold and possession to the REDEVELOPER for the purpose of conducting and performing, at REDEVELOPER's sole cost and expense, soil, geologic and engineering investigations and tests and installation of support pilings, including the installation of not more than thirty-five (35) piles, and for no other purposes.

C. The AGENCY is agreeable to the REDEVELOPER's performing such work on the Property on the condition that REDEVELOPER prevent either the land or the AGENCY from sustaining encumbrances or incurring any liability or damage as a result of the work to be performed on said Property by the REDEVELOPER.

Agreements

NOW THEREFORE, each of the parties hereto, for and in consideration of the premises and the agreement of the other party hereto, does covenant and agree as follows:

1. AGENCY hereby authorizes REDEVELOPER and its contractors to enter upon the Property at any and all times hereafter until October 16, 1986, at its own risk pending the close of escrow and prior to actual transfer of leasehold and possession to the REDEVELOPER for the sole purpose of conducting and performing, at REDEVELOPER's sole cost and expense, soil, geologic and engineering investigations and tests and installation of support pilings, including the installation of not more than thirty-five (35) piles, and for no other purposes; subject, however, to the following terms, covenants and conditions:

(a) REDEVELOPER shall not do or perform any work or activities other than that specifically set forth above. Should REDEVELOPER commence any activities upon the Property other than that specifically set forth above, this authorization shall terminate immediately.

(b) Pioneer Title Company shall have approved this Agreement and the proposed work to be undertaken by REDEVELOPER pursuant hereto and shall have agreed that neither this Agreement nor the work to be undertaken pursuant hereto shall occasion, give rise to, or necessitate an exception to its standard ALTA coverage title policy to be subsequently issued in connection with the construction of improvements upon the property. Thereafter, should REDEVELOPER commence any activities upon

AGREEMENT AND AUTHORIZATION TO ENTER UPON LAND

the Property which would occasion, give rise to, and/or necessitate such an exception to such policy, this authorization shall terminate immediately.

(c) MeraBank, a federal savings bank, and Citicorp Real Estate, Inc. (collectively "Lender") shall have approved this Agreement and the proposed work to be undertaken by REDEVELOPER pursuant hereto and shall have agreed that neither this Agreement nor the work to be undertaken pursuant hereto shall occasion, give rise to, or necessitate any refusal and/or objection by Lender to fund its construction loan in connection with the construction of improvements upon the property. Thereafter, should REDEVELOPER commence any activities upon the Property which would occasion, give rise to, and/or necessitate such a refusal and/or objection, this authorization shall terminate immediately.

(d) REDEVELOPER enters the premises at its own risk and subject to whatever hazards presently exist on the Property. Before entering upon the Property to do any work, REDEVELOPER shall make a thorough inspection of the premises for the purpose of locating conditions which might be hazardous to the safety of those entering upon the Property. REDEVELOPER shall take whatever steps, at its sole cost and expense, as are necessary to eliminate such hazards or make them known to those entering upon the premises.

(e) REDEVELOPER shall indemnify AGENCY and hold it harmless from any and all liability for bodily injury, death and property damage occurring on the Property or arising out of or in any way connected with the improvements or buildings located upon the Property, including, but not limited to, fire or to the failure, collapse or deterioration of said improvements or buildings and shall reimburse AGENCY for all costs, expenses and loss, including attorney's fees, incurred by it in consequence of any claims, demands and causes of action which may be made or brought against it. REDEVELOPER shall provide and maintain and within ten (10) days from the effective date of this Agreement shall furnish AGENCY with satisfactory proof of public liability insurance for this undertaking, with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) for bodily injury or death to each person, and THREE MILLION DOLLARS (\$3,000,000.00) total for each accident, and TWENTY THOUSAND DOLLARS (\$20,000.00) for property damage. AGENCY shall be an additional named insured upon such insurance.

(f) REDEVELOPER may make such improvements as may be necessary to further its use of the Property at its own

AGREEMENT AND AUTHORIZATION TO ENTER UPON LAND

risk, cost and expense; provided, however, that REDEVELOPER shall obtain a payment bond in an amount sufficient to cover labor and materials to be expended for such activities and present evidence of such bond to AGENCY prior to entry on the Property. Cost and expenditures in addition to the amounts covered by the bond shall not be made without the prior written approval of the AGENCY. In the event REDEVELOPER does not complete the lease of the Property described herein, it shall pay to AGENCY the amount necessary to restore the Property to the condition it was in on the date this Agreement was entered, unless the AGENCY shall stipulate otherwise in writing.

(g) In every contract for the performance of any work on the Property, the REDEVELOPER shall include an express provision satisfactory to the AGENCY by which all parties to the contract acknowledge that the AGENCY is in no way liable for the performance of the contract, and that no lien will attach to the Property while it continues to be owned by the AGENCY. Such contract shall also require the contractor to furnish the following:

(1) Proof satisfactory to the REDEVELOPER and the AGENCY of adequate insurance against bodily injury and property damage;

(2) Proof satisfactory to the REDEVELOPER and the AGENCY that the contractor carries Workman's Compensation Insurance as required by law.

A fully executed copy of such contract shall be presented to the AGENCY upon request.

(h) Prior to the transfer of leasehold interest in the Property REDEVELOPER agrees to either obtain and maintain a payment bond in an amount sufficient to cover payment of labor and materials to be expended on the Property after transfer of title or provide AGENCY with evidence of filing of Notice of Cessation of Labor at least sixty (60) days prior to transfer of title, together with certification at the time of transfer that no work has been performed on the Property since the filing of said Notice.

2. In the performance of the work allowed by this Agreement, REDEVELOPER shall adhere to and abide by each of the terms, covenants and conditions contained in the DDA, and to any plans submitted to and approved by the AGENCY.

3. REDEVELOPER shall not obtain any interest whatsoever in the Property by virtue of this Agreement or by virtue of the work upon the Property.

AGREEMENT AND AUTHORIZATION TO ENTER UPON LAND

4. If REDEVELOPER should for any cause or reason, or none at all, fail, neglect and/or refuse to close escrow pursuant to the DDA on or before October 16, 1986, REDEVELOPER shall thereafter pay to AGENCY as liquidated damages on a weekly basis the sum of Four Hundred Dollars (\$400.00) per day for each day or portion thereof thereafter until the earlier of: the termination of this Agreement by its terms, the closing of the aforesaid escrow, or the vacation and/or restoration of the property by REDEVELOPER pursuant to the terms hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

AGENCY:

REDEVELOPMENT AGENCY OF THE CITY  
OF SACRAMENTO

By \_\_\_\_\_  
Executive Director

APPROVED AS TO FORM:

LAW OFFICES OF BRENTON A. BLEIER  
A Professional Corporation

\_\_\_\_\_  
BRENTON A. BLEIER

REDEVELOPER:

JB AND LE REGENCY VENTURE  
A California Limited Partnership

By: KINGS CAPITOL REGENCY, INC.  
A California Corporation  
Its General Partner

By \_\_\_\_\_  
JOSEPH BENVENUTI  
President

AGREEMENT AND AUTHORIZATION TO ENTER UPON LAND

APPROVED AS TO FORM:

de la VERGNE & McMURTRY  
Attorneys at Law

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DAVID W. McMURTRY



DOCUMENTS NEEDED FOR  
REDEVELOPMENT AGENCY MEETING  
ON SEPTEMBER 16, 1986

1. Disposition and Development Agreement
  - a. Ground Lease
  - b. Public Garage Purchase and Sale Agreement
  - c. Progress Disbursement Agreement
  - d. Maintenance and Operations Agreement
  - e. Non-Disturbance and Attornment Agreement
  - f. Agreement and Grants of Easements
  - g. Amended Legal Description
2. Construction Contract with J.A. Jones
  - a. Parental Guarantee - Jones Group, Inc.
  - b. Financial Statements of Parent
3. Architectural Contract with Ellerbe Associates
  - a. Architectural contract with Ellerbe Associates and Redevelopment Agency of the City of Sacramento
4. Mera Bank/Citicorp Financing Commitment
5. Hyatt Amended and Restated Management Agreement
6. Evidence of Sale of Assets of Cook Hotel Associates
7. Project Management Contract with Planning Performance, Inc.
8. Developer Qualification Documents
  - a. Kings Capitol Regency Formation Documents
    1. Articles of Incorporation
    2. Bylaws
    3. Authorizing Resolutions
  - b. Evidence of Equity - Deposit with Institution
9. Good Faith Deposit - Letter of Credit for \$250,000

**SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY**

CITY CLERKS OFFICE  
CITY OF SACRAMENTO

SEP 2 12 28 PM '86

August 29, 1986

TO: Sacramento City Council  
Sacramento County Board of Supervisors  
Sacramento Housing and Redevelopment Commission

FROM: William H. Edgar, Executive Director

SUBJECT: Capitol Center Hotel Project

We received the attached letter from the Kings Capitol Regency, Inc. today. In accordance with their request, we have scheduled a public hearing to consider the issuance of a new Disposition and Development Agreement before the City Council on September 16, 1986.

This matter will be reviewed by the Sacramento Housing and Redevelopment Commission at their September 15, 1986 meeting.

Please call me or Andy Plescia if you have any questions.

Attachment

BOO  
WILLIAM H. EDGAR  
Executive Director

*make sure  
on agenda!*

*Pro*

25

RED LINE VERSION

NOTE: THE UNDERLINED MATERIAL HAS BEEN ADDED  
SINCE THE AUGUST 28, 1986 REVISION, WHICH WAS  
POSTED FOR PUBLIC COMMENT. DELETIONS FROM THAT  
REVISION ARE REPRESENTED BY THE CARET ("^").

DISPOSITION AND DEVELOPMENT AGREEMENT

By And Between

REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

A Public Body, Corporate and Politic

And

JB AND LE REGENCY VENTURE

A California Limited Partnership

Dated As Of September 16, 1986

PART I

THIS AGREEMENT is entered into as of the 16th day of September, 1986, by and between the REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO, a public body, corporate and politic ("AGENCY"), established pursuant to California Health and Safety Code Sections 33000 et seq. ("Community Redevelopment Law"), and having its office at 630 "I" Street in the City of Sacramento ("City"), State of California, and JB AND LE REGENCY VENTURE, a California Limited Partnership, ("REDEVELOPER") having its office at 2101 Evergreen Street, Sacramento, California 95815, consisting of this Part I, Exhibits "A"- "F", and Part II (Form HUD-6209B, 9-69), attached hereto and made a part hereof (collectively "Agreement")

## WITNESSETH:

WHEREAS, in furtherance of the objectives of the Community Redevelopment Law, the AGENCY has undertaken a program for the clearance and reconstruction or rehabilitation of blighted areas in the City, and in this connection is engaged in a redevelopment project known as the "Uptown Development Project, Project No. 8" ("Project Area"); and

WHEREAS, as of the date of this Agreement there has been prepared and approved a redevelopment plan for the Project, approved by the City Council of the City on July 20, 1972, by City Ordinance No. 3146, Fourth Series (which plan, as amended ("Redevelopment Plan")); and

WHEREAS, a copy of the Redevelopment Plan was recorded on September 21, 1979, among the land records for the place in which the Project Area is situated, namely, in the Office of the County Recorder of the County of Sacramento in Book 79-09-21 of Official Records, beginning at page 1507, as amended of record; and

WHEREAS, the AGENCY has offered to lease and REDEVELOPER is willing to lease and redevelop in accordance with the Redevelopment Plan and this Agreement, certain real property ("the property") described as follows:

All that land situated in the State of California, County of Sacramento, City of Sacramento, described as follows:

All that certain real property lying within the block bounded by 12th, 13th, "K", and "L" Streets of the City of Sacramento, according to the official plat thereof,

Excepting therefrom all that portion of Lot 10 in said block described as follows:

Beginning at the point of intersection of the East line of said 12th Street with the North line of said "L" Street, said point being the Southeast corner of said Lot 10; thence from said point beginning, along the east line of said 12th Street, Northerly 79.50 feet; thence along a line parallel with and 79.50 feet Northerly from the North line of said "L" Street Easterly 42.00 feet; thence along a line parallel with and 42.00 Easterly from the East line of said 12th Street Southerly 79.50 feet to the North line of said "L" Street; thence along the North line of said "L" Street Westerly 42.00 feet to the point of beginning, (henceinafter referred to as the "Premises"); and subject to:

1. Easement for electrical facilities and appurtenances thereto granted to Great Western Power Company of California, a corporation, recorded July 25, 1924, Book 688 of deeds, page 214, which affects the East 3.00 feet of the West 51.00 feet of the North 48.50 feet of the Lot 10 in said block.
2. Easement for electrical facilities and appurtenances thereto granted to Great Western Power Company of California, a corporation, recorded July 25, 1924, Book 688 of deed, page 215, which affects the East 3 feet of the West 48.72 feet of the North 33.04 feet of the South 112.54 feet of Lot 10 in said block.
3. Easement for electrical facilities and appurtenances thereto granted to Great Western Power Company of California, a corporation, recorded September 3, 1930, Book 321, Official Records, page 165 which affects a portion of the West 51 feet of the North 35.00 feet of Lot 10 in said block.
4. The effect of the document entitled, "Property Rehabilitation Standards for Satisfactory Rehabilitation of Properties", dated March 28, 1968, recorded January 31, 1969, in Book 690131 of Official Records, page 328, and Amendments or Revisions thereto which were recorded June 10, 1971, in Book 710610 of Official Records, page 232; recorded February 15, 1973, in Book 730215 of Official Records, page 394; and recorded August 23, 1978, in Book 780823 of Official Records, page 1222.
5. The terms, provisions and conditions contained in Sacramento City Ordinance No. 2820, Fourth Series, as disclosed by that certain instrument recorded August 5, 1969, in Book 690805, Official Records, page 571, which

affects the portion of the premises adjoining "K" Street.

6. The effect of the Redevelopment Plan for the Central City Development Project, a certified copy of which was recorded, September 21, 1979, in Book 790921 of Official Records, page 1507 and Amendments or Revisions thereto recorded August 13, 1980, in Book 800813 of Official Records, page 1256.

7. Easements, terms, and provisions contained in Easement And Use Agreement between Kimmel Properties, a California general partnership, and The Northwestern Mutual Life Insurance Company, a Wisconsin corporation, dated March 3, 1980, recorded March 4, 1980, in Book 800304, Official Records, page 366, which affects Lots 1, 6, 7, 8 and 9 in said block.

8. The effect of the document entitled "Description of Land Within Redevelopment Project Area Of The Capitol Area Development Authority", recorded September 12, 1980, in book 800912 of Official Records, Page 1586, and re-recorded October 31, 1980, in Book 801031 of Official Records, page 1065.

9. An easement for public utilities to be recorded in Official Records, in a form subject to the reasonable approval of REDEVELOPER upon fifteen (15) days prior notice, which shall affect a five (5) foot area along the entire north side of APN parcel number 06-112-17; and

WHEREAS, the AGENCY believes that the redevelopment of the Property pursuant to this Agreement and the fulfillment generally of the Agreement, are in the vital and best interests of the City and the health, safety and welfare of its residents, and in accord with the public purposes and provisions of the applicable Federal, State and local laws and requirements under which the Project has been undertaken and is being assisted; and

WHEREAS, the AGENCY has agreed to provide long-term financial assistance to REDEVELOPER to attempt to insure the viability of the development of the Property.

NOW, THEREFORE, in consideration of the premises and the mutual obligation of the parties hereto, each of them does hereby covenant and agree with the other as follows:

## SEC. 1. LEASE

Subject to all terms, covenants and conditions of this Agreement and pursuant to terms, conditions, and provisions of the ground lease (the "Lease") attached hereto and made a part hereof as Exhibit "A", the AGENCY shall lease the Property to the REDEVELOPER, and the REDEVELOPER shall lease said Property from the AGENCY.

## SEC. 2. LEASE OF PROPERTY

### (a) Form of Lease

The Lease shall, in addition to the condition subsequent provided for in Section 704 hereof, and to all other conditions, covenants and restrictions set forth or referred to elsewhere in this Agreement, be subject to:

(i) The Redevelopment Plan, and any amendments thereto approved by the AGENCY and the REDEVELOPER;

(ii) Applicable building and zoning laws and regulations;

(iii) Easements and rights-of-way as agreed to by the parties; and

(iv) Exceptions to title noted in Schedule B of Western Title Insurance Company Policy Number 0903 dated April 6, 1984 (a copy of which is incorporated herein and attached hereto as Exhibit "B").

### (b) Time, Place and Terms for Delivery of Lease

#### (i) Opening Escrow and Deposit of Lease

On or before the date set forth therefor in the Schedule of Performances attached hereto as Exhibit "E", the AGENCY and the REDEVELOPER shall establish an escrow with Pioneer Title Insurance Company, 455 Capitol Mall, Sacramento, California ("Pioneer Title") by depositing appropriate instructions conforming hereto, the Lease, and whatever fees, premiums, costs or other charges are payable by either party under this Agreement.

#### (ii) Escrow and Title Insurance Premiums

REDEVELOPER shall pay for all escrow costs,

recording fees and title insurance. The escrow agent and title insurance company for the purpose of this Agreement shall be Pioneer Title Insurance Corporation, unless another company is designated by mutual agreement of the parties.

### SEC. 3. GOOD FAITH DEPOSIT

#### (a) Amount

The REDEVELOPER has deposited with the AGENCY a good faith deposit of in the form of two irrevocable letter s of credit drawn upon a banking institution s, which have been assigned to the REDEVELOPER in the sum total amount of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00), hereinafter called "Deposit", as security for the performance of the obligations of the REDEVELOPER to be performed prior to the return of the Deposit to the REDEVELOPER, or its retention by the AGENCY as liquidated damages, as the case may be, in accordance with the Agreement. The REDEVELOPER will deliver acknowledgement of the aforesaid assignment by the relevant issuing banking institutions with seven (7) days from the date of acquisition hereof. AGENCY is expressly authorized to draw upon said letters of credit at any time authorized so to do hereunder and, in any event, at any time within thirty (30) days of the expiration date thereof if said letters of credit or either of them shall not have been renewed and/or replaced with another acceptable letter of credit and/or cash.

#### (b) Interest

The AGENCY shall be under no obligation to pay or earn interest on the Deposit, but if interest is payable thereon, such interest when received by the AGENCY shall be promptly paid to the REDEVELOPER.

#### (c) Retention by AGENCY

Upon termination of the Agreement as provided in Sections 703 and 704 hereof, the Deposit or the proceeds of the Deposit, shall be retained by the AGENCY as provided in Sections 703 or 704 hereof.

#### (d) Release of Deposit Upon Completion of Improvements

If the Deposit has not been claimed by the AGENCY as liquidated damages or as an option fee, as provided for herein, then upon completion of REDEVELOPER's Improvements to be constructed upon the Property, and when REDEVELOPER's Improvements are certified to be completed pursuant to Section



307 hereof, the entire Deposit shall be returned to the REDEVELOPER by the AGENCY.

(e) Liquidated Damages

If the REDEVELOPER should default upon its obligations in the manner specified in Sections 703, 704, 705 or 706 hereof, or in the provisions of the Lease attached as Exhibit "A", making it necessary for the AGENCY to terminate this Agreement or the REDEVELOPER's estate and to procure another party or parties to redevelop the Property in substantially the manner that such Property would be redeveloped under the terms of this Agreement, then the damages suffered by the AGENCY by reason thereof would be uncertain, and impracticable or extremely difficult to fix. Such damages would involve such variable factors as the consideration which such party would pay for the Property; the expenses of continuing or resuming the ownership and control of the Property; of interesting, and negotiating with, such parties; postponement of tax revenues therefrom to the community; the loss or postponement of transient occupancy taxes to the City; the impact upon the progress of the redevelopment of other properties in the area; and the failure of the AGENCY to effect its purposes and objectives within a reasonable time, resulting in additional immeasurable damage and loss to the AGENCY and the community. It is impracticable and extremely difficult to fix the amount of such damages to the AGENCY, but the AGENCY is of the opinion, upon the basis of all information available to it, that such damages would be approximately the sum of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00). By reason thereof, the AGENCY and the REDEVELOPER hereby agree in advance that the sum of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00), less any sums previously paid pursuant to Section 4(b) below, shall be paid the AGENCY upon any and all occurrences as the total of all liquidated damages or any and all defaults and not as a penalty.

(f) Acknowledgement of Liquidated Damages Provisions

By their signatures below, the AGENCY and the REDEVELOPER agree that the provisions of Section 3, Part I, and Sections 703-706, Part II, of this Agreement, as they relate to retention of Good Faith Deposit and liquidated damages if REDEVELOPER fails to complete the lease of the Property, are valid and binding between the parties to this Agreement.

DISPOSITION AND DEVELOPMENT AGREEMENT

REDEVELOPMENT AGENCY OF  
THE CITY OF SACRAMENTO

BY \_\_\_\_\_  
Chairperson

BY \_\_\_\_\_  
Secretary

JB AND LE REGENCY VENTURE  
A California Limited Partnership,

BY: KINGS CAPITOL REGENCY, INC.  
A California Corporation,  
Its General Partner

BY \_\_\_\_\_  
JOSEPH BENVENUTI  
President

BY \_\_\_\_\_  
GREGG P. LUKENBILL  
Vice President

(g) Limitation of REDEVELOPER Liability

Notwithstanding anything to the contrary contained herein, REDEVELOPER's liability for monetary damages, including any assessments pursuant to Section 4(b) below, shall be limited to the amount of the good faith deposit. However, this limitation shall in no way restrict or diminish REDEVELOPER's obligations pursuant to a decree of specific performance obtained from a court of competent jurisdiction.

(h) Payment of Deposit in Event of Abandonment

REDEVELOPER may elect, at any time prior to the execution of the Ground Lease, to abandon its rights and obligations under this Agreement upon payment of the good faith deposit as stipulated liquidated damages. In the event of such election by REDEVELOPER and the payment of the deposit pursuant hereto, REDEVELOPER shall have no further obligations hereunder.

## SEC. 4. TIME FOR COMMENCEMENT AND COMPLETION OF IMPROVEMENTS

### (a) In General

The construction of the improvements referred to in Section 301 hereof shall be commenced on or before the date established therefor in the Schedule of Performances attached hereto as Exhibit "E" and completed on or before the date established therefor in the Schedule of Performances attached hereto as Exhibit "E". No construction of the aforementioned improvements shall be undertaken by the REDEVELOPER until the AGENCY has approved the Construction Plans submitted by the REDEVELOPER to the AGENCY pursuant to the provisions of this Agreement.

### (b) Option Extension Fee

In the event that the construction of the Improvements referred to in Section 301 hereof is not commenced on or before the date established therefor in the Schedule of Performances attached hereto as Exhibit "E", the REDEVELOPER shall pay to AGENCY, on the first day of each month beginning the month following the date established therefor in the Schedule of Performances attached hereto as Exhibit "E", an option extension fee of Eight Hundred Thirty-Five Dollars (\$835.00), for each day by which the commencement of construction is delayed beyond the date established therefor in the Schedule of Performances attached hereto as Exhibit "E". The provisions thereof to the contrary notwithstanding, Section 707 hereof shall have no application to the calculation of the option extension fee as set forth in this Section.

### (c) Construction Period Extension Fee

In the event that the construction of the Improvements is not completed on or before the date established therefor by the Schedule of Performances attached hereto as Exhibit "E", then REDEVELOPER shall pay to AGENCY a construction period extension fee of Eight Hundred Thirty-Five Dollars (\$835.00), for each day by which the completion of the Improvements, as evidenced by the Certificate of Completion defined in Section 307 hereof, is delayed beyond the date established therefor by the Schedule of Performances attached hereto as Exhibit "E". The provisions thereof to the contrary notwithstanding, Section 707 hereof shall have no application to the calculation of the construction period extension fee. The construction period extension fee, if any, calculated hereunder, shall be in addition to any option extension fee calculated hereunder. The AGENCY, in its discretion, may withdraw the amounts due under this subdivision from the Good Faith Deposit delivered to the

AGENCY by REDEVELOPER pursuant to Section 3.

SEC. 5. TIME FOR CERTAIN OTHER ACTIONS

(a) Preliminary Plans and Construction Plans  
for REDEVELOPER's Improvements

(i) Time for Submission  
of Preliminary Plans

The REDEVELOPER has submitted Preliminary Plans for REDEVELOPER's Improvements to be constructed on the Property prior to the date of this Agreement and execution of this Agreement shall constitute AGENCY approval of the Preliminary Plans.

(ii) Time for Submission  
of Construction Plans

The REDEVELOPER has submitted its Construction Plans (as defined in Section 301 hereof) to the AGENCY, pursuant to Section 301 hereof, prior to the date of this Agreement. The Construction Plans are under review by the Agency as of the date of execution of this agreement. The Construction Plans shall be in substantial conformity with the approved Preliminary Plans as "substantial" is defined in Section 8(b) below.

(iii) Time for AGENCY to  
Approve or Disapprove Plans

The AGENCY shall approve or disapprove the Construction Plans referred to in Section 5(a)(ii) of this Agreement within thirty (30) days after execution of this Agreement.

(b) Corrected Plans

(i) Time for Submission of Corrected Plans

If the AGENCY disapproves the Construction Plans referred to in Section 5(a)(ii), the REDEVELOPER shall submit corrected Plans within thirty (30) days from the date the REDEVELOPER receives written notice from the AGENCY of the AGENCY's disapproval.

(ii) Time for AGENCY Action on  
Corrected Construction Plans

The AGENCY must approve or disapprove corrected

Construction Plans submitted pursuant to Section 5(b)(i) of this Agreement within thirty (30) days from the date such Plans have been submitted to the AGENCY.

(c) Maximum Time for Approved Construction Plans

In any event, the time within which the REDEVELOPER shall submit Construction Plans which conform to the requirements of Section 301 hereof and are approved by the AGENCY shall be no later than the number of days fixed by the AGENCY at the time the AGENCY disapproves the corrected Plans, which number of days shall be reasonable in light of the nature of the necessary revisions or corrections.

(d) Time for AGENCY Action on  
Change in Construction Plans

The time within which the AGENCY may reject any change in any approved Construction Plans, as provided in Section 302 hereof, shall be thirty (30) days after the date of the AGENCY's receipt of notice of such change.

(e) Monthly Reporting Prior  
To and During Construction

Beginning on the first day of the second month following the month in which this Agreement is executed and or about the first of each month thereafter to and including the month in which the AGENCY shall issue its Certificate of Completion of the Improvements, the REDEVELOPER shall provide the AGENCY with a written report in letter form dealing with the following matters:

(i) as to the period prior to the commencement of construction, REDEVELOPER's efforts and achievements directed toward fulfillment of the requirements of subparts (a), (b), (c), and (d) of this Section 5; and

(ii) as to the period following commencement of construction, the nature and extent of incremental progress since the next previous report and, whether or not, in the best estimate of the most knowledgeable representatives of REDEVELOPER, the progress achieved by REDEVELOPER to the date of the report is sufficient to make it reasonably probable that REDEVELOPER will in fact complete the Improvements on or before the date established therefor by the Schedule of Performances attached hereto as Exhibit "E".

## SEC. 6 PERIOD OF DURATION OF COVENANT ON USE

The covenant pertaining to the uses of the Property set forth in subdivision (a) of Section 401 hereof shall remain in effect from the date of the Lease until July 20, 2002, a period of thirty (30) years from the effective date of the Ordinance adopting the Redevelopment Plan, or until such date thereafter to which it may be extended by proper amendment of the Redevelopment Plan, on which date, as the case may be, such covenant shall terminate. The covenants hereof respecting restrictions upon the basis of race, color, creed, religion, sex, marital status, national origin, or ancestry set forth in subdivisions (b), of Section 401 hereof shall run in perpetuity. The duration of the covenant pertaining to the uses of the property shall be independent of and without regard to the term and provisions of the Lease attached hereto as Exhibit "A".

## SEC. 7. NOTICES AND DEMANDS

A notice, demand or other communication under the Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

(a) In the case of the REDEVELOPER, is addressed to or delivered as follows:

JB AND LE REGENCY VENTURE  
2101 Evergreen Street  
Sacramento, California 95815

Attention: JOSEPH BENVENUTI

With a copy to:

RICHARD H. HYDE, Esq.  
Hyde, Miller & Savage  
Attorneys at Law  
428 J Street, Suite 400  
Sacramento, CA 95814

With a copy to:

MERABANK  
A Federal Savings Bank  
3003 North Central Avenue, Suite 405  
Phoenix, Arizona 85012

Attention: Tim Steinhilber  
Vice President

and to:

CITICORP REAL ESTATE, INC.  
Citicorp Center, Suite 2830  
One Sansome Street  
San Francisco, CA 94104

Attention: J. Gregory Lange  
Vice President  
and Attention: Loan Administrator

and to:

CITICORP REAL ESTATE, INC.  
725 S. Figueroa Street, 4th Floor  
Los Angeles, CA 90017

Attention: John F. Pipia  
Vice President

With a copy to:

EDWARD R. STEEFEL, Esq.  
Steefel, Levitt & Weiss  
A Professional Corporation  
29th Floor, One Embarcadero Center  
San Francisco, CA 94111

and to:

ROBERT R. WULFF, Esq.  
Diepenbrock, Wulff, Plant & Hannegan  
Attorneys at Law  
300 Capitol Mall, 17th Floor  
Sacramento, CA 95814

DISPOSITION AND DEVELOPMENT AGREEMENT

(b) In the case of the AGENCY, is addressed to or delivered personally as follows:

REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO  
630 "I" Street  
Sacramento, California 95814

Attention: WILLIAM H. EDGAR  
Executive Director

With a copy to:

BRENTON A. BLEIER, Esq.,  
Law Offices of Brenton A. Bleier  
A Professional Corporation  
1001 G Street, Suite 101  
Sacramento, CA 95814

or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this Section.

SEC. 8. SPECIAL PROVISIONS

(a) Scope of Development

REDEVELOPER's Improvements are described in the "Scope of Development" incorporated herein and attached hereto as Exhibit "C".

(b) Substantial Changes

REDEVELOPER covenants and agrees that before and during the period of construction of REDEVELOPER's Improvements, REDEVELOPER shall not make or permit to be made any substantial changes in the Construction Plans, as approved by the AGENCY, without first submitting such changes to the AGENCY for approval. REDEVELOPER shall have the responsibility of notifying his contractors, architects and engineers of the requirements of this subdivision, and REDEVELOPER shall be responsible for compliance with said requirements. For purposes of this subdivision, substantial changes shall include (but not necessarily be limited to) the following and similarly important changes in the construction or in the approved Construction Plans:

(i) Change in size or design materially affecting bulk, building coverage or floor area ratio, or number of floors;



(ii) Material changes affecting the size or design or use of exterior finishing materials noticeably affecting architectural appearance or functional use and operation of the Improvements;

(iii) Material changes in size or placement of service facilities; or in the number of elevators, stairs and ramps; and changes in general pedestrian or vehicular circulation in, around or through the Improvements;

(iv) Any changes requiring approval of any City or State board, body, commission or officer, or any change required by any City and State board, body, commission or officer;

(v) Material changes in number, size, placement, graphics, design, or materials of all exterior signs, if any, shown in the Construction Plans, differing from those shown and specified in the approved Construction Plan;

(vi) Material change in landscape planting and site improvements; and

(vii) Material changes in size or quality of exterior pavement, pedestrian malls, plazas, retaining walls, pools and fountains, exterior lighting and other site and garage development of the Property other than that shown and specified in the approved Construction Plans.

(c) Non-discrimination

REDEVELOPER shall refrain from restricting the rental, sale or lease of the Property on the basis of race, color, creed, religion, sex, marital status, national origin or ancestry of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(i) In deed

"The Grantee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the Grantee

himself or any person claiming under or through him establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

(ii) In leases

"The REDEVELOPER herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the leasing, subleasing, transferring use, occupancy, tenure or enjoyment of the land herein leased nor shall the REDEVELOPER himself or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the land herein leased."

(iii) In contracts

"There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land."

(d) Affirmative Action Requirements

REDEVELOPER shall, in constructing the Improvements described herein, take all affirmative action necessary to ensure equal employment opportunity in all aspects of employment regardless of race, color, religion, sex or national origin.

(e) Upkeep and Maintenance

REDEVELOPER acknowledges that it is the responsibility of the AGENCY to oversee the rehabilitation and/or reconstruction of a portion of the City and to protect its continuous economic stability and improved environment. Therefore, REDEVELOPER will be required to maintain properly and consistently the Property and all Improvements on it to a degree that does not detract from or degrade that of his neighbor or the public property adjacent thereto. A common understanding of the expected quality of maintenance is necessary. Therefore, guidelines for the minimum quality of exterior maintenance are hereby stated.

(i) Building Upkeep

The exterior appearance of all buildings and structures are to be kept in a clean and attractive condition. Refinishing of any and all surfaces is to be performed immediately when observed to be needed due to damage or deterioration.

(ii) Grounds Upkeep

All surfaces and landscaped areas within the Project boundaries and those adjacent to the Project that are to be maintained by the REDEVELOPER are to be kept in a condition consistent with top quality landscape care. All lawn areas are to be kept fully planted and regularly mowed. Shrubs and trees are to be properly and consistently pruned. All landscaped areas are to be kept free of weeds, undesirable plants and trash.

(iii) Trash Storage

All trash, including lawn, shrubs and tree cuttings are to be placed in a screened enclosure when stored for pickup. No collected trash of any kind is to be allowed to stand outside of any enclosure for more than eight (8) hours.

If, after due notice to the REDEVELOPER and review by the AGENCY of a breach of the REDEVELOPER's good faith in regard to proper maintenance, the AGENCY shall have the opportunity to take specific action as outlined in Paragraph 9 of the Declaration of Restrictions.

(f) Responsibility for Injury,  
Death and Property Damage

REDEVELOPER shall indemnify AGENCY and hold it harmless

from any and all liability for bodily injury, death and property damage caused by or resulting from the acts of REDEVELOPER, its officers, employees or agents.

(g) REDEVELOPER's Obligation to Protect Public Safety

REDEVELOPER shall immediately upon taking possession of the premises take all necessary steps including the erection of fences, barricades and warning devices to protect private contractors and their employees and the public from the risk of injury arising out of or in any way connected with the Property, including, but not limited to, fire, or the failure, collapse, or deterioration of any improvements or buildings.

(h) Parking Structure

REDEVELOPER shall develop, pursuant to plans and specifications approved by AGENCY, a parking structure (including ground level commercial space) consisting of, and capable of accommodating, approximately six hundred thirty one (631) parking spaces ("the Garage Facility") upon the premises and upon and within a separately defined and identified parcel to be created and recorded ("the AGENCY garage parcel"), wherein the REDEVELOPER shall own and/or have easement rights in perpetuity to use portions of the Garage Facility sufficient to contain fifty one and two-thirds percent (51.67%) (approximately three hundred twenty six (326)) of the spaces in the total garage and all ground level commercial space ("the Hotel Garage") and AGENCY shall own in fee ownership free and clear of all liens, but subject to easements of record, those portions of the Garage Facility which Agency shall purchase pursuant to subpart (ii) of this subsection (h) below but in any event that portion which shall be sufficient to contain forty eight and one-third percent (48.33%) (approximately three hundred five (305)) of the spaces in the total garage ("the Public Garage"). The Public Garage shall be located entirely within and upon the AGENCY garage parcel, shall be structurally contiguous and definable, shall be located within the Garage Facility so as to be closest (relative to the location of the Hotel Garage) to the public surface streets, and shall have an unlimited easement of access across the premises to the Garage Facility in perpetuity.

(i) Joint Construction

The parties mutually acknowledge that proper scheduling and coordination of construction and necessary cost efficiency require that construction of the Public Garage, the Hotel Garage, the commercial space, and the necessary sublater support for all of the above be accomplished by the same contractor. Therefore, it is agreed that the construction of the

Public Garage should be accomplished by the REDEVELOPER's contractor, provided that, pursuant to an agreement to be agreed upon by the parties hereto, in the selection of said contractor and in determination of the contract amount, REDEVELOPER shall employ such procedures, provisions and agreements as shall be reasonably necessary, in the judgment of AGENCY counsel, to comply with applicable law. Notwithstanding any other provision hereof, this provision shall not be deemed or construed to require any illegal act or agreement by AGENCY.

(ii) Purchase of the Public Garage

AGENCY shall purchase the Public Garage from REDEVELOPER upon completion of said structure for an amount ("the purchase price") which shall in no event exceed Four Million Dollars (\$4,000,000). Subject to the foregoing dollar limitation and to the extent of costs allocated as to the structure by an independent engineer and certified to have been incurred by an independent certified public accountant designated by and retained at REDEVELOPER'S sole cost and expense, the AGENCY purchase price for the AGENCY portion of the parking of the Garage Facility shall INCLUDE payment for the entire parking structure (including ground level commercial space) including without limitation site preparation, soils testing, the exterior walls, parking decks, foundations, excavation costs, rampways, landscaping, sprinklers, utilities (relocation, installation and connection), elevators, stairways, parking equipment, striping and signage, and that portion of payments to unrelated third parties reasonably attributable to the Garage Facility for architectural, engineering, design consulting, attorney's fees, construction liability insurance, title insurance services, construction project management services, city building permit fees, city major street construction tax payments and art commissioned in satisfaction of Art in Public Places requirements and EXCLUDE therefrom (1) costs attributable to those portions utilized solely by REDEVELOPER and/or the Hotel Garage, (2) the incremental cost of those improvements utilized jointly and/or mutually by REDEVELOPER and AGENCY which is directly attributable to the incremental strength, size, capability and/or design characteristics required in such improvements by reason of REDEVELOPER's joint and/or mutual usage, provided that if AGENCY, in its sole and complete discretion is dissatisfied with allocation and/or certification of the aforesaid amount, AGENCY may designate at REDEVELOPER's sole cost

and expense an additional independent engineer and/or certified public accountant, whose determinations shall be final and binding on all parties.

Upon the completion of construction as defined herein, the REDEVELOPER shall cause the Premises to be subdivided in accordance with California law into the AGENCY Garage Parcel and the balance of the Premises ("the Hotel parcel"). The AGENCY Garage Parcel shall be defined, to the maximum extent feasible, to include that much of the Premises as is occupied by any of the assets, the cost of which, or any portion thereof, was included within the certified cost forming the basis of the Purchase Price as defined herein. To the extent that any portion of the Public Garage, as defined herein, cannot be feasibly so located within the AGENCY Garage Parcel, the REDEVELOPER agrees to convey and the LENDERS agree to release and reconvey the Public Garage to the AGENCY and from any and all liens which the LENDERS may have against any real or personal property interest of the AGENCY and/or the REDEVELOPER.

As to the foregoing improvements, if AGENCY payment is insufficient to provide for the completion all or any portion of all such improvements by reason of the dollar limitation above, REDEVELOPER shall nonetheless complete all such improvements at its own cost and expense.

(iii) Statutory Requirements

REDEVELOPER and AGENCY mutually acknowledge the applicability of various statutory requirements to AGENCY's contracts relating to the development of the Public Garage and other improvements specified in subpart (ii) above, including without limitation California Health and Safety Code Section 33422 and California Labor Code section 1771.

(iv) AGENCY Garage Parcel To Be Free of Liens

Nothing contained herein and/or contained within the Lease attached hereto as Exhibit "A" shall be deemed or construed to authorize and/or suffer any lien of any type whatsoever, except and apart from easements required hereby, to attach at any time to the AGENCY garage parcel and/or to the Public Garage for any purpose, cause or reason.

(v) Public Garage Purchase and Sale Agreement

The provisions of this subparagraph 8 (h) have

been restated and embodied in the Public Garage Purchase and Sale Agreement, ("PGPS Agreement") attached hereto and incorporated herein by reference as Exhibit "F". This Agreement and the PGPS Agreement shall be interpreted in light of each other. However, in the event of any ambiguity and/or conflict as between the terms this Agreement and the PGPS Agreement, the PGPS Agreement shall prevail.

(i) Consents and Approvals

Wherever, under the provisions of this agreement, REDEVELOPER is required to obtain the approval or consent of the AGENCY, that approval or consent may not be unreasonably withheld by AGENCY provided:

(i) the lack of ascertainable criteria within this Agreement as to any particular review or approval shall not be utilized to support a determination of unreasonableness;

(ii) in any action or proceeding contesting the AGENCY's withholding of or denial of approval or consent, the REDEVELOPER shall at all times have the burden of establishing that the decision of the AGENCY was unreasonable; and

(iii) this subpart (i) shall have no application to:

(a) any request by the REDEVELOPER for an amendment or modification of any term or provision of this Agreement; or

(b) any request by the REDEVELOPER for reinstatement after the REDEVELOPER has failed to properly remedy its default during the appropriate cure period following notice of the default; or

(c) any request by the REDEVELOPER for approval of a "substantial change" in the preliminary or final approved plans of a type set forth in subpart (i), (ii), (v), (vi) or (vii) of subpart (b) of this Section 8.

## SEC. 9. MODIFICATIONS OF PART II

### (a) Conflicts

In the event of any inconsistency or conflict between the provisions of this Part I and Part II, the provisions of this Part I shall prevail over those contained in Part II. It is the intent of the parties that this Development and Disposition Agreement and the attached Ground Lease, upon its execution by the parties hereto, shall be interpreted in light of each other. However, in the event of any inconsistency conflict between the provisions of this Agreement and the provisions of the Ground Lease, prior to the issuance of a Certificate of Completion as defined in Section 307 hereof, the provisions of this Agreement shall control. Upon the issuance of a Certificate of Completion pursuant to Section 307, the provisions of the Ground Lease shall control.

### (b) Defined Terms

In addition to those terms elsewhere defined in this Agreement, the following terms shall have the respective meanings ascribed to them below, and unless the context otherwise requires, shall include the plural:

(i) "Urban Renewal Act" and "state law" shall mean the Community Redevelopment Law of the State of California (Part I of Division 24 of the Health and Safety Code, Sections 33000, et. seq.).

(ii) "Urban Renewal Project" shall mean and include the Uptown Development Project, Project No. 8, in the City of Sacramento, California.

(iii) "Urban Renewal Plan" shall mean and include the Redevelopment Plan for Uptown Development Project, Project No. 8, adopted by City Ordinance No. 3146, Fourth Series, July 20, 1972, and recorded September 21, 1979 in the office of the County Recorder of the County of Sacramento, in Book 79-09-21 of official records, beginning at page 1507, as amended of record.

(iv) The term "REDEVELOPER's Improvements" shall mean and include those improvements to be developed and constructed on the Property under this Agreement by the REDEVELOPER.

(v) The term "commencement of construction" shall mean site preparation and shall include such activities as excavation, filling, leveling, and



grading of the Property, the demolition of buildings and the removal of buildings. However, for purposes of calculation of the date of completion required by the schedule of performances, it shall not include activities undertaken by the REDEVELOPER, or the REDEVELOPER's predecessors in interest, pursuant to an "Agreement and Authorization to Enter Upon Land" executed by the AGENCY and by the REDEVELOPER or the REDEVELOPER's predecessors in interest.

(vi) The terms "date of this Agreement", "execution", "execution of this Agreement by the AGENCY", "execution of this Agreement", and "effective date of this Agreement", shall mean in this Agreement (unless the context clearly indicates otherwise), receipt by the Redevelopment of a notification from the AGENCY that this Agreement has been approved by the AGENCY.

(vii) Each and every reference to a "deed" or a "special warranty deed" in this Agreement shall be deemed to refer to the Ground Lease attached hereto as Exhibit "A".

(c) Work to be Performed by AGENCY

Section 101 shall be amended by deleting the entire section and inserting in lieu thereof:

"SEC. 101. Site Preparation Work to be Performed by AGENCY

(a) The AGENCY shall, prior to conveyance of the Property but without expense to the REDEVELOPER, demolish and remove to the surface elevation of the adjoining ground, all existing buildings, other structures and improvements on the Property, including bricks, lumber, pipes, equipment and other materials, and all debris and rubbish resulting from such demolition, except such material and debris as may be used for any filling required on the Property.

(b) The AGENCY shall obtain the removal, abandonment or relocation by the AGENCY or by the appropriate public body or public utility company of all public utility lines, installations, facilities and related equipment within or on the Property.

(c) REDEVELOPER acknowledges that it has inspected the Property and except for demolition work to be completed by the AGENCY pursuant to subsection 101(a), agrees to accept the Property in its present condition."

(d) Access to Property

Section 203 is amended by deleting the words "the City, and the United States of America" and substituting in lieu thereof "and the City", and deleting the words "the Cooperation Agreement, or the Contract for Loan and Capitol Grant,".

(e) Plans for Construction of Improvements

Section 301 shall be amended by deleting the sentence "such Construction Plans shall, in any event, be deemed approved unless rejection thereof in writing by the AGENCY, in whole or in part, setting forth in detail the reasons therefor, shall be made within thirty (30) days after the date of their receipt by the AGENCY."

(f) Restrictions Upon Use of Property

(i) Section 401 shall be amended by deleting subsection (b) and inserting in lieu thereof the following:

"(b) Not discriminate upon the basis of race, color, religion, sex or national origin in the sale, lease, or rental or in the use or occupancy of the Property or any improvements erected or to be erected thereon, or any part thereof."

(ii) Section 402 is modified by inserting on line 4, after "covenants running with the land", the phrase "and equitable servitudes thereon,".

(iii) Section 402 is further modified by inserting on line 16, after "or any part thereof or any interest therein" the phrase "any subcontracting party or parties or other transferees under this Agreement,".

(g) Representations as to Redevelopment

Subdivision (b) of Section 501 is amended by deleting the words "Federal and".

(h) Resale of Reacquired Property;  
Disposition of Proceeds

In subdivision (a) of Section 75, delete "City assessing official" and insert in lieu thereof the phrase "appropriate local assessing authorities".

(i) Amendment of Part II, Section 601

Section 601 is amended by deleting the last portion of the first sentence beginning at ", except for the purposes..." to the end of the sentence and substitute therefore the following:

"unless the encumbrance or lien shall meet the criteria set forth in Section 6.01 of the Ground Lease attached hereto as Exhibit "A".

SEC. 10. BANK OF AMERICA OPTION AGREEMENT

REDEVELOPER expressly undertakes and agrees to perform the remaining obligations, if any, of AGENCY under that certain Purchase and Sale Agreement and Option Agreement by and between the AGENCY and Bank of America, National Trust and Savings Association, a national banking association, dated June 29, 1983, a copy of which is attached hereto and incorporated herein as Exhibit "D".

SEC. 11. ENTIRE AGREEMENT

This Agreement, including its exhibits, constitutes the entire understanding and agreement of the parties. This Agreement supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. The respective parties shall have no further or additional obligations other than those which are expressly contained within the pages of this Agreement.

SEC. 12. INSPECTION OF BOOKS AND RECORDS

The AGENCY has the right at all reasonable times to inspect the books and records of the REDEVELOPER pertaining to the Property as pertinent to the purposes of this Agreement. The REDEVELOPER also has the right at all reasonable times to inspect the books and records of the AGENCY pertinent to the purposes of this Agreement.

SEC. 13. APPLICABLE LAW

This Agreement shall be interpreted pursuant to the law of the State of California.

SEC. 14. POSSESSORY INTEREST TAXATION

This Agreement may be deemed to create a possessory interest which may be subject to taxation pursuant to California Revenue and Taxation Code section 107 et seq. and the party in whom the possessory interest is vested may be subject to the payment of property taxes levied on such interest. REDEVELOPER acknowledges and agrees that the provisions of this Section 14 comply with the requirements of Revenue and Taxation Code section 107.6.

SEC 15. AGENCY INTENDED THIRD PARTY BENEFICIARY

In consideration of and as an inducement for AGENCY's execution of this Agreement, REDEVELOPER expressly declares that AGENCY is an intended third party beneficiary of each and every promise, covenant, obligation and undertaking of REDEVELOPER pursuant that certain commitment for construction and permanent financing issued by MeraBank, a federal savings bank, and Citicorp Real Estate, Inc., a Delaware corporation, dated September 16, 1986 and all loan documents now or hereafter executed by REDEVELOPER pursuant to and/or relating thereto, and that AGENCY shall be empowered and entitled to enforce each and every such promise, covenant, obligation and undertaking against REDEVELOPER without any consent, joinder and/or other cooperation of other parties thereto. Any default by REDEVELOPER as to any such promise, covenant, obligation and undertaking shall constitute an event of default under this Agreement.

SEC. 16. EXECUTION BY REDEVELOPER

This Agreement shall be executed by the REDEVELOPER prior to the date set for public hearing on the Agreement. Failure to comply with this provision shall, at the option of the AGENCY, render this Agreement null and void and neither party shall have any further rights each against the other by reason of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Disposition and Development Agreement. This Agreement shall be effective as of the date first above written.

AGENCY:

REDEVELOPMENT AGENCY OF THE  
CITY OF SACRAMENTO

BY \_\_\_\_\_  
Chairman

BY \_\_\_\_\_  
Secretary

APPROVED AS TO FORM:

LAW OFFICES OF BRENTON A. BLEIER  
A Professional Corporation

\_\_\_\_\_  
BRENTON A. BLEIER

REDEVELOPER:

JB AND LE REGENCY VENTURE  
A California Limited Partnership

By: KINGS CAPITOL REGENCY, INC.,  
A California Corporation,  
Its General Partner

By: \_\_\_\_\_  
JOSEPH BENVENUTI  
President

By: \_\_\_\_\_  
GREGG P. LUKENBILL  
Vice President

DISPOSITION AND DEVELOPMENT AGREEMENT

APPROVED AS TO FORM:

HYDE, MILLER & SAVAGE  
Attorneys at Law

RICHARD H. HYDE

INDEX TO EXHIBITS

Exhibit "A"	Ground Lease
Exhibit "B"	Western Title Insurance Policy No. 0903
Exhibit "C"	Scope of Development
Exhibit "D"	Bank of America Option Dated June 29, 1983
Exhibit "E"	Schedule of Performances
Exhibit "F"	<u>Public Garage Purchase and Sale Agreement</u>

PART II

RED LINE VERSION

NOTE: THE UNDERLINED MATERIAL HAS BEEN ADDED  
SINCE THE AUGUST 28, 1986 REVISION, WHICH WAS  
POSTED FOR PUBLIC COMMENT. DELETIONS FROM THAT  
REVISION ARE REPRESENTED BY THE CARET ("^").

GROUND LEASE

By and Between

REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

A Public Body, Corporate and Politic

and

JB AND LE REGENCY VENTURE

A California Limited Partnership

Dated As Of October \_\_, 1986



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PREAMBLE AND PREMISES

WHEREAS, a Redevelopment Plan (which, together with all modifications thereof made after the date of the Lease in accordance with applicable law, is hereinafter referred to as the "Redevelopment Plan"), for the Uptown Development Project, Project No. 8 (hereinafter referred to as the "Project"), has been approved by the City Council of the City of Sacramento by Ordinance No. 3146, Fourth Series, on July 20, 1972, as amended of record, which Redevelopment Plan is recorded in the office of the County Recorder of the County of Sacramento (hereinafter referred to as the "Recorder"), in Book 79-09-21 of Official Records, beginning at page 1507; and

WHEREAS, the Redevelopment Agency of the City of Sacramento is owner and holder of record of fee simple title to certain real property located in the Project Area; and

WHEREAS, pursuant to the Redevelopment Plan and Part I (commencing with Section 33000) of Division 24 of the Health and Safety Code of the State of California (hereinafter called the "Community Redevelopment Law"), the Redevelopment Agency of the City of Sacramento is authorized to lease individual portions of land in the Project Areas;

NOW, THEREFORE, as of this \_\_\_\_ day of OCTOBER, 1986, the REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO, a public body, corporate and politic (hereinafter referred to as the "Lessor"), acting herein pursuant to the above-mentioned, Community Redevelopment Law, hereby leases to JB AND LE REGENCY VENTURE, a California limited partnership, (hereinafter referred to as the "Lessee") the land and premises (hereinafter referred to as the "premises") described as follows:

All that land situated in the State of California, County of Sacramento, City of Sacramento, described as follows:

All that certain real property lying within the block bounded by 12th, 13th, "K", and "L" Streets of the City of Sacramento, according to the official plat thereof,

Excepting therefrom all that portion of Lot 10 in said block described as follows:

Beginning at the point of intersection of the East line of said 12th Street with the North line of said "L" Street, said point being the Southeast corner of said

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Lot 10; thence from said point beginning, along the east line of said 12th Street, Northerly 79.50 feet; thence along a line parallel with and 79.50 feet Northerly from the North line of said "L" Street Easterly 42.00 feet; thence along a line parallel with and 42.00 Easterly from the East line of said 12th Street Southerly 79.50 feet to the North line of said "L" Street; thence along the North line of said "L" Street Westerly 42.00 feet to the point of beginning, (henceinafter referred to as the "Premises"); and subject to:

1. Easement for electrical facilities and appurtenances thereto granted to Great Western Power Company of California, a corporation, recorded July 25, 1924, Book 688 of deeds, page 214, which affects the East 3.00 feet of the West 51.00 feet of the North 48.50 feet of the Lot 10 in said block.

2. Easement for electrical facilities and appurtenances thereto granted to Great Western Power Company of California, a corporation, recorded July 25, 1924, Book 688 of deed, page 215, which affects the East 3 feet of the West 48.72 feet of the North 33.04 feet of the South 112.54 feet of Lot 10 in said block.

3. Easement for electrical facilities and appurtenances thereto granted to Great Western Power Company of California, a corporation, recorded September 3, 1930, Book 321, Official Records, page 165 which affects a portion of the West 51 feet of the North 35.00 feet of Lot 10 in said block.

4. The effect of the document entitled, "Property Rehabilitation Standards for Satisfactory Rehabilitation of Properties", dated March 28, 1968, recorded January 31, 1969, in Book 690131 of Official Records, page 328, and Amendments or Revisions thereto which were recorded June 10, 1971, in Book 710610 of Official Records, page 232; recorded February 15, 1973, in Book 730215 of Official Records, page 394; and recorded August 23, 1978, in Book 780823 of Official Records, page 1222.

5. The terms, provisions and conditions contained in Sacramento City Ordinance No. 2820, Fourth Series, as disclosed by that certain instrument recorded August 5, 1969, in Book 690805, Official Records, page 571, which affects the portion of the premises adjoining "K" Street.

6. The effect of the Redevelopment Plan for the

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Central City Development Project, a certified copy of which was recorded, September 21, 1979, in Book 790921 of Official Records, page 1507 and Amendments or Revisions thereto recorded August 13, 1980, in Book 800813 of Official Records, page 1256.

7. Easements, terms, and provisions contained in Easement And Use Agreement between Kimmel Properties, a California general partnership, and The Northwestern Mutual Life Insurance Company, a Wisconsin corporation, dated March 3, 1980, recorded March 4, 1980, in Book 800304, Official Records, page 366, which affects Lots 1, 6, 7, 8 and 9 in said block.

8. The effect of the document entitled "Description of Land Within Redevelopment Project Area Of The Capitol Area Development Authority", recorded September 12, 1980, in book 800912 of Official Records, Page 1586, and re-recorded October 31, 1980, in Book 801031 of Official Records, page 1065.

9. An easement for public utilities to be recorded in Official Records, in a form subject to the reasonable approval of REDEVELOPER upon fifteen (15) days prior notice, which shall affect a five (5) foot area along the entire north side of APN parcel number 06-112-17; and

## ARTICLE I. TERM OF LEASE

### Fixed Term

Section 1.01. The term hereof shall commence upon the execution hereof and end December 31, 2041, unless sooner terminated as herein provided.

### Option Terms

Section 1.02. Lessee shall have the option to extend the fixed term hereof by two (2) additional terms of ten (10) years each (hereinafter "the option terms") on the following basis:

(A) the first option term commencing January 1, 2042 and ending December 31, 2051, provided that Lessee shall have given Lessor written notice of its election to extend the term of the Lease for the first option term within the twelve (12) month period preceding December 31, 2040; and

(B) the second option term commencing January

## GROUND LEASE

1, 2052 and ending December 31, 2061, provided that Lessee shall have given Lessor written notice of its election to extend the term of the Lease for the second option term within the twelve (12) month period preceding December 31, 2050.

## ARTICLE 2. RENT

### Basic Rent

Section 2.01. Lessee agrees to pay the Lessor in equal quarterly installments on the twentieth (20th) day of January, April, July and October of each year beginning upon the first such quarterly day for the then previous quarter following the inception of operation of the Hotel upon the premises as set forth in Article 3 hereof, annual basic guaranteed rent for the use and occupancy of said premises in the GREATER of the following amounts:

(A) For the partial operational year preceding the first operational year, if any, and the first through the tenth operational year, an amount equal to two (2) percent of Total Gross Revenues From Hotel Operations; and/or

(B) For the eleventh operational year and each year thereafter for the remainder of the Lease term, an amount equal to three (3) percent of Total Gross Revenues From Hotel Operations; and/or

(C) Two Hundred Fifty Thousand Dollars (\$250,000.00) per annum or Sixty Two Thousand Dollars (\$62,500.00) per quarter.

The amounts paid pursuant to subsections (A) or (B) hereof (1) shall be based upon an estimate made by Lessee's independent certified public accountant, but the estimate shall be not less than the previous year's Basic Rent and (2) shall be adjusted in accordance with the results of an audit conducted by an independent certified public accountant within one hundred five (105) days after the end of each calendar year.

### Operational Year

Section 2.02. As used in Section 2.01 hereof the term "operational year" shall be defined to mean an annual period beginning upon the first of January of the year following the inception of operation of the hotel or its anniversary as appropriate and ending upon the thirty first of the following December.

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Revenue From Hotel Operations

Section 2.03. As utilized in Section 2.01 hereof, the phrase "Total Gross Revenues From Hotel Operations" shall be:

"Gross receipts" as defined by Section 5.03 or such successor section of the management agreement between Lessee and the hotel operator as may define the basis upon which management fees and incentives are calculated for the Hotel Operator, but excluding parking revenues and retail commercial leasehold revenues.

Interest on Unpaid Sums

Section 2.04. Each unpaid quarterly installment or portions thereof of amounts due to Lessor pursuant to Articles 2 and 13 hereof shall bear interest if not promptly paid on the date it becomes due at the rate set forth in the following schedule for the appropriate period until it is paid by Lessee to Lessor:

(A) for first through the fourth operational years: no interest;

(B) for the fifth operational year and thereafter: the prime rate; and

(C) notwithstanding the foregoing; for any operational year or portion thereof following the purchase of the premises by Lessee pursuant to Sections 12.12, et seq.: one percent (1%) above the prime rate.

Place for Payment of Rent

Section 2.05. All rent that becomes due and payable under this Lease shall be paid to Lessor at the office of Lessor at 630 "I" Street, Sacramento, California or such other place or places as Lessor may from time to time designate by written notice given to Lessee.

Alternative Use Rent

Section 2.06. The rent payable under this Lease shall, as to any other usage of the premises other than a first-class convention hotel, ancillary first floor commercial space defined by Section 3.08, infra, and related parking structure, be calculated pursuant to this Section.

(A) In the event that, pursuant to the restrictions upon use of the premises set forth in Section 3.02 below, Lessee shall utilize the premises for any other lawful use other than or in addition to

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that of a first-class convention hotel, ancillary first floor commercial space defined by Section 3.08, infra, and related parking structure, then, in lieu of the basic rent calculated pursuant to Section 2.01 above, Lessee shall pay to Lessor, in quarterly installments, the fair market rental of the premises beginning as of the date of the changed use.

(B) Said fair market rental shall be established by an independent fee appraiser selected by Lessor within the notice of change of use (hereinafter "the Lessor's appraiser"), in accordance with generally accepted real property appraisal standards. Said rental shall be that which would be negotiated by private parties under no compulsion so to do as of the date of the change of use.

(C) If Lessee should be dissatisfied with the fair market rental established by Lessor's appraiser, Lessee may within thirty (30) days after the receipt of the report of Lessor's appraiser, designate its own appraiser (hereinafter "the Lessee's appraiser") who shall, in turn, render the report and option of fair market rental within ninety (90) days after receipt of the report of Lessor's appraiser.

(D) In the event, the opinions of Lessor's and Lessee's appraiser shall disagree, Lessee shall within thirty (30) days thereafter, (1) accept the greater of the appraisers as the fair market rental or (2) retain a third appraiser, chosen jointly by Lessee's and Lessor's appraisers, or, in the event they are unable to agree, by the local chapter of the Appraisal Institute, who shall be required to choose one or the other of the prior opinions as the fair market rental of the premises within thirty (30) days after his selection.

(E) Lessee shall bear all costs related to the appraisal process set forth in subsections (B), (C) and (D) above.

(F) Lessor shall initiate the provisions of this Section, by giving written notice to Lessee of its intention so to do and including within said notice, the change of use involved and the name of the appraiser selected by Lessor.

(G) For purposes of this section, a termination or assignment of the Management Agreement with Hyatt Corporation without the prior written approval of Lessor shall raise a presumption affecting

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the burden of proof of a change of use which may be rebutted by Lessee by evidence that the use of the premises is of the same nature, extent and quality as that specified by Hyatt Corporation pursuant to the Management Agreement executed concurrently herewith.

(H) On the third anniversary of the change of use and establishment of alternative use rent pursuant to this section, and every three (3) years thereafter for the balance of the term of the Lease, the fair market rental shall be adjusted by agreement of the parties to reflect the then current fair market rental. If the parties should be unable to agree upon such fair market rent, it shall be established pursuant to the procedure set forth in subsections (B), (C) and (D) above and the procedure shall be initiated by written notice from Lessor, designated Lessor's appraiser, not more than ninety (90) days in advance of the aforesaid anniversary. All costs and expenses of the reappraisal process shall be borne equally by Lessee and Lessor.

Payment of Cumulative Rents

Section 2.07. The cash-flow priority of rent payments hereunder shall be as follows:

(A) Rent payments hereunder shall have priority as against any and all other obligations of Lessee, save and except the following items which shall have priority over rent payments hereunder:

(1) debt service payments on a loan meeting the criteria of Section 6.01 below (hereunder "Section 6.01 debt service");

(2) operating expenses payable to third parties;

(3) the basic management fee of the Hotel Operator;

(4) reserves required by the Lender or Hotel Operator by the Lessee's independent certified public accountant applying generally accepted accounting principles; and

(5) a fifteen percent (15%) non-cumulative return on equity.

(B) In the event, that revenues of Lessee are insufficient <sup>^</sup> in any year to make a full basic rent payment required by Section 2.01 above, any such unpaid



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sums shall be cumulated and paid, together with interest required by Section 2.04 above from future years' revenues, as available after payment of Section 6.01 debt service, operating expenses payable to third parties, the basic management fee of the Hotel Operator, reserves required by the Lender or Hotel Operator by the Lessee's independent certified public accountant applying generally accepted accounting principles, and after allowance for or payment of a cumulative return of fifteen percent (15%) on equity as defined above, and in any event upon non-qualified sale or non-qualified refinance as defined in Section 14.16 and 14.15 respectively below.

(C) In any calculation of priority of rent payments pursuant to this Section for a period after the Lender of Section 6.01 debt has succeeded to the interest of Lessee, "Section 6.01 debt service" shall be deemed to mean the sum of all required payments of principal and interest under the Section 6.01 debt in last full operational year preceding the date of the Lender's succession to the interest of Lessee (hereinafter "imputed debt service").

### Public Parking Assurance Rent

Section 2.08. In consideration of the assurance of public parking and other amenities constructed by Lessor upon the premises, Lessee shall pay annually to Lessor as additional rent hereunder a public parking assurance payment ("PPA payment") in the amount of Three Hundred Twenty Thousand Dollars (\$320,000) per annum, beginning on the first day of the sixth (6th) operational year of the Hotel and annually thereafter to and including the earlier of: (1) the first day of the thirty-sixth (36th) operational year of the Hotel or (2) the permanent closure of the parking structure to public parking availability. The PPA payments, which shall be deemed to be additional basic ground rent for purposes of relative priority with other payments by the REDEVELOPER, shall be paid to the extent available, from Lessee's pre-tax cash flow after payment of basic rent hereunder pursuant to Section 2.01, supra, debt service on an instrument meeting the criteria of Section 6.01, infra (including without limitation imputed debt service calculated pursuant to Section 2.07(C), supra), operating expenses payable to third parties, the basic management fee of the Hotel Operator, reserves required by the Lender or Hotel Operator by the Lessee's independent certified public accountant applying generally accepted accounting principles, debt service on operating deficit loans, if any, as defined in Section 14.18, infra, and after allowance for a fifteen percent (15%) return on equity, as that term is defined in Section 14.18, infra. To the extent that available cash

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flow is not sufficient to pay the foregoing items and the PPA payment, said PPA payment or portion thereof shall be cumulated and paid together with interest calculated pursuant to Section 2.04, supra, from the next available cash flow, after payment of all curet payents then due, Section 2.07(B) deferred payments, and, in any event, upon the non-qualifying sale or non-qualifying refinance of the Hotel premises.

### In Lieu of Tax Payment

Section 2.09. The parties hereto have entered into this Lease with the expectation that the Lessee's interest hereunder, including all of Lessee's improvements, will continue to be subject to property taxation on the currently applicable basis, which will indirectly accrue to the benefit of Lessor. Accordingly, Lessee shall pay annually to Lessor at the close of each operational year, as additional rent under this Lease, an In Lieu of Tax Payment equal to the difference between the actual property taxes paid by Lessee, if any, and the lesser of:

(A) One percent (1%) of the fair market value of the Lessee's interest;

(B) One percent (1%) of the last known assessed valuation (at one hundred percent (100%) of fair market value) of Lessee's interest for property taxation purposes, as increased by two percent (2%) (compounded) for each year thereafter; or

(C) One percent (1%) of the last arms-length, third-party, total sale price of Lessee's interest, as increased by two percent (2%) (compounded) for each year thereafter.

Within sixty (60) days of the close of each operational year, Lessee shall submit its calculation of the In Lieu of Tax Payment under each of the foregoing three tests. If Lessor shall dispute the determination under Alternative (C) above, Lessor may designate a national, independent Certified Public Accounting firm to verify the calculation of the nature and/or amount of the sale price determination at Lessee's sole cost and expense. If Lessor shall dispute the determination of Lessee under Alternative (A) above, Lessor may designate an independent fee appraiser to determine the fair market value of Lessee's interest. The cost of said appraisal shall be borne two-thirds (2/3) by Lessor and one-third by Lessee.

### ARTICLE 3. USE OF PREMISES

#### Principal Use

Section 3.01. It is expressly understood and agreed that Lessee is leasing said premises as vacant and unimproved land with the express agreement and obligation to develop said premises by constructing, maintaining and operating thereon a major, first-class, convention hotel ("hotel"), ancillary first floor commercial space defined by Section 3.08, infra, and related parking structure ("parking structure") in strict accordance with the provisions of that certain Disposition and Development Agreement as amended and restated by the parties hereto on June 10, 1986. Said agreement being hereby incorporated within this Lease by reference as fully as if set forth herein.

#### Only Lawful Uses Permitted

Section 3.02. Lessee shall not use or permit said premises or any portion of said premises to be improved, developed, used, or occupied in any manner or for any purpose that is in any way in violation or contravention of the aforesaid Disposition and Development Agreement, any valid law, ordinance, or regulation of any federal, state, county or local governmental agency, body or entity, nor shall the premises or any portion of said premises be used for any, use or occupancy other than as a major first-class convention hotel, ancillary first floor commercial space defined by Section 3.08, infra, and related parking structure prior to the earlier of:

(A) the purchase of the premises hereof by Lessee pursuant to Sections 12.11, et seq., below; or

(B) the end of the tenth (10th) operational year of the Hotel as defined in Section 2.02 above.

Furthermore, Lessee shall not maintain, commit, or permit the maintenance or commission of any nuisance as now or hereafter defined by any statutory or decisional law applicable to said premises on said premises or any party of said premises.

#### Express Reliance Upon Management Agreement

Section 3.03. Lessor hereby expressly declares that it enters this Lease in reliance upon that certain Management Agreement ("the Management Agreement") by and between Lessee and Hyatt Corporation ("Hyatt") and that but for Hyatt's operation of the hotel, Lessor would not have entered into this Lease. Lessee warrants, declares and represents that a primary

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purpose and intention of its execution of the Management Agreement with Hyatt was the inducement of Lessor to enter into the Disposition and Development Agreement and this Lease and that further, Lessor is an intended third party beneficiary of the Management Agreement and is entitled to enforce and fulfill, at its option, any and all provisions thereof to as full and complete an extent as the parties thereto. Lessor's rights under this section shall be subject to the terms, provisions and conditions of that certain Non-Disturbance and Attornment Agreement by and between Lessor and Hyatt dated as of September 16, 1986.

Conditions Precedent and Satisfied

Section 3.04. Lessee expressly warrants, declares and represents that any and all conditions precedent to the obligation of Hyatt under the Management Agreement have been fulfilled, satisfied and discharged prior to the execution hereof, except the obligation of Lessee to construct the Hotel and fund the purchase of furnishings, fixtures and equipment in accordance with the approved plans and specifications. Lessee further expressly warrants, declares and represents that Lessee is not in default under the Management Agreement as of the date of execution hereof.

Right to Cure

Section 3.05. Any breach of the Management Agreement shall be subject to the provisions of this Section.

(A) Any breach of the Management Agreement by the Lessee, declared as such by the Operator, if not remedied during the relevant cure period, shall be and is a breach hereof.

(B) In the event of a breach of the Management Agreement by the Operator which is not so declared by the Lessee, the Lessor may, but shall not be obligated to do so, upon not less than fifteen (15) days prior notice to Lessee, undertake to declare, enforce and/or fulfill any such provisions of the Management Agreement pursuant to its rights under Section 3.03 above, provided that the failure of the Lessee to declare the breach of the Operator shall not, of itself, constitute a breach hereof.

(C) In the event of a breach of the Management Agreement by the Operator which is so declared by the Lessee, the Lessor shall not be entitled to pursue any remedy available to it pursuant to section 3.03 above unless and until the relevant cure period shall have expired.

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(D) In the event of a breach of the Management Agreement by the Lessee which is so declared by the Operator, the Lessee expressly delegates, assigns and grants to Lessor the right to cure any such default by Lessee and to subsequently recover the cost thereof from the Lessee, if the breach shall not have been remedied by the Lessee at least fifteen (15) days prior to the expiration of the relevant cure period.

(E) In the event of a breach of the Management Agreement by the Lessee which is not so declared by the Operator the Lessor may, but shall not be obligated to do so, undertake to declare, enforce and/or fulfill any such provisions of the Management Agreement pursuant to its rights under Section 3.03 above.

(F) Lender of Section 6.01 debt may have a prior collateral assignment of the Management Agreement.

### Timely Completion of Improvements

Section 3.06. The timely completion of the improvements upon the premises as set forth in detail in the above mentioned Disposition and Development Agreement is of the essence to this Lease. Any breach by Lessee of any term, condition, or covenant of the aforesaid Disposition and Development Agreement shall be a breach hereof.

### Possible Future Expansion

Section 3.07. It is expressly understood and agreed that Lessee, in leasing said premises, has expressed the intention that it may develop said premises in addition to the improvements required by the Disposition and Development Agreement, either alone or in addition to the hotel of not to exceed one hundred sixty (160) additional rooms upon the premises covered by this Lease. Lessee acknowledges that Lessor's recognition of Lessee's intention in this regard in no way operates to mitigate or discharge to any degree whatsoever Lessee's obligation to comply with all appropriate governmental review procedures for such additions by any governmental entity having jurisdiction, including without limitation the City of Sacramento. This recitation of Lessee's intent is not intended to estop or circumscribe in any way the discretion of any such governmental entity in the conduct of any such governmental review or approval.

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### Use of Leasehold Space

Section 3.08. All of the space designed and developed for leased usage upon the ground floor of the Hotel premises along K Street, from immediately adjacent to the Ballroom on the East to 12th Street on the West, and along 12th Street from K Street on the North to the Francesca Apartments on the South shall, at all times during the term of this Lease, be reserved exclusively for commercial retail usage.

## ARTICLE 4. TAXES AND UTILITIES

### Lessee to Pay Taxes

Section 4.01. In addition to the rents required to be paid under this Lease, Lessee shall pay and Lessee hereby agrees to pay, and all taxes, assessments, or other charges of any description levied or assessed during the term hereof by any governmental agency or entity on or against said premises, any portion of said premises, any interest in said premises, or any improvements or other property in or on said premises. No taxes shall be paid by Lessee which have been levied upon Lessor's interest in the land.

### Proration of First and Last Year Taxes

Section 4.02. Notwithstanding the provisions of Section 4.01 hereof, all taxes or assessments levied or assessed on or against said premises during the tax years in which the term hereof is to commence and the term hereof is to end shall be prorated between Lessor and Lessee as of 12.01 a.m., on the date the term hereof is to commence and on the date the term hereof is to end respectively on the basis of tax years that commence on July 1, and end on June 30 of each year.

Lessor shall pay the taxes, if any, for the year in which this Lease is to commence and Lessee shall promptly on service of written request by Lessor reimburse Lessor for Lessee's share of such taxes. Lessee shall pay the taxes for the year in which the Lease is to end; and Lessor shall promptly, on service of written request by Lessee, reimburse Lessee for its share, if any, of such taxes.

### Payment Before Delinquency

Section 4.03. Any and all taxes and assessments and installments of taxes and assessments required to be paid by Lessee under this Lease shall be paid by Lessee at least ten (10) days before such tax, assessment, or installment of tax or assessment becomes delinquent and the official and original

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receipt for the payment of such tax, assessment, or installment shall immediately be given to Lessor.

### Contest of Tax

Section 4.04. Lessee shall have the right to contest, oppose, or subject to the amount or validity of any tax, assessment, or other charge levied on or assessed against said premises or any part of said premises; provided, however, that the contest, opposition or objection must be filed before the tax, assessment, or other charge at which it is directed become delinquent and written notice of the contest, opposition, or objection must be given to Lessor at least ten (10) days before the date the tax, assessment, or other charge becomes delinquent. Lessor shall, on written request of Lessee, join in any such contest, opposition, or objection if Lessee determines that such joinder is necessary or convenient or the proper prosecution of the proceedings but Lessor shall not be liable for any costs or expenses incurred or awarded in the proceeding. Furthermore, no such contest opposition, or objection shall be continued or maintained after the date the tax, assessment or other charge at which it is directed becomes delinquent unless Lessee has either:

(A) paid such tax, assessment, or other charge under protest prior to its becoming delinquent; or

(B) obtained and maintained a stay of all proceedings for enforcement and collection of the tax, assessment, or other charge by posting such bond or other matter required by law for such a stay; or

(C) delivered to Lessor a good and sufficient undertaking in an amount specified by Lessor and insured by a bond corporation authorized to issue undertakings in California conditioned on the payment by Lessee of the tax, assessment, or other charge together with any fines, interest, penalties, costs, and expenses that may have accrued or been imposed thereon within thirty (30) days after final determination of Lessee's contest, opposition, or objection to such tax, assessment, or other charge.

### Tax Returns and Statements

Section 4.05. The Lessee shall, as between Lessor and Lessee, have the duty of attending to, preparing, making, and filing any statement, return, report, or other instrument required or permitted by law in connection with the determination, equalization, reduction, or payment of any taxes, assessments, or other charges that are or may be levied on or assessed against said premises, any portion of said

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premises, any interest in said premises, or any improvements or other property on said premises.

### Tax Hold Harmless Clause

Section 4.06. Lessee shall indemnify and hold Lessor and the property of Lessor, including said premises and any improvements now or hereafter on said premises free and harmless from any liability, loss or damage resulting from any taxes, assessments, or other charges required by this article to be paid by Lessee and from all interest, penalties, and other sums imposed thereon and from any sales or other proceedings to enforce collection of any such taxes, assessments, or other charges.

### Utilities

Section 4.07. Lessee shall pay or cause to be paid, and hold Lessor and the premises free and harmless from, all charges for the furnishing of, including initial installation of, gas, water, electricity, telephone service, and other public utilities to said premises during the term hereof and for the removal of garbage and rubbish from said premises during the term hereof.

### Payment by Lease

Section 4.08. Should Lessee fail to pay within the time specified within this article any taxes, assessments, or other charges required by this article to be paid by Lessee, Lessor may, without notice to or demand on Lessee, pay, discharge, or adjust such tax, assessment, or other charge for the benefit of Lessee. In such event, Lessee shall promptly on written demand of Lessor reimburse Lessor for the full amount paid by Lessor in paying, discharging, or adjusting such tax, assessment or other charge together with interest thereon at the prime rate from the date of payment by Lessor until the date of repayment by Lessee. Where no time within which any charge required by this article to be paid by Lessee is specified in this article, such charge must be paid by Lessee before it becomes delinquent.

### Possessory Interest Taxation

Section 4.09. This Lease creates a possessory interest which may be subject to taxation pursuant to California Revenue and Taxation Code section 107 et seq. and the party in whom the possessory interest is vested may be subject to the payment of property taxes levied on such interest. Lessee acknowledges and agrees that the provisions of this Section 4.09 comply with the requirements of Revenue and Taxation Code section 107.6.



ARTICLE 5. CONSTRUCTION BY LESSEE

Duty to Construct

Section 5.01. Lessee shall, at Lessee's sole cost and expense, construct or cause to be constructed on such premises a major, first-class convention hotel ("the hotel") and parking structure ("parking structure") in the manner and according to the terms specified in this article.

Lessor's Approval of Plans Required

Section 5.02. No structure or other improvement of any kind shall be erected or maintained on said premises unless and until the plans, specifications, and proposed location of such structure or improvement have been approved in writing by Lessor. No structure or other improvement shall be erected or maintained on said premises that does not comply with the plans, specifications, and locations approved in writing by Lessor. Furthermore no material addition to or material structural alteration of any structure now or hereafter on said premises shall be commenced until and unless plan and specifications for such addition or alteration shall be approved in writing by Lessor.

Preparation and Submission of Plans

Section 5.03. (a) The parties hereto declare and represent that Lessee has prepared and submitted to Lessor, as part of the selection procedure leading to the Disposition and Development Agreement, a set of preliminary drawings, specifications and elevations of the hotel. Lessor represents and declares and Lessee acknowledges that Lessor placed great emphasis upon said preliminary plans and elevations in the selection of Lessee as Lessee under this Lease. Lessee declares and represents that its sole purpose in submitting the aforementioned preliminary plans was to induce Lessor to grant this Lease to Lessee in reliance thereon.

(b) Lessee shall, at Lessee's own cost and expense, prepare complete final construction plans for the hotel and submit those plans to the Lessor, the Architectural Review Board of the City of Sacramento and the City of Sacramento Building Department. These plans shall include detailed working drawings, plans, and specifications for the building project. The plans shall be in substantial conformity with the preliminary plans approved by Lessor on June 18, 1985.

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Lessor's Approval of Plans - Time Limit

Section 5.04. Within thirty (30) days after receipt by Lessor of any of the documents submitted to Lessor for approval pursuant to Section 5.03 of this Lease, Lessor shall either approve such documents by endorsing Lessor's approval on each such documents and returning one set of the documents to Lessee, or Lessor shall give written notice to Lessee of any objections Lessor may have to such, documents. Within thirty (30) days after service on Lessee of written notice of Lessor's objections, Lessee may deliver corrective amendments to the documents to Lessor and Lessor shall within thirty (30) days after receiving the corrective amendments serve written notice on Lessee of Lessor's approval or rejection of the documents as so amended.

Changes in Plans

Section 5.05. Substantial changes in approved plans shall be made only in accordance with this Section.

(A) After approval by Lessor of the documents pertaining to said hotel mentioned in Section 5.03. of this Lease, any substantial changes in the plans or specifications for said building project must be approved by Lessor.

(B) For purposes of this subdivision, substantial changes shall include (but not necessarily be limited to) the following similarly important changes in the construction or in the approved construction plans:

(1) Change in size or design materially affecting bulk, building coverage or floor area ratio, or number of floors;

(2) Material changes affecting the size or design or use of exterior finishing materials noticeably affecting architectural appearance or functional use and operation of the improvements;

(3) Material changes in size or placement of service facilities or in the number of elevator, stairs and ramps; and changes in general pedestrian or vehicular circulation in, around or through the improvements;

(4) Any changes requiring approval of any City or State board, body, commission or

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officer, or any change required by any City or State board, body commission or officer;

(5) Material changes in number, size, placement, graphics, design, or materials of all exterior signs, if any shown in the construction plans, differing from those shown and specified in the approved construction plans;

(6) Material change in landscaping planting and side improvements; and

(7) Material changes in size or quality of exterior pavement, pedestrian malls, plazas, retaining walls, pools and fountains, exterior lighting and other site and entourage development of the premises other than that shown and specified in the approved construction plans.

(C) Changes in work or material not amounting to "substantial changes" need not be approved by Lessor but a copy of the altered plans and specifications reflecting such minor changes must be given to Lessor.

No Construction Before Notice - Notice of Nonresponsibility

Section 5.06. No work of any kind shall be commenced on and no building or other material shall be delivered for said building project, nor shall any other building or land development work be commenced or building material be delivered on said premise, apart from work and/or materials expressly authorized by that certain Agreement and Authorization to Enter Upon Land by and between Lessor and Lessee dated September 16, 1986, until at least ten (10) days after written notice has been given by Lessee to Lessor of the commencement of such work or the delivery of such materials. Lessor shall, at any and all times during the term of this Lease have the right to post and maintain on said premises and to record as require by law any notice or notices of nonresponsibility provided for by the Mechanic's Lien laws of the State of California. The work prohibited by this section until ten (10) days written notice thereof has been given to Lessor includes as well as actual construction work, any site preparation work, installation of utilities, street construction or improvement work or any grading or filling of said premises.

All Work On Written Contract

Section 5.07. All work required in the construction of said building project, including any site preparation work,

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landscaping work, utility installation work as well as actual construction work on said building project, shall be performed only by competent contractors duly licensed as such under the laws of the State of California and shall be performed pursuant to written contracts with such contractors.

(A) Each such contract shall provide that the final payment under the contract due to the contractor shall be an amount equalling at least ten (10) percent of the full amount payable under the contract, or such lesser security as Lessor may, in its sole discretion approve, and shall not be paid to the contractor until, whichever last occurs, either:

(1) The expiration of thirty-five (35) days from the date of recording by Lessee as owner of a notice of completion of said building project, Lessee agreeing to record such notice of completion promptly within the time specified by law for the recording of such notice; or

(2) The settlement and discharge of all liens of record claimed by persons who supplied either labor or materials for the construction of said building project.

(B) Notwithstanding the provisions of subsection (A) above, the amount withheld from any contractor pursuant thereof may be paid to said contractor prior to the expiration of the period specified in subsection (A)(1) above where the Lessee represent, warrants and declares in writing to Lessor that:

(1) Lessee has undertaken such investigation as it finds necessary and has determined that all persons, who could claim a lien by reason of having furnished labor or materials for the construction of the improvements, have been paid;

(2) Such persons, having been paid, have no basis to claim a lien against the premises; and

(3) Notwithstanding the provisions of Section 3(e) and 3(g) of the Disposition and Development Agreement and Section 11.02 below to the contrary, and in addition to the damages set forth therein, Lessee does agree to indemnify Lessor for any loss which Lessor may

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suffer by reason of any such claim of lien up to the amount of such payment of withheld funds by Lessee or its agents.

Performance and Lien Bonds

Section 5.08. Each contractor engaged by Lessee to perform any services in or about the construction of said building project, including any construction, site preparation, utility installation, landscaping, or parking construction services, shall furnish to Lessee, who shall deliver copies thereof to Lessor, at his own expense at the time of entering a contract with Lessee for such services:

(1) A bond issued by a corporate surety authorized to issue surety insurance in California in an amount equal to one hundred (100) percent of the contract price payable under the contract, or such lesser security as the Agency may, in its sole discretion approve, securing the faithful performance by the contractor of his contract with Lessee; and

(2) A bond issued by a corporate surety authorized to issue surety insurance in California in an amount equal to one hundred (100) percent of the contract price payable under the contract, or such lesser security as the Agency may, in its sole discretion approve, securing the payment of all claims for the performance of labor or services on, or the furnishing of materials for, the performance of the contract.

In lieu of the foregoing, Lessee may designate Lessor as a co-beneficiary with the construction lender of such other forms of security securing performance and payment of contract amounts as may be acceptable to the construction lender provided that:

(1) In the event that the proceeds of any such security are not applied to the construction of the improvements, Lessor shall have priority, as against the construction lender or any other entity, as to that portion of such security as shall be derived when the amount of such security is multiplied by a fraction, the numerator of which is the difference between the total costs of all improvements and the amounts of the indebtedness of Lessee to the construction lender and the denominator of which is the total cost of all improvements; or

(2) Lessor may, in its sole and complete discretion, approve some lesser security which may

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include the full and unconditional guarantee in writing by the General Contractor's parent corporation, provided that (1) Lessor has received the guarantee in a form and substance satisfactory to Lessor and current financial statements of such parent corporation indicating to Lessor's satisfaction that the parent corporation is financially able to satisfy its obligations under the guarantee, and (2) Lessor shall also receive in form and substance satisfactory to Lessor the full and unconditional guarantees of the general partner of the Lessee and the principals of the general partner of the Lessee who are guarantors of the construction loan.

### Compliance With Law and Quality

Section 5.09. Said building project shall be constructed, and all work performed on said premises and all buildings or other improvements erected on said premises shall be in accordance with all laws, ordinances, regulations, and orders of all federal, state, county, or local governmental agencies or entities having jurisdiction over said premises; provided, however, that any structures or other improvement erected on said premises, including said building project shall be deemed to have been constructed in full compliance with all such laws, ordinances, regulations, and orders when a final valid Certificate of Occupancy entitling Lessee and tenants of Lessee to occupancy and use of the structure or other improvement has been duly issued by proper governmental agencies or entities. All work performed on said premises pursuant to this Lease or to the Disposition and Development Agreement, or all authorized by this Lease or Disposition and Development Agreement, shall be done in good workmanlike manner and only with new materials of good quality and high standard.

### No Discrimination

Section 5.10. The Lessee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, and this Lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall the Lessee himself nor any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or venders in the land herein

leased.

Time For Completion, Enforced Delay

Section 5.11. Lessee shall cause construction of said building project to be commenced no later than November 16, 1986, shall cause construction of said building project to therefore be diligently pursued without unnecessary interruption, and shall cause said building project to be completed and ready for occupancy not later than October 16, 1988. Should Lessee fail to commence the construction of said building project on or before the date specified in this section, or should Lessee abandon or substantially suspend construction work or should Lessee default in or violate its obligations with respect to the construction of said building project in any other fashion under this article, Lessor may, by giving three (3) months written notice to Lessee, terminate this Lease, or in the sole and complete discretion of Lessor, charge the sum of Eight Hundred Thirty Five Dollars (\$835.00) per day for each such day of delay, including the period of notice set forth above, as additional rent under this Lease.

Should the Lessee fail to complete construction of said building project on or before the date specified in this section, Lessor may, by giving at least six (6) months written notice to Lessee, terminate this Lease or charge the sum of Eight Hundred Thirty Five Dollars (\$835.00) per day for each such day of delay, including the period of notice set forth above, as additional rent under this Lease.

In the calculation of any delay in the commencement or completion of said building project under this section, Lessee shall be excused for any enforced delays in commencement of construction, construction, or completion of construction, caused by unforeseeable causes beyond its control and without its fault or negligence, including without limitation the act of Lessor, the act of any agent of Lessor, the act of any public enemy, acts of God, the elements (to the extent that such delays are attributable to elements not reasonably anticipated to occur within the period of construction), war, war defense conditions, litigation, strikes, walk-outs, shortage of construction materials or other similar causes beyond Lessee's control and Lessee's reasonable anticipation provided that Lessee shall, have used reasonable diligence to avoid any such delay and to resume construction as promptly as possible after any such delay, and provided further that Lessee shall, within (15) days after the beginning of any such enforced delay, have first notified the Lessor thereof in writing, and of the cause or causes thereof, and requested an extension for the period of the enforced delay.

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### Mechanic's Liens

Section 5.12. At all times during the term of this Lease, Lessee shall keep said premises and all building and improvements now or hereafter located on said premises free and clear of all liens and claims of liens for labor, services, materials, supplies, or equipment performed on or furnished of said premises. Should Lessee fail to pay and discharge, or cause said premises to be released from, or bond (in amount equal to one and one-half times the amount of the lien or claim) and such lien or claim of lien within thirty (30) days after service on Lessee of written request from Lessor to do so, Lessor may pay, adjust, compromise, and discharge any such lien or claim of lien on such terms and manner as Lessor may deem appropriate. In such event, Lessee shall, on or before the first day of the next calendar month following any such payment by Lessor, reimburse Lessor for the full amount paid by Lessor in paying, adjusting, compromising, and discharging such lien or claim of lien including any attorney's fees or other costs expended by Lessor together with interest at the prime rate from the date of payment by Lessor to the date of repayment by Lessee. For purposes of this Section, "lien" shall include without limitation stop notices.

### Ownership of Building Project

Section 5.13. Any and all buildings as improvements placed or erected on said premises and part of said building project as well as any and all other alterations, additional improvements, and fixtures, except furniture, trade fixtures or equipment made or placed in or on said premises by Lessee or any other person shall be owned by Lessee during the term of this Lease, but shall be considered part of the real property of said premises and upon expiration or sooner termination of this Lease shall remain on said premises and shall become the property of Lessor.

### Excess Equity

Section 5.14. Lessee may sell limited partnership equity interests in the project. It is possible that such sale of equity interests may generate greater proceeds than that required to fund the difference between the total of funds expended by Lessee to make the improvements, less the exclusions set forth in Section 6.01(b) below, and the first deed of trust specified by Section 6.01 below (said difference hereinafter "the excess equity").

In the event that such excess equity should occur, Lessee agrees to retain such excess equity as operational reserves and not, by way of example, pay any portion of such funds to any owner of Lessee or any affiliate of Lessee or any



owner thereof for any purpose whatever (except as expressly specified in Section 6.01(b)) until the earlier of:

(a) the end of the seventh (7th) operational year; or

(b) the Hotel Operator's independent certified public accountant shall certify to Lessor that the Hotel has had a positive pre-tax, post debt service cash flow for two (2) consecutive calendar years.

## ARTICLE 6. INCUMBRANCE OF LEASEHOLD ESTATE

### Lessee's Right to Encumber

Section 6.01. Lessee may, at any time and from time to time during the term of this Lease encumber to any person or entity (hereinafter "Lender") by deed of trust or mortgage or other security instrument all of Lessee's interest under this Lease and the leasehold estate created hereby in Lessee for any purpose or purposes without the consent of Lessor.

Except as expressly provided herein, no encumbrance incurred by Lessee whether by express agreement or by operation of law shall, and Lessee shall not have power to incur any encumbrance that will, constitute in any way a lien or encumbrance on the fee of said premises or any interest of Lessor in said premises.

Notwithstanding the foregoing, Lessor expressly agrees to grant to Lender a first deed of trust in the fee estate of said premises ("the senior trust deed") securing a construction and/or permanent loan having the following characteristics:

(A) A term of not more than thirty-five (35) years;

(B) Securing a principal amount not to exceed Forty Nine Million Dollars (\$49,000,000) together with any interest, penalties, and other reasonable expenses related thereto, including without limitation attorney's fees and other allowable collection costs and delinquent taxes, insurance and such other obligations secured by the senior trust deed as shall be approved by Lessor;

(C) Grants to the Lessor the right to cure any breach or default of said mortgage by Lessee;

(D) The right of Lessor upon breach of this

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Lease by Lessee to foreclose, discharge and extinguish the interest of Lessee without affecting in any way the right of the Lessor to maintain said mortgage upon the premises;~

(E) As to a construction loan, requiring debt service based upon an interest rate not to exceed Fifteen percent (15%)~; and

(F) As to a permanent loan, requiring debt service based upon an amortization of principal over a period of not less than three hundred sixty (360) months, provided that the term of said loan may be less than three hundred sixty (360) months.

### Notice of Loan Default

Section 6.02. Immediately after the recording of any deed of trust or mortgage executed by Lessee pursuant to Section 6.01 of this Lease and containing a power of sale as defined by California law, Lessor shall at Lessee's cost and expense record in the office of the County Recorder of Sacramento County, California a written request executed and acknowledged by Lessor for a copy of any notice of default and a copy of any notice of sale under such deed of trust or mortgage to be mailed to Lessor at the address specified in the request by Lessor.

### Notice to and Service on Lender

Section 6.03. Lessor shall mail to Lender, should Lessee incur any encumbrance pursuant to Section 6.01 of this Lease, and to Hotel Operator, a duplicate copy of any and all notices Lessor may from time to time give to or serve on Lessee pursuant to or relating to this Lease. Lessee shall at all times keep Lessor informed in writing of the name and mailing address of Lender and Hotel Operator and any changes in Lender's or Hotel Operator's address. Any notices or other communications permitted by this or any other section of the Lease or by law to be served on or give to Lender and/or Hotel Operator by Lessor shall be deemed duly served on and given to Lender and/or Hotel Operator when deposited in the United States mail, first-class, postage prepaid, addressed to Lender and/or Hotel Operator at the last mailing address for Lender and/or Hotel Operator furnished in writing to Lessor by Lessee or Lender and/or Hotel Operator.

### No Modification Without Lender's Consent

Section 6.04. Should Lessee incur any encumbrance pursuant to Section 6.01 of this Lease, Lessee and Lessor hereby stipulate and agree that they will not modify this Lease

in any way or cancel this Lease by mutual agreement without the written consent of Lender and Hotel Operator having such encumbrances.

Rights of Lender and Hotel Operator

Section 6.05. Should Lessee incur any encumbrance pursuant to Section 6.01 of this Lease, and in any event as to the Hotel Operator, the Lender having such encumbrance and/or the Hotel Operator shall have the right at any time during the term of this Lease and the existence of the Lender's encumbrance and/or the Management Agreement:

(A) Do any act or thing required of Lessee under this Lease, and any such set or thing done or performed by Lender and/or Hotel Operator shall be as effective to prevent a forfeiture of Lessee's rights under this Lease as if done by Lessee itself;

(B) Realize on the security afforded by the leasehold estate by exercising foreclosure proceedings or power or sale or other remedy afforded in law or in equity or by the security document (hereinafter the "Trust Deed") or by the Management Agreement and to:

(1) transfer, convey or assign the title of Lessee to the leasehold estate created by this Lease to any purchaser at any foreclosure sale, whether the foreclosure sale be conducted pursuant to court order or pursuant to a power of sale contained in the Trust Deed; or

(2) acquire and succeed to the interest of Lessee under this Lease by virtue of any foreclosure sale or transfer whether the foreclosure sale be conducted pursuant to a court order or pursuant to a power of sale contained in the Trust Deed, pursuant to any other statutory or decisional law, or by means of a deed in lieu of foreclosure; or

(3) sell, assign or otherwise transfer the interest of Lessee under this Lease, provided that the express written consent of Lessor be first had and obtained pursuant to the provisions of Section 10.01, infra.

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Right of Lender and/or Hotel Operator to Cure Default

Section 6.06. Should Lessee incur an encumbrance pursuant to Section 6.01 of this Lease and in any event as to Hotel Operator, before Lessor may terminate this Lease because of any default under or breach of this Lease by Lessee, Lessor must give written notice of the default or breach to Lender and Hotel Operator and afford Lender and/or Hotel Operator the opportunity after service of notice to:

(A) Cure the breach or default within ninety (90) days where the default can be cured by the payment of money to Lessor or some other person;

(B) Cure the breach or default within ninety (90) days where the breach or default must be cured by something other than the payment of money and can be cured within that time; or

(C) Cure the breach or default in such reasonable time as may be required where something other than money is required to cure the breach or default and cannot be performed within ninety (90) days provided that acts to cure the breach or default are commenced within that time period after service of notice of the default on Lender and/or Hotel Operator by Lessor and are thereafter diligently continued by Lender and/or Hotel Operator.

Foreclosure in Lieu of Curing Default

Section 6.07. Notwithstanding any other provision of this Lease, the Hotel Operator and/or a Lender under an encumbrance incurred by Lessee pursuant to Section 6.01 of this Lease may forestall termination of this Lease by Lessor or a default under or breach of this Lease by Lessee by commencing proceedings to foreclose his encumbrance on the leasehold estate created by this Lease. The proceedings so commenced may be for foreclosure of the encumbrance by order of court or by foreclosure of the encumbrance under a power of sale contained in the instrument containing the encumbrances or by any other procedure under statutory or decisional law. The proceedings shall not, however, forestall termination of this Lease by Lessor for the default or breach by Lessee unless;

(A) They are commenced within ninety (90) days after service on Lender of the notice described in Section 6.06 of this Lease above;

(B) They are, after having been commenced, diligently pursued in the manner required by law to completion; and

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(C) Hotel Operator and/or Lender keeps and performs all the terms, covenants, and conditions of this Lease requiring the payment or expenditure of money by Lessee until the foreclosure proceedings are complete or are discharged by redemption, satisfaction, payment, or conveyance of the leasehold estate to Hotel Operator and/or Lender.

### No Merger of Leasehold and Fee Estates

Section 6.08. Should Lessee incur an encumbrance pursuant to Section 6.01 of this Lease and in any event as to the Hotel Operator, then there shall thereafter, during the existence of the encumbrance and/or the Management Agreement, be no merger without the consent of Hotel Operator and/or Lender under such encumbrances of the leasehold estate created by this Lease and the fee estate in said premises merely because both estates have been acquired or become vested in the same person or entity.

### Hotel Operator or Lender as Assignee of Lease

Section 6.09. No Hotel Operator or Lender shall be liable to Lessor as assignee of this Lease unless and until such time as Hotel Operator or Lender acquires all rights of Lessee under this Lease through foreclosure or other proceedings in the nature of foreclosure or as the result of some other action or remedy provided by law, the deed of trust or other security agreement or the Management Agreement. During the period that a Lender shall have the rights of Lessee under this Lease, said Lender's liability under this Lease shall be limited to the net proceeds derived from the operation of the leasehold premises after operating expenses, debt service or imputed debt service and basic management fee and net proceeds of sale or disposition of the leasehold premises, provided that all sums accrued pursuant to Article 2 and Section 13.02 hereof shall remain a lien and charge against the Lessee's interest until paid pursuant to the terms hereof.

In the event that the Lessee should disaffirm or reject this Lease in any proceeding pursuant to the Bankruptcy Code, the Lender shall have the right within thirty (30) days of such disaffirmance or rejection to lease the premises from Lessor upon the same terms and conditions as contained herein.

In the event that Lessor shall obtain relief from the automatic bankruptcy stay and Lessor shall thereupon terminate Lessee's interest hereunder, while Lender shall have been prevented by the aforesaid automatic bankruptcy stay from foreclosing upon Lessee's interest hereunder pursuant to the Leasehold Deed of Trust, then the Lender shall have the right

within thirty (30) days of such termination by Lessor to lease the premises from Lessor upon the same terms and conditions as contained herein, provided that Lender shall be required to pay to Lessor that sum which would have been required to have been paid by Lessee to cure the default leading to the termination of the lease and any sums accrued and owing to Lessor by Lessee at the time of the aforesaid termination shall be deemed accrued and owing to Lessor under the new lease, it being the intent of this provision to insure that Lender gains no advantage by reason of its failure, neglect and refusal to cure Lessee's default under the prior lease during the applicable cure period hereunder.

Lender and Hotel Operator as Including Subsequent Interests

Section 6.10. The term "Lender" as used in this Lease and the term "Hotel Operator" as used in this Lease shall mean not only the entity that loaned money to Lessee and is named as beneficiary, mortgage, secured party or security holder in the instrument creating any encumbrance incurred by Lessee pursuant to Section 6.01 of the Lease and/or the person, persons, or entity that undertook initially to operate the hotel under the Management Agreement, but also all subsequent assignees and holders of the interest created by such instrument.

Refinancing of Existing Indebtedness

Section 6.11. Lessee (or a Lender which has succeeded to the interest of Lessee hereunder) may, at its option during the term of this Lease refinance the existing indebtedness secured by the encumbrances specified under this Article including any encumbrance which shall be superior to the Lease pursuant to Section 6.01 hereof. However, in the event that Lessee shall refinance any encumbrance which shall be superior to Lessor's rights pursuant to Section 6.01 hereof, the refinanced encumbrance shall have the following characteristics:

(A) The refinanced encumbrance shall not secure a dollar amount of indebtedness greater than the dollar amount of indebtedness of which Lessor's interest was originally subordinated pursuant to Section 6.01 hereof;

(B) The debt service of the refinanced indebtedness shall be based upon an amortization of principal of not less than that of the indebtedness secured by the initial encumbrance superior to the rights of Lessor pursuant to Section 6.01 hereof.

## ARTICLE 7. REPAIRS AND RESTORATION

### Maintenance by Lessee

Section 7.01. At all times during the term hereof Lessee shall, at Lessee's own cost and expense, keep and maintain said premises and all improvements now or hereafter on said premises as well as all facilities now or hereafter appurtenant to said premises in good order and repair and in safe and clean condition. Furthermore, Lessee shall, at Lessee's own cost and expenses, maintain at all times during the term hereof the whole of said premises as well as any improvements, landscaping, or facilities thereon in a clear, sanitary, neat, tidy, orderly, and attractive condition.

### Requirement of Governmental Agencies

Section 7.02. At all times during the term hereof, Lessee, at Lessee's own cost and expense, shall:

(A) Make all alterations, additions, or repairs to said premises or the improvements or facilities on said premises required by any valid law, ordinance, statute, order, or regulation now or hereafter made or issued by any federal, state, county, local, or other governmental agency or entity;

(B) Observe and comply with all valid laws, ordinances, statutes, orders, and regulations now or hereafter made or issued respecting said premises or the improvements or facilities on said premises by any federal, state, county, local, or other governmental agency or entity;

(C) Contest if Lessee, in Lessee's sole discretion, desires by appropriate legal proceedings brought in good faith and diligently prosecuted in the name Lessee, or in the names of Lessee and Lessor where appropriate or required, the validity or applicability to said premises of any law, ordinance, statute, order, or regulation now or hereafter made or issued by any federal, state, county, local, or other governmental agency or entity; provided, that any such contest or proceeding, though maintained in the names of Lessee and Lessor, shall be without cost to Lessor, and Lessee shall protect said premises and Lessor from Lessee's failure to observe or comply during the contest with the contested law, ordinance, statute, order, or regulation;

(D) Idemnify and hold Lessor and the property

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of Lessor, including said premises, free and harmless from any and all liability, loss, damages, fines, penalties, claims, and actions resulting from Lessee's failure to comply with and perform the requirements of this section.

### Lessee's Duty to Restore Premises

Section 7.03. Should, at any time during the terms hereof, any building or improvements now or hereafter on <sup>^</sup> the premises be destroyed in whole or in part by fire, theft, the elements, or any other cause not the fault of Lessor, this Lease shall continue in full force and effect and Lessee, at Lessee's own cost and expense, shall repair and restore the damaged or destroyed building, buildings, improvement, or improvements according to the original plan thereof or according to such modified plans therefore as shall be approved in writing by Lessor. The work of repair and restoration shall be commenced by Lessee within one hundred twenty (120) days after the damage or destruction occurs and shall be completed with due diligence not longer than two (2) years after the work is commenced. In all other respects, the work of repair and restoration shall be done in accordance with the requirements for original construction work on said premises set forth in Article 5 hereof.

### Option to Terminate Lease for Destruction

Section 7.04. Notwithstanding the provisions of Section 7.03 hereof, Lessee shall have the option of terminating this Lease on the last calendar day of any month by giving Lessor at least one hundred eight (180) days' prior written notice of Lessee's intent to do so and by removing, at Lessee's own cost and expense, all debris and remains of the damaged improvements from said premises where;

(A) Any building or improvements now or hereafter on said premises are so damaged or destroyed by fire, theft, the elements, or any cause not the fault of Lessee or Lessor during the last twenty-five (25) years of the initial term hereof that they cannot be repaired and restored as required by Section 7.03 hereof at a cost not exceeding fifty (50) percent of the cost to replacing all buildings and improvements if totally destroyed then, immediately preceding the calamity damaging or destroying the damaged buildings or improvement, located on said premises.

(B) Any buildings or improvements now or hereafter on said premises are so damaged or destroyed by fire, theft, the elements, or any cause not the fault of Lessee or Lessor during the last ten (10)



years of the term hereof that they cannot be repaired and restored as requirement by Section 7.03 hereof at a cost not exceeding twenty (20) percent of the cost of replacing all buildings and improvements if totally destroyed then, immediately preceding the calamity damaging or destroying the damaged or destroyed buildings or improvements, located on said premises.

(C) At any time after the ninth (9th) operational year of the Hotel, Lessee shall purchase the premises pursuant to Section 12.12 et. seq., below or pay the alternative use rent pursuant to Section 2.06 et. seq.

Application of Insurance Proceeds

Section 7.05. Any and all fire or other insurance proceeds that become payable at any time during the term hereof because of damage to or destruction of any buildings or improvements on said premises shall be paid to Lessee or its Lender and applied by Lessee toward the cost of repairing and restoring the damaged or destroyed buildings or improvements in the manner required by Section 7.03 hereof; provided, however, that should Lessee exercise the option given Lessee by Section 7.04 hereof to terminate this Lease because of damage to or destruction of buildings or improvements on said premises, then, in that event, any and all fire or other insurance proceeds that become payable because of such damage or destruction:

(A) Shall be applied first toward the reduction of the unpaid balance of the obligation secured and discharging said premises from any then outstanding encumbrance or encumbrances incurred by Lessee pursuant to Section 6.01 hereof; and

(B) If the damage or destruction shall have occurred prior to end of the ninth (9th) year, shall then be applied toward an amount equal to the then-present value of all subsidies paid by or made available by Lessor to Lessee from the inception of development to the date of termination.

(1) Such subsidies shall be deemed to include the following:

(a) the difference between the fair market rental, calculated in accordance with the provisions of Section 2.06 above, of the premises for each year of the Lease and the amount theretofore paid by Lessee in lease

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rent hereunder; and

(b) the difference between the fair market value of any service or other provision, including without limitation parking spaces, made available by Lessor to Lessee, Hotel Operator or guests of the Hotel and the amounts paid by Lessee, Hotel Operator and/or guests of the Hotel to Lessor for such service or other provision during the term of the Lease.

(2) In calculating the amount of such subsidies no consideration shall be given to taxes, assessments and other impositions of general application, including without limitation, property taxes and transient occupancy taxes, which may accrued to the benefit of Lessor and/or related entities.

(3) In calculating the present value of such subsidies, the after tax rate of return on equity earned by Lessee's equity owners during the term of the Lease shall be used.

(C) Then the balance of the proceeds, if any, shall be paid to Lessee.

## ARTICLE 8. INDEMNITY AND INSURANCE

### Idemnity Agreement

Section 8.01. Lessee shall indemnify and hold Lessor and the property of Lessor, including said premises and any buildings or improvements now or hereafter on said premises, free and harmless from any and all liability, claims, loss, damages or expenses resulting from Lessee's occupation and use of said premises, and excepting only any portion of such liability directly attributable to negligence of Lessor, specifically including, without limitation, any liability, claim, loss, damage, or expense arising by reason of:

(A) The death or injury of any person, including Lessee or any person who is an employee or agent of Lessee, or by reason of the damage to or destruction of any property, including property owned by Lessee or by any person who is an employee or agent of Lessee, from any cause whatever while such person or property is in or on said premiss or in any way connected with said premises or with any of the

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improvements or personal property on said premises;

(B) The death or injury of any person, including Lessee's partners or any person who is an employee or agent of Lessee, or by reason of the damage to or destruction of any property, including property owned by Lessee or any person who is an employee or agent of Lessee, caused or allegedly caused by either (a) the condition of said premises or some building or improvement on said premises, or (b) some act or omission on said premises of Lessee or any person in, on, or about said premises with the permission and consent of Lessee;

(C) Any work performed on said premises or material furnished to said premises at the instance or request of Lessee or any person or entity acting for or on behalf of Lessee; or

(D) Lessee's failure to perform any provision hereof or to comply with any requirement of law or any requirement imposed on Lessee or said premises by any duly authorized governmental agency or political subdivision.

Liability Insurance

Section 8.02. Lessee shall, at Lessee's own cost and expense, secure promptly after execution hereof and maintain during the entire term hereof a broad form comprehensive coverage policy of public liability insurance issued by an insurance company acceptable to Lessor and authorized to use liability insurance in California insuring Lessee and Lessor against loss or liability caused by or connected with Lessee's occupation and use of said premises under this lease in amounts not less than:

(A) One Million Dollars (\$1,000,000.00) for injury to or death of one person and, subject to such limitation for the injury or death of one person, of not less than Fifty Million Dollars (\$50,000,000.00) for injury to or death of two or more persons as a result of any one accident or incident; and

(B) Five Million Dollars (\$5,000,000.00) for damage to or destruction of any property of others.

Fire and Casualty Insurance

Section 8.03. Lessee shall, at Lessee's own cost and expense, at all times during the term hereof keep all buildings, improvements, and other structures on said premises,

as well as any and all additions thereto, insured for their full insurable value by insurance companies authorized to issue such insurance in California against loss or destruction by fire and the perils commonly covered under the standard extended coverage endorsement to fire insurance policies in the county where said premises are located. Any loss payable under such insurance shall be payable to Lessee, Lessor, and any Lender under an encumbrance incurred by Lessee pursuant to Section 6.01 hereof as their interests may appear. Any proceeds received because of a loss covered by such insurance shall be used and applied in the manner required by Section 7.05 hereof.

Specific Perils to Be Insured

Section 8.04. Notwithstanding anything to the contrary contained in Section 8.03 hereof, the insurance required by Section 8.03 hereof shall, whether or not included in the standard extended coverage endorsement mentioned in Section 8.03, insure all buildings, improvements, and other structures on said premises, as well as any and all additions thereto, against loss or destruction by earthquake, windstorm, cyclone, tornado, hail, explosion, riot, riot attending a strike, civil commotion, malicious mischief, vandalism, aircraft, fire, smoke damage, and sprinkler leakage. Furthermore, the insurance required by Section 8.03 hereof during the construction of said building project described in Article 5 shall have course of construction, vandalism, and malicious mischief clauses attached insuring said project during its construction and all materials delivered to the site of said building project for their full insurable value.

Deposit of Insurance With Lessor

Section 8.05. Lessee shall within ten (10) days after execution hereof, and promptly thereafter when any such policy is replaced, rewritten, or renewed, deliver to Lessor a true and correct copy of each insurance policy required by this Article hereof or a certificate executed by the insurance company or companies or their authorized agent evidencing such policy or policies.

Notice of Cancellation of Insurance

Section 8.06. Each insurance policy required by this Article hereof shall contain a provision that it cannot be cancelled for any reason unless ten (10) days prior written notice of the cancellation is given to Lessor in the manner required by this lease for service of notices on Lessor by Lessee.

## ARTICLE 9. CONDEMNATION

### Total Condemnation

Section 9.01. Should during the term hereof, title and possession of all of said premises be taken under the power of eminent domain by any public or quasi-public agency or entity, this lease shall terminate as of 12:01 A.M. of, whichever first occurs, (1) the date legal title of said premises becomes vested in, or (2) actual physical possession of said premises is taken by, the agency or entity exercising the power of eminent domain and both Lessor and Lessee shall thereafter be released from all obligations, except those specified in Section 9.05 hereof, under this lease.

### Partial Taking - Parking Facilities Only

Section 9.02. Should, during the term hereof, title and possession of only a portion of said premises be taken under the power of eminent domain by any public or quasi-public agency or entity, all compensation and damages payable by reason of the eminent domain power shall be available to and used, to the extent reasonably needed, by Lessee in replacing the parking facilities so taken to the extent reasonably practicable under then existing laws and conditions with new parking facilities on the remaining portion of said premises. Plans and specifications for the replacement parking facilities must be first approved in writing by Lessor.

### Partial Taking - Hotel Facilities

Section 9.03. Should, during the term hereof, title and possession of only a portion of said premises be taken under power of eminent domain by any public or quasi-public agency or entity, all compensation and damages payable by reason of any improvements other than parking facilities constructed by Lessee on said premises taken by such exercise of the eminent domain power shall be available to and used, to the extent reasonably needed, by Lessee to replace the improvements so taken to the extent reasonably practicable under then existing laws and conditions with improvements of the same type on the remaining portion of said premises. Plans and specifications for the replacement improvement must, however, be first approved by Lessor in writing.

### Termination for Partial Taking

Section 9.04. Lessee may terminate this lease for the reasons stated in either, or both, Section 9.02 or Section 9.03 hereof by serving written notice of termination on Lessor within ninety (90) days after Lessee has been deprived of

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actual physical possession of the portion of said premises taken by eminent domain. This lease shall terminate as of 12:01 A.M. of the first day of the calendar month following the calendar month in which the notice of termination described in this section is served on Lessor. On termination hereof pursuant to this section, all subleases and subtenancies in or on said premises or any portion or portions of said premises created by Lessee under this lease shall also terminate and said premises shall be delivered to Lessor free and clear of all such subleases and subtenancies; provided, however, that Lessor may, at Lessor's option, by mailing written notice to a subtenant allow any subtenant to attorn to Lessor and continue his or her occupancy on said premises as a tenant of Lessor. On termination hereof pursuant to this section, however, both Lessor and Lessee shall be released from all obligations, except those specified in Section 9.05 hereof, under this lease.

Condemnation Award

Section 9.05. Any compensation or damages awarded or payable because of the taking of all or any portion of said premises by eminent domain shall be allocated between Lessor and Lessee as follows:

(A) All compensation or damages awarded or payable for the taking by eminent domain of any land that is part of the said premises shall be paid to and be the sole property of Lessor free and clear of any claim of Lessee or any person claiming rights to said premises through or under Lessee.

(B) All compensation or damages awarded or payable because of any improvements constructed or located on the portion of said premises taken by eminent domain where only a portion of said premises is taken by eminent domain and Lessee is not entitled to or does not terminate this lease shall be applied in the manner specified in Section 9.02 or Section 9.03 toward the replacement of such improvements with equivalent new improvements on the remaining portions of said premises.

(C) All compensation or damages awarded or payable because of any improvements constructed or located on the portion of said premises taken by eminent domain where this lease is terminated because of the taking by eminent domain, whether all or only a portion of said premises is taken by eminent domain, shall be located between Lessee and Lessor as follows:

(1) That percentage of the

compensation or damages awarded or payable because of the improvements that equal the percentage of the full term hereof that has, at the time of the taking, not expired shall belong to and be in the sole property of Lessee.

(2) That percentage of the compensation or damages awarded or payable because of the improvements that equals the percentage of the full term hereof that has, at the time of the taking, expired shall belong to and be the sole property of Lessor.

(3) The term "time of taking" as used in this subparagraph shall mean 12:01 A.M. of, whichever shall first occur, the date title or the date physical possession of the portion of said premises on which the improvements are located is taken by the agency or entity exercising the eminent domain power.

(D) Any severance damages awarded or payable because only a portion of said premises is taken by eminent domain shall be:

(1) The sole and separate property of Lessee during the first ten (10) years of the term hereof;

(2) Equally divided, except to the extent needed to replace any improvements taken by eminent domain with the equivalent improvements on the remaining portion of said premises where Lessee cannot or does not terminate the lease between Lessor and Lessee during the eleven (11) to forty-five (45) years of the term hereof; and

(3) The sole and separate property of Lessor during the last ten (10) years of the term hereof or any extension thereof.

Notwithstanding the foregoing, any sums to be paid to Lessee and/or Lessor pursuant to this Section 9.05 shall be paid to Lender to be applied first toward the reduction and/or discharge of any debt secured by an encumbrance subject to Section 6.01 hereof, provided that if any portion of Lessor's proceeds hereunder are applied to discharge Lender's encumbrance, then all of the proceeds in excess of the sum necessary to discharge the aforesaid encumbrance shall be paid to Lessor with no apportionment to Lessee whatever.

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### Lease Termination for Partial Taking

Section 9.06. Should, during the term hereof, title and possession of only a portion of said premises be taken under the power of eminent domain by any public or quasi-public agency or entity and Lessee does not or cannot under Section 9.02 or of said premises taken under eminent domain as of 12:01 A.M. of, whichever first occurs, the date title is taken or the date actual physical possession of the portion taken by eminent domain is taken by the agency or entity exercising the eminent domain power. Furthermore, the rent payable under this lease shall, as of that time, be reduced in the same proportion that the value of the portion of said premises taken by eminent domain bears to the full value of said premises at that time; provided, however, that Lessee shall, subject to the provisions of Section 9.02 and 9.03 of this lease, replace any improvements or facilities with equivalent new facilities on the remaining portion of said premises and do all other acts at Lessee's own cost and expense required by the eminent domain taking to make the remaining portion of said premises fit for the uses specified in this lease.

### Voluntary Conveyance in Lieu of Eminent Domain

Section 9.07. A voluntary conveyance by Lessor, with the consent of Lessee, of title to all or a portion of said premises to a public or quasi-public agency or entity in lieu of or under a threat by such agency or entity to take the same by eminent domain proceedings shall be considered a taking of title to all or such portion of said premises under the power of eminent domain subject to the provisions of this Article.

## ARTICLE 10. ASSIGNMENT AND SUBLEASING

### No Assignment Without Lessor's Consent

Section 10.01. Except as provided in Section 10.02 hereof, Lessee shall not assign or otherwise transfer this lease, any right or interest in this lease, or any right or interest in said premises or any of the improvements that may now or hereafter be constructed or installed on said premises without the express written consent of Lessor first had and obtained. Any assignment or transfer by Lessee without the prior written consent of Lessor, whether it be voluntary or involuntary, by operation of law or otherwise, is void and shall, at the option of Lessor, terminate this lease. A consent by Lessor to one assignment shall not be deemed to be a consent to any subsequent assignment hereof by Lessee. The consent of Lessor to any assignment of Lessee's interest in this lease, however, shall not be unreasonably withheld;



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provided, however that if the assignment of Lessee's interest shall give rise to any right of termination by the Operator under Section 10.02 or its successor section of the Management Agreement, the consent of Lessor shall be in Lessor's sole and complete discretion.

### Permitted Assignments and Transfers

Section 10.02. Notwithstanding the provisions of Section 10.01 hereof, Lessee may without the prior written consent of Lessor transfer and assign all Lessee's interest under the Lease and the leasehold estate hereby created in Lessee to:

(A) Any trustee named in a deed of trust, any mortgagee named in a mortgage, or any person named in any other type of security instrument for the purpose of incurring an encumbrance on such interest and such leasehold estate pursuant to Section 6.01 hereof.

(B) A corporation or partnership now or hereafter organized in which Lessee owns at least ninety (90) percent of all outstanding shares of stock and/or interest.

However, such a permitted assignment shall not operate to relieve Lessee of its obligations to Lessor hereunder unless and until Lessor shall have conveyed to Lessee its written consent to such an assignment and release.

### Hotel Operator and Management Agreement

Section 10.03. Lessee shall cause the Hotel to be operated pursuant to a management agreement ("Management Agreement") with a Hotel Operator ("Operator"). The Management Agreement shall be subject to Lessor's approval. The initial Operator of the Hotel is to be Hyatt Corporation ("Hyatt"), pursuant to an Amended and Restated Management Agreement by and between Lessee and Hyatt dated as of September 16, 1986, which Agreement has been approved by Lessor. In the event of any transfer or assignment of said Management Agreement such new Operator and Management Agreement must be approved in writing by Lessor.

Lessor shall approve such subsequent Management Agreement if it contains the following minimum requirements:

(A) the initial term of the Management Agreement shall be for at least thirty (30) years;

(B) the Management Agreement cannot be terminated without Lessor's consent by either party

except

(1) in the event of breach thereunder;

or

(2) the failure to achieve economic goals reasonably approved by Lessor, and that in no event will there be a termination of the Management Agreement by Lessee for the failure to reach such economic goals prior to the end of the seventh (7th) operational year; provided, however, that no Lessor consent shall be required for a termination of the Management Agreement by any Mortgagee who succeeds to the position of Lessee as a result of a foreclosure or similar proceeding so long as the Mortgage provides for a replacement Operator consistent herewith;

(C) the Management Agreement shall provide that Lessor shall receive notice of default and notice of the grounds therefore when the defaulting party does;

(D) that the Operator cannot without Lessor's consent assign its rights under the Management Agreement except to a wholly owned subsidiary whose performance is guaranteed by its parent in a written guarantee reasonably satisfactory to Lessor;

(E) the Management Agreement shall be subordinate to this lease and that in the event of a default thereunder by Operator, Operator shall be liable in damages to Lessor as Lessee's successor or assignee

(1) in the case of the failure of Operator to pay over sums due to Lessee (and Lessor shall be entitled to collect such sums from Operator), and

(2) in all the other cases, damages sustained after delivery by Lessor of a notice of default under this lease, provided that no suit pursuant to this clause (2) may be instituted by Lessor against Operator prior to termination hereof;

(F) the Management Agreement shall not conflict with this lease, and shall require Operator to comply with all the provisions hereof relating to the use, operation, and maintenance of the Hotel and the personal property located thereon;

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(G) the Management Agreement shall require the Operator

(1) to operate the Hotel as a first-class convention hotel on standards equal to the standards of other comparable hotels,

(2) to maintain the Hotel and its personal property in a neat, clean, sanitary and safe condition,

(3) to make provisions for the cost of replacing and renewing the Hotel's personal property through the establishment of reserves or other appropriate mechanism,

(4) to manage, supervise and direct the Hotel's sales, reservations, advertising, promotional, marketing and public relations activities,

(5) to apply sound administrative, accounting, budgeting, personnel, and purchasing policies and practices,

(6) to maintain or cause to be maintaining the insurance required by Article 8 hereof,

(7) to establish, implement and supervise inventory and cost control systems,

(8) to maintain adequate control over the Hotel's books and records, especially but not limited to those relating to total gross revenues from hotel operations,

(9) to arrange for on behalf of Lessee, as appropriate, water, electricity, gas, steam, fuel oil, telephone, sanitation equipment maintenance and other necessary services for the Hotel's proper operation,

(10) to make timely payments from the Hotel's Gross Revenue for all purchases made or arranged for the Hotel,

(11) to collect, account for and remit all applicable exercise, sales and revenue taxes or similar governmental charges collected directly for guest and patrons,

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(12) to encourage, through sales offices, the use of the Hotel by businesses, trade associations, conventions, tourists, incentive groups, travel agencies and other recognized sources of hotel business,

(13) to recruit, hire and train all the employees at the Hotel,

(14) to comply with all Law and Ordinances, and

(15) generally to perform each of the foregoing in an efficient and economic manner so as to (i) optimize the Hotel's revenues and (ii) enhance the character and reputation of Capitol Center area;

(H) any Operator under the Management Agreement shall agree to attorn to Lessor, at the option of Lessor, in the event of an Event of Default by Lessee hereunder and a termination hereof;

(I) Lessee's obligations under this Lease shall be secured by an assignment by Lessee to Lessor of all of its right, title and interest in and to such Management Agreement; and

(J) the Operator shall agree that if the Management Agreement is terminated as an executory contract in the event of Lessee's bankruptcy that the Operator will agree to enter into a new Management Agreement with Lessor upon the same terms and conditions as the existing Management Agreement.

(K) If Hyatt Corporation ceases to be the Operator for any reason other than Hyatt's succeeding to the position of Lessee hereunder, Lessee agrees to use its best efforts to find a replacement Operator reasonably satisfactory to Lessor. A Operator who is financially responsible and has prior experience in managing first-class hotels shall be reasonably satisfactory to Lessor.

Transfer of Stock as Assignment

Section 10.04. Should Lessee be a corporation, or should Lessee's interest in this lease be assigned to a corporation pursuant to Section 10.02 hereof, any transfer or assignment of any stock or interest in the corporation totaling in the aggregate more than ten (10) percent of all such stock

or interest in the corporation shall be considered an assignment hereof requiring the prior written consent of Lessor; provided, however, that any transfer of shares to a shareholder's spouse, children, or grandchildren caused by the shareholder's death shall be excepted from this provision.

## ARTICLE 11. DEFAULT AND TERMINATION

### Abandonment by Lessee

Section 11.01. Should Lessee breach this lease and abandon said premises prior to the natural expiration of the term of this lease, Lessor may continue this lease in effect by not terminating Lessee's right to possession of said premises, in which event Lessor shall be entitled to enforce all Lessor's rights and remedies under this Lease including the right to recover the rent specified in the Lease as it becomes due under this lease.

### Termination for Breach by Lessee

Section 11.02. All covenants and agreements contained in this lease are declared to be conditioned to this lease and to the term hereby demised to Lessee. Should Lessee default in the performance of any covenant, condition, or agreement contained in this lease and the default not be cured within the period prescribed for said cure, or, if none is prescribed elsewhere herein, six (6) months after written notice of the default is served on Lessee by Lessor, then Lessor may, subject to the rights of Lender and/or Hotel Operator pursuant to ARTICLE 6, except Section 6.01 thereof, terminate this Lease and:

(A) Bring an action to recover from Lessee:

(1) The worth at the time of award of the unpaid rent which had been earned including without limitation all amounts accrued but unpaid pursuant to Article 2 and Section 13.02 hereof at the time of termination of the lease;

(2) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination of the lease until the time of award exceeds the amounts of rental loss that Lessee proves could have been reasonably avoided; and

(B) Bring an action, in addition to or in lieu of the action described in subsection (A) of this section, to reenter and regain possession of said

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premises in the manner provided by the laws of unlawful detainer of the State of California then in effect.

### Insolvency of Lessee

Section 11.03. Should Lessee become insolvent as defined in this section, Lessor may, by giving thirty (30) days written notice to Lessee or to the person appointed to manage Lessee's affairs at the address for such person appearing the in official records of the court that appointed him, terminate this Lease and forfeit Lessee's interest in said premises and in any improvements or facilities in, on, or appertaining to said premises. For purposes of this section, Lessee shall be conclusively presumed to have become insolvent if Lessee:

(A) Has a receiver appointed to take possession of all or substantially all of the Lessee's property because of insolvency;

(B) Makes a general assignment for the benefit of creditors;

(C) Allows any judgment against Lessee to remain unsatisfied and unbonded for a period of ninety (90) days or longer; or

(D) Files for protection under the United States Bankruptcy Code or any successor statute.

### Cumulative Remedies

Section 11.04. The remedies given to Lessor and Lessee in this Article shall not be exclusive but shall be cumulative with and in addition to all remedies now or hereafter allowed by law and elsewhere provided in this Lease.

### Waiver of Breach

Section 11.05. The waiver by Lessor of any breach by Lessee of any of the provisions of this Lease shall not constitute a continuing waiver or a waiver of any subsequent breach by Lessee either of the same or a different provision of this Lease.

### Surrender of Premises

Section 11.06. On expiration or sooner termination of this Lease, Lessee shall surrender said premises, all improvements in or on said premises, and all facilities in any way appertaining to said premises, to Lessor in as good, safe, and clean condition as practicable, reasonable wear and tear excepted.

## ARTICLE 12. PARKING LEASE

### Parking Structure

Section 12.01. Lessor and Lessee have agreed pursuant to the terms of the Disposition and Development Agreement that Lessee shall develop, pursuant to plans and specifications approved by Lessor, a parking structure (including ground level commercial space) consisting of, and capable of accommodating, approximately six hundred thirty one (631) parking spaces ("the Garage Facility ") upon the premises and upon and within a separately defined and identified parcel, not part of the premises, to be created and recorded ("the AGENCY garage parcel "), wherein the Lessee shall own and/or have easement rights in perpetuity to use portions of the Garage Facility sufficient to contain fifty one and two-thirds percent (51.67%) (approximately three hundred twenty six (326)) of the spaces in the total garage and all ground level commercial space ("the Hotel Garage ") and Lessor shall own in fee ownership free and clear of all liens those portions of the Garage Facility which Lessor shall purchase pursuant to Section 8 (h) (ii) of the Disposition and Development Agreement but in any event that portion which shall be sufficient to contain forty eight and one-third percent (48.33%) (approximately three hundred five (305)) of the spaces in the total garage ("the Public Garage "). The Public Garage shall be located entirely within and upon the AGENCY garage parcel , shall be structurally contiguous and definable, shall be located within the Garage Facility so as to be closest (relative to the location of the Hotel Garage ) to the public surface streets, and shall have an unlimited easement of access across the premises to the Garage Facility in perpetuity.

### Lease of Lessee Portion of Parking Structure

Section 12.02. Lessee leases to Lessor, and Lessor hires from Lessee, upon and subject to the terms and conditions hereinafter set forth ("the parking lease"), the Hotel Garage for the term of this Ground Lease.

### Rent on Parking Lease

Section 12.03. The rent to be paid by Lessor to the Lessee under the parking lease for the Hotel Garage shall be in the sum of One Million Four Hundred Seventy Five Thousand Dollars (\$1,475,000) per annum; due and payable quarterly upon the dates set forth in section 2.01, supra.

Use of Lessee Portion of Parking Structure

Section 12.04. The Hotel Garage is leased to Lessor for the purpose of operating a off-street public and hotel parking facility and for such other and additional uses ordinarily incidental to such activity. Lessor shall not use, or permit said premises, or any part thereof, to be used, for any purposes other than the purpose or purposes for which said premises are hereby leased. Lessor shall irrevocably reserve not less than forty eight and one-third percent (48.33%) of the spaces in the total garage to public parking usage. For purposes of this provision, "public parking usage" shall be defined to mean usage by persons who, at the time of the usage, are not registered guests of the Hotel. Lessor shall be permitted to park vehicles by tandem parking in the Hotel Garage and Lessor shall provide adequate personnel as required for immediate access for all owners' to their vehicles when parked in the Hotel Garage.

Condition of Premises

Section 12.05. Lessee shall deliver the Hotel Garage to Lessor in an acceptable state of repair. Lessor shall maintain the Hotel Garage including paved and planted areas and sidewalks in safe and sanitary order, condition and repair during the term of this Lease and shall return the Hotel Garage at the end of the term in the condition in which possession of the Hotel Garage was delivered to Lessor, reasonable wear and tear excepted.

Fixtures

Section 12.06. Lessor shall submit plans for approval and have written consent from Lessee prior to affixing and installing any fixtures in, or on the Hotel Garage. Said fixtures shall be installed at the sole expense of the Lessor. Any such fixtures, equipment, and other property installed in or affixed to or on the Hotel Garage shall remain the property of Lessor, and Lessee agrees that Lessor shall have the right at any time, and from time to time, to remove any and all such fixtures, equipment, and other property, provided, however, that any such fixtures, equipment, or property not removed from the Hotel Garage thirty (30) days after expiration or sooner termination of the term hereof shall be deemed to have been abandoned by Lessor and shall thereupon become the absolute property of Lessee without compensation to Lessor. Lessee agrees that it shall not mortgage or pledge any such fixtures, equipment, or other property of Lessor at the Hotel Garage. Lessor shall have the right to secure the Hotel Garage and limit access thereto. Any such installation shall be considered fixtures pursuant to this paragraph.



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### Insurance

Section 12.07. Lessor may take out and keep in force during the term of this Lease at its own expense public liability insurance for protection against liability to the public arising as an incident to the use of or resulting from any accident occurring in or about the Hotel Garage .

### Assignment and Subletting

Section 12.08. Lessor shall neither assign this Lease nor sublet the Hotel Garage , other than to Lessee pursuant to the Operating Agreement set forth in Article 13, infra, without first obtaining the written consent of Lessee and Lender to do so, provided, however, that Lessee and Lender shall not arbitrarily or unreasonably refuse to grant its consent to such assignment or subletting, and provided further that a consent to one assignment or subletting by Lessee and Lender shall not be deemed a consent to any subsequent assignment or subletting. Any assignment or subletting without the consent of Lessee and Lender shall be void and shall, at the option of Lessee and Lender, terminate this Lease.

### Compliance With Law

Section 12.09. Lessor shall comply promptly with all federal, state, and municipal statutes and ordinances, and with all regulations, orders, and directives of appropriate governmental agencies. If such statutes, ordinances, regulations, orders and directives as they may now exist or may hereafter provide concerning the use and safety of the Hotel Garage , shall require Lessor to make any repairs, changes, or modifications in, on, or to the Hotel Garage . Lessor shall have the right to terminate this Lease rather than expend the money upon giving thirty (30) days written notice of termination at least thirty (30) days before any such compliance is required.

### Termination

Section 12.10. This parking lease shall terminate upon any non-qualifying refinance of the hotel premises and/or any sale other than a qualified sale by lender and/or upon any foreclosure upon the senior trust deed pursuant to section 6.01, supra.

### Additional Rent

Section 12.11. If Lessor's purchase price for Lessor's portion of the Garage Facility pursuant to the provisions of Section 8(h)(ii) of the Disposition and Development Agreement, as amended and restated as of June 10, 1986, shall be less than

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Four Million Dollars (\$4,000,000), then Lessor shall pay as additional rent under the parking lease set forth in this Article 12 an annual amount payable quarterly pursuant to Section 12.03, supra, and computed as follows: The difference between the purchase price of the Lessor's portion of the Garage Facility established pursuant to Section 8(h)(ii) of the Disposition and Development Agreement and Four Million Dollars (\$4,000,000) shall be multiplied an annual debt service constant based upon the Lessee's initial interest rate upon the permanent loan to which this Lease is subordinated pursuant to Section 6.01 above and an amortization period of one hundred twenty (120) months.

## ARTICLE 13. PARKING OPERATING AGREEMENT

### The Operating Agreement

Section 13.01. Lessee hereby agrees to operate the entire parking structure pursuant to the terms of this Article 13, including both the Public Garage and the Hotel Garage which has been leased to Lessor pursuant the parking lease set forth in Article 12 supra.

### Lessor's Revenues on Operating Agreement

Section 13.02. As Lessor's revenues attributable to the Garage Facility, Lessee shall pay to Lessor the following amounts:

(1) As to the Hotel Garage, Lessee shall pay to Lessor quarterly on the dates established by Section 2.01 hereof the greater of:

(a) One Hundred Fifty Thousand Dollars (\$150,000.00) per annum or

(b) twenty-five percent (25%) of all of Lessee's pre-tax cash flow attributable to the entire development, after payment of Ground Lease rent, debt service on instruments senior to Lessor's Ground Lease pursuant to Section 6.01 hereof, including without limitation imputed debt service as defined in Section 2.07(C) hereof, operating expenses payable to third parties, the basic management fee of the Hotel Operator, reserves required by the Lender or Hotel Operator by the Lessee's independent certified public accountant applying generally accepted accounting principles, debt service on instruments securing operating deficit loans and after allowance for a fifteen percent (15%)

return on equity.

Notwithstanding the foregoing, for the first five (5) operational years of the Hotel, the One Hundred Fifty Thousand Dollar (\$150,000) minimum payment shall be subordinate to the amounts established pursuant to Section 2.07(A) hereof. To the extent that such available cash flow is insufficient to pay the foregoing payments, such unpaid amounts shall be cumulated and paid from the next available cash flow after all current payments then due, Section 2.07(B) deferred payments, Section 2.08 deferred payments, allowance for a fifteen percent (15%) cumulative return on equity and, in any event, upon any non-qualifying sale or non-qualifying refinance of the Hotel premises.

Notwithstanding the foregoing, the total annual sum paid by Lessee to Lessor pursuant to this subsection 13.02(1) shall be deemed basic ground rent for purposes of priority as to other payments by the REDEVELOPER and shall not exceed the amount paid by Lessor as rent on the parking lease pursuant to Section 12.03 above and provided further that, if and when said payment by Lessee to Lessor pursuant to this subsection 13.02(1) shall equal the amount under Section 12.03 above or at such earlier time as Lessee may, in its discretion and subject to the approval of Lender, elect, this agreement relating to the Hotel Garage shall terminate. The agreement related to the Hotel Garage shall terminate in the event of a non-qualifying sale or non-qualifying refinance, but shall not terminate in the event of a qualified sale or qualified refinance.

(2) As to the Public Garage, Lessee shall pay to Lessor, on a quarterly basis, an annual amount equal to the difference between:

(a) the product of (i) the number of parking spaces in the Public Garage when multiplied by (ii) the average annual gross income per parking space ("gross income per space") derived by the City of Sacramento from all parking spaces within parking structures operated by or on behalf of the City of Sacramento for the preceding calendar year; and

(b) the portion of Lessee's actual, direct operational expense of the Garage Facility attributable to the Public Garage, paid to non-affiliated third parties and

## GROUND LEASE

allocated pro rata upon the number of spaces contained with the Garage Facility ("operational expense"), excluding any application of indirect cost or overhead, attributable to the Public Garage .

(3) For purposes of the foregoing calculation, gross income per space shall be determined annually by the City of Sacramento Department of Public Works, Parking Division or its successor entity or division ("City Parking"). The determination of City Parking shall be conclusive, except that Lessee shall have the right to have City Parking's calculation audited at Lessee's sole cost and expense by any reputable, national accounting firm. Operational expense shall be determined and certified annually to Lessor by Lessee's reputable, national accounting firm. Said determination, unconditionally so certified, shall be conclusive.

### Use of Parking Structure Pursuant to Operating Agreement

Section 13.03. The parking structure shall be operated by Lessee for the purpose of operating a off-street public and hotel parking facility and for such other and additional uses ordinarily incidental to such activity. Lessee shall not use, or permit said parking structure, or any part thereof, to be used, for any purposes other than the purpose or purposes for which said parking structure are hereby leased. Moreover, Lessee shall irrevocably reserve not less than forty eight and one-third percent (48.33%) of the spaces in the total garage to public parking usage. For purposes of this provision, "public parking usage" shall be defined to mean usage by persons who, at the time of the usage, are not registered guests of the Hotel. Lessee shall be permitted to park vehicles by tandem parking in the Hotel Garage and Lessee shall provide adequate personnel as required for immediate access for all owners' to their vehicles when parked in the Garage Facility .

### Condition of Parking Structure

Section 13.04. Lessor shall deliver the Garage Facility to Lessee in an acceptable state of repair. Lessee shall maintain the Garage Facility including paved and planted areas and sidewalks in safe and sanitary order, condition and repair during the term of this Operating Agreement and shall return the Garage Facility at the end of the term in the condition in which possession of the Garage Facility was delivered to Lessee, reasonable wear and tear excepted.

## GROUND LEASE

### Fixtures

Section 13.05. Lessee shall submit plans for approval and have written consent from Lessor prior to affixing and installing any fixtures in, or on the Garage Facility. Said fixtures shall be installed at the sole expense of the Lessee. Any such fixtures, equipment, and other property installed in or affixed to or on the Garage Facility shall remain the property of Lessee, and Lessor agrees that Lessee shall have the right at any time, and from time to time, to remove any and all such fixtures, equipment, and other property, provided, however, that any such fixtures, equipment, or property not removed from the Lessor portion of parking structure thirty (30) days after expiration or sooner termination of the term hereof shall be deemed to have been abandoned by Lessee and shall thereupon become the absolute property of Lessor without compensation to Lessee. Lessor agrees that it shall not mortgage or pledge any such fixtures, equipment, or other property of Lessee in the Public Garage. Lessee shall have the right to secure the Garage Facility and limit access thereto. Any such installation shall be considered fixtures pursuant to this paragraph.

### Insurance

Section 13.06. Lessee shall take out and keep in force during the term of this Operating Agreement at its own expense public liability insurance for protection against liability to the public arising as an incident to the use of or resulting from any accident occurring in or about the Garage Facility. The limits of liability under this insurance are to be for amounts not less than One Million Dollars (\$1,000,000.00) for any one person injured, Five Million Dollars (\$5,000,000.00) for any one accident, and One Hundred Thousand Dollars (\$100,000.00) for property damage. These policies shall insure the contingent liability of Lessor. Lessee shall obtain a written obligation imposed on the insurance carrier to notify Lessor in writing before any cancellation of such insurance.

### Assignment and Subletting

Section 13.07. Lessee shall neither assign this Operating Agreement nor sublet the Public Garage, without first obtaining the written consent of Lessor and Lender to do so. Any assignment or subletting without the consent of Lessee shall be void and shall, at the option of Lessor, terminate this Operating Agreement.

### Compliance With Law

Section 13.08. Lessee shall comply promptly with all federal, state, and municipal statutes and ordinances, and with

## GROUND LEASE

all regulations, orders, and directives of appropriate governmental agencies. If such statutes, ordinances, regulations, orders and directives as they may now exist or may hereafter provide concerning the use and safety of the Public Garage, shall require Lessor to make any repairs, changes, or modifications in, on, or to the Public Garage. Lessee shall have the right to terminate this Operating Agreement rather than expend the money upon giving thirty (30) days written notice of termination at least thirty (30) days before any such compliance is required.

### Termination

Section 13.09. This parking lease shall terminate upon any non-qualifying refinance of the hotel premises and/or any sale other than a qualified sale by lender and/or upon any foreclosure upon the senior trust deed pursuant to section 6.01, supra.

### Taxes

Section 13.10. In addition to all other sums to be paid by it under this Operating Agreement, Lessee shall pay to the County of Sacramento all real property taxes levied upon Lessee's possessory interest in the Garage Facility and all personal property taxes which shall be levied against the personal property of the Lessee situated in the Garage Facility. This Operating Agreement may be deemed to create a possessory interest which may be subject to taxation pursuant to California Revenue and Taxation Code section 107 et seq. and the party in whom the possessory interest is vested may be subject to the payment of property taxes levied on such interest. Lessee acknowledges and agrees that the provisions of this Section 13.10 comply with the requirements of Revenue and Taxation Code section 107.6.

### Lessee's Assumption of Obligations of Kimmel Parking Agreement

Section 13.11. The obligations under that certain Easement and Use Agreement between Kimmel Properties and The Northwestern Mutual Life Insurance Company dated March 3, 1980 shall be fulfilled by Lessee from spaces within the Public Garage.

## ARTICLE 14. MISCELLANEOUS

### Force Majeure

Section 14.01. Except as otherwise expressly provided in this Lease, should the performance of any act required or permitted by this Lease to be performed by either Lessor,

## GROUND LEASE

Lessee, Lender, or Hotel Operator be prevented or delayed by reason of unforeseeable causes beyond its control and without its contributing fault or negligence, including without limitation acts of God, acts of the public enemy, orders of a court of competent jurisdiction, operation of law, acts of the other party, fires, floods, epidemics, quarantines, restrictions, strikes, freight, embargos, and unusually severe weather or delays of subcontractors due to such causes or any other cause except financial inability, not the fault of the party required to perform the act, the time for performance of the act will be extended for a period equivalent to the period of enforced delay and performance of the act during the period or enforced delay will be excused; provided, however, that nothing contained in this section shall excuse the prompt payment of rent by Lessee as required by this Lease or the performance of any act rendered difficult or impossible solely because of the financial condition of the party, Lessor or Lessee, required to perform the act and provided further that the parties seeking the benefit of the provisions of this section shall within ten (10) days after the beginning of such enforced delay, have first notified the other party thereof in writing, and of the cause or causes thereof and requested an extension for the period of the enforced delay.

### Attorney's Fees

Section 14.02. Should any litigation be commenced between the parties to this Lease concerning said premises, this Lease, or the rights and duties of either in relation thereto, the party, Lessor or Lessee, prevailing in such litigation shall be entitled, in addition to such other relief as may be granted in the litigation to a reasonable sum as and for his attorney's fees in such litigation which shall be determined by the court in such litigation or in a separate action brought for that purpose.

### Notices to Lessor

Section 14.03. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Lease or by law to be served on or given to Lessor by Lessee or any Lender described in Article 6 of this Lease shall be in writing and shall be deemed duly served and given when personally delivered to Lessor, to any managing employee of Lessor, or, in lieu of such personal service, when deposited in the United States mail, first-class postage prepaid, addressed to Lessor at 630 "I" Street, Sacramento, California 95814. Lessor may change Lessor's address for the purpose of this section by giving written notice of such change to Lessee in the manner provided in Section 14.04 whereupon Lessee shall transmit a copy of such notice to any Lender described in Article 6 of this Lease.

## GROUND LEASE

### Notices to Lessee

Section 14.04. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Lease or by law to be served on or given to Lessee by Lessor shall be in writing and shall be deemed duly served and given when personally delivered to Lessee, any managing employee of Lessee, or, in lieu of such personal service, when deposited in the United States mail, first-class postage prepaid, addressed to Lessee at 2101 Evergreen Street, Sacramento, California 95815. Lessee may change his address for the purpose of this section by giving written notice of such change to Lessor in the manner provided in Section 14.03 of this Lease.

### Governing Law

Section 14.05. This Lease, and all matters relating to this Lease, shall be governed by the laws of the State of California in force at the time any need for interpretation of this Lease or any decision or holding concerning this Lease arises.

### Prime Rate Defined

Section 14.06. As used herein, "prime rate" shall mean that rate charged by Bank of America N.T. and S.A. or its successor organization to its prime or best commercial borrowers upon short term, unsecured borrowings as that rate shall be from time to time established, amended and/or announced.

### Binding on Heirs and Successors

Section 14.07. This Lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto, Lessor and Lessee, but nothing in this section shall be construed as a consent by Lessor to any assignment of this Lease or any interest therein by Lessee except as provided in Article 10 of this Lease.

### Partial Invalidity

Section 14.08. Should any provision of this Lease be held by a court of competent jurisdiction to be either invalid, void, or unenforceable, the remaining provisions of this Lease shall remain in full force and effect unimpaired by the holding.



Sole and Only Agreement

Section 14.09. This instrument, together with the Disposition and Development Agreement and Public Garage Purchase and Sale Agreement of even date herewith, and all other written agreements executed pursuant hereto, constitutes the sole and only agreement between Lessor and Lessee respecting said premises, the leasing of said premises to Lessee, the construction of the said building project described in this Lease on said premises, or the Lease terms herein specified, and correctly sets forth the obligations of Lessor and Lessee to each other as of its date. Any agreements or representations respecting said premises, their leasing to Lessee by Lessor, or any other matter discussed in this Lease not expressly set forth in this instrument are null and void.

Time of Essence

Section 14.10. Time is expressly declared to be the essence of this Lease.

Invalidity of Articles 12 and 13; Liquidated Damages

Section 14.11. If at any time during the applicability of Article 12 (The Parking Lease) and Article 13 (The Operating Agreement), a court of competent jurisdiction should determine that Lessor is and/or was not authorized by law to lease the Garage Facility for the uses authorized herein pursuant to the aforesaid Articles 12 and 13 hereof, then the aforesaid Articles 12 and 13 shall automatically terminate, as to the lease and/or the operating agreement pertaining the Garage Facility, and thereafter, Lessee and Lessor shall each be relieved of their respective duties and liabilities relating thereto. In connection therewith, the parties hereto expressly declare that the damages, if any, suffered by Lessee by reason thereof would be uncertain, and impracticable or extremely difficult to fix. By reason thereof, Lessor and Lessee hereby agree that Lessor shall pay to Lessee as liquidated damages annually thereafter within one hundred twenty days after the end of the operational year a sum equal to the amount by which:

(A) The sum of One Million Four Hundred Seventy Five Thousand Dollars (\$1,475,000.00) plus the amount, if any, determined in accordance with Section 12.11 hereof which shall have been paid in the operational year immediately previous to the determination of invalidity, EXCEEDS, if at all,

(B) the GREATER of:

(a) One Hundred Fifty Thousand Dollars (\$150,000.00) or

GROUND LEASE

(b) twenty-five percent (25%) of all of Lessee's pre-tax cash flow attributable to the entire development, after payment of Ground Lease rent, debt service on instruments senior to Lessor's Ground Lease pursuant to Section 6.01 hereof, including without limitation imputed debt service as defined in Section 2.07(C) hereof, debt service on instruments securing operating deficit loans and after allowance for a fifteen percent (15%) return on equity.

Option to Purchase

Section 14.12. Lessee shall have an option to purchase the premises upon the following terms and conditions:

(A) If this Lease shall not have otherwise been terminated pursuant to the terms hereof or by operation of law, Lessee shall have the option on or after the end of the ninth (9th) operational year of the hotel to be constructed upon these premises, (hereinafter the "option date") to purchase the leased fee of said premises at the then existing fair market value of the leased fee interest. Lessee may exercise this option by giving written notice to Lessor of its intention so to do.

(B) The fair market value of the leased fee interest in the premises shall be determined in accordance in Section 14.13 hereof. Upon determination of the fair market value of the leased fee interest, Lessee may, within thirty (30) days of the receipt thereof, received its notice of intention to purchase.

(C) The purchase price so determined shall be deposited in an escrow opened by Lessee with a reputable title company together with a copy of Lessee's notice of intent to purchase pursuant to this option and together with all other documents or instruments required by this option to be delivered into escrow. Lessee shall give written notice to Lessor of such deposits in escrow. On close of escrow opened by Lessee upon exercise of the option, Lessor shall convey to Lessee good marketable title to said premises, as evidenced by a standard form CLTA title insurance policy issued by such a reputable title company subject only to such liens, encumbrances, clouds and conditions as exist at time of the execution of this Lease as set forth in the introduction hereto above or are hereinafter incurred by Lessee.

(D) On the exercise of this option and close of the escrow for the sale of said premises to Lessee, Lessee shall pay all costs related to said transfer including but not limited to the full cost of the title insurance policy required by this section, the cost of preparing, executing and acknowledging any deed or other instruments required to convey the title to the premises to Lessee, any documentary transfer taxes, costs of recording, and escrow fees. In the event of a purchase by Lessee of Lessor's interest in the premises, Lessor shall convey its interest to Lessee by means of a special warranty deed containing covenants as required by the Development and Disposition Agreement and additional specific covenants as to the use of the premises requiring the same uses and for the same periods as those required by the terms of this Lease.

Determination of Fair Market Value

Section 14.13. At the time of its notice to Lessor of its intention to purchase under the options set forth in Section 14.12 hereof, Lessee shall include the name and report of an independent fee appraiser who has appraised the value of Lessor's interest and rendered an opinion in accordance with generally accepted real property appraisal standards of the fair market value of Lessor's interest at its highest and best use. Upon receipt of the report of said appraiser, (hereinafter "Lessee's appraiser"), Lessor may within thirty (30) days thereafter give notice to Lessee of its intention to retain, at Lessee's cost and expense, an independent fee appraiser to render an additional opinion of fair market value in accordance with generally accepted real property appraisal standards. Said appraiser, (hereafter "Lessor's appraiser") shall render his opinion of value within forty five (45) days thereafter. Thereupon, Lessee may accept the greater of the value estimate established by Lessee's appraiser and/or Lessor's appraiser as the fair market value of Lessor's interest and the purchase price thereof, or Lessee may, at its option, within (30) days after receipt of the report of the Lessor's appraiser, retain a third appraiser chosen by Lessee's appraiser and Lessor's appraiser or, in the event that they are unable to agree, an appraiser recommended by the local governing board of the Appraisal Institute, who shall select the opinion of the Lessee's appraiser or the appraiser or the opinion of the Lessor's appraiser as the fair market value of the Lessor's interest in the premises. If Lessee shall elect to retain the aforesaid third appraiser, the third appraiser's selection of the opinion of value shall be binding upon all parties. The cost of all appraisals undertaken by reason of Lessee's election to purchase pursuant to Section 14.12 hereof

shall be borne solely and completely by Lessee.

Conversion of Accrued Rents at Option Purchase

Section 14.14. If Lessee should exercise its option to purchase the leased fee pursuant to Sections 14.12, et. seq., prior to a sale or non-qualifying refinance of the Hotel premises, Lessee may, at its option, convert the total accrued but unpaid amounts pursuant to Article 2 hereof to a debt instrument in such total amount bearing interest at one percent (1%) above the prime rate maturing upon the earlier of: (1) the sale or non-qualifying refinance of the Hotel premises or (2) ten (10) years from the date of purchase; and secured by a security interest in the premises subordinated only to Section 6.01 debt.

Allocation of Sale or Refinance Proceeds  
in Event of Insufficiency

Section 14.15. All sums accrued pursuant to Article 2 and Section 13.02 hereof shall be repaid in the event of a non-qualifying sale, transfer or other assignment of any interest in the leasehold or any improvements thereon or in the event of a non-qualifying refinance of the improvements upon the leasehold. Said accrued sums may continue to accrue in accordance with the terms hereof in the event of a qualifying refinance. A qualifying refinance is one in which the net proceeds of such refinance do not exceed the then-remaining principal balance of the Section 6.01 debt and the repayment of any sums accrued pursuant to Article 2 and Section 13.02 hereof. A non-qualifying sale is any sale other than a qualified sale by a Lender pursuant to Section 14.16 herein. In the event that the net proceeds of a non-qualifying sale or non-qualifying refinance are insufficient to pay a cumulative fifteen percent (15%) return on equity (hereinafter "equity return") and all amounts accrued pursuant to Article 2 and Section 13.02 hereof (hereinafter collectively "accrued sums"), said equity return and said accrued sums shall be paid from available net proceeds in the proportion that such amounts bear to each other, and the unpaid balance of such accruals shall be carried forward and shall continue to accrue.

Qualified Sale By Lender

Section 14.16 Notwithstanding the provisions of Section 14.15 above, sums accrued pursuant to Article 2 and Section 13.02 hereof may continue to accrue upon a qualified sale by a Lender in the event and to the extent that the net proceeds of the sale are insufficient to pay all amounts then properly due and payable to Lender including without limitation delinquent installments upon the debt, foreclosure costs, carrying cost, and other costs directly related to Lender's

## GROUND LEASE

assumption of Lessee's interest hereunder and the total of such accrued sums. For purposes of this section, Lender shall mean the senior trust deed holder pursuant to Section 6.01 hereof. "Qualified Sale By Lender" for purposes of this section shall be defined to mean a sale by Lender of the Lessee's interest under this Lease in which:

(a) The total consideration received by Lender shall not exceed the total of sums then due and owing to Lender including without limitation delinquent installments upon the debt, foreclosure costs, carrying cost, and other costs directly related to Lender's assumption of Lessee's interest hereunder and excluding any debt assumed by the purchaser; and

(b) The purchaser is approved by the hotel manager if said approval is required by the management agreement.

### Option Not Assignable Without Consent

Section 14.17. Lessee may not assign this option or right to purchase without the prior written consent of Lessor being first obtained.

### Equity Defined

Section 14.18. Whenever reference is made in this Lease to "equity", the term "equity" shall mean the difference between the total amount of debt secured by the security instrument to which Lessor's Ground Lease is subordinated pursuant to Section 6.01 hereof and the total amounts of funds expended by the Lessee for making the improvements upon the premises pursuant to the approved budget of Lender, not including sums expended by Lessor for the parking structure pursuant to Section 8 (h) of the Disposition and Development Agreement, but including operating deficit loans actually advanced. "Operating deficit loans" shall be loans in which all proceeds are devoted to funding operating deficits of the Hotel, and where prior thereto all equity funds shall have been devoted to the construction of the improvements (excluding exclusionary items set forth in Section 6.01(b) hereof) and to funding operating deficits and no equity funds above that cumulative amount expressly allowed by Section 6.01(b) shall have been disbursed to the Lessee, any owner of Lessee or any affiliate of the Lessee or any owner thereof. Notwithstanding anything to the contrary contained herein, "equity" shall not be deemed to include any sums paid by Lessee or any partner or principal thereof to any person or entity in settlement of claims, whether valid or invalid, against the Lessee or any principals or partners thereof.

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### Audit of Lessee Payments

Section 14.19. All amounts required to be paid and/or accumulated by Lessee under this Lease shall be adjusted in accordance with an audit conducted annually of Lessee's operation by a reputable independent certified public accounting firm ("the auditor") within one hundred five (105) days after the close of each calendar year at Lessee's sole cost and expense. The auditor shall unconditionally certify all such amounts to Lessor.

### Sale Defined

Section 14.20. Whenever reference is made in this Lease to "sale" of the Hotel premises, the term sale shall include without limitation any sale, assignment, gift or other transfer of any cumulative, beneficial interest amounting to ten percent (10%) or more of the ownership of the Hotel improvements or any other similarly significant change in the ownership.

### Default of Superior Loan

Section 14.21. Any default by Lessee of any promise, covenant, obligation, and/or undertaking relating to and/or pursuant to the Loan Documents relating to the first deed of trust to which this Lease is subordinate pursuant to Section 6.01, supra., shall constitute a default under this Lease.

### Lessor Intended Third Party Beneficiary

Section 14.22. In consideration of and as an inducement for Lessor's execution of this Agreement, Lessee expressly declares that Lessor is an intended third party beneficiary of each and every promise, covenant, obligation and undertaking of Lessee pursuant that certain commitment for construction and permanent financing issued by MeraBank, a federal savings bank, of Phoenix, Arizona, and Citicorp Real Estate, Inc., a Delaware corporation, dated September 16, 1986 and all loan documents now or hereafter executed by Lessee pursuant to and/or relating thereto, and that Lessor shall be empowered and entitled to enforce each and every such promise, covenant, obligation and undertaking against Lessee without any consent, joinder and/or other cooperation of other parties thereto. Lessor and Lessee further agree that a breach of any obligation of the aforesaid commitment shall be deemed a breach of this lease.

### Pre-Tax Cash Flow Defined

Section 14.23. "Pre-tax cash flow" as used in this lease shall mean gross revenues from any source (including

without limitation non-recurring gains on sale of assets of any type) less net cash charges paid to non-affiliated third parties, adding back principal repayments on debt payments, all in accord with generally accepted accounting principles.

Consents and Approvals

Section 14.24. Wherever, under the provisions of this agreement, Lessee is required to obtain the approval or consent of the Lessor, that approval or consent may not be reasonably withheld by Lessor provided that:

(A) the lack of ascertainable criteria within this Lease as to any particular approval or consent shall not be utilized to support a determination of unreasonableness;

(B) in any action or proceeding contesting the Lessor's withholding or denial of approval or consent, the Lessee shall at all times have the burden of establishing by clear and convincing evidence that the decision of the Lessor was unreasonable;

(C) this Section 14.24 shall have no application to

(1) any request by the Lessor for an amendment, modification or waiver of any term or provision of this Lease; or

(2) any request by the Lessee for reinstatement after the Lessee has failed to properly remedy its default during the appropriate cure period following notice of default.

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EXECUTED on October \_\_, 1986, at Sacramento,  
California.

LESSOR:

REDEVELOPMENT AGENCY OF THE  
CITY OF SACRAMENTO

BY \_\_\_\_\_  
Chairman

BY \_\_\_\_\_  
Secretary

APPROVED AS TO FORM:

LAW OFFICES OF BRENTON A. BLEIER  
A Professional Corporation

\_\_\_\_\_  
BRENTON A. BLEIER

LESSEE:

JB AND LE REGENCY VENTURE,  
a California Limited Partnership

By: KINGS CAPITOL REGENCY, INC.,  
A California Corporation,  
Its General Partner

By: \_\_\_\_\_  
JOSEPH BENVENUTI  
President

By: \_\_\_\_\_  
GREGG P. LUKENBILL  
Vice President



GROUND LEASE

APPROVED AS TO FORM:

HYDE, MILLER & SAVAGE  
Attorneys at Law

RICHARD H. HYDE