TO: Chairperson and Members of the Redevelopment Agency

FROM: J. Gordon Palmer, Jr., Executive Director
Stockton Redevelopment Agency

SUBJECT: RESOLUTION: APPROVE AN OPERATING LEASE BETWEEN HOTEL STOCKTON INVESTORS AND THE REDEVELOPMENT AGENCY OF THE CITY OF STOCKTON

RECOMMENDATION

It is recommended that the Redevelopment Agency adopt a resolution approving an Operating Lease between Hotel Stockton investors and the Redevelopment Agency of the City of Stockton.

SUMMARY

In 2002, Hotel Stockton Investors entered into a Disposition and Development Agreement (DDA) with the Stockton Redevelopment Agency (Agency) to renovate the second through fifth floors of the Hotel Stockton into affordable rental housing. The DDA provided the Agency with the right to operate and lease the ground floor and the rooftop terrace of the Hotel. The Operating Lease between the Redevelopment Agency and Hotel Stockton Investors, the current owners of the Hotel, specifies the terms under which the Agency will lease the space. The Agency has in turn entered into a Master Lease with Atlas Properties, who is entering into subleases with the ultimate users.

DISCUSSION

Background

In 2002, the Redevelopment Agency approved a DDA with Hotel Stockton Investors for the renovation of the Hotel Stockton. In 2003, the pre-disposition terms of the DDA had been met and the title to the Hotel was transferred to Hotel Stockton Investors.

The DDA included a stipulation that the second through fifth floors of the Hotel would be renovated into affordable rental housing. The DDA also included a provision which allows the Agency, or its assignee, the right to operate the approximately 22,000 square feet of retail space at the Hotel, which includes the ground floor and the rooftop terrace located on the third floor of the building.

In April 2003, the Agency issued a Request for Qualifications (RFQ) seeking a firm that could develop and lease the retail space in the Hotel Stockton. Three Statements of Qualifications were received in response to the RFQ. Atlas Properties was selected
and negotiations began to determine the terms of the lease between the Agency and Atlas Properties (Atlas). Atlas had possible tenants who were very interested in the space at the Hotel Stockton, including Paragary's. To allow Atlas to enter into subleases with prospective tenants, the Agency entered into a Master Lease with Atlas based on the requirement of the DDA, which gave the Agency the right to operate and lease the space. On May 10, 2005, a Master Lease between the Agency and Stockton City Center 16, LLC, which is an affiliate of Atlas Properties with overlapping ownership, was approved.

Present Situation

The attached Operating Lease between Hotel Stockton Investors (the “Landlord”) and the Agency formalizes the terms of the lease. The basic terms of the Operating Lease are as follows:

- The Operating Lease will be for 55 years, retroactive to May 3, 2005.
- The Agency shall accept the building “as is” from the Landlord. Based on requirements of the Master Lease, the Agency will then need to provide the plumbing and electrical stub-ins, telephone and television stub-ins, HVAC rough-in, elevators, and sewer stub-ins for the space to be sub-leased by the Master Tenant. It also requires the Agency to provide all tenant improvements for the white table cloth restaurant.
- The Agency shall pay rent to the Landlord in the amount of forty cents ($0.40) per square foot per month (approximately $8,800/month). The Agency will credit the rent payments to the $9.6 million loan from the Agency to Hotel Stockton Investors which was used to pay for a portion of the renovation of the building. The Agency will apply the rent to accrued interest, then to principal.
- The Agency, the Master Tenant, and individual tenants must comply with all the requirements of the State Historic Preservation Officer with regard to the Hotel’s status as a historic structure. The Agency agrees to indemnify and hold the Landlord harmless from any claims arising from any alleged failure to comply with the historic building requirements. The Landlord will have the right to approve any and all designs, work in progress and/or completed work by the Agency, Master Tenant, and Tenant.
- The Operating Lease requires the Agency to pay operating and maintenance expenses for the retail space. However, through the Master Lease, these costs are the responsibility of the Master Tenant. The Agency is still responsible for repairing and replacing the structural portions of the building.
RESOLUTION: APPROVE AN OPERATING LEASE BETWEEN HOTEL STOCKTON INVESTORS AND THE REDEVELOPMENT AGENCY OF THE CITY OF STOCKTON

FINANCIAL SUMMARY

The rent (approximately $8,800/month) which is required as a part of the Operating Lease will not be paid but will be used to credit the $9.6 million loan between the Redevelopment Agency and Hotel Stockton Investors. Funds for the tenant improvements have been budgeted in the 2005/2006 Redevelopment Department budget under account 334-7350-640 (West End - Redevelopment Agency CIP).

Respectfully submitted,

J. GORDON PALMER, JR., EXECUTIVE DIRECTOR
STOCKTON REDEVELOPMENT AGENCY

JGP: SJP: LI: jb
Attachment
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OPERATING LEASE

BY AND BETWEEN

HOTEL STOCKTON INVESTORS,
A California Limited Partnership, as Landlord;

AND

REDEVELOPMENT AGENCY OF THE
CITY OF STOCKTON, as Tenant

OF THE PREMISES KNOWN AS:
First Floor and Roof Terrace of
HOTEL STOCKTON

Dated as of
May 3, 2005
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## EXHIBITS

- **Exhibit A:** Description of the Hotel Stockton Property
- **Exhibit B:** Delineation of Premises
- **Exhibit C:** Insurance Requirements
OPERATING LEASE

This Operating Lease (the "Operating Lease") is entered into as of this 3rd day of May, 2005, by and between Hotel Stockton Investors, a California limited partnership as the landlord ("Landlord") and the Redevelopment Agency of the City of Stockton, (the "Agency"), a public body, corporate and politic, as tenant, with reference to the following facts:

A. The Agency and the Landlord, entered into that certain Amended and Restated Disposition, Development, Grant and Loan Agreement, dated as of July 9, 2002, as amended by that certain First Amendment to Amended and Restated Disposition, Development, Grant And Loan Agreement and Loan Modification Agreement, dated as of January 18, 2005, and as implemented pursuant to that certain First Operating Memorandum to the DDA, dated as of December 10, 2002 (collectively, the "DDA"). Under the DDA, the Landlord acquired from the Agency the Hotel Stockton (as defined below) and rehabilitated the Hotel Stockton.

B. Pursuant to Section 7.2 of the DDA, the Landlord agreed that the Agency would operate the first floor and roof terrace of the Hotel Stockton after the rehabilitation of the Hotel Stockton was completed. Accordingly, the Landlord and the Agency enter into this Operating Lease (the "Operating Lease"), in which the Agency leases from the Landlord the first floor and roof terrace areas of the Hotel Stockton to operate those portions of the Hotel Stockton.

THEREFORE, the parties agree as follows:

ARTICLE 1.
DEFINITIONS AND EXHIBITS

Section 1.1 Definitions. The capitalized terms set forth in this Article 1 shall, for the purposes of this Operating Lease, have the meaning set forth below as follows:

(a) "Affiliate" shall mean, with respect to any specified Person, any other Person controlling or controlled by or under common control with such specified Person. For the purposes of this definition, "control", when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise. The terms "controlling" and "controlled" have meanings correlative to the foregoing.

(b) "Agency" shall mean the Redevelopment Agency of the City of Stockton, a public body, corporate and public.

(c) "Alteration" shall mean any demolition, alteration, installation, addition, improvement, or new construction to the Property.
(d) "Business Day" shall mean a day other than a Saturday, a Sunday or a day on which banks in Stockton, California are authorized or obligated to close their regular banking business.

(e) "City" shall mean the City of Stockton, a charter city.

(f) "Commencement Date" shall mean the date of execution of this Operating Lease by the Agency and the Landlord.

(g) "DDA" shall mean the Amended and Restated Disposition, Development, Grant and Loan Agreement, dated as of July 9, 2002, between the Agency and the Landlord regarding the Hotel Stockton, as amended by that certain First Amendment to Amended and Restated Disposition, Development, Grant And Loan Agreement and Loan Modification Agreement, dated as of January 18, 2005, and as implemented pursuant to that certain First Operating Memorandum to the DDA, dated as of December 10, 2002.

(h) "Environment" shall mean soil, surface waters, ground waters, land, stream sediments, surface or subsurface strata, ambient air and Improvements in and on the Land (including the air within those Improvements).

(i) "Environmental Claim" shall mean any claim, investigation, proceeding, action, order, directive, summons, complaint, citation, notice or inquiry from any Governmental Authority or other Person which could or does result in any Environmental Damages.

(j) "Environmental Condition" shall mean any condition with respect to the Environment, whether or not yet discovered, at, on, in or under the Property, which could or does result in any Environmental Damages.

(k) "Environmental Damages" shall mean all claims, judgments, damages (including punitive damages), losses, penalties, fines, liabilities, encumbrances, liens, costs and expenses of investigation and defense of any Environmental Claim which are incurred by any Indemnified Party in respect of the Property as a result of (i) the existence of Hazardous Substances at, on, under or off the Real Property, or (ii) the violation or threatened violation of, or liability under any Environmental Law.

(l) "Environmental Laws" shall mean all Requirements of Law including, without limitation, federal, state and local statutes, regulations, rules, codes and ordinances (whether now existing or hereafter enacted or promulgated) of or with any Governmental Authority relating to the discharge, generation, removal, transportation, storage or handling of Hazardous Substances, including, the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. § 9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Clean Air Act 42 U.S.C. § 7401 et seq.), the State Drinking Water Act (42 U.S.C. Section 3000(f), et
seq.), Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), California Health and Safety Code (Section 25100 et seq., Section 39000 et seq.), or California Water Code (Section 1300 et seq.).

(m) "Event of Default" shall have the meaning set forth in Section 11.1 of this Operating Lease.

(n) "Excusable Delays" shall mean a delay due to acts of God, governmental restrictions, enemy actions, civil commotion, fire casualty, strikes, shortages of supplies or labor, work stoppages or other causes beyond the reasonable control of the Landlord or Agency, but lack of funds shall not be deemed a cause beyond the reasonable control of either party.

(o) "GAAP" shall mean generally accepted accounting principles in the United States of America, as amended from time to time.

(p) "Governmental Authority" shall mean any federal, state, local or foreign court, agency, authority, board, bureau, commission, department, office or instrumentality of any nature whatsoever or any governmental or quasi-governmental unit, whether now or hereafter in existence, or any officer or official thereof, having jurisdiction over the Agency, Landlord or the Property.

(q) "Hazardous Substance" shall mean any substance:

(1) the presence of which requires notification, investigation or remediation under any Environmental Law;

(2) which is or becomes defined as a "hazardous substance", "hazardous waste", "toxic substance", "toxic waste", "pollutant", "contaminant" or words of similar import under any Environmental Law;

(3) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and is or becomes regulated by any Governmental Authority;

(4) without limitation, which contains gasoline, diesel fuel or other petroleum hydrocarbons or volatile organic compounds;

(5) without limitation, which contains polychlorinated biphenyls or asbestos or urea formaldehyde foam insulation; or

(6) without limitation, which contains or emits radioactive particles, waves or materials, including, without limitation, radon gas.

(r) "Hazardous Substances" shall not include: (A) construction materials, gardening materials, office supply products or janitorial supply products customarily used in the construction, maintenance, rehabilitation, or management of
commercial properties, buildings and grounds, or (B) certain substances which may contain chemicals listed by the State of California pursuant to California Health and Safety Code Section 25249.8 et seg., which substances are commonly used by a significant portion of the population living within the region of the Property, including, but not limited to, alcoholic beverages, aspirin, tobacco products, nutrasweet and saccharine, so long as such materials and substances are stored, used and disposed of in compliance with all applicable Environmental Laws.

(s) "Hotel Stockton" shall mean the real property, including improvements thereon, described in the attached Exhibit A owned by the Landlord.

(t) "Impositions" shall have the meaning set forth in Section 6.3 of this Operating Lease.

(u) "Indebtedness" shall mean, without duplication, with respect to any Person: (i) any liability of such Person, to the extent it would appear as a liability on a balance sheet of such Person prepared in accordance with GAAP, (a) for borrowed money, (b) evidenced by a bond, note, debenture or similar instrument given in connection with the acquisition of any businesses, properties or assets of any kind (other than a trade payable or a current liability arising in the ordinary course of business), or (c) for the payment of money relating to a capitalized lease obligation; (ii) any liability of such Person under any reimbursement obligation relating to a letter of credit, statutory obligation, performance or surety bond; (iii) any liability of others described in the preceding clauses (i) and (ii) that such Person has guaranteed or that is otherwise its legal liability or which is secured by a Lien on property of such Person; and (iv) any amendment, supplement, modification, deferral, renewal, extension or refunding of any liability of the types referred to in clauses (i), (ii) and (iii) above.

(v) "Indemnified Parties" shall mean the Landlord and each of its respective board members, partners, members, officers, employees, representatives, agents and successors and assigns.

(w) "Insurance Requirements" shall mean all provisions of the insurance policies covering or applicable to all or any part of the Property or the ownership, occupancy, right to possession, use, improvement, operation or maintenance thereof, all requirements of the issuer of any of such insurance policies and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions, including any local board of fire underwriters) which, pursuant to an insurance policy, are binding upon the Agency or the Agency and applicable to the Property.

(x) "Lease Year" shall mean a period of twelve (12) full calendar months. The first Lease Year shall begin on the Commencement Date. Each succeeding Lease Year shall commence on the anniversary of the Commencement Date.
(y) "Leasehold Mortgage" shall mean any mortgage, deed of trust, security agreement or collateral assignment encumbering Agency's estate created hereunder or any portion thereof as a leasehold mortgage lien, as reasonably approved by the Landlord.

(z) "Leasehold Mortgagee" shall mean the holder, mortgagee, grantee or secured party under any Leasehold Mortgage and its successors and assigns.

(aa) "Lender" shall mean the holder of any Indebtedness of the Landlord which is, at that time, secured by a first priority deed of trust or mortgage encumbering the Property.

(bb) "Landlord" shall mean Hotel Stockton Investors, a California limited partnership, and it successors and assigns, the owner of the Hotel Stockton.

(cc) "Lien" shall mean any lien, mortgage, pledge, security interest or other encumbrance of any nature upon any property, including any mechanic's lien, materialmen's lien, conditional sale or other tile retention agreement or lease in the nature thereof.

(dd) "Master Lease" shall mean the Master Lease between the Redevelopment Agency of the City of Stockton, as Agency or Master Landlord and Stockton City Center 16, LLC, as Master Tenant or Master Tenant.

(ee) "Master Tenant" is Stockton City Center 16, LLC, as Master Tenant or Master Tenant.

(ff) "Master Landlord" is the Redevelopment Agency of the City of Stockton, as Agency.

(gg) "Officer's Certificate" shall mean a certificate of any authorized officer of Agency or the Landlord, as the case may be.

(hh) "Operating Lease" shall mean this Operating Lease, dated as of May 3, 2005, between the Landlord, as landlord, and Agency, as Lessee, as the same may be amended from time to time.

(ii) "Person" shall mean any individual, corporation, partnership, limited liability company, limited liability partnership, joint venture, association, joint stock company, trust, unincorporated organization, or Governmental Authority.

(jj) "Premises" shall mean the first floor and roof terrace portions of the Property, as delineated on the attached Exhibit B of this Operating Lease, which may be modified from time to time only by the written consent of Landlord and the Agency.

(kk) "Proceeds" shall mean amounts, awards or payments payable to the Landlord in respect of all or any part of the Property in connection with the damage, destruction or taking thereof (after the deduction therefrom of any and all reasonable
expenses incurred or in the recovery thereof, including all attorneys' fees and expenses, the fees of insurance experts and adjusters and the costs incurred in any litigation or arbitration with respect to such damage, destruction or taking).

(II) "Property" shall mean the Hotel Stockton.

(mm) "Rent" shall mean the rent payable pursuant to Section 3.2 of this Operating Lease.

(nn) "Requirements of Law" shall mean:

(1) the corporate charter and by-laws (in the case of a corporation), partnership agreement and certificate or statement of partnership (in the case of a partnership), operating agreement and certificate of limited liability company (in the case of a limited liability company), or other organizational or governing documents of the Landlord and its successors or assigns under this Operating Lease,

(2) any legal requirement including any local, state, federal or foreign statute, law, ordinance, code, treaty, rule or regulation now or hereafter in effect (including Environmental Laws and the Americans with Disabilities Act), or final and binding determination of an arbitrator, or order, judgment, decree, injunction, permit, license, authorization, certificate, franchise, approval, notice, demand letter, direction or determination of any Governmental Authority applicable to the Property or the operation, management, use or condition thereof, or

(3) any recorded deed of restriction, declaration, covenant running with the land or otherwise, now or hereafter in force other than any such deed, declaration or covenant the noncompliance, with which will not have a material adverse affect on the value, utility or legality of the Property.

(oo) "Restoration" shall mean, in case of damage to or destruction or taking of the Property or any part thereof, the restoration, replacement or rebuilding of the Property as nearly as practicable (after taking into account the consequences of a taking, if any) to at least its condition, value, utility and character (in light of commercial materials and services then available) immediately prior to such damage, destruction or taking, together with such Alterations as may be made in accordance with the applicable provisions of this Operating Lease.

(pp) "Restoration Conditions" shall mean the following conditions:

(1) the applicable Property can be restored to operation as in at least the condition, value and utility which it had prior to the casualty or taking not later than six (6) months before the end of the term of this Operating Lease.

(2) sufficient rent and/or rent insurance proceeds will be available to fund, in a timely manner, all payments to any Lender through the
Restoration period, sufficient funds are available to complete the Restoration and the Landlord has delivered a completion bond to the Agency;

(3) this Operating Lease will not terminate as a result of such casualty or taking or as a result of Restoration not being completed within four (4) months beyond the time within which Restoration is projected to be completed;

(4) so long as any Indebtedness secured by either of the component portions of the Property is outstanding, the Proceeds for Restoration shall be held by the Lender subject to disbursement for the expenses of Restoration in a manner satisfactory to the Lender; and

(5) no Event of Default has occurred and is continuing.

(qq) "Space Leases" shall mean all leases, subleases, rental agreements, occupancy agreements, licenses and other agreements respecting the occupancy or use of any part of the Premises, in effect at any time during the term of this Operating Lease, excluding this Operating Lease and the Master Lease.

(rr) "Tenant" shall mean any tenant under any of the Space Leases.

(ss) "Term" shall mean the term of this Operating Lease as set forth Section 2.3 of this Operating Lease.

Section 1.2 Certain Terms. Unless the context indicates otherwise, all accounting terms are used herein as defined under GAAP. All references to Sections, Schedules, Exhibits, etc. are to Sections, Schedules or Exhibits of or to this Operating Lease unless otherwise specified. Any of the terms defined in Section 1.1 may, unless the context otherwise requires, be used in the singular or plural depending on the reference. "Herein," "hereunder" and words of similar import refer to this Operating Lease as an entirety and not to particular Sections or Articles of this Operating Lease. The word "including" shall be construed to be followed by the words "without limitation."

Section 1.3 Exhibits. The following exhibits are attached to this Operating Lease and are a part of this Operating Lease:

Exhibit A: Description of the Hotel Stockton Property
Exhibit B: Delineation of the Premises
Exhibit C: Insurance Requirements

ARTICLE 2.
BASIC LEASE TERMS

Section 2.1 Lease of Premises. The Landlord hereby leases to the Agency and the Agency leases from the Landlord the Premises on and subject to all of the terms and conditions set forth in this Operating Lease.
Section 2.2 Identification of Premises. The Premises consists of the portions of Property which Agency leases pursuant to this Operating Lease. The Premises shall be delineated on the attached Exhibit B of this Operating Lease, which may be modified from time to time.

Section 2.3 Term. The Term of this Operating Lease shall commence on the Commencement Date and end on the date fifty-five (55) years after the Commencement Date, unless terminated earlier pursuant to the terms of this Operating Lease.

Section 2.4 Condition of Premises. Agency shall accept each portion of the Premises "as is".

Agency's possession of any portion of the Premises shall constitute Agency's acknowledgment that such portion of the Premises are in all respects in the condition in which Agency is required to deliver them to Agency under this Operating Lease and that Agency has examined such portion of the Premises and is fully informed to Agency's satisfaction of the physical and environmental condition and the utility thereof.

Section 2.5 Landlord's Reserved Rights. So long as the Agency's use of the Premises or other rights or obligations under this Operating Lease are not materially adversely affected, the Landlord reserves the right from time to time:

(a) Structural Changes. To install, use, maintain, repair and replace pipes, ducts, conduits, wires, meters and equipment for service to the Premises, and to relocate any pipes, ducts, conduits, wires, meters and equipment included in the Premises, and to repair, replace and maintain any of the structural components (roof, foundation, walls) of the Property.

(b) Easement Changes. To make reasonable changes and grant other rights thereto, including without limitation, the granting of easements, rights of way and rights of ingress and egress and similar rights to users of parcels adjacent to the Property.

ARTICLE 3.
RENT AND REPAYMENTS

Section 3.1 Payment of Rent. The Agency shall pay to the Landlord the amounts specified in this Article 3 as Rent for the Premises. All Rent shall be due to Landlord on or before the first (1st) day of the calendar month following the Commencement Date, during the Term of this Operating Lease. Rent for any portion of the Premises shall commence on the Commencement Date. Agency shall pay all Rent in lawful money of the United State of America to Landlord by check or wire transfer to the address set forth in Section 14.1, or to such other account or person or at such other place as Landlord may from time to time designate in writing. Agency shall credit Rent payments by Agency as payment on that certain loan to Landlord from Tenant as evidenced by that certain promissory note and deed of trust in the amount of Nine
Million Six Hundred Thousand dollars ($9,600,000). Agency shall apply said Rent payments first to accrued interest on the loan and then to the principal balance of said loan. Agency shall provide Landlord with a written statement of account annually evidencing such Rent payments. The Landlord shall review and approve the written statement, or request revisions, within thirty (30) days after receipt. In the event that the Landlord determines as the result of its review that there is an understatement in the amount owed to the Landlord, the Landlord shall promptly notify the Agency. In the event the Landlord and the Agency cannot agree on the amount owed to the Landlord, the Agency and the Landlord shall submit the calculations to an independent third party certified public accountant to make the determination. Any additional amounts owed to the Landlord shall be paid no later than eight (8) months after the end of the Lease Year for which such payments are owed.

Section 3.2 Rent. Throughout the Term, the Agency shall pay the Landlord, as rent ("Rent") for each month of each Lease Year, in the amount of ($0.40) Forty Cents per square foot of the Premises per month then leased by the Agency. The Rent shall increase by one percent (1%) of the prior Rent amount on every anniversary of the Commencement Date.

Section 3.3 Interest on Late Payments. All Rent payable by Agency to Landlord hereunder, if not paid when due, shall bear interest from the due date until paid at the lower of the highest rate permitted by law ten percent (10%).

Section 3.4 Inspection and Audit Rights. The Agency shall make available for examination at reasonable intervals and during normal business hours to Landlord all books, accounts, reports, files, and other papers or property with respect to all matters covered by this Operating Lease, and shall permit the Landlord to audit, examine, and make excerpts or transcripts from such records. The Landlord also has the right to make audits of any conditions relating to this Operating Lease.

ARTICLE 4.
INSTALLATION OF IMPROVEMENTS

Section 4.1 Improvements By Agency. The Agency shall construct certain improvements in the Premises. Other tenant or other improvements shall be constructed by the Master Tenant or the individual Tenants leasing space in the Premises.

Section 4.2 Prevailing Wage. The Master Tenant or the individual Tenants, as the case may be, including, without limitation, their architects, general and sub-contractors, shall be responsible for compliance with all wage and hour laws, including, but not limited to Labor Code Section 1720, et seq., and to determine whether compliance with "prevailing wage" is necessary with respect to any and all initial tenant improvement work, repairs, modifications or changes to the portions of the Hotel Stockton leased pursuant to this Operating Lease. Agency agrees to indemnify and hold harmless to the greatest extent allowable by law, Landlord from any and all claims.
or causes of action arising from any labor dispute or dispute as to the required payment of prevailing, union or other wages however they be denominated for any improvement work performed by the Agency on the Hotel Stockton property.

Section 4.3 Master Tenant or Tenant's Historical Preservation. The Agency, Master Tenant or the individual Tenants, as the case may be, including, without limitation, their architects, general and sub-contractors, shall review and comply with any and all requirements of the "California State Historic Preservation Officer" ("SHPO") with regard to the status of the Hotel Stockton as a historic structure which is on the National Register of Historic Places ("National Register"). (36 CFR Part 800; Section 106 of the National Preservation Act of 1974 (16 U.S.C. § 470 (f), Stockton Municipal Code §16-140 et seq., 36 CFR Parts 800.6(b)(2) and 800.7, as well as The Secretary of Interior's Standards For Rehabilitation and Guidelines for Rehabilitating Historic Buildings ("Standards") (U.S. Department of the Interior, National Park Service, 1983, rev. 1990. Agency agrees to indemnify and hold harmless to the greatest extent allowable by law, Landlord from any and all claims or causes of action arising from any alleged failure of Agency, Master Tenant or any Tenant, General or Sub-contractor to comply with the above—mentioned historic building requirements for construction of any tenant improvements or modifications or alterations of the same.

Section 4.4. Landlord Approval. Landlord reserves the right to approve any and all designs, work in progress and/or completed work by the Agency, Master Tenant or any Tenant or the general or sub-contractor(s) with respect to the Historic Building compliance mentioned above. The final authority on behalf of Landlord as to approval, (whose approval shall not be unreasonably withheld), shall be Michael F. Malinowski, AIA, who can be reached at (916) 442-6955, address: 2420 K. Street, Sacramento, California 95816.

ARTICLE 5.
USE AND MAINTENANCE OF THE PREMISES

Section 5.1 Use of Premises. The Premises shall be used only as retail space (including without limitation restaurant, catering and related special event uses) and for no other purposes without the Landlord's prior written consent, which consent shall not be unreasonably withheld or delayed; provided, however, Landlord's withholding of consent shall be conclusively presumed reasonable if the proposed use would materially increase the wear and tear on or the risk of damage to the Property above levels or risks resulting from the use as of the date of this Operating Lease or the proposed use is for an illegal, immoral or disreputable purpose. The Agency shall not do or permit to be done in, on or about the Property, nor bring or keep or permit to be brought or kept therein, anything which is prohibited by or will in any way conflict with any law, ordinance, rule, regulation, permit or order now in force or which may hereafter be enacted, or which is prohibited by any insurance policy for the Property, or will materially increase the existing rate of, or cause a cancellation of, or affect any insurance for the Property. The Agency shall not maintain or permit any nuisance in, on
or about the Property or commit or suffer to be committed any waste in, on or about the Property.

Section 5.2 Maintenance of Premises. After the Commencement Date, the Agency shall, at all times during the Term of this Operating Lease and, at Agency’s sole cost and expense, except as otherwise provided herein and in the Master Lease, or cause to be kept, such portion of the Premises and every part thereof and all lighting, signs, heating, ventilating and air conditioning, mechanical, electrical, plumbing, sprinkler and life safety systems, equipment, fixtures, alterations, additions and improvements to such portion of the Premises in good and clean order, repair and operating condition and in a first-class manner such that the utility and operation of such portion of the Premises will not be affected in any material adverse respect, subject to ordinary wear and tear. Subject to Excusable Delays and the provisions set forth in this Operating Lease with respect to damage or destruction caused by fire or other casualty or by a taking, the Agency shall promptly make or cause to be made all necessary or appropriate repairs, replacements and renewals, whether interior or exterior, nonstructural, ordinary or extraordinary to the Premises. All repairs and replacements shall consist of materials which are compatible with the existing Improvements and installed in a good and workmanlike manner. Except for routine maintenance, which may be performed by the qualified employees of the Agency or the City of Stockton, Agency shall engage a duly licensed independent contractor to perform all maintenance and repair services on all structural components of the Premises and all heating, ventilating and air conditioning, mechanical, electrical, plumbing, sprinklers and life safety systems and equipment in the Premises. Landlord and its consultants or contractors shall have the right to inspect the Premises to determine Agency’s compliance with this Section 5.2, and Agency shall promptly complete, or cause to be completed, any reasonable work recommended by Landlord or its consultants or contractors as a result of any such inspection. Subject (to the extent applicable) to the provisions of Section 6.6 relating to permitted contests, the Agency shall not perform or permit any act or thing which might affect the condition, value, utility or operation of the Property or any part thereof in any material adverse respect or commit or permit any waste of the Property or any part thereof.

Section 5.3 General Alterations. All Alterations shall require the Landlord’s written approval, which approval shall not be unreasonably withheld. The Agency shall not make or permit any Alteration unless undertaken in accordance with the applicable provisions of this Operating Lease and the Master Lease. Any Alteration which involves an estimated cost of more than Five Hundred Thousand Dollars ($500,000) shall be conducted under the supervision of an Architect or a reputable general contractor selected by the Agency having experience with properties similar to the Property and reasonably approved by the Landlord. No such Alteration shall be undertaken until fifteen (15) Business Days after there shall have been filed with the Landlord, for its approval, detailed plans and specifications and cost estimates therefor, prepared and approved in writing by such Architect or general contractor. Such plans and specifications may be revised at any time and from time to time provided that material revisions of such plans and specifications are filed with the Landlord for its approval together with the written approval thereof by such Architect or general contractor. All
work done in connection with any Alteration shall be performed by a licensed contractor approved by the Landlord (which approved shall not be unreasonably withheld) with due diligence in a good and workmanlike manner and substantially in accordance with such plans and specifications, all applicable Requirements of Law and Insurance Requirements. The cost of any Alteration shall be promptly and fully paid for by the Agency or the Master Tenant or any Tenant performing the Alteration, except as otherwise specifically provided in this Operating Lease, subject to the right to contest any amount claimed to be due in accordance with the provisions in Section 6.6 below. Notwithstanding the provisions of this Operating Lease, the City retains all approval rights and all standard approval times in its role as a permitting and regulatory body.

Section 5.4 Insurance During Alterations. The Agency shall assure that builder's risk insurance and public liability insurance, including bodily injury and property damage liability and comprehensive general liability insurance in accordance with Section 7.1 and Exhibit C hereto, shall be maintained or caused to be maintained by the at all times by the Agency, the Master Tenant, or applicable constructing Tenant, when any Alteration is in progress. All such insurance shall be effected under a valid and enforceable policy or policies issued prior to the commencement of any Alteration and shall name the Landlord as an additionally insured party.

Section 5.5 Environmental Provisions.

(a) After the Commencement Date, the Agency shall, at its sole cost and expense, comply in all material respects with all Environmental Laws applicable to such portion of the Premises or operations thereon, and shall ensure that all operations, businesses and activities conducted thereon are in compliance with all Environmental Laws.

(b) After the Commencement Date, the Agency shall, at its sole cost and expense, comply with and shall cause Master Tenant and all Tenants of such portion of the Premises to comply with all Environmental Laws relating to asbestos or asbestos-containing materials and other Hazardous Substances with respect to the respective portion of the Premises occupied by the Agency, Master Tenant or Tenant with respect to such Person's use and operation of the Premises and entrances to the Premises.

(c) If the Agency shall receive any notice or other communication from any person concerning any actual, alleged, suspected or threatened violation of or liability under any Environmental Laws or any Environmental Condition, any notice or other communication from any Governmental Authority concerning any actual or threatened Environmental Claim, then the Agency shall deliver to Landlord, within ten (10) days after receipt of such notice or communication, a written description of such violation, liability, or actual or threatened event or condition. Receipt of such notice shall not be deemed to create any obligation on the part of Agency to defend or otherwise respond to such notification. To the extent any such notice relates to Agency's use and operations of the Premises and any approaches and entrances to the Premises, the Agency shall promptly take, or cause Master Tenant to take, all actions reasonably necessary to defend Landlord against such notification of Environmental
Claim or clean up or remedy such Environmental Condition in compliance with all Environmental Laws.

(d) Upon Landlord’s reasonable request as it relates to the condition of the Premises after the Commencement Date and as it relates to the Agency’s use and occupancy of the Premises, Agency shall or shall cause Master Tenant to, at no cost to Landlord, take all actions reasonably necessary to ensure that there is no Hazardous Substance at, on or under the Premises in quantities or concentrations that would cause a Governmental Authority to require further investigation or remediation. The Agency shall promptly provide to Landlord copies of all environmental site assessments or environmental audit reports, or updates of such assessments or reports that are generated in connection with the above activities. The Agency’s obligations hereunder shall arise upon the reasonable request of Landlord, regardless of whether any Governmental Authority has taken or threatened any action with respect to the presence of any Hazardous Substances at, on or under the Property. If the Agency fails to discharge any of its obligations hereunder, Landlord shall have the right, but not the obligation, in its reasonable discretion, at the Agency’s cost and expense (which may be reimbursed by Master Tenant or Tenants to the extent responsible under the Master Lease or Subleases, respectively, for such costs and expenses), to take such reasonable actions that Landlord reasonably deems necessary or advisable, including, without limitation, the removal or cleanup of any Hazardous Substances at, on or under the Property. The Agency grants the Landlord and its employees, contractors and agents an irrevocable and non-exclusive license, subject to the rights of the Master Tenant and Tenants, to enter upon the Property to conduct such activities in accordance with the preceding sentence. All reasonable costs or expenses incurred by Landlord under this subsection shall be due and payable by the Agency (which may be reimbursed by Master Tenant or Tenants to the extent responsible under the Master Lease or Subleases, respectively, for such costs and expenses).

ARTICLE 6.
GENERAL PROVISIONS REGARDING THE PROPERTY

Section 6.1 Indemnification By Agency. The Agency shall protect, indemnify, defend and hold harmless the Indemnified Parties from and against: all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including all reasonable attorneys' fees and expenses) imposed upon or incurred by or asserted against any of the Indemnified Parties (without the gross negligence or willful misconduct of any of them) or the Property, arising out of or relating to any of the following prior to the end of the Term of this Operating Lease:

(a) possession of the Premises by Agency or its affiliates pursuant to this Operating Lease, or any interest therein,

(b) any accident, injury to or death of any persons or loss of or damage to property occurring on or about the Premises or any part thereof or the adjoining parking areas, sidewalks, curbs, vaults and vault space, if any, streets or ways,
(c) any use, non-use or condition of the Premises or any part thereof, including claims or penalties arising from violation of any Requirement of Law or Insurance Requirement, as well as any claim based on any patent or latent defect, any claim the insurance as to which is inadequate, and any claim in respect of any adverse environmental condition, impact or effect,

(d) any failure on the part of Agency to perform or comply with any of the terms of this Operating Lease, the Master Lease or other agreement to which it is a party or by which it or the Premises or any portion thereof is bound,

(e) any performance of any labor or services or the furnishing of any materials or other property as required under this Operating Lease to be provided by Agency with respect to the Premises or any part thereof,

(f) any negligence or tortuous act or omission on the part of Agency or any of its agents, contractors, servants, employees, licensees or invitees,

(g) any contest referred to in Section 6.6, or

(h) the presence at the Premises of any Hazardous Substance to the extent Agency's or any of its affiliates' responsibility under the provisions of Section 5.5 of this Operating Lease.

Any amounts payable under this Section 6.1 to any Indemnified Party which are not paid within thirty (30) days after written demand therefor by the Indemnified Party, setting forth in reasonable detail the amount of such demand and the basis therefor, shall bear interest from the date of demand until paid at the rate of ten percent (10%) per annum. If any action, suit or proceeding is brought against any Indemnified Party by reason of any such occurrence, the Agency, upon request of the Indemnified Party, shall at the Agency's expense resist and defend such action, suit or proceeding or shall cause the same to be resisted and defended by counsel for the insurer of the liability or by counsel selected by the Agency and approved by the Indemnified Party in its reasonable discretion. So long as the Agency is resisting and defending such action, suit or proceeding as provided above in a prudent and commercially reasonable manner and the liability thereunder is covered by insurance or the Agency demonstrates its ability to pay for any settlement amount to the reasonable satisfaction of the Indemnified Party, any Indemnified Party shall not be entitled to settle such action, suit or proceeding and claim the benefit of this Section 6.1 with respect to such action, suit or proceeding and the Indemnified Party agrees that it will not settle any such action, suit or proceeding without the consent of the Agency; provided that if Agency is not diligently defending such action, suit or proceeding in a prudent and commercially reasonable manner as provided above, the Indemnified Party may settle such action, suit or proceeding upon notice to Agency and claim the benefit of this Section 6.1 with respect to settlement of such action, suit or proceeding. The Landlord understands that Agency may cause the Master Tenant to comply with Agency's obligations under this Section 6.1 as provided in the Master Lease. The Landlord understands that the Agency may
require Master Tenant to reimburse Agency for any costs or expenses Agency incurs under this Section 6.1, to the extent Master Tenant is responsible for such costs or expenses under the Master Lease.

Section 6.2 Right of Entry and Inspection of the Property. The Landlord and its authorized representatives may, at all reasonable times and upon not less than one (1) Business Day's notice (except in the case of emergency), enter the Premises to:

(a) inspect the Premises;

(b) exhibit the Premises to prospective purchasers, lenders or investors;

(c) perform any obligations of Landlord in accordance with this Operating Lease; and

(d) post notices of non-responsibility, "For sale" and "For Lease" signs in and about the Premises.

(e) Any entry to the Premises obtained by Landlord pursuant to this Section 6.2 shall not under any circumstances be construed to be a forcible or unlawful entry into or a detainer of the Premises or an eviction, actual or constructive, of Agency from the Premises or any portion thereof. The Landlord shall not inspect the Premises on other than a Business Day except in the case of an emergency.

Section 6.3 Payment of Impositions. Subject to the provisions of this Operating Lease relating to permitted contests and subject to reimbursement from the Master Tenant under the Master Lease and Tenants under the Space Leases, Agency shall pay, or cause to be paid, before any fine, penalty, interest or cost may be added for such nonpayment, all of the following (collectively, "Impositions"):  

(a) all taxes, assessments, excises, levies, fees and charges (and any tax, assessment, excise, levy, fee or charge levied wholly or partly in lieu thereof or as a substitute therefor or as an additional thereto) of every kind and description, general or special, ordinary or extraordinary, foreseen or unforeseen, secured or unsecured, whether or not now customary or within the contemplation of Landlord and Agency, that are levied, assessed, charged, confirmed or imposed by any Governmental Authority on or against, or otherwise with respect to, the Premises, or any part thereof or any personal property of Agency used in connection with the Premises; and

(b) all taxes, assessments, excises, levies, fees and charges, including all payments related to the cost of providing facilities or services, whether or not now customary or within the contemplation of Landlord and Agency, that are levied, assessed, charged, confirmed or imposed by any Governmental Authority upon, or measured by, or reasonably attributable to:

(1) the Premises;
(2) the cost or value of equipment, furniture, fixtures and other personal property located in the Premises or the cost or value of any leasehold improvements made in or to be Premises, regardless of whether title to such improvements is vested in Agency or any third party;

(3) any rent payable under this Operating Lease, including any gross income tax excise tax levied by any public or Governmental Authority with respect to the receipt of any such rent;

(4) the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy of the Premises, or

(5) this transaction or any document to which Agency is a party creating or transferring an interest or an estate in the Property.

(c) The Agency shall not be required to pay any income, excess profits or revenue tax, excise tax or inheritance tax, gift tax, franchise tax, corporation tax, capital levy, estate succession or other similar tax or charge that may be payable by or chargeable to the Agency, or any interest, fines, costs, additions to tax or penalties in respect thereof, unless such tax is imposed, levied or assessed in substitution for any Impositions that Agency is required to pay pursuant to this Section.

The Agency shall be entitled to seek reimbursement for all such taxes, assessments, excises, levies, fees and charges pursuant to the terms hereof and pursuant to the terms of the Master Lease.

Section 6.4 Compliance with Law, Insurance Requirements.

(a) Subject to the provisions of Section 6.6, relating to permitted contests, Agency shall promptly,

(1) comply, or cause compliance with, all applicable Requirements of Law and Insurance Requirements before the expiration of any applicable extension or grace period, whether or not compliance therewith shall require structural changes in the Improvements or interfere with the use and enjoyment of the Premises or any part thereof,

(2) procure, maintain and comply with all permits, licenses and other authorizations required by Requirements of Law to be complied with for any use then being made of the Premises or any part thereof, and for the proper operation and maintenance of the Premises or any part thereof, and

(3) comply with applicable duties or obligations under any instruments of record at the time in force binding upon, and enforceable against the Premises or any part thereof; provided that it shall not be a default hereunder if it shall be the obligation of Agency to comply with any Requirement of Law, procure, maintain
or comply with any such permit, license or other authorization or comply with such duties or obligations so long as Agency promptly, after receiving actual notice of any noncompliance, commences and diligently pursues its rights and uses its diligent efforts to cause compliance with such Requirement of Law or maintain or comply with such permit, license or other authorization or comply with such duties or obligations within a reasonable time so long as the failure to comply with the requirement in question does not subject the Landlord to any of the risks described in clause (b) or (c) of Section 6.6 below and does not impair the validity of any insurance required to be maintained by Agency under Article 7 below or the right to full payment of any claims thereunder. Agency shall pay all fines, penalties, interest and costs imposed as a result of any failure of Agency to perform its obligations under this Section 6.5 (which may be reimbursed by Master Tenant or Tenants to the extent responsible under the Master Lease or Subleases, respectively, for such fines, penalties, interest and costs.)

(b) Agency shall perform punctually all obligations and agreements to be performed by it as landlord under the Master Lease, or as a party to or bound by the Permitted Exceptions or any other agreement relating to the Premise, and to do all things necessary or appropriate to compel performance by each other party to each of such instruments of such other party’s obligations and agreements thereunder.

Section 6.5 Lien. Subject to the provisions of Section 6.6 relating to permitted contests, Agency shall not directly or indirectly create or permit or suffer to be created or to remain, and shall promptly discharge or cause to be discharged by bonding, payment, final order of a court or competent jurisdiction or otherwise, within thirty (30) days after receiving written notice of the filing thereof, any Lien with respect to the Premises or any part thereof, other than Leasehold Mortgages approved by the Landlord pursuant to Section 8.1.

Section 6.6 Permitted Contests. Anything to the contrary contained herein notwithstanding, Agency at its expense may contest, by appropriate legal, administrative or other proceedings conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Imposition or Lien therefor or any Requirement of Law or Insurance Requirement or the application of any instrument of record affecting the Premises or any part thereof or any claims or judgments of mechanics, materialmen, suppliers or vendors or Lien therefor, and may withhold payment of the same pending such proceedings if permitted by law; provided that:

(a) in the case of any Impositions or Lien therefor or any claims or judgments of mechanics, materialmen, suppliers or vendors or Lien therefor, such proceedings shall suspend the collection thereof from the Agency and the Premises,

(b) neither the Premises nor any part thereof or interest therein would be in any danger of being sold, forfeited or lost if Agency pays the amount or satisfies the condition being contested, and Agency would have the opportunity to so pay or satisfy in the event of the failure to prevail in the contest, and
(c) in the case of an Insurance Requirement, the failure of Agency to comply therewith shall not impair the validity of any insurance required to be maintained by under Article 7 below or the right to full payment of any claims thereunder.

ARTICLE 7.
INSURANCE

Section 7.1 Agency Insurance. Agency, at its expense, shall obtain and keep in force throughout the Term the following: (a) combined single limit, bodily injury and property damage liability insurance insuring Agency against any liability arising out of Agency's use, occupancy or maintenance of the Premises, the limits of which shall not be less than Two Million Dollars ($2,000,000) per occurrence, (b) all risk property insurance including without limitation fire, theft, sprinkler damage and malicious mischief covering the Premises in amount of not less than one hundred percent (100%) of its replacement cost, excluding foundations, footings and excavations, with a commercially reasonable deductible. and (c) if available at commercially reasonable rates, earthquake, flood, rental loss or such other insurance as determined by Agency to be necessary to protect Agency's interests. Agency may carry any of said insurance under a blanket policy or self-insurance. Agency shall deliver to Landlord prior to occupancy of the Premises and prior to expiration of any such policy, certificates evidencing the existence and amounts of such insurance. The Agency shall require the Master Tenant to maintain the insurance required in Exhibit C.

Section 7.2 Landlord Insurance. The Landlord, at its expense, comply with all of its insurance requirements under the DDA and related deed of trust.

Section 7.3 Waiver of Subrogation. Any policy or policies of fire, extended coverage or similar casualty insurance, which either party obtains in connection with the Premises, or Agency's personal property therein, shall, to the extent the same can be obtained without undue expense, include a clause or endorsement denying the insurer any rights of subrogation against the other party to the extent rights have been waived by the insured prior to the occurrence of injury or loss. The Landlord and Agency hereby waive any rights of recovery against the other for injury or loss due to hazards covered by insurance containing such a waiver of subrogation clause or endorsements to the extent of the injury or loss covered thereby and agree to obtain such a waiver from their respective insurance carriers; to the extent permitted by law, each party shall indemnify and hold the other harmless for the indemnifying party's failure to obtain such waiver from its insurance company.

ARTICLE 8.
PERMITTED MORTGAGES

Section 8.1 Right to Encumber. Agency shall have the right during the Term to encumber, through a Leasehold Mortgage which Landlord approves in its reasonable discretion, all of Agency's right, title and interest in the Premises subject to the provisions of this Operating Lease.
Section 8.2  **Notice to Leasehold Mortgagee.** During any period in which a Leasehold Mortgage is in place, Landlord shall give any such Leasehold Mortgagee of which Landlord has received notice from Agency a duplicate copy of all notices of default or other notices that Landlord may give to or serve in writing upon Agency pursuant to the terms of this Operating Lease. The address of the Leasehold Mortgagee originally designated in the notice from Landlord may be changed upon written notice delivered to Landlord in the manner specified in Section 14.1 of this Operating Lease.

Section 8.3  **Right of Leasehold Mortgagee to Cure.** The Leasehold Mortgagee, at its option at any time within thirty (30) days following expiration of the right of Agency to cure any default under this Operating Lease, may pay any amount, or do any act or thing required of Agency by the terms of this Operating Lease. All payments made and all acts performed by such Leasehold Mortgagee within such thirty (30)-day period shall be effective to prevent a termination of the rights of Agency hereunder to the same extent as if they had been performed by Agency.

Section 8.4  **Right to New Lease.** Notwithstanding anything to the contrary contained herein, no termination of this Operating Lease shall become effective until each Leasehold Mortgagee approved pursuant to Section 8.1 shall have had the option, exercisable by giving Landlord written notice not more than thirty (30) days after Landlord has given such Leasehold Mortgagee notice of the occurrence of any Event of Default by Agency hereunder, to elect to receive from Agency a new lease to such Leasehold Mortgagee (or to its nominee) covering the Premises for the then un-expired balance of the Term, and otherwise on the same terms and conditions as set forth in this Operating Lease. Upon termination of this Operating Lease, Landlord agrees to execute such new lease with such Leasehold Mortgagee (or with its nominee), if such Leasehold Mortgagee:

(a)  shall cure immediately any monetary Event of Default by Agency hereunder;

(b)  shall undertake immediately to remedy any non-monetary Event of Default by Agency hereunder, excluding those which by their very nature are capable of cure only by Agency, and thereafter proceed with reasonable diligence to cure such Event of Default within a reasonable period of time; provided, however, that such period shall not extend for more than ninety (90) days after the date of such agreement; and

(c)  shall agree to perform thereafter all covenants and conditions contained in this Operating Lease to be observed and performed by Agency.

Section 8.5  **Limitation on Liability of Leasehold Mortgagee.** No Leasehold Mortgagee shall be or become liable to Landlord as an assignee of this Operating Lease or otherwise unless it expressly assumes by written instrument executed by Landlord and Leasehold Mortgagee such liability (in which event the Leasehold Mortgagee's liability shall be limited to the period of time during which it is the owner of
the leasehold estate created hereby) and no assumption shall be inferred from or result from foreclosure or other appropriate proceedings in the nature thereof or as the result of any other action or remedy provided for by such Leasehold Mortgage or other instrument or from a conveyance from Agency pursuant to which the purchaser at foreclosure or grantee shall acquire the rights and interest of Agency under the terms of this Operating Lease.

ARTICLE 9.
DAMAGE, DESTRUCTION AND RESTORATION

Section 9.1 Notice of Casualty. If the Property, the Premises, or any part thereof is damaged or destroyed by any casualty, Agency shall give prompt notice thereof to the Landlord.

Section 9.2 Application of Proceeds. In the event Proceeds are payable on account of a damage or destruction, then the Proceeds shall, subject to Section 9.3 and the rights of Lender and Leasehold Mortgagee, be paid to or made available to Agency.

Section 9.3 Restoration of Premises. Except as provided otherwise in Section 9.4 below, in the event of damage or destruction of the Premises or portion thereof, Agency shall cause the Restoration of the Premises to a condition equal or better than existed prior to the damage or destruction to the extent permitted under this Operating Lease. In connection with any such Restoration, Proceeds shall be made available to Agency only upon and subject to the following conditions:

(a) Provision by Landlord of any additional funds that are needed to pay the entire cost of the Restoration of the Hotel Stockton, other than the portions of the improvements for which the Agency initially funded rehabilitation costs (not as a grant or loan under the DDA) prior to the date of this Operating Lease;

(b) Plans and specifications for the work acceptable to Agency and Landlord by architects with copies of all permits, licenses and approvals required for the work;

(c) A contract for the work acceptable to Agency and Landlord with a contractor acceptable to the Agency and Landlord;

(d) A cost breakdown for the work acceptable to Agency and Landlord;

(e) Evidence acceptable to Agency and Landlord that the Restoration Conditions have been, and until the completion of the work the Restoration Conditions, shall remain, satisfied;

(f) Evidence acceptable to Agency and Landlord that, upon completion of the work, the size, capacity, quality, value and general utility of the Premises will be equal to or greater than the condition of the Premises before the casualty occurred;
(g) Evidence acceptable to Agency and Landlord that all prior disbursements of such insurance proceeds were properly applied to pay the cost of the work; and

(h) Evidence of satisfaction of customary construction loan disbursement requirements and any additional conditions or requirements that any holder of a security financing interest in the Hotel Stockton may reasonably establish to protect its security.

Section 9.4 Termination of Operating Lease. If:

(a) there is an event of damage or destruction which causes twenty-five percent (25%) or more of the Property or the Premises, to be in a condition such that it cannot be occupied for its intended purpose for a period in excess of ninety (90) consecutive days,

(b) sufficient Proceeds are not available to remedy, repair or mitigate the damage, destruction or condition,

(c) Agency reasonably estimates that the cost of remedy, repair or mitigation is greater than the available Proceeds and applicable deductibles on insurance policies,

(d) the lack of sufficient Proceeds results from

(1) a Lender or Leasehold Mortgagee having applied Proceeds to reduce the obligations secured by the a deed of trust on the Property, or

(2) the event or circumstance which gave rise to the damage, destruction or condition was not one for which insurance was available, or

(3) the event or circumstances which gave rise to the damage, destruction or condition was not one for which insurance was available on commercially reasonable terms (other than insurance specifically required under Sections 7.1 and 7.2),

(e) then, within one hundred eighty (180) days following the date on which the Property, the Premises or portion thereof can no longer be occupied for its intended purpose, the either party may terminate this Operating Lease by giving written notice of termination to the other party and the Agency shall not be obligated to undertake any Restoration of the Premises.

(f) In the event that this Operating Lease is terminated in accordance with this Section 9.4, the Agency shall have no further obligation to pay Rent under this Operating Lease and shall have no right to receive any Proceeds with respect of the Premises, all such rights being hereby assigned to Landlord.
ARTICLE 10.
TAKING OF PREMISES

Section 10.1 Notice of Taking. If the Premises, or any part thereof or interest therein, is taken or damaged by reason of any public improvement or condemnation proceeding, or by exercise of the power of eminent domain, or in any other manner, or if either party receives any notice or other information regarding any such proceeding, such party shall give prompt notice thereof to the other party.

Section 10.2 Total Taking. If all or substantially all of the Premises is taken by exercise of the power of eminent domain, then this Operating Lease shall terminate as of the earlier of the date the condemning agency is entitled to take possession of the Premises or the date the condemning agency obtains title to the Premises.

Section 10.3 Temporary Taking. If all or any portion of the Premises is taken by exercise of the power of eminent domain for a temporary period, this Operating Lease shall continue without any abatement of Rent, and Agency shall be entitled to all compensation for such taking, except if such temporary taking results in rent payments not being due under the Master Lease, all such compensation shall be paid to Agency and Agency shall not be obligated to pay Rent under this Operating Lease for such period for applicable for the Premises rented under the Master Lease.

Section 10.4 Partial Taking. If only a portion of the Premises is taken, but such taking results in the permanent unavailability for twenty-five percent (25%) or more of the remaining space in the Premises, then, within one hundred eighty (180) days following the date such portion of the Premises becomes unavailable for occupancy, Agency may terminate this Operating Lease by giving written notice of termination to the Landlord. In the event (i) there is a taking of only a portion of the Premises, (ii) sufficient Proceeds are not available to Agency to affect Restoration of the Premises given the partial taking, and (iii) Agency reasonably determines that the cost of that Restoration is more than the available Proceeds, then, within one hundred eighty (180) days following the date the condemning agency takes possession of the portion of the Premises taken, Agency may terminate this Operating Lease by giving written notice of termination to the Landlord. If this Operating Lease is terminated pursuant to this Section 10.4, Agency shall not be obligated to undertake any Restoration of the Premises, and Agency shall not be obligated to make further Rent payments under this Operating Lease.

Section 10.5 Application of Proceeds, Restoration of Property. If there is a taking of only a portion of the Property and this Operating Lease is not terminated pursuant to Section 10.2 or Section 10.4, Landlord shall cause the Restoration of the Premises to a condition equal or better than that existed prior to the taking. In the event Proceeds are payable to the Landlord on account of a taking of the Property that does not result in termination of this Operating Lease pursuant to Section 10.2 or Section 10.4, then to the extent those Proceeds are paid to the Landlord or made available for Restoration, the Landlord shall use the proceeds to the extent needed for the
Restoration. Restoration shall be undertaken in accordance with the provisions of Section 9.3 above.

Section 10.6 Allocation of Compensation. If all or any part of the Property is taken by exercise of the power of eminent domain, all awards, compensation, damages, income, rent and interest payable in connection with such taking shall, except as expressly set forth in this Section 10.6 and in Section 10.3, be paid to and become the property of Landlord. Without limiting the generality of the foregoing, Landlord shall have no claim against Agency or the entity exercising the power of eminent domain for the value of the leasehold estate created by this Operating Lease or any unexpired Term of this Operating Lease.

ARTICLE 11.
DEFAULT

Section 11.1 Events of Default. The occurrence of any of the following events shall constitute an "Event of Default" on the part of Agency, without notice from the Landlord, unless otherwise provided:

(a) Payment. Failure to pay any installment of Rent, the failure continuing for a period of fifteen (15) days after written notice thereof from the Agency; and

(b) Performance. Agency's failure to perform any of its covenants, agreements or obligations hereunder (except default in the payment of Rent), the default continuing for thirty (30) days after written notice thereof from the Landlord; if the default cannot be cured within thirty (30) days, it shall be an Event of Default if Agency has not commenced to cure the default within thirty (30) days of written notice or if Agency fails to diligently continue to cure the default or if such default is not cured within a reasonable time.

Section 11.2 Landlord's Remedies. If an Event of Default occurs, Landlord shall have the right at any time to give a written termination notice to Agency and, on the date specified in such notice, Agency's right to possession shall terminate and this Operating Lease shall terminate. Upon such termination, Landlord shall have the right to recover from Agency:

(a) The worth at the time of award of all unpaid Rent which had been earned at the time of termination;

(b) The worth at the time of award of the amount by which all unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Landlord proves could have been reasonably avoided;

(c) The worth at the time of award of the amount by which all unpaid Rent for the balance of the Term of this Operating Lease after the time of award
exceeds the amount of such rental loss that Landlord proves could be reasonably avoided; and

(d) The "worth at the time of award" of the amounts referred to in clauses (a) and (b) above shall be computed by allowing interest at the rate of ten percent (10%) per annum.

Section 11.3 Continuation of Operating Lease. Should Agency breach this Operating Lease, this Operating Lease shall continue in effect for so long as Landlord does not terminate Agency's right to possession, and Landlord shall have the right to enforce all its rights and remedies under this Operating Lease, including the right to recover all Rent as it becomes due under this Operating Lease. Acts of maintenance or preservation or efforts to relet the Premises or the appointment of a receiver upon initiative of Landlord to protect Landlord's interest under this Operating Lease shall not constitute a termination of Agency's right to possession unless written notice of termination is given by Landlord to Agency.

Section 11.4 Cumulative. Each right and remedy of either party provided for in this Operating Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Operating Lease or now or hereafter existing at law or in equity or by statute or otherwise. The exercise or beginning of the exercise by the either party of any one or more of the rights or remedies provided for in this Operating Lease, or now or hereafter existing at law or in equity or by statute or otherwise, shall not preclude the simultaneous or later exercise by such party of any or all other rights or remedies provided for in this Operating Lease or now or hereafter existing at law or in equity or by statute or otherwise.

Section 11.5 No Waiver. No failure by the Landlord to insist upon the strict performance of any term hereof or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial payment of Rent during the continuance of any such breach shall constitute a waiver of any separate breach under this Operating Lease. Efforts by the Landlord to mitigate the damages caused by Agency's breach of this Operating Lease shall not be construed to be a waiver of Landlord's right to recover damages under this Article 11.

Section 11.6 Landlord Breach. If the Landlord materially breaches this Operating Lease or any other agreement between Agency and Landlord, Agency shall give the Landlord written notice of such breach, which notice requests that the breach be cured. If the breach is not cured: (i) within thirty (30) days after receipt by the Landlord of the notice of breach or (ii) if by reason of the nature of the breach, it cannot be cured within thirty (30) days, then within a time that would be reasonable if Landlord were to proceed with diligence to remedy the breach, Agency shall be entitled to any remedy available to it at law or equity.
ARTICLE 12.
ASSIGNMENT

Section 12.1 Assignment and Sublease. Except as otherwise provided herein and except for the Leasehold Mortgages approved by the Landlord pursuant to Section 8.1, Agency shall not directly or indirectly assign, mortgage, pledge or otherwise transfer this Operating Lease or any interest therein, in whole or in part, or sublease all or any part of the Premises, without the prior written consent of Landlord in each instance, which consent shall not be unreasonably withheld. Landlord hereby approves the Master Lease, and any Space Leases entered into pursuant to the Master Lease. This Operating Lease shall not, nor shall any interest herein, be assignable as to the interest of Agency involuntarily or by operation of law without the prior written consent of Landlord. Any of the foregoing acts without prior written consent of Landlord shall be void and shall, at the option of Landlord, constitute a default that entitles Landlord to terminate this Operating Lease. Landlord agrees that the instrument by which any assignment or sublease to which Landlord consents or which is permitted by this Section 12.1 is accomplished, shall expressly provide that the assignee or sub-lessee will perform all of the covenants to be performed by Agency under this Operating Lease as and when performance is due after the effective date of the assignment or sublease and that Landlord shall have the right to enforce such covenants directly against such assignee or sub-lessee. Any purported assignment or sublease without an instrument containing the foregoing provisions shall be void. Any sublease, assignment or other transfer by Agency shall not relieve Agency of its applicable obligations under this Operating Lease, including Agency’s obligation to pay Rent. The acceptance of Rent by Landlord from any other person or entity shall be deemed to be a waiver by Landlord of the applicable rent provisions of this Operating Lease. The consent by the Landlord to any assignment or other transfer shall not constitute a waiver of the necessity for such consent to any subsequent assignment or other transfer. Notwithstanding the foregoing, if (a) Agency proposes to assign its interest hereunder to a purchaser of Agency’s interest in an arm’s length, market-rate sale, and (b) the Landlord consents to such assignment, then upon such assignment, Agency shall be relieved of all liability hereunder as of the assignment date.

Section 12.2 Assignment by Landlord. The Landlord shall have the right to transfer and assign, in whole or in part, all its rights and obligations under this Operating Lease and in the Property, with the Agency’s reasonable approval which shall not be unreasonable delayed and which shall be deemed granted if the Agency has not responded within thirty (30) days of the Landlord’s written request for such approval. Upon such assignment, the transferee shall be deemed to have assumed such obligations and no further liability or obligation shall thereafter accrue against the Landlord under this Operating Lease or any agreement relating to this Operating Lease. Agency shall attorn to the purchaser or successor in interest of the Landlord.
ARTICLE 13.
ESTOPPEL, ATTORNMENT AND SUBORDINATION

Section 13.1 Estoppel Certificates. Landlord and Agency agree that at any time and from time to time upon not less than twenty (20) days' prior written notice by the other party, or upon request from any Lender, Leasehold Mortgagee or a permitted assignee or other interested party, Agency and Landlord will execute, acknowledge and deliver to the other party or to such Lender or Leasehold Mortgagee a statement in writing certifying (a) that this Operating Lease is unmodified and in full force and effect; (b) the date through which Rent has been paid; and (c) that, to the knowledge of the certifier (if such be the case), there is no default, set-off, defense or other claim against other than those, if any, so specified under the provisions of this Operating Lease. It is intended that any such statement may be relied upon by any persons proposing to acquire the interest of Landlord, Agency or any Lender or Leasehold Mortgagee, as the case may be, in this Operating Lease or by any prospective Lender or Leasehold Mortgagee or assignee of any Lender or Leasehold Mortgagee.

Section 13.2 Attornment. Agency shall, in the event any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under any mortgage or deed of trust made by the Landlord or its successors or assigns, encumbering the Premises, or any part thereof, or in the event of a deed-in-lieu thereof and if so requested, attorn to the purchaser upon such foreclosure or sale or upon any grant of a deed in lieu of foreclosure and recognize such purchaser as the landlord under this Operating Lease, and Landlord's successor shall be deemed to have assumed all of the Landlord's obligations under this Operating Lease.

Section 13.3 Subordination. This Operating Lease shall be subject and subordinate at all times to the lien of all mortgages and deeds of trust securing any amount or amounts whatsoever which may now exist or hereafter be placed on or against the Property, all without the necessity of having further instruments executed by Agency to effect such subordination other than Leasehold Mortgages. Notwithstanding the foregoing, in the event of a foreclosure of any such mortgage or deed of trust or of any other action or proceeding for the enforcement thereof, or of any sale thereunder, this Operating Lease shall not be terminated or extinguished, nor shall the rights and possession of Agency hereunder be disturbed, if no Event of Default then exists under this Operating Lease, and Agency shall attorn to the person who acquires ownership of the Property, or any portion thereof through any such mortgage or deed of trust. Agency agrees to execute, acknowledge and deliver upon demand such further instruments evidencing such subordination of this Operating Lease to the lien of all such mortgages and deeds of trust as may reasonably be required by Landlord, but Agency's covenant to subordinate this Operating Lease to mortgages or deeds of trust hereafter executed is conditioned upon each such mortgage or deed of trust, or a separate subordination agreement, containing the commitments specified in the preceding sentence. Without limiting the generality of the foregoing, Agency agrees to enter into a subordination, nondisturbance and attornment agreement in the form reasonably acceptable to Landlord.
ARTICLE 14.
MISCELLANEOUS PROVISIONS

Section 14.1 Notices. All notices required to be given hereunder shall be in writing and mailed postage prepaid by certified or registered mail return receipt requested, by personal delivery, or reputable overnight delivery to the appropriate address set forth below, as such other place or places as either the Landlord or Agency may, from time to time respectively, designate in a written notice given to the other. Notices shall be deemed sufficiently served on the date of personal delivery or the refusal to accept the mailing thereof, as evidenced by the requested return receipt.

To Agency: Redevelopment Agency of the City of Stockton
425 North E! Dorado Street
Stockton, CA 95202
Attention: Executive Director

With a Copy to: Office of the City Attorney
425 North E! Dorado Street
Stockton, CA 95202

To Landlord: Hotel Stockton Investors
1001 6th Street, Ste. 200
Sacramento, CA 95814
Attention: Cyrus Youssefi

Section 14.2 Successors Bound. This Operating Lease and each of its covenants and conditions shall be binding upon and shall inure to the benefit of both the Landlord and Agency and their respective heirs, successors and legal representatives and their respective assigns, subject to the provisions hereof. Whenever in this Operating Lease a reference is made to the Agency, such reference shall be deemed to refer to the person in whom the interest of the Agency shall be vested, and the Agency shall have no obligation hereunder as to any claim arising after the transfer of its interest in the Premises. Any successor or assignee of Agency who accepts an assignment or the benefit of this Operating Lease and enters into possession or enjoyment hereunder shall thereby assume and agree to perform and be bound by the covenants and conditions thereof. Nothing herein contained shall be deemed in any manner to give a right of assignment to Agency without the written consent of the Landlord or to release Agency from any obligations hereunder.

Section 14.3 Waiver. No waiver of any default or breach of any covenant by either party hereunder shall be implied from any omission by either party to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver, and then said waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term or condition contained herein by either party shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The
subsequent acceptance of rent hereunder by Landlord or the payment of rent by Agency shall not waive any preceding breach by Agency of any covenant in this Operating Lease, nor cure unlawful detainer action, other than the failure of Agency to pay the particular Rent so accepted, regardless of Landlord's or Agency's knowledge of such preceding breach at the time of acceptance or payment of such Rent. The consent or approval by either party to or of any act by either party requiring further consent or approval shall not be deemed to waive or render unnecessary their consent or approval to or of any subsequent similar acts.

Section 14.4 No Light, Air or View Easement. Any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to or in the vicinity of the Property shall in no way affect this Operating Lease or impose any liability on the Landlord, Agency or City.

Section 14.5 Peaceful Enjoyment. Agency shall, and may peacefully have, hold and enjoy the Premises, subject to the other terms hereof, provided that Agency pays the rental and other sums herein recited to be paid by Agency and performs all of Agency's covenants and agreements herein contained.

Section 14.6 Time. Time is of the essence of every provision hereof.

Section 14.7 Attorneys' Fees. In any action or proceeding which the Landlord or Agency may be required to prosecute to enforce its respective rights under this Operating Lease, the unsuccessful party therein agrees to pay all costs incurred by the prevailing party therein and in any appeal in connection therewith, including reasonable attorneys' fees, to be fixed by the court, and said costs and attorneys' fees shall be made a part of the judgment in said action.

Section 14.8 Captions and Article Numbers: Terms Generally. The captions, article and section numbers and table of contents appearing in this Operating Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent or such sections or articles of this Operating Lease in no way affect this Operating Lease. The exhibits and addenda specified in the Table of Contents hereto are attached to and made a part of this Operating Lease.

Section 14.9 Severability. If any term, covenant, condition or provision of this Operating Lease, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Operating Lease, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

Section 14.10 Applicable Law. This Operating Lease, and the rights and obligations of the parties hereto, shall be construed and enforced in accordance with the laws of the State of California.
Section 14.11 **Holding Over.** Should Agency, or any of its successors in interest, hold over the Premises, or any part thereof, after the expiration of the Term of this Operating Lease, unless otherwise agreed to in writing, such holding over shall constitute and be construed as tenancy from month-to-month only, at a monthly Rent equal to two hundred percent (110%) of the then annual rent due under this Operating Lease.

Section 14.12 **Surrender.** Upon the expiration or earlier termination of this Operating Lease, Agency shall surrender the Premises to the Landlord in the condition and repair required under this Operating Lease. The Landlord may cause any personal property that is not removed from the Premises within thirty (30) days after the date of any termination of this Operating Lease to be removed from the Premises and stored at Agency's expense, or, at Landlord's election said personal property thereafter shall belong to Landlord without the payment of any consideration, subject to the rights of any person holding a perfected security interest therein. Upon the expiration or earlier termination of this Operating Lease, Agency shall reassign to Landlord all of the rights of Agency in, to or under the Master Lease and other agreements relating to the Premises.

Section 14.13 **Landlord's Right to Perform.** All agreements and covenants to be performed or observed by Agency under this Operating Lease shall be at Agency's sole cost and expense and without any abatement of rent. If Agency fails to pay any sum of money to be paid by Agency or to perform any other act to be performed by Agency under this Operating Lease, Landlord shall have the right, but shall not be obligated, and without waiving or releasing Agency from any obligations of Agency, to make any such payment or to perform any such other act on behalf of Agency in accordance with this Operating Lease. Agency shall reimburse the Landlord the actual cost of the Landlord's performing such obligation on Agency's behalf, including reimbursement of any amounts that may be expended by the Landlord, plus interest at the lower of the rate of ten percent (10%) or the maximum lawful rate. Landlord shall have, in addition to all other rights and remedies of Landlord, the same rights and remedies in the event of the nonpayment of such sums plus interest by Agency as in the case of default by Agency in the payment of rent.

Section 14.14 **Recording.** Neither the Landlord nor Agency shall record this Operating Lease nor a short form memorandum thereof without the consent of the other. Agency agrees to execute, acknowledge and deliver to the Landlord a quitclaim deed at the end of the Term.

Section 14.15 **Entire Agreement.** This Operating Lease sets forth all covenants, promises, agreements, conditions and understandings between the Landlord and Agency concerning the Premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between Landlord and Agency concerning the lease of the Premises other than as are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Operating Lease shall be binding upon the Landlord or Agency unless reduced to writing and signed by Landlord and Agency.
IN WITNESS WHEREOF, the parties have executed this Operating Lease as of the date first above written.

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY  
BY:  
    DEPUTY CITY ATTORNEY  
    AGENCY COUNSEL  

AGENCY:  
REDEVELOPMENT AGENCY OF THE CITY OF STOCKTON  
J. GORDON PALMER, JR.  
INTERIM EXECUTIVE DIRECTOR

ATTEST:  
KATHERINE GONG MEISSNER  
AGENCY SECRETARY

LENSOR:  
HOTEL STOCKTON INVESTORS,  
a California limited partnership  
By:  
    Cyrus Youssef, General Manager

APPROVED AS TO FORM:  
By:  
    Counsel for Developer
EXHIBIT A
DESCRIPTION OF THE HOTEL STOCKTON

That certain real property situated in the State of California, County of San Joaquin, City of Stockton, described as follows:

All of Block 63 ¾ EAST OF CENTER STREET in the City of Stockton, according to the Official Map or Plat thereof, San Joaquin County Records, bounded on the North by Bridge Street, on the East by Hunter Street, on the South by Weber Avenue and on the West by El Dorado Street.
EXHIBIT B
DELINEATION OF PREMISES
EXHIBIT C

INSURANCE REQUIREMENTS

A. Minimum Limits of Insurance

1. Commercial General liability: Two Million Dollars ($2,000,000) per occurrence for bodily injury, personal injury, and property damage, combined single limit and Two Million Dollars ($2,000,000) aggregate limit, with a Three Million Dollar ($3,000,000)-umbrella policy limit.


3. Professional Liability/Errors and Omissions coverage of not less than One Million Dollars ($1,000,000) for each architect and/or engineer.

4. Business interruption and/or loss of "rental value" insurance in an amount sufficient to avoid any co-insurance penalty and to provide Proceeds in an amount equal to the actual loss of business income which is sustained during the period of Restoration (such period not to be required to exceed six (6) months), the term "rental value" to mean the sum of (A) the total rentals payable under the Space Leases and (B) the total amount of all other amounts to be received by the Master Tenant or third parties which are the legal obligation of the Tenants.

5. Broad form boiler and machinery insurance (without exclusion for explosion) covering all boilers or other pressure vessels, machinery and equipment located in, on or about the Premises and insurance against loss of occupancy or use arising from any such breakdown in such amounts as are generally available at reasonable premiums and are generally required by institutional lenders for properties comparable to the Premises.

6. During the course of any construction or Restoration of the Improvements, builder's risk completed value insurance against "all risks of physical loss," including collapse and transit coverage, with deductibles not to exceed One Thousand Dollars ($1,000), in nonreporting form, covering the total value of work performed and equipment, supplies and materials furnished, and containing the "permission to occupy upon completion of work or occupancy" endorsement.

7. Such other insurance with respect to the Premises against loss or damage of the kinds from time to time customarily insured against and in such amounts as are generally available at reasonable premiums.
The Agency shall furnish or caused to be furnished to the Landlord evidence satisfactory to the Landlord that each contractor with whom Agency or its agents have contracted for the performance of work on the Premises carries workers' compensation insurance as required by law and complies with the above-required insurance limits.

B. **Deductibles and Self-Insured Retention**

Any deductibles or self-insured retention in excess of Fifty Thousand Dollars ($50,000) must be declared to and approved by Agency, in its reasonable discretion.

C. **Other Insurance Provisions**

All policies shall contain the following provisions:

1. City, Agency, Landlord and their respective board members, Council members, directors, members, partners, officials, officers, and employees shall be named as additional insureds on general liability policies as respects liability arising out of activities performed by or on behalf Agency; and premises owned, occupied or used by Agency. The policies shall contain no special limitations on the scope of protection afforded to Agency, City, Landlord, and their respective board members, Council members, directors, members, partners, officials, officers, and employees.

2. For any claims related to the Premises, Agency's insurance coverage shall be primary insurance as respects Landlord, its members, partners, officers, officials, and employees.

3. Any failure to comply with the reporting or other provisions of the policies shall not affect coverage provided to Landlord and its members, partners, officers, officials or employees.

4. Agency's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. Each insurance policy required by this Operating Lease shall be endorsed, by separate endorsement acceptable to Landlord in its reasonable discretion, to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to Landlord by carrier.

The Workers' Compensation insurers shall agree to waive all rights of subrogation against the Landlord and their agents, officers and employees for losses arising from work performed by the Agency for or on behalf of the Agency and/or City.
REDEVELOPMENT AGENCY
OF THE
CITY OF STOCKTON

RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF STOCKTON (THE "AGENCY") APPROVING EXECUTION BY THE AGENCY OF AN OPERATING LEASE WITH HOTEL STOCKTON INVESTORS (THE "LANDLORD")

WHEREAS, the City Council (the "City Council") of the City of Stockton (the "City") has adopted the Amended and Restated Redevelopment Plan for the West End Urban Renewal Project No. 1 Redevelopment Project adopted by Ordinance No. 039-91 of the City of Stockton on July 15, 1991, as amended (the "Redevelopment Plan"). The Redevelopment Plan sets forth a plan for redevelopment of the West End Urban Renewal Project Area (the "Project Area"); and

WHEREAS, the Agency is responsible for administering the Redevelopment Plan to cause redevelopment of the Project Area, including disposition of property and installation of public improvements within the Project Area for private redevelopment consistent with the Redevelopment Plan; and

WHEREAS, the Agency and Hotel Stockton Investors, a California limited partnership, entered into that certain Amended and Restated Disposition, Development, Grant and Loan Agreement (DDA), dated as of July 9, 2002, as amended by that certain First Amendment to Amended and Restated Disposition, Development, Grant and Loan Agreement and Loan Modification Agreement, dated as of January 18, 2005, and as implemented pursuant to that certain First Operating Memorandum to the DDA, dated as of December 10, 2002 (collectively the "DDA"). Under the DDA, the Landlord acquired from the Agency the Hotel Stockton and rehabilitated the Hotel Stockton, which is located in the Project Area; and

WHEREAS, pursuant to Section 7.2 of the DDA, the Landlord agreed that the Agency would operate the first floor and rooftop terrace after the rehabilitation of the Hotel Stockton was completed; and

WHEREAS, on May 10, 2005 the Agency entered into a Master Lease with Stockton City Center 16, LLC (the "Master Tenant") to grant the Master Tenant an option to lease and operate as retail space the first floor and rooftop terrace portions of the Hotel Stockton pursuant to Section 7.2 of the DDA; and

WHEREAS, it was determined the lease-up and operation of the retail spaces within the Hotel Stockton pursuant to the Master Lease will serve major Redevelopment Plan goals and objectives by eliminating blight and Redeveloping underutilized sites in the Project Area; and

WHEREAS, the Master Lease required the Agency to install certain public improvements and in order to allow these improvements to be installed approved payment by the Agency of funds for the installation of the improvements; and
WHEREAS, the Landlord and the Agency desire to enter into an Operating Lease, substantially in the form on file with the Agency Secretary, in which the Agency leases from the Landlord the first floor and rooftop terrace areas of the Hotel Stockton to operate those portions of the Hotel Stockton; and

NOW THEREFORE, BE IT RESOLVED BY THE REDEVELOPMENT AGENCY OF THE CITY OF STOCKTON, AS FOLLOWS:

1. The Agency approves the Operating Lease and hereby authorizes and directs the Agency Executive Director to take such other actions and execute such other documents as are appropriate to effectuate the intent of the executed Operating Lease.

PASSED, APPROVED and ADOPTED______________________________

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EDWARD J. CHAVEZ, Chairperson
Redevelopment Agency of the
City of Stockton

ATTEST:

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KATHERINE GONG MEISSNER, Secretary
Redevelopment Agency of the
City of Stockton