

RESOLUTION OF THE CITY COUNCIL

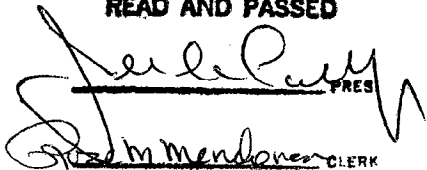
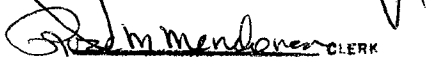
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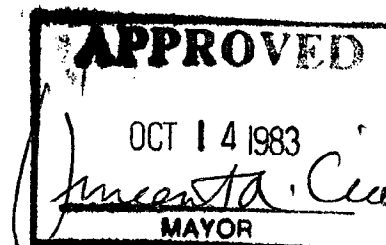
Approved October 14, 1983

RESOLVED THAT, pursuant to Section 416(6) of the City Charter, the Board of Park Commissioners, through His Honor the Mayor, as Chairman, is authorized to execute a lease to Biltmore Hotel Associates, of Biltmore Park, so-called, bounded by Dorrance, Francis and Exchange Streets, in the City of Providence, R.I., as per copy of lease submitted herewith, and in accordance with Resolution of the Board of Park Commissioners duly passed at its meeting of September 22, 1983.

IN CITY COUNCIL

OCT 6 1983
READ AND PASSED


PRES

CLERK



RESOLUTION AUTHORIZING THE
BOARD OF PARK COMMISSIONERS,
THROUGH HIS HONOR THE MAYOR,
AS CHAIRMAN, TO EXECUTE A
LEASE TO BILTMORE HOTEL
ASSOCIATES. (copy submitted)

DEPT. OF CITY CLERK
PROVIDENCE, R. I.

SEP 28 11 45 AM '83

FILED

Council President Pawlino and Councilman Turner (By Request)

LEASE

CITY OF PROVIDENCE

Landlord

and

BILTMORE HOTEL ASSOCIATES

Tenant

Providence, Rhode Island

Dated: As of , 1983

*Original lease sent
to Mayor on October 18, 1983*

LEASE

THIS LEASE is made as of the day of , 1983 by and between the CITY OF PROVIDENCE, RHODE ISLAND ("Landlord") having an address at c/o Superintendent of Parks, Roger Williams Park, Providence, Rhode Island 02903, and BILTMORE HOTEL ASSOCIATES, a Rhode Island partnership having an office at Kennedy Plaza,, Providence, Rhode Island 02903("Tenant").

W I T N E S S E T H:

WHEREAS, Landlord agreed to lease to the Tenant that certain parcel of land and the improvements thereon, located in Providence, Rhode Island, and bounded by Dorrance, Francis and Exchange Streets (the "Premises");

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth and for other good and valuable consideration, the receipt whereof is hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. Demised Premises.

Landlord, for and in consideration of the rents hereinafter reserved by Landlord and the covenants and agreements hereinafter contained on the part of Tenant, by these presents does hereby lease, to Tenant, and Tenant does hereby take and hire from Landlord, upon and subject to the terms and conditions hereinafter expressed, the Premises.

TOGETHER with all right and interest, if any, of Landlord in and to any easement appurtenant to said parcel of land, but no limitation or termination of any such right or interest shall affect this Lease or any of Tenant's obligations hereunder.

SUBJECT, however, to the condition and state of repair the Premises may be in at the date hereof.

2. Term.

TO HAVE AND TO HOLD the Premises unto Tenant, its legal representatives, successors, and assigns, for a term to commence on the date hereof and to end at 11:59 p.m. on the sixth anniversary hereof, provided that Tenant and Landlord

shall have the right to extend this lease for forty-nine (49) additional periods of one year each. This lease shall automatically be extended unless Tenant or Landlord notifies the other party of its desire to terminate this Lease at least 60 days prior to the expiration of the then current term in which event this Lease shall terminate at the end of the then current term.

3. Rent.

3.1 Tenant covenants and agrees to pay to Landlord rent for the Premises ("Rent") at the rate of \$1.00 per year. Such Rent shall be payable in advance on the first business day of each year during the term of this Lease, commencing on the date hereof.

3.2 It is agreed that nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between Landlord and Tenant or between Tenant and any other person, or cause Tenant to be responsible in any way for the debts or obligations of Landlord or any other person.

4. Payment of Taxes.

Landlord shall cause the Premises to remain exempt from any and all real estate taxes for so long as this Lease shall remain in effect.

5. Repairs and Maintenance.

5.1 Throughout the term of this Lease, but subject to the terms of Section 5.2 hereof, Tenant, at its sole cost and expense, shall take good care of the Premises and keep all sidewalks adjoining the Premises in a litter free condition, ordinary wear excepted. Without limiting the foregoing, Tenant shall be responsible for maintaining and taking care of the plants, grass, trees and other vegetation which is on the Premises from time to time and for the first six years of this Lease, the underground sprinkler system on the Premises, provided, however, Tenant shall have no liability for any losses to such vegetation on the Premises unless such loss is the result of Tenant's gross negligence and no liability for the underground sprinkler in the event this Lease is renewed beyond the initial term.

5.2 Landlord shall be required to furnish adequate police and fire service or to make any major repairs in or about the Premises which are required to maintain the Premises in good order and repair, but are not matters of routine maintenance and therefore Tenant's responsibility pursuant to Section 5.1. Landlord's liability for such repairs shall be limited to

Landlord incurring expenses up to \$10,000 (which amount shall increase proportionately with any change in the Consumer Price Index, or other similar index if such index is discontinued, as published by the Federal Government with the index published for the year ending December 31, 1983 serving as the base year) per year for out-of-pocket expenses. After Landlord has spent such amount, neither party shall have any liability for maintenance and repair of the Premises, but each may in its sole discretion perform or make such maintenance and repairs.

5.3 Landlord shall also provide the electricity to operate whatever street lights are currently located on the Premises and Tenant shall be responsible for providing any other utilities required for the operation of the Premises.

5.4 Within three (3) months of the commencement of this Lease Landlord shall plan and landscape, and from time to time thereafter the Landlord may plan and landscape, the Premises at its sole expense. Such plans and the execution thereof shall be subject to Tenant's approval which shall not be unreasonably withheld. Tenant may terminate this Lease at any time in the event Tenant and Landlord cannot agree on landscaping plans or the means by which such plans are executed.

~~5.5~~ ^{Landlord} will install, at its expense, an underground sprinkler for the Premises. Such system shall become the property of Landlord upon the termination of this Lease.

6. Use of Premises.

6.1. Tenant shall use the Premises as a park which shall be open to the public at all reasonable hours. Such use shall be subject to such reasonable rules and regulations as Tenant shall impose from time to time.

6.2 Landlord may, in accordance with its usual procedures and with the prior written consent of Tenant, issue permits for the use of the Premises. So long as Landlord provides Tenant with such information as Tenant reasonably requires to make a determination as to such request, Tenant shall not unreasonably withhold or delay such consent.

7. Insurance.

7.1 Tenant, at its own sole cost and expense, shall, throughout the entire term of this Lease, procure and maintain comprehensive general public liability insurance against claims for bodily injury, death or property damage occurring upon, in or about the Premises, including, among other things, such insurance to afford immediate protection at the date of

commencement of the term hereof to the limit of not less than \$500,000 in respect of bodily injury or death to any one person, and to the limit of not less than \$1,000,000 in respect of any one occurrence, and to the limit of not less than \$250,000 for property damage, and such protection may continue at not less than the same limits until required to be changed by Landlord in writing by reason of changed economic conditions making such protection inadequate.

7.2 Losses under any policy of insurance provided by Tenant shall be adjusted with the insurers and/or underwriters by and shall be payable to Tenant.

7.3 Landlord shall maintain such insurance as it shall deem appropriate for any insurable property on the Premises and for any other liability Landlord may incur with respect to the Premises.

8. Changes and Alterations by Tenant.

8.1 Tenant shall have the right at any time and from time to time during the term of this Lease to make, at its own sole, cost and expense, changes and alterations in or to the Premises.

8.2 No change or alteration (regardless of the estimated cost thereof) shall be made without Landlord's prior consent if the proposed change or alteration would materially change the character of all or a portion of the Premises.

9. Miscellaneous.

9.1 Tenant shall not enter into any sublease of all or any portion of the Premises or assign or transfer this Lease without the prior written consent of Landlord, which consent shall not be unreasonably withheld, provided, however, that no such consent shall be required for any assignment or sublet to a successor to Tenant as owner of the Biltmore Plaza Hotel.

9.2 Landlord also hereby warrants and represents to Tenant, as of the date hereof that no consent, approval or other action of or filing is required in connection with the execution, delivery, observance or performance by Landlord of this Lease or any other transactions herein provided for that has not previously been obtained.

9.3 Tenant will cooperate with any governmental agency if federal, state or local funds become available for use in restoring or improving the Premises.

10. Indemnification.

10.1 Tenant shall indemnify and save Landlord harmless from ~~and against~~, and shall reimburse Landlord for, all liabilities, obligations, damages, fines, penalties, claims, demands, costs, charges, judgments and expenses, including, but not limited to, reasonable attorneys' fees, which may be imposed upon or incurred or paid or asserted against Landlord or Landlord's interest in the Premises by reason of or in connection with any occurrence during the term of this Lease on or about the Premises, which are caused by any grossly negligent act committed by Tenant, its agents, servants or employees.

10.2 Landlord shall indemnify and save Tenant harmless from and against, and shall reimburse Tenant for, all liabilities, obligations, damages, fines, penalties, claims, demands, costs, charges, judgments and expenses, including, but not limited to, reasonable attorneys' fees, which may be imposed upon or incurred or paid or asserted against Tenant or Tenant's interest in the Premises by reason of or in connection with any occurrence during the term of this Lease on or about the Premises, other than such liabilities as are caused by any grossly negligent act committed by Tenant, its agents, servants or employees, or with respect to expenses incurred by Tenant for which Landlord is not obligated under the provisions of this Lease to reimburse Tenant.

11. Condemnation.

11.1 If at any time during the term of this Lease, the whole or any part of the Premises shall be taken by any lawful power or authority by the exercise of the right of condemnation or eminent domain, this Lease, at the Tenant's option, and the term hereof shall terminate and expire on the date of such taking.

11.2 Tenant agrees not to object to any condemnation of the Premises by Landlord or other authority for use as a so-called "Auto Restricted Zone".

12. Estoppel Certificates.

12.1 Tenant agrees at any time and from time to time, upon not less than ten (10) days' prior notice by Landlord, to execute, acknowledge and deliver, without charge, to Landlord, or to any person designated by Landlord, a statement in writing certifying that this Lease is unmodified (or if there have been modifications, identifying the same by the date thereof and specifying the nature thereof), that Tenant has not received

any notice of default or notice of termination of this Lease (or if Tenant has received such a notice, that it has been revoked, if such be the case), that to the knowledge of Tenant no Event of Default exists hereunder (or if any such Event of Default does exist, specifying the same and stating that the same has been cured, if such be the case), that Tenant to its knowledge has no claims or offsets against Landlord hereunder (or if Tenant has any such claims, specifying the same), and the dates to which the Rent and other sums and charges payable by Tenant hereunder have been paid.

12.2 Landlord agrees at any time and from time to time, upon not less than ten (10) days' prior written notice by Tenant, to execute, acknowledge and deliver, without charge, to Tenant, or to any person designated by Tenant, a statement in writing stating that this Lease is unmodified (or if there be modifications, identifying the same by the date thereof and specifying the nature thereof), that no notice of default or notice of termination of this Lease has been served on Tenant (or if Landlord has served such notice, that the same has been revoked, if such be the case), that to Landlord's knowledge no Event of Default does exist, and the date to which the Rent has been paid by Tenant.

13. Conditional Limitations--Default Provisions.

13.1 If any one or more of the following events (herein sometimes called "Events of Default") shall happen:

13.1.1 If default shall be made by Landlord or Tenant in the performance of or compliance with any of the covenants, agreements, terms or conditions contained in this Lease, and such default shall continue for a period of fifteen (15) days after notice thereof from the other party hereto, or, in the case of a default or a contingency which cannot with due diligence be cured within such period of fifteen (15) days, such defaulting party fails to proceed with all due diligence within such period of fifteen (15) days to cure the same and thereafter to prosecute the curing of such default with all due diligence (it being intended that in connection with a default not susceptible of being cured with due diligence within fifteen (15) days that the time to such defaulting party within which to cure the same shall be extended for such period as may be necessary to complete the curing thereof with all due diligence); or

13.1.2 If Tenant shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent or shall file any petition or answer seeking any reorganization, arrangement, recapitalization, readjustment, liquidation,

dissolution or similar relief under any present or future Federal Bankruptcy Act or any other present or future applicable Federal, state or other statute or law, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant or of all or any substantial part of its properties or of the Property, or shall make an assignment for the benefit of creditors, or shall admit in writing its or their inability to pay its debts generally as they become due; or

13.1.3 If within sixty (60) days after the commencement of any proceedings against Tenant seeking any reorganization, arrangement, recapitalization, readjustment, liquidation, dissolution or similar relief under the present or any future Federal Bankruptcy Act or any other present or future applicable Federal, state or other statute or law, such proceedings shall not have been dismissed, or if, within sixty (60) days after the appointment, without the consent or acquiescence of Tenant, of any trustee, receiver or liquidator of Tenant, or of all or any substantial part of its properties or of the Premises, such appointment shall not have been vacated or stayed on appeal or otherwise, or within sixty (60) days after the expiration of any such stay such appointment shall not have been vacated;

then and in any such event of default, the non-defaulting party at any time thereafter (but prior to the curing of all such Events of Default) may give notice to the defaulting party specifying such Event of Default or Events of Default and stating that this lease and the term hereby demised shall expire and terminate on the date specified in such notice, which shall be at least 5 days after the giving of such notice, and on the date specified in such notice this lease and the term hereof shall expire and terminate with the same force and effect as though the date so specified were the date herein originally fixed as the expiration date of the term of this lease and all rights of the parties under this lease shall expire and terminate.

13.2 Upon any expiration or termination of this Lease pursuant to Section 13.1 of this Article, or any termination by or resulting from summary proceedings or otherwise, Tenant shall quit and peaceably surrender the Premises to Landlord.

14. Invalidity of Particular Provisions.

If any term or provision of this lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or

circumstances other than those as to which it is held invalid or unenforceable, shall not be effected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

15. Notices.

All notices, requests, demands, consents, approvals, and other communications which may or are required to be served or given hereunder (for the purposes of this Article collectively called "Notices") shall be in writing and shall be sent by registered or certified mail, return receipt requested, postage prepaid, addressed to the party to receive such Notice at his or its address first above set forth. Copies of any notice to Tenant shall also be sent to Michael L. Henry, Esq., Dunfey Hotels, 500 Lafayette Road, Hampton, New Hampshire 03842. Either party may, by Notice given as aforesaid, change its address for all subsequent Notices, except that neither party may require Notices to it to be sent to more than two addresses. Except where otherwise expressly provided to the contrary elsewhere in this Lease, Notices shall be deemed given when mailed in the manner aforesaid.

16. Condition of and Title to Property.

Tenant represents that the Premises, and the present uses and non-uses thereof, have been examined by Tenant, and Tenant agrees that it will accept the same in the condition or state in which they or any of them now are, without representation or warranty, express or implied in fact or by law by Landlord.

17. Quiet Enjoyment.

Landlord covenants that Tenant, upon paying the Rent and all other sums and charges herein provided for and observing and keeping all covenants, agreements and conditions of this Lease on its part to be observed and kept, shall quietly have and enjoy the Premises during the term of this Lease, without hindrance or molestation by anyone claiming by, through or under Landlord, subject, however, to the exceptions, reservations, and conditions of this Lease.

18. Oral Change or Termination.

This Lease and the documents referred to herein contain the entire agreement between the parties pertaining to the subject matter hereof, and any executory agreement hereafter made shall be ineffective to change, modify or discharge it in whole or in part unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification or discharge is sought. This Lease cannot be changed or terminated orally.

19. Limitations on Liability.

Landlord agrees that the obligations of Biltmore Hotel Associates as Tenant under or with respect to this Lease do not constitute personal obligations of the partners of Biltmore Hotel Associates, or any of such partners, and shall not create or involve any claim against, or personal liability on the part of, any of them and that Landlord will look solely to the assets of Biltmore Hotel Associates for satisfaction of any liability of Landlord in respect of this Lease and will not seek recourse against such partners or any of them or any of their personal assets for such satisfaction.

20. Successors and Assigns.

The covenants, conditions and agreements in this Lease shall bind and inure to the benefit of Landlord and Tenant and, except as otherwise provided in this Lease, their respective legal representatives, permitted successors and assigns.

IN WITNESS WHEREOF, the parties hereto have duly executed this instrument as of the day and year first above written.

BILTMORE HOTEL ASSOCIATES

By: _____, as
general partner

By _____

CITY OF PROVIDENCE

By _____

By _____

By _____

By _____

By _____

By _____

STATE OF RHODE ISLAND

COUNTY

OF

PROVIDENCE

On this day of , 1983, personally appeared , to me known and known by me to be a general partner of Biltmore Hotel Associates, the party executing the foregoing instrument, and acknowledged said instrument by him executed in his said capacity to be his free act and deed in such capacity and the free act and deed of said partnership.

Notary Public

STATE OF RHODE ISLAND

COUNTY OF PROVIDENCE

On this day of , 1983, personally appeared [], to me known and known by me to be a of said City of Providence, the party executing the foregoing instrument, and acknowledged said instrument by him executed in his said capacity to be his free act and deed in such capacity, and the free act and deed of said City.

Notary Public