

TRANSIENT OCCUPANCY TAX REIMBURSEMENT AGREEMENT

30749

This Transient Occupancy Tax Reimbursement Agreement ("Agreement") dated, for reference purposes only, as of July 16, 2008, is executed pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting held on June 19, 2007, by and between the CITY OF LONG BEACH, a municipal corporation ("City"), and PORTSIDE PARTNERS, LLC, a California limited liability company (including its successors and assigns, "Portside").

RECITALS

A. Portside is the owner of a subleasehold interest in certain real property commonly known as 600 Queensway Drive (the "Property"). Portside subleases the Property from LBH Land Holding Company, LLC, a California limited liability company ("LBH") pursuant to a Sublease Agreement (the "Sublease") and LBH leases the Property from City pursuant to a ground lease (the "Lease") dated as of October 1, 2005 and executed by and between City, as lessor, and LBH, as lessee.

B. Portside intends to develop an eleven-story 178-room hotel on the Property (the "Project"), which is expected to generate substantial future transient occupancy tax ("TOT") for the benefit of City. Portside conducted soil tests on the Property during its pre-development due diligence, and the results of such soil tests show that significant improvements are needed to prepare the Property for development.

C. Portside has requested City assistance in making the necessary soil improvements to the Property, and City has agreed to provide assistance to Portside pursuant to a transient occupancy tax reimbursement arrangement, and otherwise on the terms and conditions outlined in this Agreement.

AGREEMENT

1. Principal. City agrees to pay to Portside, at 444 West Ocean Blvd., Suite 1108, Long Beach, California 90802, or at such other place as Portside may from time to time designate, in writing, an amount equal to the total costs incurred by Portside in connection with the soil improvement work performed upon the Property, but in no event shall such amount exceed One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00) (the "Principal"), together with interest on the Principal as hereafter provided. Portside shall keep written records of all costs and expenses incurred in connection with the soil improvement work and shall deliver copies of such records to City, or otherwise make such records available to City for inspection upon reasonable advance notice, for a period of at least three (3) years after the Commencement Date.

2. Interest. Simple interest ("Interest") at the rate of seven percent (7.00%) per annum (the "Interest Rate") shall begin to accrue on the Principal Amount

beginning on the Commencement Date. The "Commencement Date" shall be the October 1st immediately succeeding the date on which both of the following conditions have been satisfied: (i) the Project receives a Certificate of Occupancy from City and (ii) City receives from Portside the first transient occupancy tax payment generated by the Project.

3. Payment. Principal and Interest shall be due and payable as follows:

A. Prior to the Commencement Date City shall have no obligation to make any payment of Principal or Interest to Portside.

B. On the Commencement Date, City shall pay to Portside (i) an amount equal to twenty-five percent (25%) of the TOT revenue paid to City by Portside as of the Commencement Date. Continuing annually thereafter, City shall make payments to Portside in an amount equal to the sum of (i) One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00) (Principal component), and (ii) all Interest accrued to date on the outstanding Principal balance (Interest component). Each payment shall be made within thirty (30) days after receipt by City of TOT revenue generated by the Project during the preceding fiscal year.

C. Notwithstanding anything to the contrary contained in this Agreement, each recurring payment made by City pursuant to Section 3.B shall in no event exceed an amount equal to twenty-five percent (25%) of the most recent annual TOT payment generated by the Project and paid by Portside to City. If the payment amount called for by Section 3.B is reduced pursuant to this Section 3.C, such reduced payment shall first be applied to the Principal component and second to the Interest component. In the event of a reduced payment, the next payment will cover the difference between the reduced payment and the full payment or portion thereof that may be available from the annual TOT payment; provided, however, that in no event shall the annual payment exceed twenty-five percent (25%) of the most recent annual TOT payment generated by the Project and paid by Portside to City. (See Exhibit A attached hereto, "Example Transient Occupancy Tax Payments Under Various Scenarios").

D. Payments made by City to Portside under this Agreement will only be made from TOT generated by the Project and received by City.

4. Term. This Agreement shall terminate on the tenth (10th) anniversary of the Commencement Date. At the end of the term City shall (i) pay all outstanding Principal and Interest due and owing to Portside, or (ii) City extend the term of this Agreement as needed in order to continue making recurring payments under Section 3 until all outstanding Principal and Interest is paid to Portside.

5. Unsecured Obligation. Portside acknowledges and agrees that the payments to be made hereunder are an unsecured, special obligation of City payable only out of the TOT generated by the Project. Portside acknowledges and agrees that neither City's TOT from the Project, nor any revenues of City are, have been, or will be pledged or hypothecated by City to or for payment of amounts owing under this Agreement. If and when requested by City, Portside agrees to execute and deliver to City, within five (5) business days after receipt, a certificate acknowledging for the benefit of any and all third parties that City's obligation under this Agreement is an unsecured obligation of City for which neither City's TOT, nor any revenues of City are, have been, or will be pledged or hypothecated to or for payment.

6. Default. Upon the default by City under this Agreement, including, without limitation, a failure to make a payment within thirty (30) days after receiving written notice from Portside that such payment is due, past due amounts shall bear interest at the lesser of the Interest Rate plus two percent (2%) or the maximum rate allowed by law at the time of the default.

7. Payments. If requested by Portside, all payments made hereunder shall be made by bank wire transfer of federal funds to such places, to such accounts, and in such manner as may be designated in writing from time to time by Portside. All Principal and Interest due hereunder is payable in lawful money of the United States of America.

8. Amendments. This Agreement may not be changed, modified, amended or terminated except by a writing executed by the party against whom enforcement of such change or termination is sought.

9. Authority. Portside and City (and the undersigned representatives of each) represent that each has full power, authority and legal right to execute and deliver this Agreement and that the respective obligations hereunder constitute valid and binding obligations of Portside and City.

10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

11. Assignment. Portside shall have the right to assign its interest in this Agreement to any person or entity which legally and validly succeeds to the interests of Portside under the Sublease (or to LBH under the Ground Lease) and in accordance with all transfer requirements contained in the Ground Lease, as well as to any lender providing financing to Portside.

12. Insolvency. This Agreement and all of City's obligations hereunder shall terminate in the event a court shall have made or entered any decree or order: (i) adjudging Portside to be bankrupt or insolvent, (ii) approving as properly filed a petition (unless such petition is dismissed within ninety (90) days) seeking reorganization of Portside or an arrangement under the bankruptcy laws or any other applicable debtor's relief law or statute of the United States or any state thereof;

(iii) appointing a receiver, trustee or assignee of Portside, in bankruptcy or insolvency or for its property, unless such appointment is dismissed within ninety (90) days, (iv) directing the winding up or liquidation of Portside unless such decree or order is dismissed within ninety (90) days, or (v) Portside shall have voluntarily submitted to or filed a petition seeking any such decree or order.

13. Use of Terms. In all matters of interpretation, whenever necessary to give effect to any provision of this Agreement, the singular shall include the plural, the plural shall include the singular, each gender shall include the other, and the terms "City" and "Portside" shall include their respective heirs, successors and assigns.

14. Attorney's Fees. In the event of the bringing of any action or suit by a party hereto against another party hereunder by reason of any breach of any of the covenants or agreements contained in this Agreement, then in that event, the prevailing party in such action or dispute, whether by final judgment or out of court settlement, shall be entitled to have and recover of and from the other party all costs and expenses of suit, including actual attorneys' fees. Any judgment or order entered in any final judgment shall contain a specific provision providing for the recovery of all costs and expenses of suit, including actual attorneys' fees (collectively "Costs") incurred in enforcing, perfecting and executing such judgment. For the purposes of this paragraph, Costs shall include, without limitation, attorneys' fees, costs and expenses incurred in (i) post-judgment motions, (ii) contempt proceeding, (iii) garnishment, levy, and debtor and third party examination, (iv) discovery, and (v) bankruptcy litigation

15. Severability. If any provision or any word, term, clause or other part of any provision of this Agreement shall be invalid for any reason, the same shall be ineffective, but the remainder of this Agreement and the provisions hereof shall not be affected and shall remain in full force and effect.

16. Usury. It is the intention of City and Portside to conform strictly to all applicable usury laws. Accordingly, it is agreed that notwithstanding any provision to the contrary in this Agreement, the aggregate of all interest and any other charges or consideration constituting interest under applicable usury law that is taken, reserved, contracted for, charged or received under this Agreement, or otherwise in connection with this transaction, shall under no circumstances exceed the maximum amount of interest allowed by the usury laws applicable to this transaction. If any excess of interest in such respect is provided for in this Agreement, or in any of the documents securing payment hereof or otherwise relating hereto, then, in such event:

- A. the provisions of this paragraph shall govern and control;
- B. neither City nor its heirs, legal representatives, successors or assigns shall be obligated to pay the amount of such interest to the extent that it is in excess of the maximum amount of interest allowed by the usury laws applicable to this transaction;

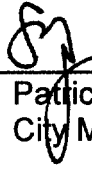
C. any excess shall be deemed canceled automatically and, if theretofore paid, shall be credited to this Agreement by Portside or, if obligations under this Agreement shall have been paid in full, refunded to City; and

D. the effective rate of interest shall be automatically subject to reduction to the maximum legal rate of interest allowed under applicable usury laws.

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

“City”


CITY OF LONG BEACH, a municipal corporation

By:  Assistant City Manager
Patrick H. West
City Manager **EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.**

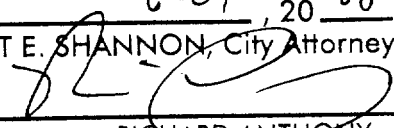
“Portside”

PORTSIDE PARTNERS, LLC, a California limited liability company

By: Ensemble Hotel Partners, LLC, a California limited liability company

By: 
Name: Ed Proenza
Title: Senior Vice President

APPROVED AS TO FORM

6-27, 20 08
ROBERT E. SHANNON, City Attorney
By: 
RICHARD ANTHONY
DEPUTY CITY ATTORNEY