

TRANSIENT OCCUPANCY TAX SHARING AGREEMENT

35420

This Transient Occupancy Tax Sharing Agreement (“Agreement”) dated, for reference purposes only, as of November 1, 2019, is executed pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting held on October 1, 2019, by and between the CITY OF LONG BEACH, a municipal corporation (“City”), and BREAKERS DEVELOPMENT, LLC, a California limited liability company (including its successors and assigns, “Owner”).

RECITALS

- A. Owner is the owner of a fee interest in certain real property commonly known as 210 E. Ocean Blvd., Long Beach, California 90802 (the “Property”).
- B. Owner intends to develop a 185-room (approximate) hotel on the Property (the “Project”), which is expected to generate substantial future transient occupancy tax (“TOT”) for the benefit of City.
- C. Owner has requested City assistance in making the Project economically viable, and City has agreed to provide assistance to Owner pursuant to a transient occupancy tax sharing arrangement, and otherwise on the terms and conditions outlined in this Agreement.

AGREEMENT

1. Sharing. Subject to Section 3, City agrees to reimburse to Owner, at such place as Owner may from time to time designate in writing, an amount up to Thirteen Million Thousand Dollars (\$13,000,000) (as may be adjusted, the “Owner’s Amount”). Owner intends to expend at least \$135 million in connection with the development of the Project (“Projected Project Cost”). On or before the date on which the Project receives a Certificate of Occupancy from City, Owner shall provide documentation to City for its review and reasonable approval evidencing total actual expenditures by Developer in connection with the development of the Project (“Actual Project Cost”). If the Actual Project Cost is lower than the Projected Project Cost, then the Owner’s Amount shall be reduced by a fraction, the numerator of which is the Actual Project Cost and the denominator of which is the Projected Project Cost. If the Actual Project Cost is higher than the Projected Project Cost, then the Owner’s Amount shall not change. As an example, if the Actual Project Costs are \$100 million, then the adjusted Owner’s Amount would be 74.07% (100 divided by 135) of the original Owner’s Amount, or \$9,629,100.

2. Payment. Payments shall be due and payable as follows:

A. Prior to the October 1st immediately succeeding the date on which (i) the Project receives a Certificate of Occupancy from City and (ii) City receives the first transient occupancy payment generated by the Project (the “Commencement Date”), City shall have no obligation to make any payment of the Owner’s Amount.

B. On the Commencement Date, City shall reimburse to Owner an amount equal to eighty percent (80%) of the TOT revenue paid to City by Owner as of the Commencement Date, excluding those Transient Occupancy Taxes generated under the Long Beach Tourism Business Improvement Area. Continuing annually thereafter until the Payment Termination Date, City shall pay to Owner an amount equal to eighty percent (80%) of the TOT revenue paid to City by Owner in the preceding fiscal year, excluding those Transient Occupancy Taxes generated under the Long Beach Tourism Business Improvement Area; provided, however, that in no event shall the aggregate of such payments made by City

under this Agreement exceed the Owner's Amount. Each payment shall be made within thirty (30) days after receipt by City of all TOT revenue generated by the Project during the preceding fiscal year.

C. Payments made by City to Owner under this Agreement will only be made from TOT generated by the Project and received by City, excluding those Transient Occupancy Taxes generated under the Long Beach Tourism Business Improvement Area.

3. Term. This Agreement shall terminate on the twentieth (20th) anniversary (the "Term") of the Commencement Date ("Expiration Date"). City's obligation to make any payments under this Agreement shall terminate on the earlier to occur of (i) the ninth (9th) anniversary of the Commencement Date, or (ii) payment by City to Owner of entire amount of the Owner's Amount (the "Payment Termination Date"). The first full year of the Term shall be referred to as the First Agreement Year, the second full year of the Term (commencing upon the first anniversary of the Commencement Date) shall be referred to as the Second Agreement Year, and so on, until the final full year of the Term, which shall be referred to as the Twentieth Agreement Year.

4. Hotel Flag. Owner shall open and operate the hotel as an American Automobile Association ("AAA") 4-Diamond affiliate of the "Preferred Hotels & Resorts" or similar brand as reasonably approved by the City. The Hotel Brand shall at all times maintain a 4 Diamond Rating ("Minimum Rating") from AAA, and Owner shall provide written documentation on an annual basis after the Commencement Date evidencing compliance with the Minimum Rating. If at any time prior to the Payment Termination Date the Project does not meet the Minimum Rating requirement, City's obligation to make any payments to Owner hereunder shall be suspended until such time as the Project subsequently achieves a Minimum Rating, and the Payment Termination Date shall not be extended as a result of such suspension.

5. Unsecured Obligation. Owner 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. Owner 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, Owner 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. Operating Covenant. Owner shall operate a hotel on the Property in accordance with this Agreement, including without limitation Section 4, from the Commencement Date until the Expiration Date. If Owner fails to operate the Property in a manner which generates TOT (subject to temporary suspension due to government order or repair or rehabilitation of the hotel), then City shall be entitled to recover all previous payments by City to Owner hereunder up to the Owner's Amount. If Owner fails to comply with Section 4 after the Payment Termination Date, City shall send written notice to Owner of such failure, and thereafter Owner shall have six (6) months ("Minimum Rating Cure Period") within which to reinstate the Minimum Rating. If Owner fails to reinstate the Minimum Rating within the Minimum Rating Cure Period, then City shall be entitled to recover previous payments by City to Owner hereunder, according to the following schedule:

AGREEMENT YEAR DURING WHICH MINIMUM RATING CURE PERIOD EXPIRED	PAYMENT RECOVERY TO WHICH CITY IS ENTITLED
Tenth Agreement Year	100% of the Owner's Amount
Eleventh Agreement Year	90.9% of the Owner's Amount
Twelfth Agreement Year	81.8% of the Owner's Amount
Thirteenth Agreement Year	72.7% of the Owner's Amount
Fourteenth Agreement Year	63.6% of the Owner's Amount
Fifteenth Agreement Year	54.5% of the Owner's Amount
Sixteenth Agreement Year	45.4% of the Owner's Amount
Seventeenth Agreement Year	36.3% of the Owner's Amount
Eighteenth Agreement Year	27.2% of the Owner's Amount
Nineteenth Agreement Year	18.1% of the Owner's Amount
Twentieth Agreement Year	9.0% of the Owner's Amount

7. 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 Owner that such payment is due, past due amounts shall bear interest at the lesser of seven percent (7%) per annum or the maximum rate allowed by law at the time of the default. In addition, Owner shall be entitled to withhold from future TOT payments to the City any past due amounts not timely paid by City to Owner under this Agreement.

8. Payments. If requested by Owner 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 Owner. All payments due hereunder are payable in lawful money of the United States of America.

9. 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.

10. Authority. Owner 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 Owner and City.

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

12. Assignment. Owner 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 Owner in the Project, as well as to any lender providing financing to the Project.

13. 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 Owner to be bankrupt or insolvent, (ii) approving as properly filed a petition (unless such petition is dismissed within ninety (90) days) seeking reorganization of Owner 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 Owner 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 Owner unless such decree or order is dismissed within ninety (90) days, or (v) Owner shall have voluntarily submitted to or filed a petition seeking any such decree or order.

14. 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 "Owner" shall include their respective heirs, successors and assigns.

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. Further Assurances. City and Owner agree to cooperate in including in this Agreement, by suitable amendment, any provision which may be reasonably requested by any proposed secured lender ("Mortgagee") for the purpose of (i) adding commercially reasonable mortgagee protections, (ii) allowing such Mortgagee reasonable means to protect or preserve its security interest in the collateral, including its lien on the Property and the collateral assignment of this Agreement and/or (iii) clarifying terms or restructuring elements of the transactions contemplated hereby; provided, however, in no event shall City be obligated to materially modify any of Owner's obligations or City's rights under this Agreement in any manner not already contemplated in this Agreement.

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: Rebecca G. Garner
Name: Rebecca G. Garner DEC 05 2019
Its: Acting Asst. City Manager

**EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER**

OWNER:

BREAKERS DEVELOPMENT, LLC,
a California limited liability company

By: Robert Gordon
Name: Robert Gordon DEC 03 2019
Title: CEO

APPROVED AS TO FORM
12-3, 2019
CHARLES PARRIN, City Attorney
By: [Signature]
ANTHONY
DEPUTY CITY ATTORNEY