

29879
AMENDED AND RESTATED

HOTEL LEASE

(700 QUEENSWAY DRIVE)

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1 This AMENDED AND RESTATED LEASE (this "**Lease**") is made this 17th day
2 of November, 2006, between the **CITY OF LONG BEACH**, a municipal corporation and trust
3 grantee of the State of California of certain tide and submerged lands within said City
4 ("**Landlord**" or "**Lessor**") and QW Land Holding Company, LLC, a California limited liability
5 company ("**Tenant**" or "**Lessee**"), pursuant to a minute order adopted by the City of Long Beach
6 City Council on September 19, 2006.

7 **ARTICLE I**

8 **RECITALS**

9
10 1.1 **Preliminary Statement.**

11 1.1.1 Landlord is the owner of certain tide and submerged lands conveyed to it
12 by the State of California, which lands were granted and are held upon certain trusts and
13 conditions set forth in Chapter 676, Statutes of 1911, Chapter 102, Statutes of 1925, Chapter 158,
14 Statutes of 1935, Chapter 29, Statutes of 1956, First Extraordinary Session, Chapter 1560,
15 Statutes of 1959, and Chapter 138, Statutes of 1964, First Extraordinary Session.

16 1.1.2 Pursuant to an Amended and Restated Lease dated May 12, 1988, as
17 amended on October 27, 1994, December 12, 1994, April 3, 1996 and February 17, 1998, and as
18 assigned to Queensbay Hotel, LLC, a Delaware limited liability company, on March 22, 2005,
19 and thereafter assigned to Tenant on November 17, 2006 (as amended, the "**Original Lease**"),
20 Landlord leased the Premises to Tenant.

21 1.1.3 Tenant has proposed to prepay the base rent for the entire term, and on the
22 basis of such prepayment and other consideration, including but not limited to Tenant's
23 investment of at least Twelve Million Dollars (\$12,000,000) over the first five (5) years of the

1 term of this Lease for capital improvements to the existing hotel on the Premises (the "**Hotel**"),
2 Landlord is willing to extend the term of the leasehold estate and make other changes to the
3 Original Lease. Landlord and Tenant desire to amend and restate the Original Lease in its
4 entirety to reflect the prepayment of base rent, extension of the term and other agreed upon
5 changes. As such, this Lease amends and restates and supersedes in its entirety the Original
6 Lease.

7 1.2 Definitions. As used in this Lease, the following words and phrases shall have the
8 following meanings:

9 1.2.1 Premises. The real property and improvements thereon shown on the
10 attached drawing marked Exhibit "A" and further described in Exhibit "B".

11 1.2.2 City Manager. The City Manager of the City of Long Beach.

12 1.2.3 Landlord's Original Address.

13 c/o City Manager, City Hall - 13th Floor
14 333 West Ocean Boulevard
15 Long Beach, California 90802
16 FAX: (562) 570-7650

17 1.2.4 Tenant's Original Address.

18 QW Land Holding Company, LLC
19 a California Limited Liability Company
20 444 West Ocean Boulevard, Suite 1108
21 Long Beach, California 90802
22 Attn: Kambiz Babaooff
23 FAX: (562) 437-5128
24

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With copies to:

Ensemble Real Estate Services
2425 East Camelback Rd.
Suite 390
Phoenix, AZ 85016
Attn: Michael Moskowitz
FAX: (602) 954-2229

And

Jeffer, Mangels, Butler & Marmaro LLP
1900 Avenue of the Stars, 7th Floor
Los Angeles, California 90067
Attn: Scott M. Kalt, Esq.
FAX: (310) 203-0567

18

1.3 Exhibits.

- Exhibit "A" Drawing of Premises
- Exhibit "B" Legal Description of Premises and non-exclusive easements
- Exhibit "C" Estoppel Certificate

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20
21

All of the above-described exhibits are attached to this Lease and incorporated by reference.

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ARTICLE II

PREMISES, TERM, OPTION AND APPURTENANT RIGHTS AND DUTIES

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30

2.1 Premises. Landlord leases to Tenant and Tenant leases from Landlord effective upon the Commencement Date (as defined in Paragraph 2.2) the Premises and all buildings and improvements located thereon subject to the terms, covenants, and conditions contained in this Lease. There are excepted and reserved from the Premises all minerals and mineral rights of every kind or nature lying below the surfaces of said areas. Landlord shall not exercise any right

1 of surface entry on the Premises nor any right to use the subsurfaces of the land and water areas
2 described within three hundred (300) feet below ground level or water surface level of said
3 Premises for the purpose of mineral exploration or development. This Lease shall confer no
4 rights in Tenant or its successors in interest to the subsurfaces of the land and water areas
5 described more than three hundred (300) feet below ground level. This Lease shall be subject to
6 an easement to Landlord for power, telephone and sewage lines and other utilities present on the
7 Premises upon the Commencement Date or those utilities necessary to Landlord in the future, so
8 long as such future utilities do not unreasonably interfere with the development, use or operation
9 of the Premises and are placed in a location on the Premises reasonably approved by Tenant.
10 Tenant shall have the right to relocate to another location on the Premises or with the approval of
11 Landlord, off-site, any easement for utilities now or hereafter encumbering the Premises in favor
12 of Landlord, to the extent necessary for any development or redevelopment of the Premises by
13 Tenant. If any new easements for utilities, access or similar purposes across the Premises are
14 necessary for Tenant to develop, use or operate the Premises, as permitted by this Lease,
15 Landlord may grant such easements for the purpose of encumbering fee title to the Premises with
16 such easements for the term of this Lease.

17 Tenant shall not use or allow the Premises to be used for the furnishing of
18 wharfage, dock, warehouse, or other terminal facilities to a common carrier by water which is
19 subject to the United States Shipping Act of 1916, as amended. Tenant may, nevertheless, allow
20 a water taxi service to operate to and from the Premises if such water taxi service has otherwise
21 been granted a permit by the City of Long Beach and all agencies, federal state or local as
22 applicable. No warranty is given by Landlord as to access for water taxi service. Landlord shall
23 have no obligation based upon this Lease to perform dredging of any kind.

1 2.1.1 There is excepted and reserved to Lessor and to the public at large the
2 right of use, for purposes of commerce, navigation and fishery from time to time, such portions
3 of Parcel II of Parcel A and Parcel B of the Premises (collectively, the "**Water Parcel**") as shall
4 not be used by Lessee, or Lessee's sublessees or concessionaires.

5 2.1.2 There is excepted and reserved from Parcel I of Parcel A of the Premises
6 an easement and right-of-way for pedestrian traffic across that portion of said Parcel I of
7 Parcel A between the public pedestrian walkway along the Flood Control Channel and the
8 Queen's Way Bridge, described as follows:

9 Commencing at Monument L.B.H.D. "A-11 Aux.", as recorded in
10 Book 81, Page 50, Record of Surveys of Los Angeles County,
11 thence North 923.69 feet; thence East 1,300.31 feet to the true
12 point of beginning, said point of beginning having Coordinates
13 N 4,024,511.04; E 4,227,521.00 of Zone 7 of the California
14 Coordinate System; thence S 24° 28' 38" W along the westerly line
15 of Parcel I of Parcel A 64.11 feet; thence S 67° 39' 40" E 5.00 feet;
16 thence N 24° 28' 38" E 62.78 feet; thence N 52° 38' 26" W 5.13
17 feet to the true point of beginning.

18 2.2 Term and Commencement Date. The term shall be for sixty-six (66) years (the
19 "**Term**") unless sooner terminated, commencing as of October 1, 2006 ("Commencement Date")
20 and ending at 11:59 p.m. on September 30, 2072.

1 **ARTICLE III**

2 **RENT**

3
4 3.1 **Lease Year.** The words "Lease Year" as used herein shall mean a calendar year
5 commencing January 1 and ending December 31. Any portion of the Term occurring at the
6 beginning or end thereof which is less than a Lease Year shall be deemed and called a "**Partial**
7 **Lease Year**".

8 3.2 **Rent.** Tenant shall prepay to Landlord rent for the entire Term of the Lease in the
9 amount of either (i) the sum of \$2,214,678, payable on or before the date that is ten (10) days
10 following the mutual execution and delivery of this Lease, plus \$2,619,259, payable on or before
11 the second (2nd) anniversary of the mutual execution and delivery of this Lease, or
12 (ii) \$4,429,356 payable on or before the date which is ten (10) days after the mutual execution
13 and delivery of this Lease. Landlord acknowledges that (i) the amount of the payment to be
14 made on the second anniversary of the mutual execution and delivery of this Lease pursuant to
15 subparagraph (i) above (the "**Second Installment Amount**") has been calculated based upon an
16 interest accrual factor of nine percent (9%), and (ii) accordingly, notwithstanding anything to the
17 contrary set forth above, if Tenant pays the Second Installment Amount to Landlord prior to such
18 second anniversary, the Second Installment Amount due and owing by Tenant hereunder shall be
19 discounted to its net present value as of the date of such early payment based upon a discount
20 rate of nine percent (9%) per annum.

21 3.2.1 **Change In Use.** In the event a hotel ceases to be operated on the
22 Leasehold and any other use of the Premises as authorized in writing by the Landlord begins,
23 Tenant shall (1) provide Landlord written notice of the effective date of the change in use, and
24 (2) obtain all required permits and comply fully with Paragraph 5.8.

1 **ARTICLE IV**

2
3 **THE PREMISES**

4 4.1 Subsurface Conditions. Tenant acknowledges that neither Landlord nor any of
5 Landlord's officers, agents, or employees have made, nor does Landlord make herewith, any
6 representation, warranty, or guaranty, either express or implied, concerning the surface or
7 subsurface soil conditions of the Premises. Tenant shall have the sole responsibility for
8 determining the surface or subsurface conditions of the Premises. Tenant takes said Premises
9 and all improvements thereon "as is" and "with all faults".

10 4.2 Mechanics Liens. Subject to Tenant's right to contest the same as hereinafter
11 provided, Tenant shall pay as soon as due all mechanics', laborers', materialmans', contractors',
12 subcontractors' or other similar charges or liens on the Premises. Nothing contained herein shall
13 in any respect make Tenant the agent of Landlord or authorize Tenant to do any act or to make
14 any contract encumbering or in any manner affecting the title or rights of Landlord in or to the
15 Premises. If any such mechanics' or other similar liens shall at any time be filed against
16 Landlord's interest in the Premises, Tenant shall cause the same to be discharged of record within
17 thirty (30) days after the date of filing the same or otherwise free the Premises from such claim
18 or lien and any action brought to foreclose such lien, or Tenant shall promptly furnish to
19 Landlord a bond in an amount equal to one hundred twenty-five percent (125%) of such claim
20 and issued by a surety company satisfactory to Landlord, securing Landlord against payment of
21 such lien and against any and all loss or damage whatsoever in any way arising from the failure
22 of Tenant to discharge such lien. Tenant may in good faith contest any of such liens provided it
23 does so with due diligence and further provided that Tenant shall fully pay and immediately
24 discharge the amount of any final judgment granted against Landlord and Tenant or either of

1 them in any litigation involving the enforcement of such liens or the validity thereof. In the
2 event Tenant fails or refuses to discharge of record any such uncontested lien within said thirty
3 (30) day period or to pay and satisfy any such judgment as provided above, Landlord, following
4 twenty (20) days written notice to Tenant of Landlord's intent, may, but shall not be obliged to,
5 pay the amount thereof inclusive of any interest thereon or any court costs assessed against
6 Landlord and/or Tenant in litigation. Any amounts so paid by Landlord and all reasonable
7 attorneys' fees and other expenses of Landlord together with interest thereon at the rate provided
8 in Paragraph 5.5 from the date of payment shall be deemed additional rent and be paid by Tenant
9 to Landlord on demand.

10 4.3 Improvements. Upon expiration or sooner termination of this Lease, all
11 improvements to the Premises shall become the property of Landlord free and clear of all liens,
12 charges or encumbrances of any nature whatsoever, if Landlord does not require Tenant to
13 remove said improvements. If Landlord requires Tenant to remove said improvements, then
14 Tenant shall do so at no cost to Landlord within one hundred eighty (180) days following the
15 date of expiration or termination of this Lease. Tenant shall execute any documents requested by
16 Landlord to evidence transfer of title to the improvements within thirty (30) days following the
17 termination of this Lease.

18 **ARTICLE V**

19 **USE OF PREMISES AND TENANT'S COVENANTS**

20
21 5.1 Permitted Uses

22 5.1.1 Tenant shall not use or allow the Premises to be used for any purpose
23 other than a first class Hotel as reasonably determined by Landlord and other uses incidental

1 thereto. Hotel shall mean a commercial land use for the rental of approximately one hundred
2 ninety-five (195) guest rooms to transient occupants for a period of not more than thirty (30)
3 consecutive days and incidental uses within the hotel or associated with the primary use of the
4 Premises as a hotel, including but not limited to restaurants, bars, sundry, gift or other retail
5 outlets of the type commonly found in hotels, spas, and airline, auto rental and tour offices or
6 desks. Tenant acknowledges that any change in the use of the Premises must conform to the
7 requirements of the "Public Trust Doctrine" and agrees that Tenant will use the Premises only for
8 purposes consistent with the Public Trust Doctrine, as reasonably determined by Landlord.
9 Landlord acknowledges that the Hotel and incidental uses described above are consistent with
10 the Public Trust Doctrine. Tenant agrees that no improvements shall be erected, placed upon,
11 operated, nor maintained upon the Premises, nor any business conducted or carried on therein or
12 therefrom, in violation of the terms of any regulation, order, law, statute, or ordinance of a
13 governmental agency having jurisdiction including, but not limited to, those of the City of Long
14 Beach and the State of California. It is agreed that Lessee shall have the right to construct,
15 establish and maintain additional executive office space for rental to third parties for other than
16 the hotel and restaurant operators; provided, however, that the total space devoted to such use
17 shall not exceed five percent (5%) of the total space of all buildings constructed on Parcel I of
18 Parcel A of the Premises.

19 5.1.2 The Water Parcel may be used for the construction, installation, use,
20 operation, maintenance, repair and renewal of wharfs, floats, mooring buoys and related
21 structures to be used for the embarking and disembarking of passengers on sightseeing and
22 excursion boats and on transient yachts and other vessels, for the temporary mooring or berthing
23 of such vessels, and for other uses incidental thereto. Lessee shall not operate a yacht marina or

1 provide permanent mooring or berthing facilities for vessels, except with the written consent of
2 Lessor. Said uses shall not include scheduled dining and/or harbor cruises with walk up ticket
3 sales. Embarking or disembarking of Coast Guard Certified vessels for more than fifty (50)
4 passengers shall not be allowed unless any such vessel is (1) home ported in the Queensway Bay,
5 and (2) the express written permission of the Director of Community Development has been
6 secured by Lessee.

7 5.2 Capital Improvements.

8 5.2.1 Tenant shall perform certain capital improvements to the Hotel at its sole
9 cost and expense. The capital improvements shall cost at least \$12,000,000 and be performed
10 over the first five (5) years of the Term. Except as may be provided herein, it is Tenant's sole
11 responsibility to obtain all applicable regulatory permits and approvals, including but not limited
12 to all environmental reviews, in connection with such capital improvements. Before
13 commencing such capital improvements, Tenant shall procure and deliver to Landlord at
14 Tenant's expense evidence of necessary permits, licenses, and governmental approvals for the
15 same. Upon request, Tenant agrees to provide Landlord with a statement evidencing the costs
16 incurred by Landlord in connection with said capital improvements, together with reasonably
17 appropriate back-up documentation to support said statement. If Tenant elects to demolish the
18 Hotel then existing on the Premises in order to replace it with another Hotel meeting the
19 requirements of Paragraph 5.1, construct any improvements for incidental or ancillary uses
20 permitted by Paragraph 5.1 or make material modifications to any of the foregoing, Tenant shall
21 be required to obtain the approvals described in this Paragraph 5.2.1 from Landlord with respect
22 to the proposed new Hotel and the necessary permits, licenses and governmental approvals for
23 construction of the proposed new Hotel.

1 5.2.2 A Coastal Development Permit may be required in order to perform
2 capital improvements to the Hotel. Tenant shall be responsible for obtaining a Coastal
3 Development Permit if so required by applicable law or the California Coastal Commission or its
4 staff. Landlord will use every reasonable effort to cooperate and assist Tenant in obtaining all
5 necessary Coastal Development Permits.

6 5.2.3 [Intentionally omitted]

7 5.2.4 No improvements, other than those approved in accordance with
8 Paragraph 5.2.1, shall be constructed or maintained. Tenant shall repair or restore to a condition
9 satisfactory to Landlord, any damage to landscaping, parking areas or other property owned by
10 Landlord which results from the performance of the capital improvements to the Hotel.

11 5.2.5 All contracts entered by Tenant relating to construction or alteration on the
12 Premises, the Hotel or the use thereof shall contain the following clause:

13 "This Agreement shall in no way bind the City of Long Beach, its
14 officials, agents, or employees, nor obligate them for any costs or
15 expenses whatsoever under this Agreement, or which are in any
16 manner connected with the subject matter of this Agreement."

17 5.2.6 Tenant shall notify Landlord twenty (20) days prior to commencement of
18 work to enable Landlord to post and record Notice(s) of Nonresponsibility.

19 5.2.7 Tenant shall provide or cause to be provided and shall pay for labor,
20 materials, equipment, tools, construction equipment and machinery, water, heat, utilities,
21 transportation and other facilities and services necessary for proper execution and completion of
22 the capital improvements.

1 5.2.8 Tenant warrants to Landlord that the capital improvements will be of good
2 quality, free from faults and defects.

3 5.2.9 The Premises shall remain in continuous use after completion and opening
4 as a Hotel except as may be provided in Article IX of this Lease and except during periods that
5 the use or operation as a Hotel shall not be practical or feasible due to (a) causes beyond the
6 reasonable control of Tenant, (b) major renovation, repair or improvement of the Hotel in
7 accordance with this Lease, or (c) demolition of the then existing Hotel improvements and
8 replacement with another Hotel in accordance with this Lease.

9 5.3 Utilities and Services. Tenant shall be responsible for prompt payment for all
10 utilities and related services furnished to the Premises during the term including, without
11 limitation, water, gas, electricity, telephone service, trash collection, sewer charges, and for all
12 connection charges, Tenant may arrange for its subtenants to pay directly for such services.

13 5.4 Payments. Tenant covenants to perform promptly all of its obligations under this
14 Lease and to pay when due all rent, charges, costs and other sums which by the terms of this
15 Lease are to be paid by Tenant. All such payments to Landlord shall be made at Landlord's
16 original address or at such other place as may be designated in writing by Landlord. Any
17 delinquent payment due Landlord shall bear interest at the rate provided in Paragraph 5.5.

18 5.5 Interest. Whenever this Lease provides for the payment of interest on a sum due
19 either party from the other, the rate of interest shall be the maximum interest rate allowed by law,
20 where no interest rate is otherwise stated, on the date the sum becomes due and payable.

1 5.6 Condition of Premises. Tenant covenants to keep the Premises reasonably neat
2 and clean, and to keep all improvements constructed thereon in good order, repair and condition,
3 reasonable wear and tear and damage by casualty and governmental authority excepted. Should
4 Lessee fail to make any repairs or perform the maintenance required hereunder, and provided
5 Lessee does not reasonably object to the need for such repairs or maintenance, Lessor shall have
6 the option to make and perform the same if Lessee fails to commence and diligently prosecute to
7 completion the same within thirty (30) days after written notice from Lessor to make such repairs
8 or perform such maintenance, and Lessee agrees to reimburse Lessor for the reasonable cost
9 thereof within fifteen (15) days after Lessee has been billed by Lessor. The making of such
10 repairs by Lessor shall in no event be construed as a waiver of the duty or Lessee to make future
11 repairs or perform required maintenance as herein provided. Landlord shall not be required at
12 any time to make any repairs or improvements whatsoever for the benefit of the Premises.

13 5.7 Alterations. Tenant shall first obtain Landlord's prior written consent which shall
14 not be unreasonably withheld for any structural improvements upon or modifications to the
15 structural portions of the Premises or any improvements or modifications to the exterior of any
16 building or structure thereon. To obtain that consent, Tenant shall submit to the Landlord's
17 Department of Community Development reasonably detailed plans and specifications for such
18 alteration, together with a statement of Tenant's reasons for the alteration and the contemplated
19 use of areas after the alterations are completed. Landlord reserves the right within thirty (30)
20 days after the submission of the plans, specifications, and statement to disapprove such proposed
21 alteration. If Landlord neither approves nor disapproves in writing the proposed alteration within
22 the thirty (30) day period, the proposed alteration shall be deemed approved subject to the
23 provisions of Paragraph 5.8.

1 Landlord's approval is not required for non-structural alterations or improvements
2 within a building which do not alter the exterior elevation of the building; provided Tenant must
3 nevertheless comply with all building permit requirements and other laws and regulations
4 applicable thereto.

5 5.8 Compliance with Laws. Tenant covenants to make all repairs, alterations,
6 additions, or replacements to the Premises and the improvements constructed thereon and all
7 equipment, facilities, signs and fixtures thereon, required by law because of Tenant's use thereof;
8 to keep the Premises and improvements constructed thereon equipped with all safety appliances
9 so required because of such use; to procure or to require its subtenants to procure any licenses
10 and permits required for any such use; to comply with all laws, ordinances, orders and
11 regulations of all governmental authorities having jurisdiction over the Premises and the business
12 activities thereon; and to obtain all permits and consents required by law, order or regulation of
13 all governmental agencies having jurisdiction. Landlord will cooperate with and assist Tenant in
14 obtaining such permits and all permits, licenses, approvals and certificates from governmental
15 authorities as may be required for any Hotel construction, modification and improvement
16 permitted by this Lease and the use and operation of the Hotel; provided, however, this covenant
17 shall not be deemed or construed as a waiver of any right or obligation of Landlord acting in its
18 governmental capacity.

19 5.9 Indemnification. Tenant agrees to defend, hold harmless, and indemnify
20 Landlord, the Board of Harbor Commissioners (individually and collectively), and their officers
21 and employees from all injury, loss, claims, causes of action, demands or damages to any person
22 or property while on the Premises or in connection with the operations conducted by Tenant or
23 its servants, agents or employees in connection with this Lease or loss, injury, damages, claims

1 or causes of action to or of any person or property anywhere occasioned by the wrongful
2 omission, neglect or fault of Tenant, its servants, agents, employees, contractors or invitees
3 (excluding acts by the Landlord and its agents), which loss, claim, cause of action or damage
4 occurred on or after the Commencement Date of this Lease.

5 This indemnification provision supplements and in no way limits the scope of the
6 indemnifications set out in Paragraph 5.10 below. The indemnity obligation of Tenant under this
7 Paragraph shall survive the expiration or termination, for any reason, of this Lease.

8 5.10 Use of Hazardous Material.

9 5.10.1 Use of Hazardous Material. Tenant shall not cause or permit any
10 Hazardous Material, as defined in Paragraph 5.10.5, to be generated, brought onto, used, stored,
11 dispensed or disposed of on or about the Premises by Tenant or its agents, employees,
12 contractors, subtenants, or invitees, except for limited quantities of standard hotel and janitorial
13 supplies containing chemicals categorized as Hazardous Material and except for batteries or
14 petroleum products used in vehicles or vessels and/or stored on site for use in such vehicles or
15 vessels. Tenant shall:

16 (a) Use, store, dispense, and dispose of all such Hazardous
17 Material in strict compliance with all applicable statutes, ordinances, and regulations in effect
18 during the Term that relate to public health and safety and protection of the environment
19 ("**Environmental Laws**"), including those Environmental Laws identified in Paragraph 5.10.5;
20 and

1 (b) Comply at all times during the Term with all
2 Environmental Laws.

3 5.10.2 Notice of Release or Investigation. If, during the Lease Term (including
4 any extensions), Tenant becomes aware of (a) any actual or threatened release of any Hazardous
5 Material on, under, or about the Premises or (b) any inquiry, investigation, proceeding, or claim
6 by any government agency or other person regarding the presence of Hazardous Material on,
7 under, or about the Premises, Tenant shall give Landlord written notice of the release or
8 investigation within five (5) days after learning of it and shall simultaneously furnish to Landlord
9 copies of any claims, notices of violation, reports, or other writings received by Tenant that
10 concern the release or investigation.

11 5.10.3 Indemnification. Tenant shall, at Tenant's sole expense and with counsel
12 reasonably acceptable to Landlord, indemnify, defend, and hold harmless Landlord, directors,
13 officers, employees, and agents with respect to all losses arising out of or resulting from the
14 disruption and release of any Hazardous Material in or about the Premises, or the violation of
15 any Environmental Law, by Tenant or Tenant's agents, contractors, or invitees. This
16 indemnification includes:

17 (a) Losses attributable to diminution in the value of the
18 Premises;

19 (b) Loss or restriction of use of rentable space on the Premises;

20 (c) Adverse effect on the marketing on or of the Premises; and

1 (d) All other liabilities, obligations, penalties, fines, claims,
2 actions (including remedial or enforcement actions of any kind and administrative or judicial
3 proceedings, orders, or judgments), damages (including consequential and punitive damages),
4 and costs (including attorney, consultant, and expert fees and expenses) resulting from the
5 release or violation.

6 This indemnification shall survive the expiration or termination of this Lease.

7 5.10.4 Remediation Obligations. If the presence of any Hazardous Material
8 brought onto the Premises by Tenant or Tenant's employees, agents, contractors, or invitees
9 results in contamination in violation of any Environmental Law, Tenant shall promptly take all
10 necessary actions, at Tenant's sole expense, to remediate the contamination in accordance with
11 Environmental Law as required by the lead agency having jurisdiction for continued use of the
12 Premises as a hotel. Tenant shall first obtain Landlord's approval of the proposed remedial
13 action. This provision does not limit the indemnification obligation set forth in Paragraph 5.10.3.

14 5.10.5 Definition of "Hazardous Material". As used in this Paragraph 5.10, the
15 term "**Hazardous Material**" shall mean any hazardous or toxic substance, material, or waste that
16 is or becomes regulated by the United States, the State of California, or any local government
17 authority having jurisdiction over the Premises. Hazardous Material includes:

18 (a) Any "hazardous substance," as that term is defined in the
19 Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)
20 (42 United States Code Sections 9601-9675);

1 (b) "Hazardous waste," as that term is defined in the Resource
2 Conservation and of Recovery Act of 1976 (RCRA) (42 United States Code Sections 6901-
3 6992k);

4 (c) Any pollutant, contaminant, or hazardous, dangerous, or
5 toxic chemical, material, or substance, within the meaning of any other applicable federal, state,
6 or local law, regulation, ordinance, or requirement (including consent decrees and administrative
7 orders imposing liability or standards of conduct concerning any hazardous, dangerous, or toxic
8 waste, substance, or material, now or hereafter in effect);

9 (d) Petroleum products;

10 (e) Radioactive material, including any source, special nuclear,
11 or byproduct material as defined in 42 United States Code Sections 2011-2297g-4;

12 (f) Asbestos in any form or condition unless in compliance
13 with Environmental Laws; and

14 (g) Polychlorinated biphenyls (PCBs) and substances or
15 compounds containing PCBs.

16 5.11 Insurance.

17 5.11.1 Tenant shall procure and maintain for the duration of this Lease (including
18 any extensions, renewals, or holding over thereof), at Tenant's sole expense, the following
19 insurance from insurance carriers authorized in California or from insurance carriers that are
20 listed on the California Department of Insurance's List of Eligible Surplus Lines Insurers

1 (<http://www.insurance.ca.gov/docs/FS-LESLI.htm>) and that have at least a rating of or equivalent
2 to A-VIII by A.M. Best Company for at least the coverages and limits listed, unless otherwise
3 determined by Landlord's Risk Manager or designee at Landlord's discretion in writing.
4 "Claims-made" policies are not acceptable unless approved in advance and in writing by
5 Landlord's Risk Manager or designee.

6 (a) Commercial general liability insurance equivalent in
7 coverage scope to ISO CGL CG 00 01 10 93, and including, as may be applicable to Tenant's
8 operations, products and completed operations, innkeepers liability, liquor liability, watercraft
9 liability, and fire legal liability, in an amount not less than Ten Million Dollars (\$10,000,000) per
10 occurrence and in aggregate. The City of Long Beach, the Board of Harbor Commissioners, and
11 their officials, employees, and agents shall be named as additional insureds in an additional
12 insured endorsement equivalent to ISO CG 20 26 11 85 and shall be protected from and against
13 claims, demands, causes of action, expenses, costs, or liability for injury to or death of persons,
14 or damage to or loss of property arising out activities performed by or on behalf of the Tenant.
15 Said insurance shall be primary insurance with respect to Landlord and shall include cross
16 liability protection.

17 (b) During the period of operation of the Hotel on the
18 Premises, Workers' Compensation Insurance as required by the Labor Code of the State of
19 California and any other applicable laws, and employer's liability insurance with minimum limits
20 of One Million Dollars (\$1,000,000) per accident or illness.

21 (c) Automobile Liability Insurance equivalent in scope to ISO
22 CA 00 01 06 92, including Garagekeepers Liability, in an amount not less than Two Million

1 Dollars (\$2,000,000) combined single limit per accident for bodily injury and property damage
2 covering Symbol 1 ("all autos") operated under this Lease.

3 (d) Except for periods when coverage is provided under (e)
4 below, special perils property insurance, including debris removal, in an amount to cover the full
5 replacement value of the buildings and structural improvements on the Premises. Landlord shall
6 be named as a loss payee.

7 (e) Special perils property insurance, including debris removal,
8 and builders risk coverage during the course of construction in an amount sufficient to cover the
9 full replacement value of buildings and structural improvements constructed or erected on or
10 about the Premises during the course of construction Landlord shall be named as a loss payee.

11 (f) Special perils property insurance, including debris removal,
12 in an amount sufficient to cover the full replacement value of Tenant's personal property and
13 equipment on the Premises.

14 (g) Business interruption insurance providing that the rent due
15 Landlord shall be paid to Landlord for a period up to twelve (12) months if the Premises are
16 destroyed or rendered inaccessible. Landlord shall be named as an additional insured, as its
17 interests may appear.

18 5.11.2 If Tenant fails to procure and/or maintain any of the insurance required
19 herein, Landlord may, at its election procure and maintain such insurance on behalf of Tenant
20 and Landlord, at Tenant's sole expense.

1 5.11.3 If Landlord exercises its election, pursuant to the terms of this Lease, to
2 purchase any of the insurance coverages herein, Tenant shall reimburse Landlord immediately
3 for the reasonable cost of insurance procured by Landlord on Tenant's behalf and in any event no
4 later than fifteen (15) calendar days of the date of Landlord's invoice therefor. Any such
5 invoiced amount not received by Landlord within fifteen (15) calendar days of the date of
6 Landlord's invoice is subject to interest of two percent (2%) per month accruing from the
7 sixteenth calendar day after the invoice date, compounded monthly, but in any event such
8 interest shall not exceed any maximum amount established by applicable law.

9 5.11.4 If Landlord does not exercise its election to purchase any of the insurance
10 required herein, Tenant shall have the responsibility for procuring and maintaining such
11 insurance.

12 5.11.5 When Tenant is responsible for procuring and maintaining any of the
13 insurance required herein, Tenant agrees to provide Landlord with any policy information
14 requested by Landlord and to make available to Landlord all books, records and other
15 information relating to such insurance during normal business hours.

16 5.11.6 Tenant shall deliver to Landlord certificates of insurance and original
17 endorsements for approval as to sufficiency and form no later than thirty (30) days after the
18 commencement of new or renewal policies required herein or no later than thirty (30) days after
19 the effective date of any policy amendments required herein. The certificates and endorsements
20 for each insurance policy shall contain the original signature of a person authorized by that
21 insurer to bind coverage on its behalf.

1 5.11.7 Insurance required herein shall be primary insurance as respects the
2 Landlord. Any insurance or self-insurance maintained by the Landlord shall be excess of this
3 insurance. Coverage shall state that the insurance shall apply separately to each insured against
4 whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5 All policies shall be endorsed to provide at least thirty (30) days' notice of cancellation (10 days
6 if cancelled for nonpayment of premium) and thirty (30) days' notice of nonrenewal, suspension,
7 termination (other than cancellation), or material changes in coverage terms to Landlord and
8 Tenant.

9 5.11.8 Any self-insurance program, self-insurance retention, or deductibles must
10 be approved separately in writing by Landlord's Risk Manager or designee and shall protect the
11 City of Long Beach, its officials, employees, and agents in the same manner and to the same
12 extent as they would have been protected had the policy 'or policies not contained retention
13 provisions.

14 5.11.9 With respect to damage to property, Landlord and Tenant hereby release
15 each other from liability for such damage, one against the other, but only to the extent that
16 collectible property insurance is available for said damage.

17 5.11.10 Not more frequently than every three (3) years, if the amount, scope,
18 or types of coverages specified herein are not adequate based upon the levels of coverage
19 generally maintained for similar hotels in the Long Beach area, Tenant shall amend its
20 insurances as required by Landlord's Risk Manager or designee. Such amendment(s) may
21 include, but is not limited to, coverage for earthquake and flood if available from responsible

1 insurance companies at reasonable cost. Determination of "responsible insurance companies"
2 and "reasonable cost" are at the reasonable discretion of Landlord's Risk Manager or designee.

3 5.11.11 Except as provided in Section 5.11.9, such insurance as required
4 herein shall not be deemed to limit Tenant's liability relating to performance under this Lease.
5 Landlord reserves the right to require complete certified copies of all said policies at any time.
6 The procuring of insurance shall not be construed as a limitation on liability or as full
7 performance of the indemnification and hold harmless provisions of this Lease.

8 5.11.12 Any modification or waiver of the insurance requirements herein shall
9 be made only with the written approval of the Landlord's Risk Manager or designee, provided
10 that notwithstanding anything to the contrary contained herein, Landlord hereby agrees that
11 statutory limits shall be acceptable if higher insurance limits are not commercially available.

12 5.11.13 Any of the required insurance may be provided through insurance
13 maintained by Tenant's Hotel operator as long as it otherwise satisfies the requirements of this
14 Section 5.11.

15 5.11.14 If yacht mooring or other similar activities are conducted on the Water
16 Parcel by Lessee, its subtenants, or their licensees or concessionaires, then Lessee, its subtenants,
17 or their licensees or concessionaires shall provide or cause to be provided insurance coverage for
18 any such operations, and such insurance shall not contain a watercraft exclusion.

19 5.12 Taxes. This Lease may create a possessory interest subject to property taxation
20 and Tenant may be liable for the payment of property taxes levied on such possessory interest.
21 Tenant covenants to pay or cause to be paid, prior to delinquency, all taxes, assessments and

1 other governmental and district charges that may be levied or assessed upon buildings,
2 improvements or property located on the Premises, to the extent of the possessory interests
3 created by this Lease and/or to the extent owed by Tenant. Satisfactory evidence of such
4 payments shall be delivered to Landlord upon demand therefor. Tenant shall have the right to
5 contest in accordance with applicable laws any taxes, assessments and charges.

6 5.13 Surrender. Except as otherwise provided in this Lease, at the termination of this
7 Lease (whether by lapse of time or otherwise), Tenant covenants to peaceably yield up and
8 surrender the Premises, including all improvements then located thereon constructed by Tenant
9 (except for those structures required by Landlord to be demolished pursuant to Section 4.3), said
10 Premises, and improvements, to be in good order, repair and condition, reasonable wear and tear,
11 damage by casualty and action by governmental authority or Force Majeure excepted.

12 5.14 Limitation of Liability.

13 5.14.1 Tenant acknowledges that unfavorable swell or water conditions
14 (including debris and sediment from the Los Angeles River) may occur at times in the adjacent
15 area of the Los Angeles River, such conditions include debris which has flowed down that river.
16 Tenant waives all claims for injury or damage or loss of business which may be sustained by
17 persons, Tenant's property or the property of Tenant's employees, invitees, customers,
18 subtenants, or any other person in or about the Premises as a result of any such condition.

19 5.15 Rights of Way and Access to Premises. Landlord's authorized representatives
20 shall have easements for and the right of access to the Premises for the installation, relocation,
21 removal, operations, maintenance, and repair of sewers, pipelines, conduits and structures owned
22 and maintained by Landlord as of the Commencement Date of the Term and for the purpose of

1 determining whether or not Tenant is complying with the terms and conditions of this Lease.
2 The rights reserved to Landlord under this Paragraph shall be exercised at reasonable times on at
3 least twenty-four (24) hours advance notice to Tenant, except in an emergency, and shall not
4 violate reasonable security restrictions required by any subleases.

5 5.16 Lessor's Obligation to Maintain, Repair and Restore. Lessor shall make such
6 repairs to and perform such maintenance of the rock dike located adjacent to the Premises at the
7 water's edge as may become necessary as a result of normal wear and tear, the elements or
8 negligence or willful misconduct of Lessor, its agents and employees, all at Lessor's sole cost
9 and expense. In the event such repair or maintenance is required by reason of the negligence or
10 willful misconduct of Lessee, its subtenants, concessionaires or licensees, Lessee shall make all
11 necessary repairs thereto at Lessee's sole cost and expense; or, at Lessee's written request, Lessor
12 shall make all necessary repairs thereto, and Lessee agrees to pay Lessor the reasonable cost of
13 making such repairs; provided, however, that estimates of work to be performed by Lessor will
14 be submitted to Lessee for approval prior to commencement of said work.

15 5.16.1 Lessor, at its own cost and expense, shall install and maintain, or cause to
16 be installed and maintained, the landscaping on or surrounding the Queen's Way Bridge
17 approach in the vicinity of the Premises. If Lessor does not perform, or cause to be performed,
18 the necessary landscape installation and maintenance as required herein, Lessee shall have the
19 right to perform the same at Lessor's expense, and Lessor agrees to reimburse Lessee for the cost
20 thereof, plus ten percent (10%) for administrative overhead, within fifteen (15) days after Lessor
21 has been billed by Lessee.

1 5.16.2 Subject to Section 2.1, Lessor shall maintain a depth of water within the
2 Water Parcel of not less than minus twelve (-12) feet MLLW, provided it is able, with reasonable
3 diligence, to obtain all necessary permits.

4 5.17 Restriction of Filling and Height Limitations. Lessor agrees, during the term of
5 this Lease, that without the written consent of Lessee it will not:

6 5.17.1 Engage in landfilling and/or reclamation operations in any part of the
7 Water Parcel.

8 5.17.2 Engage in landfilling and/or reclamation operations in the water area in
9 that part of the Harbor District immediately adjacent to the Water Parcel, except as hereinafter
10 set forth.

11 5.17.3 Engage in landfilling and/or reclamation operations in any portion of the
12 water area in that part of the Harbor District, located northerly and easterly of a line parallel to
13 the Rock Dike Reference Line (depicted on Harbor Department Drawing No. HD 4-16-2) and
14 located sixty-five (65) feet distant therefrom northeast and measured at right angles from said
15 Rock Dike Reference Line, between the southerly corner of Parcel II of Parcel A of the Premises
16 and a point ("**Point A**") along said parallel line approximately four hundred sixty-six (466) feet
17 southeasterly thereof.

18 5.17.4 Engage in landfilling and/or reclamation operations in any portion of the
19 water area in that part of the Harbor District, located northerly and easterly of a line parallel to
20 the Rock Dike Reference Line (depicted on Drawing HD 4-16-2) and located one hundred fifty
21 (150) feet distant therefrom northeast and measured at right angles from said Rock Dike

1 Reference Line between Point A and the intersection of the Easterly Limit of the Harbor District
2 Boundary Line (as of March 9, 1972) and Pier J.

3 5.17.5 Authorize or grant permits for the construction of any buildings or
4 structures above an elevation of plus thirty-two (+32) feet MLLW in the area in the Harbor
5 District between said Rock Dike Reference Line and the line one hundred fifty (150) feet distant
6 therefrom northeast and measured at right angles between Point A and the intersection of the
7 Easterly Limit of the Harbor District Boundary Line (as of March 9, 1972) and Pier J, and
8 provided that any such buildings or structures shall be aesthetically compatible with existing and
9 contemplated development, as approved by Lessor, in the near vicinity.

10 **ARTICLE VI**

11 **LANDLORD'S TITLE; LANDLORD'S COVENANTS**

12
13 6.1 Landlord's Title. This Lease and any improvements to be made or constructed on
14 the Premises by Tenant shall be subject and subordinate to the trusts and conditions set forth in
15 the statutes referred to in Paragraph 1.1 and the limitations imposed by the Constitution of the
16 State of California. Landlord warrants it has the right and legal capacity and authority to enter
17 into and perform its obligations under this Lease.

18 6.2 Quiet Enjoyment. Landlord covenants and agrees that Tenant, subject to the
19 terms and provisions of this Lease, on payment of the rent and observing, keeping and
20 performing all of Tenant's covenants, shall lawfully, peaceably and quietly have, hold, occupy
21 and enjoy the Premises and any appurtenant rights granted to Tenant under this Lease without
22 hindrance or rejection by any person.

1
2
3 **ARTICLE VII**

4 **ASSIGNMENTS AND SUBLEASES.**

5 7.1 Assumption. Simultaneously with an assignment, the assignee shall execute an
6 agreement running to Landlord assuming Tenant's obligations under this Lease. Tenant shall
7 remain fully obligated under this Lease for any obligations or liabilities arising under this Lease
8 prior to the date of the assignment, notwithstanding any assignment or sublease or any
9 indulgence granted by Landlord to Tenant or to any assignee or subtenant unless released in
10 writing by Landlord.

11 7.2 Limitations on Assignment.

12 7.2.1 Except as provided in Paragraph 7.2.4.2 or Article VIII, Tenant may not
13 assign this Lease or any interest herein without first obtaining the written consent of Landlord,
14 which consent shall not be unreasonably withheld or delayed. Such approval shall be
15 conclusively deemed given if Tenant has not received notice of objection from Landlord within
16 sixty (60) days after written request for consent and the information mentioned in Paragraph
17 7.2.4.3 has been given to Landlord.

18 7.2.2 Assignment Invalid. Any transfer or assignment to which Landlord's
19 consent is required by this Lease shall be, except as provided in Paragraph 7.2.1 above, void and
20 shall confer no right or occupancy upon assignee.

21 7.2.3 Complete Release. Except as otherwise expressly set forth herein, the
22 assigning party shall be fully and completely released from all liability for the performance of all
23 of the covenants to be performed by Tenant under this Lease. Landlord's approval or consent to
any such assignment or transfer shall not be a waiver of any right to object to further or future

1 assignments, but the consent to each such successive assignment must be first obtained in writing
2 from Landlord.

3 7.2.4 Assignment Procedures and Requirements.

4 7.2.4.1 Any assignment may only be approved by Landlord acting in its
5 capacity as trustee of the tide and submerged lands granted to the City of Long Beach as
6 described in Paragraph 1.1.1 after the following procedure:

7 Except as otherwise permitted by this Paragraph 7.2 and Paragraph 8.1, Tenant
8 may not assign this Lease or any interest herein without first obtaining the written consent of
9 Landlord as provided in Paragraph 7.2.1. Each request for consent to an assignment shall be in
10 writing, accompanied by information relevant to Landlord's determination as to the financial and
11 operational responsibility and appropriateness of the proposed assignee; including but not limited
12 to the intended use and/or required modification of the Premises, if any, together with a fee of
13 \$1,000, as consideration for Landlord's considering and processing said request. Tenant agrees
14 to provide Landlord with such other or additional information and/or documentation as may be
15 reasonably requested. Any assignee shall assume and agree to perform the obligations of Tenant
16 under this Lease. Tenant shall deliver to Landlord a copy of such assignment, together with a
17 statement setting forth the following information:

18 (a) Name and Address for Notices. The name and address of
19 the assignee for the purpose of notices to be given.

20 (b) Type of Entity. Whether the assignee is an individual, a
21 corporation, a partnership, limited liability company or a joint venture, and if such assignee is a

1 corporation, the names of such corporation's principal officers and of its directors and State of
2 incorporation, and if such assignee is a partnership, limited liability company, or joint venture,
3 the names and addresses of the general partners or managing members of such partnership or
4 venture.

5 7.2.4.2 Assignments Not Subject to Approval. The provisions of this
6 Article VII shall not be applicable to the following types of assignments and transfers, which
7 shall be permitted without the prior consent of Landlord.

8 (a) Death or Incapacity. Assignments resulting from the death
9 or mental or physical incapacity of an individual, managing partner or president of the
10 corporation or limited liability company; provided, however, that any person replacing an
11 individual who departs because of physical or mental disability shall have education and
12 experience comparable to that of the person replaced.

13 (b) Family Transfer. A transfer or assignment for the benefit
14 of a spouse, children, grandchildren or other family members so long as continued management
15 competence by or on behalf of such individuals can be demonstrated.

16 (c) Affiliated Entity. A transfer to an "Affiliated Entity" as
17 hereinafter defined. An "**Affiliated Entity**" shall be (i) any corporation, partnership, limited
18 liability company, trust or other entity which either directly or indirectly controls the assigning
19 entity; or (ii) any corporation, partnership, limited liability company, trust or other entity, which
20 is either directly or indirectly controlled by the assigning entity; or (iii) any corporation,
21 partnership, limited liability company, trust or other entity which is controlled, either directly or
22 indirectly, by a shareholder, partner, member or other interest holder or group of shareholders,

1 partners, members or other interest holders which also controls, either directly or indirectly, the
2 assigning entity. "Control" means the power through the ownership of voting interests to make
3 the management decisions of the entity. Tenant agrees to provide evidence of "Control" to
4 Landlord upon request.

5 (d) IRS Transfer. A transfer of stock or other interests
6 resulting from or in connection with a reorganization as contemplated by the provisions of the
7 Internal Revenue Code of 1954, as amended, or otherwise or conversion, in which the ownership
8 interests of an entity are assigned directly or by operation of law to a person or persons, firm or
9 corporation which acquires the control of the voting interests of such entity or all or substantially
10 all of the assets of such entity.

11 (e) Public Entity. A transfer of stock in a publicly held
12 corporation or of the beneficial interest in any publicly held partnership or real estate investment
13 trust.

14 (f) Partner or Member. A transfer by a limited partner or
15 member or joint venturer to a partnership, limited liability company or joint venture in which the
16 assignor is a partner, member or venturer.

17 (g) Partnership or Corporation. If Tenant is a partnership,
18 limited liability company, joint venture or corporation, any assignment of less than twenty-five
19 percent (25%) of the partnership, limited liability company or joint venture interest or
20 outstanding capital stock of such an entity.

1 (h) Transfer to Lender or by Foreclosure. Any transfer under
2 Article VIII.

3 7.2.4.3 Approval of Assignments. Landlord agrees that it shall consent to
4 an assignment to an entity which, at the time of such assignment, is of such financial standing
5 and responsibility as to give reasonable assurance that, (i) the Premises will be operated in a first
6 class condition, (ii) the payment of all rent, if any, and other amounts reserved in this Lease will
7 be made in compliance with all the terms, covenants, provisions and conditions of this Lease
8 (iii) the assignee has the business experience (whether directly or through its hotel manager or
9 operator) and financial resources to operate the hotel in a first class manner. In requesting an
10 approval by Landlord of assignment pursuant to Paragraph 7.2, Tenant shall provide the
11 following information to Landlord with respect to proposed assignments of this Lease.

12 (a) Name. Name and address of the assignee.

13 (b) Description. Description of the Premises to be assigned.

14 (c) Relevant Management Experience. The extent and nature
15 of any experience of the proposed assignee (and any proposed Hotel operator or manager) in
16 managing hotels similar to the Hotel.

17 (d) Financial Information. The information showing the
18 financial ability of the assignee to operate the Hotel in accordance with this Lease.

19 (e) Officers. The identity, background and experience of all
20 officers and directors of assignee, at executive vice president level and above and senior

1 operational officer relating to the Premises, if a corporation or general partners of a partnership
2 or sole proprietor of a proprietorship (Principals).

3 (f) Additional Information. In addition to the above, the
4 assignor shall provide all the information required by the Landlord, including but not limited to
5 the following:

6 (i) Criminal record of the subtenant, assignee or any of
7 the principals.

8 (ii) Nature and extent of litigation to which the assignee
9 or any Principal is a party or has been a party in the last five (5) years.

10 (iii) Any course of conduct which a prudent person
11 would deem materially detrimental to the Premises or to the intended use of the Premises by
12 assignee.

13 (iv) Financial references.

14 (v) Source of project financing, if applicable.

15 (vi) Identification of non-performing loans by principals
16 and/or corporation.

17 (vii) Amount of recourse debt.

18 (g) Informational Purposes. For informational purposes only:

19 (i) Number of anticipated employees of the assignee.

1 (ii) At the time of submission of the request, the terms
2 and conditions of the assignment.

3 (iii) With respect to all assignments a copy thereof after
4 execution by all parties thereto.

5 7.2.4.4 Confidentiality. If requested by Tenant at the time of submission
6 of the information described above, Landlord shall keep such information and the identity of the
7 proposed assignee confidential until approved. Notwithstanding the above, Landlord shall
8 disclose such information if in its reasonable opinion it is required to do so under applicable law.

9 7.2.4.5 Rejection by Landlord. Landlord reserves the right to reject any
10 proposed assignee where the matters specified above indicate that the presence of assignee
11 would adversely affect the financial and operational viability of the Hotel. Landlord shall either
12 approve or disapprove any proposed assignee within sixty (60) days after receipt by Landlord of
13 a request to do so provided that all information is provided in a timely manner. Failure of
14 Landlord to act within said sixty (60) days shall constitute approval. If Landlord does not
15 approve any proposed assignee, Landlord shall state in writing the reasons for such disapproval.
16 Tenant shall have the right to challenge the validity of such disapproval. No damages shall be
17 payable to Tenant in any action arising from such disapproval unless Landlord shall have acted
18 unreasonably or in bad faith or with actual malice.

19 7.2.5 No Release. Notwithstanding any assignment by Tenant permitted by
20 Paragraph 7.2 with Landlord's consent, and notwithstanding any assignment by a partner or joint
21 venturer of Tenant permitted by Paragraph 7.2.4.2 with Landlord's consent or made without
22 Landlord's consent pursuant to Paragraph 7.2.1, the assigning party shall remain fully liable for

1 the performance all of the covenants to be performed by Tenant under this Lease prior to the
2 effective date of such assignment, but shall be released from liability with respect to the
3 performance of such covenants to be performed after such date. Landlord's approval of or
4 consent to any such assignment or transfer shall not be a waiver of any right to object to further
5 or future assignments, and Landlord's consent to each such successive assignment must be first
6 obtained in writing from Landlord unless otherwise permitted by this Lease without Landlord's
7 prior consent.

8 7.2.6 Landlord Acknowledgment. Tenant acknowledges and agrees that a
9 default under Paragraph 7.2 or any subparagraph thereof shall be conclusively deemed to be a
10 default not susceptible of being cured by Tenant. A leasehold mortgagee may cure such default
11 if within thirty (30) days of written notice of such a default, it diligently proceeds to commence
12 to foreclose on such mortgage, unless prevented from doing so by an automatic stay in
13 bankruptcy, injunction or other court order, in which case it shall have thirty (30) days after
14 obtaining relief therefrom to commence the foreclosure, and, once possession of the Premises is
15 obtained, cure such default. No denial of assignment by Landlord, as provided by Paragraph 7.2
16 shall be, by and of itself, a default.

17 7.3 Recognition of Subleases. Upon Tenant's request from time to time, Landlord
18 shall execute and deliver to any subtenant of Tenant within thirty (30) days after delivery of the
19 request, accompanied by a copy of the subtenant's sublease with Tenant, a recognition agreement
20 in a commercially reasonable form which shall provide that upon a termination of this Lease and
21 failure of this Lease to be replaced by a New Lease (as defined in Paragraph 8.4), Landlord
22 agrees to recognize and be bound by the terms of the subtenant's sublease for the remaining term
23 of the sublease, so long as the subtenant performs its obligations under the sublease, and the

1 subtenant agrees to attorn to Landlord, provided that (a) the subtenant agrees in the sublease to
2 be subject to the terms of this Lease and to perform any obligations of Tenant under this Lease
3 that are applicable to the subleased part of the premises (excluding rental obligations), and
4 (b) the expiration date of the term of the sublease is on or before the expiration date of the Term
5 of this Lease.

6 **ARTICLE VIII**

7 **LEASEHOLD FINANCING; RIGHTS OF LENDER**

8
9 8.1 Assignment for Security. The provisions of Paragraph 7.2 shall not prevent or
10 hinder Tenant after the Commencement Date from assigning Tenant's interest under this Lease
11 ("**Leasehold Estate**") to one or more lenders as security for loans (each a "**Lender**") without
12 Landlord's consent. If the secured loan is a construction loan, the proceeds of it shall be used to
13 provide funds for the purchase of the Leasehold Estate, and/or the renovation or construction of
14 improvements on the Premises, including but not limited to interest and financing costs, soft and
15 hard costs of construction, possessory interest and property taxes and assessments, insurance
16 premiums and other costs of the Premises during the period of construction and until break even
17 operations are achieved following completion. Tenant may perform any and all acts and execute
18 any and all instruments necessary or proper to consummate any loan transaction and perfect the
19 security therefor to be given the Lender. The term "**Lender**" as used herein shall mean the
20 beneficiary, mortgagee, secured party, or other holder of a promissory note or other written
21 obligation which is secured by any deed of trust, mortgage or other written security agreement
22 affecting the Premises ("**Leasehold Mortgage**"). Tenant shall deliver to Landlord a copy of the
23 promissory note, deed of trust, or security agreement executed by Tenant in connection with any
24 Leasehold Mortgage within twenty (20) days from the date of execution thereof by Tenant.

1 8.2 Lender's Rights. With respect to any Lender who shall have delivered to
2 Landlord a written notice stating its name, address and a general description of the Leasehold
3 Mortgage it holds on the Premises, the following provisions shall apply:

4 8.2.1 Landlord, when giving notice to Tenant with respect to any default or
5 termination under the provisions of this Lease, shall also serve a copy of such notice upon any
6 Lender, and no such notice to Tenant shall be effective unless a copy of such notice is so served
7 upon the Lender. Upon the occurrence of any "event of default" (as defined in Paragraph 10.2
8 below), Landlord shall deliver to each and every Lender a notice (a "**Default Notice**") stating the
9 nature of the event of default and the date of its occurrence. Landlord may not exercise any of its
10 remedies (including, without limitation, termination of this Lease) available upon the occurrence
11 of any event of default by Tenant until the "Lenders' Cure Period" (as defined in Paragraph 8.2.5
12 below) has expired.

13 8.2.2 Any Lender may do any act or thing required of Tenant hereunder and all
14 such acts or things done and performed shall be accepted by Landlord and be as effective to
15 prevent a forfeiture of Tenant's rights hereunder as if done or performed by Tenant, including the
16 right to commence an action against the Tenant for the appointment of a receiver and to obtain
17 possession of the Premises under and in accordance with the Leasehold Mortgage.

18 8.2.3 Any Lender may acquire and succeed to the interest of Tenant hereunder
19 without Landlord's consent by foreclosure of the Leasehold Mortgage or by a deed or assignment
20 in lieu of foreclosure and may transfer the Leasehold Estate to a bona fide purchaser; provided,
21 however, any such bona fide purchaser shall execute an agreement running to Landlord assuming

1 Tenant's obligations under this Lease. Notwithstanding anything to the contrary contained
2 herein, the written consent of Landlord shall not be required in the case of:

3 (a) A transfer of the Leasehold Estate relating thereto in a
4 foreclosure sale of the trust deed or assignment, a judicial foreclosure, or a deed in lieu of
5 foreclosure; or

6 (b) A subsequent transfer of the Premises or of possession of
7 the Premises by a Lender who is a purchaser at such foreclosure sale or as a result of a deed or
8 assignment in lieu of foreclosure or judicial foreclosure, to a transferee, provided the transferee
9 agrees in writing to assume and perform all the obligations under this Lease.

10 In the event of a transfer under (a) or (b) above, the Lender shall forthwith give
11 notice to the Landlord in writing of any such transfer setting forth the name and address or fax
12 number of the transferee and the effective date of such transfer, together with a copy of the
13 document by which such transfer was made. Landlord's consent requirement under Paragraph
14 7.2 shall not apply to such transfer. Any transferee under the provisions of this Paragraph shall
15 perform the full obligations of the Tenant under this Lease, and as a condition to the completion
16 of this transfer must cure, remedy or correct any event of default existing at the time of such
17 transfer if the same is reasonably susceptible of being cured by the transferee at that time.

18 8.2.4 If there is a Monetary Default by Tenant, Lender shall have a period of
19 thirty (30) days (the "**Monetary Cure Period**"), after receipt from Landlord of a written notice
20 that such Monetary Default has occurred, in which to cure the Monetary Default. If after any
21 such payment by a Lender, Tenant pays the same or any part thereof to Landlord, the Landlord
22 shall promptly refund said payment to such Lender.

1 8.2.5 In the event of any Non-Monetary Default, such default shall be cured:

2 (a) If a Lender cures, remedies or corrects a Non-Monetary
3 Default in a manner reasonably satisfactory to Landlord within a period of thirty (30) days (the
4 "**Non-Monetary Cure Period**"; a Monetary Cure Period and a Non-Monetary Cure Period may
5 each sometimes be referred to herein as a "**Lender's Cure Period**") after the later to occur of
6 (i) receipt from Landlord of a written notice that a Non-Monetary Default has occurred or (ii) the
7 expiration of any cure period available to Tenant under this Lease for such Non-Monetary
8 Default; provided, however, if the curing of such default requires activity over a longer period of
9 time, such default may be cured, if within said Non-Monetary Cure Period, a Lender commences
10 and thereafter diligently continues to perform whatever may be required to cure the particular
11 Non-Monetary Default in a manner reasonably satisfactory to Landlord; or

12 (b) If during "Lender's Cure Period," the Lender notifies
13 Landlord of its intent to commence foreclosure, and within sixty (60) days after the mailing of a
14 Default Notice by Lender, said Lender, (i) actually commences foreclosure proceedings and
15 prosecutes the same thereafter with reasonable diligence, the Lender's Cure Period shall be
16 extended by the time necessary to complete such foreclosure proceedings; or (ii) if said Lender is
17 prevented from commencing or continuing foreclosure by any order, judgment, or decree of any
18 court or regulatory body of competent jurisdiction or automatic stay in bankruptcy, and said
19 Lender diligently seeks release from or reversal of said order, judgment or decree, the Lender's
20 Cure Period shall be extended by (i) the time necessary to obtain the release from or reversal of
21 said order, judgment or decree and thereafter to complete such foreclosure proceedings, plus
22 (ii) the thirty-five (35) day period referred to in the next sentence. Within thirty-five (35) days
23 after such foreclosure sale and the vesting of title free of redemption in the purchaser thereat

1 (whether or not such purchaser is the Lender), said purchaser shall, as a condition to the
2 completion of such transfer, cure, remedy, or correction of the default, or commence and
3 thereafter diligently pursue the performance of the thing or work required to be done to cure,
4 correct, and remedy said default, in a manner satisfactory to Landlord. If said event of default is
5 a default by Tenant which Lender is not capable of curing on a commercially reasonable basis,
6 Landlord may not terminate this Lease so long as Lender is continuing to pay any amounts due
7 to Landlord under this Lease, and is diligently proceeding to cure all defaults by Tenant which
8 such Lender is capable of curing on a commercially reasonable basis. In addition, Landlord may
9 waive any defaults of Tenant which no Lender is capable of curing on a commercially reasonable
10 basis if and when a Lender assumes Tenant's rights and obligations under this Lease subsequent
11 to foreclosure of its security interest in Tenant's leasehold estate or pursuant to receipt of an
12 assignment of Tenant's rights in the leasehold estate in lieu of such foreclosure.

13 (c) If a Lender obtains title to Tenant's leasehold estate
14 pursuant to foreclosure of its security on Tenant's leasehold estate or through an assignment of
15 Tenant's leasehold estate in lieu of such foreclosure, such Lender's liability to Landlord shall be
16 limited to Tenant's obligations under this Lease incurred during the period while such Lender is
17 in possession of the Premises or is the owner of the leasehold estate; such Lender shall have no
18 liability to Landlord for any obligations of Tenant incurred after a transfer of the leasehold estate
19 from such Lender to a third party. In any event, Landlord's recourse against any Lender who
20 becomes the owner of the leasehold estate shall be limited to its interest in the Leasehold Estate.
21 Notwithstanding the foregoing, Tenant shall remain liable to Landlord for all amounts which
22 may become due during the period of time that a Lender shall be the owner of the Leasehold
23 Estate; provided, however, that from and after the date a Lender shall be the owner of the

1 Leasehold Estate, Landlord waives any and all right to collect or receive from such Lender any
2 sums pursuant to Paragraph 10.2 of the Lease.

3 8.3 Estoppel Certificate. Landlord shall, from time to time, upon not less than thirty
4 (30) days' prior written request by Tenant or Tenant's Lender, together with a fee of \$1,000 as
5 consideration for Landlord's processing said request shall execute, acknowledge and deliver to
6 Tenant or Tenant's Lender a statement in writing certifying to Tenant's Lender or an independent
7 third party that this Lease is unmodified and in full force and effect and that Landlord has no
8 knowledge of any uncured defaults of Tenant under this Lease (or, if there have been any
9 modifications that the same is in full force and effect as modified and stating the modifications
10 and, if there are any defaults, setting them forth in reasonable detail), the Commencement Date
11 and the dates to which the rent and other charges have been paid, and any other matters
12 respecting this Lease as may reasonably be required. Any such statement delivered pursuant to
13 this Paragraph 8.3 may be relied upon by any prospective lender or any prospective purchaser of
14 or from Tenant or Tenant's Lender. Notwithstanding the foregoing, if the requested estoppel
15 certificate is in the form of Exhibit "C" attached to and made a part of this Lease, Landlord shall
16 have fifteen (15) days instead of thirty (30) days to execute, acknowledge and deliver the
17 estoppel certificate.

18 8.4 New Lease. If (a) either (i) Tenant's interest under this Lease shall be sold,
19 assigned (other than for security purposes) or otherwise transferred pursuant to the exercise of
20 any right, power or remedy by a Lender or pursuant to judicial proceedings, or (ii) this Lease
21 shall be rejected under the powers reserved to Tenant and its trustee in bankruptcy under the
22 Federal Bankruptcy Code or similar state or federal legislation, or (iii) this Lease shall have been
23 terminated pursuant to the terms hereof by reason of an event of default or shall otherwise have

1 terminated, (b) no rent shall then be due and payable to Landlord, and (c) the Lender or any other
2 purchaser of Tenant's interest hereunder shall have arranged for the correction of any default
3 susceptible of being corrected by the tenant under the "New Lease" (defined below), then
4 Landlord, within ninety (90) days after receiving written request therefor (which period shall be
5 extended for so long as Lender is prevented by an automatic stay in bankruptcy, injunction or
6 other court order from making such request, in which case Lender shall have until thirty (30)
7 days after obtaining relief therefrom to make the request) and upon payment to Landlord of all of
8 Landlord's expenses, including, without limitation, reasonable attorneys' fees and expenses
9 incident thereto, will execute and deliver a new lease of the Premises to the Lender or its
10 nominee, purchaser, assignee or transferee, as the case may be, for the remainder of the term of
11 this Lease (a "New Lease"), and with the same terms as are contained herein and having the
12 same priority as this Lease. Concurrently with execution of such New Lease, notwithstanding
13 anything to the contrary contained in Paragraph 4.3 or 5.13 of this Lease, Landlord
14 acknowledges ownership, during the New Lease, of the improvements on the Premises to the
15 new tenant under the New Lease together with a bill of sale conveying any personal property
16 related to the improvements and other appropriate instruments of conveyance. Upon the
17 execution and delivery of such New Lease, Landlord, at the expense of the tenant under the New
18 Lease, shall take such steps as shall be necessary to cancel and discharge this Lease of record,
19 remove Tenant from the Premises and record the New Lease or a memorandum of the New
20 Lease in the official records of Los Angeles County, California.

21 8.5 Termination of Lease. Notwithstanding anything to the contrary contained in this
22 Lease, any attempted exercise by Tenant of a right granted by this Lease or at law or in equity to
23 terminate this Lease shall be void without Tenant first obtaining the written consent of the most

1 senior Lender, if any. Landlord acknowledges that if Tenant has any right to terminate this
2 Lease, such senior Lender shall have the sole and exclusive right to exercise such election to
3 terminate this Lease during the period that such Lender has a security interest or lien pursuant to
4 a deed of trust in the Tenant's leasehold estate. Nothing contained in this Paragraph 8.5 shall be
5 deemed to limit in any way Landlord's rights to terminate this Lease for any default or breach by
6 Tenant, subject to prior notice to Lender and Lender's right to cure hereunder.

7 **ARTICLE IX**

8 **CASUALTY AND EMINENT DOMAIN**

9
10 9.1 **Restoration.** If during the Term the Premises or any improvements on the
11 Premises are totally or partially destroyed, this Lease shall not terminate except as specifically
12 provided in this Article IX and Tenant shall promptly and diligently restore such improvements
13 to substantially the same condition (or at Tenant's option, a better condition) as they were in
14 immediately before such destruction; provided, however, that if the damage or destruction occurs
15 during the last ten (10) years of the Term, Tenant may, but shall not be obligated to, restore or
16 repair the improvements damaged or destroyed. If Tenant elects not to restore or repair during
17 the last ten (10) years, then Tenant agrees to obtain the consent of the most senior Lender, if any,
18 as required by Paragraph 8.5, and immediately terminate the Lease without rebate of any rent
19 from Landlord. Any insurance proceeds payable to Tenant may, in accordance with the deed of
20 trust in favor of the most senior Lender, be payable to the Lender or a trustee to be selected by
21 the most senior Lender and reasonably acceptable to Landlord and Tenant to be disbursed for the
22 restoration of the improvements in accordance with the terms of this Paragraph 9.1; provided,
23 however, that any funds not necessary for restoration may be disbursed in accordance with the
24 applicable leasehold deed of trust. If Tenant elects to terminate this Lease and the most senior

1 Lender does not elect to assume all of Tenant's obligations under this Lease all as provided
2 above, this Lease shall automatically terminate on the thirty-first (31st) day after Tenant delivered
3 its notice to Lender and Landlord and neither party under this Lease shall have any further
4 obligations or liabilities to one another under this Lease, except for Tenant's obligations under
5 Paragraph 4.3 above to remove any existing improvements, at no cost to Landlord, if Landlord so
6 requests. If this Lease terminates (other than as a result of Tenant's election not to restore or
7 repair the damaged improvements during the last ten (10) years of the lease term), Landlord shall
8 within thirty (30) days after the termination reimburse to Tenant the amount of the prepaid rent
9 under this Lease attributable to the period from the date of the early termination to the end of the
10 full term of this Lease. If the most senior Lender does elect to assume all of Tenant's obligations
11 under this Lease, Tenant shall within ten (10) days of such election execute an assignment of this
12 Lease to the most senior Lender, the most senior Lender shall execute an assumption of this
13 Lease and Landlord shall approve the same in writing.

14 9.1.1 Subject to the rights of Lender, any excess insurance proceeds remaining
15 after such restoration shall belong to Tenant.

16 9.1.2 Tenant shall notify Landlord of the date of commencement of the
17 restoration twenty (20) days prior thereto to enable Landlord to post and record notices of
18 nonresponsibility. Tenant shall accomplish restoration in a manner that will cause the least
19 inconvenience, annoyance and disruption at the Premises. On completion of any restoration,
20 Tenant shall record a notice of completion in the Office of the County Recorder of Los Angeles
21 County. Tenant waives the provisions of Civil Code Section 1932(2) and Civil Code Section
22 1933(4) with respect to any destruction of the Premises.

1 9.2 Total Taking. If, after the Commencement Date, the whole of the Premises or all
2 of the Hotel improvements then located on the Premises shall be taken by right of eminent
3 domain or otherwise for any public or quasi public use, then, when possession shall be taken by
4 the condemner, or the Tenant is deprived of its practical use of the Premises and other
5 improvements, whichever date is earlier, this Lease and all rights of Landlord and Tenant
6 hereunder, shall terminate and rent and all other payments required of Tenant for the remainder
7 of the term hereof shall be cancelled.

8 9.3 Partial Taking. In the event of a partial taking, as a result of which the remaining
9 portion of the Premises or any other improvements on the Premises cannot be restored to an
10 economically operable facility of a comparable kind and quality to the facility existing prior to
11 the taking with the condemnation awards received by Tenant (as the same may be determined in
12 the reasonable discretion of the most senior Lender, if any, or in the discretion of Tenant if no
13 Lender then exists), then this Lease at Tenant's option shall terminate as of the time when
14 possession of the Premises shall be partially taken by the condemner or when Tenant is deprived
15 of the practical use thereof, whichever date is earlier. If, after the Commencement Date, a
16 portion of the Premises or any other improvements shall be taken by right of eminent domain or
17 otherwise for any public or quasi public use and the remaining portion of the Premises and
18 improvements can be restored by Tenant to an economically operable facility of comparable kind
19 and quality to the facility existing prior to the taking (in the discretion of the most senior Lender,
20 if any, or in the discretion of Tenant if no Lender then exists), then this Lease shall not be
21 affected and Tenant shall retain the remaining portion of the Premises and other improvements
22 thereon; provided, however, an amount of the prepaid rent shall be refunded in an amount agreed
23 upon by the parties reflecting the value of the portion of the Premises taken relative to the value

1 of the entire Premises and the amount of time remaining in the Lease term. If the parties are
2 unable to agree on the amount of prepaid rent, the amount shall be fixed by arbitration. Landlord
3 shall give notice to Tenant of the appointment of a real estate appraiser with at least five (5)
4 years' full-time commercial appraisal experience in the area in which the Premises are located
5 who shall appraise and set the amount of prepaid rent to be refunded. If Tenant does not appoint
6 an appraiser within ten (10) days thereafter to perform the same task, the single appraiser
7 appointed shall be the sole appraiser and shall set the refund amount. If two appraisers are
8 appointed, they shall select, within ten (10) days after the appointment of the second appraiser, a
9 third appraiser with the same minimum qualifications. If the two cannot agree upon a third, he
10 shall be appointed by any judge of the Superior Court of the County of Los Angeles upon
11 application therefor by either party, upon ten (10) days written notice to the other. Each party
12 shall bear one-half (1/2) of the cost of appointing the third appraiser and of paying the third
13 appraiser's fee. Within sixty (60) days after the selection of the third appraiser, a majority of
14 them shall set the amount of prepaid rent to be refunded. If a majority of the appraisers are
15 unable to set the reduced rent for said periods within the sixty (60) day period, then the three (3)
16 appraisals shall be averaged. After the refund amount has been set, the appraisers shall notify the
17 parties, who shall immediately execute an amendment to this Lease stating the refund amount
18 payable by Landlord to Tenant for the balance of the term.

19 9.4 Condemnation. If there is either a total or partial taking by right of eminent
20 domain, Landlord shall receive from the award the value of Landlord's residual interest in the
21 land and/or water taken by the condemnor, and all other compensation and damages awarded in
22 connection therewith shall belong to Tenant and shall be paid to a trustee to be selected by the
23 most senior Lender, if any, subject to Landlord's and Tenant's reasonable approval, and subject

1 to the terms of the Deed of trust benefiting the most Lender, if any. Landlord and Tenant hereby
2 consent to the most senior Lender's participation in a condemnation proceeding. If there is a
3 temporary taking for a period less than the remaining term of this Lease, Tenant (or the most
4 senior Lender, if any) shall be entitled to receive all compensation and damages awarded in
5 connection therewith.

6 **ARTICLE X**

7 **DEFAULT**

8
9 10.1 Tenant's Default. The provisions of this Article X set forth the sole and exclusive
10 remedies for Landlord and Tenant upon default by the other.

11 10.2 Tenant's Default. The occurrence of any of the following shall constitute an
12 "event of default" by Tenant.

13 (a) Failure to pay when due rent, if any, pursuant to Paragraph
14 3.2, or other amounts due Landlord hereunder, if the failure continues for ten (10) days after
15 notice thereof has been given to Tenant and Tenant's Lender (a "**Monetary Default**").

16 (b) Failure to comply with any of the other covenants or
17 conditions of this Lease, unless, within sixty (60) days after notice thereof has been given to
18 Tenant and Tenant's Lender, the cure of such default has been commenced and thereafter
19 diligently pursued (a "**Non-Monetary Default**").

20 10.3 Landlord's Remedies. Subject to the provisions of Paragraph 8.2 hereof, if any
21 default by Tenant shall continue uncured, following notice of default as required by this Lease,
22 and not be cured within the time required by this Lease, Landlord shall have the right to pursue

1 any one or more of the following remedies in addition to any other remedies now or later
2 available to Landlord at law or in equity. These remedies are not exclusive but cumulative.

3 (a) Termination. Subject to the provisions of Article 9 hereof,
4 in the event of a Monetary Default only, Landlord may, at Landlord's election, terminate this
5 Lease (and, subject to the rights of Tenant's Lender, recover possession of the Leasehold Estate)
6 by giving sixty (60) days notice of termination to Tenant and Lender. Unless the Monetary
7 Default is cured within such sixty (60) day period, this Lease shall be terminated (subject to the
8 rights of Tenant's Lender, as set forth herein) and the same shall expire as fully and completely
9 as if the day of such notice were the date herein specifically fixed for the expiration of the Lease
10 term, and all of Tenant's rights in the Premises and in all improvements situated thereon shall
11 terminate.

12 (b) Recovery of Rent. Landlord shall be entitled to the amount
13 of the rent which had been earned before termination, plus late charges and interest as provided
14 by the express terms of this Lease. The proceeds of any reletting or attornment shall be applied,
15 when received, first to any amounts then due and unpaid by Tenant under this Lease, to the
16 extent that such proceeds for the period covered do not exceed the amount due from and charged
17 to Tenant for the same period, and the balance to Tenant.

18 (c) Landlord's Damages. Landlord shall be entitled, at
19 Landlord's election, to recover from Tenant in compensation for all damages suffered by
20 Landlord as a result of Tenant's default, the worth at the time of the award (computed in
21 accordance with Paragraph (b) of Section 1951.2 of the California Civil Code) of the damages
22 Landlord proves that it would sustain as a result of the rent it could obtain for the Premises for

1 the remainder of the Lease Term being less than the Rent then unpaid for the balance of the
2 Lease Term.

3 (d) Landlord's Right to Cure. Landlord, at any time after the
4 expiration of the applicable time to cure a default, notice of which has previously been given to
5 Tenant, shall be entitled (but not obligated) to make any payment required of Tenant under this
6 Lease and/or to perform any covenants and comply with any condition imposed on Tenant under
7 this Lease. If, by reason of any such uncured default by Tenant, Landlord incurs any reasonable
8 expense or pays any reasonable sum, or performs any act reasonably requiring Landlord to incur
9 any expense or to pay any sum, including the actual fees and expenses paid or incurred by
10 Landlord in order to prepare and post or deliver any notice permitted or required by the
11 provisions of this Lease or otherwise permitted or contemplated by law, then the amount so paid
12 or incurred by Landlord shall be immediately due and payable to Landlord by Tenant as
13 additional rent. Such amounts shall bear interest at the Wall Street Journal prime interest rate in
14 effect on the date of payment by Tenant, but not in excess of the maximum rate permitted by
15 law, from the date of such demand until paid in full.

16 (e) Landlord shall have the right to have a receiver appointed
17 to collect rent and conduct Tenant's business while and event of default is outstanding. Neither
18 the filing of a petition for the appointment of a receiver nor the appointment thereof shall
19 constitute an election by Landlord to terminate this Lease.

20 10.4 Default by Landlord. Landlord shall be in default of its obligations under this
21 Lease if it fails to perform the same within any expressly specified period of time or, if no period
22 of time is expressly specified, within a reasonable time, but in no event more than thirty (30)

1 days after written notice by Tenant to Landlord specifying wherein Landlord has failed to
2 perform such obligations. However, if the nature of Landlord's default is such that more than
3 thirty (30) days are required for its cure, Landlord shall not be in default if Landlord commences
4 such cure within such thirty (30) day period and thereafter diligently prosecutes the same to
5 completion. In the event of any such default by Landlord, Tenant may pursue any remedy now
6 or hereafter available to Tenant under the laws and judicial decisions of the State of California.

7 **ARTICLE XI**

8 **MISCELLANEOUS PROVISIONS**

9
10 11.1 Notice. Any notice, demand, request, consent, approval or communication that
11 either party desires or is required to give to the other party shall be in writing addressed to the
12 other party at the addresses or fax numbers set forth in Paragraphs 1.2.3 and 1.2.4 or such other
13 address as may have been specified by notifying the other party of the change of address. Notice
14 shall be deemed served on the second business day following the day of mailing if mailed with
15 the United States Postal Service, by certified mail, return receipt requested. Notice by facsimile
16 shall be deemed effective upon receipt. All payments required under this Lease shall be deemed
17 sufficiently paid if made by check collected on first presentation.

18 11.2 Consent and Approval. Except as otherwise specifically provided herein,
19 Landlord's consent or approval of any act by Tenant or other matter requiring Landlord's consent
20 or approval shall not be unreasonably withheld or delayed by Landlord and if given shall not be
21 deemed to waive or render unnecessary Landlord's consent to, or approval of, any subsequent act
22 by Tenant.

23 11.3 Time of Essence. Time is of the essence of each provision of this Lease.

1 11.4 Covenants and Conditions. All provisions hereof expressed as either covenants or
2 conditions on the part of Tenant or Landlord to be performed or observed shall be deemed to be
3 both covenants and conditions.

4 11.5 Successors. This Lease shall be binding on and inure to the benefit of the parties
5 and their successors except as may otherwise be provided herein.

6 11.6 California Law. This Lease shall be construed and interpreted in accordance with
7 the laws of the State of California. Tenant covenants and agrees to submit to the personal
8 jurisdiction of any state court in the State of California for any dispute, claim or matter arising
9 out of or related to this Lease. If either party seeks recourse in equity of to enforce any of its
10 rights under this Lease, the other party agrees to waive any defense which it might otherwise
11 have that the first party has an adequate remedy at law.

12 11.7 Integrated Agreement; Amendments. This Lease contains or refers to all of the
13 agreements of the parties and cannot be amended or modified except by written agreements
14 executed by Landlord and Tenant. Landlord and Tenant shall not execute any amendment,
15 modification or termination of this Lease without Tenant delivering to each Lender then holding
16 a security interest in the Leasehold Estate (and their legal counsel) thirty (30) days' prior written
17 notice of such proposed amendment, modification or termination. Such notice shall contain the
18 following language at the top of such notice in all capital letters: WARNING: THIS NOTICE
19 REQUIRES A RESPONSE WITHIN THIRTY (30) DAYS OR THERE MAY BE
20 IMPAIRMENT OF A GROUND LEASE WHICH IS SECURITY FOR LOAN NO. _____.

1 11.8 Interpretation. The captions and the Table of Contents of this Lease shall have no
2 effect on its interpretation. When required by the context of this Lease, the singular shall include
3 the plural.

4 11.9 Severability. The unenforceability, invalidity or illegality of any provision shall
5 not render the other provisions unenforceable, invalid or illegal.

6 11.10 Attorney Fees. If either party becomes a party to any litigation concerning this
7 Lease, by reason of any act or omission of the other party or its authorized representatives, and
8 not by an act or omission of the party that becomes a party to that litigation or any act or
9 omission of its authorized representatives, the party that causes the other party to become
10 involved in the litigation shall be liable to that party for reasonable attorneys' fees and court costs
11 incurred by it in the litigation. If either party commences an action against the other party arising
12 out of or in connection with this Lease, the prevailing party shall be entitled to request the court
13 for an award of reasonable attorneys' fees and costs of suit from the losing party.

14 11.11 Force Majeure. In any case where either party hereto is required to do any act,
15 any inability of that party to perform the act, or any delays in its performance of the act, caused
16 by or resulting from Acts of God, war, civil commotion, fire, flood, earthquake or other casualty,
17 strikes or other extraordinary labor difficulties, shortages of labor or materials or fuel or
18 equipment in the ordinary course of trade, government regulations (including but not limited to
19 any delays in the issuance of any governmental permits, licenses, certificates or approvals
20 beyond the reasonable processing time for issuance) or any other cause not reasonably within
21 that party's control and not due to that party's fault or neglect, shall be excused and such failure
22 to perform, or such delay in performance, shall not be a default by that party within the meaning

1 of this Lease. Financial inability of either party, or changes in market conditions, shall not be
2 considered to be a circumstance or cause beyond the reasonable control of that party.

3 11.12 Nondiscrimination. In the performance of this Lease, Tenant agrees not to
4 discriminate against any employee or applicant for employment or service on the basis of race,
5 color, religion, ancestry, sex, sexual orientation, AIDS, AIDS related condition, national origin,
6 age, marital status, disability, handicap or veteran status. Tenant shall at all times comply with
7 the Americans With Disabilities Act ("ADA") and shall have sole responsibility for providing
8 access at and on the Premises as required by the ADA.

9 11.13 Municipal Authority. Landlord warrants that the execution and delivery of this
10 Lease by Landlord and the consummation of the transactions contemplated herein have been
11 duly authorized and approved by all requisite action of the City of Long Beach, and this Lease
12 has been duly executed and delivered by Landlord and constitutes a valid and binding obligation
13 on Landlord.

14 11.14 Joint Effort. The parties agree that this Lease has been drafted through the joint
15 efforts of the parties and that it is not to be construed against either party as the drafter.

16 11.15 No Joint Venture or Partnership. Nothing in this agreement shall be construed as
17 creating either a partnership or joint venture between the parties hereto.

18 11.16 No Relocation Benefits. Tenant agrees that nothing contained in this Lease shall
19 create any right in Tenant for any relocation payment or assistance pursuant to the provisions of
20 Title 1, Division 7, Chapter 16 of the California Government Code, or pursuant to any other law

1 of the State of California, from Landlord on the expiration or sooner termination of this Lease
2 except if resulting from a condemnation or under threat of condemnation.

3 11.17 Non-Merger. There shall be no merger of this Lease nor of the leasehold estate
4 created by this Lease, with the fee estate in the Premises or with the interest or estate of any
5 Lender by reason of the fact that this Lease or the leasehold estate created by this Lease or any
6 interest in this Lease or any such leasehold estate may be held, directly or indirectly, by or for the
7 account of any person or persons who shall own the Premises, or any interest therein, or shall
8 hold any Leasehold mortgage. No such merger shall occur unless and until all persons at the
9 time holding the estate or interests to be merged shall in a written instrument effecting such
10 merger and shall duly record the same.

11 11.18 Memorandum of Lease. Landlord and Tenant shall execute and record a
12 Memorandum of Lease in a form reasonably acceptable to Landlord and Tenant and the most
13 senior Lender, if any. All recording costs, documentary transfer taxes, taxes assessed, and fees
14 shall be paid by Tenant.

15 11.19 Counterparts. This Lease may be executed in several duplicate counterparts, each
16 of which shall be deemed an original of this Lease for all purposes.

17 11.20 Adult Entertainment. Tenant shall not, whether or not the Premises are zoned for
18 such an activity, allow any "adult entertainment business" to operate on the Premises as such a
19 business is defined by Section 21.15.110 of the Long Beach Municipal Code.

1 11.21 Lender as Third Party Beneficiary. Each Lender shall be a third party beneficiary
2 of those provisions of this Lease intended for its protection, including but not limited to the
3 provisions respecting a New Lease.

1 WITNESS the execution hereof under seal the day and year first above written.

CITY OF LONG BEACH, a municipal corporation

Date: 11-21-06

By: [Signature]

"LANDLORD"

Date: NOV 20 2006

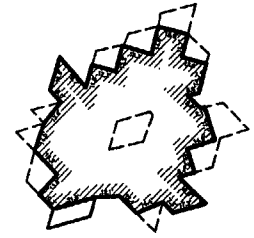
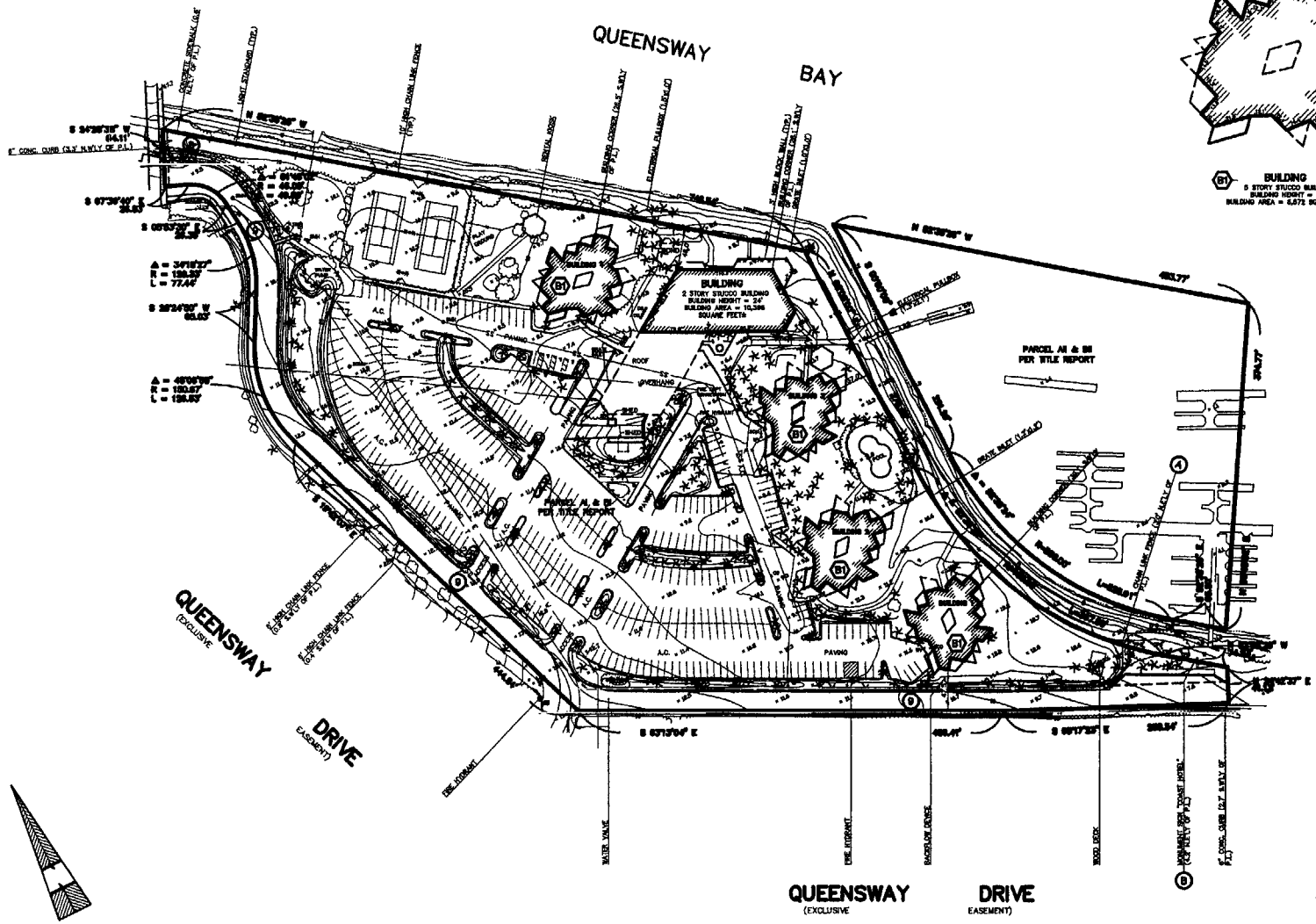
QW Land Holding Company, D.L.C.,
a California limited liability company

By: [Signature]
Name: Philip R. Graf
Its: Manager
By: [Signature]
Name: Mark R. Minsky
Its: Manager

"TENANT"

2 Approved as to form this 21 day of November, 2006.

3 Charles Parkin Principal Deputy
4 Robert E. Shannon, City Attorney Deputy
5




BUILDING
 2 STORY MIXED BUILDING
 BUILDING HEIGHT = 24'
 BUILDING AREA = 10,000 SQUARE FEET

ACCEPTED AND APPROVED FOR CONSTRUCTION	
OWNER	DATE
CONTRACTOR	DATE
THIS DRAWING MAY NOT BE USED FOR CONSTRUCTION WITHOUT THE WRITTEN APPROVALS AND WITHOUT THE REQUIRED PERMITS BEING OBTAINED.	

ENGINEER	
NAME	DATE

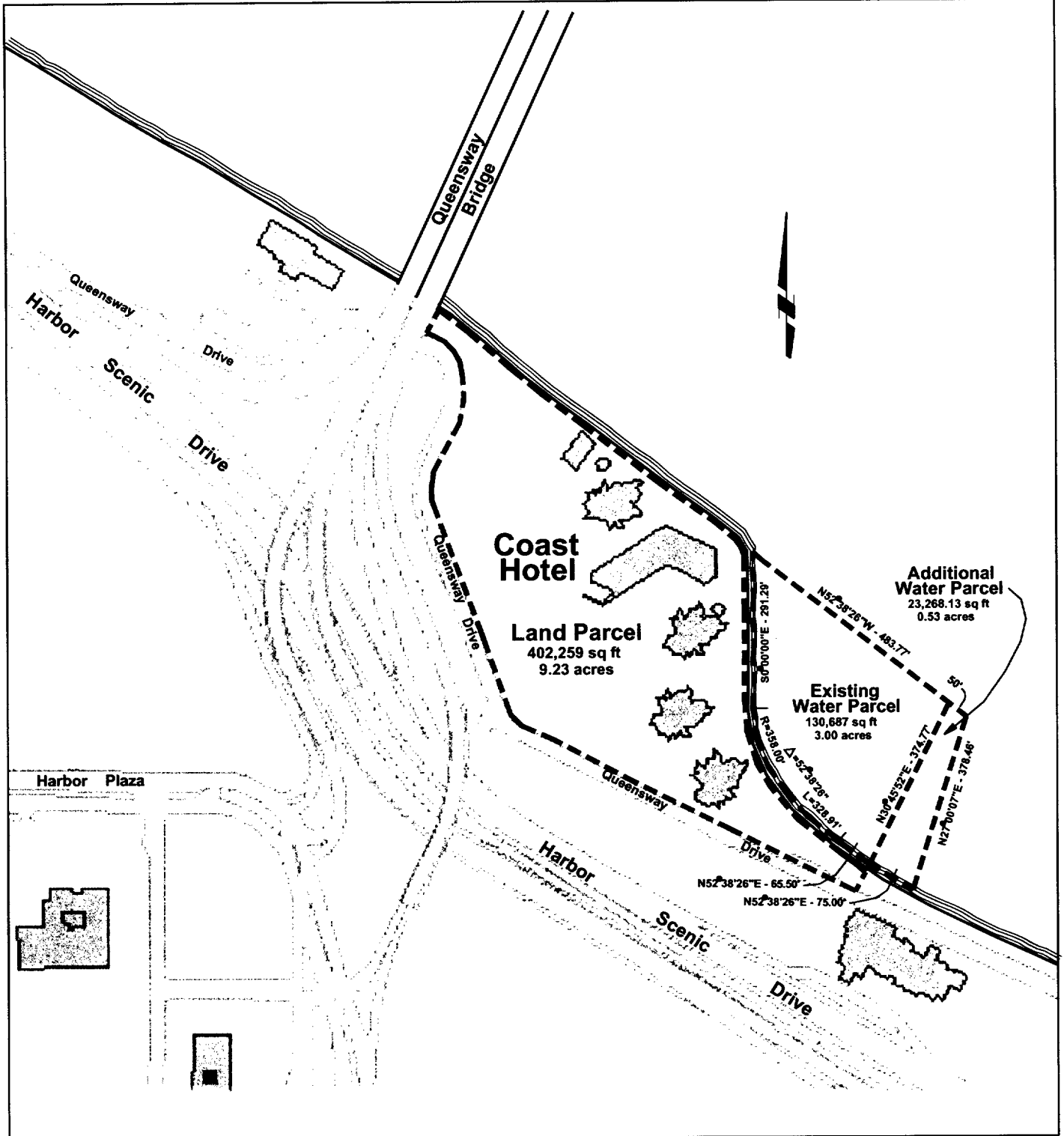
O.K.O. ENGINEERING INC.	
CIVIL, ARCHITECTURAL, MECHANICAL/ELECTRICAL/PLUMBING	
3201 BIRCHER DRIVE	
LAKE FOREST, CALIFORNIA 92640	
949/597-3577	
TEL. 161/597-5571	

DATE	SCALE	BY	FOR
5/9/06	1"=60'	E.L.M.	D.U.M.

ALTA./A.C.S.M. LAND TITLE SURVEY	
PROJECT	DATE
COAST HOTEL	
700 QUEENSWAY DRIVE	
LONG BEACH	
CALIFORNIA	

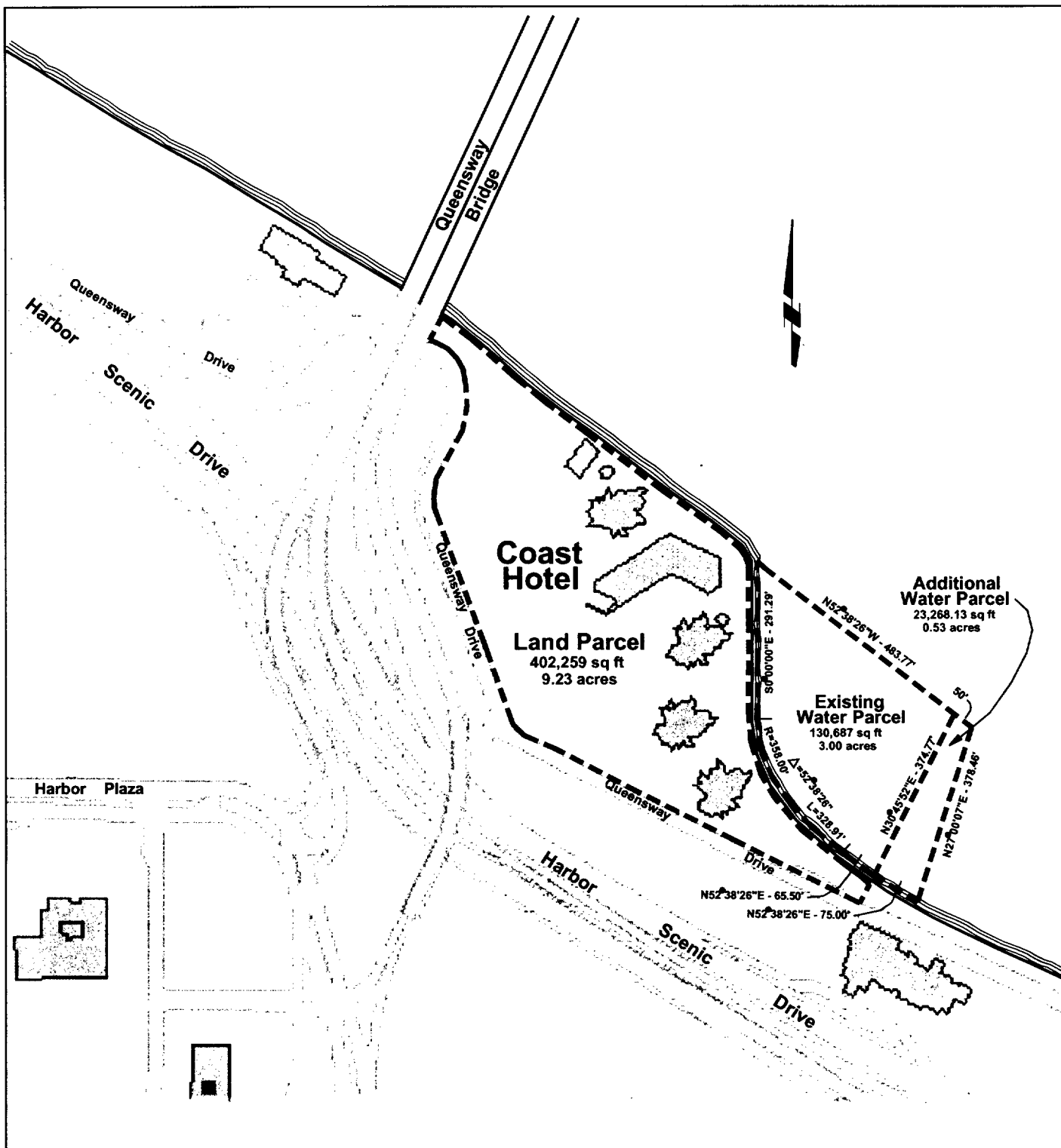
2. 2

Exhibit A
 Page 2 of 3



CITY OF LONG BEACH - CALIFORNIA
 DEPARTMENT OF PUBLIC WORKS - CHRISTINE F. ANDERSEN, DIRECTOR

Lease Map: Additional Water Area
Coast Hotel
 Exhibit "A"



CITY OF LONG BEACH - CALIFORNIA
 DEPARTMENT OF PUBLIC WORKS - CHRISTINE F. ANDERSEN, DIRECTOR

Lease Map: Additional Water Area
Coast Hotel
 Exhibit "A"

Exhibit "B"

Legal Description of Premises and Non-Exclusive Easements

PARCEL A:

PARCEL I:

THAT CERTAIN PARCEL OF LAND SITUATED IN THE HARBOR DISTRICT OF THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT MONUMENT L.B.H.D. "A-11 AUX." AS RECORDED IN BOOK 81, PAGE 50, RECORD OF SURVEYS OF SAID COUNTY; THENCE NORTH 923.69 FEET; THENCE EAST 1,300.31 FEET TO THE TRUE POINT OF BEGINNING, SAID POINT OF BEGINNING HAVING COORDINATES NORTH 4,024,511.04; EAST 4,227,521.00 OF ZONE 7 OF THE CALIFORNIA COORDINATE SYSTEM; THENCE SOUTH 24° 28' 38" WEST 64.11 FEET; THENCE SOUTH 67° 39' 40" EAST 26.83 FEET TO THE BEGINNING TO A TANGENT CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 46.00 FEET; THENCE EASTERLY ALONG SAID CURVE 49.59 FEET TO A TANGENT LINE; THENCE SOUTH 5° 53' 30" EAST 26.35 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 129.33 FEET; THENCE SOUTHERLY ALONG SAID CURVE 77.44 FEET TO A TANGENT LINE; THENCE SOUTH 28° 24' 50" WEST 65.03 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 150.67 FEET; THENCE SOUTHERLY ALONG SAID CURVE 126.53 FEET TO A TANGENT LINE; THENCE SOUTH 19° 42' 07" EAST 444.54 FEET; THENCE SOUTH 63° 13' 04" EAST 486.41 FEET; THENCE SOUTH 65° 17' 23" EAST 258.54 FEET; THENCE NORTH 24° 42' 37" EAST 41.13 FEET; THENCE NORTH 52° 38' 26" WEST 74.93 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 400.00 FEET; THENCE NORTHERLY ALONG SAID CURVE 367.50 FEET TO A TANGENT LINE; THENCE NORTH 279.08 FEET; THENCE NORTH 52° 38' 26" WEST 746.54 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPT ALL STRUCTURES AND IMPROVEMENTS APPURTENANT AND ATTACHED TO THE SAID LAND, AS CONVEYED IN A DEED RECORDED ON JANUARY 9, 1987 AS INSTRUMENT NO. 87-35761, OFFICIAL RECORDS.

ALSO EXCEPT ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AND ALL MINERALS AND ALL MINERAL RIGHTS OF EVERY KIND AND CHARACTER IN, UNDER OR THAT MAY BE PRODUCED AND SEVERED THEREFROM TOGETHER WITH ALL RIGHTS OF EVERY KIND AND DESCRIPTION WHATSOEVER TO DRILL FOR, DEVELOP, TAKE, REMOVE AND SEVER THE SAME, OR ANY PART THEREOF, FROM SAID PREMISES WITHOUT, HOWEVER, THE RIGHT OF SURFACE ENTRY.

1 **PARCEL II: (EXISTING WATER PARCEL)**

2 THAT CERTAIN PARCEL SITUATED IN THE HARBOR DISTRICT OF THE CITY OF
3 LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, MORE
4 PARTICULARLY DESCRIBED AS FOLLOWS:

5 COMMENCING AT MONUMENT L.B.H.D. "A-11 AUX.", AS RECORDED IN BOOK 81,
6 PAGE 50, RECORD OF SURVEYS OF SAID COUNTY; THENCE SOUTH 132.70 FEET;
7 THENCE EAST 2,128.52 FEET TO THE TRUE POINT OF BEGINNING, SAID POINT OF
8 BEGINNING HAVING COORDINATES NORTH 4,023,454.65; EAST 4,228,348.21 OF
9 ZONE 7 OF THE CALIFORNIA COORDINATE SYSTEM; THENCE NORTH 30° 45' 52"
10 EAST 374.77 FEET; THENCE NORTH 52° 38' 26" WEST 483.77 FEET; THENCE SOUTH
11 291.29 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE
12 NORTHEASTERLY AND HAVING A RADIUS OF 358.00 FEET; THENCE SOUTHERLY
13 ALONG SAID CURVE 328.91 FEET TO THE BEGINNING OF A TANGENT LINE;
14 THENCE SOUTH 52° 38' 26" EAST 65.50 FEET TO THE TRUE POINT OF BEGINNING.

15 EXCEPT ALL STRUCTURES AND IMPROVEMENTS APPURTENANT AND ATTACHED
16 TO SAID LAND, AS CONVEYED IN A DEED RECORDED JANUARY 9, 1987 AS
17 INSTRUMENT NO. 87-35761, OFFICIAL RECORDS.

18 ALSO EXCEPT ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AND ALL
19 MINERALS AND ALL MINERAL RIGHTS OF EVERY KIND AND CHARACTER IN,
20 UNDER OR THAT MAY BE PRODUCED AND SAVED THEREFROM, TOGETHER WITH
21 ALL RIGHTS OF EVERY KIND AND DESCRIPTION WHATSOEVER TO DRILL FOR,
22 DEVELOP, TAKE, REMOVE AND SEVER THE SAME, OR ANY PART THEREOF, FROM
23 SAID PREMISES WITHOUT, HOWEVER, THE RIGHT OF SURFACE ENTRY.

24

25 **PARCEL B: (ADDITIONAL WATER PARCEL)**

26 THAT CERTAIN PARCEL SITUATED IN THE HARBOR DISTRICT OF THE CITY OF
27 LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, MORE
28 PARTICULARLY DESCRIBED AS FOLLOWS:

29 COMMENCING AT MONUMENT L.B.H.D. "A-11 AUX.", AS RECORDED IN BOOK 81
30 PAGE 50, RECORD OF SURVEYS OF SAID COUNTY; THENCE SOUTH 132.70 FEET;
31 THENCE EAST 2,128.52 FEET TO THE TRUE POINT OF BEGINNING HAVING
32 COORDINATES NORTH 4,023,454.65; EAST 4,228,349.21 OF ZONE 7 OF THE
33 CALIFORNIA COORDINATE SYSTEM; THENCE NORTH 30° 45' 52" EAST 347.77 FEET;
34 THENCE SOUTH 52° 38' 26" EAST 50.00 FEET; THENCE SOUTH 27° 00' 07" WEST 378.46
35 FEET TO A LINE WHICH BEARS SOUTH 52° 38' 26" EAST AND WHICH PASSES
36 THROUGH THE TRUE POINT OF BEGINNING; THENCE NORTH 52° 38' 26" WEST 75.00
37 FEET TO THE TRUE POINT OF BEGINNING.

38

1 Exhibit "C"

2
3 Landlord Estoppel Certificate

4
5
6
7 _____, 20__

8
9 _____
10 _____
11 _____
12 _____

13
14 Re: Amended and Restated Lease dated _____, 2006 executed by The City of
15 Long Beach, a municipal corporation, as landlord ("Landlord"), and QW Land
16 Holding Company, LLC, a California limited liability company, as tenant
17 ("Tenant") (the "Ground Lease"). The Ground Lease is evidenced by a
18 Memorandum of Amended and Restated Lease recorded on _____,
19 2006 as Instrument No. _____ in the Official Records of Los Angeles County,
20 California

21
22 Ladies and Gentlemen:

23
24 Landlord certifies to _____ and _____ and their respective successors and
25 assigns as follows:

26 1. Lease. A true, correct and complete copy of the Ground Lease is attached hereto
27 as Exhibit 1. Capitalized terms used in this Estoppel Certificate and not defined herein shall
28 have the meanings ascribed to them in the Ground Lease.

29 2. Term. The Ground Lease expires on _____, 20__.

30 3. Current Status of Lease. Except as otherwise specifically set out on a schedule
31 attached to this Estoppel Certificate:

32 a. the Ground Lease is in full force and effect and has
33 not been modified, amended, supplemented or changed in any
34 respect, and the entire Leasehold Estate under the Lease is held by
35 Tenant;

36 b. To the best of Landlord's knowledge, Tenant has
37 not assigned, transferred mortgaged, hypothecated or otherwise
38 encumbered all or any part of its interest under the Ground Lease;

39 c. To the best of Landlord's knowledge, no party to the
40 Ground Lease is in default in the performance of its obligations or
41 otherwise under the Ground Lease or has committed any breach of
42 the Ground Lease, and no event has occurred or circumstance

1 exists which, with the giving of notice or passage of time, or both,
2 could constitute such a default or breach;

3 d. No notice of default has been given to Tenant or
4 Landlord under the Lease;

5 e. Landlord has no rights of cancellation or
6 termination rights with respect to the Ground Lease, except as
7 provided in the Ground Lease;

8 f. The current notice address for Landlord is:

9 City of Long Beach
10 333 W. Ocean Boulevard
11 Long Beach, CA 90802

12 g. Landlord has not assigned, transferred, mortgaged,
13 hypothecated or otherwise encumbered all or any part of its interest
14 under the Lease, or its underlying fee, title or interest in the
15 Premises;

16 4. Rent, Other Charges and Security Deposit.

17 a. No Base Rent is or will become due under the Ground
18 Lease.

19 b. Percentage rent, if any, payable under the Ground Lease
20 has been paid through _____, subject to annual
21 reconciliation for _____.

22 c. Landlord does not hold a security deposit under the Ground
23 Lease.

24 d. There are no other amounts of additional rent or other
25 charges due and unpaid from Tenant to Landlord under the Ground
26 Lease.

27 5. Reliance on Estoppel Certificate. Landlord acknowledges the right of
28 _____ and _____ and their respective successors and assigns, to rely upon the
29 statements, representations and consents contained in this estoppel and will promptly inform
30 them if it learns that any such statement or representation may be or may become untrue,
31 inaccurate or misleading.

1 IN WITNESS WHEREOF, Landlord has executed this Estoppel Certificate as of
2 _____, 20__.

3
4
5
6
7
8
9
10

CITY OF LONG BEACH,
a municipal corporation

By: _____

Name: _____
Director of Community Development

1

Exhibit 1 to Estoppel Certificate

2

Ground Lease

3