

**SUBLEASE AGREEMENT  
(CHULA VISTA BAYFRONT CONVENTION CENTER)**

**by and between  
CITY OF CHULA VISTA,  
as Sublessor  
and  
RIDA CHULA VISTA, LLC,  
as Sublessee**

**Dated as of \_\_\_\_\_, 2022**

**Relating to**

**\$ \_\_\_\_\_  
CHULA VISTA BAYFRONT FACILITIES  
FINANCING AUTHORITY  
REVENUE BONDS  
(CHULA VISTA BAYFRONT PHASE 1A  
INFRASTRUCTURE IMPROVEMENTS)  
Series 2022B (Tax-Exempt)**

**\$ \_\_\_\_\_  
CHULA VISTA BAYFRONT FACILITIES  
FINANCING AUTHORITY  
REVENUE BONDS  
(CHULA VISTA BAYFRONT PHASE 1A  
INFRASTRUCTURE IMPROVEMENTS)  
Series 2022B (Tax-Exempt)**

**TABLE OF CONTENTS**

**Page**

**ARTICLE I  
DEFINITIONS AND EXHIBITS**

Section 1.1 Definitions and Rules of Construction..... 2  
Section 1.2 Exhibits ..... 2

**ARTICLE II  
REPRESENTATIONS, WARRANTIES AND COVENANTS**

Section 2.1 Representations and Warranties of RIDA..... 3  
Section 2.2 Covenants of RIDA ..... 4  
Section 2.3 Representations, Covenants and Warranties of the City..... 5

**ARTICLE III  
AGREEMENT TO SUBLEASE; TERM OF SUBLEASE;  
SUBLEASE ADVANCE RENT AND SUBLEASE PAYMENTS**

Section 3.1 Sublease ..... 6  
Section 3.2 Term..... 6  
Section 3.3 Extension of Term ..... 6  
Section 3.4 Sublease Advance Rent ..... 6  
Section 3.5 Base Rent and Additional Rent..... 7  
Section 3.6 Section 467 of the Code..... 8  
Section 3.7 Capital Expenditures as Rent..... 9  
Section 3.8 Use and Possession ..... 9  
Section 3.9 Reimbursement ..... 9  
Section 3.10 Net-Net-Net Lease ..... 9  
Section 3.11 Further Assurances and Corrective Instruments..... 9  
Section 3.12 Security Deposit..... 10  
Section 3.13 Peaceable Surrender..... 11  
Section 3.14 Waiver..... 12  
Section 3.15 Holdover ..... 12

**ARTICLE IV  
INSURANCE**

Section 4.1 Insurance Requirements..... 12  
Section 4.2 Rental Interruption Insurance ..... 13  
Section 4.3 [Reserved]..... 13  
Section 4.4 Payment of Insurance Proceeds ..... 13  
Section 4.5 General Insurance Provisions ..... 14  
Section 4.6 Cooperation..... 14

**ARTICLE V  
EMINENT DOMAIN; DAMAGE OR DESTRUCTION;  
USE OF NET PROCEEDS**

Section 5.1 Eminent Domain ..... 15  
Section 5.2 Damage or Destruction ..... 19

ARTICLE VI  
CONDITIONS AND COVENANTS WITH RESPECT TO THE FACILITY

Section 6.1	Permitted Use of the Facility .....	24
Section 6.2	City Holds Subleasehold Interest in the Site and Leasehold Interest in the Convention Center .....	27
Section 6.3	Quiet Enjoyment .....	27
Section 6.4	Installation of RIDA’s Personal Property .....	27
Section 6.5	[Reserved].....	27
Section 6.6	Maintenance and Repair .....	27
Section 6.7	Hotel Management Agreement.....	31
Section 6.8	Performance by the Public Entities.....	31
Section 6.9	Records .....	32
Section 6.10	Alterations.....	33
Section 6.11	Liens.....	34
Section 6.12	“As-Is” Sublease and Waivers.....	36
Section 6.13	Force Majeure Event.....	38
Section 6.14	Compliance with Laws .....	41
Section 6.15	Equal Employment Opportunity; Nondiscrimination and OFAC .....	41
Section 6.16	Taxes and Property Expenses; Reporting .....	42
Section 6.17	Meet and Confer .....	44
Section 6.18	Property Expenses.....	44
Section 6.19	Property Tax Expenses; Utility Charges; Contest Right.....	44
Section 6.20	Hazardous Materials .....	46
Section 6.21	Advertising Devices.....	52
Section 6.22	Prevailing Wage.....	52

ARTICLE VII  
ASSIGNMENT BY THE CITY AND AMENDMENTS

Section 7.1	Assignment by the City.....	54
Section 7.2	Amendments and Modifications.....	54

ARTICLE VIII  
EVENTS OF DEFAULT AND REMEDIES

Section 8.1	Events of Default .....	54
Section 8.2	Remedies.....	56
Section 8.3	Bankruptcy.....	59

ARTICLE IX  
SUBLEASE FINANCING ENCUMBRANCE

Section 9.1	Permitted Financing Encumbrances .....	60
Section 9.2	Definition of “Permitted Sublease Financing Encumbrance,” “Permitted Equity Financing Encumbrance,” “Permitted Financing Encumbrance,” “Permitted Mortgage Lender,” “Permitted Lender” and “Equity Collateral Enforcement Action” .....	61
Section 9.3	Rights of Permitted Lender.....	62
Section 9.4	City’s Deemed Consent to Assignment or Transfer or Bidders .....	66
Section 9.5	Subordination, Non-Disturbance and Attornment Agreement .....	67

Section 9.6	Miscellaneous .....	67
-------------	---------------------	----

ARTICLE X  
SUB-SUBLEASES; ASSIGNMENT

Section 10.1	Sub-Subleases .....	68
Section 10.2	Effect of Sub-sublease .....	70
Section 10.3	Conditions .....	70
Section 10.4	Sub-subtenant Attornment .....	70
Section 10.5	Sub-sublease Rent Requirements .....	71
Section 10.6	Reporting of Sub-sublease Information .....	71
Section 10.7	Assignment .....	71
Section 10.8	Effect of Transfer .....	71
Section 10.9	Conditions .....	72
Section 10.10	Permitted Lender and Foreclosure Purchasers .....	72

ARTICLE XI  
MISCELLANEOUS

Section 11.1	Notices .....	72
Section 11.2	Binding Effect .....	74
Section 11.3	Severability .....	74
Section 11.4	Execution in Counterparts .....	74
Section 11.5	Applicable Law .....	74
Section 11.6	Captions .....	74
Section 11.7	No Merger .....	75
Section 11.8	Third-Party Beneficiary .....	75
Section 11.9	Release of Encumbrance .....	76
Section 11.10	Transaction Costs .....	76
Section 11.11	Drafting Presumption; Review Standard .....	76
Section 11.12	Constitutional Rights and Compliance with Law .....	76
Section 11.13	Time of Essence .....	76
Section 11.14	Entire Agreement .....	77
Section 11.15	Discharge of the Bonds .....	77

Signatures .....	S-1
------------------	-----

DEFINITIONS ADDENDUM .....	DA-1
----------------------------	------

EXHIBIT A: DESCRIPTION OF THE SITE .....	A-1
--	-----

EXHIBIT B-1: SCHEDULE OF BASE RENT PAYMENTS .....	B-1-1
---	-------

EXHIBIT B-2: CALCULATION OF ADDITIONAL RENT .....	B-2-1
---	-------

EXHIBIT C: FORM OF LETTER OF CREDIT .....	C-1
---	-----

EXHIBIT D: LETTER OF CREDIT ISSUERS .....	D-1
---	-----

EXHIBIT E: FORM OF SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN T AGREEMENT FOR PERMITTED MORTGAGE LENDER .....	E-1
---	-----

EXHIBIT F: FORM OF SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN T AGREEMENT FOR PERMITTED MEZZANINE LENDER .....	F-1
--	-----

EXHIBIT G: FORM OF ESTOPPEL CERTIFICATE .....	G-1
---	-----

EXHIBIT H:	RENT ROLL .....	H-1
EXHIBIT I:	FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT .....	I-1
EXHIBIT J:	[RESERVED].....	J-1
EXHIBIT K:	DISTRICT DOCUMENTS .....	K-1
EXHIBIT L:	PRE-APPROVED ADVERTISING DEVICES.....	L-1
EXHIBIT M:	APPROVED AGREEMENTS.....	M-1
EXHIBIT N:	CONSTRUCTION REQUIREMENTS (ALTERATIONS) .....	N-1
EXHIBIT O:	PRIOR AGREEMENTS.....	O-1
EXHIBIT P:	MEMORANDUM OF SUBLEASE.....	P-1

**SUBLEASE AGREEMENT  
(CHULA VISTA BAYFRONT CONVENTION CENTER)**

THIS SUBLEASE AGREEMENT (Chula Vista Bayfront Convention Center) (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Sublease”), dated as of \_\_\_\_\_, 2022, is entered into by and between the City of Chula Vista, a charter city of the State of California duly organized and existing under and by virtue of the Constitution and laws of the State of California, as sublessor (the “City”), and RIDA Chula Vista, LLC, a Delaware limited liability company, as sublessee (together with its successors and permitted assigns, “RIDA”).

***WITNESSETH:***

WHEREAS, the San Diego Unified Port District, a public corporation (together with its successors in interest under the Ground Lease, the “Port”), has entered into that certain San Diego Unified Port District Lease To RIDA Chula Vista, LLC of Property Located In Chula Vista, California, dated as of \_\_\_\_\_, 2022 (as amended, amended and restated, supplemented or otherwise modified from time to time, together with any New Sublease, as such term is defined therein, the “Ground Lease”), with RIDA under which the Port has leased to RIDA the Ground Lease Property upon which RIDA will be constructing the Resort Hotel in accordance with the requirements of the Ground Lease; and

WHEREAS, the Chula Vista Bayfront Facilities Financing Authority (together with its successors in interest under the Facility Lease, the “JEPA”) and the City have determined it to be beneficial to construct the Convention Center on the Site, which is immediately adjacent to the Ground Lease Property, and to cause RIDA to construct the Convention Center on behalf of the JEPA and to sublease, operate and maintain the Convention Center; and

WHEREAS, the JEPA has entered into a Site Lease of even date herewith (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Site Lease”) by and between the JEPA and the Port under which the JEPA has leased from the Port certain real property described in Exhibit A hereto (the “Site”), on which the Convention Center will be constructed; and

WHEREAS, pursuant to the Government Code of the State of California and the Charter of the City of Chula Vista, the City may enter into leases and agreements relating to real property for purposes of supporting commercial development for business purposes, economic opportunity, or such other purposes as deemed appropriate by the City Council of the City (the “Council” or “City Council”); and

WHEREAS, the Council has determined that it is in the best interests of the City and for the common benefit of the citizens residing in the City, for the JEPA to acquire a leasehold interest in the Site upon which the Convention Center will be constructed on behalf of the JEPA by RIDA; and

WHEREAS, the JEPA has, pursuant to that certain Facility Lease dated as of \_\_\_\_\_, 2022 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Facility Lease”) by and between the JEPA and the City, subleased the Site and leased the Improvements (the Site and the Improvements together referred to herein as the “Facility”) to the City; and

WHEREAS, the JEPa and City have entered into the Facility Lease in order to support the issuance of the Bonds, which are secured in part by lease payments to be made by the City under the Facility Lease, and which are being issued by the JEPa concurrently with the execution and delivery of this Sublease; and

WHEREAS, a portion of the proceeds of the Bonds will be applied to finance the construction of the Convention Center and certain public infrastructure benefiting the Resort Hotel and the Convention Center; and

WHEREAS, pursuant to the Site Lease, the Port, and, pursuant to the Facility Lease, the JEPa, have acknowledged and consented to the City's sub-sublease of the Site and sublease of the Improvements to RIDA; and

WHEREAS, in consideration of the construction of the Convention Center by RIDA pursuant to the terms of that certain Project Implementation Agreement, dated as of the date hereof, by and among the Port, the JEPa, the City, the Special Tax District and RIDA (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Project Implementation Agreement"), and RIDA's performance of its obligations herein, the City will sub-sublease the Site and sublease the Improvements to RIDA pursuant to the terms hereof;

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants hereinafter contained and for other good and valuable consideration, the Parties agree as follows:

## ARTICLE I

### DEFINITIONS AND EXHIBITS

**Section 1.1 Definitions and Rules of Construction.** Unless the context otherwise requires, the capitalized terms used herein shall, for all purposes of this Sublease, have the meanings set forth in the Definitions Addendum attached hereto and incorporated herein. Unless the context otherwise indicates, words importing the singular number shall include the plural number and vice versa. The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms, as used in this Sublease, refer to this Sublease as a whole. The word "including" or any variation thereof means "including, without limitation" and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it. Each reference herein to this "Sublease" shall include a reference to any "New Sublease" as defined herein.

**Section 1.2 Exhibits.** The following Exhibits are attached to, and by reference made a part of, this Sublease:

Definitions Addendum

Exhibit A: Description of the Site

Exhibit B-1: Schedule of Base Rent Payments

Exhibit B-2: Calculation of Additional Rent

Exhibit C: Form of Letter of Credit

- Exhibit D: Letter of Credit Issuers
- Exhibit E: Form of Subordination, Non-Disturbance and Attornment Agreement For Permitted Mortgage Lender
- Exhibit F: Form of Subordination, Non-Disturbance and Attornment Agreement for Permitted Mezzanine Lender
- Exhibit G: Form of Estoppel Certificate
- Exhibit H: Rent Roll
- Exhibit I: Form of Assignment and Assumption Agreement
- Exhibit J: [Reserved]
- Exhibit K: District Documents
- Exhibit L: Pre-Approved Advertising Devices
- Exhibit M: Approved Agreements
- Exhibit N: Construction Requirements (Alterations)
- Exhibit O: Prior Agreements
- Exhibit P: Memorandum of Sublease

## ARTICLE II

### REPRESENTATIONS, WARRANTIES AND COVENANTS

**Section 2.1 Representations and Warranties of RIDA.** RIDA represents and warrants to the City as of the Commencement Date as follows:

(a) Due Organization and Existence; Enforceability. RIDA is a limited liability company duly organized, existing and in good standing under and by virtue of the laws of the State of Delaware, has the power to enter into this Sublease, the Ground Lease, the Project Implementation Agreement and the Continuing Disclosure Agreement; is possessed of full power to own and hold real and personal property, and to lease and sell the same; and has duly authorized the execution and delivery of this Sublease, the Ground Lease, the Project Implementation Agreement and the Continuing Disclosure Agreement. This Sublease, the Ground Lease, the Project Implementation Agreement and the Continuing Disclosure Agreement constitute the legal, valid and binding obligations of RIDA, enforceable in accordance with their respective terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting the rights of creditors generally.

(b) No Conflicts or Defaults; No Liens or Encumbrances. Neither the execution and delivery of this Sublease, the Ground Lease, the Project Implementation Agreement or the Continuing Disclosure Agreement, nor the fulfillment of or compliance with the terms and conditions



hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of the certificate of formation or the operating agreement of RIDA or any material agreement or instrument to which RIDA is now a party or by which RIDA is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of RIDA or upon the Facility, except for Permitted Encumbrances.

(c) Execution and Delivery. RIDA has duly authorized and executed this Sublease, the Ground Lease, the Project Implementation Agreement and the Continuing Disclosure Agreement in accordance with the laws of the State of Delaware.

(d) Useful Life and Residual Value. To the Knowledge of RIDA as of the Commencement Date, based in part upon an analysis performed by a nationally-recognized third-party advisory firm, immediately following the date which is 37 years from the Commencement Date, (i) the Convention Center is reasonably expected to have a remaining useful life of at least 33 years and (ii) the fair market value of the Convention Center is reasonably expected to exceed \$187,900,000 (without including in such value any increase or decrease for inflation or deflation during the Term). For purposes of this Section 2.1(d), "Knowledge of RIDA" shall mean the actual knowledge of Luke Charlton.

**Section 2.2 Covenants of RIDA.** RIDA covenants to the City as follows:

(a) No Encumbrances. RIDA will not pledge or encumber the Facility or its interest therein created by virtue of this Sublease or otherwise, except for Permitted Encumbrances.

(b) Indemnification of Public Entity Parties. To the maximum extent allowed by law, RIDA hereby indemnifies and shall defend the Public Entity Parties, at RIDA's sole cost and expense and with counsel reasonably selected by the Public Entity Parties and reasonably approved by RIDA, and hold the Public Entity Parties harmless from any and all claims (including claims under negligence and strict liability and claims with respect to obligations of the Public Entity Parties to indemnify, defend and hold harmless third parties, including the City's obligation to indemnify the JEPA under the Facility Lease), demands, liability, losses, causes of actions and suits of any kind, administrative or judicial proceedings, orders, judgments, and all Related Costs arising directly or indirectly out of (i) the performance by RIDA of its obligations under this Sublease, (ii) any breach by RIDA of its obligations under this Sublease, (iii) any accident, injury or damage whatsoever caused to any Person or the property of any Person on or about the Site or at the Improvements or (iv) the use, occupancy, possession or operation of the Site and the Improvements by any RIDA Party or Hotel Operator, or any acts or omissions of any RIDA Party or Hotel Operator, in each case, except for claims or litigation arising through the sole gross negligence or willful misconduct of any Public Entity Party (but subject to Section 18.4 of the Ground Lease); provided that the sole gross negligence or willful misconduct of one Public Entity Party with respect to any Public Entity shall not be attributed to or affect the rights of any Public Entity Party with respect to any other Public Entity under this Section 2.2(b). The foregoing indemnity, defense and hold harmless obligations of RIDA shall not include any claims (including claims under negligence and strict liability or claims with respect to obligations of the Public Entity Parties to indemnify, defend and hold harmless third parties, including the City's obligation to indemnify the JEPA under the Facility Lease), demands, liability, losses, causes of actions and suits of any kind, administrative or judicial proceedings, orders, judgments, and all Related Costs arising directly or indirectly out of (x) the Project's failure or alleged failure to comply with Section 15 and Exhibit 3 of the Settlement Agreement or any other

document implementing or duplicating Section 15 and Exhibit 3 of the Settlement Agreement, provided that RIDA has satisfied its obligations under Section 5.8 and Exhibit O of the Project Implementation Agreement and any other agreement entered into between the Port and/or City with RIDA regarding the subject of this subsection (x) or (y) any Person's failure to comply with any applicable provisions of the PWL with respect to any work performed by, or on behalf of, any Public Entity Party (other than by a RIDA Party or Hotel Operator, or on behalf of a RIDA Party or Hotel Operator, or by any Person acting directly or indirectly under a contract with a RIDA Party or Hotel Operator). If any Public Entity determines in its reasonable discretion that there is a conflict of interest with RIDA's counsel representing an applicable Public Entity and RIDA, then such Public Entity, at the election of the relevant Public Entity, may conduct such defense with its own counsel independent from RIDA's counsel that is selected by such Public Entity in its reasonable discretion and is approved by RIDA in its reasonable discretion (and in that event RIDA will select its own counsel) and the reasonable costs incurred by such Public Entity in such defense shall be covered by the foregoing indemnification, hold harmless and defense obligations and be subject to reimbursement pursuant to the Reimbursement Procedure. If any Public Entity determines in its reasonable discretion that there is a conflict of interest with counsel representing such Public Entity and the other Public Entity Parties, then such Public Entity, at its election, may conduct its own defense with its own counsel that is reasonably selected by such Public Entity, independent from the other Public Entity Parties' counsel which such Public Entity's counsel is approved by RIDA in its reasonable discretion (and in that event such Public Entity will select its own counsel) and the reasonable costs incurred by such Public Entity in such defense shall be covered by the foregoing indemnification, hold harmless and defense obligations and be subject to reimbursement pursuant to the Reimbursement Procedure. The terms of this Section 2.2(b) shall survive the expiration or earlier termination of this Sublease. The foregoing indemnity obligations of RIDA are in addition to, and not in limitation of, any other indemnity obligations of RIDA contained in this Sublease or any other agreement between the Public Entities and RIDA. Notwithstanding the foregoing, Section 19.2.3 of the Project Implementation Agreement, and not this Section 2.2(b), shall apply to the reimbursement of any fees or expenses incurred by the Public Entity Parties in connection with a Tax Claim (as defined in the Project Implementation Agreement). Notwithstanding anything to the contrary in this Section 2.2(b), RIDA shall have no obligation to pay or reimburse any Public Entity for costs incurred by such Public Entity that such Public Entity would have been obligated to pay without any express right to reimbursement by RIDA, or for which such Public Entity would have been obligated to reimburse RIDA, pursuant to this Sublease or the Project Implementation Agreement.

**Section 2.3 Representations, Covenants and Warranties of the City.** The City represents and warrants to RIDA that each representation and warranty of the City set forth in the Facility Lease is true and correct. The City covenants to perform each obligation that it is required to perform pursuant to the Facility Lease in accordance with the terms thereof unless and to the extent RIDA is required to perform such obligation pursuant to this Sublease. If any Convention Center Lease requires RIDA and/or the City to obtain any approval or authorization from the Port and/or the JEPA, then, promptly after RIDA requests, the City shall cooperate with RIDA and shall use commercially reasonable efforts to cause the Port and/or the JEPA, as applicable, to grant such approval or authorization, as applicable.

**ARTICLE III**

**AGREEMENT TO SUBLEASE; TERM OF SUBLEASE;  
SUBLEASE ADVANCE RENT AND SUBLEASE PAYMENTS**

**Section 3.1 Sublease.** The City hereby sub-subleases the Site and subleases the Improvements and all appurtenant rights thereto, including all easements and licenses granted to the City pursuant to Section 4.1 of the Facility Lease, to RIDA and RIDA hereby sub-subleases the Site and subleases the Improvements and all appurtenant rights thereto from the City upon the terms and conditions set forth herein. Each of the City and RIDA acknowledges that at the time that this Sublease is being entered into, the Convention Center has not yet been constructed on the Site and that RIDA, acting as an independent contractor to the JEPA, will construct the Convention Center in accordance with the terms of the Project Implementation Agreement.

**Section 3.2 Term.** The term of this Sublease (the “Term”) shall commence on the Closing Date (the “Commencement Date”) and shall end on \_\_\_\_\_, 20\_\_, unless extended pursuant to Section 3.3 hereof.

**Section 3.3 Extension of Term.** If the term of the Facility Lease is extended pursuant to Section 4.3 thereof, then the Term shall be extended for an equal period of time. If (a) the Ground Lease has terminated for a reason other than (i) an Event of Default (as defined in the Ground Lease) or (ii) pursuant to RIDA’s exercise of a right to terminate the Ground Lease (for example, by reason of a casualty event as provided in the Ground Lease) and (b) in accordance with law, RIDA remains in possession of the Ground Lease Property notwithstanding the termination (for example, pursuant to Section 365(h) of the Bankruptcy Code), then, on the date that is the 37<sup>th</sup> anniversary of the Commencement Date, this Sublease shall be extended for 29 years on the terms and conditions set forth in this Sublease with such modifications to the provisions with respect to the payment of Rent so that for any period of time following such extension, the sum of the Rent to be paid under this Sublease and the Rent (as defined under the Ground Lease) to be paid under the Ground Lease will equal the Rent (as defined under the Ground Lease) that would have been paid under the Ground Lease as if the Expansion Date had occurred and the Ground Lease had not been terminated.

If any Ground Lease Expansion Amendment (as defined in the Ground Lease) is not executed before the expiration or termination of this Sublease (except for any termination pursuant to Section 5.1(d), Section 5.2(b) or Section 8.2(a)), then the Term shall be extended to the date that is the 66<sup>th</sup> anniversary of the Commencement Date, on the terms and conditions set forth in this Sublease with such modifications to the provisions with respect to the payment of Rent of that for any period of time following such extension, the Rent to be paid under this Sublease will be the amount equal to the difference between (x) the Rent (as defined under the Ground Lease) that would have been paid under the Ground Lease as if the Expansion Date had occurred and (y) the amount of Rent (as defined under the Ground Lease) that Tenant is required to pay under the Ground lease without the Expansion Date having occurred.

**Section 3.4 Sublease Advance Rent.**

(a) The Parties acknowledge that the Convention Center is being constructed pursuant to the Project Implementation Agreement.

(b) Sublease Advance Rent. In partial consideration of the City's agreement to sub-sublease the Site and to sublease the Convention Center to RIDA on the terms set forth in this Sublease, RIDA shall pay Sublease Advance Rent (as defined below) hereunder to be applied to the construction of the Convention Center as set forth in the Project Implementation Agreement, pursuant to which RIDA is acting as the developer and general contractor for the construction of the Convention Center. Upon receipt of a Facility Lease Advance Rent Notice (as defined in the Facility Lease) from the JEPA under the Facility Lease, the City shall promptly submit to RIDA a Sublease Advance Rent Notice for an equivalent amount (such amounts, collectively, "Sublease Advance Rent"). Contemporaneous with its delivery of each Sublease Advance Rent Notice to RIDA, the City shall record the information contained therein in a register of the recordation of the amount of Sublease Advance Rent that is due and payable by RIDA in accordance with this Section 3.4 (the "Sublease Advance Rent Register"). The Sublease Advance Rent Register shall be available for inspection by RIDA at any reasonable time and from time to time upon reasonable prior notice. If RIDA pays Sublease Advance Rent to the City, then the City shall promptly pay an equivalent amount to the JEPA as advance rent under the Facility Lease. Notwithstanding anything to the contrary herein or in any other Convention Center Lease, if RIDA receives a notice from the City confirming that the City assigned to the JEPA its right to receive the payment of Sublease Advance Rent hereunder, then, from and after the date of the receipt of such notice, RIDA shall pay Sublease Advance Rent to the JEPA as the City's assignee. In addition to and not in limitation of the foregoing, if RIDA makes a deposit into the Construction Fund (as defined in the Indenture) without receipt of any Sublease Advance Rent Notice, then the amount so deposited shall constitute Sublease Advance Rent.

(c) Payment of Sublease Advance Rent. RIDA shall pay (i) Sublease Advance Rent (other than any Sublease Advance Rent in connection with any true-up payment pursuant to Section 9.2.6.1 of the Project Implementation Agreement) no later than ten (10) Business Days and (ii) any Sublease Advance Rent in connection with any true-up payment pursuant to Section 9.2.6.1 of the Project Implementation Agreement no later than twenty (20) Business Days, in each case, after it receives a Sublease Advance Rent Notice with respect to such Sublease Advance Rent in accordance with Section 3.4(b). All payments of Sublease Advance Rent and other sums due to City hereunder shall be paid in legal tender of the United States, without notice, invoice, setoff, deduction or demand, except as otherwise expressly provided herein. No payment by RIDA or receipt or acceptance by of a lesser amount than the required amount of Sublease Advance Rent shall be deemed to be a waiver of any current or preceding breach by RIDA of any provision hereof. No endorsement or statement on any check or any letter accompanying any check or payment as Sublease Advance Rent shall be deemed an accord and satisfaction, and City has the right to accept such check or payment without prejudice to City's right to recover the balance of such Sublease Advance Rent or pursue any other remedy in accordance with this Sublease, at law or in equity. RIDA waives all rights that it may have under present or future law to designate the items of Sublease Advance Rent to which any payments made by RIDA are to be credited. RIDA agrees that City may apply any payments made by RIDA to such items of Sublease Advance Rent as City designates, irrespective of any designation or request by RIDA as to the items of Sublease Advance Rent to which such payments should be credited.

**Section 3.5 Base Rent and Additional Rent.** In partial consideration of the City's agreement to sub-sublease the Site and to sublease the Improvements to RIDA on the terms set forth in this Sublease, RIDA agrees to pay to City the Periodic Rent in accordance with this Section 3.5. All payments of Periodic Rent and other sums due to City hereunder shall be paid in legal tender of the United States, without notice, invoice, setoff, deduction or demand, except as otherwise expressly

provided herein. No payment by RIDA or receipt or acceptance by City of a lesser amount than the required amount of Periodic Rent shall be deemed to be a waiver of any current or preceding breach by RIDA of any provision hereof. No endorsement or statement on any check or any letter accompanying any check or payment as Periodic Rent shall be deemed an accord and satisfaction, and City has the right to accept such check or payment without prejudice to City's right to recover the balance of such Periodic Rent or pursue any other remedy in accordance with this Sublease, at law or in equity. RIDA waives all rights that it may have under present or future law to designate the items of Periodic Rent to which any payments made by RIDA are to be credited. RIDA agrees that City may apply any payments made by RIDA to such items of Periodic Rent as City designates, irrespective of any designation or request by RIDA as to the items of Periodic Rent to which such payments should be credited.

(a) Base Rent. RIDA shall pay Base Rent on the dates and in the amounts set forth in Exhibit B-1 hereto.

(b) Additional Rent. RIDA shall pay Additional Rent in an amount calculated in accordance with Exhibit B-2 hereto, payable monthly on the dates set forth in Exhibit B-2.

(c) Late Charges. RIDA hereby acknowledges that late payment by RIDA to City of Periodic Rent will cause City to incur costs not contemplated by this Sublease. In the event RIDA has not paid the Periodic Rent due in accordance with the provisions of this Sublease, within three (3) Business Days from when the Periodic Rent is due, RIDA shall pay, in addition to the unpaid Periodic Rent, five percent (5%) of the Periodic Rent due ("Late Charges"). The Parties hereby agree that said Late Charges are supplemental Rent and are not interest and that the Late Charges apply whether or not RIDA receives notice of its failure to pay Periodic Rent. Notwithstanding the foregoing, in no event shall any Late Charge be less than One Hundred Dollars (\$100). Acceptance by City of any Late Charge or the late payment of any Periodic Rent or any portion thereof shall in no event constitute a waiver of an Event of Default with respect to such overdue amount, nor shall it prevent City from exercising any of its other rights and remedies hereunder. In addition to the application of a Late Charge, if RIDA fails to pay any Periodic Rent when due, then the unpaid Periodic Rent amount shall accrue interest at the Default Rate from the date due until paid, and such interest shall constitute supplemental Rent.

**Section 3.6 Section 467 of the Code.** The Parties acknowledge and agree that, for federal income tax purposes, amounts paid or funded by RIDA pursuant to Sections 3.5(b) (Additional Rent), 3.5(c) (Late Charges), 3.7 (Capital Expenditures as Rent), 3.9 (Reimbursement), 4.5(b) (Payment of Premiums; Right of City to Pay and be Reimbursed), Section 6.6 (Maintenance and Repair) and Section 6.8(b) (City Repair Rights), and which are treated as Rent hereunder, shall constitute "contingent payments" for purposes of Section 467 of the Code and the regulations thereunder and shall be allocable to the period in which the requisite amounts are accrued. For purposes of the foregoing, (i) amounts paid or funded by RIDA pursuant to Sections 3.7 (Capital Expenditures as Rent), Section 6.6 (Maintenance and Repair) and Section 6.8(b) (City Repair Rights) shall, to the extent such amounts would be required to be capitalized into the basis of the Convention Center, be accrued on a "straight-line" basis from the date the relevant improvements are "placed in service" over the remaining Term, (ii) amounts paid by RIDA pursuant to Section 3.4 (Sublease Advance Rent) shall be accrued on a "straight-line" basis from the date such amounts are paid over the remaining Term and (iii) amounts paid by RIDA pursuant to Section 3.5(b) (Base Rent and Additional Rent) shall be allocable to and deductible by RIDA in the taxable period in which such amounts accrued.

**Section 3.7 Capital Expenditures as Rent.** In partial consideration of its right to occupy the Facility, capital expenditures made by RIDA to fund any alterations or any improvements to the Convention Center or the Site shall be treated as supplemental Rent hereunder.

**Section 3.8 Use and Possession.** During the Term, RIDA shall be entitled to the exclusive use and possession of the Facility, subject only to the Permitted Encumbrances and rights of access provided for herein and in the Project Implementation Agreement.

**Section 3.9 Reimbursement.** The reimbursement procedure set forth in this Section 3.9 shall be referred to as the “Reimbursement Procedure”. If under the terms of the Convention Center Leases an amount expended by a Public Entity is to be reimbursed by RIDA, then RIDA shall reimburse the applicable Public Entity for the subject amount within thirty (30) days of RIDA’s receipt of reasonable evidence of the nature and the amount of costs incurred by the applicable Public Entity, including, without limitation, a reasonably detailed invoice or statement from the applicable Public Entity, for the subject amount and, if applicable, copies of any applicable third party invoices, and/or work description. The Parties acknowledge that RIDA’s obligations to reimburse the Public Entities are derived from its interest in the Facility hereunder and thus any amounts owed to the applicable Public Entity pursuant to the Reimbursement Procedure shall accrue interest at the Default Rate from the date due until paid if not paid within the time period permitted under the Reimbursement Procedure.

**Section 3.10 Net-Net-Net Lease.** Subject to the last sentence of this Section 3.10, RIDA acknowledges that the Rent will be absolutely net of any costs or expenses to City relating to the Site or any Improvements and acknowledges and agrees that City shall not be responsible for any costs, charges, expenses and outlays of any nature whatsoever arising from or relating to the Site or any Improvements during the Term, whether foreseen or unforeseen and whether or not within the contemplation of the Parties as of the Commencement Date, except as shall be otherwise expressly provided in the Convention Center Leases. Without limitation of the foregoing, City shall not be required to construct, install, provide or arrange for any utilities, roadway, docks, tide walls, drainage or other improvements of any nature on, in, under or above the Site. Except as expressly set forth herein, RIDA shall not be responsible for the payment of (i) any administrative costs of the Public Entities relating to the Facility, (ii) taxes imposed on the Public Entities based on income or profit of any of the Public Entities as a result of their respective interests in the Facility or undertaking of the transactions contemplated herein, (iii) fees of auditors, accountants, attorneys or engineers, (iv) insurance premiums required to be paid for by the City pursuant to this Sublease, (v) any costs associated with the issuance, administration or enforcement of the Bonds, nor (vi) any other administrative or overhead costs or expenses incurred by any of the Public Entities in connection with this Sublease.

**Section 3.11 Further Assurances and Corrective Instruments.** The City and RIDA agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Site hereby sub-leased or the Convention Center hereby subleased or intended to be sub-leased or subleased, respectively, or for carrying out the express intention of this Sublease.

### **Section 3.12 Security Deposit.**

(a) A security deposit in the amount of \$350,000 shall be provided to the JEPA, as assignee of the City, by RIDA, on or before RIDA's execution of this Sublease. The security deposit shall be held by the JEPA and used for the purpose of remedying an Event of Default. If there shall be an Event of Default, then the JEPA shall have the right, but shall not be obligated, to use, apply or retain all or any portion of the security deposit for the payment of any (a) Rent or any other amount applicable to such Event of Default, or (b) amount that the JEPA may spend or become obligated to spend, or for the compensation of the JEPA for any losses incurred, by reason of such Event of Default (including any damage or deficiency arising in connection with the reletting of the Facility). If any portion of the security deposit (in whatever form) is so used or applied, then, within three (3) Business Days after the JEPA gives written notice to RIDA of such use or application, RIDA shall increase the Letter of Credit (as defined below) (or deliver to the JEPA, as assignee of the City, additional funds, in the case of a cash security deposit) in an amount sufficient to restore the security deposit to the original security deposit amount, and RIDA's failure to do so shall constitute an Event of Default if such failure is not cured within the notice and cure period set forth in Section 8.1(b) below. RIDA waives any and all rights that RIDA may have under Section 1950.7 of the California Civil Code, any successor statute, and all similar provisions of Law, now or hereafter in effect. RIDA agrees that (i) any statutory time frames for the return of a security deposit are superseded by the express period identified in this Section 3.12, and (ii) the JEPA has the right to claim from the security deposit any and all sums expressly identified in this Section 3.12, and any additional sums reasonably necessary to compensate the JEPA for any and all losses or damages caused by the Event of Default, including, but not limited to, all damages or Rent due upon termination of this Sublease pursuant to Section 1951.2 of the California Civil Code. The JEPA shall not be required to keep the security deposit in trust, segregate it or keep it separate from the JEPA's general funds, and RIDA shall not be entitled to any interest accrued on the security deposit.

(b) In satisfaction of RIDA's obligation set forth in this Section 3.12, RIDA may deliver to the JEPA, as assignee of the City, an irrevocable stand-by letter of credit ("Letter of Credit") issued by Wells Fargo Bank, N.A. or another bank that has a Moody's Long Term Letter of Credit rating of "A-" or higher and a Moody's Long Term Deposit rating of "A-" or higher. The principal sum of the Letter of Credit shall be made payable to the JEPA, as assignee of the City, or order. Each Letter of Credit provided during the Term shall be valid for a minimum of twelve (12) months from date of issuance; provided, however, that, subject to Section 3.12(e), when the remaining Term is one (1) year or less, the Letter of Credit shall be valid for a minimum of three (3) months beyond the last day of the Term and if a Letter of Credit is not valid for the entire remaining Term plus three (3) months beyond the last day of the Term, then such Letter of Credit shall be extended or renewed at least sixty (60) days prior to its expiration.

(c) All of the principal sum of the Letter of Credit shall be available unconditionally to the JEPA, as assignee of the City, for the purposes and uses for the security deposit provided in this Section 3.12. The bank, and the form and provisions of the Letter of Credit shall be acceptable to the JEPA, in its reasonable discretion, and if not so acceptable, the JEPA shall have the right to reject such Letter of Credit; provided, however, that a Letter of Credit substantially in the form of Exhibit C attached hereto without material changes shall be deemed acceptable to the JEPA and any of the banks listed on Exhibit D attached hereto shall be deemed acceptable to the JEPA. The Letter of Credit shall not be acceptable to the JEPA if it requires the JEPA to present the Letter of Credit in person, at a location that is not in San Diego County, send written notice of an Event of Default or request or demand payment from RIDA after an Event of Default, prior to the

JEPA drawing on any funds under the Letter of Credit. RIDA acknowledges and agrees that if the JEPA, as assignee of the City, accepts a Letter of Credit from RIDA that must be presented in person at a location that is not in San Diego County, RIDA agrees to pay all reasonable travel and other expenses incurred by the JEPA Parties in presenting the Letter of Credit at its designated location.

(d) Notwithstanding the above, RIDA may elect to provide the required security deposit in the form of cash.

(e) Notwithstanding anything to the contrary herein, but without limiting Section 8.2(d), the JEPA shall release to RIDA or order, as applicable, the full then-remaining amount of the security deposit within ninety (90) days following Completion of the Convention Center and the issuance by the City of the final certificate of occupancy with respect to the Convention Center.

### **Section 3.13 Peaceable Surrender.**

(a) Upon the expiration or earlier termination of this Sublease, (or any New Sublease entered into in accordance with this Sublease, in which case the New Sublease shall control) RIDA shall peaceably surrender the Site to the City in accordance with the end of Term obligations set forth in this Sublease, including without limitation, in the same good order and condition as of the commencement of the Term, reasonable wear and tear and any improvements permitted by this Sublease or the Project Implementation Agreement excepted (subject to any demolition obligations with respect to any such improvements under this Sublease or the Project Implementation Agreement). If RIDA fails to surrender the Site at the expiration of this Sublease or the earlier termination or cancellation thereof in the condition required under this Sublease, in addition to the City's other remedies, RIDA shall defend and indemnify the City from all liability and expense resulting from the delay or failure to surrender, including without limitation any succeeding tenant claims based on RIDA's failure to surrender or the Public Entities' failure to deliver the Site due to RIDA's failure to so surrender the Site and loss of profits due to RIDA's failure to so surrender the Site.

(b) Immediately following the expiration or earlier termination of this Sublease, RIDA shall execute, deliver, and cause to be recorded in the Office of the Recorder of San Diego County, all such documents, including but not limited to a quitclaim deed, as are necessary or advisable to fully release, of record, the encumbrance on title to the Facility which is caused by the terms of this Sublease and convey the Improvements that RIDA may then have (excluding any trade fixtures, installed or constructed on the Site, which shall remain the personal property of RIDA) to the City free and clear of any mechanics' or materialmen's liens and other encumbrances (other than any lien for taxes that are not due and payable and, if the Expansion Date occurs, subject to RIDA's interest in the Improvements under the Ground Lease) and without compensation to any Public Entity or RIDA; it being acknowledged that RIDA will have a leasehold, but not an ownership interest, in the Improvements. RIDA shall thereafter take such actions and execute such documents as may further be necessary or advisable to fully evidence the termination of this Sublease and the release of the City and RIDA from all of their respective obligations hereunder. Without limitation of the foregoing, RIDA hereby appoints the City as RIDA's attorney-in-fact to execute such deed in the name and on behalf of RIDA and to record same in the official records of San Diego County, California. This power of attorney is irrevocable and coupled with an interest. RIDA shall deliver to the City all such documents as are necessary or advisable to fully release, of record, the encumbrances on title to the Facility which are caused by the terms of this Sublease, including, without limitation, any Permitted Financing Encumbrances with respect to the Improvements.



**Section 3.14 Waiver.** No waiver of any provision of this Sublease shall be implied by any failure of a party to enforce any remedy on account of the violation of such provision, even if such violation shall continue or be repeated subsequently. Any waiver by a party of any provision of this Sublease may only be in writing, and no express waiver shall affect any provision other than the one specified in such waiver and that one only for the time and in the manner specifically stated. No receipt of monies by City from RIDA after the termination of this Sublease shall in any way alter the length of the Term or of RIDA's right of possession hereunder or after the giving of any notice shall reinstate, continue or extend the Term or affect any notice given RIDA prior to the receipt of such monies, it being agreed that after the service of notice or the commencement of a suit or after final judgment for possession of the Facility, City may receive and collect any Rent due, and the payment of said Rent shall not waive or affect said notice, suit or judgment. City shall have the power and authority to waive any requirement of RIDA under this Sublease except as such authority may be limited by the Facility Lease; provided, however, that City may elect to obtain approval of the City Council as a condition to exercising this authority.

**Section 3.15 Holdover.** This Sublease shall terminate without further notice at expiration of the Term. Any holding over by RIDA after either expiration or earlier termination of this Sublease without the City's prior written consent shall be a tenancy at-sufferance upon all of the provisions of this Sublease, except those pertaining to the Term, and except that Rent shall be 150% of the Rent in effect under this Sublease prior to such expiration or termination. If RIDA, with the City's consent, remains in possession of the Site after the expiration or earlier termination of this Sublease, such possession shall be deemed a month-to-month tenancy terminable upon thirty (30) days' notice furnished at any time by either Party to the other Party. All provisions of this Sublease, except those pertaining to the Term, shall apply to the month-to-month tenancy, and RIDA shall continue to pay all Rent required by this Sublease. Notwithstanding anything herein to the contrary, in no event shall the Term, together with any holdover period, exceed sixty-six (66) years. Except for the first sentence of this Section 3.15, this Section 3.15 shall not apply if the Expansion Date occurs.

## ARTICLE IV

### INSURANCE

#### **Section 4.1 Insurance Requirements.**

(a) RIDA shall maintain or cause to be maintained at its expense, commencing on the first date after the date that the Construction Period ends, and thereafter, throughout the Term hereof, all policies of insurance that are required by Article 18 of the Ground Lease for operation of the Resort Hotel, in the forms, with all endorsements, and in the amounts required by Article 18 of the Ground Lease; provided that such insurance policies shall also cover the Site and the Improvements with respect to operation thereof; provided, however, RIDA shall ensure that there is no period of time during the Term hereof when neither each insurance policy that is required hereunder is in effect nor any corresponding insurance policy under the Project Implementation Agreement is in effect. The Trustee shall be named as loss payee with respect to all proceeds paid under the all-risk and builders risk insurance covering the Facility only to the extent such proceeds are properly allocable to any loss or damage to the Convention Center with Alterations thereto. No amendments or modifications to the insurance requirements set forth in Article 18 of the Ground Lease shall be made without the City's prior express written consent to such amendments or modifications.

(b) The Public Entities shall be named as additional insureds with respect to all liability insurance policies that Section 4.1(a) requires RIDA to maintain or cause to be maintained.

#### **Section 4.2 Rental Interruption Insurance.**

(a) Coverage and Amount. Except as set forth in this Section 4.2(a), RIDA shall not be required to maintain any rental interruption insurance with respect to the Facility for the City's lost rental income under this Sublease or the JEPA's lost rental income under the Facility Lease ("Facility Lease Lost Rental Income Insurance"). If the City requests that RIDA procure and maintains Facility Lease Lost Rental Income Insurance, then RIDA shall use commercially reasonable efforts to procure such Facility Lease Lost Rental Income Insurance in accordance with this Section 4.2(a) so long as procuring or maintaining such Facility Lease Lost Rental Income Insurance does not adversely affect any other insurance that RIDA maintains in connection with the Resort Hotel or the Convention Center, including any insurance that RIDA is required to procure and maintain pursuant to any Convention Center Lease, the Project Implementation Agreement, the Ground Lease or any documentation that evidences or secures any Financing Transaction (as defined in the Ground Lease) or any Financing Transaction ("RIDA Baseline Insurance"), it being understood that RIDA may intend to procure some or all of the RIDA Baseline Insurance through a program managed by the Hotel Operator or an affiliate of the Hotel Operator, and RIDA may determine in its reasonable discretion that procuring the RIDA Baseline Insurance other than through such program would have an adverse effect on the RIDA Baseline Insurance. RIDA shall request proposals for Facility Lease Lost Rental Income Insurance after the City requests that RIDA do so, and shall present such proposals to the City for its consideration. If and as needed, RIDA and the City shall meet and confer regarding such proposals. The Parties understand that it may be most efficient for RIDA to procure Facility Lease Lost Rental Income Insurance in conjunction with the RIDA Baseline Insurance. If (i) the City, in its reasonable discretion, selects a proposal for the procurement of such Facility Lease Lost Rental Income Insurance and (ii) RIDA (A) determines that procuring such Facility Lease Lost Rental Income Insurance will not adversely affect any RIDA Baseline Insurance (including RIDA's ability to procure RIDA Baseline Insurance) or (B) determines in its sole discretion to procure such Facility Lease Lost Rental Income Insurance, then RIDA shall procure such Facility Lease Lost Rental Income Insurance for the applicable policy period (assuming that such Facility Lease Lost Rental Income Insurance remains commercially available to RIDA), and the City shall promptly reimburse RIDA for the amount by which (x) the aggregate amount expended by RIDA in connection with obtaining and maintaining the RIDA Baseline Insurance and the Facility Lease Lost Rental Income Insurance exceeds (y) the amount that RIDA would have expended in connection with maintaining the RIDA Baseline Insurance had RIDA not also obtained the Facility Lease Lost Rental Income Insurance. Promptly after the City so requests, RIDA shall provide documentation to the City that reasonably evidences the amount of such excess.

(b) Additional Requirements. Rental interruption insurance shall name the JEPA as the insured and the Trustee as loss payee as their interests appear.

#### **Section 4.3 [Reserved].**

#### **Section 4.4 Payment of Insurance Proceeds.**

(a) Proceeds of any policies of liability insurance required hereunder shall be applied toward extinguishment or satisfaction of the liability with respect to which the insurance proceeds shall have been paid.

(b) Any Net Proceeds of all-risk insurance and builders risk insurance (if any) provided pursuant to Section 4.1 with respect to the Facility shall be paid and be applied as provided in Section 5.2 hereof, Section 6.1(a) of the Facility Lease and Section 9.2 of the Project Implementation Agreement.

(c) Proceeds of any Facility Lease Rental Income Insurance that RIDA procures at the request of the City under Section 4.2(a) shall be paid to the Trustee in accordance with Section 5.2 of the Facility Lease and be credited to the payment of Lease Payments under the Facility Lease as they become due and payable.

#### **Section 4.5 General Insurance Provisions.**

(a) Form of Policies. All policies of insurance required to be procured and maintained pursuant to this Sublease, other than the worker's compensation insurance required by Section 18.2.4 of the Ground Lease, shall provide that each of the Public Entities and the Trustee shall receive 30 days' notice of each expiration, or any intended cancellation thereof or reduction of the coverage provided thereby. If RIDA receives any notice of expiration or intended cancellation of any such insurance or reduction of coverage from the insurer, it shall promptly deliver such notice to the City. All insurance policies required hereunder must be provided by an insurer with an S&P or AM Best rating of not less than "A-".

(b) Payment of Premiums; Right of City to Pay and be Reimbursed. RIDA shall pay or cause to be paid when due the premiums for all insurance policies required to be purchased by RIDA hereunder. In the event that RIDA fails to maintain all policies of insurance required by Section 4.1 of this Sublease in the forms, with all endorsements, and in the amounts required hereby, then the City may purchase such insurance and RIDA shall reimburse the City for all costs of such insurance if purchased by the City, which reimbursement shall be supplemental Rent.

(c) Protection of the Trustee. The Trustee shall not be responsible for the sufficiency or adequacy of any insurance herein required and shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss agreed to by RIDA and the City.

(d) Evidence of Insurance. During the Term, RIDA shall provide the City with insurance certificates, in the form customary in the insurance industry, issued by the insurer evidencing the existence of the necessary insurance policies and certified endorsements effecting coverage required by Section 4.1.

**Section 4.6 Cooperation.** The City shall cooperate fully with RIDA in filing any proof of loss with respect to any insurance policy maintained pursuant to this Article 4 and in the prosecution or defense of any prospective or pending Condemnation proceeding with respect to the Facility or any portion thereof.

## ARTICLE V

### EMINENT DOMAIN; DAMAGE OR DESTRUCTION; USE OF NET PROCEEDS

#### Section 5.1 Eminent Domain.

(a) Eminent Domain. If all or any portion of the Facility shall be condemned pursuant to exercise of the power of eminent domain, or acquired under an actual threat of the exercise of such power (collectively, "Condemnation"), then the rights and obligations of the City and RIDA with respect thereto shall be as set forth in this Section 5.1. Nothing in this Section 5.1 shall be interpreted to prevent the City from exercising its power of eminent domain as to RIDA's sub-subleasehold interest in the Site and subleasehold interest in the Improvements.

(b) Notice of Condemnation. If either Party receives notice of any Condemnation or intended Condemnation (including, without limitation, service of process), then, within five (5) Business Days of receipt thereof, such Party shall deliver to the other Party an exact copy of such notice of any Condemnation or intended Condemnation and the date such notice was received. The Port shall receive a copy of any notice received by either Party under this Section 5.1(b).

(c) Representation of Interest. City and RIDA shall each have the right to represent its respective interests in such proceeding or negotiation with respect to a Condemnation or intended Condemnation and to make full proof of its claims. City and RIDA each agrees to execute and deliver to the other Party any instrument which may be required to effectuate or facilitate the provisions of this Section 5.1.

(d) Early Termination. In the event of a Condemnation (other than a Temporary Condemnation) of all of the Facility, the 2022A Bonds shall be redeemed in whole from the Available Condemnation Amount (defined in subparagraph (C) below) and the amount, if any, required to be paid by RIDA pursuant to subparagraph (C) below and RIDA shall obtain the consents from the Permitted Lenders pursuant to subparagraph (A) below and the releases from the Permitted Lenders pursuant to subparagraph (B) below. In the event (i) of a Condemnation (other than a Temporary Condemnation) of a portion of the Facility with respect to which the total proceeds of Condemnation exceed Seventy Million Dollars (\$70,000,000), and prevents RIDA from reasonably and economically using the remainder of the Facility, for the same Permitted Use as at the time of the Condemnation (as reasonably determined by RIDA and reasonably approved by the City and the JEPA) or (ii) of a Condemnation (other than a Temporary Condemnation) where the Facility or any portion thereof needs to be repaired or restored as a result of a Condemnation (other than a Temporary Condemnation), (1) the cost of such repair or restoration exceeds ten percent (10%) of the then current fair market value of all of the Convention Center and (2) the amount that the Trustee has received as part of the Leasehold Award from the Condemnation is less than ninety percent (90%) of the cost of such repair or restoration, then, in the case of either (i) or (ii) above, RIDA may terminate this Sublease by delivering to the City written notice thereof and if RIDA exercises this option, this Sublease shall then terminate as of the date the following conditions are satisfied:

(A) each Permitted Lender and the Hotel Operator consents in writing to the termination of this Sublease and the Hotel Operator consents in writing to termination of the Hotel Management Agreement concurrently with the termination of this Sublease;

(B) each Permitted Lender releases all liens in its favor on the Site, Improvements, and RIDA's subleasehold interest in this Sublease (but not in any Leasehold Award to which such Permitted Lender is entitled pursuant to Section 5.1(g)); and

(C) as applicable, (a) if such Condemnation occurs at a time when any 2022A Bonds are outstanding and the Completion Guaranty has not terminated in accordance with the terms thereof, RIDA pays to the Trustee the lesser of: (i) Five Million Dollars (\$5,000,000) and (ii) the positive difference (if any) of (A) the amount that is necessary to redeem the outstanding principal amount of the 2022A Bonds under the Indenture (other than the principal amount of the 2022A Bonds that corresponds to the amount of capitalized interest and costs of issuance (with respect to the Bonds) funded with the proceeds of the 2022A Bonds) minus (B) the sum of: (1) the amount that is then on deposit in the 2022A Account of the Construction Fund; (2) the amount on deposit in the 2022A Account of the Reserve Fund; (3) the amount on deposit in the Revenue Fund that would have been applied to pay debt service on the 2022A Bonds in the current Bond Year, as calculated by the JEPA based on the debt service due on all Bonds then outstanding (such aggregate amount in clauses (1) through (3), the "Available Condemnation Amount on Deposit"); and (4) the amount of the Leasehold Award that the Trustee has received with respect to such Condemnation (such aggregate amount in this clause (B), the "Available Condemnation Amount"), or (b) if such Condemnation occurs at a time when any 2022A Bonds are outstanding and the Completion Guaranty has terminated in accordance with the terms thereof, RIDA pays to the Trustee the positive difference (if any) of (A) the amount that is necessary to redeem the outstanding principal amount of the 2022A Bonds under the Indenture minus (B) the Available Condemnation Amount.

If (i) a Condemnation (as defined in the Ground Lease) affects the Resort Hotel, and (ii) RIDA will no longer operate the Resort Hotel under the Ground Lease (it being understood that such failure to operate will result in a material reduction in Convention Center bookings) then RIDA shall within ninety (90) days of the Condemnation, pay to the Trustee (a) the amount set forth in Section 5.1(d)(C)(a) above if such Condemnation occurs at a time when any 2022A Bonds are outstanding and the Completion Guaranty has not terminated in accordance with the terms thereof, or (b) the amount set forth in Section 5.1(d)(C)(b) above if such Condemnation occurs at a time when any 2022A Bonds are outstanding and the Completion Guaranty has terminated in accordance with the terms thereof, and, except as set forth in the following sentence, this Sublease shall terminate as of the date when the conditions set forth in Sections 5.1(d)(A) and 5.1(d)(B) are satisfied. As an alternative to terminating this Sublease following the redemption of the 2022A Bonds pursuant to this paragraph, RIDA may deliver notice to the City that it is electing to continue as the subtenant under this Sublease following the termination of the Ground Lease. In such event, RIDA shall continue to be bound by all the terms of this Sublease following the termination of the Ground Lease.

Any termination of this Sublease pursuant to this Section 5.1(d) shall act to relieve RIDA from any further liability under this Sublease except as to obligations accruing or arising on or prior to such termination or which are otherwise required to be performed in connection with such termination or surrender of the Facility or which otherwise expressly survive such termination. In the event of such termination, RIDA shall deliver the portion of the Site that has not been Condemned to the City in a Buildable Condition and in accordance with any other condition required for the surrender of the Site under this Sublease.

(e) Partial Condemnation. If only a portion of the Site or the Improvements is subject to Condemnation and this Sublease is not terminated pursuant to Section 5.1(d) above, then (i) this Sublease shall continue in full force and effect upon the same terms and conditions as set

forth herein, (ii) the Base Rent shall be reduced in proportion to the loss of use of the Site and/or the Improvements, as applicable, after the Condemnation as compared to the use of the Site and/or the Improvements, as applicable, immediately prior to the Condemnation (as reasonably determined by the City and approved by RIDA in its reasonable discretion), and (iii) any Leasehold Award shall be applied as set forth in Section 5.1(g)(i)(A)(1) and, if applicable, Section 5.1(g)(i)(B). If only a portion of the Site or the Improvements is subject to Condemnation and this Sublease is terminated pursuant to Section 5.1(d) above, then any Leasehold Award shall be applied as set forth in Section 5.1(g)(i)(B).

(f) Temporary Condemnation. If the Facility or any portion thereof is subject to a Temporary Condemnation, then this Sublease shall continue in full force and effect. Any portion of an award, settlement or other compensation or damages which may be given for such Temporary Condemnation attributable to the Term shall be paid to the Trustee, as assignee of the JEPAs of the Assigned Rights, and shall be deposited by the Trustee in the Revenue Fund for application in accordance with Section 4.2 of the Indenture, and the Base Rent under this Sublease shall be adjusted or abated in an amount equal to the amount of such portion of such award, settlement or other compensation or damages, as applicable. As used herein, a “Temporary Condemnation” shall mean any taking which is not intended by the condemning authority to be permanent at the time such Condemnation initially occurs.

(g) Award.

(i) *Leasehold Award.* Any and all awards and/or settlements or other compensation or damages for any Condemnation (excluding any compensation or damages for any Temporary Condemnation and excluding any compensation or damages attributable to RIDA’s personal property that would be retained by RIDA at the end of the Term) of any portion of or all of the Facility or the leasehold estate created by this Sublease (collectively, “Leasehold Award”) shall be paid as follows:

(A) (1) Provided this Sublease is not terminated pursuant to Section 5.1(d)(i) above, that portion of the Leasehold Award determined by the City to be reasonably necessary to repair and restore the remaining portion of the Improvements shall be payable in trust to the Trustee and shall be deposited in the Insurance and Condemnation Fund pursuant to Section 4.5 of the Indenture and Section 6.1(d) of the Facility Lease. Such portion of the Leasehold Award shall be held in trust by the Trustee in the Insurance and Condemnation Fund pursuant to the terms of the Indenture. If, no later than six (6) months after the date that any applicable Condemnation has occurred or such later date as the JEPAs consent to pursuant to Section 6.1(c) of the Facility Lease, RIDA has provided to the City, the JEPAs and the Trustee the certifications to be provided by RIDA as set forth in Section 6.1(b)(i)(A) and Section 6.1(b)(i)(C) of the Facility Lease, and the City has provided the certifications to be provided by the City as set forth in Sections 6.1(b)(i)(A), 6.1(b)(i)(B) and 6.1(d)(iii) of the Facility Lease, then such portion of the Leasehold Award shall be transferred to the 2022A Account of the Construction Fund pursuant to Section 4.5 of the Indenture and disbursed by the Trustee in accordance with Section 6.1(d)(iii) of the Facility Lease, the terms of the Indenture and Section 9.2 of the Project Implementation Agreement, for the payment of the costs of repairing and restoring the remaining portion of the Improvements to substantially its condition prior to such Condemnation or to such other condition as the City (at RIDA’s request and based on information provided by RIDA) has certified to the Trustee pursuant to Section 6.1(d)(iii) of the Facility Lease will have an annual fair rental value of not less than the Maximum Lease Payments (under and as defined in the Facility Lease) that the City is required to pay in each Lease Year (as

defined in the Facility Lease). If RIDA requests that the City provide such certification, then the City shall promptly request that RIDA provide information that the City reasonably requires to establish the truthfulness of such certification, RIDA shall provide the City with such information, and if the truthfulness of such certification is established to the reasonable satisfaction of the City, then the City shall make such certification as and when required under the Facility Lease. If any such Condemnation occurs prior to the date that the Convention Center has been Completed and the Convention Center is to be repaired and restored as provided above, then, in addition to the Condemnation Proceeds deposited in the Insurance and Condemnation Fund and subsequently transferred to the 2022A Account of the Construction Fund, any amounts remaining on deposit in the 2022A Account of the Construction Fund shall continue to be available to fund construction of the Convention Center and shall be disbursed by the Trustee in accordance with Section 3.10 of the Indenture and Section 9.2 of the Project Implementation Agreement prior to disbursement by the Trustee of any amounts initially on deposit in the Insurance and Condemnation Fund and later transferred to the 2022A Account of the Construction Fund.

(2) If there is no Trustee or if there is but the Trustee declines to act as a trustee for the disbursement of funds as provided above, then such Leasehold Award shall be payable in trust to the Permitted Mortgage Lender with an outstanding Permitted Lease Financing Encumbrance that is still outstanding, and shall be disbursed by such Permitted Mortgage Lender as provided above. If the Permitted Mortgage Lender is the trustee for disbursement, then the Permitted Mortgage Lender may disburse the progress payments in accordance with its normal loan disbursement procedures (e.g., upon receipt of appropriate mechanics' lien releases, and invoices) so long as such disbursement procedures are reasonably acceptable to the City and ensure that the Leasehold Award is applied to the costs of repairing and restoring the remaining portion of the Improvements or to redeem the 2022A Bonds as set forth in this Section 5.1. If there is no such Permitted Mortgage Lender, or if there is, but it declines to hold and disburse the Leasehold Award, then such Leasehold Award shall be payable to a bank or trust company doing business in the County of San Diego agreed upon by the Parties, or if the Parties fail to agree, to Bank of America, N.A., or its successor, and such Leasehold Award shall be deposited in interest bearing accounts or deposits agreed upon by the Parties, or if the Parties fail to agree, then in the bank's regular passbook savings account, and shall be disbursed as provided above after all amounts in the 2022A Account of the Construction Fund are disbursed by the Trustee for the costs of repairing and restoring the remaining portion of the Improvements or to redeem the 2022A Bonds as set forth in this Section 5.1.

(B) If this Sublease is terminated pursuant to Section 5.1(d), or if there are excess proceeds available after completion of the repair and restoration of the remaining portion of the Improvements as provided above, then any portion of the Leasehold Award not used for the repair and restoration of the remaining portion of the Improvements pursuant to clause (A) above, or used to place the Improvements in a Buildable Condition and satisfy any other conditions required for the surrender of the Site under this Sublease to the City, shall be paid as follows (with all amounts on deposit in the funds and accounts listed below being exhausted first prior to use of any Net Proceeds):

(1) *first*, a portion of such Net Proceeds equal to an amount that, when taken together with the Available Condemnation Amount on Deposit, will be sufficient to redeem the 2022A Bonds under the Indenture, shall be used (along with the Available Condemnation Amount on Deposit) to redeem the 2022A Bonds,

(2) *second*, to RIDA in an amount equal to the unamortized portion of all Advance Rent paid by RIDA under this Sublease, as reimbursement of such Advance Rent,

(3) *third*, to the Port to the extent of any loss in value of the Port's fee interest in the Site, and

(4) *fourth*, to RIDA.

(C) If there is any Permitted Lender that has a Permitted Financing Encumbrance outstanding, any portion of the Leasehold Award relating to the Improvements and not used as described in clauses (A) and (B) and which is payable to RIDA pursuant to clause (B) shall be paid to the Permitted Lender that has the highest priority lien (i.e., the Senior Permitted Mortgage Lender), to be applied against the indebtedness that is secured by its Permitted Financing Encumbrance to the extent such payment is required to be made by RIDA pursuant to the terms of the Permitted Financing Encumbrance held by the Permitted Lender,

(ii) *Claims by RIDA*. Nothing in this Section 5.1 shall be construed to preclude RIDA from prosecuting any claim directly against the condemning authority (but only in a manner consistent with this Section 5.1), but not against the City or the Port (unless the City or the Port is the condemning entity), if such claim does not diminish or otherwise adversely affect the Leasehold Award or the City's rights herein. RIDA shall be entitled to any award allocated by a court of competent jurisdiction to RIDA's personal property.

(h) RIDA hereby acknowledges that the City may consult with the JEPA prior to making any determinations under this Section 5.1, and, with respect to certain determinations, the City is required to consult with the JEPA pursuant to the Facility Lease.

## **Section 5.2 Damage or Destruction.**

(a) Casualty. Subject to Section 5.2(b) and Section 5.2(c), in the event of any damage to or destruction of the Site or any Improvements, whether or not from a risk coverable by the insurance described in Section 4.1, RIDA shall promptly repair and restore the Site or such Improvements, in a manner reasonably approved in writing by the City, so that after such restoration and repair, the Facility is in substantially the same condition as existed prior to such event of damage or destruction, as applicable, or to such other condition as the City, at RIDA's reasonable request and based on information provided by RIDA, has certified to the JEPA, the Port and the Trustee will have an annual fair rental value in each Lease Year (under and as defined in the Facility Lease) of not less than the Maximum Lease Payment (under and as defined in the Facility Lease) in each Lease Year. If RIDA requests that the City provide such certification, then the City shall reasonably request that RIDA provide information that the City reasonably requires to establish the truthfulness of such certification, RIDA shall provide the City with such information, and if the truthfulness of such certification is established to the reasonable satisfaction of the City, then the City shall make such certification as and when required under Section 6.1(b)(i)(A) of the Facility Lease.

Any property insurance policy proceeds received in connection with and that are allocable to such damage to or destruction of the Site or such Improvements ("Casualty Proceeds") shall be paid to the Trustee as "loss payee" under the property insurance policies that are required to be maintained pursuant to the Project Implementation Agreement and this Sublease and shall be



deposited into the Insurance and Condemnation Fund pursuant to Section 4.5 of the Indenture and Section 6.1(a) of the Facility Lease. Such Casualty Proceeds shall be held in trust by the Trustee in the Insurance and Condemnation Fund pursuant to the terms of the Indenture. If, no later than six (6) months after the date that any damage to or destruction of the Site or any Improvements has occurred or such later date as the JEPA consents to pursuant to Section 6.1(b) of the Facility Lease, RIDA has provided to the City, the JEPA and the Trustee the certifications to be made by RIDA as set forth in Section 6.1(b)(i)(A) and Section 6.1(b)(i)(C) of the Facility Lease, and the City has provided the certifications to be made by the City as set forth in Section 6.1(b)(i)(A) and Section 6.1(b)(i)(B) of the Facility Lease, then such Casualty Proceeds shall be transferred by the Trustee to the 2022A Account of the Construction Fund and disbursed by the Trustee in accordance with Section 6.1(b) of the Facility Lease, the terms of the Indenture and Section 9.2 of the Project Implementation Agreement to fund the repair or restoration of the Site and the Improvements. If RIDA has made the certifications to be made by RIDA pursuant to Section 6.1(b)(i)(A) and Section 6.1(b)(i)(C) of the Facility Lease and requests the City to make the certifications to be made by the City in Section 6.1(b)(i)(A) and Section 6.1(b)(i)(B) of the Facility Lease then the City shall promptly request information that the City reasonably requires to establish the truthfulness of RIDA's certifications and to make the City's required certifications, and if the truthfulness of RIDA's certifications and the evidence required by the City to make its certifications is established to the reasonable satisfaction of the City, then the City shall promptly make such certifications as and when required under the Facility Lease. If any damage to or destruction of the Site or any Improvements occurs prior to the date that such Improvements have been Completed, then, in addition to the Casualty Proceeds deposited in the Insurance and Condemnation Fund and subsequently transferred to the 2022A Account of the Construction Fund, all amounts remaining on deposit in the 2022A Account of the Construction Fund shall continue to be available to fund construction of the Site and the Improvements and shall be disbursed by the Trustee in accordance with Section 3.10 of the Indenture and Section 9.2 of the Project Implementation Agreement prior to disbursement by the Trustee of any Casualty Proceeds deposited in the Insurance and Condemnation Fund and subsequently transferred to the 2022A Account of the Construction Fund. Upon completion of repair or restoration of such damage or destruction, as applicable, free and clear of mechanics or other liens, any remaining balance of the Casualty Proceeds in the 2022A Account of the Construction Fund with respect to such damage or destruction, as applicable (exclusive of any proceeds applicable to RIDA's personal property that would be retained by RIDA at the end of the Term, all of which shall be paid to RIDA), shall be paid to RIDA as reimbursement of the unamortized portion of any Advance Rent previously paid by RIDA; provided, however, if there is any Permitted Lender that has a Permitted Financing Encumbrance outstanding, then such amount shall be paid to the Permitted Lender that has the highest priority lien to be applied against the indebtedness that is secured by its Permitted Financing Encumbrance to the extent such payment is required to be made by RIDA pursuant to the terms of the Permitted Financing Encumbrance held by the Permitted Lender.

If there is no Trustee or if there is but the Trustee declines to act as a trustee for the disbursement of funds as provided above, then any Casualty Proceeds shall be payable in trust to the Permitted Mortgage Lender with an outstanding Permitted Lease Financing Encumbrance that is still outstanding, and shall be disbursed by such Permitted Mortgage Lender as provided above. If the Permitted Mortgage Lender is the trustee for disbursement, then the Permitted Mortgage Lender may disburse the payments in accordance with its normal disbursement procedures (e.g. upon receipt of appropriate mechanics lien releases, invoices, etc.) so long as such disbursement procedures are reasonably satisfactory to City and ensure that the Casualty Proceeds are applied to the costs of repairing, restoring or replacing the Site and the Improvements that were damaged or destroyed. If there is no such Permitted Mortgage Lender, or if there is, but it declines to hold and disburse the

Casualty Proceeds, then such Casualty Proceeds shall be payable to a bank or trust company doing business in the County of San Diego agreed upon by the Parties, or if the Parties fail to agree, to Bank of America, N.A., or its successor, and such Casualty Proceeds shall be deposited in interest bearing accounts or deposits agreed upon by the Parties, or if the Parties fail to agree, then in the bank's regular passbook savings account, and shall be disbursed as provided above after all amounts in the 2022A Account of the Construction Fund are disbursed by the Trustee for the costs of repairing and restoring the remaining portion of the Site and the Improvements.

To the extent that the Casualty Proceeds and all amounts that are on deposit in the 2022A Account of the Construction Fund, are insufficient to pay for the costs of restoring, repairing or replacing the damaged Site and Improvements, RIDA shall pay such deficiency to the Trustee for application to the restoration costs in accordance with Section 6.1(b) of the Facility Lease, within ninety (90) days after the insurer first makes available such Casualty Proceeds for repair, restoration or replacement. In satisfaction of its obligation under the preceding sentence, RIDA may provide a letter(s) of credit or a completion guaranty, in each case, in a form reasonably acceptable to each of the City, the Port and the JEP A, in an amount equal to such deficiency. As and to the extent provided in the Project Implementation Agreement, the provisions of Article 9 of the Project Implementation Agreement shall apply to all work performed pursuant to this Section 5.2. Notwithstanding the foregoing, if RIDA is not able to obtain sufficient Casualty Proceeds (in the case of an insured casualty) or construction funds (in the case of an uninsured casualty) to commence repair, restoration or replacement of the damaged Site or Improvements within ninety (90) days of such damage or destruction, and in the case of an insured casualty, RIDA has used its best efforts to so obtain such Casualty Proceeds or, in the case of an uninsured casualty, RIDA has used its best efforts to obtain sufficient construction funds, then RIDA shall have such additional time as is necessary to obtain such Casualty Proceeds or construction funds (but in no event to exceed one hundred and eighty (180) days from the date of such damage or destruction) in which to commence to repair, restore or replace the damaged Site and Improvements (including commencing engineering or permitting with respect thereto).

(b) Termination. Notwithstanding anything in Section 5.2(a) to the contrary, if: (1) (A) there is damage or destruction to the Site or any Improvements and (B) (a) the cost of repairing said damage or destruction exceeds Fifty Million Dollars (\$50,000,000) and a Permitted Mortgage Lender requires that any or all of Casualty Proceeds with respect to such damage or destruction are used to repay any indebtedness that is secured by a Permitted Lease Financing Encumbrance or (b) the cost of repairing said damage or destruction exceeds the Casualty Proceeds with respect to such damage or destruction (exclusive of any Casualty Proceeds attributable to RIDA's personal property that would be retained by RIDA at the end of the Term) by at least Five Million Dollars (\$5,000,000) then RIDA shall have the option to terminate this Sublease and if RIDA exercises such option, this Sublease shall then terminate upon RIDA's satisfaction of all of the requirements in subparagraphs (i) through (vi) below, or (2) (A) there is damage or destruction to any Improvements and (B) Casualty Proceeds with respect to such damage or destruction are required to be applied in accordance with Section 6.1(c) of the Facility Lease because the certifications required to be made pursuant to Section 6.1(b)(i) of the Facility Lease are not provided to the JEP A and the Trustee within six (6) months of said damage or destruction, then RIDA shall promptly satisfy the requirements in subparagraphs (i) and (iii) through (vi) below and this Sublease shall then terminate:

(i) RIDA shall have procured and maintained all property damage insurance that it is required to procure and maintain pursuant to this Sublease (except for any immaterial deviation from such requirements) and RIDA shall have exercised commercially

reasonable efforts to obtain all available Casualty Proceeds with respect to such damage or destruction;

(ii) RIDA shall, within ninety (90) days after the date of such damage or destruction, give the City written notice of its election to terminate (“Notice of Election to Terminate”);

(iii) RIDA shall secure and deliver to the City the written consent of each Permitted Lender and the Hotel Operator to terminate this Sublease and the Hotel Operator shall have consented in writing to termination of the Hotel Management Agreement concurrently with the termination of this Sublease;

(iv) RIDA shall secure and deliver to the City the releases from each Permitted Lender of all liens in favor of each Permitted Lender on the Site, Improvements, and RIDA’s interest in this Sublease effective as of the termination date (other than any liens with respect to insurance proceeds to which such Permitted Lender is entitled pursuant to this Section 5.2, if any);

(v) as applicable, (A) if such damage or destruction occurs at a time when any 2022A Bonds are outstanding and the Completion Guaranty has not terminated in accordance with the terms thereof, RIDA pays to the Trustee the lesser of: (1) Five Million Dollars (\$5,000,000) and (2) the positive difference (if any) of (x) the amount that is necessary to redeem the outstanding principal amount of the 2022A Bonds under the Indenture (other than the principal amount of the 2022A Bonds that corresponds to the amount of capitalized interest and costs of issuance (with respect to the Bonds) funded with the proceeds of the 2022A Bonds) minus (y) the sum of: (a) the amount that is then on deposit in the 2022A Account of the Construction Fund; (b) the amount on deposit in the 2022A Account of the Reserve Fund; (c) the amount on deposit in the Revenue Fund that would have been applied to pay debt service on the 2022A Bonds in the current Bond Year, as calculated by the JEPA based on the debt service due on all Bonds then outstanding (such aggregate amount in clauses (a) through (c), the “Available Casualty Amount on Deposit”); and (d) the amount of the Casualty Proceeds that the Trustee has received with respect to such damage or destruction (such aggregate amount in this clause (A), the “Available Casualty Amount”), or (B) if such damage or destruction occurs at a time when any 2022A Bonds are outstanding and the Completion Guaranty has terminated in accordance with the terms thereof, RIDA pays to the Trustee the positive difference (if any) of (x) the amount that is necessary to redeem the outstanding principal amount of the 2022A Bonds under the Indenture minus (y) the Available Casualty Amount, and

(vi) RIDA shall, within one hundred and eighty (180) days of the City’s receipt of the Notice of Election to Terminate or the termination date of this Sublease pursuant to Section 5.2(b)(2) above, surrender the Site to the City in a Buildable Condition and in accordance with any other conditions required for the surrender of the Site under this Sublease to the City.

If (i) any damage to or destruction of the Resort Hotel occurs, and (ii) RIDA will no longer operate the Resort Hotel under the Ground Lease (it being understood that such failure to operate will result in a material reduction in Convention Center bookings) then RIDA shall within ninety (90) days of such damage or destruction pay to the Trustee (a) the amount set forth in Section 5.2(b)(v)(A) above if such damage or destruction occurs at a time when any 2022A Bonds are outstanding and the Completion Guaranty has not terminated in accordance with the terms thereof, or (b) the amount set forth in Section 5.2(b)(v)(B) above if such damage or destruction occurs at a time when any 2022A Bonds are outstanding and the Completion Guaranty has

terminated in accordance with the terms thereof, and, except as set forth in the following sentence, this Sublease shall terminate as of the date when the conditions set forth in Section 5.2(b)(iii), Section 5.2(b)(iv) and Section 5.2(b)(vi) are satisfied. As an alternative to terminating the Sublease following the redemption of the 2022A Bonds pursuant to this paragraph, RIDA may deliver notice to the City that it is electing to continue as the subtenant under this Sublease following the termination of the Ground Lease. In such event, RIDA shall continue to be bound by all the terms of this Sublease following the termination of the Ground Lease.

(c) In the event of a damage or destruction giving rise to a termination of this Sublease, any and all Casualty Proceeds (exclusive of any proceeds applicable to RIDA's personal property that would be retained by RIDA at the end of the Term, all of which shall be paid to RIDA) paid to the Trustee shall be distributed by the Trustee as follows (with all amounts on deposit in the funds and accounts listed below being exhausted first prior to use of any Net Proceeds):

(i) *first*, a portion of such Net Proceeds equal to an amount that, when taken together with the Available Casualty Amount on Deposit, will be sufficient to redeem the 2022A Bonds under the Indenture, shall be used (along with the Available Casualty Amount on Deposit) to redeem the 2022A Bonds;

(ii) *second*, the remaining amount of Net Proceeds shall be distributed to RIDA, provided, however, if there is any Permitted Lender that has a Permitted Financing Encumbrance outstanding, then such amount shall be paid to the Permitted Lender that has the highest priority lien to be applied against the indebtedness that is secured by its Permitted Financing Encumbrance (i.e., the Senior Permitted Mortgage Lender) to the extent such payment is required to be made by RIDA pursuant to the terms of the Permitted Financing Encumbrance held by the Permitted Lender.

(d) No Rental Abatement. Except as may be expressly permitted in this Sublease, RIDA shall not be entitled to any abatement or reduction in the Rent during any period of time that any portion of the Improvements or any Alterations located on the Site are in need of repair, restoration or replacement or are under construction for such repairs, restoration or replacements or any other period of time during the Term.

(e) Waiver of Statutory Provisions. The provisions of this Sublease, including this Section 5.2, constitute an express agreement between the City and RIDA with respect to any and all damage to, or destruction of, all or any part of the Facility or any portion thereof, and any California statute or regulation, now or hereafter in effect, regarding the rights or obligations of a tenant concerning damage or destruction following a casualty event are waived and shall have no application to this Sublease or any damage or destruction to all or any part of the Facility as a result of a casualty event.

(f) RIDA hereby acknowledges that the City may consult with the JEPA prior to making any determinations under this Section 5.2 and, with respect to certain determinations, the City is required to consult with the JEPA pursuant to the Facility Lease.

## ARTICLE VI

### CONDITIONS AND COVENANTS WITH RESPECT TO THE FACILITY

#### Section 6.1 Permitted Use of the Facility.

(a) Permitted Use. RIDA represents and warrants as of the Commencement Date that it has an immediate essential need for all of the Facility, which need is not expected to be temporary or to diminish during the Term, and that RIDA shall make use of the Facility (i) as approximately 275,000 net usable square feet of meeting space located in the Convention Center (the “Primary Use”), (ii) any use which is ancillary or incidental to the Primary Use described in this Section 6.1, and (iii) any other use of the Facility that is approved by the City in its sole and absolute discretion, in writing; provided that any such uses are not restricted or prohibited by the CDP or any Laws (collectively, the “Permitted Use”); and provided, further, that in the event of any conflict between the terms of this Section 6.1 and the CDP or any Laws, RIDA shall deliver notice to the City of such conflict and the Parties shall meet and confer within ten (10) days of the City receiving RIDA’s notice to discuss the conflict and attempt to resolve the conflict in good faith. If the conflict cannot be resolved by the Parties within thirty (30) days after the meet and confer commences, then the Parties shall endeavor to resolve the dispute pursuant to Section 26.12.10 of the Project Implementation Agreement. Except as expressly provided herein, RIDA shall not use or permit the Facility to be used for any uses or purposes other than the Permitted Use. This restriction on use of the Facility absolutely prohibits a change in use by RIDA to a use that is not a Permitted Use.

RIDA agrees to comply with all project conditions and all applicable mitigation measures, including, without limitation, those contained in the final Environment Impact Report “Chula Vista Bayfront Master Plan and Port Master Plan Amendment Final Environmental Impact Report,” (UPD# #83356-EIR-658, SCH #2005081077; Document 56562), including, but not limited to, the “Mitigation Monitoring and Reporting Program”, and the resolution certifying said final Environmental Impact Report, Resolution No. 2010-79, adopted by the BPC on May 18, 2010 (collectively, the “EIR”), and in the CVBMP Documents.

RIDA acknowledges and agrees that the only parking it has a right to utilize in connection with the Permitted Use is as set forth in this Section 6.1, Section 4.2 of the Ground Lease, Section 4.3 of the Ground Lease and any Contemporaneous Agreement. RIDA acknowledges and agrees that with respect to any public parking (other than the Parking Improvements) located adjacent to or proximate to the Site, RIDA has only the rights of a member of the public notwithstanding any regular use of such parking by RIDA and/or its employees, subtenants, independent contractors, visitors and patrons, and invitees and the Hotel Operator. For the avoidance of doubt, the foregoing shall in no way affect any parking rights granted under or specifically governed by any Contemporaneous Agreement or any agreement governing parking rights of the Hotel Operator.

(b) Primary Use. RIDA agrees that the Site and the Improvements shall be used only and exclusively for the Permitted Use, including the following uses that are ancillary or incidental to the Primary Use and that are designed primarily for Convention Center guests, visitors or employees:

- (i) Rental of Meeting Space;

- (ii) Full-service restaurant and/or limited service restaurant, including cocktail lounge and any standalone bar or cocktail lounge;
- (iii) Snack bar, delicatessen and/or coffee shop(s);
- (iv) Banquet and other food and beverage uses;
- (v) Retail shop(s);
- (vi) Barber and beauty shop;
- (vii) Spa services;
- (viii) Health, recreational, and tennis facilities, including recreational lessons;
- (ix) Bicycle rentals;
- (x) Rental of automobiles;
- (xi) Motorcycle rentals;
- (xii) Boat rentals, beach equipment rentals and beach-related services;
- (xiii) Special temporary exhibition(s), including production shows (including any and all uses in connection with the production of ICE! (including the use of the ICE! tent as temporary additional meeting space when such ICE! tent is not used for purposes of the ICE! production)) and outdoor entertainment (including ice skating and carnivals);
- (xiv) Vending machines, including telephones;
- (xv) Office and counter areas for Convention Center management and other ancillary services that are consistent with services provided by a convention center or a conference center comparable with the Convention Center;
- (xvi) Back-of-house activities consistent with services provided by a convention center or a conference center comparable with the Convention Center, including but not limited to a shipping center, truck yard loading and unloading, sales, human resources, management, information technology management, repair and storage, employee cafeteria, employee gymnasium or other recreation space, and employee locker room or other storage and changing areas);
- (xvii) Office and logistics services;
- (xviii) Construction, operation and maintenance of central plant facilities (including to serve the Resort Hotel);
- (xix) Installation and hosting of telecommunications equipment;
- (xx) Building maintenance and workshop area;

- (xxi) Parking and valet parking services;
- (xxii) A security office;
- (xxiii) A parking management office;
- (xxiv) Storage areas consistent with services provided by a convention center or a conference center comparable with the Convention Center;
- (xxv) Bicycle parking;
- (xxvi) Electronic vehicle charging stations;
- (xxvii) Shuttle bus loading, unloading and management areas;
- (xxviii) Restrooms;
- (xxix) Any sign or other advertising device that complies with the CDP (as may be amended with the consent of RIDA), the EIR and Laws and is (A) maintained or used to identify or advertise an establishment, occupancy or service available on the Site, (B) temporarily displayed in conjunction with promotional events, (C) related to the construction or operation of the Improvements (including, for example, directional, identification and related signage) or (D) approved by the City in its sole and absolute discretion; and
- (xxx) Each other use that (i) is ancillary or incidental to the Primary Use, (ii) is customary for a convention center and/or a conference center in the United States of America that is comparable with the Convention Center and (iii) is not prohibited by the CDP or any Laws.

(c) Continuous Operation. From and after sixty (60) days after the Completion of the Convention Center, RIDA shall actively and continuously use and operate the Improvements (other than the Existing Improvements) (in accordance with the Permitted Use, except to the extent a Force Majeure Event renders RIDA unable to do so (which inability, for the avoidance of doubt, shall be for the period of time that such Force Majeure Event prevents the use and/or operation of the Facility (excluding the Existing Improvements) and except for temporary interruptions reasonably and directly related to Alterations (provided that RIDA shall diligently prosecute construction of such Alterations to Completion in accordance with Section 6.10 hereof). Active and continuous use and operation shall (x) mean that the Improvements (other than the Existing Improvements) shall be continuously open for business, and appropriately staffed with personnel, on such days and for such hours as is customary for similar business operations in San Diego County, California and (y) shall include training activities and pre-opening activities after the Completion of the Convention Center and before opening the Convention Center to the public in an effort to open the Convention Center to the public, provided that RIDA diligently prosecutes such training activities and pre-opening activities. Notwithstanding anything to the contrary herein, RIDA may decide in its sole discretion and in good faith in order to maximize the long-term best interest of the Development that portions of the Convention Center which are not then in use may be temporarily closed if (a) RIDA reasonably believes that such temporary closure will not cause the Revenues (as defined in the Indenture) pledged under the Indenture to be less than the amount needed to pay the Annual Debt Service (as defined in the Indenture) and (b) such temporary closure does not materially and adversely affect the use and operation of, and access to, the remainder portion of the Convention Center (for example, for

renovations; provided that such renovations are not otherwise prohibited by this Sublease and provided, further, that RIDA diligently prosecutes such renovations to completion). RIDA acknowledges and agrees that said active and continuous use and operation of the Improvements (other than the Existing Improvements) enhances the value of the lands within City's jurisdiction; provides public service; and provides additional employment, taxes, and other benefits to the general economy of the area. The City acknowledges and agrees that RIDA shall not be in violation of this Section 6.1(c) for any failure to operate any retail, food service and other service space so long as RIDA has made and continues to make commercially reasonable efforts to lease such space.

(d) Hotel Management Agreement. Unless otherwise consented to by the Port, the JEPA or the City in writing, the Convention Center shall be operated and managed by the Hotel Operator pursuant to the terms of a Hotel Management Agreement.

**Section 6.2 City Holds Subleasehold Interest in the Site and Leasehold Interest in the Convention Center.** During the term of the Facility Lease, the City shall hold a subleasehold interest in the Site and a leasehold interest in the Improvements pursuant to the Facility Lease. The execution of this Sublease shall not cause a merger of the interests created by the Facility Lease, the Site Lease and this Sublease.

**Section 6.3 Quiet Enjoyment.** Subject to the Permitted Encumbrances, during the Term, the City shall provide RIDA with quiet use and enjoyment of the Facility, and RIDA shall during such Term peaceably and quietly have and hold and enjoy the Facility, without suit, trouble or hindrance from the City, or any Person claiming under or through the City except as expressly set forth in this Sublease. The City will, at the request of RIDA, but at no unreimbursed expense to the City, cooperate in any legal action in which RIDA asserts its right to such possession and enjoyment to the extent the City may lawfully do so, including, if necessary, joining such legal action. Notwithstanding the foregoing, the City shall have the right of access to the Facility as provided in this Sublease.

**Section 6.4 Installation of RIDA's Personal Property.** RIDA may at any time and from time to time, in its sole discretion and at its own expense, install or permit to be installed items of equipment or other personal property in or upon any portion of the Facility. All such items shall remain the sole personal property of RIDA, regardless of the manner in which the same may be affixed to such portion of the Facility. Neither any Public Entity nor the Trustee shall have any interest in any of such equipment or personal property which may be modified or removed by RIDA at any time; provided that RIDA shall repair and restore any and all damage to the Facility resulting from the installation, modification or removal of any such items of equipment and personal property. Nothing in this Sublease shall prevent RIDA from financing the purchase of items to be installed pursuant to this Section 6.4, provided that no lien or security interest attaching to such items shall attach to any part of the Facility.

**Section 6.5 [Reserved].**

**Section 6.6 Maintenance and Repair.**

(a) Maintenance and Repair. At any time when any Hotel Management Agreement is in effect, RIDA shall, at its sole cost and expense, and at all times during the Term, comply with the maintenance and repair standards for the Facility set forth in such Hotel Management Agreement. RIDA, at its sole cost and expense, shall also maintain, repair, replace and



rebuild the Facility as necessary to keep the Improvements (other than the Existing Improvements) in First-Class Condition except for reasonable wear and tear. Without limitation of the foregoing, RIDA shall perform all maintenance and make all repairs and replacements, ordinary as well as extraordinary, foreseen or unforeseen, structural or otherwise, which may be necessary or required so that at all times the Facility (together with all equipment, trade fixtures, mechanical and utility systems, paving, landscaping, installations and appurtenances) shall be in compliance with the Hotel Management Agreement, and in First-Class Condition. RIDA acknowledges and agrees that, during the Term, in order to adhere to these maintenance and repair standards, certain repairs and replacements which are accounted for as capital expenditures shall be required and are bargained for by the Port in consideration of the Site Lease, by JEPA in consideration of the Facility Lease, and by City as consideration for this Sublease, and that regular capital reinvestment in the Facility should therefore be anticipated by RIDA and that capital reinvestment for such purposes does not qualify RIDA for any concessions, subsidies, or other modifications of the Sublease during the Term. Further, RIDA shall provide containers for the collection of trash and garbage outside the Convention Center, which may require the City's approval, and keep the Facility in a clean, safe, healthy and sanitary condition, free and clear of rubbish, litter, and any fire hazards. RIDA's maintenance shall include, without limitation, all preventive maintenance, painting and replacements necessary to maintain and preserve the Facility, and compliance with the BMPs.

Except in the event where RIDA may need to undertake work to protect life, public health and safety, and property, or to maintain public services and private services, which constitutes an "emergency development" in the Port's CDP Regulations, and shall be processed by the Port in accordance with the "Emergency Developments" section of said CDP Regulations, prior to RIDA performing any non-routine repair or replacement (which shall mean any repair or replacement that does not occur with an expected or known frequency in the normal course of business) to the exterior, the structure or building systems or which will substantially interfere with the typical operation of the Improvements, or affect the portions of the Improvements that are generally accessible to the public (if any), RIDA shall submit to the City plans and specifications with respect to such repair or replacement, as applicable, and receive the City's written approval thereof, pursuant to the procedures set forth in this Section 6.6 and Section 6.10, as if such repair or replacement, as applicable, were an Alteration; provided, however, that RIDA shall not be required to do so if RIDA would not be required to obtain the City's approval if such repair or replacement, as applicable, were an Alteration. If the City's approval is required pursuant to this Sublease for any plans or specifications with respect to any repair or replacement, then the City shall not unreasonably reject such plans or specifications with respect to any such repair or replacement, as applicable, that, if not performed by RIDA, would result in an Event of Default. If RIDA is legally required to obtain the BPC's approval for any plans or specifications with respect to any repair or replacement, then RIDA shall cooperate in good faith with the City to prepare such plans or specifications to be presented to the BPC. If the City withholds its consent in violation of this Section 6.6(a) or if the BPC withholds its consent and, in each case, the City or the BPC, as applicable, does not give RIDA the opportunity to revise the plans or specifications for reconsideration by the City or the BPC, as applicable, then RIDA may challenge such decision of the City or the BPC, as applicable, through Judicial Reference in accordance with Section 6.6(e). RIDA's obligation to repair or replace shall be suspended during the pendency of any Judicial Reference pursuant to this Section 6.6.

By entering into this Sublease, RIDA expressly waives all rights to make repairs at the expense of any of the Public Entities, as provided in Section 1942 of the California Civil Code, and all rights provided by Section 1941 of the California Civil Code.

All amounts expended by RIDA for maintenance and repair of the Improvements pursuant to this Section 6.6 shall be treated as supplemental Rent for all purposes of this Sublease.

In the event of conflict between the terms of the Hotel Management Agreement and the terms of this Section 6.6(a) with respect to RIDA's obligations hereunder, the terms of this Section 6.6(a) shall control.

(b) Condition in Compliance with Laws. RIDA, at its sole cost and expense, shall keep the Facility (together with all equipment, trade fixtures, mechanical and utility systems, paving, installations and appurtenances) in full compliance with all Laws and the requirements of any insurer providing insurance for the Facility or any part thereof.

(c) Inspection Report. Within sixty (60) days after notice from the City to RIDA requesting an Inspection Report, which notice shall not be given more than once in any five- (5-) year period (unless the City determines that RIDA may be in default of its obligations under this Section 6.6, in which event such time limitation shall not apply), RIDA, at RIDA's sole expense, shall provide to the City a detailed inspection report listing any known defects, required repairs or deferred maintenance items in the Facility and recommendations for work to be performed to ensure that the condition of the Facility is in full compliance with this Sublease, including the standard of condition set forth in this Section 6.6 (the "Inspection Report"). Notwithstanding the foregoing, if the City requests an Inspection Report more than once in any Lease Period, then the City shall pay RIDA for any reasonable costs incurred by RIDA in connection with such Inspection Report unless such Inspection Report demonstrates that RIDA is in default of its obligations under this Section 6.6. The Inspection Report shall be (i) prepared by an unrelated third-party inspector licensed in the State of California selected by RIDA, (ii) certified to the City, to the best knowledge of the Person conducting the inspection, as complete and accurate, and (iii) in a form reasonably acceptable to the City. Without limitation of RIDA's obligations or the City's remedies hereunder, RIDA shall commence work to comply with the recommendations set forth in such Inspection Report within thirty (30) days of receipt of same and diligently pursue such work to completion within not later than one hundred eighty (180) days of receipt of such Inspection Report.

Notwithstanding the requirement in this Section 6.6(c) that RIDA provide the City with an Inspection Report within sixty (60) days after notice from the City, so long as there is no Event of Default and the Convention Center is operated pursuant to a Hotel Management Agreement under an Acceptable Brand, and such Hotel Management Agreement requires RIDA to maintain and repair the Facility in accordance with such Hotel Management Agreement and requires there to be established a reserve for repair and maintenance of the Facility, including without limitation, the furniture, trade fixtures and equipment, and such repair and maintenance occur in accordance with the requirements of such Hotel Management Agreement, Section 6.6(a) and Section 6.6(b), then the foregoing Inspection Reports shall not be required.

(d) Waste or Nuisance. RIDA shall not use, or fail to maintain, the Facility in a manner that constitutes waste or nuisance.

(e) Judicial Reference. If the City withholds its consent in violation of Section 6.6(a) or if the BPC withholds its consent to the plans and specifications with respect to repair or replacement of the Facility that RIDA submitted in accordance with Section 6.6(a) and, in each case, the City or the BPC, as applicable, does not give RIDA the opportunity to revise the plans or specifications for reconsideration by the City or the BPC, as applicable, then the sole remedy of

RIDA shall be to seek relief in the nature of specific performance through consensual general reference as provided in Part 2, Title 8, Chapter 6 (Section 638, et seq.) of the California Code of Civil Procedure, or any successor California statute governing resolution of disputes by a court-appointed referee (“Judicial Reference”) and in no event shall the City or the BPC, as applicable be liable to RIDA, or any Person whatsoever, for monetary damages. Notwithstanding the foregoing, RIDA shall be entitled to recover such monetary damages, if any, it may sustain as a result of the City’s or the BPC’s, as applicable, failure or refusal to comply with a final, non-appealable, Superior Court order confirming an award in favor of RIDA in said Judicial Reference.

(i) *Issue.* The issue to be submitted to Judicial Reference shall be whether the City’s or the BPC’s, as applicable, record contains substantial evidence to support the decision to reject the plans and specifications with respect to repair or replacement of the Facility that RIDA submitted in accordance with Section 6.6(a) in accordance with the requirements set forth in this Section 6.6. RIDA may submit said issue to Judicial Reference.

(ii) *Judicial Reference Procedure.* Submission of a dispute to a Judicial Reference proceeding shall be commenced by a written notice thereof made by one Party to the other Party, or by mutual written election of both Parties (in either case, a “Reference Notice”). The Judicial Reference proceeding shall be conducted in San Diego County, and the Parties waive their respective rights to initiate any legal proceedings against each other in any court or jurisdiction other than the Superior Court of the State in and for the County of San Diego unless such court determines that it lacks jurisdiction, in which case, the Judicial Reference proceedings shall be conducted in the Federal District Court for the Southern District of California if such court has jurisdiction, and if such court has no jurisdiction, then any court of competent jurisdiction (the “Court”). The referee shall be a retired California federal or state judge with experience in commercial real estate leasing and related disputes selected by mutual agreement of the Parties from a reputable source, and if the Parties cannot so agree within twenty (20) days after the Reference Notice is given, the referee shall be selected by the presiding judge of the Court (or his or her representatives). The referee shall not have any power to alter, amend, modify or change any of the terms of this Sublease nor grant any remedy which is either prohibited by the terms of this Sublease, or not available in a court of law or equity. The Parties shall bear their respective costs, fees, and expenses incurred in connection with said Judicial Reference. For purposes of this clause (ii), “Parties” shall mean RIDA and any Public Entity or the BPC, as applicable.

(iii) *Other Public Entities.* RIDA acknowledges that any Public Entity shall have the right to participate in any Judicial Reference conducted pursuant to this Section 6.6(e). If RIDA challenges any decision of the City and/or the BPC, as applicable, through Judicial Reference in accordance with Section 6.6(e), then the Port shall have the right to represent the interests of the Port and/or the BPC.

(f) Reservations. RIDA shall take possession of the Facility subject to the agreements, licenses, right of entry agreements, and other documents set forth in Exhibit M attached hereto and incorporated herein by reference (“Approved Agreements”). RIDA acknowledges that Section 24.2 of the Project Implementation Agreement includes certain rights with respect to granting a license or easement or other access agreement to Rohr for Rohr and its authorized contractors and agents to access the Site upon reasonable prior notice to RIDA for sampling, operation, maintenance, relocation, replacement, removal and closure of groundwater monitoring, soil vapor or extraction wells or other Remediation Facilities (as defined in the Relocation

Agreement (as defined in the Project Implementation Agreement)), and that such rights are reserved herein.

#### **Section 6.7 Hotel Management Agreement.**

(a) Deemed Approval. RIDA will not enter into an agreement for the management of all or a substantial portion of the Facility unless such management agreement (a) is a Hotel Management Agreement that includes the management of the Resort Hotel and (b) is approved by the Port pursuant to and in accordance with the Ground Lease, except the Hotel Management Agreement that is in effect as of the Commencement Date, which the Port reviewed and consented to prior to the Commencement Date. Notwithstanding anything to the contrary herein or in any Contemporaneous Agreement, Hotel Operator shall have the right to subcontract any of its responsibilities to be performed by it under any Hotel Management Agreement to any third party without the prior consent of the City; provided that Hotel Operator shall not be relieved of its obligations pursuant to such Hotel Management Agreement as a result of such subcontracting. If the Port approves a Hotel Management Agreement pursuant to and in accordance with the Ground Lease, then the terms and conditions of this Sublease shall in no way be deemed to have been waived or modified.

#### **Section 6.8 Performance by the Public Entities.**

(a) Inspection. From and after the Completion of the Convention Center, the Public Entities shall have the right but not an obligation to enter, view, inspect and determine the condition of, and protect their interests in the Facility, during normal business hours and upon a three (3) Business Days' prior notice to RIDA (except in the case of an emergency in which case no prior notice shall be required but the applicable Public Entity that enters the Facility shall notify RIDA) and the Public Entities that enter the Facility shall: (a) comply with all applicable security and safety procedures of RIDA, of which RIDA informs the Public Entities in writing and with which the Public Entities can reasonably comply, and (b) use commercially reasonable efforts to minimize any interference with RIDA's operation and use of the Site and the Improvements, the Ground Lease Property, the Resort Hotel and the Parking Improvements, while on the Site and at the Improvements. If the City determines that the Site and/or the Improvements are not in the condition required pursuant to the terms of this Sublease or if the City receives a notice with respect thereto pursuant to the Facility Lease, the City shall deliver written notice to RIDA detailing the items to be corrected and RIDA shall commence the necessary maintenance, alteration, repair, replacement and rebuilding work necessary to remedy the issues set forth in the City's notice within ten (10) days after written notice from the City and diligently pursue such work to completion.

(b) City Repair Rights. At the City's option, if RIDA fails to commence to perform the necessary maintenance, alteration, repair, replacement or rebuilding work within ten (10) days of the City's written demand therefor (except in the event of an emergency in which case no such notice shall be required) in accordance with this Sublease, then the City may, but shall not be required to, perform such maintenance, alteration, repair, replacement or rebuilding work, and RIDA shall pay the City the actual cost thereof, together with interest thereon at the Default Rate from the date due until paid and an administrative fee in the amount of ten percent (10%) of the cost of such work, pursuant to the Reimbursement Procedure. Such payments shall constitute supplemental Rent under this Sublease and shall be paid monthly as billed by the City or in a lump sum payment, as directed by the City. If requested by the City, RIDA shall pay to the City the entire estimated cost of such work in advance, but such payment shall not relieve RIDA from the obligation to pay any

excess costs that may be actually incurred by the City. The City shall have no obligation to repair or maintain any portion of the Site. The rights of the City under this Section 6.8(b) shall not create any obligations or increase any obligations of the City set forth elsewhere in this Sublease, nor shall the exercise of such rights, or the failure to exercise same, limit any other rights or remedies of the City. From and after the Completion of the Convention Center, the City shall have the right to enter the portions of the Site where the necessary maintenance, alteration, repair, replacement or rebuilding work, as applicable, is to be performed or is being performed in accordance with this Section 6.8(b) during normal business hours and upon a three (3) Business Days' prior notice to RIDA (except in the case of an emergency in which case no prior notice shall be required but the City shall notify RIDA) and the City shall: (a) comply with all applicable security and safety procedures of RIDA, of which RIDA informs the City in writing and with which the City can reasonably comply, and (b) use commercially reasonable efforts to minimize any interference with RIDA's operation and use of the Site, the Improvements, the Ground Lease Property, the Resort Hotel and the Parking Improvements, while on the Site and at the Improvements.

### **Section 6.9   Records.**

(a)     Maintenance Records. RIDA shall, during the Term and, with respect to each record, for a period of seven (7) years from the date the record was created (or such longer period as RIDA may decide in its sole discretion), use commercially reasonable efforts to keep, or cause to be kept, accurate and complete records of maintenance conducted at the Facility. The records must be supported by source documents of original entry such as invoices, receipts, work orders, construction contracts, service contracts or other pertinent supporting documents. All of RIDA's maintenance records relating to the Facility shall be kept either at the Site, the Ground Lease Property, or at such other location in San Diego County, California as are acceptable to the City. The Public Entities shall have the right at any time to examine such maintenance records without restriction and, at the Public Entities' request, RIDA shall provide the Public Entities with copies thereof at RIDA's expense for the purpose of determining the accuracy thereof. After the seven (7) year period has expired for a certain record of maintenance, RIDA shall deliver the original record of maintenance to the City at the address set forth in Section 11.1 or such other location designated by the City in writing, which may include the main offices of the City; provided, however, that RIDA may elect to deliver all of the records of maintenance subject to this Section 6.9 that expire in a given Lease Year at one time, in one delivery, within twelve (12) months after the end of the applicable Lease Year.

(b)     Major Alterations Cost Records. RIDA shall, during the Term and, with respect to each record, for a period of seven (7) years after the date such record is created (or such longer period as RIDA may decide in its sole discretion), use commercially reasonable efforts to maintain customary records of construction costs incurred by RIDA in connection with any Major Alterations. Such records shall include, but are not limited to, a general ledger, vendor invoices, cancelled checks, agreements with third-party contractors and contractor progress payment billings. RIDA shall furnish to the City an itemized statement of the construction costs incurred and paid by RIDA in connection with any Major Alterations within thirty (30) days after RIDA receives the City's request therefor (which request shall not be provided to RIDA until the respective Major Alterations have been Completed). The statement shall be sworn to and signed, under penalty of perjury, by RIDA as fairly representing, to the best of RIDA's knowledge, the construction costs incurred and paid by RIDA. Should RIDA perform any construction with its own personnel, RIDA shall during the Term and, with respect to each record, for a period of seven (7) years after the date of such record (or such longer period as RIDA may decide in its sole discretion), maintain the following records with respect to the actual work performed by its own personnel: a payroll journal,

copies of cancelled payroll checks, and timecards or other payroll documents which show dates worked, hours worked, and pay rates. Books and records herein required shall be maintained and made available either at the Site, the Ground Lease Property, the Convention Center, the Resort Hotel or at such other location in San Diego County, California as is reasonably acceptable to the City. The City shall have the right with 48 hours' advanced notice and at reasonable times to examine and audit said books and records without restriction for the purpose of determining the accuracy thereof, and the accuracy of the aforesaid statement. In the event RIDA does not make available the original books and records at the Site, the Ground Lease Property, the Convention Center, the Resort Hotel or at such other location in San Diego County, California, then RIDA agrees to pay all reasonable expenses incurred by the City Parties in conducting an audit at the location where said books and records are maintained. After the seven (7) year period has expired for any record subject to this Section 6.9(b), RIDA shall deliver the original of such record to the City at the address set forth in Section 1.11 or such other location designated by the City in writing, which may include the main offices of the City; provided, however, that RIDA may elect to deliver all of the records subject to this Section 6.9(b) that expire in a given Lease Year at one time, in one delivery, within twelve (12) months after the end of the applicable Lease Year.

### **Section 6.10 Alterations.**

(a) Major Alterations. The term "Major Alterations" means all Alterations other than Minor Alterations, the Initial Project Improvements and the Existing Improvements. RIDA shall comply with all Laws, at its sole cost and expense, including, without limitation, obtaining any permits and approvals required to be obtained for the Major Alterations from any Governmental Authority. RIDA may not make any Major Alterations without the prior written consent of the City. The City's consent will not be unreasonably withheld. The foregoing is not intended to limit the City's discretion when the City is exercising its police or regulatory powers as a Governmental Authority or is considering issuing any discretionary approval. The City may condition its approval of a Major Alteration on compliance with Laws and RIDA obtaining insurance coverages in addition to those required under Article 4 if such additional coverage is customarily obtained in connection with work similar in scope to the Major Alteration. All Major Alterations shall be in accordance with plans and specifications, including but not limited to working drawings (collectively, "Alteration Plans") submitted to and approved by the City in its reasonable discretion in writing prior to the commencement of the Major Alterations. Following approval by the City, any changes in the Alteration Plans shall be subject to the City's approval, in the City's reasonable discretion. If the City approves the Alteration Plans, and if RIDA elects to proceed with the Major Alterations, then RIDA shall construct and Complete all of the Major Alterations set forth in the Alteration Plans in one (1) integrated construction project with all due diligence; provided, however, that any Major Alterations may be Completed in phases if such phasing is permitted by the Laws.

(b) Minor Alterations. RIDA may make Minor Alterations without the City's written consent except to the extent the City's prior written consent must be obtained to comply with Laws. "Minor Alterations" shall mean Alterations that do not: (i) significantly change the silhouette or appearance of the Convention Center, (ii) result in a use that is not a Permitted Use, (iii) require new subsurface utility installations, (iv) require structural modifications, (v) result in an exterior replacement that results in a substantial change to the exterior appearance of the Improvements, (vi) result in the removal of trees in violation of the CDP, (vii) pave any area greater than twenty-five (25) square feet, (viii) trigger any storm water construction BMP permit or permanent structural BMP permit or alterations to existing permanent structural BMPs, or (ix) violate any Laws or the CDP.

(c) Diligent Construction; Continuous Operations. Once construction of any Alterations is commenced, RIDA shall diligently prosecute construction of the Alterations to Completion. During the course of the construction of the Major Alterations, RIDA shall continue to use and operate the Site and the Improvements (other than the Existing Improvements) to the extent required by Section 6.1(c). Once an Alteration is Complete, RIDA shall use and operate the Alteration as part of the Site and the Improvements, as applicable, throughout the Term.

(d) Construction Requirements. In constructing any Alterations, RIDA shall comply with all Construction Requirements and all Laws, including, without limitation, any PMP requirements, mitigation measures or conditions of approval under the terms of any of the approvals of the Project and the Development from any Governmental Authority, including any CDP applicable to the Site or the use or development thereof and any conditions of approval or mitigation measures or project changes pursuant to any environmental review under CEQA.

(e) Tenant Percentage for Art. RIDA acknowledges and agrees that any requests for proposed Alterations during the Term may be conditioned on the payment of additional commissions or purchases of artwork and/or in-lieu contributions based on the policies of the BPC.

#### **Section 6.11 Liens.**

(a) No Right to Bind the City. Neither RIDA, any RIDA Party nor the Hotel Operator shall have any power or authority to do any act or thing, or to make any contract or agreement, which shall bind the City in any way whatsoever, and the City shall have no responsibility to RIDA, RIDA Party, the Hotel Operator or other Person who performs, causes to perform, engages in or participates in any construction of any work on the Facility at the request of RIDA, RIDA Party, the Hotel Operator or other Persons. The City shall not be required to take any action to satisfy any such contract or agreement or to remove or satisfy any lien resulting therefrom.

(b) Notice of Non-Responsibility. RIDA shall give written notice to all contractors, subcontractors and materialmen of the Public Entities' non-responsibility in connection with any construction of any Improvements, Alterations or any other construction work on the Site, and shall immediately provide each of the Public Entities with true copies of such notices not less than ten (10) days prior to the commencement of any work on the Site. Each of the Public Entities shall have the right to post and keep posted thereon notices of non-responsibility, or such other notices which the City may deem to be proper for the protection of the City's interest in the Facility. RIDA shall provide each of the Public Entities with any information required by such Person to complete the notice of non-responsibility.

(c) Mechanics' Liens. RIDA shall pay or cause to be paid all costs for work, labor, services or materials supplied to or performed on the Facility that might result in any mechanics' lien or similar lien as and when RIDA is required to do so under RIDA's agreement with the respective provider thereof. If RIDA receives notice that any mechanics' lien or any similar lien is recorded against the Facility and RIDA is not contesting such lien in accordance herewith, then RIDA shall cause such lien to be released and removed of record within thirty (30) days after RIDA receives notice of the recordation of the mechanics' lien or similar lien. RIDA shall indemnify, defend, release and save the City free and harmless from and against any and all claims of lien of laborers or materialmen or others for work performed or caused to be performed or for materials or supplies furnished for or at the Facility by or for any RIDA Party and the Hotel Operator and all Related Costs.

Notwithstanding anything to the contrary in this Sublease, RIDA's obligation to comply with this Section 6.11 before the Acceptance of the Convention Center (as such term is defined in the Project Implementation Agreement) is set forth in the Project Implementation Agreement and as such this Section 6.11 shall not be effective before the Acceptance of the Convention Center (as such term is defined in the Project Implementation Agreement) and RIDA shall have no obligation under this Sublease with respect to any mechanics' lien that arises out of the JEPA's failure to pay to RIDA any amount that the Project Implementation Agreement requires the JEPA to pay to RIDA.

(d) Contest of Lien. If RIDA in good faith wishes to contest the amount or validity of any lien (other than any lien with respect to taxes), then RIDA shall have the right to do so; provided that (a) RIDA shall first provide the City with at least ten (10) Business Days' written notice prior to any such contest, (b) RIDA shall first record a surety bond sufficient to release such lien; and (c) RIDA shall cause the following conditions to remain satisfied during such contest:

(i) such contest shall not place the fee estate of the Facility in material danger of being forfeited or lost;

(ii) such contest shall be without cost, liability, or expense to the Public Entity Parties;

(iii) RIDA shall prosecute such contest with reasonable diligence and in good faith; and

(iv) no Event of Default shall exist under this Sublease at the time of or during such contest.

(e) City's Right to Pay. If RIDA shall be in default in paying any charge for which a lien claim has been filed, and if RIDA has not contested such lien in accordance with Section 6.11(d), then the City may, but shall not be so obliged to, pay said lien claim and any costs incurred in connection therewith, and the amount so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due and owing from RIDA to the City, and RIDA shall pay the same to the City pursuant to the Reimbursement Procedure, together with interest on the full amount thereof at the Default Rate from the date of the City's payments until paid.

(f) Notice of Liens. Should any claims of lien be filed against the Site or any Improvement or any action affecting the title to the Site or Improvements be commenced, the Party receiving notice of such lien or action shall give the other Party written notice thereof within five (5) Business Days of receipt.

(g) Right of Entry. Nothing herein shall imply any consent on the part of the City to subject the City's estate to liability under any mechanics' lien or other lien. Without limiting RIDA's obligations under Section 6.11(b), from and after the Completion of the Convention Center, the City Parties shall have the right, but not the obligation, to enter upon and inspect the portions of the Facility where the operation of the Convention Center and any Alterations to the Convention Center is ongoing, during normal business hours and upon a three (3) Business Days' prior notice to RIDA (except in the case of an emergency in which case no prior notice shall be required but each of such City Parties shall notify RIDA) and the City shall, and shall cause each of such City Parties to: (a) comply with all applicable security and safety procedures of RIDA of which RIDA informs the



City in writing and with which such City Party can reasonably comply, and (b) use commercially reasonable efforts to minimize any interference with RIDA's operation and use of the Site and the Improvements, the Ground Lease Property, the Resort Hotel and the Parking Improvements, while at the Facility. Notwithstanding the foregoing, nothing herein shall limit the City's right to enter the Facility at any time to exercise its police powers.

#### **Section 6.12 "As-Is" Sublease and Waivers.**

(a) RIDA's Acknowledgment. RIDA acknowledges that prior to entering into this Sublease, the Port, the City, and the JEPA have given RIDA sufficient opportunity to consider, inspect and review, to RIDA's complete satisfaction: (1) any and all rights, appurtenances, entitlements, obligations, and liabilities concerning the Site, including without limitation any Existing Improvements; (2) the physical condition of the Site, including, without limitation, the condition and value of any Existing Improvements and the soils, subsoil media, and ground waters at or under the Site; (3) the risk of climate change and the possible adverse consequences thereof, including, without limitation, rises in sea level and possible damage to and destruction of the Site; (4) the development potential of the Site including, without limitation, as may be affected by the preceding clause (3); (5) the effect of all Laws, including, without limitation, those concerning land use, environmental quality and maintenance, endangered species, and traffic regulation; (6) the financial prospects of the Site and local market conditions; (7) RIDA's determination of the feasibility of RIDA's intended use and enjoyment of the Site; (8) the presence of any Pre-Existing Hazardous Material and any other contamination of the Site, including any Existing Improvements, soils, groundwater, water adjacent to San Diego Bay and sediment adjacent to San Diego Bay; and (9) all other facts, circumstances, and conditions affecting, concerning or relating to the Site. The land use; the environmental, biological, physical and legal condition of the Site; the risks associated with possible climate change; the feasibility of RIDA's intended use and enjoyment of the Site; and such other facts, circumstances and conditions being collectively referred to herein as the "Condition of the Site"; and, without limitation on any other provision of this Sublease, RIDA expressly assumes the risk that adverse conditions affecting the Site have not been revealed by RIDA's investigations.

(b) Only Express Written Agreements Binding. RIDA acknowledges and agrees that no Person acting on behalf of a Public Entity is authorized to make, and that except as expressly set forth in this Sublease and the Contemporaneous Agreements to which RIDA or a Public Entity is a party, none of the Public Entity Parties nor anyone acting for or on behalf of a Public Entity has made any representation, warranty, agreement, statement, guaranty or promise to RIDA, or to anyone acting for or on behalf of RIDA, concerning the Condition of the Site or any other aspect of the Site. RIDA further acknowledges and agrees that no representation, warranty, agreement, statement, guaranty or promise, if any, made by any Person for or acting on behalf of a Public Entity which is not expressly set forth in this Sublease and the Contemporaneous Agreements as of the Commencement Date will be valid or binding on a Public Entity. The City acknowledges and agrees that no representation, warranty, agreement, statement, guaranty or promise, if any, made by any Person for or acting on behalf of RIDA which is not expressly set forth in this Sublease and the Contemporaneous Agreements as of the Commencement Date will be valid or binding on RIDA.

(c) As-Is Sublease. RIDA further acknowledges and agrees that RIDA's execution of this Sublease shall constitute RIDA's representation, warranty and agreement as of the Commencement Date that the Condition of the Site has been independently verified by RIDA to its full satisfaction, and that, except to the extent of the express covenants of the City set forth in this Sublease, RIDA will be leasing the Site based solely upon and in reliance on its own inspections,

evaluations, analyses and conclusions, or those of RIDA's representatives; and that RIDA IS LEASING THE SITE IN ITS "AS-IS, WITH ALL FAULTS" CONDITION AND STATE OF REPAIR INCLUSIVE OF ALL FAULTS AND DEFECTS, WHETHER KNOWN OR UNKNOWN, AS MAY EXIST AS OF RIDA'S EXECUTION OF THIS SUBLEASE, INCLUDING ANY EXISTING IMPROVEMENTS. Without limiting the scope or generality of the foregoing, RIDA expressly assumes the risk that the Site does not or will not comply with any Laws now or hereafter in effect.

(d) Waivers, Disclaimers and Indemnity.

(i) *Waiver and Disclaimer.* RIDA hereby fully and forever waives, and the City hereby fully and forever disclaims, all warranties of whatever type or kind with respect to the Site, whether expressed, implied or otherwise including, without limitation, those of fitness for a particular purpose, tenantability, habitability or use.

(ii) *Landlord's Materials.* RIDA acknowledges that any information and reports, including, without limitation, any engineering reports, architectural reports, feasibility reports, marketing reports, soils reports, environmental reports, analyses or data, or other similar reports, analyses, data or information of whatever type or kind which RIDA has received or may hereafter receive from Public Entity Parties (collectively, the "Landlord's Materials") have been furnished without warranty of any kind (other than that the Port has delivered true and correct copies of each of the items set forth on Exhibit K attached hereto as filed in the Office of the District Clerk ("District Documents")) and on the express condition that RIDA will make its own independent verification of the accuracy, reliability and completeness of such Landlord's Materials and that RIDA will not rely thereon. Accordingly, subject to terms of Section 6.12(d)(iii) below, RIDA agrees that under no circumstances will it make any claim against, bring any action, cause of action or proceeding against, or assert any liability upon, Public Entity Parties or any of the Persons that prepared or furnished any of the Landlord's Materials as a result of the inaccuracy, unreliability or incompleteness of, or any defect or mistake in, any such Landlord's Materials, and RIDA hereby fully and forever releases, acquits and discharges Public Entity Parties and each Person furnishing such Landlord's Materials of and from, any such claims, actions, causes of action, proceedings or liability, whether known or unknown (other than in connection with the Port's breach of its representation and warranty set forth in Section 22.4.2 of the Ground Lease that the Port has delivered to RIDA true and correct copies of each of the District Documents set forth on Exhibit K attached hereto).

(iii) *Release and Waiver.*

(A) *Release.* Except to the extent of Claims against the Port, the City, or JEPAs arising from any breach by the Port, the City and/or the JEPAs, as applicable of its respective covenants and obligations expressly provided in any Convention Center Lease or the Project Implementation Agreement, or the Port's representation and warranty set forth in Section 22.4.2 of the Ground Lease or Section 18(d)(ii) of the Site Lease, RIDA, on behalf of RIDA, its successors and assigns, hereby fully and forever releases, acquits and discharges the Public Entity Parties of and from, and hereby fully, and forever waives and agrees not to assert any and all Claims whatsoever, whether known or unknown, direct or indirect, foreseeable or unforeseeable, absolute or contingent, that any RIDA Party, Hotel Operator or any of RIDA's successors or assigns now has or may have or which may arise or be asserted in the future arising out of, directly or indirectly, or in any way connected with: (i) any act or omission of the Port, the City, or JEPAs (or any Person acting

for or on behalf of the Port, the City, or JEPA or for whose conduct the Port, the City, or JEPA may be liable), whether or not such act be the active, passive or sole negligence of the Port, the City, or JEPA (or any Person acting for or on behalf of the Port, the City or JEPA or for whose conduct the Port, the City or JEPA may be liable), in connection with their prior ownership, maintenance, operation or use of the Site; (ii) any condition of environmental contamination or pollution at the Site (including, without limitation, any Pre-Existing Hazardous Material or other contamination or pollution of any soils, subsoil media, surface waters or ground waters at the Site and any clean-up or abatement order effecting the Site); (iii) to the extent not already included in clause (ii) above, the prior, present or future existence, release or discharge, or threatened release, of any Hazardous Materials at the Site (including, without limitation, the release or discharge, or threatened release, of any Hazardous Materials into the air at the Site or into any soils, subsoils, surface waters or ground waters at the Site); (iv) the violation of, or noncompliance with, any Environmental Law or other applicable Law now or hereafter in effect, however and whenever occurring; (v) the condition of the soil and groundwater at the Site; (vi) the Condition of the Site, including, without limitation, the condition of any improvements located on the Site including, without limitation, the structural integrity and seismic compliance of such improvements; (vii) any matters which would be shown on an accurate ALTA land survey of the Site (including, without limitation, all existing easements and encroachments, if any); (viii) all applicable Laws now or hereafter in effect; (ix) matters which would be apparent from a visual inspection of the Site; or (x) to the extent not already covered by any of the foregoing clauses (i) through (ix) above, the use, maintenance, development, construction, ownership or operation of the Site by the Port, the City, or JEPA (or any Person acting for or on behalf of the Port, the City or JEPA or for whose conduct the Port, the City or JEPA may be liable) or any predecessor(s)-in-interest in the Site of the Port, the City, or JEPA.

(B) *Waiver of Civil Code Section 1542.* With respect to all releases made by RIDA under or pursuant to Section 6.20 and this Section 6.12, RIDA hereby waives the application and benefits of California Civil Code § 1542 and hereby verifies that it has read and understands the following provision of California Civil Code § 1542:

“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her would have materially affected his or her settlement with the debtor or released party.”

RIDA: \_\_\_\_\_

(e) Survival. The terms of this Section 6.12 shall survive the expiration or earlier termination of this Sublease.

### **Section 6.13 Force Majeure Event.**

(a) Definition. The term “Force Majeure Event” means the occurrence of any of the following events (and the actual collateral effects of such event), individually or in any combination, to the extent that (x) such event is beyond the reasonable control of RIDA and (y) such event and/or such actual collateral effect prevents RIDA from the performance of its obligations under this Sublease and is approved by the City pursuant to Section 6.13(e) below:

(i) A strike, or similar labor disturbances causing a work stoppage, excluding any such strike or work stoppage that could have been avoided had RIDA, Hotel Operator or a RIDA Party, as applicable, complied with Laws or labor agreements with respect to the Development, if any.

(ii) Hurricanes, typhoons, tornadoes, cyclones, other severe storms, lightning or floods.

(iii) Days of precipitation or high winds in any month in excess of ten (10) year average for the area within the Port's jurisdiction.

(iv) An earthquake, volcanic eruptions, explosions, disease, epidemics or other natural disaster.

(v) Fires (including wildfires).

(vi) Inability to procure labor, utilities, equipment, materials, or supplies in the open market due to lack of availability (but, in each case, not attributable to a mere increase in price or RIDA's, Hotel Operator's or RIDA Parties' acts or failure to act).

(vii) Acts of war or armed conflict, insurrections, riots, and acts of terrorism (including hijacking, chemical or biological events, nuclear events, disease related events, arson or bombing) or, with respect to any of the foregoing, any threat thereof.

(viii) Extraordinary delays in the issuance of any approvals or authorizations from any Governmental Authority (excluding any non-regulatory approvals provided under the terms of this Sublease by any Public Entity) that is necessary to proceed with development or operation of the Convention Center (provided that RIDA has timely and properly filed all applications, submitted all required documents and fees and taken all other reasonable actions that are necessary to obtain such approvals or authorizations and that RIDA, Hotel Operator or a RIDA Party is not responsible for the delay in the issuance of such approvals or authorizations by such party's own actions or inactions). For purposes of this paragraph, "extraordinary delays" with respect to any approval or authorization from any Governmental Authority shall mean delays beyond the reasonably expected time period for such approval or authorization which reasonably expected time period shall include customary or reasonably foreseeable delays in obtaining such approvals.

(ix) An act of God.

(x) Embargoes or blockades.

(xi) Pre-Existing Hazardous Material (that is not the result of Material Exacerbation).

(xii) Closures or work stoppages ordered by any Governmental Authority that do not arise from a breach of this Sublease or the Project Implementation Agreement or misconduct by RIDA, RIDA Parties or Hotel Operator.

(b) Calculation of Delay. Actual delays resulting from the occurrence of one or more Force Majeure Events occurring concurrently shall be calculated concurrently and not consecutively.

(c) Exclusions. For purposes of this Section 6.13, a Force Majeure Event shall not include adverse general economic or market conditions not caused by any of the events described in 6.13(a)(i) through (xii) above.

(d) Payment Obligations. In no event will a Force Majeure Event excuse the payment of Rent or any other monies due to City under this Sublease.

(e) Notice and Acceptance Requirement. RIDA shall notify City of a Force Majeure Event in writing within ten (10) Business Days after RIDA learns of, and in no event later than thirty (30) days after commencement of, such Force Majeure Event. Such notice (the "Initial Force Majeure Notice") must be made in good faith and describe the Force Majeure Event creating delay, why such delay is occurring, the estimated expected duration of such delay, and the commercially reasonable efforts that RIDA is taking to minimize the period of delay. Commencing on the date that is thirty (30) days after the date of the Initial Force Majeure Notice and for so long as the Force Majeure Event or the actual collateral effects of such Force Majeure Event exist (whichever is later), RIDA shall provide to City monthly written updates on the estimated expected duration of such delay and the commercially reasonable efforts that RIDA is taking to minimize the period of delay. Within thirty (30) days after the Force Majeure Event or the actual collateral effects of such Force Majeure Event cease to exist (whichever is later), RIDA shall notify City in writing that the Force Majeure Event and the actual collateral effects of such Force Majeure Event, as applicable, have ceased to exist and of the number of days by which Force Majeure Event (including the actual collateral effects of such Force Majeure Event) has delayed completion of any construction work on the Facility from and after Completion of the Convention Center or Hotel Operator's operation of the Improvements (excluding Existing Improvements), as applicable (the "Force Majeure Notice"). Within thirty (30) days after City's receipt of the Force Majeure Notice, City shall provide notice to RIDA ("Force Majeure Response") that either City (a) requires additional information to make a determination regarding RIDA's assertion of the existence of a Force Majeure Event or the duration of the delay caused by the Force Majeure Event or the actual collateral effects of such Force Majeure Event, (b) approves the Force Majeure Notice, or (c) denies some or all of the Force Majeure Notice. City's approval or denial of the Force Majeure Notice shall be in City's reasonable discretion. If City denies some or all of the Force Majeure Notice, City and RIDA will meet and confer in good faith within ten (10) days after City's delivery of the Force Majeure Response to attempt to reach a mutually acceptable modification to the Force Majeure Notice that will result in City approving the Force Majeure Notice as modified ("Meet & Confer Period"). If the City and RIDA do not agree on a modification to the Force Majeure Notice during the Meet & Confer Period, RIDA may elect to withdraw the Force Majeure Notice and if RIDA does not withdraw the Force Majeure Notice, City shall present the Force Majeure Notice to the City Council for its consideration to either approve or deny the Force Majeure Notice at a regularly scheduled meeting that shall take place within sixty (60) days after the expiration of the Meet & Confer Period. If the City Council denies the Force Majeure Notice, then the dispute shall be resolved by a court of competent jurisdiction. If a court of competent jurisdiction determines in a final and non-appealable decision that the putative Force Majeure Event that was described in such Force Majeure Notice did not constitute a Force Majeure Event, the duration of such delay in the completion of any construction work on the Facility or in the operation of the Improvements (excluding Existing Improvements), as applicable, specified therein was not reasonable, or the efforts that RIDA took to minimize the period of delay were not commercially reasonable, then, as City's sole and exclusive remedy for RIDA's failure to perform any obligation under this Sublease from which RIDA claimed to be excused as a result of such Force Majeure Event, but was not excused, RIDA shall make City whole for any loss that City suffered as a result of such failure.

**Section 6.14 Compliance with Laws.** RIDA shall in all activities on or in connection with the Site and the Improvements, and in all uses thereof, including without limitation the Permitted Use and any construction of the Convention Center or the making of any Alterations thereto as permitted by Section 6.10, abide by and comply with, and cause the Hotel Operator and each RIDA Party (other than RIDA) to abide by and comply with, all Laws at RIDA's sole cost and expense, and the City shall not have any obligations or responsibilities to comply with any Laws as to the Facility or any use thereby by any RIDA Party or Hotel Operator. In particular and without limitation, RIDA shall have the sole and exclusive obligation and responsibility, at RIDA's sole cost and expense, to comply with the requirements of the following, to the extent applicable: (i) the San Diego Unified Port District Code, including without limitation, Article 10 (Stormwater Management and Discharge Control) and the City of Chula Vista Municipal Code, (ii) the ADA, including but not limited to regulations promulgated thereunder, (iii) applicable federal, state and local laws and regulations regarding employment and labor practices, including, without limitation, the provisions of Section 6.15 below and those referenced in the Project Implementation Agreement, (iv) any Coastal Development Permit ("CDP") (including any conditions of approval or mitigation measures or project changes pursuant to the environmental review under the California Environmental Quality Act ("CEQA")) or any other California Coastal Commission ("CCC") regulations or local, state or federal requirements now or hereafter affecting the Facility, including the use or development thereof, (v) the Port Master Plan ("PMP"), (vi) any other development permits or approvals accepted by RIDA, and (vii) the policies adopted by the BPC and the City. During the Term, the City shall not adopt any Law that only applies to the Tenant's Initial Project Improvements, the Convention Center or RIDA, unless the Law is determined by the City, in its sole and absolute discretion, but in a manner that is neither arbitrary nor capricious, to be necessary for health and safety reasons, to protect the welfare of the people, or to exercise the City's police powers. The foregoing limitation on the adoption of certain Laws by the City shall not apply to the adoption of any ordinance or resolution that authorizes an amendment to this Sublease or is adopted to authorize the enforcement of the City's rights or the performance of the City's obligations under this Sublease, including without limitation, any ordinances or resolutions adopted by the City as part of any discretionary approval. In the event of any conflict between the terms of a policy, ordinance or resolution adopted by the City and/or the JEPA and this Sublease, RIDA shall deliver notice to the City of such a conflict and the parties shall meet and confer within ten (10) days of the City's receipt of the notice to discuss the conflict and attempt to resolve the conflict in good faith. If the conflict cannot be resolved by the Parties within thirty (30) days after the meet and confer, then the Parties shall endeavor to resolve the conflict pursuant to Section 26.12.10 of the Project Implementation Agreement. If the conflict is not resolved pursuant to Section 26.12.10 of the Project Implementation Agreement, then the terms of this Sublease shall control and RIDA shall be excused from complying with the terms of such policy adopted by the City to the extent of such conflict only.

**Section 6.15 Equal Employment Opportunity; Nondiscrimination and OFAC.**

(a) Nondiscrimination. RIDA shall comply with Title VII of the Civil Rights Act of 1964, as amended; the Civil Rights Act of 1991; the California Constitution; the California Fair Employment and Housing Act; the ADA; and any other applicable Laws now existing or hereinafter enacted, requiring equal employment opportunities or prohibiting discrimination. This shall include, without limitation, Laws prohibiting discrimination because of race, color, religion, sex, national origin, ancestry, physical or mental disability, veteran status, medical condition, marital status, age, sexual orientation, pregnancy, or other non-job related criteria. In complying with all such Laws, including, without limitation the ADA, RIDA shall be solely responsible for such compliance and required programs, and there shall be no allocation of any such responsibility between the City and

RIDA. Each Sub-Subtenant and the Hotel Operator (with respect to their operations on the Site only) shall comply with the requirements of this Section 6.15.

(b) Compliance with Employment and Labor Requirements. RIDA shall comply with the Federal Fair Labor Standards Act of 1938; the Federal Labor-Management Reporting and Disclosure Act of 1959; the Occupational Safety and Health Act of 1970; the California Constitution; and any other Laws now existing or hereinafter enacted, regarding employment and labor practices. RIDA shall also comply with the National Labor Relations Act, including the provisions with respect to the rights of employees to organize.

(c) OFAC Compliance. RIDA represents and warrants as of the Commencement Date that (i) RIDA and, to the best of RIDA's knowledge, the Persons that directly or indirectly hold an interest in RIDA (collectively, "RIDA Members", each a "RIDA Member") (other than any such Person that owns an interest in RIDA through publicly traded securities) is not now a Person with whom the City or any citizen of the United States is restricted from doing business with under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, H.R. 3162, Public Law 107-56 (commonly known as the "USA Patriot Act") and regulations promulgated pursuant thereto, or under any successor statutes or regulations, including, without limitation, persons and entities ("Prohibited Persons") named on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury ("OFAC") or a Person (also, a "Prohibited Person") with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States, (ii) to the best of RIDA's knowledge, none of the funds or other assets of RIDA constitute property of, or are beneficially owned, directly or indirectly, by any Prohibited Persons (iii) to the best of RIDA's knowledge, no Prohibited Person directly or indirectly Controls RIDA, or any of RIDA's Members, either individually or in the aggregate and (iv) to the best of RIDA's knowledge, none of the funds of RIDA have been derived from any unlawful activity with the result that the investment in RIDA is prohibited by Laws or that this Sublease is in violation of Laws. RIDA covenants and agrees that at no time during the Term shall a RIDA Member with a twenty percent (20%) or more direct or indirect interest in RIDA be a Prohibited Person. RIDA shall reimburse the City for all reasonable costs, including, without limitation, attorneys' fees, resulting from RIDA's failure to comply with this Section 6.15(c). If RIDA receives written notice that any of RIDA's Members (other than any such Person that holds an interest in RIDA through publicly traded securities) is a Prohibited Person, then RIDA shall promptly use RIDA's best and commercially reasonable efforts to cause such Person to divest such Person's interests in RIDA. Notwithstanding any limits set forth in this Section 6.15(c), any Person who is blocked under the USA Patriot Act shall be blocked to the full extent required under the USA Patriot Act and any regulations promulgated thereunder.

#### **Section 6.16 Taxes and Property Expenses; Reporting.**

(a) Tax Expenses. This Sublease may result in a taxable possessory interest and be subject to the payment of property and other taxes. RIDA shall pay directly to the Government Agency which is entitled thereto (which may or may not be a Public Entity), prior to delinquency, all Tax Expenses attributable to any time period during the Term now or hereafter assessed against, or relating in any way to RIDA, this Sublease, the Facility Lease, the Site Lease, the Facility or the use or occupancy thereof by RIDA, Hotel Operator and RIDA Parties, to the extent such Tax Expenses are imposed on the RIDA Parties, Hotel Operator or any Public Entity. RIDA shall promptly

following written request therefor from the City, provide the City with evidence of the payment of Tax Expenses. "Tax Expenses" shall include, without limitation, all federal, state, county, or local governmental or municipal taxes, fees, assessments, charges or other impositions of every kind and nature, whether general, special, ordinary or extraordinary (including, without limitation, real estate taxes, possessory interest taxes, use taxes, general and special assessments, leasehold taxes or taxes based upon RIDA's receipt of rent, including gross receipts or sales taxes applicable to RIDA's receipt of rent, personal property taxes imposed upon the fixtures, machinery, equipment, apparatus, systems and equipment, appurtenances, furniture and other personal property used by RIDA in connection with the Facility) and any taxes and assessments relating to the business or other activities of RIDA upon or in connection with the Facility. Tax Expenses also shall include, without limitation:

(i) Any tax on the City's receipt of Rent, right to Rent or other revenue from the Facility other than any tax imposed on the City based on income or profit of the City;

(ii) Any assessment, tax, fee, levy or charge in addition to, or in substitution, partially or totally, of any assessment, tax, fee, levy or charge previously included within the definition of real property tax, possessory interest tax or use tax or other Tax Expenses, and any assessments, taxes, fees, levies and charges that may be imposed by a Governmental Authority for services such as fire protection, street, sidewalk and road maintenance, refuse removal and for other governmental services formerly provided without charge to property owners or occupants. It is the intention of RIDA and the City that all such new and increased assessments, taxes, fees, levies, and charges and all similar assessments, taxes, fees, levies and charges be included within the definition of Tax Expenses for purposes of this Sublease; and

(iii) Any assessment, tax, fee, levy, or charge, which is levied or assessed based upon the area of the Facility or the Rent payable hereunder, including, without limitation, any gross receipts tax upon or with respect to the possession, leasing, operating, management, maintenance, alteration, repair, use or occupancy by RIDA of the Facility, or any portion thereof.

Notwithstanding anything to the contrary in this Sublease, (i) Tax Expenses shall not include any taxes based on income or profit that are imposed on RIDA, the Public Entity Parties or the direct or indirect owners of RIDA, Hotel Operator or the Affiliates of Hotel Operator, whether based upon the taxable income or profit generated by RIDA, the Public Entity Parties, Hotel Operator or otherwise and (ii) the taxes described in clause (i) shall not be otherwise recoverable by the Public Entity Parties pursuant to this Sublease (including but not limited to Section 2.2(b) hereof).

RIDA acknowledges that the City has formed the Bayfront Project Special Tax Financing District of the City of Chula Vista pursuant to Chapter 3.61 of the Chula Vista Municipal Code (the "Special Tax District") and that RIDA's sub-subleasehold or other possessory interest in the Site and the operation of the Convention Center thereon shall be subject to levy of a special tax thereunder in the amounts and at the times specified in the rate and method of apportionment for the Special Tax District that is in effect as of the Commencement Date or as amended with RIDA's consent. Any taxes imposed by the Special Tax District, as it may be amended from time to time in accordance with the terms of this Sublease, shall constitute Tax Expenses under the terms of Section 6.16(a)(iii). RIDA agrees to remit, or to cause the Hotel Operator to remit, such special taxes when and in the amounts due.



**Section 6.17 Meet and Confer.** RIDA agrees to meet and confer with the City and the Port regarding possible terms for its support of any City or Port proposal to amend any terms of the existing Special Tax District. RIDA also agrees to meet and confer with the City or Port should either desire to establish a new special tax district in the future.

**Section 6.18 Property Expenses.** Without limitation of RIDA's other obligations under this Sublease, RIDA agrees to pay, prior to delinquency, all Property Expenses. As used herein, "Property Expenses" shall include, without limitation, all costs and expenses of any nature incurred or payable, or arising in connection with, the ownership, management, maintenance, construction, repair, replacement, restoration or operation of the Facility, including, without limitation, any amounts paid for: (i) the cost of supplying any utilities, the cost of operating, maintaining, repairing, renovating and managing any utility systems, mechanical systems, communications systems, sanitary and storm drainage systems, and the cost of supplies and equipment and maintenance and service contracts in connection therewith; (ii) the cost of licenses, certificates, permits and inspections; (iii) the cost of any insurance carried or required to be carried by RIDA pursuant to this Sublease and the Hotel Management Agreement with respect to the Facility including without limitation any premiums and deductibles (except the cost of any Facility Lease Lost Rental Income Insurance); (iv) the cost of landscaping, supplies, tools, equipment and materials, and all fees, charges and other costs incurred in connection with the management, operation, repair and maintenance of the Site and/or the Improvements; (v) payments under any easement, license, permit, operating agreement, declaration, or covenant or instrument pertaining to the Site that exist as of the Commencement Date or that are created or consented to by RIDA; and (vi) the cost of any Improvements, capital repairs, capital alterations, or capital equipment, required by Laws, the Hotel Management Agreement or otherwise required under this Sublease. Notwithstanding anything to the contrary in this Sublease, Property Expenses shall not include (a) Property Tax Expenses, (b) any amounts that constitute Sublease Advance Rent nor (c) any other amount that a Public Entity has expressly agreed to pay without reimbursement from RIDA under this Sublease or any Contemporaneous Agreement or that this Sublease or any Contemporaneous Agreement expressly provides that RIDA is not required to pay.

**Section 6.19 Property Tax Expenses; Utility Charges; Contest Right.**

(a) Payment Obligation. RIDA shall pay or cause to be paid all Property Tax Expenses prior to delinquency, including but not limited to, utility charges of any type or nature charged to the City, the Port, the JEPA or RIDA or levied, assessed or charged against any portion of the Facility or the respective interests or estates therein; provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, RIDA shall be obligated to pay only such installments as are required to be paid during the Term as and when the same become due.

(b) Right to Pay Under Protest. Subject to the terms and conditions of this Section 6.19 and Section 19.4 of the Project Implementation Agreement, RIDA may pay the Property Tax Expenses under protest and RIDA may contest any amount of such Property Tax Expenses (each, a "Property Tax Contest"); provided that (x) RIDA shall first provide the City with at least ten (10) Business Days' written notice prior to commencing any such Property Tax Contest, (y) RIDA shall reasonably cooperate with the City with respect to any such Property Tax Contest and (z) RIDA shall cause the following conditions to remain satisfied:

(i) such Property Tax Contest shall not place the fee estate of the Site in material danger of being forfeited or lost;

(ii) such Property Tax Contest shall be without cost, liability, or expense to the Public Entities;

(iii) RIDA shall prosecute such Property Tax Contest with reasonable diligence and in good faith;

(iv) no Event of Default shall exist under this Sublease at the time of or during such Property Tax Contest; and

(v) such Property Tax Contest shall not challenge any Property Tax Expenses payable under any Community Facilities District affecting the Facility that are in effect as of the Commencement Date or that the City has notified RIDA in writing and RIDA has approved at least ninety (90) days before the Commencement Date or that RIDA otherwise approves pursuant to the terms of this Sublease.

(c) [Reserved.]

(d) Miscellaneous. RIDA shall pay the contested Property Tax Expenses when due and payable regardless of any anticipated or ongoing Property Tax Contest. RIDA shall be entitled to any refund of any Property Tax Expenses (and penalties and interest) paid by RIDA whether such refund is made during or after the Term (except to the extent such refund includes any tax increase for which RIDA has been reimbursed by the City prior to receiving such refund); provided that RIDA shall be responsible for securing such refund and the City shall have no obligation or liability in connection with such refund. When RIDA concludes any Property Tax Contest, RIDA shall pay the amount of any Property Tax Expenses as has been finally determined in such Property Tax Contest to be due (except for any amounts that RIDA has already paid pursuant to this Section 6.19(d)), and any costs, interest, penalties, or other liabilities in connection with such Property Tax Expenses.

(e) Limitation on Property Tax Contest. RIDA and the City understand that, as of the Commencement Date, the City is generally expected to receive for any Subject Fiscal Year, (a) 15.24% of 1% of the assessed value of the Hotel and Convention Center Project for such Subject Fiscal Year as the City's ordinary share of the Project Property Taxes for such Subject Fiscal Year and (b) 0.077% of the assessed value of the Hotel and Convention Center Project for such Subject Fiscal Year as the City's property tax in-lieu of vehicle license fee with respect to the Hotel and Convention Center Project for such Subject Fiscal Year. For example, in the first Subject Fiscal Year, where the assessed value of the Hotel and Convention Center Project is expected to be \$1,013,676,000, (i) the City's ordinary share of Project Property Taxes is expected to be \$1,544,842, (ii) the City's property tax in-lieu of vehicle license fee with respect to the Hotel and Convention Center Project is expected to be \$780,531, and (iii) the City's total share of the Project Property Taxes is expected to be \$2,325,373. If RIDA contests the amount of Project Property Taxes for any Subject Fiscal Year and RIDA prevails in such contest and any appeals with respect to such contest, then, within sixty (60) days after the later of (A) the end of the last applicable appeal period in connection with such contest or (B) the date of the last final decision in connection with such contest or any such appeal, RIDA shall pay to the City the positive difference (if any) between: (1) the applicable amount set forth in the table below for such Subject Fiscal Year less (2) (x) if the formula

for allocating Project Property Taxes to the City as set forth in the first sentence in this clause is not modified after the Commencement Date, the amount the City is actually entitled to receive from Project Property Taxes for such Subject Fiscal Year or (y) if the formula for allocating Project Property Taxes to the City as set forth in the first sentence in this clause is modified after the Commencement Date, the amount the City would have been entitled to receive from Project Property Taxes for such Subject Fiscal Year if the formula for allocating Project Property Taxes to the City had not been so modified.

<b>Subject Fiscal Year</b>	<b>Amount</b>
First Subject Fiscal Year	\$2,325,373
Second Subject Fiscal Year	\$2,371,880
Third Subject Fiscal Year	\$2,419,318
Fourth Subject Fiscal Year	\$2,467,704

**Section 6.20 Hazardous Materials.**

(a) RIDA Use of Hazardous Materials. RIDA shall not cause or permit any Hazardous Material Activity in or about the Site or Improvements by RIDA or its agents, whether by a RIDA Party, Hotel Operator or any other Person, during the Term (including any extensions or holdover periods resulting from RIDA’s obligations pursuant to Section 6.20(d)) unless expressly approved, at the City’s sole discretion, in writing by the City after submittal by RIDA of Material Safety Data Sheets or other information requested by the City regarding the Hazardous Material. Approval by the City of any Hazardous Materials Activity shall not create or impose any liability or obligation on the City with respect to such Hazardous Material or Hazardous Materials Activity and RIDA shall assume all liability and obligations related thereto. All Hazardous Materials Activity shall be in strict compliance with all applicable Laws and other requirements in effect during the Term, including, without limitation, Environmental Laws. RIDA shall comply at all times with all Environmental Laws. Notwithstanding the foregoing, if RIDA is in compliance with Environmental Laws, RIDA shall not be required to obtain the City’s consent to generate, store or use reasonable and customary quantities of Hazardous Materials for cleaning materials or supplies, construction materials or supplies, food service materials or supplies, paint, auto supplies (including, without limitation, gasoline, oil and other supplies incidental to motorized vehicles) or office materials or supplies reasonably required to be used in the normal course of the Permitted Use.

(b) Notice of Release or Inquiry. If RIDA becomes aware of (i) any actual or threatened release that occurs during the Term of any Hazardous Material on, in, under, from, or about the Facility or (ii) any Inquiry, RIDA shall give the City written notice of such release or Inquiry within twenty-four (24) hours after RIDA learns that there has been a release or Inquiry and shall simultaneously furnish to the City copies of any notices of inquiry or investigation, claims, notices of violation, reports, warning or other writings received by RIDA that concern such release or Inquiry. Unless the City receives separate notice, RIDA shall provide the City with advance written notice of any meeting scheduled between any RIDA Party and any Government Agency where a material item of discussion is directly related to the subject matter of this Section 6.20, at least five (5) Business Days prior to such meeting or as soon as reasonably possible if the Government Agency schedules such meeting with any RIDA Party for less than five (5) Business Days from the date the meeting is proposed. The City and the Port shall be entitled to have its representatives attend and participate in any and all such meetings. If the Government Agency brings up Hazardous Material

on, in, under, from, or about the Facility in any other scheduled meeting, RIDA shall suggest that a separate meeting should be scheduled so that the City and the Port can participate in such meeting.

(c) Port Right to Inspect and Data. If Hazardous Materials Activity has occurred during the Term or is ongoing, the Port or its designated representative, at the Port's sole discretion, may, but is not obligated to, enter upon the Facility and make any inspections, non-intrusive tests or measurements that the Port deems necessary or desirable to determine if a release or discharge of Hazardous Materials has occurred. The Port shall furnish to RIDA a minimum of twenty-four (24) hours' notice prior to conducting any inspections or tests, unless, in the Port's reasonable judgment, circumstances require otherwise. If the Port reasonably suspects a possible release of Hazardous Materials or a use of Hazardous Materials in violation of Environmental Law, then the Port shall describe the concern to RIDA, and may require RIDA, at RIDA's sole expense, to have additional investigation for such Hazardous Materials conducted on, under or about the Facility by an environmental consultant or engineering firm designated by the Port; provided, however, that RIDA's obligation to conduct such investigation shall terminate if RIDA can demonstrate to the Port's reasonable satisfaction that there was neither any release of Hazardous Materials, nor any use of Hazardous Materials during the Term in violation of Environmental Law. Such tests may include, without limitation, any area outside the Site or Convention Center that may have been contaminated, including but not limited to surface and groundwater. RIDA shall provide to the Port as soon as reasonable after they become available to RIDA, access to all non-privileged information reports and data obtained, generated or learned as a result of sampling or testing activities on the Facility, including raw and verified lab data and consultant reports. RIDA shall be permitted to have representatives present during any sampling or testing on or at the Site, and may obtain split samples, if requested, copies of the results of on-site testing and visual inspections, and complete access to all samples and tests taken or conducted as a result of any investigations of the Site or Improvements. Access to any non-privileged consultant reports issued by or on behalf of RIDA concerning the Site or Improvements shall be provided to the Port as soon as reasonable after such reports are finalized. Any environmental reports issued by or on behalf of RIDA regarding the Facility or Hazardous Materials Activities related thereto shall first be generated in draft form and furnished to the Port for review and comment, except in the case when any resulting delay in producing a final environmental report would violate any Laws or any order of any Government Agency. Except in the case when any resulting delay in producing a final environmental report would violate any Laws or any order of any Government Agency, no such report shall be made final until the Port has had reasonable opportunity to review the draft and to identify any factual inaccuracies therein; provided, however, that if the Port fails to comment on a draft report within thirty (30) days after RIDA provides the Port with the final draft report and any information needed by the Port to complete its review, RIDA shall provide the Port with notice to deliver any comments to the draft report within fifteen (15) days of the delivery of the notice. If the Port does not respond after the second notice, RIDA may complete and submit the report. Notwithstanding the foregoing, under no circumstance shall any report submitted by RIDA pursuant to this Section 6.20(c) bind the Port and the City or contain any representation from the Port or the City. Failure by the Port to inspect, test or take other actions pursuant to this Section 6.20(c) shall in no way relieve RIDA of any responsibility for a release of a Hazardous Material.

(d) Environmental Cleanup Obligations. If, on or after the Commencement Date, any Hazardous Material has been released by RIDA Parties or Hotel Operator, or any Pre-Existing Hazardous Material is exacerbated by RIDA Parties or Hotel Operator and thereby violates any Environmental Laws and/or results in (a) any investigation mandated by any Government Agency, (b) any clean-up order by any Government Agency, (c) any third-party claim or demand against the

City, (d) any material increase in liability of the City or (e) any Material Exacerbation, then RIDA shall promptly take all necessary actions, at RIDA's sole expense, to complete the Environmental Cleanup. RIDA shall have no obligation to undertake any Environmental Cleanup with respect to any contamination caused by any Pre-Existing Hazardous Material unless such Environmental Cleanup is required as a result of RIDA's Material Exacerbation, and the extent of RIDA's obligation to undertake such Environmental Cleanup shall be limited to that required as a result of the Material Exacerbation. RIDA shall provide notice to the City prior to performing any removal or remedial action. In the event that an Environmental Cleanup conducted or required of RIDA interferes with the current or future use of the Facility or other property of the Public Entity Parties, RIDA shall promptly alter or amend the Environmental Cleanup (whether such is completed or not and regardless of the time period elapsed between the cleanup activities and the request of the City to alter the Environmental Cleanup because of the interference), upon notice from the City, as necessary to prevent and/or eliminate such interference. RIDA shall not propose, and the City is under no obligation to agree to, any covenant of use restriction or other institutional controls as part of any removal or remediation required as a result of this Section 6.20(d). Unless otherwise agreed in writing by the City, an Environmental Cleanup required under this Section 6.20(d) shall avoid and not include the use of additional restrictive covenants or other institutional controls. To the extent the City incurs any costs or expenses in performing RIDA's obligation to conduct an Environmental Cleanup which is RIDA's obligation under this Sublease or under Environmental Law, RIDA shall reimburse the City for all such costs and expenses in accordance with the Reimbursement Procedure. This provision does not limit the indemnification obligation set forth in Section 6.20(g).

(e) Environmental Cleanup Extending Beyond Term if Expansion Date Does Not Occur. Should any Environmental Cleanup of Hazardous Materials for which RIDA is responsible not be completed prior to the expiration or earlier termination of this Sublease and the Expansion Date does not occur, then: (i) RIDA shall deposit with the City an amount of money equal to the balance of the estimated costs of such Environmental Cleanup as reasonably determined by an independent third-party environmental consultant that is acceptable to RIDA and selected by the City (the "Independent Consultant"), and (ii) if the nature of the contamination or Environmental Cleanup required of RIDA is such as to make any portion of the Facility untenable or unleaseable, then RIDA shall be liable to the City as a holdover tenant until the Environmental Cleanup has been completed to the extent required by this Sublease, or to the extent necessary to render the Facility, in full compliance with all Environmental Laws and to make the Facility suitable for lease to third parties. The estimated cost of the Environmental Cleanup shall require approval of the City. The City and RIDA agree and acknowledge that, pursuant to the Revenue Sharing Agreement, the Port, its successors and assigns have certain rights in the funds that RIDA is required to deposit with the City in accordance with Section 6.20(e)(i). The City shall release funds from such deposit from time to time to pay for such Environmental Cleanup costs incurred with the approval of the City. To the extent the Independent Consultant estimates, at any time, that the funds remaining on deposit may not be sufficient to cover all remaining anticipated Environmental Cleanup costs, then RIDA shall deposit, within thirty (30) days of the City's written demand therefor, such additional funds with the City as Independent Consultant may estimate at such time may be required to complete the Environmental Cleanup.

(f) Financial Security. If the City determines, in its reasonable discretion, that RIDA does not have insurance or other financial resources sufficient to enable RIDA to fulfill its obligations under this Section 6.20 whether or not accrued, liquidated, conditional, or contingent, then RIDA shall, at the request of the City, procure and thereafter maintain in full force and effect such commercially available environmental impairment liability and/or pollution liability insurance

policies and endorsements, or shall otherwise provide such collateral or security reasonably acceptable to the City as is appropriate to assure that RIDA will be able to perform its duties and obligations hereunder.

(g) Hazardous Materials Indemnification. RIDA hereby assumes for itself and shall indemnify, defend the Public Entity Parties, and hold the Public Entity Parties harmless from any and all claims, demands, liability, losses, causes of actions and suits of any kind, administrative or judicial proceedings, orders (judicial or administrative), judgments, and all Related Costs (whether or not based upon personal injury, negligence, strict liability, property damage, or contamination of, or adverse effects upon, the environment, waters or natural resources, including any loss of or damage to the Public Entity Parties' real or personal property, or claims with respect to obligations of the Public Entity Parties to indemnify, defend and hold harmless third parties, including the City's obligation to indemnify the JEPA under the Facility Lease), which occur or arise during or after the Term relating to, or resulting from, any Hazardous Materials Activity, any Tenant Hazardous Material, any Hazardous Material that migrates to the Site from the Ground Lease Property during the Term, any Material Exacerbation of Pre-Existing Hazardous Material by a RIDA Party or Hotel Operator, or any breach by RIDA of its obligations under this Section 6.20, at RIDA's sole cost and expense and with counsel and experts selected by the Public Entities in their reasonable discretion and approved by RIDA in its reasonable discretion and who act according to the Public Entities' reasonable direction, with reasonable input and cooperation from RIDA; provided, however, that if any Public Entity determines in its reasonable discretion that there is a conflict of interest with counsel representing such Public Entity and the other Public Entity Parties, then such Public Entity, at its election, may conduct its own defense with its own counsel independent from the other Public Entity Parties' counsel which such Public Entity's counsel is approved by RIDA in its reasonable discretion (and in that event such Public Entity will select its own counsel) and the reasonable costs incurred by such Public Entity in such defense shall be covered by the foregoing indemnification, hold harmless and defense obligations and be subject to reimbursement pursuant to the Reimbursement Procedure. RIDA's obligations under this Section 6.20 (including the indemnification of the Public Entity Parties by RIDA under this Section 6.20(g)) include, without limitation, any Environmental Cleanup required by this Sublease, costs incurred in connection with any investigation of site conditions or any cleanup, treatment, remedial, removal, or restoration work required by this Sublease or any federal, state or local Government Agency because of Hazardous Materials present in the air, soil or ground water above, on, or under the Facility. The Public Entities shall have a direct right of action against RIDA even if no third party has asserted a claim. The indemnification and Environmental Cleanup requirements under this Section 6.20 include, but, are not necessarily limited to:

- (i) Losses attributable to diminution in the value of the Facility;
- (ii) Losses of rental or other income from the Facility;
- (iii) Loss of or damage to natural resources regarding which the City or the Port is the lawfully designated trustee;
- (iv) Loss or restriction of use of rentable space(s) in the Facility;
- (v) Adverse effect on the marketing of any space(s) in the Facility; and

(vi) All other liabilities, obligations, penalties, fines, claims, actions (including remedial or enforcement actions of any kind and administrative or judicial proceedings, orders, or judgments), damages (including consequential and punitive damages), and costs (including reasonable attorney, consultant, and expert fees and expenses).

Notwithstanding anything to the contrary in this Section, RIDA shall have no indemnity obligation to the Public Entity Parties resulting from Pre-Existing Hazardous Material other than a Material Exacerbation of Pre-Existing Hazardous Material by a RIDA Party or Hotel Operator.

(h) Termination of Sublease. If the Expansion Date does not occur, upon the expiration or earlier termination of this Sublease, RIDA shall: (i) cause all Tenant Hazardous Materials (and Pre-Existing Hazardous Materials Materially Exacerbated by a RIDA Party or Hotel Operator) to be removed from the Site and Improvements and disposed of in accordance with all applicable provisions of Environmental Law; (ii) remove any underground or aboveground storage tanks or other containers installed or used by RIDA, or its predecessors as RIDA or otherwise under this Sublease, if any, to store any Hazardous Material on the Facility, and repair any damage to the Site caused by such removal; (iii) cause any soil or other portion of the Facility which has become contaminated by any Hazardous Material (or any Pre-Existing Hazardous Materials Materially Exacerbated by a RIDA Party or Hotel Operator) during the Term to be decontaminated, detoxified, or otherwise cleaned up in accordance with the applicable requirements of any Government Agency with authority over the Site or Improvements; and (iv) surrender possession of the Facility to City free of any Tenant Hazardous Materials (and any Pre-Existing Hazardous Material Materially Exacerbated by a RIDA Party or Hotel Operator); provided, however, with respect to any Material Exacerbation of any Pre-Existing Hazardous Material, RIDA's responsibility shall be limited to remediating such Existing Hazardous Material condition to such an extent that the Port's liability and responsibility for such Pre-Existing Hazardous Material is no greater than such liability and responsibility would have been on the Commencement Date had RIDA not Materially Exacerbated such Pre-Existing Hazardous Material condition thereafter.

(i) Storage Tanks.

(i) *Storage Tanks.* Except for USTs described in Exhibit F-1 to the Project Implementation Agreement which the City has approved RIDA to install on the Site as part of the Plans, no underground storage tanks ("USTs") or aboveground storage tanks ("ASTs") shall be permitted to be installed on or under the Site without the prior written consent of the City in its sole and absolute discretion. In the event RIDA obtains such approval to install a UST or an AST on or under the Site then RIDA shall be responsible for complying with all Laws pertaining to such UST or AST, including tank monitoring of such UST or AST as required by the County of San Diego Hazardous Material Management Division ("HMMD") or any other responsible agency and RIDA further agrees to take sole responsibility for reporting unauthorized releases from such UST to HMMD and the City within twenty-four (24) hours of such unauthorized release. RIDA will be responsible for all fees and costs related to the unauthorized release of any Hazardous Material from such AST or UST or any required Environmental Cleanup as a result thereof including, but not limited to: investigative, surface and groundwater clean-up, and expert and agency fees. RIDA shall maintain evidence of financial responsibility for taking corrective action and for compensating third parties for bodily injury and/or property damage caused by a release from any such UST or AST. RIDA further agrees to be responsible for maintenance and repair of any such USTs and ASTs; obtaining tank permits; filing a business plan with HMMD or other responsible agency; and for paying for all regulatory agency fees relating to USTs and ASTs.

(ii) *Records.* RIDA agrees to keep complete and accurate records regarding USTs and ASTs on the Site for the prior three (3) year period, including, but not limited to, records relating to permit applications, monitoring, testing, equipment installation, repairing and closure of the USTs and ASTs, and any unauthorized releases of Hazardous Materials. RIDA also agrees to make such records available for the Public Entities or responsible agency inspection. RIDA further agrees to include a copy of Health and Safety Code, Chapter 6.7, Section 25299, as part of any agreement between RIDA and any operator of USTs or ASTs.

(iii) *Aboveground Storage Tanks.* In the event RIDA obtains approval to install an AST or such approval is not required, RIDA shall be responsible for complying with all Laws pertaining to such AST. In connection with such AST, RIDA shall, in accordance with this Sublease and applicable Laws, secure and pay for all necessary permits and approvals, prepare a spill prevention control counter measure plan and conduct periodic inspections to ensure compliance therewith. In addition, RIDA shall maintain and repair said tanks to conform and comply with all other applicable Laws for ASTs, including without limitation all of the requirements of Health & Safety Code, Chapter 6.67, Sections 25270 through 25270.13 as presently existing or as hereinafter amended, including without limitation conducting daily visual inspection of such ASTs, allowing the San Diego Regional Water Quality Control Board (“SDRWQCB”), the Port, the City, and/or responsible agency, to conduct periodic inspections. RIDA also shall comply with valid orders of the SDRWQCB, filing the required storage tank statement and payment of the fee therefor, establishing and maintaining the required monitoring program and systems, reporting spills as required, and payment of lawfully imposed penalties as provided therein and as otherwise provided by Law.

(j) Environmental Covenants.

(i) *Excavated Soil Removal.* RIDA hereby acknowledges that excavation of soils from the Site could result in exportation of a regulated waste requiring appropriate characterization, handling, transport and disposal (collectively, “Excavated Soil Removal”). The Public Entities take no responsibility and assume no liability whatsoever for Excavated Soil Removal. Accordingly, RIDA hereby waives any claim, or potential claim, it may have to recover costs or expenses from the Public Entities arising out of or associated with Excavated Soil Removal and agrees to indemnify, defend and hold harmless the Public Entity Parties from and against any and all claims (including under negligence or strict liability and claims with respect to obligations of the Public Entity Parties to indemnify, defend and hold harmless third parties, including the City’s obligation to indemnify the JEPA under the Facility Lease), liabilities, losses, damages, costs, and expenses arising from, out of, or in any way related to Excavated Soil Removal, except only claims or litigation arising through the gross negligence or willful misconduct of any Public Entity Party; provided that the sole gross negligence or willful misconduct of one Public Entity Party with respect to any Public Entity shall not be attributed to or affect the rights of any Public Entity Party with respect to any other Public Entity under this Section 6.20(j)(i).

(ii) *Worker Claims for Hazardous Material.* The Public Entities shall have no liability or responsibility for ensuring that RIDA’s workers, including without limitation those conducting testing, construction and maintenance activities on the Site and Improvements are protected from any Hazardous Material existing on the Site and Improvements. RIDA shall assess all human health risks from vapor transport or direct contact with residual hazardous substances or contaminants and incorporate such engineering and institutional controls as may be required to sufficiently protect human health of onsite workers and transient visitors. RIDA hereby waives any claim, or potential claim, it may have to recover any damages, losses, Related Costs related to worker



exposure or alleged worker exposure to any residual onsite contamination and to indemnify, defend and hold harmless the Public Entity Parties from and against any and all such Related Costs, claims (including under negligence or strict liability and claims with respect to obligations of the Public Entity Parties to indemnify, defend and hold harmless third parties, including the City's obligation to indemnify the JEPA under the Facility Lease), liabilities, losses and damages, except only claims or litigation arising through the gross negligence or willful misconduct of any Public Entity Party; provided that the sole gross negligence or willful misconduct of one Public Entity Party with respect to any Public Entity shall not be attributed to or affect the rights of any Public Entity Party with respect to any other Public Entity under this Section 6.20(j)(ii).

(iii) *Covenant Not To Sue and Release of the City.* RIDA hereby RELEASES the Public Entity Parties from, COVENANTS NOT TO SUE the Public Entity Parties for and ASSUMES FOR ITSELF all obligations, requirements and liabilities of RIDA under this Section 6.20, including for claims for contribution, equitable indemnity or otherwise seeking to transfer or limit the obligations, requirements and liabilities of RIDA under this Section 6.20.

(k) Survival. The terms of this Section 6.20 shall survive the expiration or earlier termination of this Sublease.

**Section 6.21 Advertising Devices.** All signs, flags and other advertising devices (collectively, the "Advertising Devices") visible from outside the Site or the Improvements, as applicable, must be expressly approved in writing by the City prior to installation. As of the Commencement Date, the Advertising Devices described on Exhibit L attached hereto have been previously approved by the City in writing (collectively, "Pre-Approved Advertising Devices"). The City's written approval shall comply with the following: (1) the City's approval of Advertising Devices that is not a Discretionary Entitlement shall not be unreasonably withheld; (2) the City's approval of Advertising Devices that is a Discretionary Entitlement shall be subject to the City's sole and absolute discretion; and (3) all approvals by the City of Advertising Devices, whether they are a Discretionary Entitlement or not, shall be in accordance with all Laws (collectively, "Review Processes"). During the Term, RIDA may submit to the City a list of Advertising Devices to be flown, installed, placed or erected on the Site and the Improvements, to be approved or disapproved by the City in accordance with the Review Processes. Such list shall specify, with respect to each proposed Advertising Device, its form, proposed location on the Site or the Improvements, dimensions, frequency and duration of display and any other information that the City may request. RIDA shall not sell any naming rights to any portion of the Convention Center without the prior written consent of the City, which consent may be denied, conditioned, or withheld in the City's sole and absolute discretion, and if the City consents to the sale of naming rights, RIDA shall pay the City percentage rent, in an amount to be mutually agreed to by the City and RIDA, based on the gross income for the sale of such naming rights. All signage on the Site is subject to all Laws, including without limitation, San Diego Unified Port District Code Section No. 8.30. If the City or the Port hereafter adopts any other ordinance or policy governing signage, RIDA shall comply with such ordinance or policy subject to any grandfathering terms thereof.

**Section 6.22 Prevailing Wage.**

(a) RIDA acknowledges and agrees that:

(i) Any construction, alteration, demolition, installation or repair work, in each case, to or of the Improvements required or performed under this Sublease constitutes "public

work” under California Prevailing Wage Law, including Labor Code §§ 1720 through 1861, et seq. (“PWL”), and obligates RIDA to cause such work to be performed as “public work,” including, but not limited to, the payment of applicable prevailing wages to all Persons subject to the PWL.

(ii) RIDA shall cause all Persons performing “public work” to or of the Improvements under this Sublease to comply with all applicable provisions of the PWL and other applicable wage Laws.

(iii) The City hereby notifies RIDA, and RIDA hereby acknowledges, that the PWL includes, without limitation, Labor Code § 1771.1(b) that provides that the following requirements described in Labor Code § 1771.1(a) shall be included in all bid invitations and “public work” contracts: “A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of § 4104 of the Public Contract Code, or engage in the performance of any contract for “public work,” as defined in this chapter, unless it is currently registered and qualified to perform “public work” pursuant to Section 1725.5. It is not a violation of this Section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Sections 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform “public work” pursuant to Section 1725.5 at the time the contract is awarded.”

(iv) RIDA acknowledges that its obligations under the PWL with respect to the Improvements include, without limitation, ensuring that:

(1) pursuant to Labor Code § 1771.1(b), a bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor or subcontractor’s current registration to perform “public work” pursuant to § 1725.5;

(2) pursuant to Labor Code § 1771.4(a)(1), the call for bids and contract documents shall specify that the project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations (“DIR”);

(3) pursuant to Labor Code § 1771.4(a)(2), it posts or requires the prime contractor to post job site notices, as prescribed by regulation; and

(4) pursuant to Labor Code § 1773.3(a)(1), it provides notice to the DIR of any “public works” contract subject to the requirements of the PWL, within thirty (30) days of the award, but in no event later than the first day in which a contractor has workers employed upon the public work. Pursuant to Labor Code § 1773.3(a)(2), the notice shall be transmitted electronically in a format specified by the DIR and shall include the name and registration number issued by the DIR pursuant to §1725.5 of the contractor, the name and registration number issued by the DIR pursuant to §1725.5 of any subcontractor listed on the successful bid, the bid and contract award dates, the contract amount, the estimated start and completion dates, job site location, and any additional information that the DIR specifies that aids in the administration and enforcement of the PWL. PWC-100 is the name of the form currently used by the DIR for providing the notice, but RIDA shall determine and use whatever form the DIR requires.

(v) None of the Public Entities shall be responsible for RIDA’s failure to comply with any applicable provisions of the PWL.

(vi) RIDA's violations of the PWL shall constitute a default (subject to cure pursuant to Section 8.1(c)) under this Sublease.

(vii) Notwithstanding anything in this Sublease to the contrary, RIDA shall not be responsible for any Person's failure to comply with any applicable provisions of the PWL with respect to any work performed by, or on behalf of, any Public Entity Party (other than by a RIDA Party or Hotel Operator, or on behalf of a RIDA Party or Hotel Operator, or by any Person acting directly or indirectly under a contract with a RIDA Party or Hotel Operator).

Notwithstanding anything to the contrary in this Sublease, RIDA's obligation to comply with PWL before the Acceptance of the Convention Center (as such term is defined in the Project Implementation Agreement) is set forth in the Project Implementation Agreement and such this Section 6.22 shall not be effective before the Acceptance of the Convention Center (as such terms are defined in the Project Implementation Agreement).

## ARTICLE VII

### ASSIGNMENT BY THE CITY AND AMENDMENTS

**Section 7.1 Assignment by the City.** Except for the assignment to the JEPA of the City's rights hereunder as provided in the Facility Lease, the City will not assign this Sublease, or any right, title or interest of the City in and to this Sublease, to any other Person.

**Section 7.2 Amendments and Modifications.** This Sublease may be amended, or any of its terms modified, only in writing and only with the written consent of the City and RIDA.

## ARTICLE VIII

### EVENTS OF DEFAULT AND REMEDIES

**Section 8.1 Events of Default.** The occurrence of any one (1) or more of the following events shall constitute an event of default by RIDA hereunder (each, an "Event of Default"):

(a) **Abandonment.** "Abandonment" shall mean that on and after Completion of the Convention Center, for thirty (30) consecutive days or longer, none of the Improvements (excluding the Existing Improvements) are operated by RIDA or the Hotel Operator, except for temporary closures that are permitted under, or periods of time when such Improvements are not operated as permitted under Section 6.1 or as a result of an existing Force Majeure Event in accordance with Section 6.13 that prevents Hotel Operator and RIDA from being at the Facility or operating a portion of the Improvements (excluding the Existing Improvements) and RIDA does not cure such condition within sixty (60) days after written notice thereof from the City. Notwithstanding the foregoing, "Abandonment" shall not include temporary closures or failures to operate that may result from an event of condemnation of any of the Improvements.

(b) **Failure to Pay.** Failure by RIDA to pay, when due, any Rent, other payment, and/or charge that RIDA is required to pay hereunder, where such failure continues for a period of five (5) days after written notice thereof from the City; provided, however, that any notice provided under this Section 8.1(b) shall be in lieu of, and not in addition to, any notice required under Section 1161 of the California Code of Civil Procedure, as amended.

(c) Failure to Perform. Failure by RIDA to perform any express or implied covenants or conditions in this Sublease (other than as provided in the other subsections of this Section 8.1), where such failure continues for thirty (30) days after written notice thereof from the City; provided that, if the nature of such failure is such that the same cannot reasonably be cured within such thirty (30) day period, and RIDA diligently commences such cure within such thirty (30) day period and thereafter diligently proceeds to rectify and cure such failure, then such failure shall not constitute an Event of Default; and provided, further, that if such failure is due to a Force Majeure Event in accordance with Section 6.13, then such failure shall not constitute an Event of Default for so long as the Force Majeure Event or the actual collateral effects of such Force Majeure Event exists.

(d) Bankruptcy Event. The occurrence of a Bankruptcy Event.

(e) [Reserved].

(f) Cross-Defaults. The occurrence or existence of an Event of Default as defined in and in accordance with the Project Implementation Agreement or an Event of Default as defined in and in accordance with the Ground Lease, in each case, at any time during the Term; provided that in the event that an Event of Default under the Project Implementation Agreement is cured pursuant to the terms of the Project Implementation Agreement, such Event of Default shall be deemed cured hereunder, and in the event that an Event of Default under the Ground Lease is cured pursuant to the terms of the Ground Lease, such Event of Default shall be deemed cured hereunder.

(g) Breach of a Representation or Warranty.

(i) Any representation or warranty by RIDA under this Sublease or the Exhibits attached hereto, including any representation or warranty made in any payment request or certification provided or delivered by RIDA pursuant to this Sublease, is not true, correct or complete in any material respect and RIDA does not cure such deficiency within ten (10) Business Days after it actually knows about such deficiency, or within ten (10) Business Days after RIDA receives written notice thereof; provided that, if the nature of such breach is such that the same cannot reasonably be cured within such ten (10) Business Day period, and RIDA diligently commences such cure within such ten (10) Business Day period and thereafter diligently proceeds to rectify and cure such breach, then such failure shall not constitute an Event of Default.

(ii) Any representation or warranty by the Completion Guarantor under the Completion Guaranty is not true, correct or complete and RIDA does not, or does not cause the Completion Guarantor to (as the case may be), cure such deficiency within ten (10) Business Days after it actually knows about such deficiency, or within ten (10) Business Days after RIDA receives written notice thereof from any Public Entity; provided that, if the nature of such breach is such that the same cannot reasonably be cured within such ten (10) Business Day period, and Completion Guarantor diligently commences such cure within such ten (10) Business Day period and thereafter diligently proceeds to rectify and cure such failure, then such breach shall not constitute an Event of Default; [provided that without limiting the Public Entities' rights and remedies with respect to the original undersigned RIDA under this Agreement or the Completion Guarantor, during the effectiveness of any New Agreement or the while any Foreclosure Purchaser has assumed and is holding RIDA's interest under this this Agreement or is holding the controlling interest in RIDA, no

failure or breach by the Completion Guarantor under the Completion Guaranty shall constitute a breach, default or Event of Default under this Agreement.]<sup>1</sup>

(h) Specified Defaults. The occurrence of any event expressly stated to constitute an Event of Default under this Sublease.

**Section 8.2 Remedies.** Upon any Event of Default but subject to Section 8.2(g), the City may, in addition to all other rights and remedies afforded to the City hereunder or by law or in equity, take any one or more of the following actions:

(a) Termination of Sublease. Terminate this Sublease by giving RIDA written notice thereof, in which event RIDA shall immediately surrender the Facility to the City. In the event that the City shall elect to so terminate this Sublease, then the City may recover from RIDA:

(i) The worth at the time of award of any unpaid Rent which had been earned at the time of such termination; plus

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

(iii) The worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such Rent loss that RIDA proves could be reasonably avoided; plus

(iv) Any other amount necessary to compensate the City for all detriment proximately caused by RIDA's failure to perform its obligations under this Sublease or which in the ordinary course of things would be likely to result therefrom, including, without limitation, the cost of recovering possession of the Facility, expenses of reletting (including necessary repair, renovation and alteration of the Facility), reasonable attorneys' fees, and any other reasonable costs; plus

(v) At the City's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by Law.

AS USED IN CLAUSES (I) AND (II) ABOVE, THE "WORTH AT THE TIME OF AWARD" IS COMPUTED BY ALLOWING INTEREST AT THE DEFAULT RATE. AS USED IN CLAUSE (III) ABOVE, THE "WORTH AT THE TIME OF AWARD" IS COMPUTED BY DISCOUNTING SUCH AMOUNT AT THE DISCOUNT RATE OF THE FEDERAL RESERVE BANK OF SAN FRANCISCO AT THE TIME OF AWARD PLUS ONE PERCENT (1%).

Failure by the City to enforce one or more of the remedies herein provided upon an Event of Default shall not be deemed or construed to constitute a waiver of such Event of Default. RIDA hereby waives for RIDA and for all those claiming under RIDA all rights now or hereafter existing to redeem by order or judgment of any court or by any legal process or writ, RIDA's right of occupancy of the Facility after any termination of this Sublease.

---

<sup>1</sup> Discuss in terms of Completion Guaranty resolution. Same issue in PIA section 21.1.5.2.

(b) Continue Sublease in Effect. Exercise the remedy described in California Civil Code Section 1951.4 (the City may continue this Sublease in effect after RIDA's breach and abandonment and recover Rent as it becomes due if RIDA has the right to sublet or assign this Sublease, subject only to reasonable limitations).

(c) Perform Acts on Behalf of RIDA. Perform any act that RIDA is obligated to perform under this Sublease (and enter upon the Facility in connection therewith if necessary) in RIDA's name and on RIDA's behalf, without being liable for any claim for damages therefor, and RIDA shall reimburse the City on demand for any expenses which the City may incur in thus effecting compliance with RIDA's obligations under this Sublease (including, but not limited to, collection costs and legal expenses), plus interest thereon at the Default Rate.

(d) Increased Security Deposit. Notwithstanding anything to the contrary in Section 3.12(e), require RIDA to, in which case RIDA shall, increase the security deposit with an amount equal to three (3) months of the Base Rent (which remedy may be exercised on more than one occasion with further increases in the security deposit on any subsequent Event of Default); provided that the City shall return such increased amount of the security deposit to RIDA on the first anniversary of the date on which the applicable Event of Default ceased to exist upon request in writing from RIDA except if another Event of Default then exists, and a separate increased security deposit has not already been delivered to RIDA with respect to such Event of Default in accordance with this Section 8.2(d), then the City will continue to hold such increased amount of security deposit until the first anniversary of the date on which such other Event of Default ceases to exist and RIDA requests in writing the return of the increased amount of the security deposit from the City.

(e) Payment by RIDA. Require RIDA to, in which case RIDA shall, pay to the City all costs incurred by the City (including court costs and reasonable attorneys' fees and expenses and staff time) in: (a) obtaining possession of the Facility; (b) removing and storing RIDA's or any other occupant's property; (c) repairing, restoring, altering, remodeling, or otherwise putting the Facility into condition acceptable to a new tenant; (d) performing RIDA's obligations which RIDA failed to perform; and (e) enforcing, or advising the City of, its rights, remedies, and recourses arising out of the Event of Default.

(f) Assignment of Plans and Other Matters. Require RIDA to, in which case RIDA shall, (i) at RIDA's sole cost and expense, assign and transfer to the City all of RIDA's right, title and interest in and to all plans, drawings, specifications, permits, approvals, warranties, entitlements, and other similar property and instruments relating to the Facility, free and clear of liens and claims by third parties, in connection with and (ii) execute and deliver to the City, within five (5) Business Days of the City's request, in a form provided by and acceptable to the City, an instrument confirming the Assignment and transfer of such property and interests to the City and, within such five (5) Business Day period, to deliver the originals of such plans, drawings, specifications, permits, approvals, warranties, entitlements, and other similar property and instruments relating to the Facility to the City. RIDA agrees to reasonably cooperate with the City at no cost or expense to the City in seeking any consent from the preparer of any plans, drawings, specifications, permits, approvals, warranties, entitlements, and other similar property and instruments relating to the Facility, which may be required for the City to rely on such plans, drawings, specifications, permits, approvals, warranties, entitlements, and other similar property and instruments relating to the Facility.

(g) Certain Limitations. The City shall not have the right to terminate this Sublease as a result of any Event of Default arising solely under Section 8.1(c) or Section 8.1(f) (as it relates to a cross-default for failure to perform only) of the Sublease that is susceptible to cure (but will retain all other remedies) if the following conditions apply:

(i) (A) RIDA has, in good faith, by written notice served on the City within thirty (30) days of receipt of any notice from the City of such Event of Default, contested that (x) RIDA has failed to perform any covenant or condition required to be performed by it under this Sublease or (y) an Event of Default as defined in and in accordance with the Project Implementation Agreement or an Event of Default as defined in and in accordance with the Ground Lease has occurred or is continuing, as applicable, and (B) there has been no final determination by a court with jurisdiction that (x) RIDA has in fact failed to perform any covenant or condition required to be performed by it under this Sublease and that such failure has had a material adverse effect on any Public Entity or the Project or (y) an Event of Default as defined in and in accordance with the Project Implementation Agreement or an Event of Default as defined in and in accordance with the Ground Lease has occurred or is continuing and that such Event of Default has had a material adverse effect on any Public Entity or the Project, as applicable; or

(ii) after any final determination by a court with jurisdiction that (x) RIDA has in fact failed to perform any covenant or condition required to be performed by it under this Sublease and that such failure has had a material adverse effect on any Public Entity or the Project or (y) an Event of Default as defined in and in accordance with the Project Implementation Agreement or an Event of Default as defined in and in accordance with the Ground Lease has occurred or is continuing and that such Event of Default has had a material adverse effect on any Public Entity or the Project, as applicable, RIDA promptly (and in all events, within thirty (30) days of such final determination), cures such failure, such Event of Default as defined in and in accordance with the Project Implementation Agreement or such Event of Default as defined in and in accordance with the Ground Lease, as applicable.

Without limiting the foregoing, the City shall not have the right to terminate this Sublease as a result of any Event of Default arising solely under Section 8.1(f) unless the Project Implementation Agreement or the Ground Lease, as applicable, has been terminated in accordance with its terms. For purposes of this Section 8.2(g), a “final determination by a court with jurisdiction” shall mean the entry of a final judgment by the trial court or equivalent tribunal in any such proceeding. For clarification, the thirty-day cure period following such “final determination” within which RIDA’s failure to perform must be cured in order to avoid the City’s right to terminate pursuant to this Section 8.2(g) shall commence immediately upon entry of such judgment by the trial court and shall not be stayed, delayed or otherwise postponed during any appeal periods or other post-judgment proceedings (e.g., Motion for New Trial or JNOV) that RIDA might pursue following entry of such judgment.

For purpose of this Section 8.2(g), “material adverse effect on any Public Entity or the Project” shall mean, but shall expressly not be limited to, (i) a failure to comply with any provision of the Port Act, including, but not limited to, Port Act provisions limiting use of the Facility, (ii) a material failure to comply with any CDP (as may be amended from time to time) applicable to the Facility, (iii) a material failure to comply with the PMP, or any amendments thereto, (iv) a material failure to comply with any provision of this Sublease or the Project Implementation Agreement, as applicable, related to Hazardous Materials, (v) a material failure to comply with any provision of this Sublease relating to assignment or sublease of the Site, (vi) a failure to comply with any provision of

this Sublease or the Project Implementation Agreement, as applicable, relating to PWL requirements, (vii) a failure to comply with any provision of this Sublease or the Project Implementation Agreement, as applicable, that results or could reasonably be expected to result in a public health or safety issue, (viii) a failure to comply with any provision of this Sublease or the Project Implementation Agreement, as applicable, the effect of which may be that any Public Entity Party has incurred or could reasonably be expected to incur criminal liability, (ix) a failure to comply with any provision of this Sublease or the Project Implementation Agreement, as applicable, that could reasonably be expected to result in a default by the City or the JEPA under the public financing, or (x) a failure to comply with any provision of this Sublease or the Project Implementation Agreement, as applicable, that could reasonably be expected to result in significant irreparable harm or injury to any Public Entity. Nothing in this Section 8.2(g) shall prejudice RIDA's ability to appeal any decision of any court, provided that RIDA's appeal shall not limit the City's ability to pursue any remedies available to the City under this Sublease.

### **Section 8.3 Bankruptcy.**

(a) Bankruptcy Event. Upon occurrence of a Bankruptcy Event, the City shall have all rights and remedies available pursuant to this Article VIII. After the commencement of a Bankruptcy Case: (i) RIDA shall perform all post-petition obligations of RIDA under this Sublease; and (ii) if the City is entitled to damages (including unpaid Rent) arising from and after the commencement of the Bankruptcy Case pursuant to the terms of this Sublease, then all such damages shall be entitled to administrative expense priority pursuant to the Bankruptcy Code. RIDA acknowledges that this Sublease is a lease of nonresidential real property and therefore RIDA, as the debtor in possession, or the trustee shall not seek or request any extension of time to assume or reject this Sublease or to perform any obligations of this Sublease that arise from or after the commencement of the Bankruptcy Case.

(b) Assignment/Assumption.

(i) *General.* Any Person to which this Sublease is assigned pursuant to the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Sublease on and after the date of such an assignment, and any such assignee shall upon request by the City execute and deliver to the City an instrument confirming such assumption in a form acceptable to the City. If RIDA desires to assign this Sublease under the Bankruptcy Code to any Person who shall have made a bona fide offer, then RIDA shall give the City written notice of such proposed assignment and assumption (which notice shall set forth the name and address of such Person, all of the terms and conditions of such offer, and the adequate assurance to be provided the City to assure such Person's future performance under this Sublease) prior to the date RIDA shall make application to the appropriate court for authority and approval to enter into such assignment and assumption. The City shall thereupon have the prior right and option, to be exercised by notice to RIDA given at any time prior to the effective date of such proposed assignment and assumption, to accept an assignment and assumption of this Sublease upon the same terms and conditions and for the same consideration, if any, as the bona fide offer made by such Person, less any brokerage commissions which may be payable out of the consideration to be paid by such Person for the assignment and assumption of this Sublease. If RIDA fails to assume or assume and assign this Sublease in accordance with the requirements of the Bankruptcy Code within the period provided by the Bankruptcy Code or allowed by a bankruptcy court, then this Sublease shall be deemed rejected and the City shall have all rights and remedies available to it pursuant to Section 8.2.



(ii) *Financial Statements.* At any time during the Term, upon not less than five (5) days' prior written notice, RIDA shall provide the City with audited financial statements for RIDA for not less than the most recent two (2) years (or such shorter period of time as RIDA has existed if such financial statements have been created for less than two (2) years) for which such financial statements have been created. Such statements are to be certified by an Authorized Representative of RIDA to be a complete copy of the financial statements of RIDA and to have been prepared in accordance with generally accepted accounting principles and audited by any independent certified public accountant.

(c) Adequate Assurances. In the event RIDA or proposed assignee under Section 8.3(b) proposes under the Bankruptcy Code to cure any default under this Sublease or to assume or assign this Sublease and is obliged to provide adequate assurance to the City that (a) a default shall be cured, (b) the City shall be compensated for its damages arising from any breach of this Sublease and (c) future performance of RIDA's obligations under this Sublease shall occur, then such adequate assurances shall include all of the following, as designated by the City in its sole and absolute discretion:

(i) Those acts specified in the Bankruptcy Code or other applicable laws as included within the meaning of "adequate assurance";

(ii) A prompt cash payment to compensate the City for any monetary defaults or actual damages arising directly from a breach of this Sublease;

(iii) A cash deposit in an amount at least equal to the then-current amount of the security deposit; and

(iv) The assumption or assignment of all of RIDA's interest and obligations under this Sublease.

The City covenants that if (x) the JEPAs as a debtor in a Bankruptcy Case rejects the Facility Lease pursuant to Section 365 of the Bankruptcy Code, or (y) the Port as a debtor in a Bankruptcy Case rejects the Site Lease pursuant to Section 365 of the Bankruptcy Code, then the JEPAs or the City, as then applicable, will exercise its rights under 11 U.S.C. § 365(h) to stay in possession of the Facility.

## ARTICLE IX

### SUBLEASE FINANCING ENCUMBRANCE

**Section 9.1 Permitted Financing Encumbrances.** RIDA shall not encumber or hypothecate this Sublease, RIDA's sub-subleasehold interest in the Site or subleasehold interest in the Improvements, or any part thereof or interest therein, or grant any security interest in the direct or indirect equity interests of RIDA except as set forth in this Article IX. If, under the Ground Lease, Landlord (as defined in the Ground Lease) consents to a Permitted Lender (as defined in the Ground Lease) and to Tenant (as defined in the Ground Lease) encumbering or hypothecating the Ground Lease, Tenant's leasehold interest under the Ground Lease, or the Improvements (as defined in the Ground Lease) thereon, or any part thereof or interest therein or the granting of a security interest in the direct or indirect equity interests in Tenant under the Ground Lease in accordance with the Ground Lease in connection with any Financing Transaction (as defined in the Ground Lease), then

the City shall be deemed to have consented to such Permitted Lender and to RIDA encumbering or hypothecating (and RIDA may encumber or hypothecate) this Sublease, RIDA's sub-subleasehold interest in the Site or subleasehold interest in the Improvements, or any part thereof or interest therein, or the granting of (and there may be granted) a security interest in the direct or indirect equity interests of RIDA (such encumbrance, hypothecation or grant of any security interest in any direct or indirect equity interests of RIDA being referred to herein as a "Financing Transaction"), respectively, as security for such, or for any transaction that is secured by such, Financing Transaction (as defined in the Ground Lease), pursuant to any mortgage, deed of trust, security agreement, pledge agreement or other similar instrument that is the same as, or in substantially the same form as, the mortgage, deed of trust, security agreement, pledge agreement or other similar instrument to which Landlord consented under the Ground Lease. For purposes of this Section 9.1 and for sake of clarity, the term "loan" does not include an obligation by a Pledgor to reimburse MICC (or an Affiliate thereof) for payments made pursuant to a Permitted Loan Guaranty.

**Section 9.2 Definition of "Permitted Sublease Financing Encumbrance," "Permitted Equity Financing Encumbrance," "Permitted Financing Encumbrance," "Permitted Mortgage Lender," "Permitted Lender" and "Equity Collateral Enforcement Action".** Each mortgage, deed of trust or similar security instrument securing RIDA's payment and performance in connection with the Financing Transaction by a Permitted Mortgage Lender that is deemed consented to by City is a "Permitted Sublease Financing Encumbrance". Any security agreement, pledge agreement or similar instrument or agreement that creates any security interest in the Mezzanine Interests securing RIDA's payment and performance in connection with any Financing Transaction by a Permitted Mezzanine Lender (including MICC or its Affiliate) that is deemed consented to by City is a "Permitted Equity Financing Encumbrance" (together with the Permitted Sublease Financing Encumbrance, "Permitted Financing Encumbrance"). The term "Permitted Mortgage Lender" means any lender that is deemed approved by City pursuant to Section 9.1 and that is a party to a Financing Transaction for a Permitted Sublease Financing Encumbrance made in accordance with this Sublease. City's consent or deemed consent shall not be required for an assignment or transfer of indebtedness secured by a Permitted Financing Encumbrance, where the terms and conditions of the Permitted Financing Encumbrance are not changed or modified in a manner for which RIDA must obtain City's consent under Section 9.6(c). The term "Permitted Lender" means each Permitted Mortgage Lender and each Permitted Mezzanine Lender, or any one thereof. For the avoidance of doubt, a holder of indebtedness that is secured by any Financing Transaction, but that is not a Permitted Mortgage Lender because it is not a party to a Financing Transaction (i.e., the holder of some or all of the indebtedness that is secured by a Permitted Sublease Financing Encumbrance in favor of an agent that holds collateral as security for such indebtedness) need not be approved or deemed approved by City, and may assign or transfer such indebtedness without City's consent or approval or deemed consent or deemed approval, but shall not be a Prohibited Person. The term "Equity Collateral Enforcement Action" means any action or proceeding or other exercise of a Permitted Mezzanine Lender's rights and remedies in connection with its security interests in (or from) a Pledgor in order to realize upon its equity collateral, including, without limitation, the acceptance of an assignment in lieu of foreclosure for the equity collateral. With respect to any Permitted Equity Financing Encumbrance, (a) the granting of such Permitted Equity Financing Encumbrance shall not be deemed a Change of Control of RIDA, or (b) any enforcement action and/or the completion of any Equity Collateral Enforcement Action (including, without limitation, the acquisition of all (or substantially all) of the direct or indirect ownership of RIDA) or the exercise of voting control over RIDA by a Permitted Mezzanine Lender with respect to such equity collateral security interest shall not be deemed a Change of Control of RIDA and shall not be prohibited by this Sublease.

### **Section 9.3 Rights of Permitted Lender.**

(a) Voluntary Sublease Surrender. So long as a Permitted Financing Encumbrance remains outstanding, City will not accept the voluntary surrender, cancellation, or termination of this Sublease by RIDA before the Term expires, unless each Permitted Lender with an outstanding Permitted Financing Encumbrance provides prior written consent thereto. Nothing in this Section 9.3(a) shall impair City's right to terminate this Sublease as a result of an Event of Default or by reason of City's other rights to terminate this Sublease as set forth in this Sublease, subject to the Permitted Lender's notice and cure rights pursuant to Section 9.3(b) below, if applicable, and the New Sublease rights pursuant to Section 9.3(b)(iv) below, if applicable.

(b) Right to Cure/New Sublease.<sup>2</sup>

(i) *Notice of Default.* So long as one or more loans secured by a Permitted Financing Encumbrance remain outstanding, City hereby agrees to give each Permitted Lender with a Permitted Financing Encumbrance that has provided City with its address and has requested a copy of the same, a copy of any written notice, which City gives to RIDA pursuant to Section 8.1, at the same time as it delivers it to RIDA, and such notice shall be deemed delivered three (3) days after delivery thereof to the respective Permitted Lenders, whereupon each Permitted Lender shall have the right, but not the obligation, to cure such default or Event of Default. This Sublease shall not terminate as a result of an Event of Default if a Permitted Lender cures such Event of Default within (x) thirty (30) days after the Permitted Lender is deemed to have received such notice of an Event of Default in the payment of Rent, or (y) subject to the terms of this Section 9.3(b), within ninety (90) days after the Permitted Lender is deemed to have received such notice of any other Event of Default under this Sublease. City shall accept performance of the terms of this Sublease by the Permitted Lender, or any agent, nominee or designee of the Permitted Lender that Permitted Lender notifies City in writing is performing the cure rights on behalf of and for the Permitted Lender under this Section 9.3.(b)(i) (each, a "Designated Nominee"); provided such performance is completed within the time frames set forth in this Section 9.3(b) as if the terms were performed by RIDA, regardless of whether there has been an Event of Default and Permitted Lender is liable to City for the performance by such Designated Nominee. If there is more than one Permitted Lender, then City shall recognize only the cure rights of the Permitted Lender (whether such cure rights are exercised by Permitted Lender or its Designated Nominee) that has been most recently designated as authorized to exercise cure rights by the Permitted Mortgage Lender with the earliest recorded Permitted Sublease Financing Encumbrance that has not been reconveyed and to which deemed consent has been received in accordance with this Sublease, without any liability to the City, RIDA or the other Permitted Lenders; provided, however, that City shall accept without the necessity of further inquiry, and without liability to the City, RIDA and any Permitted Lender, a written notice from the Permitted Mortgage Lender with the earliest recorded Permitted Sublease Financing Encumbrance that is still outstanding and to which City consented as confirmation that such Permitted Mortgage Lender has the first right to exercise any cure rights under this Sublease or enter into a New Sublease as set forth in this Article 9, and such notice shall be valid for all purposes until such time as such Permitted Mortgage Lender informs City in writing that such notice is no longer valid or City receives a new written notice from the succeeding Permitted Mortgage Lender with the earliest recorded Permitted Financing Encumbrance that is outstanding and to which deemed consent has been received in accordance with this Sublease, stating that the prior Permitted Mortgage

---

<sup>2</sup> Conform to Ground Lease section 10.3.2.

Lender with the earliest recorded Permitted Sublease Financing Encumbrance no longer has an outstanding Permitted Sublease Financing Encumbrance as evidenced by a copy of the recorded reconveyance of the Deed of the Trust for such prior Permitted Mortgage Lender.

(ii) *Possession Required.* If the Event of Default specified in Section 9.3(b)(i)(y) cannot be cured until the Permitted Lender has obtained possession of the Facility (or, in the case of a Permitted Mezzanine Lender, control of RIDA) through foreclosure or otherwise, and if the Permitted Lender has delivered to City within the ninety (90) day cure period specified in Section 9.3(b)(i)(y) Permitted Lender's written commitment (in form acceptable to City in its sole discretion) to use diligent efforts to cure (or to cause RIDA to cure) such Event of Default with due diligence upon obtaining possession of the Facility (or, in the case of a Permitted Mezzanine Lender, control of RIDA) through foreclosure or otherwise, then the Permitted Lender shall have such additional time (but in no event to exceed two hundred and seventy (270) days from the date of obtaining possession of the Facility) as is reasonably necessary to cure (or to cause RIDA to cure) such Event of Default, but only if the Permitted Lender: (x) unless judicially stayed, commences the judicial or other foreclosure of the Permitted Financing Encumbrance within ninety (90) days from receipt of written notice of the occurrence of an Event of Default under this Sublease; (y) prosecutes said foreclosure with due diligence; and (z) cures, during said period, all monetary Events of Default and, during the period of said stay and/or foreclosure, continues to pay and perform during said period of stay and/or foreclosure all other monetary obligations of RIDA in a timely manner, including, without limitation, payment of all rent, taxes, assessments, utility charges, insurance premiums and all other amounts required to be paid by RIDA under this Sublease. Notwithstanding anything herein to the contrary, nothing herein shall require a Permitted Lender who has taken possession of the Facility or, in the case of an Equity Collateral Enforcement Action, control of RIDA, to cure any non-monetary default that, by its nature, is not reasonably capable of being cured by the Permitted Lender, or in the case of an Equity Collateral Enforcement Action, RIDA, or is a Bankruptcy Event (each, an "Incurable Default"). All such Incurable Defaults shall be deemed to be permanently waived following the Permitted Lender's taking possession of the Facility or, in the case of an Equity Collateral Enforcement Action, control of RIDA. All monetary obligations and non-monetary obligations that are not Incurable Defaults shall still be performed as required under this Sublease, subject to the extended cure periods set forth in this Section 9.3(b). In no event shall nuisance or waste caused by RIDA's failure to use the Facility in accordance with the Permitted Use or failure to construct, operate and maintain the Facility in accordance with the requirements of this Sublease be an Incurable Default.

(iii) *No Termination by City.* City shall not terminate this Sublease by reason of an Event of Default if City has failed to comply with its obligations under Section 9.3 or if the Permitted Lender (i) is curing or has cured all Events of Defaults under this Sublease in the payment of Rent within the time frames provided in Section 9.3(b)(i)(x) above, and (ii) has cured all other Events of Default within the time frames provided in Sections 9.3(b)(i)(y) and 9.3(b)(ii), other than any Incurable Default.

(iv) *New Sublease.*<sup>3</sup> In the event of any termination of this Sublease of which City has received written notice by reason of a surrender, cancellation, or termination by RIDA, or as a result of the rejection or disaffirmance of this Sublease pursuant to bankruptcy law or other Law affecting creditors rights, or as a result of any other termination of this Sublease for any

---

<sup>3</sup> Conform to Ground Lease.

reason, excluding in all cases a termination under Sections 5.1(d) or 5.2(b), then City shall deliver notice to each Permitted Lender that this Sublease has been terminated or rejected, as applicable. The notice shall include a statement of all Rent that would be due under this Sublease but for the termination hereof or the rejection of this Sublease, as applicable, and all other Events of Default, or breaches under this Sublease, that are then known to City, without the duty of inquiry; provided that in no event shall such notice prevent or estop City from asserting other breaches under this Sublease or Events of Default that become known to City after the time the notice is sent to the Permitted Lender. The Permitted Mortgage Lender or any Permitted Mezzanine Lender or SPE Lender Affiliate (defined below) nominated by the first priority Permitted Mortgage Lender (a “New Tenant”) shall then have the option, to be exercised within seventy-five (75) days following receipt of such notice of termination or rejection, as applicable, to enter into a new lease (“New Sublease”) with City (the period of time during which any Permitted Lender may require a New Sublease, the “New Lease Period”),, in each case, on the following terms and conditions:

(aa) The New Sublease shall commence as of the date of the termination or rejection of this Sublease, as applicable, and shall be for the remainder of the Term, and at the Rent, terms, covenants, and conditions as this Sublease.

(bb) Upon execution of the New Sublease, the New Tenant shall pay any and all sums that would at the time of execution thereof be due under this Sublease, but for termination, and shall pay all expenses, costs, attorneys’ fees, court costs, and disbursements incurred by City in connection with any default and termination of this Sublease, recovery of possession of the Facility, and the execution, preparation and delivery of the New Sublease.

(cc) Upon execution of the New Sublease, the New Tenant shall cure all other defaults under this Sublease, which have not yet been cured (other than any Incurable Default), with due diligence in a timely manner in accordance with the cure periods under the Sublease assuming such cure periods commence with the execution of the New Sublease and without additional notice (provided that City has already provided such notice of such default to New Tenant).

(dd) Nothing herein shall be construed to require City to deliver possession of the Facility to the New Tenant. Upon execution and delivery of the New Sublease, the New Tenant may take any and all appropriate actions as may be necessary to remove parties in possession from the Facility. City shall not grant any real property interest in the Facility during the seventy-five (75) day period set forth in Section 9.3(b)(iv).

(ee) The sublessee under each sub-sub-sublease of the Site and sub-sublease of the Improvements shall be deemed to have agreed that each sublessee whose sub-sub-sublease of the Site or the sub-sublease of the Improvements, as applicable, was in effect immediately prior to the execution of such New Sublease shall, on the date of its execution or the commencement of its term, whichever is later, pursuant to its sub-sub-sublease of the Site or its sub-sublease of the Improvements, as applicable, attorn to the New Tenant and the New Tenant shall accept such attornment of each sub-sub-sublease of the Site or each sub-sublease of the Improvements, as applicable, which was entered into in compliance with the terms hereof; provided that City shall have no obligation to require the same of sublessee and shall have no liability to New Tenant resulting from the failure of any sublessee to comply with this Section 9.3(b)(iv)(ee).

During such seventy-five (75) day period and thereafter if the Permitted Lender designated to exercise the cure rights under Section 9.3(b)(i) timely accepts such offer of a New Sublease until the termination or expiration of such New Sublease, ownership of the Improvements shall not vest in City, and the Permitted Lender's lien that elected to exercise the cure rights under Section 9.3(b)(i) in and to the Improvements shall continue unaffected by the termination of this Sublease.

Should neither the Permitted Lender designated to exercise the cure rights under Section 9.3(b)(i) nor its Designated Nominee accept said offer for such New Sublease in writing within said seventy-five (75) day period, or, having so accepted said offer, should it fail promptly to execute the New Sublease or satisfy the requirements of clauses (ii) and (iii) above in a timely manner, then the termination of this Sublease shall be effective as to all of the Permitted Lenders and the Permitted Lenders shall have no further rights hereunder.

Furthermore, if the first priority Permitted Mortgage Lender nominates Permitted Mezzanine Lender or an SPE Lender Affiliate that is affiliated with the Permitted Mezzanine Lender to receive the New Sublease, then the New Tenant may, concurrently or promptly after receipt of the New Sublease, enter into a new Financing Transaction with the Permitted Mortgage Lender(s) on substantially the same terms as those of the Financing Transaction(s) in place immediately prior to termination of this Sublease (but with modifications, as necessary, to reflect the New Sublease and the new identity of the tenant). The security interest on the New Sublease granted in connection with such Financing Transaction will be a Permitted Sublease Financing Encumbrance. It is the intent of this provision to permit the Permitted Lender(s) that do not receive a New Sublease to be in the same position in which they would have been had no Sublease termination occurred. The New Tenant will provide to City notice of any such Financing Transaction, together with copies of documents evidencing such Financing Transaction and redlines against the previously existing documents evidencing the Financing Transaction that is, in effect, being continued.

The provisions of this Section 9.3(b)(iv) shall and are expressly intended to survive a termination or rejection of this Sublease in the manner set forth in this Section 9.3(b)(iv) to permit the New Tenant the right to exercise the option to enter into New Sublease in accordance with this Section 9.3(b)(iv).

(c) Loan Default. If a Permitted Financing Encumbrance or any loan secured by a Permitted Financing Encumbrance is in default at any time, then the Permitted Lender shall, as provided by Law, have the right, without City's prior consent, to perform the following; provided that the Permitted Lender exercises such rights as to the whole of Permitted Lender's interest in the Ground Lease, Project Implementation Agreement, and this Sublease and/or RIDA, as the case may be, and not portions thereof:

(i) In the case of a Permitted Mortgage Lender, accept an Assignment of this Sublease in lieu of foreclosure or, in the case of a Permitted Mezzanine Lender, accept an assignment of its equity collateral resulting from an Equity Collateral Enforcement Action; or

(ii) In the case of a Permitted Mortgage Lender, request that a court of competent jurisdiction appoint a receiver as to any or all of the Facility or cause a foreclosure sale to be held pursuant to either judicial proceedings, power of sale and/or foreclosure proceedings as provided in its Permitted Sublease Financing Encumbrance;

(iii) In the case of a Permitted Mezzanine Lender, exercise such remedies as may be permitted by its Permitted Equity Financing Encumbrance or applicable Law;

provided, however, that no Assignment or Transfer to the successful bidder (a “Foreclosure Purchaser”) that is neither a Permitted Lender, nor an Affiliate of a Permitted Lender that is a special purpose entity set up and operated by a Permitted Lender specifically to take and hold (directly or indirectly) title to the Site or the Mezzanine Interests (“SPE Lender Affiliate”) shall be effective without City’s prior written consent in accordance with Section 9.4 below.

(d) Assume Sublease Obligations. Notwithstanding anything in this Sublease to the contrary, (a) in the case of the acquisition of the leasehold interest created by this Sublease in connection with a Permitted Sublease Financing Encumbrance and as an express condition thereto, the Foreclosure Purchaser shall, before or concurrently with such acquisition, agree in writing to be bound by all provisions of, and assume each and every obligation of RIDA, under this Sublease and (b) in the case of an Equity Collateral Enforcement Action and as an express condition thereto, the Foreclosure Purchaser shall, before or concurrently with such Equity Collateral Enforcement Action, cause RIDA to reaffirm, in writing, promptly after the Equity Collateral Enforcement Action, its obligations under this Sublease; provided, however, that under no circumstance shall such Permitted Lender or such Foreclosure Purchaser have any liability hereunder unless and until it becomes a tenant under this Sublease. Notwithstanding the foregoing, nothing in this Section 9.3(d) shall limit the liability of a Permitted Lender for damage or loss caused by Permitted Lender’s attempt to cure a non-monetary Event of Default. A Permitted Lender that has: (i) acquired the sub-subleasehold interest in the Site and the subleasehold interest in the Improvements and assumed RIDA’s obligations, or (ii) entered into a New Sublease pursuant to Section 9.3(b)(iv) shall be released from all obligations under this Sublease first arising after the effective date of the assignment and assumption of such sub-subleasehold interest and such subleasehold interest to an assignee deemed consented to by City, in accordance with Section 9.4.

#### **Section 9.4 City’s Deemed Consent to Assignment or Transfer or Bidders.**

(a) City’s Deemed Consent to Assignment. City’s consent shall not be required for a Transfer to a Foreclosure Purchaser that is a Permitted Lender or an SPE Lender Affiliate. If (x) Landlord under the Ground Lease consents to any of the following in accordance with the Ground Lease or (y) a referee finds in accordance with the judicial reference procedure set forth in Section 10.4.3 of the Ground Lease that Landlord under the Ground Lease shall have consented to any of the following: (1) an Assignment to a Foreclosure Purchaser that is neither a Permitted Lender, nor an SPE Lender Affiliate, or (2) an Assignment or sub-sub-sublease or sub-sublease, as applicable, of all or Substantially All of the Site and the Improvements to a Person by a Permitted Lender or an SPE Lender Affiliate should such entity become the tenant by reason of: (i) being the successful bidder upon said foreclosure, (ii) an assignment in lieu of foreclosure, or (iii) a New Sublease entered into pursuant to Section 10.3.2(d) of the Ground Lease (each capitalized term in clauses (1) and (2) above shall have the meaning assigned thereto in the Ground Lease), then the City shall be deemed to have consented to (A) an Assignment to such Foreclosure Purchaser or (B) an Assignment or sub-sub-sublease of all or Substantially All of the Site or sub-sublease of all or Substantially All of the Improvements to the Person described in clause (2) by a Permitted Lender or an SPE Lender Affiliate.

(b) Cancellation; Surrender; Modification; Amendment. There shall be no voluntary cancellation, surrender (which term shall be deemed to include rejection by the City of this

Sublease in a Bankruptcy Case in which the City is a debtor) or modification of this Sublease that is binding on any Permitted Lender (other than correction of scrivener's errors), without the prior written consent of each Permitted Lender (but nothing herein shall prevent City or RIDA from terminating this Sublease pursuant to the express terms hereof, subject, however, to the rights of the Permitted Lender designated to exercise the cure rights to obtain a New Sublease in accordance with Section 9.3(b)(iv)). RIDA hereby advises City that RIDA is assigning any right that it may have to object to any sale of City's interests in the Facility free and clear of this Sublease under the terms of 11 U.S.C. § 363(f)(2) to the Permitted Lenders to act on RIDA's behalf and any such objection by Permitted Lenders shall be as effective as if made by RIDA and, for the benefit of City, RIDA hereby waives any and all right to object to any sale of City's interests in the Facility solely to the extent assigned to the Permitted Lender or a SPE Lender Affiliate. So long as a Permitted Financing Encumbrance remains outstanding, City shall not grant consent or be deemed to consent to any voluntary cancellation, surrender, amendment or modification of this Sublease that is not consented to in writing by each Permitted Lender with an outstanding Permitted Sublease Financing Encumbrance of which City has received notice.

(c) City's Deemed Consent to Potential Bidders. City's consent or deemed consent shall not be required for a Transfer to a Foreclosure Purchaser that is a Permitted Lender or an SPE Lender Affiliate. If Landlord under the Ground Lease consents to an Equity Collateral Enforcement Action (as defined in the Ground Lease) that is a foreclosure on the Mezzanine Interests (as defined in the Ground Lease) in accordance with the Ground Lease, then the City shall be deemed to have consented to an Equity Collateral Enforcement Action that is a foreclosure on the Mezzanine Interest.

**Section 9.5 Subordination, Non-Disturbance and Attornment Agreement.** Prior to or on the Commencement Date, (a) City and each Permitted Mortgage Lender shall enter into a subordination, non-disturbance and attornment agreement substantially in the form of Exhibit E attached hereto and (b) City and each Permitted Mezzanine Lender shall enter into a subordination, non-disturbance and attornment agreement substantially in the form of Exhibit F attached hereto.

#### **Section 9.6 Miscellaneous.**

(a) Estoppel Statements. Upon not less than fifteen (15) Business Days' notice by RIDA, City shall execute, acknowledge and deliver to RIDA, or if requested by RIDA in writing, such Permitted Lender or such prospective qualified Permitted Lender, as applicable, an estoppel statement in substantially the form of Exhibit G attached hereto without any material changes.

(b) Completion of the Convention Center.<sup>4</sup> If any Foreclosure Purchaser acquires the subleasehold interest before the date when the Convention Center is Completed, such Foreclosure Purchaser shall expressly assume in writing (in a form reasonably acceptable to the Public Entities) the obligations of RIDA under the Ground Lease and the Project Implementation Agreement. The City shall negotiate in good faith with such Foreclosure Purchaser to set a new commercially reasonable timetable for Completion of the Convention Center ("New Convention Center Completion Timetable"). For the avoidance of doubt, the new date of Completion of the Convention Center ("New Convention Center Outside Construction Completion Date") may be later than the Original Outside Construction Completion Date set forth in the Project Implementation Agreement),

---

<sup>4</sup> Conform to 10.6.2 of the Ground Lease. Add confirmation that any Foreclosure Purchaser of the Convention Center Site must also acquire the Hotel Site and assume the PIA.



based on the status of the construction of the Convention Center at the time of the applicable foreclosure or action in lieu of foreclosure, as applicable, but in no event shall such New Convention Center Outside Construction Completion Date be extended by a period that does not reasonably take into account the status of the construction of the Convention Center at the time of the applicable foreclosure or action in lieu of foreclosure, as applicable, and the amount of time that it would reasonably take a sophisticated developer with experience constructing and operating convention centers to Complete the Convention Center and in no event shall such New Convention Center Outside Construction Completion Date extend beyond four (4) years from the Original Outside Construction Completion Date set forth in the Project Implementation Agreement, unless otherwise agreed to by City. Once City and such Foreclosure Purchaser agree on a New Convention Center Completion Timetable, then such Foreclosure Purchaser shall Complete the Convention Center in accordance with such New Convention Center Completion Timetable and such Foreclosure Purchaser shall pay Construction Late Charges in accordance with the Project Implementation Agreement. If the City and such Foreclosure Purchaser cannot agree on a New Convention Center Completion Timetable, then the City and such Foreclosure Purchaser shall proceed to Judicial Reference in accordance with Section 6.6(e); provided that the New Convention Center Outside Construction Completion Date shall be tolled during the pendency of any Judicial Reference pursuant to this Section 9.6(b).

(c) Amendments and Modifications to Loan Documents. Notwithstanding anything to the contrary herein, RIDA and Permitted Lender shall have the right to make any amendment or modification to any of the Loan Documents without City's consent if (a) City receives a copy of the amendment or modification within thirty (30) days after it has been executed and (b) following the amendment or modification, (i) the requirements of Sections 10.1.2 or 10.1.3 of the Ground Lease, as applicable, are satisfied and (ii) the name of the borrower and the name of the lender that is a party to the Permitted Financing Encumbrance remain the same, except that the lender may be different if such lender is a replacement to the administrative agent under the Permitted Financing Encumbrance; provided that such replacement lender is a Financial Institution that is an existing Permitted Mortgage Lender previously approved by the Landlord for the same financing secured by the applicable Permitted Financing Encumbrance. Notwithstanding the foregoing, no City consent shall be required for any protective advances made by a Permitted Lender under and in compliance with the applicable Loan Documents.

## ARTICLE X

### SUB-SUBLEASES; ASSIGNMENT

#### Section 10.1 Sub-Subleases.

(a) Sub-Subleases. The City and RIDA agree that no sub-sub-sublease of the Site and no sub-sublease of the Improvements (each, a "Sub-sublease") shall be made except as set forth in this Article 10.

(b) Consent Required. Subject to the terms of Sections 10.1(b) through 10.6 and except for (a) any Sub-sublease that is for less than ten thousand (10,000) square feet of the total square footage of the Convention Center, no Sub-sublease shall be made or permitted without the prior written consent of the City (which consent shall not be unreasonably withheld, conditioned or delayed).

(c) Request for Consent. If a Sub-sublease is proposed for which the City consent is required, RIDA shall notify the City in writing, which notice (the “Sub-sublease Notice”) shall include (i) the proposed effective date of the Sub-sublease, which shall not be less than sixty (60) days and not more than one hundred eighty (180) days after the date of delivery of the Sub-sublease Notice, (ii) a narrative description, with supporting documents, of the proposed Sub-sublease, including without limitation, the name of the proposed Sub-subtenant, the term of the Sub-sublease, the proposed use of the Site and/or the Improvements, as applicable, the experience of the proposed Sub-subtenant, the organizational structure of the proposed Sub-subtenant, and any additional information that the City may reasonably require to evaluate the Sub-sublease based on the factors set forth in Section 10.1(d), (iii) with respect to any Sub-sublease that has a maximum total term of more than five (5) years, a copy of the proposed sub-sublease agreement, (iv) a statement of any current litigation or any litigation which was resolved within the prior five (5) years affecting the proposed Sub-subtenant and (v) such other information as the City may reasonably require. Not later than thirty (30) days after receipt of a Sub-sublease Notice, the City shall notify RIDA (a) that the City has all information that it requires to evaluate the proposed Sub-sublease or (b) of any additional information that the City reasonably requires to evaluate the proposed Sub-sublease, as applicable. The City shall notify RIDA that it consents or does not consent to the proposed Sub-sublease (including, if applicable, a reasonably detailed explanation for the City withholding its consent) not later than sixty (60) days after the City has received all information that the City reasonably requested to evaluate the proposed Sub-sublease. Any Sub-sublease made without the City’s prior written consent shall, at the City’s option, be null, void and of no effect undone at RIDA’s sole cost and expense and shall not be binding on the City. RIDA shall pay to the City a commercially reasonable fee set by the City in connection with the City reviewing and approving each Sub-sublease for which the City’s consent is required pursuant to the Reimbursement Procedure, regardless of whether the Sub-sublease is consummated or the City’s consent thereto is granted. Any Sub-sublease shall be subject to the terms and provisions of this Sublease.

The burden of producing evidence and the burden of proof showing the City that a prospective Sub-subtenant meets each and all of the aforesaid qualifications and standards and that the City breached, or did not act reasonably under, this Section 10.1, shall be on RIDA.

(d) Consent Factors. If the City consents to any Sub-sublease, RIDA may within one hundred eighty (180) days after the date of delivery of the Sub-sublease Notice, enter into such Sub-sublease; provided that, if there is any material change to the financial condition of the Sub-subtenant or any other material change to any of the proposed terms or conditions of the Sub-sublease as set forth or attached to the Sub-sublease Notice, then RIDA shall again submit a Sub-sublease Notice to the City for its approval and take all other action required under this Section 10.1.

Notwithstanding anything to the contrary herein, the City shall grant consent that is required hereunder to any Sub-sublease if all of the following conditions and requirements are satisfied in the City’s reasonable discretion:

(i) Consistent Use. The Sub-subtenant’s proposed use of the Facility following the proposed Sub-sublease will be for the Permitted Use only or such proposed use as has been approved by the City in its sole and absolute discretion;

(ii) Reputation. The Sub-subtenant is reputable (which shall mean the absence of reputations for dishonesty, criminal conduct or association with criminal elements – “reputable” shall not mean “prestigious”, nor shall the determination of whether one is reputable

involve considerations of personal taste or preference) and has no pattern of or reputation for, either discriminatory employment practices which violate any Laws or non-compliance with Environmental Laws;

(iii) Financial Stability. The Sub-subtenant has sufficient financial resources for the Sub-subtenant to perform its obligations under the Sub-sublease;

(iv) Event of Default. At the time of the delivery of the Sub-sublease Notice and at the time of the execution of the Sub-sublease, there is no Event of Default;

(v) [Reserved]; and

(vi) Term. The proposed Sub-sublease will be for no longer than the remainder of the Term.

**Section 10.2 Effect of Sub-sublease.** If the City consents to a Sub-sublease, (i) the terms and conditions of this Sublease shall in no way be deemed to have been waived or modified, (ii) such consent shall not be deemed consent to any further Sub-sublease by either RIDA or a Sub-subtenant, and (iii) RIDA shall deliver to the City, within ten (10) days after execution, an original executed copy of all documentation pertaining to the Sub-sublease, and any document evidencing a Sub-sublease shall be in form acceptable to the City.

**Section 10.3 Conditions.** In the event the City consents to any Sub-sublease as required hereunder, then at the City's election said consent shall be conditioned upon the following: (i) in the case of a Sub-subtenant under a Sub-sublease of all or Substantially All of the Facility, such Sub-subtenant shall agree to be bound by all provisions, and assume each and every obligation, under this Sublease (including those obligations arising or pertaining to periods prior to the effective date of the Sub-sublease), or, in the case of a Sub-subtenant under a Sub-sublease of less than all or Substantially All of the Facility, such Sub-subtenant shall execute a document reasonably acceptable to the City acknowledging that all rights of the Sub-subtenant are subject to all terms and conditions of this Sublease as the same relate to the space subject to the Sub-sublease; and (ii) the Sub-subtenant shall execute an attornment agreement as provided in Section 10.4 below.

**Section 10.4 Sub-subtenant Attornment.** Every Sub-sublease hereunder is subject to the express condition, and by accepting a Sub-sublease hereunder each Sub-subtenant shall be conclusively deemed to have agreed, that if this Sublease terminates or if the City succeeds to RIDA's estate in the Facility, the Sub-subtenant shall, at the option of the City, attorn to and recognize the City as the Sub-subtenant's landlord under the Sub-sublease, provided that the City shall not (i) be liable for any act or omission or negligence of RIDA, (ii) be subject to any counterclaim, offset or defense which theretofore accrued to such Sub-subtenant against RIDA, (iii) be bound by any payment of Rent or other sums of money for more than one (1) month in advance or any security deposit (unless actually received by the City), (iv) be obligated to perform any work in the sublet space, (v) in the event of a casualty, be obligated to repair or restore the Improvements or the Site, (vi) in the event of a partial Taking, be obligated to repair or restore the Improvements or the Site, (vii) be obligated to make any payment to such Sub-subtenant, or (viii) be bound by any obligations that the City lacks the capacity to perform; provided, however, that, if the City elects not to perform any of the obligations set forth in clause (v) to the extent that the Sub-subtenant has not caused such casualty and such casualty affects the entirety of Sub-subtenant's operations on the Site and/or the Improvements, as applicable, or clause (vi) to the extent that such

partial Taking affects the Sub-subtenant's operations in their entirety on the Site and/or the Improvements, as applicable, then Sub-subtenant shall have the right to terminate the applicable Sub-sublease, in its reasonable discretion, by providing notice thereof to the City. Any Sub-subtenant shall promptly execute and deliver any instrument that the City may reasonably request to evidence such attornment. Upon early termination of this Sublease, if the City requests that Sub-subtenant attorn to the City, then RIDA shall pay over to the City all sums held by RIDA for the benefit of such Sub-subtenant or as security under the provisions of the existing Sub-subleases for such Sub-subtenant. In addition, at RIDA's request, the City may agree, in its sole and absolute discretion and without obligation to RIDA or Sub-subtenant and without liability to the City, to negotiate a non-disturbance agreement with a Sub-subtenant with a Sub-sublease in excess of 50% of the Project if the City has previously approved the Sub-sublease in writing to such Sub-subtenant pursuant to which such non-disturbance agreement the City would agree not to disturb the possession of such Sub-subtenant in the event this Sublease is terminated.

**Section 10.5 Sub-sublease Rent Requirements.** Subject to the terms of any Permitted Financing Encumbrance, each Sub-sublease shall require the Sub-subtenant thereunder to make all payments of rent and other sums of money that are owed under the applicable Sub-sublease to the City during the existence of an Event of Default and following written notice of the same from the City, and the City shall apply said payments made to all Rent that is due and payable to the City pursuant to this Sublease, and any remaining amounts will be held and applied to future Rent payable under this Sublease.

**Section 10.6 Reporting of Sub-sublease Information.** If RIDA has entered into any Sub-subleases, then, within thirty (30) days of request from the City and within sixty (60) days after the end of each calendar year, RIDA shall submit to the City a rent roll in the form of Exhibit H attached hereto containing the information described therein for each Sub-sublease then in effect, along with a site plan showing locations of any Sub-subleases.

**Section 10.7 Assignment.** Subject to the terms of this Section 10.7, Section 10.10, Article IX, the terms of the definition of "Equity Collateral Enforcement Action", and except for any Assignment or Transfer to a Foreclosure Purchaser that is a Permitted Lender or an SPE Lender Affiliate, no Assignment or Change of Control of RIDA (collectively, "Transfer") shall be made or permitted. If Landlord under the Ground Lease consents to any Transfer (as defined in the Ground Lease) under the Ground Lease, then the City shall be deemed to have consented to a Transfer under this Sublease on the terms and conditions that are the same as, or substantially the same as, the terms and conditions to the applicable Transfer (as defined in the Ground Lease) to which Landlord consented under the Ground Lease. Notwithstanding anything herein to the contrary, but subject to the terms of this Section 10.7, Section 10.10, Article IX, the terms of the definition of "Equity Collateral Enforcement Action", and except for any Assignment or Transfer to a Foreclosure Purchaser that is a Permitted Lender or an SPE Lender Affiliate, no Transfer is allowed prior to the date that the Convention Center is Completed and the City has issued the final certificate of occupancy with respect to the Convention Center.

**Section 10.8 Effect of Transfer.** If the City is deemed to have consented to a Transfer, (i) the terms and conditions of this Sublease shall in no way be deemed to have been waived or modified, (ii) such deemed consent shall not be deemed consent to any further Transfer by either RIDA or a Transferee, and (iii) RIDA shall deliver to the City, within one hundred and eighty (180) days after the City's deemed consent to such Transfer, an original executed copy of all documentation pertaining to the Transfer. In the case of an Assignment of this Sublease only, that

complies with the terms of Section 10.7, RIDA and the Transferee shall enter into, and deliver to the City, an assignment and assumption agreement substantially in the form of Exhibit I attached hereto, with any deviations from such form being approved by the City in the City's reasonable discretion. Upon the City's receipt of such fully executed assignment and assumption agreement where Transferee assumes all liability and obligations under this Sublease and the Project Implementation Agreement first arising from and after the effective date of such Transfer, RIDA (but not the Completion Guarantor(s), if the Completion Guaranty is in effect on the effective date of the Transfer) shall be relieved from any liability under this Sublease first arising from and after the effective date of such Transfer.

**Section 10.9 Conditions.** In the event the City is deemed to have consented to any Assignment as required hereunder, then said deemed consent shall be conditioned upon (i) the assignee agreeing in writing to be bound by all provisions, and assuming each and every obligation, under this Sublease and the Project Implementation Agreement (first arising from and after the effective date of the assignment) through an assignment and assumption agreement substantially in the form of Exhibit I hereto (with any deviations from such form being approved by the City in the City's reasonable discretion) and executes and delivers such assignment and assumption agreement to the City; and (ii) the Completion Guarantor(s) (if applicable) delivering a written acknowledgement, in a form acceptable to the City, consenting to the Assignment and reaffirming their obligations under the Completion Guaranty; [provided that no such acknowledgement and reaffirmation shall be required from Completion Guarantor(s) (if applicable) in connection with any Transfer or Assignment resulting from or following any exercise of remedies by a Permitted Lender.]<sup>5</sup>

**Section 10.10 Permitted Lender and Foreclosure Purchasers.** The foregoing provisions of this Article 10 shall not apply to the Transfers which are governed by Sections 9.3 and 9.4.

## ARTICLE XI

### MISCELLANEOUS

**Section 11.1 Notices.** All notices, certificates or other communications hereunder to RIDA, the City, the Port, the JEP A, or the Trustee shall be in writing and shall be sufficiently given and shall be deemed given when delivered or mailed by first class mail, postage prepaid, to the parties listed below:

To RIDA:	RIDA Chula Vista, LLC 1777 Walker Street, Suite 501 Houston, Texas 77010 Attention: Ira Mitzner
----------	--

---

<sup>5</sup> Subject to acceptable Completion Guaranty terms.

With copy to: RIDA Chula Vista, LLC  
1777 Walker Street, Suite 501  
Houston, Texas 77010  
Attention: Luke Charlton

And

Latham & Watkins  
12670 High Bluff Drive  
San Diego, CA 92130  
Attention: Steven Levine

To the City: City of Chula Vista  
276 Fourth Avenue  
Chula Vista, California 91910  
Attention: City Manager

With copy to: City of Chula Vista  
276 Fourth Avenue  
Chula Vista, California 91910  
Attention: City Attorney

With copy to: Port (at the address shown below)

With copy to: JEPA (at the address shown below)

To Port: Executive Director  
San Diego Unified Port District  
Post Office Box 120488  
San Diego, CA 92112-0488

With copy to: Director, Real Estate Department  
San Diego Unified Port District  
Post Office Box 120488  
San Diego, CA 92112-0488

With copy to: Port Attorney  
San Diego Unified Port District  
Post Office Box 120488  
San Diego, CA 92112-0488

To JEPA: Chula Vista Bayfront Facilities Financing Authority  
PO Box 5296  
Chula Vista, CA 91912  
Attention: Executive Director

With copies to: City of Chula Vista  
276 Fourth Avenue  
Chula Vista, California 91910  
Attention: City Manager

City of Chula Vista  
276 Fourth Avenue  
Chula Vista, California 91910  
Attention: Finance Director

City of Chula Vista  
276 Fourth Avenue  
Chula Vista, California 91910  
Attention: City Attorney

San Diego Unified Port District  
Post Office Box 120488  
San Diego, CA 92112-0488  
Attention: Executive Director

Director, Real Estate Department  
San Diego Unified Port District  
Post Office Box 120488  
San Diego, CA 92112-0488

Port Attorney  
San Diego Unified Port District  
Post Office Box 120488  
San Diego, CA 92112-0488

RIDA, the Port, the JEPa and the City, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

**Section 11.2 Binding Effect.** This Sublease shall inure to the benefit of and shall be binding upon RIDA and the City and their respective successors and assigns.

**Section 11.3 Severability.** In the event any provision of this Sublease shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 11.4 Execution in Counterparts.** This Sublease may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 11.5 Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State.

**Section 11.6 Captions.** The captions or headings in this Sublease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Sublease.

**Section 11.7 No Merger.** If both RIDA's and the City's estate under this or any other lease relating to the Facility or any portion thereof shall at any time by any reason become vested in one owner, this Sublease and the estate created hereby shall not be destroyed or terminated by the doctrine of merger unless (a) the City so elects as evidenced by recording a written declaration so stating, and, unless and until the City so elects, the City shall continue to have and enjoy all of its rights and privileges as to the separate estates and (b) RIDA has provided written consent to such election.

**Section 11.8 Third-Party Beneficiary.** There are no third-party beneficiaries of this Sublease except as set forth in this Section 11.8. Each Permitted Lender shall be a third-party beneficiary of this Sublease as it relates, directly or indirectly, to such Permitted Lender, including, without limitation, pursuant to Section 4.1, Section 5.1(d), Section 5.1(g), Section 5.2(a), Section 5.2(b), Section 6.6(f), and Article IX, Section 10.7, Section 10.10, Section 11.7, and this Section 11.8, only and only to the extent such Permitted Lender has any rights under such provisions; provided, however, that Permitted Lender shall not have the right to enforce such rights against the City unless Permitted Lender has complied with the provision relating to such third party beneficiary rights in this Sublease. Notwithstanding anything to the contrary in this Sublease, the only remedies that a Permitted Lender shall have in enforcing its third party beneficiary rights under this Section 11.8 against the City shall be the right to pursue declaratory relief and specific performance.

As the owner and lessor of the Convention Center and the sublessor of the Site under the Facility Lease (with respect to the JEPA) and as the owner and lessor of the Site under the Site Lease (with respect to the Port), each of the JEPA and the Port has certain interests in the development, use and financing of the Facility and will benefit from the performance by RIDA of certain covenants to be performed by RIDA under this Sublease. The Parties agree that permitting any third party beneficiary under this Sublease to bring its own breach of contract action is consistent with the objectives of this Sublease and the reasonable expectations of the City and RIDA. As such, in order to induce the Port and JEPA to consent to the execution of this Sublease by the City, under this Sublease, (x) the JEPA shall be a third party beneficiary of this Sublease as it relates to any JEPA Sublease Third Party Beneficiary Provision and (y) the Port shall be a third party beneficiary of this Sublease as it relates to any Port Sublease Third Party Beneficiary Provision. The JEPA and/or the Port will be permitted to exercise its respective third party beneficiary rights with respect to any breach of a JEPA Sublease Third Party Beneficiary Provision or a Port Sublease Third Party Beneficiary Provision, as applicable, either in conjunction with the City or on its own behalf subject to the terms and conditions of this Section 11.8. The JEPA or the Port will be permitted to exercise its respective third party beneficiary rights with respect to any breach of a JEPA Sublease Third Party Beneficiary Provision or a Port Sublease Third Party Beneficiary Provision, respectively, only if (a) the JEPA or the Port, as applicable, consults with the City regarding the exercise of their respective third party rights prior to the commencement of any action to enforce such rights and (b) the JEPA or the Port, as applicable, delivers written notice to RIDA of the JEPA's or the Port's, as applicable, intention to exercise such rights against RIDA (such notice, the "Third Party Beneficiary Notice"). If the JEPA or the Port, as applicable, delivers a Third Party Beneficiary Notice to RIDA with respect to a breach of a Sublease Third Party Beneficiary Provision and the City exercises remedies with respect to such breach of such Sublease Third Party Beneficiary Provision, then the JEPA or the Port, as applicable, must undertake (for the benefit of RIDA and the City) to cooperate and coordinate with the City, and City shall cooperate and coordinate with the JEPA or the Port, as applicable, so that all statements and positions taken by the JEPA, the Port or the City with respect to any dispute related to such breach in communications with RIDA or in any dispute resolution procedure will be joint statements or positions, as applicable, to the maximum extent possible. Notwithstanding anything to



the contrary in any Contemporaneous Agreement, when pursuing its third party beneficiary rights under this Section 11.8, the rights of the Port and the City shall be limited to the right to pursue declaratory relief, specific performance and claims for direct damages, including, without limitation, attorneys' fees and costs, all of which rights shall be subject to terms of this Sublease, including, without limitation, all notice and cure rights granted to Permitted Lenders herein, and neither the JEPA nor the Port may exercise any right to terminate this Sublease.

**Section 11.9 Release of Encumbrance.** Immediately following the end of the Term, the City shall execute, deliver, and cause to be recorded in the Office of the Recorder of San Diego County, all such documents as are necessary or advisable to fully release, of record, the encumbrance on title to the Site which is caused by the recording of this Sublease with the San Diego County Recorder; and shall thereafter take such actions and execute such documents as may further be necessary or advisable to fully evidence the termination of this Sublease and the release of RIDA from all obligations hereunder, except such obligations as survive the Term as expressly set forth herein.

**Section 11.10 Transaction Costs.** To the extent RIDA requests any approval, consent or other action by the City (including, without limitation, in connection with any proposed Alterations, Financing Transaction or Transfer), RIDA shall pay or reimburse the City upon written demand therefor, all of the City's reasonable attorneys' fees and other third party costs incurred by the City in connection therewith, together with the City's then current processing or cost recovery fee for similar transactions consistent with any schedule of such fees then utilized by the City. The City shall provide RIDA with a copy of any such fee schedule following written request therefor from RIDA. Such costs and fees shall be payable to the City whether or not the City grants such approval or consent, or undertakes the action requested by RIDA.

**Section 11.11 Drafting Presumption; Review Standard.** The Parties acknowledge that this Sublease has been agreed to by both the Parties, that both City and RIDA have consulted with attorneys with respect to the terms of this Sublease and that no presumption shall be created against the drafting Party. Any deletion of language from this Sublease prior to its execution by City and RIDA shall not be construed to raise any presumption, canon of construction or implication, including, without limitation, any implication that the Parties intended thereby to state the converse of the deleted language. Unless otherwise specified in this Sublease, any approval or consent to be given by City or the City Council may be given or withheld in the City's or the City Council's sole and absolute discretion.

**Section 11.12 Constitutional Rights and Compliance with Law.** Nothing in this Sublease is intended to limit any rights that RIDA has under the Constitution of the United States of America or the California State Constitution with respect to any act, including the enactment of any Law, by City or any other Governmental Authority, including, without limitation, any claim for a taking, and this Sublease shall be construed as to give effect to such intent. Whenever this Sublease requires RIDA to comply with the requirements of any Law, then RIDA will be deemed in compliance with such Law if each applicable Governmental Authority has provided a written variance from or waiver of compliance therewith.

**Section 11.13 Time of Essence.** Time is of the essence with respect to this Sublease and each of its provisions.

**Section 11.14 Entire Agreement.** It is understood and acknowledged that there are no oral agreements between the Parties affecting this Sublease and this Sublease supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the Parties with respect to the subject matter hereof, except for the Prior Agreements, the Contemporaneous Agreements and the Approved Agreements. This Sublease contains all of the terms, covenants, conditions, warranties and agreements of the Parties relating in any manner to the rental, use and occupancy of the Site and the Improvements and shall be considered to be the only agreement between the Parties and their representatives and agents, except for the applicable Prior Agreements, the applicable Contemporaneous Agreements and the applicable Approved Agreements. All negotiations and oral agreements acceptable to the Parties have been merged into and are included herein. There are no other representations or warranties between the Parties, and all reliance with respect to representations is based totally upon the representations and agreements contained in this Sublease. However, RIDA acknowledges and agrees that other documents may restrict RIDA's use of the Facility or impose other obligations not specifically referenced in this Sublease, including, but not limited to, conditions of approval of a CDP or mitigation measures under CEQA.

**Section 11.15 Discharge of the Bonds.** In the event that all Bonds and Additional Bonds issued under the Indenture shall be deemed to have been paid and discharged in accordance with Section 9.3 of the Indenture (the "Discharge of the Bonds"), then all references herein to the Bonds, Additional Bonds, Trustee, the Indenture and the Assigned Rights (as defined in the Indenture) shall be of no force and effect as of the effective date of the Discharge of the Bonds. On the effective date of the Discharge of the Bonds, (a) the Assigned Rights shall revert to the JEPa without any further action on the part of any Public Entity or the Trustee, (b) any amounts that were to have been paid to Trustee under the Facility Lease shall be paid to the JEPa, except for any Net Proceeds, which shall be held pursuant to the terms of this Sublease and distributed in accordance with the provisions of the Facility Lease, this Sublease, the Project Implementation Agreement and, subject to the provisions of the Facility Lease, this Sublease and the Project Implementation Agreement, the Revenue Sharing Agreement, or any other agreement between the Public Entities and RIDA governing the distribution of such amounts, and (c) all rights granted to the Trustee hereunder, including, but not limited to, the Assigned Rights (as defined in the Indenture) and the right to enforce any remedies, to provide consent and to receive notice, shall be of no further force and effect.

IN WITNESS WHEREOF, the City has caused this Sublease to be executed in its name by its duly authorized officers, and RIDA has caused this Sublease to be executed in its name by its duly authorized officers, as of the date first above written.

CITY OF CHULA VISTA, as Sublessor

By: \_\_\_\_\_  
Its: City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

RIDA CHULA VISTA, LLC, as Sublessee

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

CONSENTED AND, WITH RESPECT TO  
SECTIONS 6.6(A), 6.8(A), 6.20(C) AND 11.8 OF  
THIS SUBLEASE, AGREED TO BY:

SAN DIEGO UNIFIED PORT DISTRICT

By: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary

CONSENTED AND, WITH RESPECT TO  
SECTIONS 3.12(E), 6.8(a), 11.8 AND 11.15 OF  
THIS SUBLEASE, AGREED TO BY:

CHULA VISTA BAYFRONT FACILITIES  
FINANCING AUTHORITY, a California  
joint exercise of powers authority

By: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary

## **DEFINITIONS ADDENDUM**

[to be inserted.]

**EXHIBIT A**  
**DESCRIPTION OF THE SITE**

**EXHIBIT B-1**

**SCHEDULE OF BASE RENT PAYMENTS**

**Sublease Base Rental Periods:**

First (1st) Lease Period: Lease Years 1 – 18

Second (2nd) Lease Period: Lease Years 19 – 23

Third (3rd) Lease Period: Lease Years 24 – 37

**Base Rent:**

First (1st) Lease Period: \$0 per Lease Year,

Second (2nd) Lease Period: \$2,100,000 per Lease Year,

Third (3rd) Lease Period: \$2,450,000 per Lease Year

## EXHIBIT B-2

### CALCULATION OF ADDITIONAL RENT

Pursuant to Section 3.5(b) of the Sublease, RIDA shall pay to City Additional Rent in the amount calculated pursuant to this Exhibit B-2.

1. Additional Rent. For each calendar year of the First (1st) Lease Period, Second (2nd) Lease Period, and Third (3rd) Lease Period, RIDA shall pay additional rent (“Additional Rent”) to the City equal to fourteen percent (14%) (“Additional Rent Percentage”) of the amount by which the Net Operating Income for such calendar year exceeds eleven percent (11%) of the Actual Capital Investment (“Additional Rent Hurdle”).

For purposes of this Exhibit B-2, the following definitions shall apply:

“Net Operating Income” shall mean, for any calendar year, the total Project Revenues less all Operating Expenses calculated on an annual basis.

“Actual Capital Investment” shall mean (a) the Sublease Advance Rent paid by RIDA under the Sublease that is not captured in clause (b) and (b) the actual cost incurred by RIDA (but neither funded nor reimbursed by proceeds of casualty or condemnation (net of any taxes) or by the Port, the City, or JEPA) to design, construct and develop the Initial Project Improvements and the Tenant’s Initial Project Improvements, including, without limitation, all financing costs and other costs that are capitalized in accordance with generally accepted accounting principles, as certified by a reputable, certified public accountant as of the latest of the following dates: Completion of the Convention Center and Completion (as defined in the Ground Lease) of the Tenant’s Initial Project Improvements.

“Project Revenues” shall mean all income, receipts, proceeds, amounts, money, cash, assets, property or things of value actually received by RIDA for all goods and merchandise sold, room revenues derived from hotel operations, food and beverages sold, the charges for all services performed, or any other revenues generated by or otherwise payable to RIDA (and RIDA Parties) (including, without limitation, user fees, retail and commercial rent, revenue from rooms, accommodations, food and beverage, and the proceeds of business interruption insurance) in, at or from the Site, the Ground Lease Property, the Initial Project Improvements and the Tenant’s Initial Project Improvements, whether collected, uncollected, received, payable or accrued, and all rent actually received by RIDA from any Sub-subtenant pursuant to the applicable Sub-sublease and all rent actually received by Tenant from any Subtenant (as defined in the Ground Lease) pursuant to the applicable Sublease (as defined in the Ground Lease). For the avoidance of doubt and by way of example, Project Revenues from lodging will include only Room revenues derived from the use of Rooms in the Resort Hotel; Project Revenues from food and beverage sales will be limited to income from food and beverages served or delivered at or from the Site, the Convention Center, the Ground Lease Property and the Resort Hotel; Project Revenues from Meeting Space usage will be limited to revenue from the use of Meeting Space located within the Convention Center, the Site, the Resort Hotel and the Ground Lease Property; and Project Revenues from retail sales will be limited to revenues from the sales of goods that are delivered at the Convention Center or the Resort Hotel or for which the purchaser pays at the Convention Center or the Resort Hotel. Project Revenues shall exclude (a) any promotional allowances, (b) proceeds from any sale of the Project (or any portion thereof) or any refinancing of the Project (or any portion thereof), in each case, that are not



prohibited by this Sublease or the Ground Lease, (c) proceeds of any disposition of RIDA's trade fixtures (that is fixtures that relate uniquely to RIDA and which are removable without non-repairable damage to the Improvements), furnishings, moveable equipment and other personal property of RIDA located on the Site or the Ground Lease Property or at the Initial Project Improvements or the Tenant's Initial Project Improvements, (d) bad debt losses, (e) all income, receipts, proceeds, amounts, money, cash, assets, property or things of value received by any Sub-subtenant or any Subtenant (as defined in the Ground Lease) (but this exclusion (e) is not intended to exclude from Project Revenues rent actually received by RIDA from any Sub-subtenant pursuant to the applicable Sub-sublease or rent actually received by Tenant from any Subtenant (as defined in the Ground Lease) pursuant to the applicable Sublease (as defined in the Ground Lease)), (f) interest received or accrued with respect to the funds in any repair and replacement reserve required to be maintained under a Hotel Management Agreement; provided that such interest is required to be credited to the reserve, (g) any refunds, rebates, discounts and credits of a similar nature that are given, paid or returned in the course of obtaining income or components thereof, which will be deducted from the Project Revenues for the period in which such income was earned; or (h) any insurance proceeds or Condemnation proceeds. Any "Project Revenue" shall be calculated on an accrual basis promptly after an audit with respect to such Project Revenue has been completed.

"Operating Expenses" shall mean expenses, costs, and amounts of every kind that RIDA pays or incurs during any calendar year because of or in connection with the ownership, operation, management, maintenance, repair, replacement, or restoration of, or Alterations to, the Site, the Ground Lease Property, the Initial Project Improvements and the Tenant's Initial Project Improvements, or the operation or management of the business conducted thereon consistent with this Sublease and the Ground Lease, as applicable (collectively, "Operation"), including, by way of example, all direct and indirect employment expense (including wages, salaries, and other compensation and benefits of all persons engaged in Operation, including employer's social security taxes, unemployment taxes, insurance, and any other taxes imposed on RIDA that may be levied on those wages, salaries, and other compensation and benefits), cost of goods sold, costs of supplies or materials consumed and any other cost or expense of any kind incurred in connection therewith; cost of equipment and fixtures installed in the Initial Project Improvements, the Site, the Ground Lease Property or the Tenant's Initial Project Improvements (to the extent not included in the calculation of Actual Capital Investment); the cost of any utilities; the cost of operating, managing, maintaining, and repairing any building system; the cost of licenses, certificates, permits, and inspections; the cost of any Property Tax Contest; the costs incurred in connection with the implementation and operation of a transportation system management program or similar program; advertising and marketing expense of any kind (including the cost of participating in a reservation management or loyalty program); fees, charges, and other costs including management fees (or amounts in lieu of such fees), consulting fees, legal fees, and accounting fees of all persons engaged by RIDA or otherwise reasonably incurred by RIDA in connection with the operation, management, maintenance, and repair of the Site, the Ground Lease Property, the Initial Project Improvements and the Tenant's Initial Project Improvements, or the operation of the business conducted thereon; payments under any easement, license, operating agreement, declaration, restrictive covenant, or instrument relating to the sharing of costs by the Site, the Ground Lease Property, the Initial Project Improvements and the Tenant's Initial Project Improvements; payments under any operating agreement, including industry standard operator and franchise fees, replacement reserves, and replacement costs in excess of reserves; asset management fees for the Tenant's Initial Project Improvements and the Initial Project Improvements (which shall not exceed one percent (1%) of the Project Revenues); gross tax receipts for the Tenant's Initial Project Improvements or the Initial Project Improvements; sales, use, transient occupancy or similar tax; the cost of maintaining insurance premiums for the Tenant's

Initial Project Improvements, the Initial Project Improvements and the Parking Improvements (including liability insurance); property taxes for the Tenant's Initial Project Improvements and the Initial Project Improvements; possessory interest tax on RIDA's leasehold interest (land value); incentive management fees ("Management Incentive Fee") for the Tenant's Initial Project Improvements and the Initial Project Improvements (which, for any calendar year, shall not exceed twenty percent (20%) ("Maximum Incentive Fee Percentage") of the portion of the Net Operating Income for such calendar year that exceeds Seventy-Five Million Six Hundred and Eighty Thousand Dollars (\$75,680,000) ("Incentive Fee Hurdle")); Rent actually paid by RIDA under this Sublease; any other cost or expense that is properly allocated to the operation of the Ground Lease Property, the Site, the Tenant's Initial Project Improvements or the Initial Project Improvements under USALI; and all other expenses categorized as "deductions" under the Hotel Management Agreement that are agreed to by the City in the reasonable exercise of its discretion. Operating Expenses shall exclude debt service (principal and interest) paid by RIDA for the Tenant's Initial Project Improvements or its leasehold interest in the Initial Project Improvements; depreciation of the Tenant's Initial Project Improvements and the Initial Project Improvements; income taxes paid by RIDA for Project Revenues related to the Tenant's Initial Project Improvements or the Initial Project Improvements; and the costs or expenses of operating any business within any portion of the Ground Lease Property, the Site, the Tenant's Initial Project Improvements or the Initial Project Improvements that is subleased to any Sub-subtenant or any Subtenant (as defined in the Ground Lease) (but not the costs incurred by RIDA (as sublandlord and as RIDA) in operating such portion of the Ground Lease Property, the Site, the Tenant's Initial Project Improvements or the Initial Project Improvements (such as insurance costs, maintenance and repair costs and Property Tax Expenses)). Any "Operating Expense" shall be calculated on an accrual basis promptly after an audit with respect to such Operating Expense has been completed.

With respect to each calendar year in the First (1st) Lease Period, Second (2nd) Lease Period, and Third (3rd) Lease Period, on or before the fifteenth (15th) day after the earlier of: (a) the completion of RIDA's audit of the Project's financial records for such calendar year and (b) the date (as extended in accordance with the Law) by which RIDA is required by Law to file its U.S. federal income tax for the last taxable year that includes a portion of such calendar year, RIDA shall render to Port, City and JEPA, a monthly report of Net Operating Income for the immediately preceding month of such calendar year and the Additional Rent due, if any. Each report shall be signed by an Authorized Representative of RIDA under penalty of perjury and shall be accompanied by payment of all Additional Rent due.

2. Additional Rent Example Calculation.

For the purpose of this Additional Rent example calculation only, the variables are as follows:

AR = Additional Rent

MIF = Management Incentive Fee

a = Additional Rent Percentage

b = Maximum Incentive Fee Percentage

c = Incentive Fee Hurdle

d = Additional Rent Hurdle

LNR = Landlord Net Revenue (Net Operating Income without deducting MIF)

ONR = Operator Net Revenue (Net Operating Income without deducting AR)

Assuming that the Net Operating Income for a year is \$100 million, the Additional Rent will be calculated as follows:

$$AR = \frac{a(LNR - b(ONR - c) - d)}{1-ab}$$

$$AR = \frac{14\% (\$100M - 20\% (\$100M - \$75.68M) - \$86.35M)}{1 - (14\% \times 20\%)}$$

$$AR = \frac{14\% (\$100M - 20\% \times \$24.32M - \$86.35M)}{1-.028}$$

$$AR = \frac{14\% (\$100M - \$4.864M - \$86.35M)}{.972}$$

$$AR = \frac{14\% \times \$8.786M}{.972}$$

$$AR = \frac{\$1.23M}{.972}$$

AR = approximately \$1.265 Million

**EXHIBIT C**  
**FORM OF LETTER OF CREDIT**

(to be attached prior to execution)

**EXHIBIT D**

**LETTER OF CREDIT ISSUERS**

Wells Fargo Bank, N.A.

Bank of America, N.A.

Cullen/Frost Bankers, Inc.

Crédit Agricole S.A.

The Bank of Nova Scotia, operating as Scotiabank

BBVA Compass Bancshares, Inc.

**EXHIBIT E**

**FORM OF SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT  
FOR PERMITTED MORTGAGE LENDER**

**EXHIBIT F**

**FORM OF SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT  
FOR PERMITTED MEZZANINE LENDER**

**EXHIBIT G**

**FORM OF ESTOPPEL CERTIFICATE**

Name  
Address

RE: [ \_\_\_\_\_ ] (“Premises”)

Ladies and Gentlemen:

This Estoppel Statement (“**Statement**”) is issued by the CITY OF CHULA VISTA, a charter city of the State of California (hereinafter referred to as “**Landlord**”), as landlord under that certain sublease dated [ \_\_\_\_\_ ], between Landlord and RIDA Chula Vista, LLC, a Delaware limited liability company (hereinafter referred to as “**Tenant**”), as tenant (the “**Sublease**”). Capitalized terms used herein without definition have the meanings given in the Sublease.

To the actual knowledge of Landlord (without any duty of investigation or inquiry), Landlord hereby acknowledges and confirms to Recipient (as defined below) the following:

1. The Sublease is currently in full force and effect and has not been modified in whole or in part, except as provided by [that/those] certain amendment[s] described and dated as follows: [N/A or list amendment(s)].

2. The Sublease is for a term of [thirty-seven (37) years], commencing [ \_\_\_\_\_ ] and ending [ \_\_\_\_\_ ].

3. As of the date of this Statement, Tenant [is/is not], to the actual knowledge of Landlord (without any duty of investigation or inquiry), in default or in breach under the provisions of the Sublease.

4. Landlord has consented (or is deemed to have consented) to a Permitted Lease Financing Encumbrance created in favor of [ \_\_\_\_\_ ] for a loan in the amount of [ \_\_\_\_\_ ] Dollars (\$[ \_\_\_\_\_ ]), and such consent is based on Port’s approval of a Permitted Lease Financing Encumbrance (as defined in the Ground Lease) created in favor of [ \_\_\_\_\_ ] for a loan in the amount of [ \_\_\_\_\_ ] Dollars (\$[ \_\_\_\_\_ ]) through [an Administrative Approval / Resolution No. [ \_\_\_\_\_ ]], a copy of which is attached hereto and by reference incorporated herein.

5. Except for the items set forth in Section 4, Landlord has no actual knowledge (without any duty of investigation or inquiry) of any other assignment or hypothecation of said leasehold estate, or any pledge or assignment of rents with respect to said Premises.

6. All rent, and any other charges payable by Tenant pursuant to the Sublease (referred to collectively hereinafter as “**Rent**”) has been paid through and including [ \_\_\_\_\_ ]; provided, however, there may be Rent still due and owing which will be discovered at the time of audit by Landlord and, to that extent, Landlord cannot represent that all Rent has been paid.



7. This Statement is given by Landlord with the understanding that the statements herein made may be relied upon only by [ ] (the “**Recipient**”) and only for the purpose of estopping Landlord from asserting contrary facts against Tenant which Tenant also has no knowledge of. Recipient acknowledges and agrees that nothing in this Statement shall be construed as a consent to any lender, loan, or assignment, a waiver of any of the Landlord’s rights under the Sublease or at law or equity, or a modification or amendment to the Sublease and to the extent there may be any conflict between the terms of this Statement and the terms of the Sublease, the Sublease shall control and prevail.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

APPROVED AS TO FORM AND LEGALITY  
CITY ATTORNEY

**CITY OF CHULA VISTA,**  
a charter city of the State of California

By: \_\_\_\_\_  
Glen R. Googins

By: \_\_\_\_\_  
[ ]  
[ ]



**EXHIBIT I**

**FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT**

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

[ ● ]

NO FEE FOR RECORDING PURSUANT TO  
GOVERNMENT CODE SECTION 27383

[Space above for Recorder’s use.]

THIS DOCUMENT IS RECORDED FOR THE  
BENEFIT OF THE CITY OF CHULA VISTA, AND  
THE RECORDING IS FEE-EXEMPT UNDER  
SECTION 27383 OF THE GOVERNMENT CODE.

**[FORM OF] ASSIGNMENT AND ASSUMPTION AGREEMENT**

This **ASSIGNMENT AND ASSUMPTION OF LEASE** (this “**Agreement**”) is made as of [ ● ] (the “**Effective Date**”), by and between **[RIDA CHULA VISTA, LLC**, a Delaware limited liability company] (“**Assignor**”), and [ ● ], a [ ● ] (“**Assignee**”).

**RECITALS**

A. Assignor is the sublessee under that certain Sublease Agreement, dated as of [ ● ]<sup>6</sup> (the “**Commencement Date**”), between the City of Chula Vista, a charter city of the State of California duly organized and existing under and by virtue of the Constitution and laws of the State of California (“**Sublessor**”), as sublessor, and Assignor, as sublessee (as amended to date, the “**Lease**”), with respect to the real property more particularly described therein and located in the City of Chula Vista, California. Capitalized terms used herein without definition have the meanings given in the Lease.

B. The Lease is evidenced by a Memorandum of Lease dated as of [ ● ] and recorded in the Official Records of the San Diego County Recorder as Document Number [ ● ] (together with the Lease, the “**Lease Agreements**”).

C. Assignor [and/or its predecessor in interest] constructed various improvements on the Site and remains the sublessee of the Improvements.

D. Assignor desires to assign its interest under the Lease to Assignee, and Assignee desires to assume all of Assignor’s obligations under the Lease accruing or arising from and after the Commencement Date.

<sup>6</sup> NTD: To be completed before being attached to the execution version of the Lease.

## AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignment. As of the Effective Date, Assignor hereby assigns, transfers, and sets over to Assignee all of its right, title, and interest in, to and under the Lease Agreements and the Facility and Assignee hereby accepts such assignment and (x) assumes and agrees to perform and be bound by all of the terms, covenants, and conditions of the Lease Agreements that are to be performed by, and are binding upon, the [●<sup>7</sup>] thereunder arising on and after the Commencement Date and (y) assumes any and all obligations of Assignor as the sublessee of the Facility arising on and after the Commencement Date (the foregoing, collectively, the “**Assignee Obligations**”).

2. Indemnities. Assignee agrees to indemnify, protect, defend and hold Assignor harmless from and against any and all liabilities, losses, costs, damages and expenses (including reasonable attorneys’ fees and expenses) incurred by Assignor as a result of Assignee’s failure to perform the Assignee Obligations. Assignor agrees to indemnify, protect, defend and hold Assignee and Sublessor harmless from and against any and all liabilities, losses, costs, damages and expenses (including reasonable attorneys’ fees and expenses) incurred by Assignee as a result of Assignor’s failure to perform the terms, covenants, obligations and conditions required to be performed by Assignor under and pursuant to the Lease Agreements prior to the Effective Date. Assignor agrees to indemnify, protect, defend and hold the Port harmless from and against any and all liabilities, losses, costs, damages and expenses (including reasonable attorneys’ fees and expenses) incurred by the Port as a result of Assignor’s failure to perform the terms, covenants, obligations and conditions required to be performed by Assignor under the Port Sublease Third Party Beneficiary Provisions prior to the Effective Date. Assignor agrees to indemnify, protect, defend and hold the JEPA harmless from and against any and all liabilities, losses, costs, damages and expenses (including reasonable attorneys’ fees and expenses) incurred by the JEPA as a result of Assignor’s failure to perform the terms, covenants, obligations and conditions required to be performed by Assignor under the JEPA Sublease Third Party Beneficiary Provisions prior to the Effective Date.

3. No Broker Involvement. Assignor and Assignee represent and warrant each to the other that neither one has employed a broker or agent in connection with the transactions under this Agreement[, except [●], which has been retained by [●] as its advisor on this transaction. Any compensation of any kind owing to [●] shall be the responsibility of [●].] No brokerage commissions or finders’ fees are to be paid by either Assignor or Assignee in connection with this Agreement. Should any broker or agent assert a claim for a fee or commission in connection with the transaction under this Agreement, the party through whom such claim is shown to have been derived shall be solely responsible for the payment of such fee or commission or the defense of a claim in connection with the payment of any such fee or commission. Each party indemnifies and agrees to hold the other harmless of any claim, cause of action or damages occasioned by a breach of representations and warranties contained in this Section [3], including the payment of reasonable attorneys’ and expert witness fees in defense of same.

4. Notices. Any notices to be given by either party to this Agreement shall be given in writing and may be effected by personal delivery, electronic mail, or delivery by national overnight

---

<sup>7</sup> Insert applicable entity (i.e., sublessee).

courier service, or mailed by deposit of into the care and custody of the United States Postal Service, certified, return receipt requested, and postage prepaid, as follows:

To Assignor: [RIDA Chula Vista, LLC  
1777 Walker Street, Suite 501  
Houston, Texas 77010  
Attention: Ira Mitzner

With copy to:

RIDA Chula Vista, LLC  
1777 Walker Street, Suite 501  
Houston, Texas 77010  
Attention: Luke Charlton

and

Latham & Watkins  
12670 High Bluff Drive  
San Diego, CA 92130  
Attention: Steven Levine]

To Assignee: [ ● ]

To Sublessor: City Manager  
City of Chula Vista  
276 Fourth Avenue  
Chula Vista, CA 91910

With copy to:

City Attorney  
City of Chula Vista  
276 Fourth Avenue  
Chula Vista, CA 91910

With copy to:

Executive Director  
San Diego Unified Port District  
Post Office Box 120488  
San Diego, CA 92112-0488

Director, Real Estate Department  
San Diego Unified Port District  
Post Office Box 120488  
San Diego, CA 92112-0488

Port Attorney  
San Diego Unified Port District  
Post Office Box 120488  
San Diego, CA 92112-0488

5. Acknowledgement. Assignor and Assignee acknowledge and agree that the Effective Date shall not be a date earlier than the date that the Sublessor consents to this Agreement by executing the Agreement as set forth below and delivering the same to Assignor.

6. Miscellaneous. This Agreement shall be construed in accordance with the laws of the State of California, without regard to conflict of laws principles. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which constitute one and the same agreement. Electronic copies of original signatures of any of the parties hereto shall be binding as if they were original signatures.

*[signatures appear on following page]*

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the Effective Date.

**ASSIGNOR:**

**[RIDA CHULA VISTA, LLC]**

By: \_\_\_\_\_

Name:

Title:

**ASSIGNEE:**

**[ ● ]**

By: \_\_\_\_\_

Name:

Title:

By its execution hereof, Sublessor hereby (i) consents to the assignment of the Lease by Assignor to Assignee and the transfer of Assignor's right, title and interest in and to the Facility to Assignee, and (ii) releases Assignor from all obligations and liabilities of the Assignor, as sublessee, arising under the Lease from and after the Effective Date.

Dated: [\_\_\_\_\_, \_\_\_\_]

**CITY OF CHULA VISTA,**  
a charter city of the State of California

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPROVED AS TO FORM AND LEGALITY:**

CITY ATTORNEY

By: \_\_\_\_\_  
Glen R. Googins



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 ) ss.  
 COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(Print Name of Notary Public)

personally appeared \_\_\_\_\_

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
 Signature of Notary Public

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
 Title(s)

\_\_\_\_\_  
 Title Or Type Of Document

- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
 Number Of Pages

Signer is representing:  
 Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
 Date Of Documents

\_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
 Signer(s) Other Than Named Above

**EXHIBIT J**  
**[RESERVED]**

**EXHIBIT K**

**DISTRICT DOCUMENTS**

[Insert list of documents that were provided by the Office of the District Clerk to Chicago Title Company that are part of the Approved Title Exceptions (as defined in the DDA).]

**EXHIBIT L**

**PRE-APPROVED ADVERTISING DEVICES**

Prior to execution of the Sublease, the Parties will list any Advertising Devices which have been previously approved by the City in writing.

(to be attached prior to execution.)

**EXHIBIT M**

**APPROVED AGREEMENTS**

CVBMP Documents

Approved Title Exceptions

Convention Center Plans

[Insert all other documents, including financing documents, that are approved prior to the Commencement Date]

(to be revised / completed prior to execution.)

## EXHIBIT N

### CONSTRUCTION REQUIREMENTS (Alterations)

1. GENERALLY. TENANT SHALL COMPLY WITH THE PROVISIONS OF THIS EXHIBIT N, THOSE CERTAIN [CONDITIONS OF PROJECT APPROVAL] (DISTRICT CLERK NO. [ ● ]), AND THE PROVISIONS OF THE SUBLEASE IN CONNECTION WITH ALL CONSTRUCTION OR DEMOLITION WORK AT THE SITE WITH RESPECT TO ALTERATIONS TO THE IMPROVEMENTS (EXCEPT THE EXISTING IMPROVEMENTS) (“CONSTRUCTION WORK”).

2. Contractors. The City shall have the right to approve the general contractor for Construction Work (other than Minor Alterations), in its reasonable discretion. All contractors and subcontractors performing any Construction Work must be licensed in the State of California.

3. Architects and Engineers. All architects and engineers must have an active license to practice in the State of California.

4. Contractors, Architects and Engineers Agreements. The City shall have the right to approve the architectural, engineering and construction contracts for all of Major Alterations with respect to the Improvements (except the Existing Improvements), in its reasonable discretion.

5. Construction Barricades. RIDA shall install a construction barricade around the area of Construction Work (other than Minor Alterations), and erect such other protective measures as may be reasonably required by the City.

6. Dust and Trash Control. RIDA shall take commercially reasonable steps to minimize dust resulting from any Construction Work, and shall promptly dispose of all trash generated from the Construction Work.

7. Payment Bond. Prior to RIDA commencing any Major Alterations, RIDA shall furnish the City with the following separate corporate surety bonds in connection with such Major Alteration:

(i) To the extent required by law, a corporate surety payment bond (“Payment Bond”) issued by a surety company licensed and admitted to transact business as such in the State of California, in an amount equal to one hundred percent (100%) of the estimated Hard Construction Costs of the applicable Major Alteration, guaranteeing payment for all materials, provisions, supplies and equipment used in, upon, for or about the performance of the Major Alteration and for labor done thereon and protecting the City from any and all liability, loss or damages arising out of or in connection with any failure to make any such payments. The Payment Bond shall name RIDA as principal and the City as obligee.

(ii) The Payment Bond shall be in form and content reasonably satisfactory to the City.

8. Financial Assurances. At least ten (10) days prior to commencing any Construction Work (other than Minor Alterations), RIDA shall deliver to the City evidence reasonably demonstrating to the City that RIDA has obtained or retains financial resources and capabilities in an amount sufficient to complete the Construction Work.

9. Construction Schedule. RIDA shall, at least ten (10) days prior to date on which RIDA intends to commence construction of any Construction Work (other than Minor Alterations), deliver to the City a construction schedule. RIDA shall use commercially reasonable efforts to perform the Construction Work in accordance with the construction schedule.

10. Contractor Insurance. RIDA shall ensure that all contractors and subcontractors performing Construction Work shall obtain and thereafter maintain so long as such Construction Work is occurring, at least the minimum insurance coverages set forth below, which insurance coverages may be modified by the City from time to time in its reasonable discretion:

- (i) Workers' compensation and employer's liability insurance:
  - (a) Workers' compensation insurance as required by any applicable law or regulation.
  - (b) Employer's liability insurance in the amount of \$1,000,000 each accident/employee/disease.
- (ii) General liability insurance: Commercial General Liability insurance covering all operations by or on behalf of the contractor, which shall include the following minimum limits of liability and coverages:
  - (a) Required coverages:
    - (1) Premises and Operation;
    - (2) Products and Completed Operations;
    - (3) Contractual Liability;
    - (4) Broad Form Property Damage (including Completed Operations);
    - (5) Explosion, Collapse and Underground Hazards; and
    - (6) Personal Injury Liability.
  - (b) Minimum limits of liability:
    - (1) \$2,000,000 each occurrence (for bodily injury and property damage);
    - (2) \$2,000,000 for Personal Injury Liability;
    - (3) \$2,000,000 aggregate for Products and Completed Operations (which shall be maintained for a three (3) year period following final completion of the Work); and
    - (4) \$2,000,000 general aggregate applying separately to this Project.
- (iii) Automobile Liability Insurance: Automobile liability insurance including coverage for owned, leased, rented, hired, and/or non-owned automobiles. The limits of liability shall

not be less than \$1,000,000 for each accident limit for bodily injury, death and property damage.

(iv) Umbrella/Excess Liability Insurance: The general contractor shall also carry umbrella/excess liability insurance in the amount of \$5,000,000. If there is no per project aggregate under the Commercial General Liability policy, the limit shall be \$10,000,000.

(v) Contractor's Pollution Liability Coverage: If the City determines, in its sole and reasonable discretion, that RIDA performs or contracts for any work which involves a Hazardous Materials Activity or which has the potential to disturb or result in the release of any Hazardous Material, for which there is potential exposure to pollution or Hazardous Materials to Persons or the environment, RIDA shall obtain or cause its contractor to obtain Contractor's Pollution Liability, Pollution Legal Liability and/or Asbestos Pollution Liability and/or Errors & Omissions applicable to the work being performed or the potential release of any Hazardous Material, with limits of \$5,000,000 per claim or occurrence and \$10,000,000 aggregate per policy period of one year.

Any and all of the insurance described above may be obtained and maintained by RIDA through an owner-controlled insurance program instead of by a contractor and/or a subcontractor. City Parties shall be named as an additional insured on the forgoing insurance, and such insurance shall provide that the same shall not be canceled, or reduced in amount or coverage below the requirements of this Sublease, nor shall it be allowed to expire, without at least thirty (30) days prior written notice to the City. The foregoing insurance shall include a waiver of subrogation in favor of City Parties.

11. Notice of Completion. Within ten (10) days after Completion of any Construction Work (other than Minor Alterations), RIDA shall record a Notice of Completion in the office of the San Diego County Recorder and furnish a copy thereof to the City upon such recordation.

12. Lien Releases. Within sixty (60) days after Completion, RIDA shall deliver to the City unconditional final lien waivers from all contractors and materialmen.

13. Copy of Record Set of Plans and Certificate of Completion. Following the conclusion of any Construction Work (other than Minor Alterations), deliver to each of the Public Entities (i) a set of "as-built drawings", (ii) a certificate from RIDA's architect in favor of such Public Entity stating that, to the best knowledge of such certifying party, the Construction Work has been Completed substantially in accordance with the approved plans therefor, and (iii) a copy of the certificate of completion issued by the applicable government agency, if any such certificate of completion must be issued.

14. Conflict. In the event of conflict between the terms of these Construction Requirements and terms of the Sublease, the terms of the Sublease shall control.



**EXHIBIT O**

**PRIOR AGREEMENTS**

Disposition and Development Agreement (Sections 4.1(f), 4.7(c), 4.7(d), 4.17, 8.2, and 8.3)

Right of Entry for Pre-Closing Phase 1A Improvements

[Insert any other documents that qualify as Prior Agreements prior to execution of this Sublease.]

**EXHIBIT P**

**MEMORANDUM OF LEASE**

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Latham & Watkins  
12670 High Bluff Drive  
San Diego, CA 92130  
Attention: Steven Levine

---

(Above Space for Recorder's Use Only)

**MEMORANDUM OF SUBLEASE**

This Memorandum of Sublease, hereinafter "**Memorandum**," is dated \_\_\_\_\_, 20\_\_, between the City of Chula Vista, a charter city of the State of California duly organized and existing under and by virtue of the Constitution and laws of the State of California ("**Sublessor**"), and Rida Chula Vista, LLC, a Delaware limited liability company ("**Sublessee**"), concerning that certain real property described in Exhibit "A" and depicted in Exhibit "B", attached hereto and by this reference made a part hereof, together with all buildings, structures and other improvements now or hereafter located thereon and all appurtenant rights thereto (the "**Subleased Premises**").

For good and adequate consideration, Sublessor leases the Subleased Premises to Sublessee, and Sublessee hires them from Sublessor, for the term and on the provisions contained in that certain Sublease Agreement (Chula Vista Bayfront Convention Center) of even date herewith by and between Sublessor and Sublessee (the "**Sublease**"), including without limitation provisions prohibiting or limiting assignment, subleasing, and encumbering said subleasehold without the express written consent of Sublessor in each instance, all as more specifically set forth in said Sublease, and, Sublessor conveys to Sublessee and Sublessee accepts from Sublessor, all of Sublessor's right, title and interest in and to the Existing Improvements, which said Sublease is incorporated in this Memorandum by this reference.

The term of the Sublease is thirty-seven (37) years, beginning \_\_\_\_\_, 2022, and ending \_\_\_\_\_, 20\_\_. The term of the Sublease may be extended for an additional twenty-nine years in accordance with the terms thereof, and in the event of such extension, the term of the Sublease will end on \_\_\_\_\_, 20\_\_.

This Memorandum is not a complete summary of the Sublease. Provisions in this Memorandum shall not be used in interpreting the Sublease provisions. In the event of conflict between the terms of this Memorandum and terms of the Sublease, the terms of the Sublease shall control.

IN WITNESS WHEREOF, Sublessor and Sublessee have executed this Memorandum of Sublease as of the date first set forth above.

**CITY OF CHULA VISTA**

By: \_\_\_\_\_  
Signature

NAME: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

**RIDA CHULA VISTA, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Signature

NAME: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT A TO MEMORANDUM OF SUBLEASE**  
**LEGAL DESCRIPTION OF SUBLEASED PREMISES**

(to be attached prior to execution.)

**EXHIBIT B TO MEMORANDUM OF SUBLEASE**

**DEPICTION OF SUBLEASED PREMISES**

(to be attached prior to execution.)

**(FOR USE BY THE CITY OF CHULA VISTA)**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF SAN DIEGO )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(Print Name of Notary Public)

personally appeared \_\_\_\_\_

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
Title(s)

\_\_\_\_\_  
Title Or Type Of Document

- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
Number Of Pages

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signer(s) Other Than Named Above

**(FOR USE BY RIDA CHULA VISTA, LLC)**



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF SAN DIEGO )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(Print Name of Notary Public)

personally appeared \_\_\_\_\_

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
Title(s)

\_\_\_\_\_  
Title Or Type Of Document

- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
Number Of Pages

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signer(s) Other Than Named Above

**DEFINITIONS ADDENDUM**

2022A ACCOUNT:	defined in the Indenture
2022A BONDS:	defined in the Indenture.
ABANDONMENT:	defined in Section 8.1(a) of this Sublease.
ACCEPTABLE BRAND:	shall mean the “Gaylord Hotels” brand or any other hotel brand that has achieved "AAA Four Diamond" rating standards in a reasonable number of its hotels or the equivalent as determined by the City in its reasonable discretion; provided that RIDA shall not terminate the Hotel Management Agreement that is in effect as of the Commencement Date before the date that is the third (3rd) anniversary of the later of: (a) the date that the Resort Hotel is open for business and (b) the date that the Convention Center is open for business, unless as set forth in this Sublease or the Ground Lease.
ACTUAL CAPITAL INVESTMENT:	defined in Exhibit B-2 attached to this Sublease.
ADA:	the Americans with Disabilities Act, 42 U.S.C. §12101 (et seq.) and the regulations promulgated thereunder, as the same may be amended from time to time.
ADDITIONAL BONDS:	defined in the Indenture.
ADDITIONAL RENT:	defined in Exhibit B-2 attached to this Sublease.
ADDITIONAL RENT HURDLE:	defined in Exhibit B-2 attached to this Sublease.
ADDITIONAL RENT PERCENTAGE:	defined in Exhibit B-2 attached to this Sublease.
ADVERTISING DEVICES:	defined in Section 6.21 of this Sublease.
AFFILIATE:	with respect to any Person, any Person that Controls, is directly or indirectly Controlled by, or is under common ownership or Control with, such Person.
ALTERATION PLANS:	defined in Section 6.10(a) of this Sublease.

## **DEFINITIONS ADDENDUM**

ALTERATIONS:	any alterations, additions, installations, removals, demolitions, improvements or other physical changes to the Site and the Improvements following the Completion of the Convention Center, including the addition, installation or removal of any fixtures (other than trade fixtures) but excluding installation, maintenance, replacement or refreshing of any furniture, trade fixtures or equipment.
APPROVED AGREEMENTS:	defined in Section 6.6(f) of this Sublease.
ASSIGNED RIGHTS:	defined in the Facility Lease.
ASSIGNMENT:	any disposition, assignment, sale, conveyance, exchange or other transfer of all or any portion of RIDA's interest in this Sublease (including without limitation any easements), the leasehold estate created thereby, the Site or the Improvements, whether by operation of law or otherwise, but, for the avoidance of doubt, excluding any Sub-sublease.
ASTs:	defined in Section 6.20(i)(i) of this Sublease.
AUTHORITY SURPLUS FUND:	defined in the Indenture.
AUTHORIZED REPRESENTATIVE OF RIDA:	any person or persons designated by RIDA and authorized to act on behalf of RIDA in accordance with its governing documents.
AVAILABLE CASUALTY AMOUNT:	defined in Section 5.2(b) of this Sublease.
AVAILABLE CASUALTY AMOUNT ON DEPOSIT:	defined in Section 5.2(b) of this Sublease.
AVAILABLE CONDEMNATION AMOUNT:	defined in Section 5.1(d) of this Sublease.
AVAILABLE CONDEMNATION AMOUNT ON DEPOSIT:	defined in Section 5.1(d) of this Sublease.
BANKRUPTCY CASE:	a proceeding initiated under the Bankruptcy Code.
BANKRUPTCY CODE:	the United States Bankruptcy Code (11 U.S.C. § 101, et seq.), as amended, and any successor statute.

## **DEFINITIONS ADDENDUM**

- BANKRUPTCY EVENT:** the occurrence with respect to RIDA, any Completion Guarantor(s) or any other Person liable for RIDA's obligations under this Sublease (including without limitation any member or manager of RIDA) of any of the following: (a) appointment of a receiver or custodian for any property of such Person, or the institution of a foreclosure or attachment action upon any property of such Person; (b) filing by such Person of a voluntary petition under the provisions of the Bankruptcy Code; (c) an involuntary petition under the provisions of the Bankruptcy Code shall be filed and (i) such Person shall have consented to such involuntary petition or failed to contest in a timely and appropriate manner or (ii) such involuntary petition continues undismissed for a period of 60 days or an order for relief shall have been entered; or (d) such Person making or consenting to an assignment for the benefit of creditors or a composition of creditors.
- BASE RENT:** the rent payments due from RIDA pursuant to Section 3.5 of this Sublease and as set forth in Exhibit B-1 attached to this Sublease.
- BOND YEAR:** defined in the Indenture.
- BONDS:** defined in the Indenture.
- BMPs:** the Best Management Practices set forth in the Jurisdictional Runoff Management Program incorporated by reference in Article 10 of the San Diego Unified Port District Code.
- BPC:** Board of Port Commissioners of the San Diego Unified Port District.
- BUILDABLE CONDITION:** completion of the following work: (i) the demolition and removal of the Existing Improvements on the Site, and the public and private utilities on the Site (provided, however, that a "Buildable Condition" will not require the demolition or removal of such Existing Improvements and/or public and private utilities if the City instructs RIDA not to demolish and remove them in a written notice to RIDA), any Hazardous Materials and Pre-Existing Materials but only as and to the extent required under Section 6.20 of this Sublease, and any debris resulting from such demolition and removal; (ii) the remediation of any Hazardous Materials and Pre-Existing Materials but only as and to the extent required under Section 6.20 of this Sublease; and (iii) the repair of any damage to the Site, Existing Improvements on the Site and/or public and private utilities on the Site, caused by (i) and (ii) above, pursuant to plans and specifications approved by the City in the City's reasonable discretion.
- BUSINESS DAY:** a day (other than a Saturday or Sunday) on which banks in San Diego County, California are open for ordinary banking business.

## **DEFINITIONS ADDENDUM**

- CASUALTY PROCEEDS:** defined in Section 5.2(a) of this Sublease.
- CCC:** defined in Section 6.14 of this Sublease.
- CDP:** any Coastal Development Permit (including any conditions of approval or mitigation measures or project changes pursuant to the environmental review under CEQA) or any other CCC regulations or local, state or federal requirements now or hereafter affecting the Facility, including the use or development thereof.
- CEQA:** defined in Section 6.14 of this Sublease.
- CHANGE OF CONTROL:** with respect to any Person, a merger, consolidation, recapitalization or reorganization of such Person or other transaction or an amendment to any governing document of such Person that, in the case of any of the foregoing, results in any third party that is not an Affiliate of such Person having the ability to Control such Person; provided that, with respect to RIDA, as long as Ira Mitzner or any of his replacements set forth in the Original LLC Agreement is the manager of RIDA in accordance with the Original LLC Agreement, then there shall be no Change of Control of RIDA; and provided, further, that no merger, consolidation, recapitalization or reorganization of any Publicly Traded Person or other transaction with respect to any Publicly Traded Person or an amendment to any governing document of any Publicly Traded Person will result in a Change of Control. "Publicly Traded Person" means any Person, any of the equity securities in which are publicly traded.
- CITY:** defined in the preamble.
- CITY PARTY:** City and the officers, directors, members of the City Council, employees, partners, affiliates, agents, contractors, successors and assigns of the City, in each case, when acting only in the capacity of a City Party.
- CLAIMS:** claims, actions, causes of action, suits, proceedings, demands, rights, damages, Related Costs, losses, judgments, provisional relief, fines, penalties, and fees, including, without limitation, any and all claims for compensation, reimbursement, or contribution.
- CLOSING DATE:** defined in the Indenture.
- CODE:** the Internal Revenue Code of 1986, as amended.
- COMMENCEMENT DATE:** defined in Section 3.2 of this Sublease.

## **DEFINITIONS ADDENDUM**

<b>COMMUNITY FACILITIES DISTRICT:</b>	a financing district established and existing pursuant to the Chula Vista Municipal Code Chapter 3.61.
<b>COMPLETION AND COMPLETE:</b>	shall mean, with respect to the Improvements (except the Convention Center) or any Alterations thereto, as the context may require, that RIDA has obtained and delivered to the City, (i) a certificate of occupancy or temporary certificate of occupancy for the Improvements or Alterations with respect to any of the foregoing, as applicable, from the appropriate Governmental Authority or (ii) equivalent certification from the appropriate Governmental Authority certifying that the Improvements or applicable Alterations to any of the foregoing, as applicable, may be used in accordance with the designs therefor; provided, however, that, if no Governmental Authority customarily provides certificates of occupancy, temporary certificates of occupancy or certifications like those described in clause (ii) for work similar in nature to the Improvements or Alterations, as applicable, then such Improvements or Alterations, as applicable, will be “Complete” when such Improvements or Alterations, as applicable, are substantially complete; and provided, further, that the Convention Center shall be complete when it is Complete as defined in the Project Implementation Agreement.
<b>CONDEMNATION:</b>	defined in Section 5.1(a) of this Sublease. “Condemned” shall have correlative meaning.
<b>CONDITION OF THE SITE:</b>	defined in Section 6.12(a) of this Sublease.
<b>CONSTRUCTION FUND:</b>	defined in the Indenture.
<b>CONSTRUCTION LATE CHARGES:</b>	defined in Section 5.1.2 of the Project Implementation Agreement.
<b>CONSTRUCTION PERIOD:</b>	defined in the Project Implementation Agreement.
<b>CONSTRUCTION REQUIREMENTS:</b>	those requirements, conditions and procedures regulating the installation, construction, modification and repair of the Improvements (except the Existing Improvements) and Alterations thereto as described in Exhibit “N” attached to the Sublease.
<b>CONSTRUCTION WORK:</b>	defined in Exhibit N to this Sublease.

## DEFINITIONS ADDENDUM

CONTEMPORANEOUS AGREEMENTS:	generally, any agreements executed on or around the Commencement Date by the Port District, RIDA, City, Authority, and/or Financing District with respect to the Development, including, but not limited to the Project Implementation Agreement, the Convention Center Leases, the Ground Lease and the Completion Guaranty. <sup>1</sup>
CONTROL, CONTROLLED AND CONTROLLING:	shall be deemed, with respect to any Person, to be either or both (i) the ownership of more than fifty percent (50%) of the stock, membership interests or other voting interest of such Person or the ownership of beneficial interests in such Person, or (ii) the power to direct the management of such Person with respect to major decisions of such Person, whether through voting interests or by way of agreement.
CONVENTION CENTER:	those certain permanent improvements that constitute real estate, with approximately 275,000 net usable square feet of associated meeting space, located on the Site, and which, for the avoidance of doubt, shall exclude any personal property of RIDA located in or upon any portion of the Facility.
CONVENTION CENTER LEASES / CONVENTION CENTER LEASE:	the Site Lease, the Facility Lease and/or this Sublease, as the context may require.
CONVENTION CENTER OUTSIDE CONSTRUCTION COMPLETION DATE:	forty-eight (48) months after the Outside Construction Commencement Date (as such date may be extended by one day for each day that a Force Majeure Event delays Completion of the Convention Center).
COUNCIL / CITY COUNCIL:	defined in the recitals.
COURT:	defined in Section 6.6(e)(ii) of this Sublease.
CVBMP DOCUMENTS:	the following documents: (i) the Settlement Agreement; (ii) Chula Vista Bayfront Development Policies (District Clerk No. 59407); (iii) Chula Vista Bayfront Master Plan Natural Resources Management Plan (District Clerk No. 65065), approved by the BPC on May 10, 2016, by Resolution No. 2016-79, and the City Council of the City of Chula Vista on June 14, 2016, by Resolution No. 2016-119; (iv) Chula Vista Bayfront Master Plan Public Access Program (District Clerk No. 59408); (v) Chula Vista Bayfront Design Guidelines (District Clerk No. 67959); (vi) Integrated Planning Vision (District Clerk No. 63989); (vii) Chula Vista Bayfront Master Plan & Port Master Plan Amendment (District Clerk Nos. 59406); (viii)

---

<sup>1</sup> List of documents to be confirmed prior to execution of this Sublease.

## DEFINITIONS ADDENDUM

Mitigation Monitoring and Reporting Program for the Chula Vista Bayfront Master Plan (District Clerk No. 56555); and (ix) the CDP for the Resort Hotel, the Convention Center and the Parking Improvements.

DEFAULT RATE:	an annual rate equal to the lesser of (i) the annual “Bank Prime Loan” rate cited in the Federal Reserve Statistical Release Publication H.15(519), published weekly (or such other comparable index as City and RIDA shall reasonably agree upon if such rate ceases to be published), plus four (4) percentage points, and (ii) the highest rate permitted by applicable Law.
DESIGNATED NOMINEE:	defined in Section 9.3(b)(i) of this Sublease.
DEVELOPMENT:	RIDA’s development of, collectively, the Parking Improvements, the Resort Hotel, the Convention Center and RIDA’s Phase 1A Improvements.
DIR:	defined in Section 6.22(a)(iv)(2) of this Sublease.
DISCHARGE OF THE BONDS:	defined in Section 11.15 of this Sublease.
DISCRETIONARY ENTITLEMENT:	any discretionary approval, permit or entitlement, including, without limitation, environmental analysis under CEQA or the National Environmental Policy Act, the PMP, a Port Master Plan Amendment, stormwater permits, a CDP and/or a California Coastal Act exclusion.
DISTRICT DOCUMENTS:	defined in Section 6.12(d)(ii) of this Sublease.
EIR:	defined in Section 6.1(a) of this Sublease.
ENVIRONMENTAL CLEANUP:	to investigate, remove or remediate such contamination in compliance with all Environmental Laws and in a manner and to the satisfaction of applicable regulatory authority.
ENVIRONMENTAL LAWS:	Laws and other requirements in effect during the Term that regulate Hazardous Materials or otherwise relate to public health and safety or the protection of the environment.
EQUITY COLLATERAL ENFORCEMENT ACTION:	defined in Section 9.2 of this Sublease.
EVENT OF DEFAULT:	defined in Section 8.1 of this Sublease.



## **DEFINITIONS ADDENDUM**

EXCAVATED SOIL REMOVAL:	defined in Section 6.20(j)(i) of this Sublease.
EXISTING IMPROVEMENTS:	any improvements (including utilities, storm drains and park ways) located upon the land (and water, if applicable) that are in existence and located on, in, over or under the Site as of the Commencement Date, whether constructed by Port, a prior tenant or another third party.
EXPANSION DATE:	defined in Section 1.2 of the Ground Lease.
FACILITY:	defined in the recitals.
FACILITY LEASE:	defined in the recitals.
FACILITY LEASE LOST RENTAL INCOME INSURANCE:	defined in Section 4.2(a) of this Sublease.
FINANCING TRANSACTION:	defined in Section 9.1 of this Sublease.
FIRST-CLASS CONDITION:	(x) the quality, condition, maintenance, and repair standards described in the Hotel Management Agreement in effect that shall be in accordance with the level of quality at the time of the opening of the Convention Center for business, subject to any ordinary wear and tear and any Alterations; or (y) if no Hotel Management Agreement is in effect, then the quality, condition, maintenance, and repair standards under the Hotel Management Agreement last consented to by the Port and deemed consented to by the City (until a new one is approved) and in accordance with the level of quality at the time of the opening of the Convention Center for business, subject to any ordinary wear and tear and any Alterations.
FORCE MAJEURE EVENT:	defined in Section 6.13(a) of this Sublease.
FORCE MAJEURE NOTICE:	defined in Section 6.13(e) of this Sublease.
FORCE MAJEURE RESPONSE:	defined in Section 6.13(e) of this Sublease.
FORECLOSURE PURCHASER:	defined in Section 9.3(c) of this Sublease.

## DEFINITIONS ADDENDUM

- GOVERNMENTAL AUTHORITY:** each and every governmental agency, authority, bureau, department, quasi-governmental body, or other entity or instrumentality having or claiming jurisdiction over the Site (or any activity this Sublease allows), including without limitation, the Port and the City, United States federal government, the State and County governments and their subdivisions and municipalities, and all applicable Government Agencies, governmental authorities, and subdivisions thereof.
- GOVERNMENT AGENCY:** any federal, state or local government agency (including, but not limited to, the United States Environmental Protection Agency, the Regional Water Quality Control Board, the Department of Toxic Substances Control or Air Resources Board).
- GROUND LEASE** defined in the recitals.
- GROUND LEASE PROPERTY** defined as “Premises” under the Ground Lease.
- HAZARDOUS MATERIAL:** any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material, or substance, including, without limitation, asbestos and oil and petroleum products, which is a “Hazardous Material” or “Hazardous Substance” within the meaning of any applicable Law (including, but not limited to, hazardous substances as defined by Cal. Health & Safety Code § 25316 and anything that may result in contamination or pollution as defined by Cal. Water Code § 13050), and at any concentration that is subject to regulation under any Law relating to such Hazardous Material or Hazardous Substance. Notwithstanding any exclusion from the definition of hazardous substance or hazardous material in any applicable Law, Hazardous Material as defined herein includes any hydrocarbons, petroleum, petroleum products or waste and any other chemical, substance or waste, that is regulated by, or may form the basis of liability under, any Environmental Laws.
- HAZARDOUS MATERIALS ACTIVITY:** generation, bringing, use, storage, emission, release, or disposal of any Hazardous Material, or products or materials which include any hazardous substance as a component.
- HMMD:** defined in Section 6.20(i)(i) of this Sublease.
- HOTEL / RESORT HOTEL:** that certain single-branded resort hotel with at least 1,570 Rooms but not more than 1,600 Rooms on the Ground Lease Property generally as shown on Exhibit B-1 attached to the Ground Lease with an Acceptable Brand.

## **DEFINITIONS ADDENDUM**

HOTEL AND CONVENTION CENTER PROJECT:	the Ground Lease Property, the Site, the Convention Center, the Resort Hotel and any other personal or real property or improvements located on the Ground Lease Property or the Site.
HOTEL MANAGEMENT AGREEMENT:	management agreement for the Resort Hotel, the Parking Improvements and the Convention Center between RIDA and the Hotel Operator.
HOTEL OPERATOR:	RIDA's counterparty to a Hotel Management Agreement that is in effect in accordance with the Sublease.
IMPROVEMENTS:	those buildings, structures and other improvements (including vaults, utilities and other underground improvements) now (including any Existing Improvements) or hereafter (including the Initial Project Improvements, Alterations thereto and any other ancillary improvements constructed during the Term) located on, in, over or under the Site.
INCENTIVE FEE HURDLE:	defined in Exhibit B-2 attached to this Sublease.
INCURABLE DEFAULT:	defined in Section 9.3(b)(ii) of this Sublease.
INDEPENDENT CONSULTANT:	defined in Section 6.20(e) of this Sublease.
INITIAL FORCE MAJEURE NOTICE:	defined in Section 6.13(e) of this Sublease.
INDENTURE:	the Indenture, dated as of the date hereof, by and between Wilmington Trust, National Association, as trustee, and the JEPA, as amended, amended and restated, supplemented or otherwise modified from time to time.
INITIAL PROJECT IMPROVEMENTS:	the Improvements that are located on the Site and are initially developed by RIDA and described by the Plans (as opposed to Existing Improvements and subsequent Alterations to the Initial Project Improvements).
INQUIRY:	a notice, inquiry, investigation, proceeding, or claim by any government agency or other Person regarding the presence that occurs during the Term of any Hazardous Material on, in, under, from or about the Facility.
INSPECTION REPORT:	defined in Section 6.6(c) of this Sublease.

## DEFINITIONS ADDENDUM

INSURANCE AND CONDEMNATION FUND:	defined in the Indenture.
JEPA:	defined in the recitals.
JEPA PARTIES:	The JEPA, and the officers, directors, members of the JEPA Board, employees, partners, affiliates, agents, contractors, successors and assigns of the JEPA, and staff members of the Port and City, in each case, when acting only in the capacity of a JEPA Party.
JEPA SUBLEASE THIRD PARTY BENEFICIARY PROVISION:	Section 2.1, Section 2.2, Section 3.4(b), Section 3.9, Section 3.12, Section 3.14, Section 4.1, Section 4.2(b), Section 5.1(d), Section 5.1(f), Section 5.1(g), Section 5.1(h), Section 5.2(a), Section 5.2(b), Section 5.2(f), Section 6.1, Section 6.6, Section 6.7, Section 6.8, Section 6.9, Section 6.10, Section 6.11(b), Section 6.11(c), Section 6.12(a), Section 6.12(b), Section 6.12(d), Section 6.14, Section 6.15, Section 6.16, Section 6.19(a), Section 6.20, Section 6.21, Section 11.1, Section 11.8, Section 11.15, in each such case, of this Sublease, and in each case, the definitions of terms used therein.
JUDICIAL REFERENCE:	defined in Section 6.6(e) of this Sublease.
LANDLORD'S MATERIALS:	defined in Section 6.12(d)(ii) of this Sublease.
LATE CHARGES:	defined in Section 3.5(c) of this Sublease.
LAWS:	all of the following to the extent (i) applicable to the Site, the Improvements or any activity under this Sublease, (ii) binding and enforceable and (iii) promulgated, adopted, approved or enacted by a Governmental Authority: present and future state of California, federal and local laws, orders, ordinances, regulations, statutes, requirements, codes and executive orders, including, without limitation, the ADA, and any law of like import, and all rules, regulations and government orders with respect thereto, including without limitation any of the foregoing relating to Hazardous Materials, environmental matters (including, but not limited to, Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Resource Conservation and Recovery Act ("RCRA"), the Clean Air Act, the Clean Water Act, Oil Pollution Act, the Toxic Substances Control Act and comparable and supplemental California laws), the California Coastal Act, CEQA, the Public Trust Doctrine, public health and safety matters and landmarks protection, as any of the same now exist or may hereafter be adopted or amended. Said Laws shall include, but are not limited to, the Laws enacted by the San Diego Unified Port District Act, such as Article 10 of the San Diego Unified Port District

## DEFINITIONS ADDENDUM

Code; the PMP; the policies of the BPC; any applicable ordinances of the city in which the Site is located, including the building code thereof, and any permits and approvals by any Governmental Authority, the City, and the Port, including, without limitation, any California Coastal Development Permit, applicable to the Site or the use or development thereof.

**LEASE PAYMENTS:** the scheduled rental payments to be made by the City to the JEPA pursuant to Section 4.4(a) of the Facility Lease.

**LEASE PERIOD:** any of the following:

First (1st) Lease Period:	Lease Years 1 – 18
Second (2nd) Lease Period:	Lease Years 19 – 23
Third (3rd) Lease Period:	Lease Years 24 – 37

**LEASE YEAR:** each period of twelve (12) consecutive months commencing on the Commencement Date and each successive twelve (12) month period thereafter during the Term.

**LEASEHOLD AWARD:** defined in Section 5.1(g)(i) of this Sublease.

**LETTER OF CREDIT:** defined in Section 3.12(b) of this Sublease.

**LOAN DOCUMENT /  
LOAN DOCUMENTS:** defined in the Ground Lease.

**MAJOR ALTERATIONS:** defined in Section 6.10(a) of this Sublease.

**MANAGEMENT  
INCENTIVE FEE:** defined in Exhibit B-2 attached to this Sublease.

**MATERIAL  
EXACERBATION /  
MATERIALLY  
EXACERBATE/  
MATERIALLY  
EXACERBATED:** any material increase in the cost or amount of investigation, removal or remediation action required.

**MAXIMUM INCENTIVE  
FEE PERCENTAGE:** defined in Exhibit B-2 attached to this Sublease.

**MEET & CONFER  
PERIOD:** defined in Section 6.13(e) of this Sublease.

**MEETING SPACE:** defined in Section 5.4.1(b) of the Ground Lease.

## **DEFINITIONS ADDENDUM**

MEZZANINE INTERESTS:	the equity interests in RIDA or in any Person or Persons that own(s) direct or indirect equity interests in RIDA.
MICC:	MICC (California), LLC, a Delaware limited liability company.
MINOR ALTERATIONS:	defined in Section 6.10(b) of this Sublease.
MOODY'S:	Moody's Investors Service, Inc., its successors and assigns.
NET OPERATING INCOME:	defined in Exhibit B-2 attached to this Sublease.
NET PROCEEDS:	defined in the Indenture.
NEW CONVENTION CENTER COMPLETION TIMETABLE:	defined in Section 9.6(b) of this Sublease.
NEW CONVENTION CENTER OUTSIDE CONSTRUCTION COMPLETION DATE:	defined in Section 9.6(b) of this Sublease.
NEW LEASE PERIOD:	Defined in Section 9.3(b)(iv) of this Sublease.
NEW SUBLEASE:	defined in Section 9.3(b)(iv) of this Sublease.
NEW TENANT:	defined in Section 9.3(b)(iv) of this Sublease.
NOTICE OF ELECTION TO TERMINATE:	defined in Section 5.2(b) of this Sublease.
OFAC:	defined in Section 6.15(c) of this Sublease.
OPERATING EXPENSES:	defined in Exhibit B-2 attached to this Sublease.
OPERATION:	defined in Exhibit B-2 attached to this Sublease.
ORIGINAL LLC AGREEMENT:	that certain Limited Liability Company Agreement of RIDA Chula Vista, LLC, dated as of February, 2018, as amended pursuant to any amendment that does not amend the management of RIDA.
OUTSIDE CONSTRUCTION COMMENCEMENT DATE:	ten (10) days after the Commencement Date.

## **DEFINITIONS ADDENDUM**

<b>PARKING IMPROVEMENTS:</b>	defined in the Ground Lease.
<b>PARTY; PARTIES:</b>	the City and RIDA.
<b>PAYMENT BOND:</b>	defined in Exhibit N to this Sublease.
<b>PERIODIC RENT:</b>	collectively, the Base Rent and the Additional Rent.
<b>PERMITTED ENCUMBRANCES:</b>	as of any particular time: (1) liens for taxes and general ad valorem assessments, if any, (x) not then delinquent, (y) which RIDA may, pursuant to Section 6.19 of this Sublease, permit to remain unpaid or (z) being contested in good faith by appropriate proceedings and, if applicable, in accordance with Section 6.19 of this Sublease or Article 19 of the Project Implementation Agreement; (2) this Sublease; (3) the Facility Lease; (4) the Site Lease; (5) any right or claim of any mechanic, laborer, materialman, supplier or vendor filed or perfected in the manner prescribed by law after the Closing Date which is being contested by RIDA in accordance with Section 6.11 of this Sublease; (6) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record as of the Closing Date, including without limitation, those set forth in Exhibit K; (7) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions established following the Closing Date, to which RIDA and the JEPA, the Port and/or the City consent in writing and which the City certifies will not materially impair the use of the Facility for its intended purpose and will not, in and of itself, result in abatement of Lease Payments under the Facility Lease, or any extensions, renewals or permitted replacement thereof; (8) any encumbrance permitted under Article IX of this Sublease, including any Permitted Financing Encumbrance; (9) any encumbrance permitted pursuant to Article X of the Ground Lease, including any Permitted Financing Encumbrance (as defined in the Ground Lease); (10) any pledges contained in the Indenture; and (11) any encumbrance with respect to the Site or the Ground Lease Property that is in effect as of the Commencement Date or permitted by Section 2(c) of the Site Lease.
<b>PERMITTED EQUITY FINANCING ENCUMBRANCE:</b>	defined in Section 9.2 of this Sublease.
<b>PERMITTED FINANCING ENCUMBRANCE:</b>	defined in Section 9.2 of this Sublease.

## **DEFINITIONS ADDENDUM**

PERMITTED LENDER:	defined in Section 9.2 of this Sublease.
PERMITTED LOAN GUARANTY:	a guaranty given by MICC or an Affiliate of MICC in respect of indebtedness secured by a Permitted Lease Financing Encumbrance.
PERMITTED MEZZANINE LENDER:	(a) any Person that is deemed approved by the City pursuant to Section 9.1 of this Sublease and that is a party to a security agreement, pledge agreement or similar instrument or agreement that creates any security interest in the Mezzanine Interests securing RIDA's payment and performance in connection with any Financing Transaction and (b) from and after the date when the Convention Center is Complete, any Person that holds an interest in a loan that is secured by any security interest in the Mezzanine Interests in circumstances where a permitted syndication has occurred and such security interest is held by, and the administration of such loan is done by, an agent that is deemed approved by the City.
PERMITTED MORTGAGE LENDER:	defined in Section 9.2 of this Sublease.
PERMITTED SUBLEASE FINANCING ENCUMBRANCE:	defined in Section 9.2 of this Sublease.
PERMITTED USE:	defined in Section 6.1(a) of this Sublease.
PERSON:	any individual, partnership, firm, joint venture, association, corporation, limited liability company, government agency or any other form of business entity.
PLANS:	defined as "Convention Center Plans" in the Project Implementation Agreement.
PLEDGOR:	a Person that, in the aggregate, directly or indirectly, owns all of the equity interests of RIDA.
PMP:	defined in Section 6.14 of this Sublease.
PORT:	defined in the recitals.
PORT SUBLEASE THIRD PARTY BENEFICIARY PROVISION:	Section 2.2(b), Section 3.9, Section 4.1(b), Section 5.1(g)(ii), Section 6.6(e), Section 6.12(a), (b) and (d), Section 6.17, Section 6.20, Section 11.8, and, solely upon the expiration or earlier termination of this Sublease, Section 3.13, Section 3.15, the last sentence of Section 5.1(d), Section 5.1(g)(i)(B), Section 5.2(b)(vi), Section 6.17, Section 11.9, in each such case, of this Sublease, and in each case, the definitions of terms used therein.



## **DEFINITIONS ADDENDUM**

PRE-APPROVED ADVERTISING DEVICES:	defined in Section 6.21 of this Sublease.
PRE-EXISTING HAZARDOUS MATERIAL:	any Hazardous Material located on or under the Site prior to the Commencement Date, whether known or unknown, and any Hazardous Material located outside the Site (including any premises owned by the Port) prior to the Commencement Date that migrates onto the Site thereafter.
PREMISES SURFACE PARKING:	defined in the Ground Lease.
PRIMARY USE:	defined in Section 6.1(a) of this Sublease.
PRIOR AGREEMENTS:	the agreements listed on Exhibit O to this Sublease.
PROHIBITED PERSON / PROHIBITED PERSONS:	defined in Section 6.15(c) of this Sublease.
PROJECT:	RIDA's development of the Initial Project Improvements, the Resort Hotel and the Parking Improvements.
PROJECT IMPLEMENTATION AGREEMENT:	defined in the recitals.
PROJECT PROPERTY TAXES:	possessory interest taxes or property taxes with respect to all or any portion of the Hotel and Convention Center Project.
PROJECT REVENUES:	defined in Exhibit B-2 of this Sublease.
PROPERTY EXPENSES:	defined in Section 6.18 of this Sublease.
PROPERTY TAX CONTEST:	defined in Section 6.19(b) of this Sublease.
PROPERTY TAX EXPENSES:	property taxes and assessments with respect to the Facility (including, without limitation, real estate taxes, possessory interest taxes, general and special taxes and assessments, leasehold taxes or taxes based upon RIDA's receipt of rent, but excluding all taxes imposed upon net income or gain).
PUBLIC ENTITY:	JEPA, Port and/or City.

## DEFINITIONS ADDENDUM

PUBLIC ENTITY PARTIES:	JEPA, Port and/or City, and their respective officers, directors, members of their respective governing boards, employees, partners, affiliates, agents, contractors, successors and assigns of the JEPA, Port and City, as applicable, in each case, when acting only in the capacity of a Public Entity Party.
PWL:	defined in Section 6.22(a)(i) of this Sublease.
REFERENCE NOTICE:	defined in Section 6.6(e)(ii) of this Sublease.
REIMBURSEMENT PROCEDURE:	defined in Section 3.9 of this Sublease.
RELATED COSTS:	any costs, damages (of all kinds including punitive damage, diminution in value and loss of use), claims, liabilities, expenses (including reasonable attorneys', consultants' and experts' fees), losses, fines, penalties and court costs related to the subject matter of the Related Costs and amounts paid in settlement of any claims or actions related to the subject matter of the Related Costs. For the avoidance of doubt, Related Costs shall not include any Tax Expenses or items expressly excluded from the definition of "Tax Expenses" pursuant to Section 6.16 of this Sublease.
RENT	collectively, the Periodic Rent, the Sublease Advance Rent and all other amounts treated as "supplemental Rent" under this Sublease.
RESERVE FUND:	defined in the Indenture.
REVENUE FUND:	defined in the Indenture.
REVENUE SHARING AGREEMENT:	that certain Fourth Amended and Restated Revenue Sharing Agreement by and among the City, Port and the JEPA dated [ ● ], 2022 and filed in the Office of the Port Clerk as Document No. [ ● ] (as amended, amended and restated, supplemented or otherwise modified from time to time).
REVIEW PROCESSES:	defined in Section 6.21 of this Sublease.
RIDA:	defined in the preamble.
RIDA BASELINE INSURANCE:	defined in Section 4.2(a) of this Sublease.
RIDA MEMBER / RIDA MEMBERS:	defined in Section 6.15(c) of this Sublease.

## DEFINITIONS ADDENDUM

RIDA PARTY:	RIDA, and the agents, employees, representatives, contractors, subcontractors, suppliers, materialmen, workmen, licensees, concessionaires, Affiliates and successors and assigns of RIDA, and Sub-subtenants, and the agents, employees, representatives, contractors, subcontractors, suppliers, materialmen, workmen, concessionaires, licensees, Affiliates and successors and assigns of each of such Sub-subtenants, in each case, when acting only in the capacity of a RIDA Party.
RIDA'S PHASE 1A IMPROVEMENTS:	defined in Section 6.11 of the Ground Lease.
ROHR:	Rohr, Inc., a United Technologies Aerospace Systems Company, and its successors and assigns.
ROOM:	a separately keyed lodging unit of the Resort Hotel.
SDRWQCB:	San Diego Regional Water Quality Control Board.
SETTLEMENT AGREEMENT:	Chula Vista Bayfront Master Plan Settlement Agreement, dated May 4, 2010, among the Bayfront Coalition Member Organizations identified therein, Port, the City and the Redevelopment Agency of the City of Chula Vista (District Clerk No. 56523).
SITE:	defined in the recitals.
SITE LEASE	defined in the recitals.
SPECIAL TAX DISTRICT:	defined in Section 6.16 of this Sublease.
SPE LENDER AFFILIATE:	defined in Section 9.3(c) of this Sublease.
S&P / STANDARD & POOR'S:	S&P Global Ratings, a Standard & Poor's Financial Services LLC business, its successors and assigns.
SUBJECT FISCAL YEAR:	any of the first four fiscal years for the State of California that commence after the Completion of the Resort Hotel.
SUBLEASE:	defined in the preamble.
SUBLEASE ADVANCE RENT:	defined in Section 3.4(b) of this Sublease.
SUBLEASE ADVANCE RENT NOTICE:	a notice, delivered pursuant to Section 3.4 of this Sublease, specifying the amount of Sublease Advance Rent due and owing by RIDA.

## **DEFINITIONS ADDENDUM**

SUBLEASE ADVANCE RENT REGISTER:	defined in Section 3.4(b) of this Sublease.
SUBLEASE THIRD PARTY BENEFICIARY PROVISION:	the JEP A Sublease Third Party Beneficiary Provision or the Port Sublease Third Party Beneficiary Provision, as applicable.
SUBSTANTIAL COMPLETION:	means, with respect to any improvements, that all work has been completed with respect to such improvements, except for any punch list items.
SUBSTANTIALLY ALL:	at least eighty percent (80%) of rentable square footage.
SUB-SUBLEASE:	defined in Section 10.1(a) of this Sublease.
SUB-SUBLEASE NOTICE:	defined in Section 10.1(c) of this Sublease.
SUB-SUBTENANT:	any sub-subtenant (or sub-sub-subtenant or other level of subtenant), occupant, franchisee, licensee, or concessionaire under any Sub-sublease; provided, however, that "Sub-subtenant" shall exclude the Hotel Operator.
TAKING:	a taking by exercise of the power of eminent domain.
TAX EXPENSES:	defined in Section 6.16(a) of this Sublease.
TEMPORARY CONDEMNATION:	defined in Section 5.1(f) of this Sublease.
TENANT:	defined in the Ground Lease.
TENANT HAZARDOUS MATERIAL:	any Hazardous Material either (i) brought onto the Site or Improvements during the Term by any Person or (ii) brought onto the Site, Improvements or any other property by RIDA, a RIDA Party, or Hotel Operator or generated by any of the same.
TENANT'S INITIAL PROJECT IMPROVEMENTS:	defined in the Ground Lease.
TERM:	defined in Section 3.2 of this Sublease.
THIRD PARTY BENEFICIARY NOTICE:	defined in Section 11.8 of this Sublease.
TRANSFER:	defined in Section 10.7(a) of this Sublease.

## **DEFINITIONS ADDENDUM**

TRANSFeree:	with respect to any Assignment or a Change of Control of RIDA, the proposed assignee or the Person(s) acquiring an interest resulting in a Change of Control of RIDA, respectively.
TRUSTEE:	defined in the Indenture.
USA PATRIOT ACT:	defined in Section 6.15(c) of this Sublease.
USTs:	defined in Section 6.20(i)(i) of the Sublease.