

PROJECT IMPLEMENTATION AGREEMENT

by and among

**THE CITY OF CHULA VISTA,
a California charter city and municipal corporation,**

**THE BAYFRONT PROJECT SPECIAL TAX FINANCING DISTRICT,
a financing district,**

**THE SAN DIEGO UNIFIED PORT DISTRICT,
a public corporation,**

**THE CHULA VISTA BAYFRONT FACILITIES FINANCING AUTHORITY
a joint exercise of powers entity,**

and

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

Dated as of _____ 1, 2021

Relating to

**\$ _____
CHULA VISTA BAYFRONT FACILITIES FINANCING AUTHORITY
REVENUE BONDS
(CHULA VISTA BAYFRONT CONVENTION CENTER)
SERIES 2021A (FEDERALLY TAXABLE)**

**\$ _____
CHULA VISTA BAYFRONT FACILITIES FINANCING AUTHORITY
REVENUE BONDS
(CHULA VISTA BAYFRONT PHASE 1A INFRASTRUCTURE IMPROVEMENTS)
SERIES 2021B (TAX-EXEMPT)**

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**PROJECT IMPLEMENTATION AGREEMENT
BY AND AMONG
THE CITY OF CHULA VISTA, THE BAYFRONT PROJECT SPECIAL TAX FINANCING
DISTRICT, THE SAN DIEGO UNIFIED PORT DISTRICT, THE CHULA VISTA
BAYFRONT FACILITIES FINANCING AUTHORITY, AND RIDA CHULA VISTA, LLC**

This PROJECT IMPLEMENTATION AGREEMENT (“**Agreement**”) is entered into as of _____ 1, 20__ by and among the City of Chula Vista, a chartered municipal corporation (“**City**”), acting on its behalf and for and on behalf of the Bayfront Project Special Tax Financing District, a financing district established and existing pursuant to Chula Vista Municipal Code Chapter 3.61 Bayfront Project Special Tax Financing District Procedural Ordinance (the “**Financing District**”), the San Diego Unified Port District, a public corporation (the “**Port District**”), the Chula Vista Bayfront Facilities Financing Authority (the “**Authority**” and also sometimes referred to herein as the “**JEPA**”; and, collectively with the City, the Financing District, and the Port District, the “**Public Agencies**” or each separately, a “**Public Agency**”), a joint exercise of powers entity created by the City and the Port District pursuant to the Joint Exercise of Powers Act (defined herein below), and RIDA Chula Vista, LLC, a Delaware limited liability company (“**Developer**” or “**RIDA**”) (collectively, the “**Parties**” and, individually, a “**Party**”), with reference to the following Recitals:

RECITALS

A. The City and the Port District are parties to that certain Amended and Restated Joint Exercise of Powers Agreement, dated and effective July 25, 2019 (the “**JEPA Agreement**”), which amended and restated that certain Joint Exercise of Powers Agreement, dated as of May 1, 2014, by and between the City and the Port District. The JEPA Agreement forms the Authority for the purpose of assisting in the financing and refinancing of capital improvement projects of the City and the Port District as permitted under the Articles 1, 2, 3 and 4 of Chapter 5 of Division 7 of Title 1 of the California Government Code relating to the Chula Vista Bayfront.

B. Pursuant to a “**Site Lease**” dated as of _____ 1, 20__ (the “**Site Lease**”), the Port District has leased to the JEPA and the JEPA has leased from Port District certain real property described in Exhibit A-1 and depicted in Exhibit B-1 attached hereto (the “**Site**”), upon which an approximately 275,000 net usable square foot convention center (the “**Convention Center**” and, together with the Site, the “**Facility**”) will be constructed by RIDA pursuant to this Agreement and operated by RIDA pursuant to the Sublease, as described in more detail below.

C. Pursuant to a “**Facility Lease**” dated as of _____ 1, 20__ (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Facility Lease**”), the JEPA has in turn subleased the Site and leased the Convention Center to the City.

D. Pursuant to a “**Sublease Agreement**” dated as of _____ 1, 20__ (as amended, amended and restated, supplemented or otherwise modified from time to time, together with any New Sublease (as defined in the Sublease, the “**Sublease**”), the City has in turn subleased the Facility to RIDA. The Site Lease, Facility Lease, and Sublease are referred to collectively herein as the “**Convention Center Leases**.”

E. Port District and Developer have entered into a ground lease dated as of _____ 1, 20__ (as amended, amended and restated, supplemented or otherwise modified

from time to time, the “**Ground Lease**”), pursuant to which the Port District has leased to Developer approximately 37 acres of land located in the City of Chula Vista, California, described in Exhibit A-2 and depicted in Exhibit B-2 attached hereto (the “**Ground Lease Property**”), together with all improvements currently located on the Ground Lease Property. Pursuant to the Ground Lease, the Developer is obligated to construct, operate and maintain (or cause to be constructed, operated and maintained) the Resort Hotel (defined herein) on the Ground Lease Property.

F. The City, the Port District, the Authority and the County of San Diego (the “**County**”) entered into that certain Chula Vista Bayfront Project Funding Agreement dated as of December 13, 2019, (the “**County Funding Agreement**”) pursuant to which the County will assist the City, the Port District and the Authority in financing the construction of the Phase 1A Infrastructure Improvements by contributing the County Funds (defined in the Definitions Addendum) as provided for in the County Funding Agreement.

G. To create a vehicle to generate special tax revenues initially equal to 5.5% of the transient occupancy revenues collected within the CVBMP (defined below), to pay or reimburse the cost of the Phase 1A Infrastructure Improvements (defined below) and/or to support payments with respect to the Revenue Bonds (defined below), the City Council of the City (the “**City Council**”), took certain actions under and pursuant to the powers reserved to the City under Sections 3, 5, and 7 of the Constitution and the Charter of the City, and enacted Chapter 3.61 of the Chula Vista Municipal Code (“**Chapter 3.61**”) for the purpose of establishing a procedure for financing certain public and private improvements and maintenance and services to serve development within the boundaries of the Financing District through the establishment of the Financing District, the levy and collection of special taxes (the “**Special Tax Revenues**”) therein by the Financing District and the issuance of bonds or other indebtedness of such Financing District secured by such special taxes for the purpose of financing the Convention Center and certain other public improvements, including the Phase 1A Infrastructure Improvements, as described below.

H. On September 10, 2019, the City Council initiated proceedings pursuant to Chapter 3.61 to establish the Financing District, to authorize the Financing District to finance the purchase, construction, expansion, improvement, and rehabilitation of the Convention Center and certain other public improvements and certain maintenance and services, to authorize the levy of a special tax pursuant to the amended and restated rate and method of apportionment thereof to pay for such improvements and services and to declare the necessity of the Financing District to incur an indebtedness to contribute to the financing of such improvements.

I. On February 16, 2021, the City Council adopted a resolution declaring its intention and initiating proceedings to make changes to the rate and method of apportionment of the Financing District to increase the special tax rates to be levied initially on taxable property in the Financing District, to extend the term of the special tax to June 30, 2086 and to give the City Council the ability to lower the special tax rates in future fiscal years.

J. The City and the Port District entered into an Amended and Restated Joint Community Facilities Agreement (Chula Vista Bayfront Project Special Tax Financing District) effective as of February 24, 2020 (as amended, the “**JCFA**”) to set forth some of the essential terms for the development, operation, maintenance, and servicing of various improvements within the Chula Vista Bayfront Master Plan Area (the “**CVBMP**”) or outside the CVBMP as further described in the JCFA. Such essential terms included the priorities for the allocation of the Special Tax Revenues, as such term is defined in the JCFA, and to provide that the Special Tax Revenues

dedicated to the Convention Center and the Developer's Phase 1A Infrastructure Improvements shall be disbursed pursuant to an agreement between the Port District, the City and/or the Authority, on the one hand, and the Developer, the Project lenders and/or the Developer's contractors, on the other hand.

K. On May 20, 2020, the Authority Board adopted its Resolution 2020-007 ratifying the final form of a procurement policy for developer-performed public improvements for the Authority attached as Exhibit A to such resolution (the "**Authority Procurement Policy**") and ratifying the final form of Authority Resolution 2020-002 in the form presented and attached as Exhibit B to Resolution 2020-007 (the "**Authority Resolution 2020-002**") applying the Authority Procurement Policy to the construction of developer-performed public works for the Project.

L. Pursuant to Authority Resolution 2020-002 and in accordance with Procurement Policy Section 2.a., the Authority Board authorized the Developer to proceed with the development and construction of the Developer's Phase 1A Infrastructure Improvements and the Convention Center subject to the terms, conditions, and obligations of the Authority Procurement Policy, Authority Resolution 2020-002, all applicable Project agreements, including this Agreement, and all applicable federal, state, and local laws and regulations.

M. The Authority, the Port District and the City have determined it to be beneficial to have the Financing District finance certain of the Phase 1A Infrastructure Improvements in connection with the construction of the Resort Hotel and the Convention Center. To assist in the financing of the Convention Center and the Phase 1A Infrastructure Improvements, the Authority has determined to issue its "**Authority Taxable Bonds**" and its "**Authority Tax-Exempt Bonds**," each as defined herein and together, the "**Authority Bonds**" pursuant to the terms of the "**Authority Indenture**," as defined herein. The Authority Bonds will be secured in part and be repaid from loan payments made by the Financing District on the "**Loan**," as defined herein, and any loan payable on a parity with the Loan, made under the "**Loan Agreement**," as defined herein, "**Lease Payments**," as defined herein, payable by the City pursuant to the Facility Lease and payments to be made by the Port District pursuant to the Port Support Agreement.

N. Pursuant to the Sublease and this Agreement, the Developer is required to cause the development and construction of the "**Project**" which consists of the Developer's Phase 1A Infrastructure Improvements and the Convention Center (as such terms are defined herein).

O. Certain Laws may require that certain of the Phase 1A Infrastructure Improvements (as defined herein) be constructed in connection with the construction of the Convention Center and the Resort Hotel (as defined herein).

P. Developer and the Public Agencies desire that Developer construct the Convention Center, and in connection with the construction of the Convention Center and the Resort Hotel, construct the Developer's Phase 1A Infrastructure Improvements on certain real property described in Exhibit A-3 and depicted in Exhibit B-3 attached hereto (the "**Developer's Phase 1A Infrastructure Improvements Site**"), together with the Site, the "**Project Site**"), as set forth in this Agreement.

Q. City, Authority and Developer have entered into that certain Phase 1A Early Work Implementation and Right of Entry License Agreement, dated as of [●], 2021 (the "**Early Work Agreement**"), a copy of which is attached hereto as Exhibit X-1. The Early Work Agreement

provides for the reimbursement of certain costs described therein by the Authority to the Developer. However, City, Authority and Developer intend that such costs be reimbursed as part of the Developer's Phase 1A Infrastructure Improvements Costs payable hereunder to the extent such amounts are not reimbursed under the Early Work Agreement.

R. City and Developer have entered into (i) that certain City of Chula Vista Reimbursement Agreement to Design Specified Bayfront Infrastructure Improvements, dated as of September 15, 2020 (the "**Reimbursement Agreement**"), a copy of which is attached hereto as Exhibit X-2, and (ii) that certain City of Chula Vista Reimbursement Agreement to Construct Specified Bayfront Sewer Improvements, dated as of September 15, 2020 (the "**Sewer Agreement**"), a copy of which is attached hereto as Exhibit X-3. Each of the Reimbursement Agreement and the Sewer Agreement provide for the reimbursement of certain costs described therein by City to Developer, and therefore such costs are excluded from the Developer's Phase 1A Infrastructure Improvements Costs payable hereunder to avoid double counting.

S. The Parties desire to enter into, and Authority has required that Developer enter into, this Agreement to establish the terms and conditions in compliance with the applicable provisions of the Authority Procurement Policy and Authority Resolution 2020-002 pursuant to which the Developer may develop and construct the Project and obtain payment for all of the eligible costs of developing and constructing the Developer's Phase 1A Infrastructure Improvements from proceeds of the Authority Tax-Exempt Bonds and the County Funds, reimbursements pursuant to the Sewer Agreement, and will provide credit to the Developer pursuant to the BFDIF Program, which is on file in the office of the City Clerk, and a portion of the overall costs of developing and constructing the Convention Center from the proceeds of the Authority Taxable Bonds.

T. The Parties desire to provide for the development and construction of the "**Remaining Phase 1A Infrastructure Improvements**" (as defined herein) by the Port District, pursuant to the procurement rules of the Port District; provided that payment or reimbursement to the Port District of the costs of constructing the Remaining Phase 1A Infrastructure Improvements shall be handled by separate agreement between the City and/or the Authority, on one hand, and the Port District, on the other hand.

U. The Parties further desire to set forth certain provisions relating to nondisturbance, indemnification, and other continuing covenants of the Parties relating to the Resort Hotel and Convention Center Project and the Phase IA Infrastructure Improvements which shall remain in effect for the Term hereof.

AGREEMENT

NOW THEREFORE, in consideration of the above Recitals, the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Authority, the Port District, the City, the Financing District and the Developer agree as follows:

ARTICLE I DEFINITIONS

1.1. Definitions Addendum. Defined terms used in this Agreement and not specifically defined herein shall have the meanings set forth in the Definitions Addendum attached hereto, which

is incorporated herein by this reference. Any reference in this Agreement to this Agreement or any other agreement is a reference to such agreement as the same may be amended or amended and restated from time to time.

ARTICLE II SUBJECT OF THE AGREEMENT GENERALLY

All Exhibits attached to this Agreement are incorporated into this Agreement by this reference.

2.1. Developer's Phase 1A Infrastructure Improvements.

2.1.1. Access to the Developer's Phase 1A Infrastructure Improvements Site. The Developer Parties shall have the non-exclusive right to enter upon the Developer's Phase 1A Infrastructure Improvements Site in connection with the construction and development of the Developer's Phase 1A Infrastructure Improvements commencing on the Commencement Date and ending on the earlier of the following dates: (x) as to each portion of the Developer's Phase 1A Infrastructure Improvements Site, the date on which the Developer's Phase 1A Infrastructure Improvements corresponding to such portion of the Developer's Phase 1A Infrastructure Improvements Site is Accepted, (y) the date on which this Agreement is terminated, and (z) the date on which this Agreement expires.

2.1.2. Construction of Developer's Phase 1A Infrastructure Improvements. Except as expressly provided in this Agreement, Developer shall cause the development of the Developer's Phase 1A Infrastructure Improvements on the Developer's Phase 1A Infrastructure Improvements Site substantially in accordance in all material respects with the Approved Drawings and Specifications for the development of the Developer's Phase 1A Infrastructure Improvements within the timeframe described in Section 5.1, in each case, in accordance with all the terms and conditions of this Agreement.

2.1.3. Complete and Functional Improvements. Developer shall provide complete and functional Developer's Phase 1A Infrastructure Improvements substantially in accordance in all material respects with the Approved Drawings and Specifications. Neither recommendation of any progress payment, nor any payment by the Authority to Developer under this Agreement, nor any use or occupancy of the Project or any part thereof by the Authority, the City, or the Port District, nor any failure to act, nor any review of a shop drawing or sample submittal, will constitute an approval by any of the Public Agencies of work which is not completed by Developer substantially in accordance with the Approved Drawings and Specifications. The foregoing shall not limit claims pursuant to Articles XI or XII.

2.1.4. Payment of Developer's Phase 1A Contract Sum, Reimbursements under Sewer Agreement, Credits under BFDIF Program, and Developer's Phase 1A Project Administration Fee. In consideration for the Developer's development and delivery of the Developer's Phase 1A Infrastructure Improvements as required by this Agreement, (a) the Authority shall pay the Developer's Phase 1A Contract Sum to Developer, (b) the City shall provide to Developer a credit towards the amount payable by Developer pursuant to the BFDIF Program, as a condition of developing the Resort Hotel and Convention Center (as applicable), (c) the City shall pay to Developer amounts required to be reimbursed to Developer pursuant to the Sewer Agreement, and (d) the City shall provide payment to or credit for Developer, as applicable, the amount of the

Developer's Phase 1A Project Administration Fee. The Authority acknowledges and agrees that, without limitation, all of the Public Agency's Estimated Developer's Phase 1A Infrastructure Improvements Costs identified in Exhibit C-1-A are Developer's Phase 1A Infrastructure Improvements Costs. The Parties acknowledge that concurrent with requesting payment of Developer's Phase 1A Contract Sum, Developer will identify amounts to be paid pursuant to the Sewer Agreement and City will issue payment for same consistent with the terms of the Sewer Reimbursement Agreement. Further, Developer will identify BFDIF credit amounts requested with each payment request. City shall incrementally accrue BFDIF credits toward Developer's ultimate BFDIF obligation, subject to true-up and final calculation of credits earned and BFDIF amounts to be paid to City. City shall pay or credit, as applicable, to Developer portions of the Developer's Phase 1A Project Administration Fee as and when Developer's Phase 1A Project Administration Fee Eligible Costs are incurred by Developer.

2.1.5. Sources of Funding for Developer's Phase 1A Contract Sum. The Parties anticipate that the sources of funding for the payment of the Developer's Phase 1A Contract Sum are as set forth on Exhibit C-1-B.

2.1.6. Changes to Developer's Phase 1A Infrastructure Improvements.

2.1.6.1. In accordance with the Authority Procurement Policy, any change to the Contract Documents or the Approved Drawings and Specifications with respect to the Developer's Phase 1A Infrastructure Improvements shall be subject to Authority's prior written approval, except for changes or change orders that result in none of the following (as determined in Authority's reasonable discretion): (i) any additional payment by Authority in excess of the contingency set forth in the Developer's Phase 1A Infrastructure Improvements Budget; (ii) any additional maintenance or overhead costs to the Authority; (iii) any material delay to the date on which Completion of the Developer's Phase 1A Infrastructure Improvements occurs; (iv) any material modifications to the design or construction of the Developer's Phase 1A Infrastructure Improvements nor (v) any adverse effect with respect to the Developer's Phase 1A Infrastructure Improvements' compliance with Law. Authority shall provide written approval or a reasonable basis for denial of such changes within ten (10) Business Days after Authority receives written notice thereof from Developer. Without limitation of the foregoing, Authority shall consider reasonably and in good faith any change to the Contract Documents or the Approved Drawings and Specifications with respect to the Developer's Phase 1A Infrastructure Improvements that is proposed by Developer to address conditions affecting the Project Site that are unknown to Developer as of the Effective Date.

2.1.6.2. Developer shall meet and confer in good faith with Authority regarding, and will reasonably consider in good faith, any changes that Authority desires to make to the Approved Drawings and Specifications with respect to the Developer's Phase 1A Infrastructure Improvements, and Developer shall use commercially reasonable efforts to implement any such changes, to the extent Developer reasonably determines that such changes result in none of the following: (i) any delay to the date on which Completion of the Developer's Phase 1A Infrastructure Improvements occurs; (ii) any adverse effect with respect to the Developer's Phase 1A Infrastructure Improvements' compliance with Law nor (iii) any adverse effect on the development, maintenance or operation of (including any adverse effect on the compliance with Law by) the Convention Center or the Private Improvements (as defined in the Ground Lease). Notwithstanding the foregoing, if any such change would decrease the funds that could be allocated for the construction of Harbor Park by more than Two Million Five Hundred Thousand Dollars (\$2,500,000) individually or in the

aggregate with other changes proposed by the Authority, then such change will be subject to Developer's approval in its sole discretion. The re-allocation of amounts from the contingency to a non-contingency line item within the Developer's Phase 1A Infrastructure Improvements Budget shall not be considered when determining whether the funds that could be allocated for the construction of Harbor Park have decreased.

2.1.6.3. Nothing in this Agreement amends or waives the regulatory process for amending permits or plans approved by the City or the Port District, which shall be governed by the City's and Port District's established entitlement and permitting processes and applicable Laws.

2.2. Convention Center. Developer shall cause the development of the Convention Center substantially in accordance in all material respects with the Convention Center Plans, within the timeframe described in Section 5.1 and in accordance with all the terms and conditions of this Agreement.

2.2.1. Complete and Functional Improvements. Developer shall provide a complete and functional Convention Center substantially in accordance in all material respects with the Convention Center Plans and the Convention Center Costs incurred shall not be less than the Project Public Investment Amount.

2.2.2. Payment of Convention Center Costs. In consideration for the work performed or caused to be performed by Developer pursuant to this Section 2.2, the Authority shall pay the Convention Center Contract Sum to Developer pursuant to the procedures set forth in Section 9.2.

2.3. Sweetwater Park. Port District shall Sufficiently Complete development of Sweetwater Park. "**Sufficient Completion**" or "**Sufficiently Complete**" means that the Port District, in its sole and good faith discretion, determines that Sweetwater Park, as developed, satisfies the following criteria: (1) the Sweetwater Park on parcel S2 shall be open to the public and include improvements such as landscaping, public parking lots and restrooms, which may be temporary in nature and (2) the development within the Transition Buffer Areas and Limited Use zones of parcel SP-1 and the fencing of the No Touch Buffer Area of parcel SP-1 shall be completed. The Transition Buffer Areas and Limited Use zones of parcel SP-1 and the No Touch Buffer Area of parcel SP-1 are described in the certified PMP. Port District may, in its sole and absolute discretion, further develop Sweetwater Park following achievement of Sufficient Completion, including but not limited to the development of additional features, elements and/or landscaping, without any obligation to the Developer and without requiring Developer's approval or consent.

2.3.1. Sweetwater Park Updates. Port District shall provide, not less frequently than monthly, written updates to the Developer of the progress of the development of Sweetwater Park and shall provide written notice to Developer when Port District determines that Sweetwater Park is Sufficiently Complete.

2.3.2. First Sweetwater Park Option. Port District shall provide written notice to Developer at least thirty (30) days before Port District advertises for bids for the construction of Sweetwater Park and shall provide Developer with all Sweetwater Park Materials to the extent available at such time. On or before 5:00 p.m. (Pacific Time) on the last day of such thirty (30) day period (such date, the "**First Sweetwater Park End Date**"), Developer may, but shall not be

obligated to, exercise the option to Sufficiently Complete Sweetwater Park (the “**First Sweetwater Park Option**”). If Developer exercises the First Sweetwater Park Option, then: (a) Sweetwater Park shall thereafter be considered part of Developer’s Phase 1A Infrastructure Improvements for purposes of this Agreement (except as otherwise set forth herein), and Developer shall expeditiously Sufficiently Complete Sweetwater Park, and (b) subject to section 2.3.2.1, Developer’s costs to Sufficiently Complete Sweetwater Park shall be considered Developer’s Phase 1A Infrastructure Improvements Costs and shall thereafter be payable in the same manner as other Developer’s Phase 1A Infrastructure Improvements Costs.

2.3.2.1. Developer may exercise the First Sweetwater Park Option only by giving written notice to the Port District and the Authority (“**First Developer Completion Notice**”) prior to the First Sweetwater Park End Date. If Developer does not deliver the First Developer Completion Notice prior to the First Sweetwater Park End Date, then (a) the First Sweetwater Park Option shall terminate, and (b) the Port District shall expeditiously continue development of the Sweetwater Park until Sufficiently Complete. Notwithstanding delivery of the First Developer Completion Notice, Developer shall not commence any development work for Sweetwater Park at the Remaining Phase 1A Infrastructure Improvements Site until the Developer has the right to enter upon the Remaining Phase 1A Infrastructure Improvements Site in accordance with Section 2.3.2.4 below. Notwithstanding the foregoing, Developer may commence any other work for the performance of the Sweetwater Park that does not require access to the Remaining Phase 1A Infrastructure Improvements commencing on the first calendar day after Developer exercises the First Sweetwater Park Option. The Authority will not issue payment to Developer for work performed on Sweetwater Park if Developer does not exercise any of the First Sweetwater Park Option or the Second Sweetwater Park Option (as defined below). If Developer exercises the First Sweetwater Park Option, then with respect to Sweetwater Park, Developer shall be entitled to reimbursement only of costs incurred by Developer from and after the date the First Developer Completion Notice is delivered to Port District.

2.3.2.2. If Developer timely delivers the First Developer Completion Notice, then (a) Developer shall Sufficiently Complete Sweetwater Park in accordance with Sweetwater Park Materials on or before the Outside Construction Completion Date, and (b) within five (5) Business Days after Port District’s timely receipt of the First Developer Completion Notice, Port District shall deliver to Developer the Sweetwater Park Materials that have not previously been delivered to Developer. After Developer has delivered the First Developer Completion Notice, the Port District shall reasonably cooperate with Developer, at no cost or expense to Developer, in seeking any consent to Developer’s use of such Sweetwater Park Materials reasonably requested by Developer from the preparer or issuer of any Sweetwater Park Materials.

2.3.2.3. [Reserved].

2.3.2.4. If Developer exercises the First Sweetwater Park Option, the Developer Parties shall have the non-exclusive right to enter upon the Remaining Phase 1A Infrastructure Improvements Site in connection with the construction and development of Sweetwater Park commencing on the First Sweetwater Park End Date and ending on the earlier of the following dates: (x) the date on which Sweetwater Park is Accepted; and (y) the date on which this Agreement is terminated.

2.3.2.5. If Developer exercises the First Sweetwater Park Option, Developer’s failure to Sufficiently Complete Sweetwater Park by the Original Outside Construction

Completion Date shall in no event relieve Developer of the obligation to pay Construction Late Charges.

2.3.3. Second Sweetwater Park Option. If Developer does not exercise the First Sweetwater Park Option and the development of Sweetwater Park is not Sufficiently Complete on or before the Second Sweetwater Park End Date, then Developer may, but shall not be obligated to, exercise the option to Sufficiently Complete Sweetwater Park (the “**Second Sweetwater Park Option**”); and, together with the First Sweetwater Park Option, the “**Sweetwater Park Option**”). If Developer exercises the Second Sweetwater Park Option, then: (a) Sweetwater Park shall thereafter be considered part of Developer’s Phase 1A Infrastructure Improvements for purposes of this Agreement (except as otherwise set forth herein), and Developer shall expeditiously Sufficiently Complete Sweetwater Park and (b) subject to Section 2.3.3.1, Developer’s costs to Sufficiently Complete Sweetwater Park shall be considered Developer’s Phase 1A Infrastructure Improvements Costs and shall thereafter be payable in the same manner as other Developer’s Phase 1A Infrastructure Improvements Costs. The Second Sweetwater Park Option shall terminate upon Port District irrevocably notifying Developer that Sweetwater Park is Sufficiently Complete.

2.3.3.1. Developer may exercise the Second Sweetwater Park Option only by giving written notice to the Port District and the Authority (“**Second Developer Completion Notice**”) within ten (10) Business Days after the Second Sweetwater Park End Date, but not sooner than ten (10) days prior to the Second Sweetwater Park End Date. If Developer does not deliver the Second Developer Completion Notice within the time stated in this Section 2.3.2.1, then (a) the Second Sweetwater Park Option shall terminate at 5:00 p.m. (Pacific Time) on the date that is ten (10) Business Days after the Second Sweetwater Park End Date and Developer shall have no further remedy against Port District with respect to the development of Sweetwater Park, and (b) the Port District shall expeditiously continue development of Sweetwater Park until Sufficiently Complete. Notwithstanding delivery of the Second Developer Completion Notice, Developer shall not commence any development work for Sweetwater Park at the Remaining Phase 1A Infrastructure Improvements Site until the Developer has the right to enter upon the Remaining Phase 1A Infrastructure Improvements Site in accordance with Section 2.3.2.4 below. Notwithstanding the foregoing, Developer may commence any work for the performance of the Sweetwater Park that does not require access to the Remaining Phase 1A Infrastructure Improvements commencing on the first calendar day after the Second Sweetwater Park End Date. The Authority will not issue payment to Developer for work performed on Sweetwater Park if the Port District Sufficiently Completes Sweetwater Park by the Second Sweetwater Park End Date or if Developer does not exercise any of the Second Sweetwater Park Option or the First Sweetwater Park Option. If Developer exercises the Second Sweetwater Park Option, then with respect to Sweetwater Park, Developer shall be entitled to reimbursement only of costs incurred by Developer from and after Developer’s exercise of the Second Sweetwater Park Option. Developer shall not request reimbursement for such costs until after the Second Sweetwater Park End Date.

2.3.3.2. If Developer timely delivers the Second Developer Completion Notice, then (a) Developer shall Sufficiently Complete Sweetwater Park in accordance with the Sweetwater Park Materials on or before the Outside Construction Completion Date, and (b) within five (5) Business Days after Port District’s timely receipt of the Second Developer Completion Notice, Port District shall (i) issue a notice of termination under any outstanding Sweetwater Park Construction Contracts and (ii) deliver to Developer the Sweetwater Park Materials that have not previously been delivered to Developer. After the Developer has delivered the Second Developer Completion Notice, the Port District shall reasonably cooperate with Developer, at no cost or

expense to the Developer, in seeking any consent from the preparer or issuer of any Sweetwater Park Materials. If Port District fails to issue a notice of termination under any outstanding Sweetwater Park Construction Contract within five (5) Business Days after Port District's timely receipt of the Second Developer Completion Notice as set forth above, then Developer shall have the right to issue such notice of termination on behalf of Port District and on Developer's own behalf pursuant to Section 2.3.4.2.

2.3.3.3. Prior to delivery of the Second Developer Completion Notice, but not sooner than six (6) months prior to the Second Sweetwater Park End Date, Developer may request, and Port District shall from time-to-time provide, within ten (10) Business Days after Developer's request therefor, (i) copies of the Sweetwater Park Materials, all outstanding construction, development and design documents related to Sweetwater Park (including, without limitation, construction contracts, pay applications and architect certifications), at Developer's sole cost and expense, and (ii) a written description of the work that remains uncompleted in order to cause Sweetwater Park to be Sufficiently Complete.

2.3.3.4. If Developer exercises the Second Sweetwater Park Option, the Developer Parties shall have the non-exclusive right to enter upon the Remaining Phase 1A Infrastructure Improvements Site in connection with the construction and development of Sweetwater Park commencing on the date that is the later of (a) ten (10) days after Developer exercises the Second Sweetwater Park Option or (b) the day after the Second Sweetwater Park End Date and ending on the earlier of the following dates: (x) the date on which Sweetwater Park is Accepted; and (y) the date on which this Agreement is terminated.

2.3.3.5. If Developer exercises the Sweetwater Park Option, Developer's failure to Sufficiently Complete Sweetwater Park by the Original Outside Construction Completion Date shall in no event relieve Developer of the obligation to pay Construction Late Charges.

2.3.3.6. Each Sweetwater Park Design Contract is hereby assigned by Port District to Developer; provided, that such assignment shall be effective only upon Developer's exercise of the Second Sweetwater Park Option and only for those Sweetwater Park Contracts that Developer accepts by notifying Port District and the counterparty to such Sweetwater Park Contract in writing. When the Developer accepts the assignment of a Sweetwater Park Design Contract, Developer assumes Port District's rights and obligations under such Sweetwater Park Design Contract, but in the case of obligations, only to the extent such obligations are to be performed after the date Developer accepts the assignment. Port District shall not assign any Sweetwater Park Design Contract to, or grant a security interest in any Sweetwater Park Design Contract in favor of, any person or entity other than Developer. Port District hereby grants to Developer a security interest in the Sweetwater Park Design Contracts to secure Port District's obligations under the preceding sentence of this Section 2.3.3.6, and Port District shall take such steps as may be reasonably requested by Developer to evidence and perfect such security interest (including, without limitation, by authorizing Developer to file a UCC-1 financing statement with respect to the Sweetwater Park Design Contracts). Developer shall not assign its security interest in any Sweetwater Park Design Contract, except that it may assign or collaterally assign such security interest to a permitted assignee, or permitted collateral assignee, of this Agreement.

2.3.4. Sweetwater Park Contracts.

2.3.4.1. Port District shall include in each Sweetwater Park Design Contract (or, to the extent that any Sweetwater Park Design Contract exists as of the Effective Date, amend such Sweetwater Park Design Contract to include): (a) a provision that permits Port District (or its successors or assignees) or Developer to terminate such Sweetwater Park Design Contract for convenience upon not more than ten (10) days' prior written notice, (b) to the extent applicable, a provision that Developer is entitled to use any drawings, plans or specifications prepared under such Sweetwater Park Design Contract in connection the construction or development of Sweetwater Park, and (c) the following provision with appropriate conforming modifications: "[Contractor] consents to the assignment of [Port District's] rights and obligations in this [Sweetwater Park Design Contract] by [Port District] to RIDA Chula Vista, LLC, its assigns and/or its lenders and their respective assigns ("**RIDA Parties**"), and agrees that the warranties and obligations hereunder shall inure to the benefit of RIDA Parties, all as if RIDA Parties were a party of this [Sweetwater Park Design Contract]. Such assignment will be effective when a RIDA Party delivers to [Contractor] and [Port District] a notice accepting such assignment and assuming Port District's obligations under this [Sweetwater Park Design Contract] from and after the date of such notice. From and after Contractor's receipt of such notice, [Contractor] will treat such RIDA Party as the [Port District] under this [Sweetwater Park Design Contract]." To the extent that Developer assumes Port District's obligations under any Sweetwater Park Design Contract, Developer may pay any amounts that are owing to the counterparty under such Sweetwater Park Design Contract which result from a breach by Port District under such Sweetwater Park Design Contract, and such payments shall constitute Developer's Phase 1A Infrastructure Improvements Costs. Unless Developer does not exercise the First Sweetwater Park Option prior to the First Sweetwater Park End Date and does not exercise the Second Sweetwater Park Option prior to the Second Sweetwater Park End Date, Port District shall neither assign nor terminate any Sweetwater Park Design Contract without Developer's prior written consent, which shall not be unreasonably withheld or delayed.

2.3.4.2. Port District shall include in each Sweetwater Park Construction Contract (or, to the extent that any Sweetwater Park Construction Contract exists as of the Effective Date, amend such Sweetwater Park Construction Contract to include): (a) a provision that permits Port District (or its successors or assignees) or Developer to terminate such Sweetwater Park Construction Contract for convenience upon not more than ten (10) days' prior written notice, and (b) the following provision with appropriate conforming modifications: "[Contractor] agrees that RIDA Chula Vista, LLC, its assigns and/or its lenders and their respective assigns ("**RIDA Parties**") shall have the right to terminate this [Sweetwater Park Construction Contract] pursuant to [cross-reference termination for convenience provision] of this Sweetwater Park Construction Contract as if RIDA Parties were a party of this [Sweetwater Park Construction Contract]. Such termination will be effective when a RIDA Party delivers to [Contractor] and [Port District] a notice of termination pursuant to such Section. Notwithstanding anything to the contrary in this [Sweetwater Park Construction Contract], no RIDA Party shall have any obligations under this [Sweetwater Park Construction Contract]."

2.3.4.3. Developer shall have no right to accept assignment of a Sweetwater Park Design Contract or to terminate for convenience a Sweetwater Park Design Contract or Sweetwater Park Construction Contract, unless and until Developer exercises the First Sweetwater Park Option or the Second Sweetwater Park Option, as applicable. Developer shall provide any notice of its acceptance of assignment or notice of termination for convenience (excluding any notice of termination for convenience after Developer's acceptance of assignment of

the applicable contract) to the Port District and the counterparty of the respective contract within thirty (30) days following delivery of the First Developer Completion Notice or the Second Developer Completion Notice, as applicable.

2.3.5. Sweetwater Park Materials. Port District shall use commercially reasonable efforts to deliver the Sweetwater Park Materials to Developer pursuant to Section 2.3.3.3 or as soon as practicable after Developer exercises the First Sweetwater Park Option or the Second Sweetwater Park Option. After Developer exercise the First Sweetwater Park Option or the Second Sweetwater Park Option, Developer shall have the right to use any and all plans, drawings and specifications that constitute Sweetwater Park Materials for construction and development of Sweetwater Park. The Sweetwater Park Materials (other than the Sweetwater Park Design Contracts that are assumed by Developer) shall remain the property of the Port District, and Developer shall return or deliver all such Sweetwater Park Materials to the Port District upon Acceptance of Sweetwater Park.

ARTICLE III DURATION OF AGREEMENT

3.1. Term of Agreement. This Agreement shall become effective on the Effective Date, and the term of this Agreement (the “**Term**”) shall extend until the earlier of (a) the termination of this Agreement by the Public Agencies according to the termination provisions herein, (b) the termination of the Sublease according to Sections 5.1 or 5.2 of the Sublease (unless Authority provides written notice to Developer within ten (10) Business Days after the termination of this Agreement directing Developer to complete the Developer’s Phase 1A Infrastructure Improvements, in which case (i) except with respect to obligations that expressly survive the termination of this Agreement, Developer shall have no further obligations hereunder with respect to the Convention Center and (ii) the Term shall end upon Acceptance of all Developer’s Phase 1A Infrastructure Improvements (including Harbor Park only if Developer has agreed to construct Harbor Park pursuant to Section 5.4.4) and (if Developer has exercised a Sweetwater Park Option) the Sufficient Completion of Sweetwater Park, or (c) the later of (i) the termination or expiration of the Sublease and (ii) the occurrence of the Expansion Date under and as defined in the Ground Lease. Notwithstanding the foregoing, but subject to the next sentence of this Section 3.1, if the Sublease terminates according to Sections 5.1 or 5.2 of the Sublease, but the Ground Lease remains in effect, then (x) Developer shall have no further obligations hereunder with respect to the Convention Center, but this Agreement shall otherwise remain in effect (including with respect to Developer’s Phase 1A Infrastructure Improvements, Harbor Park (only if Developer has agreed to construct Harbor Park pursuant to Section 5.4.4), and Sweetwater Park (including with respect to the payment for each of the foregoing)) and (y) the Term shall end upon Acceptance of all Developer’s Phase 1A Infrastructure Improvements (including Harbor Park only if Developer has agreed to construct Harbor Park pursuant to Section 5.4.4) and the Sufficient Completion of Sweetwater Park. Notwithstanding anything to the contrary herein, the Term shall not extend beyond sixty-six (66) years from the Effective Date.

ARTICLE IV PROJECT COSTS

4.1. Phase 1A Infrastructure Improvements. The provisions of Section 4.1.1 and each subsection thereof shall apply only to the Developer’s Phase 1A Infrastructure Improvements.

4.1.1. Public Agency's Estimated Developer's Phase 1A Infrastructure Improvements Cost.

4.1.1.1. The aggregate Public Agency's Estimated Developer's Phase 1A Infrastructure Improvements Cost is _____ dollars (\$_____), as shown in Exhibit C-1-A attached hereto. Developer's Phase 1A Infrastructure Improvements Budget as of the Effective Date is attached as Exhibit C-2 hereto. Developer may modify from time to time the Developer's Phase 1A Infrastructure Improvements Budget reasonably and in good faith and shall provide written notice of any such modification to the Public Agencies. The Developer's Phase 1A Infrastructure Improvements Budget shall indicate the Guaranteed Maximum Price for the General Contractor's services, which shall not be increased unless (a) the General Contractor is entitled to an increase under the General Contract or (b) as otherwise expressly agreed by the Authority in writing, in the Authority's sole and absolute discretion.

4.1.1.2. If, at any time, Developer definitively establishes that the amount expended on the Developer's Phase 1A Infrastructure Improvements will exceed the amount set forth in the Developer's Phase 1A Infrastructure Improvements Budget (including contingency amounts), Developer shall promptly, and in any case not more than ten (10) Business Days after the Developer definitively establishes the amount of the increase, notify the Executive Director thereof in writing. This written notification shall include an itemized cost estimate and a list of recommended revisions (e.g., deductive changes) which Developer believes will bring the cost to within the amount set forth in the Developer's Phase 1A Infrastructure Improvements Budget. The Authority may either: (i) approve an increase in the Developer's Phase 1A Infrastructure Improvements Budget (which approval shall not be unreasonably withheld, conditioned, or delayed) or (ii) reasonably value engineer, delete or replace subcomponents of a component of the Developer's Phase 1A Infrastructure Improvements so that the Developer's Phase 1A Infrastructure Improvements can be constructed for the amount set forth in the Developer's Phase 1A Infrastructure Improvements Budget, but only if such modification neither has a material and adverse effect on the design, development, or construction of the Resort Hotel or the Project nor delays the Completion of the Resort Hotel, the Parking Improvements or the Project.

4.1.2. Approved Drawings and Specifications for the Developer's Phase 1A Infrastructure Improvements. As of the Effective Date, each of the Port District and the City has reviewed and approved the Approved Drawings and Specifications for the Developer's Phase 1A Infrastructure Improvements.

4.2. Convention Center. The provisions of Section 4.2 and each subsection thereof shall apply only to the Convention Center.

4.2.1. Estimated Convention Center Cost. The aggregate Estimated Convention Center Cost is _____ (\$_____). The Convention Center Budget as of the Effective Date is attached as Exhibit P hereto. Developer may modify from time to time the Convention Center Budget reasonably and in good faith and shall provide written notice of any such modification to the Public Agencies.

4.3. Cost Reporting. Developer 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 Developer may decide in its sole discretion), use commercially reasonable efforts to maintain customary records of construction costs incurred by Developer in connection with the Project. 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. Such records may be in electronic format. Developer shall furnish to Authority an itemized statement of the construction costs incurred and paid by Developer in connection with the Improvements, as applicable, within thirty (30) days after Developer receives Authority's request therefor (which request shall not be provided to Developer until the respective Improvements have been Completed). The statement shall be sworn to and signed, under penalty of perjury, by Developer as fairly representing, to the best of Developer's knowledge, the construction costs incurred and paid by Developer. Should Developer perform any construction with its own personnel, Developer 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 Developer 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 Project Site, the Convention Center, or at such other location in San Diego County, California as is reasonably acceptable to Authority. Authority 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 Developer does not make available the original books and records at the Project Site, the Convention Center, or at such other location in San Diego County, California, then Developer agrees to pay all expenses incurred by the Authority Parties, as applicable, 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 4.3, Developer shall deliver the original or an electronic copy of such record to Authority at the address set forth in Section 26.1 or such other location designated by Authority in writing, which may include the main offices of the City; provided, however, that Developer may elect to deliver all of the records subject to this Section 4.3 that expire in a given year at one time, in one delivery, within twelve (12) months after the end of the applicable year.

**ARTICLE V
CONSTRUCTION OF THE PROJECT AND THE REMAINING
PHASE 1A INFRASTRUCTURE IMPROVEMENTS**

5.1. Construction of the Project.

5.1.1. Commencement and Completion of the Project.

5.1.1.1. Following the Commencement Date, but not later than the Outside Construction Commencement Date, Developer shall commence the construction of the Project. Developer shall be deemed to have commenced the construction of the Project when Developer delivers a notice to proceed with respect to the construction of the Project to Developer's contractor. Thereafter, Developer shall, subject to the terms of Section 5.5, diligently proceed with the construction of the Project to Completion, and Complete the Project by the Outside Construction Completion Date. Without limiting the generality of the foregoing, Developer acknowledges and agrees that the cessation of construction of the Project for more than thirty (30) consecutive days shall, unless caused by a Force Majeure Event, be deemed a failure by Developer to diligently proceed with the construction of the Project to Completion and shall constitute an Event of Default under this Agreement without further notice or cure right by Developer if Developer does not resume construction of the Project within ten (10) days after Developer receives notice thereof from

Authority which notice shall include the following language: **“FAILURE BY DEVELOPER TO RESUME CONSTRUCTION OF THE PROJECT (AS SUCH TERM IS DEFINED IN THE PROJECT IMPLEMENTATION AGREEMENT) WITHIN TEN (10) DAYS AFTER THE DATE DEVELOPER RECEIVES, OR IS DEEMED TO HAVE RECEIVED, THIS NOTICE SHALL CONSTITUTE AN EVENT OF DEFAULT UNDER THE PROJECT IMPLEMENTATION AGREEMENT”**.

5.1.1.2. The Convention Center Plans have been previously approved in writing by Port District, Authority and City. Changes to the Convention Center Plans must be approved by the Authority in writing, in Authority’s sole and absolute discretion, and, once approved, shall be considered a part of the “Convention Center Plans”; provided, however, Authority’s approval of any change in the Convention Center Plans shall not be required if: (a) such change does not result in a use that is not a Permitted Use, (b) such change does not require modifications to the Convention Center Plans for the structural portions of the Convention Center, (c) such change does not change the design principles of the exterior appearance of the Convention Center (if any), as set forth in the CDP, (d) such change is in compliance with the Chula Vista Building Code, (e) such change is in compliance with, and does not violate the provisions of, the PMP, CDP, the EIR, CVBMP Documents and any other Laws, (f) such change does not trigger any storm water construction BMP permit or permanent structural BMP permit or alterations to existing permanent structural BMPs, and (g) such change does not pave any area greater than twenty-five (25) square feet unless Developer has previously secured the approval to perform such work from all applicable Governmental Authorities, including the Authority. Within thirty (30) days of the Authority’s notice to Developer, Developer shall provide to Authority a reasonably detailed explanation of all changes that Developer has made to the Convention Center Plans without the Authority’s approval pursuant to this Section 5.1.1, including, without limitation, an explanation of why such change did not require approval from the Authority, and copies of the revised Convention Center Plans showing the changes, and Authority shall have thirty (30) days from the receipt of such information to object to the changes to the Convention Center Plans as requiring the Authority’s approval as provided in this Section 5.1.1.2. The Convention Center Plans are by this reference made a part hereof. In the event of any inconsistency between the Convention Center Plans and the terms and conditions of this Agreement, the terms and conditions of this Agreement shall prevail.

5.1.1.3. In constructing the Project, Developer shall comply with all Construction Requirements set forth in Exhibit E attached hereto and all Laws, including, without limitation, the PMP requirements, mitigation measures or conditions of approval under the terms of any of the approvals by any Governmental Authority for the Project, including any CDPs applicable to the Project 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.

5.1.2. Initial Public Financing Payments; Construction Late Charge. Developer hereby acknowledges that if the Resort Hotel, Parking Improvements, and Convention Center are not Complete by the Original Outside Construction Completion Date (as extended in accordance herewith), JEPa Parties, Port District Parties, Financing District Parties, and City Parties will incur costs not contemplated by this Agreement, the Ground Lease and the Convention Center Leases. Accordingly, in the event Developer or the Foreclosure Purchaser (if applicable) does not Complete the Resort Hotel and Convention Center by the Original Outside Construction Completion Date (as extended in accordance herewith), then, beginning with the first month following the Original Outside Construction Completion Date, and monthly thereafter until the Resort Hotel, Parking Improvements, and Convention Center are Complete, the Developer shall, on or before the first day

of each such month, pay to the Trustee, as assignee of JEP A under the Authority Indenture, the Developer Public Financing Payment (the “**RFPF**”) based on the formula set forth below (collectively, “**Construction Late Charges**”). The Parties further agree that the Construction Late Charges apply whether or not Developer receives notice of its failure to Complete the Convention Center, Resort Hotel, and Parking Improvements, and that said Construction Late Charges are appropriate to compensate the City, Port District, Financing District, and JEP A, and are the sole compensation and remedy of the Public Agencies, for the Developer’s failure to construct the Resort Hotel, Convention Center, Developer’s Phase 1A Infrastructure Improvements, or the Parking Improvements by the Original Outside Construction Completion Date or if the Foreclosure Purchaser has assumed the Sublease, Ground Lease, and the Project Implementation Agreement, the Foreclosure Purchaser’s failure to construct the Resort Hotel, Convention Center, or the Parking Improvements, by the Outside Construction Completion Date, including any loss resulting from the loss of revenues that the JEP A Parties, the Port District Parties, the Financing District Parties and the City Parties would have received if the Resort Hotel, Convention Center, Parking Improvements, and Developer’s Phase 1A Infrastructure Improvements had been Completed by the Original Outside Construction Completion Date or the Outside Construction Completion Date (each as extended in accordance herewith); provided, however, Developer acknowledges and agrees that, as and to the extent provided in the next sentence, there will be an Event of Default if (a) Developer fails to Complete the Convention Center by the date that is three hundred sixty-five (365) days after the Outside Construction Completion Date (the “**Extended Construction Period Deadline**”) (as extended as a result of a Force Majeure Event) (“**Late Completion**”) and (b) either (i) Developer does not pay the Construction Late Charges until Completion of the Convention Center (a “**Construction Late Charge Failure**”) or (ii) if Developer can reasonably Complete the Convention Center within thirty (30) days of the Extended Construction Period Deadline, Developer does not Complete the Convention Center within such thirty (30) days, and if the nature of the Completion of the Convention Center is such that Developer cannot reasonably Complete the Convention Center within such thirty (30) days, Developer does not diligently commence such cure within such thirty (30) days or thereafter fails to diligently proceed to rectify and cure such failure (a “**Completion Cure Failure**”, and any Completion Cure Failure or any Construction Late Charge Failure, a “**Post-Late Completion Failure**”). Developer acknowledges and agrees that if Late Completion Occurs and any Post-Late Completion Failure occurs, then the Public Agencies may declare an Event of Default, and such Event of Default shall constitute a cross-default under the Ground Lease and the Sublease, if Developer does not cure its Post-Late Completion Failure within thirty (30) days of receipt of notice from the Authority, and Developer shall not be entitled to any additional cure periods under Article XXI herein. Developer acknowledges and agrees that the payment of Construction Late Charges does not constitute a remedy for any Event of Default under this Agreement, Event of Default under the Sublease for failure to Complete the Convention Center, or Event of Default under the Ground Lease for failure to Complete the Resort Hotel and Parking Improvements. Without limiting the generality of the foregoing, Developer acknowledges and agrees that the cessation of construction of the Convention Center for more than thirty (30) consecutive days shall, unless caused by a Force Majeure Event, be deemed a failure by Developer to diligently proceed with the construction of the Convention Center to Completion and shall constitute an Event of Default under this Agreement without further notice or cure right by Developer if Developer does not resume construction of the Convention Center within ten (10) days after Developer receives notice thereof from the Public Agencies which notice shall include the following language: “**FAILURE BY DEVELOPER TO RESUME CONSTRUCTION OF THE CONVENTION CENTER (AS SUCH TERM IS DEFINED IN THE PROJECT IMPLEMENTATION AGREEMENT) WITHIN TEN (10) DAYS AFTER THE DATE DEVELOPER RECEIVES, OR IS DEEMED TO HAVE RECEIVED, THIS NOTICE SHALL**

CONSTITUTE AN EVENT OF DEFAULT UNDER THE PROJECT IMPLEMENTATION AGREEMENT”.

Calculation of RFPF Formula:

$$\text{RFPF} = \frac{\text{PDSO} - (\text{EF} + \text{DSP})}{12}$$

Example of Calculation of RFPF:

Assuming the following annual amounts:

- Annual PDSO: \$18,000,000
- Annual EF: \$4,000,000
- Annual DSP: \$4,000,000

$$\text{RFPF} = \frac{\$18,000,000 - (\$4,000,000 + \$4,000,000)}{12}$$

$$\text{RFPF} = \frac{\$10,000,000}{12}$$

$$\text{RFPF} = \$833,333.33$$

For purposes of this Section 5.1.2:

“**District Support Payment**” or “**DSP**” means, with respect to any Fiscal Year, the Annual Support Payments under and as defined in the Port Support Agreement as of the Effective Date that are due and payable during such Fiscal Year.

“**Existing Funds**” or “**EF**” means, collectively, with respect to any Fiscal Year, moneys in an amount equivalent to each of the following sources of funds described in (i), (ii), and (iii), actually received by the Port District or the City, during such Fiscal Year:

(i) the Ground Lease Revenues (defined below) received by the Port District during the preceding Fiscal Year, which Ground Lease Revenues shall be subject to adjustment pursuant to Section 5.1.3 below;

(ii) the TOT attributable to the RV Park Lease; and

(iii) an amount equal to \$986,625.00, increasing 3% on July 1 of each year, commencing July 1, 2017, which amount is based on the payment made by the Port District to the City in Fiscal Year 2016 pursuant to that certain Municipal Services Agreement No. 88-2012 between the Port District and the City for the provision of Police, Fire and Emergency Medical Services.

“**Ground Lease Revenues**” means all funds derived from the following clause (a) less the amounts listed in the following clause (b):

(a) those real estate agreements set forth in Exhibit I (collectively, the “Other Ground Leases”); provided, however, if one or more of the Other Ground Leases are renewed, replaced, or amended in such a way as to change the size or configuration of the original premises to include premises outside of the original premises boundaries of all the Other Ground Leases (each a “**Modified Boundary Lease**”), then, for purposes of this Section, the Ground Lease Revenues derived from each Modified Boundary Lease shall be calculated by multiplying the total amount of Ground Lease Revenues generated by such Modified Boundary Lease by a fraction, the numerator of which shall be an amount equal to the Modified Boundary Lease premises still within the original premises boundary, and the denominator of which shall be the total premises area of the Modified Boundary Lease as modified. The City and the Port District acknowledge and agree that a Modified Boundary Lease shall not include the modification of the RV Park Lease to include some or all of parcel S-3. For example, if the original premises of an Other Ground Lease encompasses 5.0 acres, and the Modified Boundary Lease includes 4.0 acres of the original premises, and adds 6.0 acres of premises outside the original premises, then forty percent (40%) of the lease payments paid to the District under the Modified Boundary Lease shall be included as Other Ground Leases lease payments under this Section (collectively, the “**Other Ground Leases Revenues**”); to the extent Port District enters into any revenue generating agreement other than a Ground Lease with respect to operations on all or any portion of the Other Ground Leases premises, such revenue, net any related out-of-pocket operating costs paid by Port District to third parties, shall also be included as Other Ground Leases Revenues under this Section;

(b) less \$3,283,970, which is the actual amount of the buyout payment paid solely by the Port District to Chula Vista Marina, LP, dba Chula Vista Marina (“**RV Park Lessee**”) to terminate the lease between the RV Park Lessee and the Port District (“**Net RV Park Buyout Credit**”), such amount to be amortized over a period of eight years commencing on July 1, 2018 pursuant to the Net RV Park Buyout Credit Schedule (defined below), as such Net RV Park Buyout Credit Schedule and its contents may be administratively modified from time to time with the mutual consent of the City Manager and the Executive Director, without further approval of the BPC or City Council.

“**Net RV Park Buyout Credit Schedule**” means the following schedule:

Fiscal Year (FY)	RV Park Buyout Credit	Cumulative Credit
FY 19	\$410,500	\$410,500
FY 20	\$410,500	\$821,000
FY 21	\$410,500	\$1,231,500
FY 22	\$410,500	\$1,642,000
FY 23	\$410,500	\$2,052,500
FY 24	\$410,500	\$2,463,000
FY 25	\$410,500	\$2,873,500
FY 26	\$410,470	\$3,283,970

“**Public Debt Service Obligation**” or “**PDSO**” means, for any year, the amount of debt service set forth on Exhibit J attached hereto and incorporated herein by reference.

“**RV Park Lease**” means that certain lease described in Exhibit I between the Port District and Sun Chula Vista Bayfront RV LLC for property located at 825 E Street in Chula Vista which lease is on file in the Office of the Port District Clerk as Document No. 70407, as amended and may be amended from time to time.

“**TOT**” means the transient occupancy taxes levied pursuant to Chula Vista Municipal Code Chapter 3.40, attributable to the RV Park Lease.

The amount of the RFPF will be reduced to the extent the RFPF would otherwise be increased solely because Port District or the City fails to use commercially reasonable efforts to ensure the receipt of amounts that, if received by the City or the Port District, would be Existing Revenues and are due and payable to the City or the Port District.

5.1.3. True-Up Payments. Because the actual amounts of the RFPF may not be known when Developer is required to pay Construction Late Charges (since some of the amounts used in the calculation of RFPF will not be known), the Authority shall promptly, after any request by Developer, notify Developer of the reasonably expected amount of the applicable RFPF and Developer shall initially pay Construction Late Charges based on such estimated amounts. Within sixty (60) days after the end of each Fiscal Year with respect to which Developer was required to pay Construction Late Charges pursuant to this Section 5.1, the Port District shall reasonably determine the actual Ground Lease Revenues it received during such Fiscal Year and present such amount, together with reasonable supporting documentation, to Developer for Developer’s review and approval. If the amount of such actual Ground Lease Revenues received by the Port District exceeds the Ground Lease Revenues as calculated based on the preceding Fiscal Year, then the Authority shall make a true-up payment to Developer for the difference within twenty (20) Business Days from the Revenue Fund maintained under the Authority Indenture. If the amount of such Ground Lease Revenues calculated by the Port District based on the preceding Fiscal Year exceeds the amount of such actual Ground Lease Revenues received by the Port District, then Developer shall make a true-up payment to the Authority for the difference within twenty (20) Business Days of a notice of deficiency and upon receipt of such amount from Developer, the Authority shall deposit it into the Revenue Fund maintained under the Authority Indenture.

5.2. Reserved.

5.3. Reserved.

5.4. Project Schedule and Schedule Updates.

5.4.1. Planned Completion Date. For the Developer’s Phase 1A Infrastructure Improvements, the Project schedule shall indicate a planned completion date following the Commencement Date that is not later than the Outside Construction Completion Date (the “**Planned Completion Date**”). The Planned Completion Date may be extended in the event of a delay, provided that Developer duly requests a time extension in accordance with this Section 5.4 and such extension is authorized under this Article V. Any such schedule is for information purposes only.

5.4.2. Critical Path Method Schedules. Developer shall require that MMJV maintain a detailed, computer-generated, logic-driven, precedence style critical path method (“**CPM**”) schedule that is prepared with Primavera or other software used by MMJV and that includes all of MMJV’s work related to the Project. Developer shall submit to the Authority a

courtesy copy of all schedules and schedule updates that Developer receives from MMJV. If requested by the Authority, Developer shall deliver digital copies of any schedules in native computer file format.

5.4.3. Schedule Updates. Developer shall provide to Authority regular schedule updates not less than monthly, which shall include: actual start dates; actual completion dates; and remaining duration of activities in progress. Developer shall promptly notify the Authority of any changes to the schedule.

5.4.4. Schedule for Commencement and Completion of Harbor Park. Notwithstanding any provision of this Agreement to the contrary, Harbor Park shall be deemed to be excluded from Developer's Phase 1A Infrastructure Improvements and not part of the Developer's Phase 1A Infrastructure Improvements Site unless and until Harbor Park is included in the Developer's Phase 1A Infrastructure Improvements in accordance with this Section 5.4.4. Developer shall provide notice to the Public Agencies promptly after Developer determines that 75% Completion has occurred. Developer and the Public Agencies shall meet and confer in good faith within ten (10) Business Days after Developer provides such notice in order to (i) establish the plans and specifications for Harbor Park (the "**Harbor Park Plans**") and budget for Harbor Park (the "**Harbor Park Budget**"), (ii) discuss whether the Port District or Developer will construct Harbor Park, (iii) discuss the status of the development of Sweetwater Park, and (iv) discuss the use of moneys in the County Funded Bayfront Improvements Subaccount. Within sixty (60) days following such meet and confer, Port District will notify Developer in writing as to whether the Port District will construct Harbor Park (which decision will be made by the Port District in its sole and absolute discretion). If Port District elects to develop Harbor Park, then Port District shall not commence development, and shall not commence construction, of Harbor Park unless and until the Developer and the Public Agencies agree in writing that the proceeds available in the County Funded Developer's Phase 1A Subaccount, the 2021B Bond Proceeds Subaccount; and the County Funded Bayfront Improvements Subaccount of the 2021B Construction Account (including any amounts deposited by the Public Agencies in such account after the Effective Date), are sufficient (with a contingency that is acceptable to the Authority and Developer) to pay all Developer's Phase 1A Infrastructure Improvements Costs and that the remaining County Sweetwater Park Funds held by the Port District and the amounts on deposit in the Sweetwater Park Subaccount, if needed, are sufficient (with a contingency that is acceptable to the Authority and Developer) to pay all Remaining Phase 1A Infrastructure Improvements Costs that may be incurred to Sufficiently Complete the Remaining Phase 1A Infrastructure Improvements. If the Port District does not elect to construct Harbor Park within such ten (10) Business Day period and the Developer and the Public Agencies agree in writing upon the Harbor Park Plans and the Harbor Park Budget and that the proceeds available in the County Funded Developer's Phase 1A Subaccount, the 2021B Bond Proceeds Subaccount; and the County Funded Bayfront Improvements Subaccount of the 2021B Construction Account (including any amounts deposited by the Public Agencies in such account after the Effective Date), are sufficient (with a contingency that is acceptable to the Authority and Developer) to pay all Developer's Phase 1A Infrastructure Improvements Costs (assuming for this purpose only that Harbor Park is included in Developer's Phase 1A Infrastructure Improvements) and that the remaining County Sweetwater Park Funds held by the Port and the amounts on deposit in the Sweetwater Park Subaccount, if needed, are sufficient (with a contingency that is acceptable to the Authority and Developer) to pay all Remaining Phase 1A Infrastructure Improvements Costs that may be incurred to Sufficiently Complete the Remaining Phase 1A Infrastructure Improvements, then Developer's Phase 1A Infrastructure Improvements shall be deemed to include Harbor Park, Developer's Phase 1A Infrastructure Improvements Costs shall be modified accordingly and

Developer shall commence development and construction of Harbor Park. Developer shall not commence development or construction of Harbor Park prior to such time. Notwithstanding anything in this Agreement to the contrary, Harbor Park will in no event be included in Developer's Phase 1A Infrastructure Improvements for the purpose of determining whether Developer's Phase 1A Infrastructure Improvements are Complete, Harbor Park will be Accepted separately from the remainder of Developer's Phase 1A Infrastructure Improvements and any warranty period will be calculated separately for Harbor Park, on the one hand, and the remainder of Developer's Phase 1A Infrastructure Improvements, on the other hand. Developer's Phase 1A Infrastructure Improvements shall be deemed not to include Harbor Park, and Developer shall have no obligation to develop nor construct Harbor Park, unless (a) Developer and the Public Agencies agree (i) upon the Harbor Park Plans and the Harbor Park Budget, (ii) that the proceeds available in the County Funded Developer's Phase 1A Subaccount, the 2021B Bond Proceeds Subaccount; and the County Funded Bayfront Improvements Subaccount of the 2021B Construction Account (including any amounts deposited by the Public Agencies in such account after the Effective Date), are sufficient (with a contingency that is acceptable to the Authority and Developer) to pay all Developer's Phase 1A Infrastructure Improvements Costs (assuming for this purpose only that Harbor Park is included in Developer's Phase 1A Infrastructure Improvements) and (iii) that the remaining County Sweetwater Park Funds held by the Port and the amounts on deposit in the Sweetwater Park Subaccount, if needed, are sufficient (with a contingency that is acceptable to the Authority and Developer) to pay all Remaining Phase 1A Infrastructure Improvements Costs that may be incurred to Sufficiently Complete the Remaining Phase 1A Infrastructure Improvements, and (b) the Port District does not elect to construct Harbor Park as provided above. If the Port District elects to develop Harbor Park, the Port District, on the one hand, and the City and Authority, on the other hand, shall enter into a separate agreement regarding the development of Harbor Park. Notwithstanding anything herein to the contrary, the Parties shall determine appropriate insurance requirements at the time the Harbor Park Plans and Harbor Park Budget are prepared.

5.5. Unavoidable Delay. Each of the Developer and the Port District shall be entitled to an extension of the date of the performance of any obligation required of such Party under this Agreement upon the occurrence of a Force Majeure Event as and to the extent set forth in this Section 5.5.

(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 the Developer or the Port District, as applicable, that is asserting that a Force Majeure Event has occurred (the "**Force Majeure Party**") and (y) such event and/or such actual collateral effect prevents such Force Majeure Party from the performance of its obligations under this Agreement and is approved by the Authority pursuant to Section 5.5(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 the Force Majeure Party (or Hotel Operator or a Developer Party, in the case of the Project), complied with Laws or labor agreements with respect to the Project, 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 City’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 the Force Majeure Party’s (or Hotel Operator or a Developer Party, in the case of the Project) 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 Agreement by the Port District, the JEPA or the City) that is necessary to proceed with development or operation of the Convention Center, Developer’s Phase 1A Infrastructure Improvements or the Remaining Phase 1A Infrastructure Improvements, as applicable (provided that Developer 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 the Force Majeure Party (or Hotel Operator or a Developer 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, (A) “extraordinary delays” with respect to City regulatory approvals or authorizations that are subject to the Staffing and Processing Agreement shall mean delays in City processing actions or approvals that exceed 150% of the time periods for City actions under the terms of the Staffing and Processing Agreement, excluding any such delays caused by RIDA’s own actions or inactions thereunder, and (B) “extraordinary delays” with respect to any other 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 Agreement or the Sublease or misconduct by Force Majeure Party (or Hotel Operator or a Developer Party, in the case of the Project).

(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 5.5, a Force Majeure Event shall not include adverse general economic or market conditions not caused by any of the events described in 5.5(a)(i) through (xii) above.

(d) Payment Obligations. In no event will a Force Majeure Event excuse the payment of Project Costs due under this Agreement.

(e) Notice and Acceptance Requirement. After the Force Majeure Party learns of any Force Majeure Event, such Force Majeure Party shall endeavor to provide prompt (under the circumstances) informal written notice to the Executive Director and Authority staff working in the field that a Force Majeure Event has commenced, with a formal written notice to follow as described below. The Force Majeure Party shall notify the Authority and the other Parties in writing within ten (10) Business Days after the Force Majeure Party learns of, and in no event later than thirty (30) days after commencement of a 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 the Force Majeure Party 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), the Force Majeure Party shall provide to the Authority and the other Parties monthly written updates on the estimated expected duration of such delay and the commercially reasonable efforts that the Force Majeure Party 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), the Force Majeure Party shall notify the Authority and the other Parties 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 the Force Majeure Party’s construction of the Project (or, with respect to the Port District, the Remaining Phase 1A Infrastructure Improvements) or Completion (the “**Force Majeure Notice**”). Within thirty (30) days after Authority’s receipt of the Force Majeure Notice, the Authority shall provide notice to the Force Majeure Party and the other Parties (“**Force Majeure Response**”) that either the Authority (a) requires additional information to make a determination regarding the Force Majeure Party’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. The Authority’s approval or denial of the Force Majeure Notice shall be in the Authority’s reasonable discretion. If the Authority denies some or all of the Force Majeure Notice, the Authority and the Force Majeure Party will meet and confer in good faith within ten (10) days after the Authority’s delivery of the Force Majeure Response to attempt to reach a mutually acceptable modification to the Force Majeure Notice that will result in the Authority approving the Force Majeure Notice as modified (“**Meet & Confer Period**”). If the Authority and the Force Majeure Party do not agree on a modification to the Force Majeure Notice during the Meet & Confer Period, the Force Majeure Party may elect to withdraw the Force Majeure Notice and if the Force Majeure Party does not withdraw the Force Majeure Notice, the Authority shall present the Force Majeure Notice to the Authority Board 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 Authority Board 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 construction of the Project (or, with respect to the Port District, the Remaining Phase 1A Infrastructure Improvements) or Completion specified therein was not reasonable, or the efforts that the Force Majeure Party took to minimize the period of delay were not commercially reasonable, then, at the Authority's sole and exclusive remedy for the Force Majeure Party's failure to perform any obligation under this Agreement from which the Force Majeure Party claimed to be excused as a result of such Force Majeure Event, but was not excused, the Force Majeure Party shall make the Authority whole for any loss that the Authority suffered as a result of such failure.

5.6. Completion Guaranty. On or before the Effective Date, Developer shall cause each Completion Guarantor (as defined in each Completion Guaranty) to execute and deliver to Authority, and maintain in effect in accordance with its terms, a Completion Guaranty substantially in the form attached hereto as Exhibit H and incorporated herein by reference ("**Completion Guaranty**"), with any deviations from such form being reasonably acceptable to Authority, City, Port District, and Developer.

5.7. Entitlements.

5.7.1. Entitlement Costs. If 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 ("**PMPA**"), stormwater permits, a CDP and/or a Coastal Act exclusion (collectively, "**Discretionary Entitlement**"), are necessary, in Port District's sole and absolute determination, in connection with any Improvements or Alterations, demolition work, remediation work or other projects undertaken by Developer on or at the Project Site or the Improvements (each of the foregoing for which a Discretionary Entitlement is required, the "**Discretionary Project**"), then Developer shall enter into agreements, consistent with the Port District's applicable standard practices at that time (if any), with third-party experts, professionals and consultants to prepare reports and other materials ("**Consultant Services**") that are required to process the Discretionary Project and for the Port District or any other relevant Governmental Authority to consider the Discretionary Entitlement or Discretionary Project. Developer shall be directly responsible for the costs of the Consultant Services. Developer shall reimburse Port District pursuant to the Reimbursement Procedure for all reasonable costs and expenses incurred by Port District in connection with preparing, processing, considering and approving any Discretionary Project, any Discretionary Entitlement or any appeal of any CDP or Coastal Act exclusion to the CCC. If Developer fails to reimburse Port District for such costs or expenses pursuant to the Reimbursement Procedure, then, in addition to any other remedies that Port District may have, following three (3) Business Days' prior written notice to Developer, Port District may, at its reasonable discretion, discontinue the preparing, processing, considering or approving of such Discretionary Project, Discretionary Entitlement or such appeal of a CDP or Coastal Act exclusion to the CCC, as applicable, until Developer reimburses Port District, and Developer shall be responsible for any costs and expenses incurred by Port District related to such discontinuance and if such failure continues for seven (7) additional Business Days after written notice from Port District to Developer, then such failure shall be an Event of Default. Nothing herein shall obligate Port District to seek, process or obtain any Discretionary Entitlement or any other third-party Governmental Authority approval for a Discretionary Project for the benefit of Developer, and Port District makes no warranty or representation to Developer that Developer will obtain any Discretionary Entitlement or ministerial approval. Port District shall not be required to pay any Governmental Authority fees or costs and expenses for any Consultant Services associated with any Discretionary Entitlement or any other third-party Governmental Authority approval for a Discretionary Project. If Developer requests

Port District's assistance in obtaining from any third-party Governmental Authority any licenses, approvals, notifications, registrations or permits in connection with development, use and operation of the Project Site and the Improvements, including the construction of the Initial Project Improvements, Port District will consider Developer's request and inform Developer within thirty (30) days whether it will agree to reasonably assist Developer.

5.7.2. Entitlements Indemnity. Without limitation of Developer's other obligations under this Agreement, Developer agrees, at its sole cost and expense, and with counsel selected by the Public Agencies and reasonably acceptable to Developer, to indemnify, defend and hold harmless the Port District Parties, Authority Parties, Financing District Parties, and the City Parties from any third-party claims, demands, actions, causes of action, suits and Related Costs, arising out of Port District's approval of any Discretionary Project, Discretionary Entitlement or appeal of a CDP or Coastal Act exclusion to the CCC. Port District may, in its sole and absolute discretion, participate in the defense of any claims, demands, actions and causes of action and suits, and Developer shall reimburse Port District for all reasonable costs that are incurred by Port District in connection therewith, including, without limitation, reimbursement for attorneys' fees, experts' fees and other costs. Port District's participation in such defense shall not relieve Developer of any of its obligations under this Section 5.7.2. The foregoing indemnity obligations of Developer are in addition to, and not in limitation of, any other indemnity obligations of Developer contained in this Agreement, the Ground Lease, and the Sublease, and this Section 5.7.2 shall survive the expiration or earlier termination of this Agreement and the Sublease.

5.7.3. Reservation of Discretion. Developer acknowledges and agrees that, notwithstanding the terms and conditions of this Agreement, and the Sublease, Port District reserves its discretion to condition, approve or disapprove any Discretionary Entitlements or Discretionary Project, including, without limitation, adoption of any and all feasible mitigation measures, alternatives to a Discretionary Project, including a no project alternative, and a statement of overriding consideration, if applicable, and that nothing in this Agreement or the Sublease will be construed as circumventing or limiting Port District's discretion with respect to any Discretionary Entitlement, or any Discretionary Project, including, without limitation, the exercise of eminent domain, code enforcement and the making of findings and determinations required by Laws. Developer acknowledges and agrees that any and all Discretionary Entitlements may be conditioned, approved or denied by Port District, in its sole and absolute determination, and Developer accepts the risk that Port District may deny any and all Discretionary Entitlements, and hereby waives any claims, demands, actions, causes of action, suits against Port District for such conditions or denial.

5.7.4. Ministerial Action by Authority. At Developer's request, the Authority will take any reasonable and lawful ministerial action that is reasonably necessary in connection with Discretionary Entitlement or any other third-party Governmental Authority approval for a Discretionary Project (including, without limitation, signing any application for a Discretionary Entitlement in its capacity as the owner of the Convention Center, tenant under the Site Lease or sublandlord under the Facility Lease).

5.8. Energy Requirements. Notwithstanding any other provision of this Agreement to the contrary, the only obligations of Developer with respect to Section 15 and Exhibit 3 of the Settlement Agreement and any indemnification obligations with respect thereto are set forth in Exhibit O attached hereto and incorporated herein by reference and in the Ground Lease.

ARTICLE VI
PROCUREMENT REQUIREMENTS AND EQUAL OPPORTUNITY

6.1. Award of Sole-Sole Source Prime Contract. Pursuant to the findings of the Authority Board found in Authority Resolution 2020-002, the Developer may award one or more single sole source prime contracts to MMJV for the partial design and construction of the Project subject to the terms and conditions of Authority Resolution 2020-002 and this Article VI of this Agreement. The Authority has approved the final, executable construction contracts for the Convention Center and the Developer's Phase 1A Infrastructure Improvements listed on Exhibit G-3.¹

6.2. Subcontractor Bid and Award Process for the Developer's Phase 1A Infrastructure Improvements. The provisions of this Section 6.2 shall apply only to the Phase 1A Infrastructure Improvements that Developer performs. Developer shall award subcontracts in compliance with the Authority Procurement Policy and Authority Resolution 2020-002 and as implemented (with modifications) and further delineated in the bid and award process that is attached as Exhibit G-1 hereto and as further set out in this Section 6.2. Developer represents and warrants that the subcontracts listed in Exhibit G-2 hereto were awarded in accordance with the bid and award process set forth in Exhibit G-1 hereto, subject to such waivers as have been approved by the Authority under the Authority Procurement Policy and Authority Resolution 2020-002. Developer may utilize subcontracts awarded prior to the Effective Date of this Agreement, provided such subcontracts were procured in accordance with this Section 6.2. Nothing herein is intended to limit the Executive Director's authority to implement the Authority Procurement Policy and Authority Resolution 2020-002 and approve waivers as set forth therein.

6.2.1. Sole Source Subcontract Award. If so intended by Developer, Developer shall provide notice of its intention to award a sole-source contract to Authority and Authority shall evidence its approval of the Developer's proposed sole source subcontract award (which approval shall not be unreasonably withheld) by delivering a signed Sole Source Subcontract Award Approval in the form set forth in Exhibit L (with respect to Developer's Phase 1A Infrastructure Improvements) and Authority shall evidence its approval of such sole source subcontract award by counter-signing such Sole Source Subcontract Award Approval. Authority shall counter-sign a Sole Source Subcontract Award Approval or provide written notice of Authority's reasons for withholding approval within five (5) Business Days after receiving written notice from the Developer. If Authority fails to respond to a written request for Sole Source Subcontract Award Approval within five (5) Business Days, Developer shall notify Authority that such deadline has passed and Authority shall respond in writing within two (2) Business Days after receiving written notice from the Developer. If Authority fails to respond within such additional two (2) Business Day period, then Authority shall be deemed to have approved such Sole Source Subcontract Award Approval.

6.2.2. Best Qualified Contractor Subcontract Award. If so intended by Developer, Developer shall provide notice of its intention to award a subcontract on the best qualified contractor (who is not the lowest bidder) to Authority and Authority shall evidence its approval of the Developer's proposed best qualified subcontract award (which approval shall not be unreasonably withheld) by delivering a signed Best Qualified Contractor Subcontract Award Approval in the form set forth in Exhibit M (with respect to Developer's Phase 1A Infrastructure Improvements) and Authority shall evidence its approval of such best qualified contractor award by counter-signing such Best Qualified Contractor Subcontract Award Approval. Authority shall counter-sign a Best

¹ NTD: Such approval to occur before Closing.

Qualified Contractor Subcontract Award Approval or provide written notice of Authority's reasons for withholding approval within five (5) Business Days after receiving written notice from the Developer. If Authority fails to respond to a written request for Best Qualified Contractor Subcontract Award Approval within five (5) Business Days, Developer shall notify Authority that such deadline has passed and Authority shall respond in writing within two (2) Business Days after receiving written notice from the Developer. If Authority fails to respond within such additional two (2) Business Day period, then Authority shall be deemed to have approved such Best Qualified Contractor Subcontract Award Approval.

6.2.3. Applicability of Authority Procurement Policy. Notwithstanding anything to the contrary set forth in the Authority Procurement Policy or Authority Resolution 2020-002, to the extent that Developer procures work to construct all or a portion of the Remaining Phase 1A Infrastructure Improvements pursuant to Section 2.3 and to the extent Developer procures work with respect to Remaining Phase 1A Infrastructure Improvements (or, with the reasonable approval of the Executive Director, Developer's Phase 1A Infrastructure Improvements) as a result of a casualty or condemnation event, Developer may procure such work without regard to the bidding requirements set forth in Sections 1 and 2 of the Authority Procurement Policy. Except with respect to Sections 1 and 2 of the Authority Procurement Policy, the requirements of the Authority Procurement Policy and Authority Resolution 2020-002, as modified by this Agreement, shall remain in effect and apply to the Remaining Phase 1A Infrastructure Improvements constructed by Developer and any work with respect to Remaining Phase 1A Infrastructure Improvements (or, with the reasonable approval of the Executive Director, Developer's Phase 1A Infrastructure Improvements) procured by Developer as a result of a casualty or condemnation event. The modifications described above are intended to be modifications by agreement approved by the Authority Board, as expressly authorized in the Authority Procurement Policy.

6.3. Bid and Award Process for the Remaining Phase 1A Infrastructure Improvements. If the Port District constructs or causes the construction of the Remaining Phase 1A Infrastructure Improvements or Harbor Park, the Port District shall use its procurement policies, then in effect.

6.4. The Convention Center as a Special Purpose Project. Pursuant to Authority Resolution 2020-002, the Convention Center constitutes a "special purpose project" as defined in Section 6 of the Authority Procurement Policy, and the requirements of Sections 1.b.ii, 1.b.iii, 2 and 3(b) of the Authority Procurement Policy shall not apply to the provisions of this Agreement pertaining to development and construction of the Convention Center or work for the Convention Center procured by Developer as a result of a casualty or condemnation event pursuant to Article V of the Sublease.

6.5. Procurement of Alterations. Procurement of work for Alterations is governed by the Sublease and not this Agreement, and the requirements of the Authority Procurement Policy shall not apply to Alterations. The modifications described above are intended to be modifications by agreement approved by the Authority Board, as expressly authorized in the Authority Procurement Policy.

6.6. Bid Opening and Award. In the case of any Competitive Bid or Solicitation Process for the Developer's Phase 1A Infrastructure Improvements, Developer shall provide the Authority with a copy of the tabulation of competitive bid results with respect to each contract and subcontract, as applicable. Developer shall provide the Authority with copies of all executed contracts awarded in accordance with this Section 6.6 and Developer shall certify in writing to the Authority that such

contracts were awarded in accordance with the process described in Exhibit G-1 hereto, subject to such waivers as have been approved by the Authority in accordance with the Authority Procurement Policy and Authority Resolution 2020-002. A list of the subcontracts awarded for the Developer's Phase 1A Infrastructure Improvements prior to the Effective Date is set forth in Exhibit G-2. Developer hereby certifies to the Public Agencies that the subcontracts listed in Exhibit G-2 were bid and awarded in accordance with the process described in Exhibit G-1 hereto, subject to such waivers as have been approved by the Authority under the Authority Procurement Policy and Authority Resolution 2020-002.

6.7. Authority Procurement Policy Acknowledgement. In the event Developer exercises the Second Sweetwater Park Option and only for purposes of Developer's procurement of General Contracts for Sweetwater Park, Authority waives the bidding requirement of the Authority Procurement Policy (including, without limitation, set forth in Sections 1 and 2 of the Authority Procurement Policy). All other requirements of the Authority Procurement Policy and Authority Resolution 2020-002, as modified by this Agreement, shall apply to Developer's procurement of contracts for Sweetwater Park. Authority acknowledges that in compliance with the applicable provisions of the Authority Procurement Policy and Authority Resolution 2020-002, Authority has required Developer to enter into this Agreement to establish the terms and conditions pursuant to which the Developer may develop and construct the Project and obtain payment for a portion of the eligible costs of developing and constructing the Developer's Phase 1A Infrastructure Improvements and the Convention Center from the proceeds of the Authority Bonds and the County Funds, and that to the extent requirements set forth in this Agreement differ from the requirements set forth in Authority Procurement Policy and Authority Resolution 2020-002, the requirements set forth in this Agreement will govern the procurement, development and funding of the Project, including the Remaining Phase 1A Infrastructure Improvements if Developer has exercised the Second Sweetwater Park Option (to the extent permitted by Authority Procurement Policy and Authority Resolution 2020-002). Notwithstanding anything to the contrary in this Agreement, Sections 6.2 through 6.2.2 shall not apply to the Remaining Phase 1A Infrastructure Improvements.

ARTICLE VII DESIGN AND CONSTRUCTION STANDARDS

7.1. Standard of Care. Developer will use commercially reasonable efforts to furnish efficient business administration and supervision and manage the performance of the work with respect to the Project in an expeditious and economical manner consistent with Authority's interests. Developer shall endeavor to cause the General Contractor and all Subcontractors to construct the Project in a workmanlike manner. Developer's professional consultants shall be skilled in the profession necessary to perform their respective services and Developer shall cause them to perform their services related to the Project in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform the services in the same discipline in the State of California.

7.2. Compliance with Laws.

7.2.1. Port District Compliance with Laws. Port District shall in its construction of the Remaining Phase 1A Infrastructure Improvements abide by and comply with, and cause any of its General Contractor, Subcontractors, employees, and agents, to abide by and comply with all Laws.

7.2.2. Developer's Compliance with Laws. Developer shall in all activities on or in connection with the Project Site and the Project, and in all uses thereof, including without limitation the Permitted Use and any construction of the Project, abide by and comply with, and cause the Developer Parties (other than Developer) and Hotel Operator to abide by and comply with, all Laws at Developer's sole cost and expense, and Authority shall not have any obligations or responsibilities to comply with any Laws as to the Project Site and the Improvements or any use thereby by Developer Parties or Hotel Operator. In particular and without limitation, Developer shall have the sole and exclusive obligation and responsibility, at Developer'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), (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 7.2.3 and Article XX of this 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 Project Site or the Improvements, including the use or development thereof, (v) the Port Master Plan ("PMP"), (vi) the Chula Vista Municipal Code, (vii) any other development permits or approvals accepted by Developer, and (viii) the policies adopted by the BPC. Until the earlier of such time as all components of the Developer's Phase 1A Infrastructure Improvements are Accepted or the Term of this Agreement terminates or expires, neither the BPC nor the City Council shall adopt any Law that only applies to the Developer's Phase 1A Infrastructure Improvements, unless the Law is determined by the BPC, in its sole and absolute discretion, or the City Council, in its sole and absolute discretion (as applicable), but in either case, 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 Port District's police powers under the Port Act or the City Council's police powers under applicable Laws, including the CVMC. The foregoing limitation shall not apply to the adoption of any ordinance or resolution that authorizes an amendment to this Agreement or any Contemporaneous Agreement, or is adopted to authorize the enforcement of Port District's or City's rights or the performance of Port District's or City's obligations under this Agreement or any Contemporaneous Agreement, including without limitation, any ordinances or resolutions adopted by the BPC or City Council as part of any discretionary approval. In the event of any conflict between the terms of a policy adopted by the BPC or City Council and this Agreement, Developer shall deliver notice to Port District or City, as applicable, of such a conflict and the Parties shall meet and confer within ten (10) days of Port District's or City's, as applicable, receipt of the notice to discuss the conflict and attempt to resolve the conflict in good faith prior to commencing mediation pursuant to Section 26.12.10. If the conflict is not resolved pursuant to Section 26.12.10, then the terms of this Agreement shall control and Developer shall be excused from complying with the terms of such policy adopted by the BPC or City Council, to the extent of such conflict only.

7.2.3. Prevailing Wage.

7.2.3.1. This Section 7.2.3.1 applies only to the Project and does not apply to the Remaining Phase 1A Infrastructure Improvements unless and until Developer exercises a Sweetwater Park Option or to Harbor Park unless Harbor Park will be constructed by Developer. Developer acknowledges and agrees that:

a. Any construction, alteration, demolition, installation, or repair work, in each case for the Project, required or performed under this Agreement constitutes “public work” under California Prevailing Wage Law, including Labor Code §§ 1720 through 1861, et seq. (“PWL”), and obligates Developer 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.

b. Developer shall cause all Persons performing “public work” for the Project under this Agreement to comply with all applicable provisions of the PWL and other applicable wage Laws.

c. Developer’s violations of the PWL shall constitute a breach (subject to cure pursuant to Section 21.1.2) under this Agreement.

d. Authority hereby notifies Developer, and Developer 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.”

e. Developer acknowledges that its obligations under the PWL with respect to the Project include, without limitation, ensuring that:

i. 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;

ii. 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**”);

iii. 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

iv. 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 Developer shall determine and use whatever form the DIR requires.

f. None of the Authority, Port District, City, or Financing District shall be responsible for Developer's failure to comply with any applicable provisions of the PWL.

g. Notwithstanding anything in this Agreement to the contrary, Developer 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 Agency Party (other than by a Developer Party or Hotel Operator, or on behalf of a Developer Party or Hotel Operator, or by any Person acting directly or indirectly under a contract with a Developer Party or Hotel Operator).

7.3. Compliance with Design and Construction Standards. Developer shall comply, and require compliance by any of its General Contractor, Subcontractors, employees, and agents, or other Developer Parties, with the applicable Design and Construction Standards in connection with the design and construction of Developer's Phase 1A Infrastructure Improvements.

7.3.1. Standard Specifications. In connection with any modification of the Approved Drawings and Specifications for the Developer's Phase 1A Infrastructure Improvements, Developer shall comply, and require compliance by any of its General Contractor, Subcontractors, employees, and agents, with the editions of the following reference specifications that were in effect on the Plan Submission Date: the Standard Specifications and the Chula Vista Standard Special Provisions.

7.4. Construction Period. With respect to Convention Center and any portion of the Developer's Phase 1A Infrastructure Improvements, the provisions of Sections 7.1, 7.2 and 7.3 shall apply until Acceptance of the Convention Center or such portion of Developer's Phase 1A Infrastructure Improvement, as applicable.

7.5. Authority Approval Not a Waiver of Obligations. Where approval by the Authority, the Executive Director, or other representatives of the Authority is required, it is understood to be general approval only and does not relieve Developer of responsibility for complying with all applicable Laws or other requirements of this Agreement, except in the case of the Authority's express waiver of the requirement to comply with (a) any Authority requirement, to the extent such requirement is waivable, or (b) any other requirement of this Agreement waivable by the Authority. For purposes of this Agreement, in the event of Authority's express waiver provided pursuant to clauses (a) or (b) above, Developer shall be deemed in compliance with such Authority requirements or other requirement of this Agreement as a result of such waiver, in each case, only to the extent of such waiver. No such waiver shall constitute an assumption of liability by the Authority, nor shall the Authority, through approval, become an insurer or surety of work associated with the approvals.

ARTICLE VIII CONSTRUCTION

8.1. Site Safety, Security. Developer shall be responsible for Project Site safety and security, with respect to Developer's construction of the Project.

8.1.1. Persons. As between the Developer, on one hand, and the City, Port District, and the Authority, on the other hand, and without expanding the Developer's contractual obligations or duties to any Person other than the City, Port District, and Authority, the Developer shall be solely responsible for the safety and security of its officers, agents, and employees authorized by Developer to access the Project Site.

8.1.2. Other. Developer is responsible for each portion of the Developer's Phase 1A Infrastructure Improvements Site and all other materials, equipment, and other incidentals on such portion of the Developer's Phase 1A Infrastructure Improvements Site until such portion of the completed Developer's Phase 1A Infrastructure Improvements have been Accepted by the City or Port District, as applicable. Developer is responsible for the Site, materials, equipment, and all other incidentals on the Site until the completed Convention Center has been Accepted by the Authority. From and after Acceptance, any responsibility of the Developer for the Convention Center shall be pursuant to the Sublease.

8.1.3. Environment. In the construction and development of the Project, Developer shall comply with all environmental laws and regulations, including the Clean Air Act of 1970, the Clean Water Act, Executive Order number 11738, and the Stormwater Management and Discharge Control Ordinance No. 0-17988 and any and all Best Management Practice ("BMP") guidelines and pollution elimination requirements as may be established by an enforcement official. Furthermore, Developer shall prepare and incorporate into the drawings and specifications a Stormwater Pollution Prevention Plan ("SWPPP") to be implemented by Developer during Project construction and, until Acceptance of the Convention Center or the applicable Developer's Phase 1A Infrastructure Improvements. Where applicable, the SWPPP shall comply with both the California Regional Water Quality Control Board Statewide General Construction Storm Water permit and National Pollution Discharge Elimination System permit requirements and shall be in conformance with the City of Chula Vista BMP Design Manual and CVMC Chapter 14.20 (Storm Water Management and Discharge Control).

8.1.4. Access to Project Site. During the Construction Period, the Public Agency Parties shall have the right, but not the obligation, to enter upon and inspect the portions of the Project Site where the construction of the Project is ongoing, during normal business hours and upon a two (2) Business Days' prior notice to Developer (except for or in connection with inspections undertaken by any Public Agency in its regulatory capacity and except in the case of an emergency in which case no prior notice shall be required but each of such Public Agency Parties that enter the Project Site shall notify Developer and Developer's Risk Construction Manager thereof by phone prior to entering the Project Site), and each Public Agency that enters the Project Site shall, and shall cause each of its respective Public Agency Parties that enter the Project Site, as applicable, to: (a) comply with all applicable security and safety procedures of Developer of which Developer informs such Public Agency in writing and with which such Public Agency Party can reasonably comply, and (b) not interfere with Developer's construction of the Project. Notwithstanding the foregoing, nothing herein shall limit the Port District's or City's right to enter the Project Site at any time to exercise their respective police powers.

8.2. Public Right-of-Way. All work, including materials testing, special testing, and surveying to be conducted in the public right-of-way shall be coordinated with the Authority. Developer agrees to follow all Laws and regulations, and all written and publicly available standards and regulations of the Authority, as applicable, while working in the public right-of-way, including, but not limited to, utilizing proper traffic control and obtaining necessary permits.

8.3. Traffic Control. In connection with the Project, Developer shall be responsible for traffic management, including traffic control implementation, maintenance, and preparing detailed traffic control plans to be submitted to the jurisdiction for approval.

8.4. Maintenance. Developer shall maintain and be responsible for each portion of the Developer's Phase 1A Infrastructure Improvements until Acceptance of such portion, including ongoing erosion prevention measures. Upon Acceptance, the City, the Port District and/or the Authority, as applicable, shall be responsible for maintenance of such portion of the Developer's Phase 1A Infrastructure Improvements, as determined through one or more separate agreements among two or more of the City, the Port District, and the Authority. All costs incurred by Developer in maintaining the Developer's Phase 1A Infrastructure Improvements shall be Developer's Phase 1A Infrastructure Improvements Costs. To the extent such costs are incurred after Completion but before Acceptance of the Developer's Phase 1A Infrastructure Improvements and are not paid to Developer pursuant to Section 9.1 (including pursuant to the Final Accounting under Section 9.1.6), Authority shall reimburse Developer for such costs within thirty (30) days after Developer provides Authority with a request for reimbursement, together with supporting documentation evidencing such costs. For the avoidance of doubt, Developer shall have no further obligations pursuant to this Section 8.4 with respect to any portion of the Developer's Phase 1A Infrastructure Improvements after Acceptance of such portion of the Developer's Phase 1A Infrastructure Improvements.

ARTICLE IX PAYMENT OF PROJECT COSTS

9.1. Developer's Phase 1A Infrastructure Improvements Costs. The provisions of this Section 9.1 and each subsection of this Section 9.1 shall apply solely to the Developer's Phase 1A Infrastructure Improvements.

9.1.1. Payment of Costs Associated with the Developer's Phase 1A Infrastructure Improvements. Based upon Developer's Phase 1A Payment Requests submitted to the Authority by the Developer, the Authority shall make progress payments on account of the Developer's Phase 1A Contract Sum to the Developer in accordance with the provisions of this Section 9.1. The amount of each progress payment shall be computed as follows:

9.1.1.1. The amount of each progress payment shall first include:

a. The Developer's Phase 1A Infrastructure Improvements Costs incurred or to be incurred by Developer and for which Developer has made or intends to make actual payment prior to the next Developer's Phase 1A Payment Request; and

b. The Stipulated Developer's Phase 1A Infrastructure Improvements Overhead Amount that has accrued as of the date of such Developer's Phase 1A Payment Request.

9.1.1.2. The amount of each progress payment shall then be reduced by, without duplication:

a. The aggregate of any amounts previously paid by the Authority in respect of the Developer's Phase 1A Contract Sum;

b. The amount by which the Architect, pursuant to the Architect's Certificate that is attached to such Developer's Phase 1A Payment Request, reduces the amount to be paid with respect to such Developer's Phase 1A Payment Request. The Architect may reduce such amount to the extent the work performed by Developer for which payment is requested has not been performed substantially in accordance in all material respects with the Approved Drawings and Specifications for the Developer's Phase 1A Infrastructure Improvements, in which case the amount to be disbursed under the applicable Developer's Phase 1A Payment Request shall be reduced to reflect the cost of causing such construction to be performed substantially in accordance in all material respects with such Approved Drawings and Specifications (without duplication of any similar reduction that is made by Developer). In the event of any such reduction, Developer may seek payment for the amounts so reduced in any subsequent Developer's Phase 1A Payment Request; and

c. Any amount for which the Developer does not intend to pay General Contractor or any Subcontractor, unless the work has been performed by others the Developer intends to pay.

9.1.1.3. Funds for Payment of Costs/Expenses.

a. On the Effective Date, Authority shall cause the Trustee to deposit an amount equal to \$[●] *[NTD: such amount shall be the net proceeds of the Authority Tax-Exempt Bonds]* into the 2021B Bond Proceeds Subaccount. The Parties acknowledge that the County Funding Agreement provides for the County to pay County Funds to the Authority in multiple payments, from time to time as described in the County Funding Agreement, and that such payments are expected to occur after the Effective Date. Within five (5) Business Days of the Authority's receipt of any County Funds, the Authority shall transfer such County Funds as follows: (i) the Authority shall transfer the first \$10,500,000 in County Funds that the Authority receives (the "**County Sweetwater Park Funds**") to the Port District; (ii) the Authority shall transfer the next \$2,500,000 in County Funds that the Authority receives to the Trustee for deposit into the Sweetwater Park Subaccount; (iii) the Authority shall transfer the next \$6,000,000 in County Funds that the Authority receives to the Trustee for deposit into the County Funded Developer's Phase 1A Subaccount; and (iv) the Authority shall transfer all County Funds that the Authority receives thereafter to the Trustee for deposit into the County Funded Bayfront Improvements Subaccount. The Authority shall cause the Trustee to make the deposits described in clauses (ii), (iii) and (iv), above.

b. The Authority shall take all actions necessary to cause the Trustee to disburse moneys from the 2021B Bond Proceeds Subaccount and the County Funded Developer's Phase 1A Subaccount for payments required to be made to the Developer, as and when required under this Agreement. The Authority shall take all actions necessary to cause the Trustee to disburse moneys from the Sweetwater Park Subaccount for payments required to be made to the Port District, as and when required under this Agreement. The Authority shall take all actions necessary to cause the Trustee to disburse moneys from the County Funded Bayfront Improvements Subaccount for payments required to be made to the Developer, the Port District, or the City, as applicable, as and when required under this Agreement. Each Public Agency shall not interfere with any lawfully made disbursement request delivered to the Trustee. Until the County Funds Release Date, (A) Authority shall not permit any funds in the 2021B Bond Proceeds Subaccount or the County Funded Developer's Phase 1A Subaccount to be used for any purpose other than making payments to Developer in accordance with this Section 9.1 without the prior written consent of the

Developer, which consent shall be granted or withheld in Developer's sole discretion, and (B) Authority shall direct or authorize the Trustee to transfer funds out of the 2021B Bond Proceeds Subaccount and the County Funded Developer's Phase 1A Subaccount only to the account or accounts designated by Developer in writing (or as otherwise consented to in Developer's sole discretion).

c. Until the County Funds Release Date, the Port District shall use the County Sweetwater Park Funds only for Remaining Phase 1A Infrastructure Improvements Costs. Notwithstanding the foregoing, not later than five (5) Business Days after the Developer exercises a Sweetwater Park Option, the Port District shall promptly transfer all remaining County Sweetwater Park Funds to the Trustee for deposit into the County Funded Developer's Phase 1A Subaccount.

d. After all County Sweetwater Park Funds have been expended for Remaining Phase 1A Infrastructure Improvements Costs, at the written request of the Port District from time to time, the Authority shall direct the Trustee to transfer amounts on deposit in the Sweetwater Park Subaccount to the Port District. Until the County Funds Release Date, the Port District shall request and use amounts from the Sweetwater Park Subaccount only for Remaining Phase 1A Infrastructure Improvements Costs incurred or to be incurred to Sufficiently Complete the Remaining Phase 1A Infrastructure Improvements. Notwithstanding the foregoing, not later than five (5) Business Days after the Developer exercises a Sweetwater Park Option, the Authority shall direct the Trustee to transfer all amounts remaining in the Sweetwater Park Subaccount into the County Funded Developer's Phase 1A Subaccount.

e. Not later than five (5) Business Days after the later to occur of (i) Sufficient Completion of the Remaining Phase 1A Infrastructure Improvements and (ii) payment of all Remaining Phase 1A Infrastructure Improvements Costs incurred to Sufficiently Complete the Remaining Phase 1A Infrastructure Improvements (or on such earlier date designated by the Port District if the Port District reasonably determines that sufficient moneys have been set aside by the Port District to Sufficiently Complete Sweetwater Park), and provided that the Developer has not previously exercised a Sweetwater Park Option, (A) the Port District shall transfer any remaining County Sweetwater Park Funds held by the Port District directly to the Trustee for deposit in the County Funded Bayfront Improvements Subaccount and (B) the Authority shall direct the Trustee to transfer all amounts remaining in the Sweetwater Park Subaccount into the County Funded Bayfront Improvements Subaccount.

f. Until 75% Completion, amounts in the County Funded Bayfront Improvements Subaccount shall not be used for any purpose other than payment of Developer's Phase 1A Infrastructure Improvements Costs without the prior written consent of the Developer, which consent shall be granted or withheld in Developer's sole discretion. Pursuant to Section 5.4.4, following 75% Completion and until the County Funds Release Date, the Developer, the Port District, and the City shall mutually agree with respect to the use of amounts on deposit in the County Funded Bayfront Improvements Subaccount. The Parties anticipate that, until the County Funds Release Date, the Parties will apply amounts on deposit in the County Funded Bayfront Improvements Subaccount for the following purposes, in the following order of priority: (i) first, the payment of Developer Phase 1A Infrastructure Improvements Costs in excess of the amounts deposited into the 2021B Bond Proceeds Subaccount and the County Funded Developer's Phase 1A Subaccount, (ii) second, the payment of Remaining Phase 1A Infrastructure Improvements Costs in excess of the County Sweetwater Park Funds and amounts deposited into the Sweetwater Park

Subaccount, (iii) third, the payment of costs incurred to construct Harbor Park as set forth in the approved Harbor Park Budget, and (iv) fourth, other uses permitted by the County Funding Agreement or as otherwise consented to by the County. On and after the County Funds Release Date, all amounts in the County Funded Bayfront Improvements Subaccount shall be available for withdrawal and use by the Authority for any purpose as may be agreed to by the City and the Port District from time to time without any obligation to confer with or obtain consent from the Developer.

g. Until such time that the Parties have agreed on the Harbor Park Budget, any costs allocated to Harbor Park in Developer's Phase 1A Infrastructure Improvement Budget shall be held by the Trustee in the 2021B Bond Proceeds Subaccount and the County Funded Developer's Phase 1A Subaccount and made available to pay Developer's Phase 1A Infrastructure Improvements Costs to the extent other moneys in the 2021B Bond Proceeds Subaccount and the County Funded Developer's Phase 1A Subaccount are insufficient to pay all Developer's Phase 1A Infrastructure Improvements Costs. Such costs allocated to Harbor Park shall be deemed part of the contingency reserve in Developer's Phase 1A Infrastructure Improvement Budget.

9.1.2. Prerequisites to Payment.

9.1.2.1. Developer's Phase 1A Payment Request. Prior to the disbursement of any amounts to pay the Developer's Phase 1A Contract Sum, Developer shall provide the Executive Director with a Developer's Phase 1A Payment Request, together with all of the items described therein. Each Developer's Phase 1A Payment Request shall show (i) the Developer's Phase 1A Infrastructure Improvements Costs incurred or to be incurred by Developer and for which Developer has made or intends to make actual payment prior to the next Developer's Phase 1A Payment Request and (ii) the Stipulated Developer's Phase 1A Infrastructure Improvements Overhead Amount with respect to such Developer's Phase 1A Infrastructure Improvements. The form of Developer's Phase 1A Payment Request attached hereto as Exhibit K-1 may be modified or replaced by Developer, subject to the consent of Authority provided or withheld in Authority's sole discretion.

Each Developer's Phase 1A Payment Request shall be delivered in the following manner (or by such other means as is reasonably agreed to by the Developer and the Authority): Developer shall send by electronic mail to the Authority Email Addresses a notice that the Developer's Phase 1A Payment Request and supporting documentation have been uploaded to an internet website, the link to which shall be included in such email notice. Authority shall send confirmation to the Developer by electronic mail once Authority has successfully accessed the Developer's Phase 1A Payment Request.

The Authority shall not have an obligation to make payment to Developer unless and until Developer provides the Executive Director with a Developer's Phase 1A Payment Request, together with all of the items described therein (including the Architect's Certificate), and such Developer's Phase 1A Payment Request is approved by the Executive Director as provided below.

9.1.2.2. Inspection. The Developer's Phase 1A Infrastructure Improvements shall be subject to City inspection, as applicable, as provided in section 2-11 of the Greenbook. Developer shall ensure that all persons and entities providing work or services for the

Developer's Phase 1A Infrastructure Improvements comply with the inspection requirements provided in section 2-11 of the Greenbook.

9.1.2.3. Prevailing Wage Compliance. Developer shall ensure that all persons and entities providing work or services for the Developer's Phase 1A Infrastructure Improvements comply with prevailing wage requirements, as and to the extent described in Section 7.2.3.1.

9.1.2.4. Public Agency Approval. The Executive Director shall review each Developer's Phase 1A Payment Request and the supporting documentation. If the Executive Director finds in his/her reasonable discretion that any such Developer's Phase 1A Payment Request is incomplete (except to a de minimis extent) or contains material errors or misstatements on its face, then the Executive Director shall so inform Developer in writing within ten (10) Business Days after Developer provides such Developer's Phase 1A Payment Request to Authority of the reasons for his/her finding. Developer shall have the right to respond to such finding by submitting further documentation requested in such finding after receipt of said finding. The Executive Director shall review any further documentation received from Developer in support of the Developer's Phase 1A Payment Request and inform Developer of his/her approval or denial of the Developer's Phase 1A Payment Request within five (5) Business Days after Developer provides such further documentation to Authority. If the Executive Director does not find that any such Developer's Phase 1A Payment Request is incomplete (except to a de minimis extent) or contains material errors or misstatements on its face, then the Executive Director shall so inform Developer in writing within ten (10) Business Days after Developer provides such Developer's Phase 1A Payment Request to Authority and within that time period approve the Developer's Phase 1A Payment Request. If the Executive Director determines that the Developer's Phase 1A Payment Request is incomplete (except to a de minimis extent) or contains material errors or misstatements on its face, but that sufficient and complete information exists with respect to a portion of the Phase 1A Payment Request, then the Executive Director shall approve the Developer's Phase 1A Payment Request with respect to such portion of the Developer's Phase 1A Payment Request and so notify Developer within ten (10) Business Days after Developer provides such Developer's Phase 1A Payment Request to Authority. The Authority shall cause the Executive Director to carry out his or her duties under this Section 9.1.2.4 in a reasonable and good faith manner. Notwithstanding anything to the contrary set forth in this Agreement, (a) the Authority may make payment to Developer under protest and commence dispute resolution proceedings pursuant to Section 26.12 and (b) if Authority has made a payment to Developer and later determines that the payment was made in error, whether due to an incomplete or inaccurate payment request or due to missing documentation or otherwise, Authority may commence dispute resolution proceedings pursuant to Section 26.12 to challenge such previous payment. A certificate or request that Developer delivers under this Agreement will be deemed to contain material errors or misstatements on its face if such material error or omission is apparent from the four corners of such certificate or request without the use of extrinsic evidence.

9.1.3. Time of Payment. If the Executive Director provides approval pursuant to Section 9.1.2 with respect to all or any portion of any Developer's Phase 1A Payment Request, then the Authority shall cause payment to be made to Developer for the approved costs/expenses associated with such Developer's Phase 1A Payment Request by the Payment Date (excluding any Developer's Phase 1A Contested Charges). If the Payment Date falls on a weekend or holiday, the Payment Date shall be extended to the next Business Day. Except for Developer Phase 1A Contested Charges, all costs/expenses associated with each Developer Phase 1A Payment Request shall accrue interest at the Specified Default Rate from the Payment Date until paid. At the request of the

Authority, the Developer will waive the interest accrued during the first ten (10) Business Days following the applicable Payment Date up to a total of four (4) times in each calendar year for payments made after the required Payment Date under this Section 9.1.3 and Sections 9.1.4.3(b), 9.2.3 and 9.2.4.2(b). Any payment or portion thereof made to Developer in accordance with a Developer's Phase 1A Payment Request and later determined by the Authority and Developer or by an arbitrator after dispute resolution pursuant to Section 26.12 to have been incorrectly made shall accrue interest at the Specified Default Rate from the date the Authority made the incorrect payment until the date the Developer returns such amount to the Authority with interest. Developer shall pay the amount of the incorrect payment or portion thereof plus such accrued interest to Authority within ten (10) Business Days following the determination that such payment was incorrectly made to Developer, or, with the written approval of the Executive Director, such amounts shall be deducted from the following Developer's Phase 1A Payment Request(s) submitted by the Developer. Subject to Section 21.7, additional Developer's Phase 1A Infrastructure Improvements Costs incurred by the Developer that result from the failure to make payments when required by this Agreement will be the obligation of the Authority.

9.1.3.1. Additional Costs. Any costs that may accrue, such as interest on late payments to the General Contractor, Subcontractors, suppliers, or consultants as a result of the Developer's failure to make a payment to such parties shall not be the obligation of the Authority if the Authority has timely made all required payments to Developer or Developer has failed to provide the corresponding complete Developer's Phase 1A Payment Request to Authority. Such additional costs shall be the obligation of the Developer and not eligible for reimbursement.

9.1.4. Withholding and Contested Charges.

9.1.4.1. Withholding. Except to the extent required by law, Developer shall comply with and enforce the provisions relating to retainage and withholding set forth in the General Contract. Any deviations from such provisions of the General Contract shall be subject to the Authority's approval, which shall be provided in the sole and absolute discretion of the Authority. Without limiting the foregoing, Developer may release retainage or withholding amounts to a General Contractor, subject to Authority's reasonable approval, if it would reduce the overall cost of the applicable General Contract. Amounts required to be withheld or retained pursuant to this Agreement shall be excluded from amounts requested for payment pursuant to Developer Phase 1A Payment Requests until such amounts will be actually paid to the applicable General Contractor.

9.1.4.2. Payment and Invoicing for Withholding. Where a stop payment notice or mechanic's lien has been filed following the recordation of the Notice of Completion, Developer shall, to the extent in compliance with Law, withhold the amount in controversy until a fully executed release of stop payment notice or mechanic's lien or a bond releasing the stop payment notice or mechanic's lien has been filed and a conformed copy delivered to the Authority, as applicable. Notwithstanding anything in this Agreement to the contrary, Developer shall not be required to withhold any funds from the General Contractor or any Subcontractor to the extent doing so would violate any applicable law.

9.1.4.3. Developer's Phase 1A Contested Charges. In the event the Authority contests whether any amount that is included in any Developer's Phase 1A Payment Request is properly included in the Developer's Phase 1A Contract Sum ("**Developer's Phase 1A Contested Charges**"), the Authority shall provide Developer a written statement of the Developer's

Phase 1A Contested Charges, the reason why the costs/expenses are contested, and a proposed resolution.

a. Appeal to the Executive Director. Developer may appeal the determination by the Authority of any Developer's Phase 1A Contested Charges. The appeal must be received within thirty (30) days after the Authority notifies the Developer of such Developer's Phase 1A Contested Charge. During the appeal period, and as long as any Developer's Phase 1A Contested Charge remains disputed, Developer shall proceed with the development of the Project, and the Authority shall compensate Developer for all amounts requested under Developer's Phase 1A Payment Request at issue other than the Developer's Phase 1A Contested Charges. If, following the appeal, the Executive Director determines that any Developer's Phase 1A Contested Charges are eligible for reimbursement or payment to Developer, such amounts shall be included in the next payment to Developer. If the Parties involved in the dispute regarding Developer's Phase 1A Contested Charges are unable to agree and settle such dispute within ten (10) Business Days after the commencement of the appeal period, then the Parties shall resolve the conflict pursuant to Section 26.12.

b. Interest. All Developer's Phase 1A Contested Charges shall accrue interest at the Specified Default Rate from the Payment Date that would have been applicable to such Developer's Phase 1A Contested Charges if such Developer's Phase 1A Contested Charges were approved for payment until the date on which such Developer's Phase 1A Contested Charges are paid to Developer; provided, that no interest shall be paid to Developer with respect to any Developer's Phase 1A Contested Charges that are finally determined to be ineligible for reimbursement or payment to Developer. At the request of the Authority, the Developer will waive the interest accrued during the first ten (10) Business Days following the applicable Payment Date up to a total of four (4) times in each calendar year for payments made after the required Payment Date under this Section 9.1.4.3(b) and Sections 9.1.3, 9.2.3 and 9.2.4.2(b).

9.1.5. Cutoff for Submission of Invoices. Developer shall submit its final Developer's Phase 1A Payment Request not later than the Cutoff Date. Any Developer's Phase 1A Payment Requests submitted after the Cutoff Date shall not be reviewed or included as a Developer's Phase 1A Infrastructure Improvements Cost or Stipulated Developer's Phase 1A Infrastructure Improvements Overhead Amount. The final payment by the Authority for the Developer's Phase 1A Infrastructure Improvements will be made only after Developer has submitted all documentation reasonably necessary to substantiate the cost of construction and completing the Developer's Phase 1A Infrastructure Improvements associated with that phase, mechanic's lien free, stop payment notice free, substantially in accordance with the Approved Drawings and Specifications for the Developer's Phase 1A Infrastructure Improvements in all material respects. Final inspection and sign-off by the inspectors of the Authority with associated mechanic's lien and stop payment notice releases (or bonds releasing contested mechanic's liens or stop payment notices) shall be sufficient evidence of the mechanic's lien or stop payment notice free completion of the Developer's Phase 1A Infrastructure Improvements.

9.1.6. Final Accounting. Following Completion of the Developer's Phase 1A Infrastructure Improvements, Developer shall submit a Final Accounting to the Authority in order to determine the actual amount of the Developer's Phase 1A Infrastructure Improvements Costs, the Stipulated Developer's Phase 1A Infrastructure Improvements Overhead Amount and Developer's Phase 1A Contract Sum. Developer shall also submit all supporting information reasonably necessary (to the extent not otherwise previously submitted in conjunction with a Developer's Phase

1A Payment Request) to document the Developer's Phase 1A Infrastructure Improvements Costs, including specific details on the costs and work attributable to the Developer's Phase 1A Infrastructure Improvements, including, as applicable, third-party invoices, billings, and receipts for construction surveying, soil testing, blue printing, actual construction costs, and similar expenses. Developer shall also submit final lien releases and stop payment notice waivers and releases for all Developer's Phase 1A Infrastructure Improvements. Any dispute regarding the Final Accounting shall be resolved in accordance with Section 26.12.

9.1.6.1. True-up Payments. Within thirty (30) Business Days following a Final Accounting, the Authority shall determine whether the actual payments made with respect to the Developer's Phase 1A Infrastructure Improvements equal the audited approved costs and expenses and provide the Authority's report thereon (the "**Authority's Phase 1A Final Review**") to RIDA for RIDA's review and approval. Any dispute regarding the Authority's Final Review shall be resolved in accordance with Section 26.12. In the event that the amount of the Developer's Phase 1A Contract Sum as determined in the approved Authority's Final Review (the "**Developer's Phase 1A Final Amount**") exceeds the amount of the actual payments, then the Authority shall make a true-up payment to Developer for the difference within twenty (20) Business Days. If the amount of actual payments to Developer exceeds the Developer's Phase 1A Final Amount, then Developer shall remit or cause the remittance of the difference to the Authority within twenty (20) Business Days of a notice of deficiency.

9.2. Convention Center Costs. The provisions of this Section 9.2 and each subsection of this Section 9.2 shall apply solely to the Convention Center.

9.2.1. Payment of Costs Associated with the Convention Center. On the Effective Date, Authority shall pay the Initial Development Fee Payment to Developer. Based upon the Convention Center Payment Requests submitted to the Authority by the Developer, the Authority shall make progress payments on account of the Convention Center Contract Sum to the Developer in accordance with the provisions of this Section 9.2. The amount of each progress payment shall be computed as follows:

9.2.1.1. The amount of each progress payment shall first include:

a. The Convention Center Costs incurred or to be incurred by Developer and for which Developer has made or intends to make actual payment prior to the next Convention Center Payment Request;

b. The Initial Development Fee Payment plus the Remaining Convention Center Development Fee that has accrued as of the date of such Convention Center Payment Request; and

c. The Stipulated Convention Center Overhead Amount that has accrued as of the date of such Convention Center Payment Request.

9.2.1.2. The amount of each progress payment shall then be reduced by, without duplication:

a. The aggregate of any amounts previously paid by the Authority in respect of the Convention Center Contract Sum;

b. The amount by which the Architect, pursuant to the Architect's Certificate that is attached to such Convention Center Payment Request, reduces the amount to be paid with respect to such Convention Center Payment Request. The Architect may reduce such amount to the extent the work performed by Developer for which payment is requested has not been performed substantially in accordance in all material respects with the Convention Center Plans, in which case the amount to be disbursed under the applicable Convention Center Payment Request shall be reduced to reflect the cost of causing such construction to be performed substantially in accordance in all material respects with the Convention Center Plans (without duplication of any similar reduction that is made by Developer). In the event of any such reduction, Developer may seek payment for the amounts so reduced in any subsequent Convention Center Payment Request; and

c. Any amount for which the Developer does not intend to pay General Contractor or any Subcontractor, unless the work has been performed by others the Developer intends to pay.

9.2.1.3. Maximum Convention Center Amount. The maximum amount disbursed hereunder for the Convention Center Contract Sum shall not exceed the Maximum Convention Center Amount. Neither Developer nor its General Contractor nor any Subcontractor, nor any combination thereof, shall be entitled to payment in respect of the Convention Center Contract Sum in excess of the Maximum Convention Center Amount. For the avoidance of doubt, Repair/Restoration Costs are not included in the Convention Center Contract Sum and shall not be limited to the Maximum Convention Center Amount, rather such amounts will also be funded from Net Proceeds transferred to the 2021A Construction Account and other amounts available to the Developer for Repair/Restoration Costs pursuant to the terms of the Sublease, Facility Lease and Authority Indenture. Once transferred to the 2021A Construction Account pursuant to the terms of the Authority Indenture, such Net Proceeds will be disbursed pursuant to the procedures set forth in Sections 9.2.1.

9.2.1.4. Allocation of Common Costs. Common costs shall be reasonably and equitably allocated between the Developer's Phase 1A Infrastructure Improvements and the Convention Center, generally consistently with the allocation of such common costs set forth in the Form of Convention Center Budget attached hereto as Exhibit P, and such allocations shall be subject to review and approval by the Port District and City (in their reasonable discretion). All such common costs shall be tracked and allocated so as to properly distinguish common cost allocations between the Developer's Phase 1A Infrastructure Improvements and the Convention Center for purposes of complying with provisions applicable to the Authority Tax-Exempt Bonds.

9.2.1.5. Funds for Payment of Costs/Expenses.

a. Subject to Section 9.2.1.5(b) and Section 21.7, (i) the source of funds for the payment of costs and expenses for the Convention Center shall be limited to eligible proceeds of the Taxable Authority Bonds and any Net Proceeds authorized to be used for such payments (in an amount not to exceed the Project Public Investment Amount plus any Net Proceeds or other amounts available therefor pursuant to the Authority Indenture, the Facility Lease and the Sublease); Advance Rent (to the extent received by any Public Agency and not paid to Developer pursuant to this Agreement); amounts on deposit in the Authority Surplus Fund (solely to the extent provided in Section 21.7); other amounts to the extent provided in Section 21.7; and other amounts deposited by the Developer with the Authority to pay Convention Center Costs and (ii) no

other funds of the City, the Financing District, the Port District or the Authority, or monies held by, owed to, or in trust for, the City, the Financing District, the Port District, the Authority or the County, shall be used by the Authority or sought to be collected by any Developer Party for the payment of costs and expenses for the Convention Center other than those identified in this Section.

b. On the Effective Date, Authority shall cause the Trustee to deposit an amount equal to the Project Public Investment Amount into the 2021A Construction Account. Pursuant to the terms of the Authority Indenture, the Authority shall cause the Trustee to transfer any Net Proceeds deposited into the Insurance and Condemnation Fund that are available to be used for repair, rebuilding, restoration or reconstruction of the Convention Center to the 2021A Construction Account if required pursuant to the terms of the Authority Indenture, the Sublease and the Facility Lease. The Authority shall take all actions necessary to cause the Trustee to disburse moneys from the 2021A Construction Account (a) for payments required to be made to the Developer as and when required under this Agreement, the Sublease, the Facility Lease and the Authority Indenture, including for any repair, rebuilding, restoration or reconstruction of the Convention Center and (b) until Final Payment, only to Developer. No Public Agency shall interfere with any lawfully made disbursement request delivered to the Trustee.

c. Until Full Payment, the Authority shall (a) neither direct nor authorize the Trustee to transfer amounts out of the 2021A Construction Account or the Authority Surplus Fund for any purpose other than to Developer for payment of Convention Center Contract Sum pursuant to Section 9.2 of this Agreement, interest due to Developer pursuant to Sections 9.2.3 and 9.2.4.2(b) of this Agreement, and amounts to be paid to Developer pursuant to Section 5.1.3, and (b) direct or authorize the Trustee to transfer amounts out of the 2021A Construction Account or the Authority Surplus Fund only to the account or accounts designated by Developer in writing.

9.2.1.6. Application of Funds. Payments to the Developer made pursuant to this Section 9.2 shall be made:

a. First, from eligible proceeds of the Taxable Authority Bonds authorized to be used for such payments (which shall be equal to the Project Public Investment Amount); and

b. Second, upon the exhaustion of the proceeds described in clause a., from the proceeds of Advance Rent received by the Authority pursuant to the Facility Lease;

c. Solely to the extent provided in Section 21.7, from amounts on deposit in the Authority Surplus Fund; and

d. If and as needed in accordance with the terms of the Sublease, Facility Lease and Authority Indenture, from the Net Proceeds available for use for Repair/Restoration Costs.

9.2.2. Prerequisites to Payment.

9.2.2.1. Convention Center Payment Request. Prior to the disbursement or reimbursement of any amounts to pay the Convention Center Contract Sum or Repair/Restoration

Costs, Developer shall provide the Executive Director with a Convention Center Payment Request, together with all of the items described therein. Each Convention Center Payment Request shall show (i) the Convention Center Costs or Repair/Restoration Costs, as applicable, incurred or to be incurred by Developer and for which Developer has made or intends to make actual payment prior to the next Convention Center Payment Request, (ii) the Remaining Convention Center Development Fee computed upon such Convention Center Costs and (iii) the Stipulated Convention Center Overhead Costs with respect to such Convention Center Costs and as applicable. The form of Convention Center Payment Request attached hereto as Exhibit K-2 may be modified or replaced by Developer, subject to the consent of Authority provided or withheld in Authority's sole discretion.

Each Convention Center Payment Request shall be delivered in the following manner (or by such other means as is reasonably agreed to by the Developer and the Authority): Developer shall send by electronic mail to the Authority Email Addresses a notice that the Convention Center Payment Request and supporting documentation has been uploaded to an internet website, the link to which shall be included in the email notice. Authority shall send confirmation to the Developer by electronic mail once Authority has successfully accessed the Convention Center Payment Request.

The Authority shall not have an obligation to make payment to Developer unless and until Developer provides the Executive Director with a Convention Center Payment Request, together with all of the items described therein (including the Architect's Certificate), and such Convention Center Payment Request is approved by the Executive Director as provided below.

9.2.2.2. Prevailing Wage Compliance. Developer shall ensure that all persons and entities providing work or services for the Improvements comply with Prevailing Wage requirements, as and to the extent described in Section 7.2.3.1.

9.2.2.3. Public Agency Approval. The Executive Director shall review each Convention Center Payment Request and the supporting documentation. If the Executive Director finds in his/her reasonable discretion that any such Convention Center Payment Request is incomplete (except to a de minimis extent) or contains material errors or misstatements on its face, then the Executive Director shall so inform Developer in writing within ten (10) Business Days after Developer provides such Convention Center Payment Request to Authority, of the reasons for his/her finding. Developer shall have the right to respond to such finding by submitting further documentation requested in such finding after receipt of said finding. The Executive Director shall review any further documentation received from Developer in support of the Convention Center Payment Request and inform Developer of his/her approval or denial of the Convention Center Payment Request within five (5) Business Days after Developer provides such further documentation to Authority. If the Executive Director does not find that any such Convention Center Payment Request is incomplete (except to a de minimis extent) or contains material errors or misstatements on its face, then the Executive Director shall so inform Developer in writing within ten (10) Business Days after Developer provides such Convention Center Payment Request to Authority and within that time period approve the Convention Center Payment Request. If the Executive Director determines that the Convention Center Payment Request is incomplete (except to a de minimis extent) or contains material errors or misstatements on its face, but that sufficient and complete information exists with respect to a portion of the Construction Costs Payment Request, then the Executive Director shall approve the Convention Center Payment Request with respect to such portion of the Convention Center Payment Request and so notify Developer within ten (10) Business Days after Developer provides such Convention Center Payment Request to Authority. The Authority shall cause the Executive Director to carry out his or her duties under this Section 9.2.2.3

in a reasonable and good faith manner. Notwithstanding anything to the contrary set forth in this Agreement, (a) the Authority may make payment to Developer under protest and commence dispute resolution proceedings pursuant to Section 26.12 and (b) if Authority has made a payment to Developer and later determines that the payment was made in error, whether due to an incomplete or inaccurate payment request or due to missing documentation or otherwise, Authority may commence dispute resolution proceedings pursuant to Section 26.12 to challenge such previous payment. A certificate or request that Developer delivers under this Agreement will be deemed to contain material errors or misstatements on its face if such material error or omission is apparent from the four corners of such certificate or request without the use of extrinsic evidence.

9.2.3. Time of Payment. If the Executive Director provides approval pursuant to Section 9.2.2 with respect to all or any portion of any Convention Center Payment Request, then the Authority shall cause payment to be made to Developer for the approved costs/expenses associated with such Convention Center Payment Request to be paid by the Payment Date (excluding any Convention Center Contested Charges). If the Payment Date falls on a weekend or holiday, the Payment Date shall be extended to the next Business Day. Except for Convention Center Contested Charges, all costs/expenses associated with each Convention Center Payment Request shall accrue interest at the Specified Default Rate from the Payment Date until paid. At the request of the Authority, the Developer will waive the interest accrued during the first ten (10) Business Days following the applicable Payment Date up to a total of four (4) times in each calendar year for payments made after the required Payment Date under this Section 9.2.3 and Sections 9.1.3, 9.1.4.3(b) and 9.2.4.2(b). Any payment or portion thereof made to Developer in accordance with a Convention Center Payment Request and later determined by the Authority and Developer or by an arbitrator after dispute resolution pursuant to Section 26.12 to have been incorrectly made shall accrue interest at the Specified Default Rate from the date the Authority made the payment until the date the Developer returns such payment together with such interest thereon to the Authority. Developer shall pay the amount of the incorrect payment or portion thereof plus such accrued interest to Authority within ten (10) Business Days following the determination that such payment was incorrectly made to Developer, or, with the written approval of the Executive Director, such amounts shall be deducted from the following Convention Center Payment Request(s) submitted by the Developer. Subject to Section 21.7, additional costs incurred by the Developer in excess of the amount of interest paid to Developer pursuant to Sections 9.2.3 and 9.2.4.2(b) (calculated as if interest at the Specified Default Rate had accrued during the ten (10) Business Day cure periods described in such Sections 9.2.3 and 9.2.4.2(b) and was not waived by Developer) that, in each case, result from the failure to make payments when required by this Agreement will be the obligation of the Authority.

9.2.3.1. Advance Rent Notices. In the event that the payment required pursuant to Section 9.2.3 will be made, in whole or in part, from the proceeds of Advance Rent received by the Authority under the Facility Lease, then the Authority shall, no later than two (2) days after submitting the applicable approval described in Section 9.2.2, provide a Facility Lease Advance Rent Notice to the City for the amount of Advance Rent required to make such payment. Except as set forth in this Section 9.2.3.1 or in Section 9.2.6.1, (a) the Authority shall not, without the Developer's prior written consent, provide a Facility Lease Advance Rent Notice to the City and (b) the City shall not, without the Developer's prior written consent, provide a Sublease Advance Rent Notice to the Developer unless the City shall have received a corresponding Facility Lease Advance Rent Notice from the Authority. As provided in the Sublease, if Developer receives a notice from the City confirming that the City assigned to the Authority its right to receive the payment of Sublease Advance Rent (as defined in the Sublease) under the Sublease, then, from and after the date of the

receipt of such notice, Developer shall pay Advance Rent to the Authority as the City's assignee. The Parties acknowledge that additional procedures regarding the payment of Advance Rent are set forth in the Advance Rent Side Letter.

9.2.3.2. Additional Costs. Any costs that may accrue, such as interest on late payments to the General Contractor, Subcontractors, suppliers, or consultants as a result of the Developer's failure to make a payment to such parties shall not be the obligation of the Authority if the Authority has timely made all required payments to Developer or Developer has failed to provide the corresponding complete Convention Center Payment Request to Authority. Such additional costs shall be the obligation of the Developer and not eligible for reimbursement.

9.2.4. Withholding and Contested Charges.

9.2.4.1. Payment and Invoicing for Withholding. Where a stop payment notice or mechanic's lien has been filed following the recordation of the Notice of Completion, Developer shall, to the extent in compliance with Law, withhold the amount in controversy until a fully executed release of stop payment notice or mechanic's lien or a bond releasing the stop payment notice or mechanic's lien has been filed and a conformed copy delivered to the Authority, as applicable. Notwithstanding anything in this Agreement to the contrary, Developer shall not be required to withhold any funds from the General Contractor or any Subcontractor to the extent doing so would violate any applicable law.

9.2.4.2. Convention Center Contested Charges. In the event the Authority contests whether any amount that is included in any Convention Center Payment Request is properly included in the Convention Center Contract Sum or as a Repair/Restoration Cost ("**Convention Center Contested Charges**"), the Authority shall provide Developer a written statement of the Convention Center Contested Charges, the reason why the costs/expenses are contested, and a proposed resolution.

a. Appeal to the Executive Director. Developer may appeal the determination by the Authority of any Convention Center Contested Charges. The appeal must be received within thirty (30) days after the Authority notifies the Developer of such Convention Center Contested Charge. During the appeal period, and as long as any Convention Center Contested Charge remains disputed, Developer shall proceed with the development of the Project (or repair and restoration of the Convention Center, as applicable), and the Authority shall compensate Developer for all amounts requested under the Convention Center Payment Request at issue other than the Convention Center Contested Charges. If, following the appeal, the Executive Director determines that any Convention Center Contested Charges are eligible for reimbursement, such amounts shall be included in the next payment to Developer. If the Parties involved in the dispute regarding Convention Center Contested Charges are unable to agree and settle such dispute within ten (10) Business Days after the commencement of the appeal period, then the Parties shall resolve the conflict pursuant to Section 26.12.

b. Interest. All Convention Center Contested Charges shall accrue interest at the Specified Default Rate from the Payment Date that would have been applicable to such Convention Center Contested Charges if such Convention Center Contested Charges were approved for payment until the date on which such Convention Center Contested Charges are paid to Developer; provided, that no interest shall be paid to Developer with respect to any Convention Center Contested Charges that are finally determined to be ineligible for reimbursement or payment

to Developer. At the request of the Authority, the Developer will waive the interest accrued during the first ten (10) Business Days following the applicable Payment Date up to a total of four (4) times in each calendar year for payments made after the required Payment Date under this Section 9.2.4.2(b) and Sections 9.1.3, 9.1.4.3(b) and 9.2.3.

9.2.5. Cutoff for Submission of Invoices. Except with respect to any Convention Center Payment Request for Repair/Restoration Costs, Developer shall submit its final Construction Costs Payment Request not later than the Cutoff Date. Any Construction Costs Payment Requests (other than those for Repair/Restoration Costs) submitted after the Cutoff Date shall not be reviewed or included in the Project Costs for the Convention Center. The final payment by the Authority, for the Project or for Repair/Restoration Costs, as applicable, will be made only after Developer has submitted all documentation reasonably necessary to substantiate the cost of construction and completing or restoring/repairing, as applicable, the Convention Center associated with that phase, mechanic's lien free, stop payment notice free, substantially in accordance with the Convention Center Plans in all material respects. Final inspection and sign-off by the inspectors of the Authority with associated mechanic's lien and stop payment notice releases (or bonds releasing contested mechanic's liens or stop payment notices) shall be sufficient evidence of the mechanic's lien or stop payment notice free completion of the Convention Center.

9.2.6. Final Accounting. Following Completion of the Convention Center, Developer shall submit a Final Accounting to the Authority in order to determine the actual amount of the Convention Center Costs and Convention Center Contract Sum. Developer shall also submit all supporting information reasonably necessary (to the extent not otherwise previously submitted in conjunction with a Convention Center Payment Request) to document the Convention Center Costs, including specific details on the costs and work attributable to the Convention Center, including, as applicable, third-party invoices, billings, and receipts for construction surveying, soil testing, blue printing, actual construction costs, and similar expenses. Developer shall also submit final lien releases and stop payment notice waivers and releases for the Convention Center. Any dispute regarding the Final Accounting shall be resolved in accordance with Section 26.12.

9.2.6.1. True-up Payments. Within thirty (30) Business Days following a Final Accounting, the Authority shall determine whether the actual payments made with respect to the Convention Center equal the audited approved costs and expenses and provide the Authority's report thereon (the "**Authority's Convention Center Final Review**") to RIDA for RIDA's review and approval. Any dispute regarding the Authority's Convention Center Final Review shall be resolved in accordance with Section 26.12. In the event that the amount of the Convention Center Contract Sum as determined in the Authority's Final Review (the "**Convention Center Final Amount**") exceeds the amount of the actual payments, then: (a) the Authority shall make a true-up payment to Developer for the difference within twenty (20) Business Days and (b) in the event that the payment required pursuant to clause (a) will be made, in whole or in part, from the proceeds of Advance Rent received by the Authority under the Facility Lease, then the Authority shall, no later than two (2) Business Days after the final determination of the Convention Center Final Amount, provide an Advance Rent Notice to the City under the Facility Lease for the amount of Advance Rent required to make such payment. If the amount of actual payments to Developer exceeds the Convention Center Final Amount, then Developer shall remit or cause the remittance of the difference to the Authority within twenty (20) Business Days of a notice of deficiency.

9.2.6.2. Final Accounting and True-up for Repair/Replacement Costs. If requested by either the Authority or Developer not later than one (1) year following payment to

Developer of the final Repair/Replacement Costs incurred as a result of any Condemnation as provided in Section 5.1 of the Sublease, the Developer shall submit a Final Accounting which shall be processed to resolution in a similar manner to the Final Accounting described in Sections 9.2.6 and 9.2.6.1 for Convention Center Costs. There will be no Final Accounting with respect to a casualty event pursuant to Section 5.2 of the Sublease.

9.2.7. Casualty and Condemnation. While the disbursement provisions of this Section 9.2 have been drafted primarily to address the disbursement of funds for the development of the Convention Center, the Parties intend that the provisions of this Section 9.2 (with the exception of Subsections 9.2.5 which will not be applicable in such context) will also govern the disbursement of funds for the reconstruction or modification of the Convention Center following any event of damage to or destruction of, or condemnation or eminent domain with respect to, any portion of the Convention Center. As such, when the provisions of this Section 9.2 (with the exception of Subsections 9.2.5) are given effect in connection with such reconstruction or modification, such provision will be construed with the intent that Developer be able to access funds for such purposes, and the provisions of this Section 9.2 (with the exception of Subsections 9.2.5) will be deemed modified as reasonably necessary to give effect to such intent. Net Proceeds not disbursed pursuant to this Section 9.2 shall be disbursed pursuant to Article V of the Sublease and Section 6.1(a) of the Facility Lease.

9.3. Investment of Amounts in the Construction Fund. The Parties acknowledge that proceeds of the Authority Bonds and Net Proceeds on deposit from time to time in the Construction Fund and the Insurance and Condemnation Fund will be invested in Permitted Investments pursuant to, and as defined in, the Authority Indenture. The Authority agrees to provide the Developer an opportunity to provide recommendations regarding the Permitted Investments in which amounts on deposit in the Construction Fund and the Insurance and Condemnation Fund will be invested by providing the Developer with ten (10) days' notice prior to directing the Trustee to change the investment of such funds.

9.4. Calculation of Specified Default Rate. All interest at the Specified Default Rate shall compound on a monthly basis on the first day of each full calendar month in which such interest is payable.

9.5. Redemption of the Authority Bonds. If Developer has not received the full Developer's Phase 1A Contract Sum, or has not received the Convention Center Contract Sum, pursuant to this Article IX at the time that the Authority Bonds have been redeemed in full and the proceeds of the Authority Bonds and County Funds are held by the Authority and not the Trustee, then the Authority shall make disbursements to the Developer for Convention Center Costs and Developer's Phase 1A Infrastructure Improvements Costs, as applicable, at the times and in the amounts required by this Article IX. Notwithstanding the foregoing, the Authority agrees not to terminate the Authority Indenture while any Authority Bond proceeds or County Funds could become due to the Developer under this Agreement unless the Authority enters into an escrow agreement or account control agreement in a form reasonably approved by the Developer pursuant to which the Authority Bond proceeds and County Funds, as applicable, will be held and disbursed on substantially the same terms as set forth in the Authority Indenture and this Article IX.

9.6. Survival. With respect to any amounts that constitute part of Developer's Phase 1A Contract Sum or the Convention Center Contract Sum that have been incurred by Developer but have

not been paid or reimbursed to Developer pursuant to this Article IX, this Article IX and Section 21.7 shall survive the prior expiration and/or termination of this Agreement.

**ARTICLE X
ACCEPTANCE OF IMPROVEMENTS**

10.1. Developer’s Phase 1A Infrastructure Improvements. If Developer’s Phase 1A Infrastructure Improvements are Completed by Developer substantially in accordance in all material respects with the Approved Drawings and Specifications, if they comply with all Laws and Construction Requirements, and if Developer has satisfied all conditions of Acceptance set forth in Section 10.1.1, the City and the Port District shall Accept their respective Developer’s Phase 1A Infrastructure Improvements. This Section does not govern Acceptance of the Remaining Phase 1A Infrastructure Improvements.

10.1.1. Conditions of Acceptance. Prior to Acceptance of any portion of Developer’s Phase 1A Infrastructure Improvements, Developer shall, as applicable:

10.1.1.1. Complete all punch-list items from the City’s inspection of Developer’s Phase 1A Infrastructure Improvements.

10.1.1.2. Record a Notice of Completion (NOC) with the County Recorder of San Diego County at least thirty-five (35) days prior to Acceptance of such portion of Developer’s Phase 1A Infrastructure Improvements.

10.1.1.3. Submit to Port District and to the City, as applicable, the following with respect to such portion of Developer’s Phase 1A Infrastructure Improvements, as applicable:

- a. Record drawings or “as-builts” in the form of final as-built CAD files; and
- b. Copies of the signed as-built mylars that are submitted to the City (a copy of which shall be provided to the Port District).
- c. With respect to City, evidence that adequate funds are available in City’s deposit account to cover City’s project close out costs with respect to permitting;
- d. With respect to City, record drawings or “as-builts” in the form of signed as-built mylars, and with respect to Port District, copies of such signed “as-builts”;
- e. One set of final soils reports (“as-graded” Geotech report);
- f. Completed City Form 5519 Certification;
- g. Completed City Form 5522 Statement of Substantial Conformance;
- h. Operations and maintenance manuals; and

i. Warranty documentation.

10.1.1.4. Submit to Port District or City, as applicable, documentation and information reasonably necessary for Port District or City, as applicable, to provide the following items to Developer with respect to such portion of Developer's Phase 1A Infrastructure Improvements, as applicable:

- a. Approval from Port District's or City's Land Surveyor, as applicable, confirming survey monuments are set and verified (as applicable);
- b. Confirmation that street lights are fully functional; and
- c. Written approval from Port District's or City's NPDES section, as applicable, confirming stormwater requirements have been satisfied.

Subject to Section 2.1.6.3, upon receipt of the documentation and information set forth in this Section 10.1.1.4, City and Port District, as applicable, shall take all actions reasonably required to provide the foregoing items to Developer.

10.1.2. Acceptance Notice and Confirmation of Acceptance. When Developer reasonably determines that the conditions for Acceptance of any component of Developer's Phase 1A Infrastructure Improvements have been satisfied, Developer will provide written notice thereof to Authority (an "**Acceptance Notice**"). Each of the City and the Port District, as applicable, shall either confirm its Acceptance (in its reasonable discretion) of such component of Developer's Phase 1A Infrastructure Improvements or set forth the reasons for denying its Acceptance within ten (10) Business Days after Authority's receipt of such Acceptance Notice. If the City or the Port deny Acceptance, then Developer shall take such steps as may be reasonably necessary to address the City's reasons or the Port District's reasons (as applicable) for denying its Acceptance and submit a new Acceptance Notice to Authority and the foregoing process shall continue on an iterative basis (and City and the Port District, as applicable, shall have ten (10) Business Days to respond to each Acceptance Notice) until the City or the Port District, as applicable, have confirmed that Acceptance of such component has occurred.

10.2. Convention Center. When Developer determines that the Convention Center is Complete, Developer will provide a copy of its certificate of occupancy or temporary certificate of occupancy to Authority, and the Authority shall confirm its Acceptance of the Convention Center within five (5) Business Days after Authority's receipt of such copy of such certificate of occupancy or temporary certificate of occupancy.

10.3. Sweetwater Park. This Section applies only if Developer exercises a Sweetwater Park Option.

10.3.1. When Developer reasonably determines that the conditions for Sweetwater Park to be Sufficiently Complete have been satisfied, Developer will provide written notice thereof to Port District (a "**Sufficient Completion Notice**"). Port District shall either confirm Sufficient Completion (in its sole and good faith discretion) of Sweetwater Park or set forth the reasons for denying that Sweetwater Park is Sufficiently Complete within ten (10) Business Days after Port District's receipt of such Sufficient Completion Notice. If Port District denies that Sweetwater Park is Sufficiently Complete, then Developer shall take such steps as may be reasonably necessary to

address the Port District’s reasons for such denial and submit a new Sufficient Completion Notice to Port District and the foregoing process shall continue on an iterative basis (and Port District shall have ten (10) Business Days to respond to each Sufficient Completion Notice) until the Port District has confirmed that Sufficient Completion of Sweetwater Park has occurred.

10.3.2. Following Sufficient Completion and prior to Acceptance, Developer shall complete any remaining punch-list items, record a notice of completion with the County Recorder of San Diego County, and deliver to the Port District (i) “as-built” or record drawings, (ii) final soils report (“as-graded” Geotech report), (iii) operations and maintenance manuals (if applicable), and (iv) all applicable warranty documentation. When Developer reasonably determines that Sweetwater Park has been Sufficiently Completed and the conditions to Acceptance described above in this Section have been satisfied, Developer will provide written notice thereof to the Port District (an “Acceptance Notice”). Port District shall either confirm its Acceptance (in its reasonable discretion) of Sweetwater Park or set forth the reasons for denying its Acceptance within ten (10) Business Days after Port District’s receipt of such Acceptance Notice. If Port District denies Acceptance, then Developer shall take such steps as may be reasonably necessary to address the Port District’s reasons for denying its Acceptance and submit a new Acceptance Notice to Port District and the foregoing process shall continue on an iterative basis (and Port District shall have ten (10) Business Days to respond to each Acceptance Notice) until the Port District has confirmed that Acceptance of such component has occurred. Developer may provide an Acceptance Notice in addition or in lieu of providing a Sufficient Completion Notice pursuant to Section 10.3.1.

ARTICLE XI WARRANTIES

11.1. Enforcement of Warranties. Upon Acceptance of each applicable Developer’s Phase 1A Infrastructure Improvement, Developer shall assign any manufacturer’s warranties to the Public Agency accepting ownership of such applicable Developer’s Phase 1A Infrastructure Improvements. Until such improvements are assigned to the applicable Public Agency, Developer shall enforce for the Authority’s benefit all warranties provided in the Contract Documents with respect to such improvements and any other explicit warranties with respect to such improvements.

11.1.1. Materials and Workmanship. Developer shall require its General Contractor and Subcontractor(s) to warrant all work on the Project against Defective Work for a period of one (1) year following the date of Completion.

11.1.2. New Materials and Equipment. Developer shall require its General Contractor and Subcontractor(s) to warrant and guarantee to Authority that all materials and equipment incorporated into the Project are new unless otherwise specified.

11.1.3. Documentation. Developer shall furnish, or cause its General Contractor to furnish, the Public Agencies with all warranty and guarantee documents prior to Acceptance.

11.2. Term of Warranties. Unless otherwise specified or provided by Law, warranties shall extend for a term of one (1) year following the date of Completion, except that, with respect to the Convention Center, the warranties shall extend for one year after the Convention Center is substantially complete in accordance with the Contract Documents (excluding, for the avoidance of doubt, punch list items, so that the Convention Center can be occupied or utilized for its intended use (the “**Warranty Period**”).

11.3. Additional Warranties. In addition to the warranties set forth in this Article, following Acceptance, Developer or its General Contractor shall assign to the Public Agencies any and all other manufacturer's or installer's warranties for equipment or materials not manufactured by the General Contractor provided as part of the work related to the Developer's Phase 1A Infrastructure Improvements, to the extent that such third-party warranties are assignable and extend beyond the Warranty Period. Developer shall furnish, or cause its General Contractor to furnish, the Public Agencies with all warranty and guarantee documents with respect to Developer's Phase 1A Infrastructure Improvements prior to Acceptance.

ARTICLE XII DEFECTIVE WORK

12.1. Correction, Removal, or Replacement. The Developer shall require that if, within the Warranty Period, the Authority determines the Developer's Phase 1A Infrastructure Improvements contain Defective Work and provides written notice thereof to the Developer, the Developer's General Contractor or applicable Subcontractor, as applicable, shall promptly correct, repair, or both remove and replace the Defective Work as determined by Developer in its sole discretion.

12.2. Extension of Warranty. With respect to the Developer's Phase 1A Infrastructure Improvements (excluding plant materials), when Defective Work, or damage therefrom, has been corrected, repaired, replaced or removed, as applicable, during the initial Warranty Period, the Warranty Period for such Defective Work will be extended for an additional time period equal to that of the initial Warranty Period, after the date of the satisfactory completion of the correction, repair, replacement or removal, as applicable, but, in no event, beyond the earlier to occur of (a) one (1) year after the date of the expiration of the initial Warranty Period or (b) two (2) years after Acceptance of the applicable Improvement.

12.3. Right of Authority to Correct. In the event of the Developer's failure, its General Contractor's failure, or such Subcontractor's failure, as applicable, to adhere to Section 12.1 within thirty (30) days after Developer receives notice of such Defective Work from the Authority (provided that, if the nature of such Defective Work is such that the same cannot reasonably be corrected, repaired or replaced within such thirty (30) day period, and Developer diligently commences such perform such work within such thirty (30) day period and thereafter diligently proceeds with such work, then such thirty (30) day period shall be extended for as long as reasonably necessary to complete such work) or in the event of an emergency or immediate threat to public safety, Developer shall as promptly as practicable correct, remove, or replace the Defective Work or, if Developer does not do so, the Authority may, in its sole and absolute discretion, notify Developer in writing and then the Authority may correct, remove, or replace the Defective Work. In such circumstances, the costs payable to the Developer shall be reduced by the actual cost incurred by the Authority to correct, remove or replace the Defective Work.

12.4. No Limitation on Other Remedies. Exercise of the remedies for Defective Work pursuant to this Article XII shall not limit the remedies the Authority may pursue under this Agreement or at law or equity.

12.5. Disputes. If Developer and Authority are unable to reach agreement on disputed work, the Authority may direct Developer to proceed with the work and compensate Developer for undisputed amounts. Payment of disputed amounts shall be as later determined in accordance with

Section 26.12. Developer shall maintain and keep all records relating to disputed work for a period of three (3) years in accordance with Article XVI.

12.6. Applicability. This Article XII shall not apply with respect to the Convention Center.

ARTICLE XIII SECURITY FOR CONSTRUCTION

13.1. Bonds. The Contract Documents for the Developer's Phase 1A Infrastructure Improvements shall require each General Contractor to provide a performance bond on a form reasonably acceptable to the Authority for the construction of the Developer's Phase 1A Infrastructure Improvements and the aggregate amount of such bond will be no less than the amount payable pursuant to the General Contracts with respect to Developer's Phase 1A Infrastructure Improvements. Developer shall cause the Authority to be named as a co-obligee of such performance bond. Developer shall provide a payment bond on a form reasonably acceptable to Authority for the construction of the Developer's Phase 1A Infrastructure Improvements in the total amount set forth on the Developer's Phase 1A Infrastructure Improvements Budget. Developer shall deliver copies of the payment bond and performance bond to the Authority prior to commencement of construction for the Developer's Phase 1A Infrastructure Improvements. With respect to any portion of the Developer's Phase 1A Infrastructure Improvements, Developer shall ensure that (a) the payment bond is maintained though the period of time required by California Civil Code Section 9558 and (b) the performance bond is maintained for at least one (1) year following Acceptance of such portion of the Developer's Phase 1A Infrastructure Improvements, provided however that Developer may replace a performance bond with a warranty bond which shall remain in effect for the initial Warranty Period, subject to reasonable approval of the form of such warranty bond by the Public Agency accepting such Developer Phase 1A Infrastructure Improvements.

The Contract Documents for the Convention Center shall require each General Contractor to provide a performance bond on a form reasonably acceptable to the Authority for the construction of the Convention Center and the aggregate amount of such bonds will be no less than the amount payable pursuant to the General Contracts with respect to the Convention Center. Developer shall cause the Authority to be named as a co-obligee of such performance bond. Developer shall provide a payment bond on a form reasonably acceptable to Authority for the construction of the Convention Center in the total amount set forth on the Convention Center Budget. Developer shall deliver copies of the payment bond and performance bond to the Authority prior to commencement of construction for the Convention Center. Developer shall ensure the payment bond is maintained though the period of time required by California Civil Code Section 9558. Developer shall ensure the performance bond is maintained until such time as the Convention Center is Complete.

If the estimated amount payable to a General Contractor pursuant to its General Contract is increased, the Developer shall advise such General Contractor and the surety of the increased amount and the payment bond shall be increased accordingly. Under no circumstances shall the payment bond surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the Developer and such General Contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Civil Code Section 9100, and has not been paid the full amount of such person's claim.

13.2. Insolvency or Bankruptcy. If the surety on any of the above-mentioned bonds pertaining to Developer's Phase 1A Infrastructure Improvements is declared bankrupt, becomes

insolvent (as defined in Insurance Code Section 985), or its right to do business is terminated in the State of California, Developer shall, within fifteen (15) Business Days after Developer's actual knowledge or receipt of notice from the Authority, substitute or require the substitution of another bond and surety, reasonably acceptable to the Authority, to the extent a replacement bond is commercially available.

If the surety on any of the above-mentioned bonds pertaining to the Convention Center is declared bankrupt, becomes insolvent (as defined in Insurance Code Section 985), or its right to do business is terminated in the State of California, Developer shall within fifteen (15) Business Days after Developer's actual knowledge or receipt of notice from the Authority substitute or require the substitution of another bond and surety, reasonably acceptable to the Authority, to the extent (i) a replacement bond is commercially available and (ii) the cost of such replacement bond does not exceed one hundred ten percent (110%) of the portion of the cost of the original bond that is fairly allocable to the portion of the Convention Center that has not then been completed. The Parties acknowledge that the bonds required by Section 13.1 must be in place throughout the period of time required by Section 13.1 and, to that end, in the event replacement bonds are needed for the reasons described in the immediately preceding sentence but the thresholds set forth in clauses (i) and (ii) of the immediately preceding sentence are not met, the Parties shall meet and confer to determine how the Parties can replace the subject bonds or potentially obtain an alternative form of security; provided that RIDA shall not be required to obtain any such replacement bond or alternative security unless the Parties mutually agree, and in no event shall the cost to the Developer of any replacement bond or alternative security exceed the cost threshold set forth in clause (ii) of the immediately preceding sentence.

13.3. Calling a Bond.

13.3.1. Developer acknowledges and agrees that if Developer's construction of Developer's Phase 1A Infrastructure Improvements has not been performed in accordance with Section 5.1 or if the Developer has failed to cure any Defective Work within a commercially reasonable time after Developer's receipt of notice pursuant to Section 12.1 (subject to the notice and cure periods set forth in Section 12.3), and, in each case, such failure constitutes a breach by the General Contractor under the applicable Contract Documents, the Authority may use the performance bond referenced in Section 13.1 above to complete Developer's Phase 1A Infrastructure Improvements. This remedy is not a limitation on remedies of the Authority, as applicable. and is in addition to any other remedy that the Authority may have at law or in equity.

13.3.2. Developer acknowledges and agrees that if Developer's construction of the Convention Center has not been completed in accordance with Section 5.1 or if the Developer has failed to cure any Defective Work within a commercially reasonable time after Developer's receipt of notice pursuant to Section 12.1 (subject to the notice and cure periods set forth in Section 12.3), and, in each case, such failure constitutes a breach by the General Contractor under the applicable Contract Documents, the Authority may use the performance bond referenced in Section 13.1 above to complete the Convention Center. This remedy is not a limitation on remedies of the Authority and is in addition to any other remedy that the Authority may have at law or in equity.

13.4. Bond Reimbursement. Not later than one year after the last date on which a payment, performance, or warranty bond is required by this Agreement with respect to the Convention Center, Developer shall provide the Authority with an invoice and reasonable supporting documentation showing the cost actually incurred by Developer in procuring the payment bond(s) and the

performance bond(s) with respect to the Convention Center pursuant to Section 13.1. Within thirty (30) days after the receipt of such invoice and supporting documentation, Authority shall pay to Developer the lesser of (a) the cost actually incurred by the Developer in procuring such bonds and (b) One Million Dollars (\$1,000,000) (the “**Payment Bond Reimbursement Amount**”). This Section 13.4 shall apply notwithstanding anything to the contrary set forth in Section 9.2.5.

ARTICLE XIV INDEMNITY AND DUTY TO DEFEND

14.1. General Indemnity. To the maximum extent allowed by law, Developer hereby indemnifies and shall defend the Authority, the Port District Parties and the City Parties, at Developer’s sole cost and expense and with counsel selected by the Public Agencies and reasonably approved by Developer, and hold the Authority, the Port District Parties, and the City Parties harmless from any and all claims (including claims under negligence and strict liability), 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 Developer of its obligations under this Agreement, (ii) the construction of any Improvements and (until Acceptance) the Developer’s Phase 1A Infrastructure Improvements, (iii) any breach by Developer of its obligations under this Agreement, (iv) any accident, injury or damage whatsoever caused to any Person or the property of any Person on or about the Project Site or at the Improvements or (until Acceptance) the Developer’s Phase 1A Infrastructure Improvements; or (v) the use, occupancy, possession or operation of the Project Site and the Improvements and (until Acceptance) the Developer’s Phase 1A Infrastructure Improvements by any Developer Party or Hotel Operator, or any acts or omissions of any Developer Party or Hotel Operator, in each case, except for claims or litigation arising through the sole gross negligence or willful misconduct of the Authority, any Authority Party, any Port District Party (including, without limitation, with respect to the Remaining Phase 1A Infrastructure Improvements) or City Party (but subject to Section 15.4); provided, that the sole gross negligence or willful misconduct of one Public Agency Party with respect to any Public Agency shall not be attributed to or affect the rights of any Public Agency Party with respect to any other Public Agency under this Section 14.1. The foregoing indemnity, defense and hold harmless obligations of Developer shall not include any claims (including claims under negligence and strict liability), 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 (w) 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 Developer has satisfied its obligations under Section 5.8, Exhibit O, and any other agreement entered into between the Port District and/or City with Developer regarding the subject of this subsection (w), (x) 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 Port District Party (other than by a Developer Party or Hotel Operator, or on behalf of a Developer Party or Hotel Operator, or by any Person acting directly or indirectly under a contract with a Developer Party or Hotel Operator), (y) the Remaining Phase 1A Infrastructure Improvements or any development, construction or use thereof or activity thereon other than by Developer or a Developer Party or (z) any use, development or construction of any portion of the Developer’s Phase 1A Infrastructure Improvements after Acceptance thereof, excluding (1) claims pursuant to Articles XI and XII and (2) claims that arise directly or indirectly out of any act or omission of a Developer Party or Hotel Operator. If a Public Agency determine in its reasonable discretion that there is a conflict of interest with Developer’s counsel representing such Public Agency and Developer, or that there is a conflict of interest with counsel representing such Public Agency and the other Public Agencies, then

such Public Agency, at its election, may conduct its own defense with its own counsel that is reasonably selected by the Public Agency, reasonably approved by Developer, and independent from Developer's counsel (and in that event Developer will select its own counsel) and the reasonable costs incurred by the applicable Public Agency 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 14.1 shall survive the expiration or earlier termination of this Agreement. The foregoing indemnity obligations of Developer are in addition to, and not in limitation of, any other indemnity obligations of Developer contained in this Agreement or any other agreement between any of the Public Agencies and Developer. Notwithstanding the foregoing, Section 19.2.3, and not this Section 14.1, shall apply to the reimbursement of any fees or expenses incurred by Public Agencies in connection with a Tax Claim. Notwithstanding anything to the contrary in this Section, Developer shall have no obligation to pay or reimburse any Public Agency for costs incurred by such Public Agency that such Public Agency would have been obligated to pay without express right to reimbursement by Developer, or for which such Public Agency would have been obligated to reimburse Developer, pursuant to this Agreement.

14.2. Damage to Other Properties. The indemnification and agreement to hold harmless set forth in Section 14.1 shall extend to damages, including without limitation monetary claims based on allegations of takings or inverse condemnation, resulting from diversion of waters, change in the volume of flow, modification of the velocity of the water, erosion or siltation, or the modification of the point of discharge as the result of, and to the extent of and proportion caused by, the negligence by Developer, its officials, officers, the General Contractor, Subcontractor(s), agents, or employees in the construction of the Project. The foregoing indemnification obligations of Developer shall not include any claims (including claims under negligence and strict liability), 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 sole gross negligence or willful misconduct of any Public Agency Party (except that the sole gross negligence or willful misconduct of one Public Agency Party with respect to any Public Agency shall not be attributed to or affect the rights of any Public Agency Party with respect to any other Public Agency under this Section 14.2), (y) Public Agency conduct in connection with construction, maintenance, or operation of the Remaining Phase 1A Infrastructure Improvements or any development, construction or use thereof or activity thereon other than by Developer or a Developer Party, or (z) any use of the Developer's Phase 1A Infrastructure Improvements after Acceptance thereof, excluding any claims pursuant to Articles XI or XII.

14.3. Hazardous Materials Indemnity.

14.3.1. Excluding Pre-Existing Hazardous Material, Developer hereby assumes for itself and shall indemnify, defend the Authority, the Port District Parties, and the City Parties, and hold the Authority, the Port District Parties, and the City 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 any Public Agency's real or personal property), which occur or arise during or after the Term relating to, or resulting from, any Hazardous Materials Activity, any Tenant Hazardous Material, any Material Exacerbation of Pre-Existing Hazardous Material by a Developer Party or Hotel Operator, or any breach by Developer of its obligations under this Section 14.3, at Developer's sole cost and expense and with counsel and experts selected by the Public Agencies in their reasonable discretion,

and reasonably approved by Developer, and who act according to the Public Agencies' reasonable direction, with reasonable input and cooperation from Developer. Developer's obligations under Section 6.20 of the Sublease (and the indemnification of the Authority, the Port District Parties, and the City Parties by Developer under this Section 14.2) include, without limitation, any Environmental Cleanup required by this Agreement, costs incurred in connection with any investigation of site conditions or any cleanup, treatment, remedial, removal, or restoration work required by this Agreement 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 Site or Improvements or (until Acceptance of the applicable Developer's Phase 1A Infrastructure Improvements) the Developer's Phase 1A Infrastructure Improvements and the Developer's Phase 1A Infrastructure Improvements Site. The Public Agencies shall have a direct right of action against Developer even if no third party has asserted a claim. If a Public Agency determine in its reasonable discretion that there is a conflict of interest with Developer's counsel representing such Public Agency and Developer, or that there is a conflict of interest with counsel representing such Public Agency and the other Public Agencies, then such Public Agency, at its election, may conduct its own defense with its own counsel that is reasonably selected by the Public Agencies, reasonably approved by Developer and independent from Developer's counsel (and in that event Developer will select its own counsel) and the reasonable costs incurred by the applicable Public Agency 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 indemnification and Environmental Cleanup requirements under Section 6.20 of the Sublease and this Section 14.3 include, but, are not necessarily limited to:

14.3.1.1. Losses attributable to diminution in the value of the Site, Improvements or (with respect to occurrences or conditions existing prior to Acceptance of the applicable Developer's Phase 1A Infrastructure Improvements) the Developer's Phase 1A Infrastructure Improvements Site;

14.3.1.2. Losses of rental or other income from the Site, Improvements or (with respect to occurrences or conditions existing prior to Acceptance of the applicable Developer's Phase 1A Infrastructure Improvements) the Developer's Phase 1A Infrastructure Improvements Site;

14.3.1.3. Loss of or damage to natural resources regarding which Port District is the lawfully designated trustee;

14.3.1.4. Loss or restriction of use of rentable space(s) in the Site, Improvements or (with respect to occurrences or conditions existing prior to Acceptance of the applicable Developer's Phase 1A Infrastructure Improvements) the Developer's Phase 1A Infrastructure Improvements Site;

14.3.1.5. Adverse effect on the marketing of any space(s) in the Site, Improvements or (with respect to occurrences or conditions existing prior to Acceptance of the applicable Developer's Phase 1A Infrastructure Improvements) the Developer's Phase 1A Infrastructure Improvements Site; and

14.3.1.6. 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, Developer shall have no obligation to pay or reimburse any Public Agency for costs incurred by such Public Agency that such Public Agency would have been obligated to pay without express right to reimbursement by Developer, or for which such Public Agency would have been obligated to reimburse Developer, pursuant to this Agreement.

14.4. Illegal Discharge to Storm Drains. Developer shall defend, indemnify, protect, and hold harmless each of the Public Agency Parties from and against all claims asserted, or liability established for damages or injuries to any person or property resulting from a discharge to public storm drains in violation of applicable laws to the extent arising out of the construction of the Project (an “**Illegal Discharge**”) caused by any action or failure of Developer, its officials, officers, the General Contractor, Subcontractor(s), agents, or employees to take reasonable measures to prevent an Illegal Discharge or any Illegal Discharge by any such persons or entities. Developer shall also be responsible for payment of any fines or penalties assessed against any Public Agency for an Illegal Discharge. Developer’s duty to indemnify and hold harmless shall not include any claims (including claims under negligence and strict liability), 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 sole negligence or willful misconduct of any Public Agency Party, (y) Public Agency conduct in connection with construction, maintenance or operation of the Remaining Phase 1A Infrastructure Improvements or any development, construction or use thereof or activity thereon other than by the Developer or a Developer Party, or (z) any use of the Developer’s Phase 1A Infrastructure Improvements after Acceptance thereof, excluding any claims pursuant to Articles XI or XII.

14.5. Implementation of Authority Resolution 2020-002. Without limitation of the Developer’s other obligations under this Agreement, the Developer agrees, at its sole cost and expense, and with counsel selected by the Public Agency Parties, each in its reasonable discretion, and reasonably approved by Developer, to indemnify, defend and hold harmless each of the Public Agency Parties, and their officers, directors, employees, partners, affiliates, agents, contractors, successors and assigns from any Claims, Related Costs, and amounts paid in settlement of any claims or actions brought by any third party and related to the subject matter of the Related Costs (as determined by the Developer and the Public Agency Parties), arising out of any action taken by the Authority, the Port District, or the City, as applicable, in implementation of Authority Resolution 2020-002; provided, however, such indemnity, defense and hold harmless obligations of the Developer under this Section 14.5 shall not include any Claims and Related Costs arising solely out of (a) the sole or collective negligence, or willful misconduct of the Authority, the Port District and/or the City, as applicable, (b) the failure of the Authority Board to follow the procedures of the Authority in adopting Authority Resolution 2020-002, or (c) the lack of authority of the Authority Board to adopt Authority Resolution 2020-002, but shall include Claims and Related Costs arising from the Developer’s delivery of incorrect, misleading, or inaccurate information to the City, the Port District, or Authority, officers of the City, the Port District or the Authority, or the Authority Board, which any of the aforementioned parties relied upon to adopt, or recommend the adoption of, Authority Resolution 2020-002. The indemnification, defense, and hold harmless obligations of the Developer under this Section 14.5 shall exist so long as a challenge or claim can be made against the Authority, the Port District of the City.

14.6. Costs of Defense and Award. Developer shall immediately accept all tenders and defend, at Developer’s own cost, expense and risk, any and all claims, demands, suits, actions, or other legal or administrative proceedings that may be brought or instituted against each Public Agency, its officials, officers, employees and/or agents and that appear to be covered by the defense

obligation defined in Sections 14.1, 14.2, 14.3, and 14.4. Developer acknowledges and agrees that its obligation to accept tender and defend each Public Agency, its officials, officers, employees, and/or agents as provided in this Section 14.6 is absolute and not subject to any limitations in Sections 14.1, 14.2, 14.3, and 14.4 of this Agreement, or elsewhere. Developer shall pay and satisfy any judgement, award, or decree that may be rendered against any Public Agency or its officials, officers, employees and/or agents, for any and all related legal expense and costs incurred by each of them subject to the limitations in Sections 14.1 through 14.4 and only to the extent Section 14.1 through 14.4 requires Developer to do so. If a court of competent jurisdiction determines by a final judgment that any Public Agency was not entitled to indemnification or defense by Developer pursuant to this Article XIV, then such Public Agency shall pay to Developer the cost incurred by Developer in providing such indemnification or defense (including, without limitation, the reasonable costs of Developer's internal legal counsel). Where outside counsel has been retained, reasonable costs of Developer's internal legal counsel shall be limited to (x) supervising such outside counsel and (y) such other customary work performed by in-house counsel in connection with proceedings of this type where outside counsel is engaged; provided that Developer shall use reasonable efforts to avoid duplicating work performed by its outside counsel and its internal legal team. For the avoidance of doubt, "supervising such outside counsel" shall include, without limitation, review and revision of any documents prepared by outside counsel, preparation of memoranda or other similar correspondence to be provided to Developer, correspondence with regarding status of matter, review of billing matters, negotiation of contracts with outside counsel, and any other activities that would be reasonably performed by in house counsel in connection with such supervision.

14.7. Insurance Proceeds. Developer's obligation to indemnify shall not be restricted to insurance proceeds, if any, it receives.

14.8. Declarations. Developer's obligations under Article XIV shall not be limited by any prior or subsequent declaration by Developer.

14.9. Survival. Developer's obligations under Article XIV shall survive the expiration and/or termination of this Agreement.

ARTICLE XV INSURANCE REQUIREMENTS

15.1. Insurance Requirements. During the Construction Period, and with respect to any portion of the Developer's Phase 1A Infrastructure Improvements (including Sweetwater Park if the Developer exercises the Sweetwater Park Option), until Acceptance of the applicable Developer's Phase 1A Infrastructure Improvements, Developer shall maintain the policies of insurance described in Sections 15.2 and 15.3 in full force and effect. Insurance requirements applicable to Alterations are set forth in the Sublease; however, if any Alterations are constructed during the Construction Period, the Developer shall comply with the insurance requirements set forth in this Article XV with respect to such Alterations.

15.2. Forms and Amounts of Coverage. The policies for said insurance shall, as a minimum, provide the following:

15.2.1. Commercial General Liability. "Occurrence" form Commercial General Liability covering the Project Site, the Improvements, and Developer's Phase 1A Infrastructure Improvements, operations and contractual liability assumed by Developer in this Agreement and the

Sublease in the amount of not less than as set forth in Section 15.2.1.1. Developer's indemnification obligations under this Agreement and the Sublease shall in no event be limited by the terms or qualifications to the contractual liability coverage under such insurance.

15.2.1.1. Commercial General Liability Policy Amount: Not less than Twenty Million Dollars (\$20,000,000) per occurrence limit for bodily injury and property damage. The general aggregate limit shall be not less than Forty Million Dollars (\$40,000,000) unless a Twenty Million Dollars (\$20,000,000) per location aggregate limit is provided by separate endorsement. All such limits may, at Developer's option, be satisfied by limits set forth in primary policies and excess policies.

15.2.2. Builder's Risk Property Coverage.

15.2.2.1. During the Construction Period, builder's risk completed value form insurance covering the perils insured under the ISO special causes of loss form, including collapse, water damage and transit, covering the total value of work performed and equipment, supplies and materials furnished (with an appropriate limit for soft costs in the case of construction) and covering the full insurable value (exclusive of the cost of noninsurable items) of all equipment, supplies and materials at any off-site storage location used with respect to the Project or in transit. Specific limits of insurance for flood shall be determined at the joint discretion of Developer and Authority. Earthquake limits shall, at a minimum, cover 250 year maximum probable loss or such other limits as are agreed to by Developer and the Authority. The damage coverage shall be endorsed with a Loss Payee endorsement in favor of the Trustee. Notwithstanding anything to the contrary herein, the builder's risk insurance required by this Agreement may not be terminated until property insurance policies required by the Sublease are in effect. Net Proceeds shall be assigned by the Authority to the Trustee pursuant to the Indenture.

Developer shall if commercially available cause its builder's risk policy to define "soft costs" to include the costs of issuance of the Authority Bonds and capitalized interest on the Authority Bonds and interest expense related thereto ("**Expanded Soft Cost Coverage**"). The Developer shall request proposals for builder's risk policies including Expanded Soft Cost Coverage, and shall present such proposals to the Public Agencies for their consideration. If and as needed, Developer and the Public Agencies shall meet and confer regarding such proposals. Notwithstanding the foregoing provisions of this paragraph, if the Public Agencies, in their reasonable discretion, select a proposal for the procurement of such builder's risk policy, and RIDA (A) determines that procuring such Expanded Soft Cost Coverage will neither adversely affect RIDA's procurement of builders' risk insurance nor adversely affect the coverage of such builder's risk insurance or (B) determines in its reasonable discretion to procure such Expanded Soft Cost Coverage, then Developer shall procure such builder's risk policy for the applicable policy period with Expanded Soft Cost Coverage (assuming that such builder's risk policy remains commercially available to Developer, and provided, that if there is more than one proposal and RIDA determines that the proposal selected by the Public Agencies would adversely affect RIDA's procurement of builder's risk insurance or the coverage of such builder's risk insurance, then RIDA may, in RIDA's sole discretion, select any proposal that would not adversely affect, or would have lesser adverse effect on, RIDA's procurement of builder's risk insurance or the coverage of such builder's risk insurance), and the Authority shall promptly reimburse Developer for the amount by which (x) the aggregate amount expended by Developer in connection with obtaining and maintaining the builder's risk policy with Expanded Soft Cost Coverage exceeds (y) the amount that Developer would have expended in connection with maintaining a builder's risk policy without Expanded Soft Cost

Coverage. Promptly after any Public Agency so requests, Developer shall provide documentation to the Public Agencies that reasonably evidences the amount of such excess.

The Public Agencies shall be named as additional insureds under any builder's risk policy procured by the Developer pursuant to this Agreement.

15.2.2.2. Any Casualty Proceeds shall be paid to the Trustee as "loss payee" under the property insurance policies that are required to be maintained pursuant to this Agreement or the Sublease and shall be deposited into the Insurance and Condemnation Fund pursuant to Section 4.5 of the Authority 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 and shall be paid and be applied as provided in Section 9.2 hereof, Section 5.2 of the Sublease, and Section 6.1(a) of the Facility Lease. 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 in Section 5.2 of the Sublease, then any Casualty Proceeds shall be paid and disbursed as provided in Section 5.2 of the Sublease and Section 6.1(a) of the Facility Lease.

15.2.3. Worker's Compensation. Workers' compensation insurance covering all persons employed by Developer at the Project Site, Improvements and Developer's Phase 1A Infrastructure Improvements and with respect to whom death or bodily injury claims could be asserted against Developer, any Public Agency, the Project Site, the Improvements, or the Developer's Phase 1A Infrastructure Improvements, with statutorily required limits, and employer's liability insurance with minimum limits of not less than One Million Dollars (\$1,000,000) for each accident/employee/disease. Workers' compensation insurance shall include a waiver of subrogation in favor of Public Agency Parties.

15.2.4. Automobile Liability. Business automobile liability insurance covering liability arising out of vehicles used on or about the Project Site, Improvements and Developer's Phase 1A Infrastructure Improvements by Developer or its employees (including owned, non-owned, leased, rented and/or hired vehicles) insuring against liability for bodily injury, death and property damage in an amount not less than One Million Dollars (\$1,000,000) each accident limit.

15.2.5. Contractor's Pollution Liability Coverage. If either the City or the Port District determines, in its sole and absolute discretion, that Developer 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, Developer 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 or the limits maintained by or available to the contractor, whichever is higher. The Public Agencies shall also be named as additional insureds on any such policy. During the Construction Period, immediately upon learning of or reasonably suspecting that a release of Hazardous Materials has occurred on, in, under or about the Project Site, Developer shall provide notice of the same to each of the Public Agencies.

15.2.6. UST Coverage. To the extent the foregoing coverages do not cover any underground storage tanks (USTs) located on the Site during the Construction Period, Developer

shall procure such insurance in amounts and with limits reasonably acceptable to Developer and the Public Agencies.

15.3. General Requirements.

15.3.1. Certificates and Other Requirements. The cost of all required insurance shall be borne by Developer. During the Construction Period, Developer shall provide the Public Agencies 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 this Article XV (“Certificates”). The Certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind insurance on its behalf. Notwithstanding the foregoing, Developer shall request copies of each insurance policy required under this Article XV and make available to the Public Agencies for inspection at the Project Site or the Improvements any insurance policy it receives.

15.3.2. Additional Insureds and Other Requirements. All liability insurance policies shall name, or be endorsed to name the Public Agencies as additional insureds and protect the Public Agencies against any legal costs in defending claims. All liability policies shall provide cross-liability coverage. If Developer receives notice of any cancellation, modification such that the requirements of this Agreement are no longer satisfied, suspension or voiding of an insurance policy required under this Article XV from the applicable insurance carrier, then Developer shall provide to the Public Agencies written notice thereof within five (5) Business Days after receipt of such notice. To the extent the policy is blanket endorsed or is specifically endorsed to provide the same, all insurance policies shall also provide that the subject policy shall not be cancelled without thirty (30) days’ prior written notice to the Public Agencies. All insurance policies shall be endorsed to state that Developer’s insurance is primary and not excess or contributory to any insurance issued in the name of the Public Agencies. Further, all insurance companies must have an S&P or AM Best rating of not less than “A-”.

15.3.3. Deductibles. Any deductibles or self-insured retentions must be declared to each of the Developer and the Public Agencies and be consistent with customary deductibles and self-insured retentions, as applicable, for a convention center or conference center operating in the United States of America that is comparable with the Convention Center; provided, however, if the deductible or self-insured retention is in excess of Two Hundred Fifty Thousand Dollars (\$250,000), Developer shall provide the Public Agencies with reasonably satisfactory evidence of its ability to meet the deductible or self-insured retention. The evidence to be provided to the Public Agencies must include separate, unconsolidated, audited financial statements to be provided annually or upon any Public Agencies’ written request to Developer. If Developer does not provide reasonably satisfactory evidence of its ability to meet the deductible or self-insured retention, then Developer shall have the option to either: (i) reduce or eliminate such deductible or self-insured retention as respects the Public Agency Parties; (ii) procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses; or (iii) agree to self-insure the risk with form of collateral or written agreement acceptable to the Public Agencies.

15.3.4. Updates. If any Public Agency reasonably determines that the insurance provisions in this Agreement do not constitute Adequate Insurance, then such Public Agency shall notify Developer thereof and of the changes to the insurance requirements of this Agreement that any Public Agency reasonably believes are necessary to cause such requirements to constitute Adequate Insurance. The Parties agree that the insurance provisions will be modified to increase Developer’s

insurance obligations to the smallest extent that is consistent with such modified insurance provisions providing for Adequate Insurance. The Parties shall, in the first instance, attempt to agree on any revisions to such insurance provisions so that they provide for Adequate Insurance by entering into good faith negotiations and, if, within seven (7) days from the commencement of such negotiations, the Parties do not reach agreement, then, until the dispute is finally resolved by a final judgment rendered by a court of competent jurisdiction, the then-existing insurance requirements of this Agreement shall continue to govern Developer's obligations. After the Parties agree on a new insurance program that constitutes Adequate Insurance or such final judgment of a court of competent jurisdiction establishes a new insurance program, such new insurance program shall bind the Parties. Developer shall deposit new Certificates incorporating such changes within thirty (30) days of the Parties agreeing on such new insurance program. Failure by Developer to maintain insurance or deposit insurance Certificates as required in this Article XV, where such failure is not cured by Developer within ten (10) days following written notice thereof to Developer, shall constitute an Event of Default. Without limitation of the foregoing, Developer agrees that if Developer does not take out and maintain such insurance or furnish the Public Agencies with Certificates in a timely manner, the Public Agencies may, but shall not be required to, procure said insurance on Developer's behalf and charge Developer the cost thereof, which amount shall be payable by Developer to the Public Agencies pursuant to the Reimbursement Procedure.

15.3.5. No Limit on Liability. The procuring of such required policies of insurance shall not be construed to limit Developer's liability hereunder, nor to fulfill the indemnification provisions and requirements of this Agreement.

15.3.6. Compliance with Insurance Requirements. Developer agrees not to keep on the Project Site or permit to be kept, used, or sold thereon, anything prohibited by any fire or other insurance policy covering the Project Site. Developer shall, at its sole expense, comply with all reasonable requirements for maintaining fire and other insurance coverage on the Project Site and represents to the Public Agencies that Developer will confirm that it is in compliance with such requirements at all times.

15.4. Waiver of Subrogation. Developer hereby releases the Public Agencies from any and all liability or responsibility to Developer or anyone claiming through or under Developer by way of subrogation or otherwise for any loss or damage to the Project Site, any Improvements, and Developer's Phase 1A Infrastructure Improvements, or any of Developer's personal property or business caused by or arising from a fire or any other event that is covered by the insurance required to be carried pursuant to this Agreement or is actually carried, even if such fire or other event shall have been caused by the fault or negligence of any of the Public Agencies.

15.5. Authority Obligation to Maintain Insurance. Until the earlier of (a) Full Payment or (b) the earlier termination of the Sublease and this Agreement, the Authority shall maintain crime insurance, or its equivalent, with respect to conduct by officers and staff of the Authority and employees of the City and Port District relating to the transfer and requisition of Authority Bond proceeds and County Funds and processing of Developer's Phase 1A Payment Requests and Convention Center Payment Requests, in the minimum coverage amount of \$5 million ("Crime Insurance"). In the event of the occurrence of any insurable event under such Crime Insurance, Authority shall pursue recovery under such Crime Insurance. The Crime Insurance shall name, or be endorsed to name the Developer as an additional insured or loss payee, as reasonably and commercially appropriate and available. If Authority receives notice of any cancellation, modification such that the requirements of this Section 15.5 are no longer satisfied or suspension or

voiding of an insurance policy required under this Section 15.5 from the applicable insurance carrier, then Authority shall provide to the Developer written notice thereof within five (5) Business Days after receipt of such notice.

ARTICLE XVI RECORDS AND AUDITS

16.1. Retention of Project Records. Developer shall use commercially reasonable efforts to maintain the Project Records (defined below) for a period of not less than seven (7) years after the date such record is created (or such longer period as Developer may decide in its sole discretion). Developer shall make available to the Public Agencies any of the Project Records upon request of any of the Public Agencies. "Project Records" means the following documents and materials, but only if such documents and materials are related to the Project: Contract Documents, plans and specifications, inspection reports, invoices related to Project Costs, and documents that evidence payment of Project Costs or the basis for such payments. Project Records also means such other documents that (a) are reasonably necessary to evaluate (i) whether the Project has been or is being constructed in accordance with the requirements of this Agreement; (ii) whether the certifications that have been made in any Developer Phase 1A Payment Request or Convention Center Payment Request are true and correct; (iii) whether Developer is in compliance with Article XIII; (iv) the existence of any Force Majeure Event that Developer asserts exists and the duration of any delay in connection therewith; or (v) the amount of Project Costs that have been or will be incurred; and (b) are reasonably requested by the Public Agencies; provided, however, that "Project Records" with respect only to such other documents under clauses (a) and (b) above shall not include any of the following: proprietary documents and information, documents and information that are subject to confidentiality agreements which do not permit their disclosure to the Public Agencies, documents and information that are subject to the attorney client privilege, tax advisor privilege, internal communications among Developer, its Affiliates or any of their respective officers, employees or agents (including, without limitation, attorneys and tax advisors and consultants), communications among Developer, Marriott, any lender, any direct or indirect owner of Developer or any of their respective officers, employees or agents. Developer may redact from documents provided under clauses (a) and (b) above any information that is not reasonably necessary for the purposes of such clauses.

16.2. Audit of Records. At any time during normal business hours, with 48 hours' advanced notice and as often as the Public Agencies reasonably deem necessary, Developer shall make available, or shall cause its General Contractor or any Subcontractor to make available, to the Public Agencies for examination at the Project Site, the Convention Center, or at such other location in San Diego County, California as is reasonably acceptable to the Public Agencies all of the Project Records. Developer, the General Contractor and Subcontractors will permit the Public Agencies to make audits of the Project Records. If any Project Records are not made available at the Project Site, the Convention Center, or at such other location in San Diego County, California as is reasonably acceptable to Authority, then Developer shall pay all the travel related costs of the Authority to audit such Project Records at the location where the records are maintained. Such costs will not be Project Costs.

16.2.1. Costs. Developer and Developer's agents shall allow the Public Agencies to audit and examine the Project Records and any and all accounting procedures and practices that the Public Agencies reasonably determine are necessary to discover and verify all costs of whatever

nature, which are claimed to have been incurred, anticipated to be incurred, or for which a claim for additional compensation or for extra work have been submitted under this Agreement.

ARTICLE XVII TITLE TO ALTERATIONS AND IMPROVEMENTS

17.1. Title to Project. The Improvements constituting the Project which may be installed, constructed or placed in, on, over or under the Project Site, from time to time by Developer in accordance with this Agreement, the Sublease, and other agreements, (a) shall, subject to Developer's obligations under Section 6.6 of the Sublease or such other agreements, as applicable, be so installed, constructed or placed at the JEPA's, the City's or Port District's, as applicable, sole cost and expense, and (b) shall remain the JEPA's, the City's or Port District's, as applicable, property during the Term; provided that Developer's trade fixtures (that is fixtures relating uniquely to Developer and which are removable without non-repairable damage to the other Improvements), furnishings, moveable equipment and other personal property of Developer shall remain the property of Developer. Notwithstanding the foregoing, at least ninety (90) days before the last day of the Sublease Term or, in the case of earlier termination of the Sublease, within ten (10) days after such termination, unless the City expressly elects within the same time periods to require Developer to remove the same, any artworks that constitute personal property and that were provided to comply with Developer Art Investment but which are not governed by a separate agreement between Developer and the artist relating to the removal of such artworks at the end of the Sublease Term, shall not be removed and shall remain located on the Site or the Convention Center, as applicable. Prior to the Expansion Date, any and all expenditures made by Developer with respect to the Project shall be treated as supplemental Rent for all purposes under the Sublease; provided that, for the avoidance of doubt, such expenditures shall not modify, reduce, substitute or credit any of Developer's other Rent obligations under the Sublease.

17.2. Survival. The terms of this Article XVII shall survive the expiration or earlier termination of this Agreement and the Sublease.

ARTICLE XVIII LIENS

18.1. No Right to Bind Port District. Neither Developer, any Developer 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 Port District in any way whatsoever, and Port District shall have no responsibility to Developer, Developer Party, the Hotel Operator, or other Person who performs, causes to perform, engages in or participates in any construction of any Developer's Phase 1A Infrastructure Improvements, Improvements, Alterations or any other work on the Project Site at the request of Developer, Developer Party, Hotel Operator, or other Persons. Port District shall not be required to take any action to satisfy any such contract or agreement or to remove or satisfy any lien resulting therefrom.

18.2. Notice of Non-Responsibility. Developer shall give written notice to all contractors, subcontractors and materialmen of Port District's non-responsibility in connection with any construction of the Developer's Phase 1A Infrastructure Improvements, Convention Center, Alterations or any other construction work on the Project Site, and shall immediately provide Port District with true copies of such notices not less than ten (10) days prior to the commencement of any work on the Project Site. The Port District Parties shall have the right to post and keep posted thereon

notices of non-responsibility, or such other notices which Port District may deem to be proper for the protection of Port District's interest in the Project Site. Developer shall provide Port District with any information required by Port District to complete the notice of non-responsibility.

18.3. Mechanics' Liens. Developer shall pay or cause to be paid all costs for work, labor, services or materials supplied to or performed on the Project Site that might result in any mechanics' lien or similar lien as and when Developer is required to do so under Developer's agreement with the respective provider thereof. If Developer receives notice that any mechanics' lien or any similar lien is recorded against the Project Site and Developer is not contesting such lien in accordance herewith, then Developer shall cause such lien to be released and removed of record within thirty (30) days after Developer receives notice of the recordation of the mechanics' lien or similar lien. Developer shall indemnify, defend, release and save Port District 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 Project Site, the Improvements or the Developer's Phase 1A Infrastructure Improvements by or for any Developer Party and the Hotel Operator and all Related Costs.

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

18.4.1. such contest shall not place the fee estate of the Project Site in material danger of being forfeited or lost;

18.4.2. such contest shall be without cost, liability, or expense to Port District;

18.4.3. Developer shall prosecute such contest with reasonable diligence and in good faith; and

18.4.4. no Event of Default shall exist under this Agreement at the time of or during such contest.

18.5. Port District's Right to Pay. If Developer shall be in default in paying any charge for which a lien claim has been filed, and if Developer has not contested such lien in accordance with Section 18.4, then Port District 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 Developer to Port District, and Developer shall pay the same to Port District pursuant to the Reimbursement Procedure, together with interest on the full amount thereof at the Default Rate from the date of Port District's payments until paid.

18.6. Notice of Liens. Should any claims of lien be filed against the Project Site or any Improvement or any action affecting the title to the Project Site, the Improvements or the Developer's Phase 1A Infrastructure 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.

18.7. Right of Entry. Nothing herein shall imply any consent on the part of Port District to subject Port District's estate to liability under any mechanics' lien or other lien. Without limiting Developer's obligations under Section 18.2 above, the Port District Parties shall have the right, but not the obligation, to enter upon and inspect the portions of the Developer's Phase 1A Infrastructure Improvements, Alterations, and Convention Center that are generally accessible to the general public or the portions of the Project Site where the operation of the Developer's Phase 1A Infrastructure Improvements, Alterations, and Convention Center is ongoing, during normal business hours and upon a three (3) Business Days' prior notice to Developer (except in the case of an emergency in which case no prior notice shall be required but each of such Port District Parties shall notify Developer and, prior to the Completion of the Resort Hotel, Developer's Risk Construction Manager thereof by phone prior to entering the Project Site) and Port District shall, and shall cause each of such Port District Parties to: (a) comply with all applicable security and safety procedures of Developer of which Developer informs Port District in writing and with which such Port District Party can reasonably comply, and (b) use commercially reasonable efforts to minimize any interference with Developer's operation and use of the Project Site and the Improvements, while on the Project Site and at the Improvements. Notwithstanding the foregoing, nothing herein shall limit the Port District's right to enter the Project Site, the Improvements or the Developer's Phase 1A Infrastructure Improvements at any time to exercise its police powers.

ARTICLE XIX TAXES

19.1. Reporting.

19.1.1. The Public Agencies and Developer acknowledge and agree that they have delivered the Ground Lease and the Convention Center Leases with the understanding that (i) during the Term and the Ground Lease Term, the Resort Hotel is owned by Developer, (ii) during the Term, the Convention Center is owned by the Authority, (iii) from and after the Expansion Date, the Convention Center is owned by Port District, (iv) Developer has only the right to the possession and use of the Convention Center during the Term upon the terms and conditions of the Sublease, and from and after the Expansion Date upon the terms and conditions of the Ground Lease, (v) each of the Ground Lease and the Sublease is a "true lease" for all applicable legal and federal state and local tax purposes and is not a financing lease, capital lease, mortgage, equitable mortgage, deed of trust, trust agreement, security agreement or other financing or trust arrangement, and the economic realities of the Ground Lease and the Sublease are those of a true lease, (vi) all amounts paid by Developer pursuant to Article 5 of the Ground Lease, and with respect to the Convention Center pursuant to Article 7 and Article 15 of the Ground Lease, are Rent (as defined in the Ground Lease) for all applicable tax purposes, subject to Section 5.9 of the Ground Lease, (vii) all amounts paid by RIDA pursuant to Article III of the Sublease and with respect to the Facility, are Rent for all applicable tax purposes, subject to Section 3.6 of the Sublease, (viii) the Ground Lease and the Convention Center Leases have been entered into by each of Port District, City, Authority, and Developer in reliance upon the mutual covenants, conditions and agreements contained therein; and (ix) none of the covenants, conditions or agreements contained herein or therein is intended, nor shall the same be deemed or construed, to create a partnership between or among the Port District, City, Authority, and Developer, to make them joint venturers, or to make Developer an agent, legal representative, partner, subsidiary or employee of Port District, the City, or the Authority.

19.1.2. The Public Agencies and Developer agree not to (i) file or submit any tax return or other document with any Governmental Authority; (ii) enter into any contract with any

Person; or (iii) release any financial statements, in each case, that takes a position other than that (x) both the Ground Lease and the Sublease are “true leases” for federal, state and local tax purposes, (y) the Authority is the owner of the Convention Center during the Sublease Term, and (z) Port District is the owner of the Convention Center from and after the Expansion Date, in each case, unless otherwise required by a final “determination” within the meaning of Section 1313 of the Code. The Parties agree that the foregoing includes their agreement that (x) Developer will not claim depreciation deductions under Sections 167 or 168 of the Code with respect to the Convention Center and (y) Developer will report all payments described in Sections 19.1.1(vi) and (vii) as rent expense under Section 162 of the Code, subject to Section 5.9 of the Ground Lease or Section 3.6 of the Sublease, as applicable.

19.1.3. The terms of this Section 19.1 shall survive the expiration or earlier termination of this Agreement.

19.2. Tax Claims. Each Party agrees to (A) promptly notify the other Parties of any audit, examination or other proceeding with respect to any tax, tax return (including any schedule attached thereto) or information reporting related to the Ground Lease or the Sublease, the Improvements, the Resort Hotel, or the Project, including without limitation, the agreed positions described in Sections 19.1.1 and 19.1.2 (collectively, the “**Tax Claims**”, and individually, a “**Tax Claim**”) and (B) reasonably cooperate with the other Parties in connection with any Tax Claim. In the event that any Tax Claim is asserted against a Public Agency Party, Developer agrees to indemnify and defend such Public Agency Party, at Developer’s sole cost and expense, and hold such Public Agency Party harmless from any and all Tax Expenses and documented Related Costs arising in connection with such Tax Claim; provided, that the Related Costs with respect to such Tax Claim shall be determined in accordance with the following principles:

19.2.1. Related Costs arising from the work of an employee of a Public Agency during a particular calendar year shall not exceed the product of (x) the salary of such employee and (y) the percentage of such employee’s time in such year which such employee was solely engaged on the Tax Claim (to be substantiated by time records in form and substance reasonably acceptable to Developer), plus, for the avoidance of doubt, any reasonable, out-of-pocket expenses incurred by such employee with respect to the Tax Claim in such calendar year. For example, if an employee of City earns \$160,000, spends 25% of her time in the calendar year on the Tax Claim and incurs \$100 of reasonable, out-of-pocket expenses, City would be entitled to no more than \$40,100 of Related Costs with respect to the work of such employee during such calendar year.

19.2.2. A Public Agency shall not engage any outside counsel with respect to the Tax Claim without the prior written consent of Developer (not to be unreasonably withheld, conditioned or delayed; provided, that Port District, Authority and Developer acknowledge and agree that consent from Developer shall not be required if the counsel selected by Port District or the Authority is Orrick Herrington & Sutcliffe LLP; provided, further, that the City and Developer acknowledge and agree that consent from Developer shall not be required if the counsel selected by the City is Stradling Yocca Carlson & Rauth, P.C.). For the avoidance of doubt, there shall be no cap on the Related Costs incurred by outside counsel approved or deemed approved by Developer and such Related Costs shall include all legal fees and out of pocket expenses; and

19.2.3. in the event that a Public Agency engages outside counsel, then, notwithstanding Section 19.2.1 above, such Public Agency shall not be entitled to recovery of Related Costs with respect to the work performed by employees of the Public Agency except to the

extent such work is limited to (x) supervising such outside counsel and (y) such other customary work performed by in-house counsel in connection with audits, examinations or other proceedings of this type where outside counsel is engaged; provided that such Public Agency shall use reasonable efforts to avoid duplicating work performed by its outside counsel. For the avoidance of doubt, “supervising such outside counsel” shall include without limitation, review and revision of any documents prepared by outside counsel, preparation of memoranda or other similar correspondence to be provided to the governing board or other executives of the relevant Public Agency, correspondence with the general counsel or other executive members of the relevant Public Agency regarding status of matter, review of billing matters, negotiation of contract with outside counsel, and any other activities that would be reasonably performed by the office of the general counsel in fulfillment of its fiduciary duties to the relevant Public Agency.

This Section 19.2 shall survive the early termination or expiration of this Agreement. Notwithstanding anything to the contrary herein, (i) this Section 19.2 shall not apply to, and Developer shall have no responsibility with respect to, any taxes payable based on income or profits of the Public Agency Parties (for the avoidance of doubt, such exclusion shall not apply to the extent such Tax Claim relates to withholding or information reporting with respect to the taxable income of the Developer), and (ii) Section 19.4 and either Section 4.6 of the Ground Lease or Section 6.19(b) of the Sublease, as applicable, and not this Section 19.2, shall govern all Tax Claims with respect to Property Tax Expenses.

19.3. Property Expenses. Without limitation of Developer’s other obligations under this Agreement and the Sublease, Developer agrees to pay, on or before the date due, 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 Site and/or the Improvements, 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 Developer pursuant to this Agreement, the Sublease, the Ground Lease, and the Hotel Management Agreement with respect to the Site and/or the Improvements including without limitation any premiums and deductibles except the cost of any Facility Lease Lost Rental Insurance (as defined in the Sublease) and the incremental cost of any Expanded Soft Cost Coverage; (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 Developer; 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 Agreement, the Sublease, or the Ground Lease. Notwithstanding anything to the contrary in this Agreement or the Sublease, Property Expenses shall not include (a) Property Tax Expenses, (b) any amounts that constitute Sublease Advance Rent (as defined in the Sublease), or (c) any other amount that a Public Agency has expressly agreed to pay without reimbursement from Developer under this Agreement or any Contemporaneous Agreement or that this Agreement or any Contemporaneous Agreement expressly provides that the Developer is not required to pay.

19.4. Property Tax Contest Cooperation. Subject to its consent under the Ground Lease or Sublease, as applicable, and subject to any conditions which it has imposed thereunder, a Public Agency shall join in a Property Tax Contest if such Property Tax Contest is legally required to be initiated or prosecuted in such Public Agency's name. In such case, such Public Agency shall cooperate, as Developer reasonably requests, and at Developer's sole cost and expense, to permit the Property Tax Contest to be prosecuted in such Public Agency name. The Public Agencies shall give Developer any publicly available documents requested by Developer in writing that are in their control and Developer determines are reasonably necessary for Developer to prosecute its Property Tax Contest except where (i) the document is subject to an exemption or exception under the California Public Records Act (California Government Code Sections 6250 et seq.); (ii) the document is confidential pursuant to another agreement between the relevant Public Agency and another Person; (iii) the document is protected by the attorney-client privilege or work-product protections; (iv) the disclosure or release of such document would result in a breach of an agreement to which the relevant Public Agency is a party; or (v) the disclosure or release of the document would result in a violation of Laws. Developer shall pay all costs and expenses, including any legal costs, of any Property Tax Contest, including, without limitation, any costs and expenses resulting from the withdrawal of a Property Tax Contest. If Developer requests that a Public Agency assist Developer with any Property Tax Contest in accordance with the Ground Lease or the Sublease, and such assistance is consistent with the requirements of Section 4.6 of the Ground Lease or Section 6.19 of the Sublease, as applicable, and this Section 19.4, then the Public Agency shall, within fifteen (15) days after receipt of such request, notify Developer of the total amount of Anticipated Assistance Costs. Developer may, but shall have no obligation to, fund the Anticipated Assistance Costs ("**Developer Funding**"). If Developer does not notify the Public Agency that Developer will provide Developer Funding to the Public Agency, then the Public Agency shall have no obligation to assist Developer with such Property Tax Contest. If Developer notifies the Public Agency that Developer will provide Developer Funding to the Public Agency and Developer pays to the Public Agency an amount that is equal to or greater than the Anticipated Assistance Costs, then the Public Agency shall reasonably assist Developer with such Property Tax Contest as Developer reasonably requires. If the actual amount of Assistance Costs in connection with such assistance is at any time greater than the Developer Funding provided before and at such time, then the Public Agency shall promptly notify Developer thereof and the Parties shall follow the process set forth in the preceding three sentences. Port District shall have no obligation to reimburse Developer for Developer Funding up to the amount of Assistance Costs. A Public Agency shall have no liability to Developer if the Public Agency does not assist, or continue to assist, with any Property Tax Contest if Developer refuses to provide Developer Funding or the amount Developer has advanced is not sufficient to cover the Assistance Costs or the Property Tax Contest is not in compliance with this Section 19.5.2 and Section 4.6 of the Ground Lease or Section 6.19 of the Sublease, as applicable. A Public Agency shall return to Developer any portion of Developer Funding that the Public Agency receives from Developer and does not use for the Property Tax Contest within thirty (30) days after the Public Agency receives notice from Developer that the Property Tax Contest is concluded or Developer is withdrawing the Property Tax Contest.

ARTICLE XX

EQUAL EMPLOYMENT OPPORTUNITY/NONDISCRIMINATION AND OFAC

20.1. Nondiscrimination. Developer 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, Developer shall be solely responsible for such compliance and required programs, and there shall be no allocation of any such responsibility between Port District and Developer. Developer shall contractually require the General Contractor, all Subcontractors, and Developer's consultants, subconsultants, and contractors to comply with the requirements of this Article XX.

20.1.1. Equal Employment Opportunity Certification. Developer shall require all bidders to submit signed equal employment opportunity certifications, in substantially the form attached as Exhibit W, with their bid packages.

20.1.2. Equal Opportunity Contracting Nondiscrimination. Developer shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of bidders, the General Contractor, Subcontractors, vendors, or suppliers. Developer shall provide equal opportunity for bidders, contractors, the General Contractor, and Subcontractors to participate in contracting and subcontracting opportunities. Developer understands and agrees that violation of this Section 20.1.2 shall be considered a material breach of this Agreement and may result in termination of this Agreement or other sanctions. The language in this Section 20.1.2 shall be inserted in contracts between Developer, the General Contractor, any Subcontractors, vendors, and suppliers awarded in accordance with Section 6.6.

20.2. Compliance with Employment and Labor Requirements. Developer 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. Developer shall also comply with the National Labor Relations Act, including the provisions with respect to the rights of employees to organize.

20.3. OFAC Compliance. Developer represents and warrants as of the Effective Date that (i) Developer and, to the best of Developer's knowledge, the Persons that directly or indirectly hold an interest in Developer (collectively, "**Developer's Members**", each a "**Developer Member**") (other than any such Person that owns an interest in Developer through publicly traded securities) is not now a Person with whom Port District 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 Developer's knowledge, none of the funds or other assets of Developer constitute property of, or are beneficially owned, directly or indirectly, by any Prohibited Persons (iii) to the best of Developer's knowledge, no Prohibited Person directly or indirectly Controls Developer, or any of Developer's Members, either individually or in the aggregate and (iv) to the best of Developer's knowledge, none

of the funds of Developer have been derived from any unlawful activity with the result that the investment in Developer is prohibited by Laws or that the Agreement is in violation of Laws. Developer covenants and agrees that at no time during the Term shall a Developer Member with a twenty percent (20%) or more direct or indirect interest in Developer be a Prohibited Person. Developer shall reimburse Port District for all reasonable costs, including, without limitation, attorneys' fees, resulting from Developer's failure to comply with this Section 20.3. If Developer receives written notice that any of Developer's Members (other than any such Person that holds an interest in Developer through publicly traded securities) is a Prohibited Person, then Developer shall promptly use Developer's best and commercially reasonable efforts to cause such Person to divest such Person's interests in Developer. Notwithstanding any limits set forth in this Section 20.3, 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.

ARTICLE XXI EVENTS OF DEFAULT AND REMEDIES

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

21.1.1. Failure to Pay. Failure by Developer to pay, when due, any payment, and/or charge that Developer is required to pay hereunder, where such failure continues for a period of five (5) days after written notice thereof from another Party to this Agreement.

21.1.2. Failure to Perform. Failure by Developer to perform any express or implied covenants or conditions in this Agreement (other than as provided in the other subsections of this Section 21.1), where such failure continues for thirty (30) days after written notice thereof from another Party to this Agreement; provided that, if the nature of such failure is such that the same cannot reasonably be cured within such thirty (30) day period, and Developer 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 5.5, 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.

21.1.3. Bankruptcy Event. The occurrence of a Bankruptcy Event.

21.1.4. Cross-Defaults During the Term. The occurrence or existence of an Event of Default as defined in and in accordance with the Sublease 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 an Event of Default under the Sublease is cured pursuant to the terms of the Sublease, such Event of Default shall be deemed cured hereunder and in the event 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.

21.1.5. Breach of a Representation or Warranty.

21.1.5.1. Any representation or warranty by Developer under this Agreement or the Exhibits attached hereto, including any representation or warranty made in any payment request or certification provided or delivered by Developer pursuant to this Agreement, is

not true, correct or complete in any material respect and Developer does not cure such deficiency within ten (10) Business Days after it actually knows about such deficiency, or within ten (10) Business Days after Developer 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 Developer 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.

21.1.5.2. Any representation or warranty by the Completion Guarantor under the Completion Guaranty is not true, correct or complete and Developer does not cause the Completion Guarantor to cure such deficiency within ten (10) Business Days after it actually knows about such deficiency, or within ten (10) Business Days after Developer 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 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.

21.1.6. Specified Defaults. The occurrence of any event expressly stated to constitute an Event of Default under this Agreement.

21.2. Remedies for Events of Default. Upon any Event of Default but subject to Section 21.2.4, the Public Agencies may, in addition to all other rights and remedies afforded to the Public Agencies hereunder or by law or in equity, take any one or more of the following actions:

21.2.1. Termination of Agreement. Terminate this Agreement by giving Developer written notice thereof. Failure by the Public Agencies 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.

21.2.2. Perform Acts on Behalf of Developer. Perform any act that Developer is obligated to perform under this Agreement (and enter upon the Site (and, until Acceptance of the applicable Developer's Phase 1A Infrastructure Improvements, the Developer's Phase 1A Infrastructure Improvements Site) in connection therewith if necessary) in Developer's name and on Developer's behalf, without being liable for any claim for damages therefor, and Developer shall reimburse each Public Agency on demand for any expenses which such Public Agency may incur in thus effecting compliance with Developer's obligations under this Agreement (including, but not limited to, collection costs and legal expenses), plus interest thereon at the Default Rate.

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

21.2.4. Certain Limitations. The Public Agencies shall not have the right to terminate this Agreement as a result of any Event of Default arising solely under Section 21.1.2 or Section 21.1.4 of the Agreement that is susceptible to cure (but will retain all other remedies) if the following conditions apply: (i) the Developer has, in good faith, by written notice served on the Public Agencies within thirty (30) days of receipt of any notice from any Public Agency of such Event of Default, contested that (x) Developer has failed to perform any covenant or condition required to be performed by it under this Agreement or (y) an Event of Default as defined in the Sublease or an Event of Default as defined in the Ground Lease has occurred or is continuing, as applicable, until any final determination by a court with jurisdiction that (x) the Developer has in fact failed to perform any covenant or condition required to be performed by it under this Agreement and that such failure has had a material adverse effect on one or more of the Public Agencies or the Project or (y) an Event of Default as defined in the Sublease or an Event of Default as defined in the Ground Lease has occurred or is continuing, and that such Event of Default has had a material adverse effect on one or more of the Public Agencies or the Project, as applicable; or (ii) after any final determination by a court with jurisdiction that (x) the Developer has in fact failed to perform any covenant or condition required to be performed by it under this Agreement and that such failure has had a material adverse effect on one or more of the Public Agencies or the Project or (y) an Event of Default as defined in the Sublease or an Event of Default as defined in the Ground Lease has occurred or is continuing, and that such Event of Default has had a material adverse effect on one or more of the Public Agencies or the Project, as applicable, Developer promptly (and in all events, within thirty (30) days of such final determination), cures such failure, such Event of Default as defined in the Sublease or such Event of Default as defined in the Ground Lease, as applicable. Without limiting the foregoing, the Public Agencies shall not have the right to terminate this Agreement as a result of any Event of Default arising solely under Section 21.1.4 unless the Sublease or the Ground Lease, as applicable, has been terminated in accordance with its terms. For purposes of this Section 21.2.4, 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 Developer’s failure to perform must be cured in order to avoid the Public Agencies’ right to terminate pursuant to this Section 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 Developer might pursue following entry of such judgment.

For purpose of this Section 21.2.4, “**material adverse effect on one or more of the Public Agencies 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 Project Site or the Improvements, (ii) a material failure to comply with any CDP (as may be amended from time to time) applicable to the Project Site and Improvements, (iii) a material failure to comply with the Port Master Plan, or any amendment thereto, (iv) a material failure to comply with any provision of this Agreement related to Hazardous Materials, (v) [reserved], (vi) a failure to comply with any provision of this Agreement relating to PWL requirements, (vii) a failure to comply with any provision of this Agreement 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 Agreement the effect of

which may be that any Public Agency Party has incurred or could reasonably be expected to incur criminal liability, (ix) a failure by Developer to comply with any provision of this Agreement that could reasonably be expected to result in a default by the Authority with respect to payment of debt service on the Authority Bonds or under the Indenture, a default by the City under the Facility Lease, a default by the Port District under the Support Agreement, or a default by the Financing District under the Loan Agreement, or (x) a failure to comply with any provision of this Agreement that could reasonably be expected to result in significant irreparable harm or injury to any Public Agency. Nothing in this Section 21.2.4 shall prejudice Developer's ability to appeal any decision of any court, provided, that, Developer's appeal shall not limit the Public Agencies' ability to pursue any remedies available to the Public Agencies under this Agreement.

21.3. Sweetwater Park. Port District shall not be deemed in default or breach for failure to Sufficiently Complete Sweetwater Park on or prior to the Sweetwater Park End Date. Developer's exercise of either the First Sweetwater Park Option or the Second Sweetwater Park Option shall be Developer's sole and exclusive remedy for any failure of Port District or Developer to Sufficiently Complete Sweetwater Park. Developer, Authority, Special Tax District, and City acknowledge and agree that the Port District shall not be liable to Developer, Authority, Special Tax District, or City or any other Person for monetary damages (including but not limited to contract damages, consequential, incidental or punitive damages, lost profits, lost business opportunity, or any other type of monetary damage regardless of form) for Port District's failure to Sufficiently Complete Sweetwater Park. This Section 21.3 is not intended to limit (i) Developer's ability to recover its costs from Authority that are Developer's Phase 1A Infrastructure Improvements Costs (including, for the avoidance of doubt, costs incurred by Developer to Sufficiently Complete Sweetwater Park or otherwise construct Sweetwater Park in accordance with the Sweetwater Park Materials) or (ii) Developer's right to the remedy of specific performance of the Port District's obligations under Section 2.3.2.2 and 2.3.3.2.

21.4. Reserved.

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

21.5.1. Failure to Pay. Failure by Authority to pay, when due, any payment, and/or charge that Authority is required to pay hereunder, where such failure continues for a period of five (5) days after written notice thereof from Developer.

21.5.2. Failure to Perform. Failure by Authority to perform any express or implied covenants or conditions in this Agreement (other than as provided in the other subsections of this Section 21.5), where such failure continues for thirty (30) days after written notice thereof from Developer; provided that, if the nature of such failure is such that the same cannot reasonably be cured within such thirty (30) day period, and Authority 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.

21.6. Remedies for Authority Events of Default (Rent Offset). Upon any Authority Event of Default, Developer may, in addition to all other rights and remedies afforded to Developer hereunder or by law or in equity, offset against Rent (excluding Advance Rent under the Sublease)

under the Sublease any amount that Authority has failed to pay when due hereunder and that has not been paid by the Port District or the City under Section 21.7.

21.7. Payment Sources. In the event Authority fails to pay any Convention Center Contract Sum to Developer pursuant to Section 9.2 of this Agreement or any interest due to Developer pursuant to Sections 9.2.3 and 9.2.4.2(b) of this Agreement (collectively, the “**Specified Obligations**”), then such Convention Center Contract Sum or interest, as applicable, will be payable (a) from any amounts remaining on deposit in the 2021A Construction Account (the “**Indenture Funds**”); (b) in the event such failure to pay is a result of the misappropriation of Indenture Funds that are in the possession or control of the City or that have been directed for City purposes by affirmative action of the City Council, then to the extent of such misappropriated Indenture Funds, from any source of funds legally available to the City, including general fund monies, to make such payments; (c) in the event such failure to pay is a result of the misappropriation of Indenture Funds that are in the possession or control of the Port District or that have been directed for Port District purposes by affirmative action of the BPC, then to the extent of such misappropriated Indenture Funds, from any source of funds legally available to the Port District to make such payments; (d) with respect to the Authority, the City or the Port District, respectively from amounts received thereby or otherwise available to the applicable Public Agency, if any, from the proceeds of a fidelity bond or crime insurance policy covering acts by their respective officers or employees that cause a misappropriation from the 2021A Construction Account, or amounts recovered from the Person that misappropriated such moneys; and (e) from amounts on deposit in the Authority Surplus Fund, if and when available from time to time. The City shall promptly pay to the Developer the amounts set forth in the foregoing clauses (b) and (d), if any, to the extent such amounts relate to the City. The Port District shall promptly pay to the Developer the amounts set forth in the foregoing clauses (c) and (d) if any, to the extent such amounts relate to the Port District. The Authority shall promptly pay to the Developer the amounts set forth in the foregoing clause (d), if any, to the extent such amounts relate to the Authority. The Parties intend that the Port District and the City be deemed principal obligors (and not guarantor) with respect to any payment obligations they may have pursuant to the terms of this Section and (without limiting the express obligations of the Port District and the City under this Agreement) the Parties agree not to assert that the Port District or City are guarantors or sureties of the Authority’s obligation hereunder under applicable law; provided, however, in an abundance of caution, in case, contrary to such intention, it is determined that the Port District and City are guarantors with respect to the foregoing payment obligations, each of Port District and City hereby waive (i) until Full Payment, any rights of subrogation, reimbursement, indemnification, and contribution with respect to the Authority and (ii) any other rights and defenses that are or may become available to Port District or City, as applicable, by reason of California Civil Code §§ 2808, 2809, 2810, 2819, 2832, 2839 (but only to the extent of a mere offer of performance in full by Authority without the capacity to perform or actual tender of performance, or where Developer has rejected an Authority offer to perform as inadequate), 2845 and 2855 (but only with respect to Specified Disputes). Port District and City expressly reserve the right to assert, each on their own behalf, any defense(s) Authority may have under the terms of this Agreement to excuse or reduce any Authority obligation to pay Indenture Funds to Developer. The Authority shall use commercially reasonable efforts to pursue recovery from (a) individuals responsible for misappropriation of Indenture Funds and (b) any crime insurance maintained by the Authority in connection with misappropriation of Indenture Funds. Port District shall use commercially reasonable efforts to pursue recovery from (a) individuals employed by the Port District who are responsible for misappropriation of Indenture Funds and (b) any crime insurance maintained by the Port District in connection with misappropriation of Indenture Funds. City shall use commercially reasonable efforts to pursue recovery from (a) individuals employed by the City who are responsible

for misappropriation of Indenture Funds and (b) any crime insurance maintained by the City in connection with misappropriation of Indenture Funds. The City and the Port District's only obligation to pay the Specified Obligations is set forth in this Section 21.7.

ARTICLE XXII ASSIGNMENT PARTICIPATION FEE

22.1. Assignment Participation Fee. Upon each (a) Assignment of the Sublease pursuant to Section 10.7 of the Sublease, (b) a change in the composition of the direct or indirect ownership of RIDA, and (c) a sublease under the Sublease of all or Substantially All of the Facility (defined in the Sublease), RIDA shall pay to the Port District, as the owner of the Site, a fee (the "**Assignment Participation Fee**") in an amount equal to one percent (1%) of the Assignment Proceeds of such transaction; provided, however, that RIDA shall not pay the Assignment Participation Fee (i) if one or more of the members of RIDA (as of the date of Completion of the Convention Center and the City's issuance of the final certificate of occupancy for the Convention Center) which shall include, as applicable (A) each sibling of such Person, the spouse of such Person, and each parent, child, grandchild or great-grandchild of such Person (including relatives by marriage); (B) any trust for the benefit of such Person or any of the foregoing members of his or her family; (C) where such Person is a trust, any beneficiary of the trust of any of the foregoing family members of a beneficiary of the trust, or any other trust established for the benefit of any of the foregoing; and (D) each Person that Controls, is Controlled by, or in under common Control of, such Person or any of the foregoing Persons (each, an "**Original Member**"), collectively, directly or indirectly, owns at least a ten percent (10%) ownership interest in the Initial Project Improvements (including through direct or indirect ownership in RIDA), (ii) in the case of any Transfer in connection with any foreclosure on the Permitted Encumbrance or any action in lieu of foreclosure by a Permitted Lender or to a Foreclosure Purchaser that is a Permitted Lender or an SPE Lender Affiliate or the immediately subsequent Transfer by such Foreclosure Purchaser that is a Permitted Lender or an SPE Lender Affiliate to any other Person consented to by the Port District, (iii) in the case of a change in the composition of the direct or indirect ownership of RIDA as a result of an Equity Collateral Enforcement Action by a Permitted Mezzanine Lender or (iv) in the case of a change in the composition of the direct or indirect ownership of RIDA resulting from a transfer of ownership interests traded on a recognized public exchange. Prior to any Public Agency's consent to any transaction subject to an Assignment Participation Fee, RIDA shall deliver to the Port District a written statement showing the calculation of the Assignment Participation Fee owed to the Port District from RIDA based on the terms of the transaction and an organizational chart showing all Persons holding at least a twenty percent (20%) direct or indirect ownership interest in the Initial Project Improvements prior to such transaction and after such transaction. The statement of the calculation of the Assignment Participation Fee shall contain such detail as may be reasonably requested by the Port District to verify the calculation of the Assignment Participation Fee. Developer shall pay in full to the Port District the Assignment Participation Fee that is due to the Port District concurrent with the completion of the transaction. The obligation to pay the Assignment Participation Fee shall be a joint and several obligation of the transferee and transferor.

For the purposes of this Section 22.1, the term "**Assignment Proceeds**" shall mean the purchase price or other consideration that is: (a) paid (either in cash or by an assumption of debt or other consideration and, if paid over time, the present value of the total consideration using the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%)) to the RIDA and/or holders of direct or indirect interests in RIDA and (b) fairly attributable to RIDA's interest in the Sublease and the Initial Project Improvements in connection with the subject

transaction less the sum of (x) any reasonable prorrations, closing costs or other customary deductions to the purchase price for which the seller is responsible, (y) the certified cost of designing, developing and constructing the Initial Project Improvements as of the time of the Completion of the Initial Project Improvements and (z) one hundred (100) times the amount of any Assignment Proceeds that have been previously paid to the Port District, which sum shall be prorated in the case of an assignment of a portion of the Initial Project Improvements, which sum shall be prorated in the case of an assignment of a portion of the Initial Project Improvements. Notwithstanding the foregoing, if at any time an Assignment Participation Fee is payable pursuant to this Agreement and an Assignment Participation Fee (as defined in the Ground Lease) is payable pursuant to the Ground Lease, then RIDA shall, in its reasonable discretion, determine the allocation of the assignment proceeds between the Assignment Proceeds with respect to this Agreement and the Assignment Proceeds (as defined in the Ground Lease) with respect to the Ground Lease.

Upon the request of the Port District from time to time (which request shall not be made more frequently than once per year), except in the case of Completion of the Convention Center, in which case RIDA shall deliver to the Port District such schedule, and such evidence, without request from the Port District, within five (5) days of Completion of the Convention Center, RIDA shall provide the Port District with a schedule listing the name and mailing address of each Person holding at least twenty percent (20%) of the direct or indirect ownership interests in RIDA or the Initial Project Improvements and, if then true, evidence that one or more Original Members collectively holds at least ten percent (10%) of the direct or indirect ownership interest in RIDA or the Initial Project Improvements. In the event that such Person is a trust, RIDA shall include in such schedule the name and mailing address of each trustee of said trust, together with the name and mailing address of each beneficiary of said trust.

22.2. Assignment and Collateral Assignment. No Party shall assign its interest in this Agreement except to a permitted assignee to which such Party has assigned all of its interests in the Convention Center Leases entered into by such Party. No Party shall assign its interest in any of the Convention Center Leases unless the assignee assumes all of such Party's obligations under this Agreement pursuant to an assignment and assumption agreement reasonably acceptable to the other Parties. Notwithstanding anything to the contrary in this Section 22.2, the Developer may assign all or a part of its entire rights, interests and obligations hereunder, or create a security interest over its rights and interests hereunder, to the Permitted Lenders to whom Developer has assigned or collaterally assigned, or granted a lien or leasehold deed of trust in, the Sublease and the Ground Lease for the purpose of securing financing for the Convention Center, Parking Improvements, and the Resort Hotel. The Public Agencies hereby consent to the granting by the Developer to such Permitted Lenders of security interests in this Agreement. Each Public Agency acknowledges that a Permitted Lender may require that each Public Agency execute a consent to collateral assignment of this Agreement in connection with the Public Agency's consent or deemed consent to a Permitted Financing Encumbrance. As part of such collateral assignment, each Public Agency shall agree, in a manner materially and substantially consistent with the rights afforded to Permitted Lenders under Article IX of the Sublease and Article X of the Ground Lease, (i) to provide such Permitted Lenders notice of and opportunity to cure the Developer's defaults hereunder, (ii) to allow such Permitted Lenders or SPE Lender Affiliates or any successful bidder that is not a Permitted Lenders or SPE Lender (each, a "Foreclosure Purchaser") to assign and reassign all of the Developer's rights hereunder, (iii) to provide for the Public Agencies and the Foreclosure Purchaser to enter into a new agreement on the terms and conditions set forth in this Agreement in connection with a New Lease pursuant to Section 10.3.2 of the Ground Lease or a New Sublease pursuant to Section 9.3(b) of the Sublease; and (iv) to provide for other customary lender protection provisions that are not in

violation of applicable laws or regulations. Each Public Agency shall, upon reasonable request of the Developer, shall execute such consents to or acknowledgements of such assignments by the Developer and other customary documents as Developer or its Permitted Lenders reasonably require in connection with this Agreement and the financing of the Convention Center, Parking Improvements, and the Resort Hotel provided they are materially and substantially consistent with the provisions of Article X of the Ground Lease and Article IX of the Sublease and do not conflict with, modify, or amend any of the terms of this Agreement, the Sublease, or the Ground Lease. As a condition to acquiring title in connection with a foreclosure proceeding (or assignment in lieu thereof) or any assignment following a foreclosure of the tenant's interest under the Ground Lease, sub-sublessee's interest in the Sublease, or Developer's interest in the Project Implementation Agreement, Permitted Lender, SPE Lender Affiliate or Foreclosure Purchaser, as and if applicable, shall assume in writing the Ground Lease, Sublease, and this Agreement, and such Ground Lease, Sublease, and this Agreement, shall continue in full force and effect. Without limiting the forgoing provisions of this Section 22, a foreclosure (or assignment in lieu thereof) of the tenant's interest in the Ground Lease, sub-subtenant's interest in the Sublease, or Developer's interest in this Agreement by the Permitted Lender must be accompanied by a foreclosure (or assignment in lieu thereof) of all such interests, and following such foreclosure (or assignment in lieu thereof), tenant's interest in the Ground Lease, sub-subtenant's interest in the Sublease, or Developer's interest in this Agreement may only be assigned to the same Person. Following a foreclosure of Developer's interest in the Site, Developer's interest in this Agreement may only be assigned to a permitted assignee that has acquired Developer's interest in the Sublease and who expressly assumes the Developer's obligations under the Sublease and this Agreement in an assumption agreement reasonable acceptable to the City and the Port District.

22.3. Non-Disturbance Agreement. With regard to the Hotel Management Agreement with Marriott International, Inc. that has been consented to by the Port District and consented to or deemed to be consented to by the City, on the Commencement Date, and prior to or concurrently with the execution of any other Hotel Management Agreement consented to by the Port District and consented to or deemed to be consented to by the City, the Port District, the City and the Authority shall enter into a non-disturbance agreement with the Hotel Operator substantially in the form attached hereto as Exhibit Y and, if the Hotel Operator is not Marriott, based on terms reasonably acceptable to the Port District, the City, the Authority and Hotel Operator at that time.

ARTICLE XXIII NONDISTURBANCE

23.1. Port District Nondisturbance of Lessee and Sublessee Rights under the Convention Center Leases. In the event the Site Lease terminates prior to the expiration of the Sublease Term (and the Sublease has not terminated in accordance with its terms as a result of an Event of Default by the Developer thereunder), the Port District shall recognize the Facility Lease as, and the Facility Lease shall be deemed to be, a direct lease between the Port District, as lessor, and the City, as lessee, and the Port District shall not disturb the City's leasehold interest or possession of the Site (as defined in the Facility Lease) or the Convention Center under, and on the terms and conditions set forth in, the Facility Lease, and the Port District shall continue to recognize and treat the Sublease as a sublease between the City, as sublessor, and the Developer, as sublessee, and the City shall attorn to and recognize the Port District as the City's lessor under, and on the terms and conditions set forth in, the Facility Lease. In the event the Facility Lease terminates prior to the expiration of the Sublease Term (and the Sublease has not terminated in accordance with its terms as a result of an Event of Default by the Developer thereunder), the Port District shall recognize the Sublease as, and

the Sublease shall be deemed to be, a direct lease between the Authority, as lessor, and the Developer, as lessee, and the Developer shall attorn to and recognize the Authority as the Developer's lessor under, and on the terms and conditions set forth in, the Sublease. In the event both the Site Lease and the Facility Lease terminate prior to the expiration of the Sublease Term (and the Sublease has not terminated in accordance with its terms as a result of an Event of Default by the Developer thereunder), (i) the Port District shall recognize the Sublease as, and the Sublease shall be deemed to be, a direct lease between the Port District, as lessor, and the Developer, as lessee, and the Port District shall not disturb the Developer's leasehold interest or possession of the Site (as defined in the Sublease) or the Convention Center under, and on the terms and conditions set forth in, the Sublease, and the Developer shall attorn to and recognize the Port District as the Developer's lessor under, and on the terms and conditions set forth in, the Sublease. Each Permitted Lender is an express third party beneficiary of this Section 23.1 and is entitled to enforce this Section 23.1.

23.2. Authority Nondisturbance of Lessee and Sublessee Rights under the Convention Center Leases. In the event the Facility Lease terminates prior to the expiration of the Sublease Term (and the Sublease has not terminated in accordance with its terms as a result of an Event of Default by the Developer thereunder), the Authority shall recognize the Sublease as, and the Sublease shall be deemed to be, a direct lease between the Authority, as lessor, and the Developer, as lessee, and the Authority shall not disturb the Developer's leasehold interest or possession of the Site (as defined in the Sublease) or the Convention Center under, and on the terms and conditions set forth in, the Sublease, and the Developer shall attorn to and recognize the Authority as the Developer's lessor under, and on the terms and conditions set forth in, the Sublease. Each Permitted Lender is an express third party beneficiary of this Section 23.2 and is entitled to enforce this Section 23.2.

ARTICLE XXIV OPERATION OF THE SITE AND THE CONVENTION CENTER

24.1. Approved Agreements. Pursuant to the Sublease, Developer shall take possession of the Site subject to the agreements, licenses, right of entry agreements, and other documents set forth in Exhibit S attached hereto and incorporated herein by reference ("**Approved Agreements**").

24.2. Reservations. The Port District Parties and any third party requested by Port District shall have the right to enter the Site and the Improvements for the purpose of constructing, installing, maintaining, repairing, replacing or removing monitoring wells during normal business hours and upon a three (3) Business Days' prior notice to Developer (except in the case of an emergency in which case no prior notice shall be required but each of such Port District Parties and each of such third parties shall notify Developer and, prior to the Completion of the Resort Hotel, Developer's Risk Construction Manager thereof by phone prior to entering the Site) and Port District shall, and shall cause each of such Port District Parties and each of such third parties to: (a) comply with all applicable security and safety procedures of Developer of which Developer informs Port District in writing and with which such Port District Party and such third party can reasonably comply, and (b) use commercially reasonable efforts to minimize any interference with Developer's operation and use of the Site, the Improvements, the Resort Hotel and the Ground Lease Property, while on the Site and at the Improvements, and, so long as such Port District Parties and such third parties comply with such requirements and do not cause damage to the Site or any Improvements, separate and apart from the construction, installation, maintenance, repairing, replacing, and removal of the monitoring well in or from the Site, Developer shall not be entitled to any monetary payment or other remuneration for incidental costs imposed on Developer resulting from, any such access to the Site or the Improvements by such Port District Parties or such third parties. The Port District Parties shall not

cause any damage to the Site or any Improvements in connection with the construction, installation, maintenance, repairing, replacing and removal of any monitoring wells in or from the Site that adversely affects the use, operation or appearance of the Site or any of the Improvements. Port District shall reasonably cooperate with Developer in determining the location of any new monitoring well that is required by an order of the SDRWQCB. Except in the case of an emergency, Port District shall consult with Developer to ensure that the interference with Developer's operation and use of the Site, the Improvements, the Resort Hotel and the Ground Lease Property is minimized to the extent commercially reasonable efforts permit.

Port District and Developer shall independently have the right to grant on reasonable terms and notice to the other, a license or easement or other access agreement to Rohr, Inc., a United Technologies Aerospace Systems Company (together with its successors and assigns, "Rohr") for Rohr and its authorized contractors and agents to access the Site upon reasonable prior notice to Developer 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); provided, however, that if Port District grants a license or easement or other access agreement to Rohr, it shall first consult with Developer to attempt reasonably and in good faith, and shall use reasonable efforts, to avoid interference with Developer's day-to-day operations on the Site which interference is (a) unreasonable or (b) both material and reasonably avoidable. Developer shall have the right to coordinate with Rohr to install, relocate, and/or remove any Remediation Facilities (as defined in the Relocation Agreement), subject to (a) Rohr securing any necessary approvals from the SDRWQCB and (b) Developer providing advance notice to Port District that describes the proposed installation, relocation and/or removal of the Remediation Facilities and requests Port District's approval thereof ("**Remediation Facilities Notice**") and receiving Port District's written approval thereof (which approval shall not be unreasonably withheld, conditioned or delayed); provided, however, that, within twenty (20) days after Developer provides any Remediation Facilities Notice to Port District, Port District shall provide notice to Developer ("Remediation Facilities Response") that (i) approves the activities described in such Remediation Facilities Notice or (ii) denies Port District's approval of some or all of the activities described in such Remediation Facilities Notice and describes in reasonable detail the reasonable basis for such denial; and provided, further, that if Port District fails to provide a Remediation Facilities Response to Developer within such twenty- (20-) day period, then Developer may re-deliver its Remediation Facilities Notice to Port District and, if Port District fails to provide a Remediation Facilities Response thereto within ten (10) days after Developer provides such re-delivered Remediation Facilities Notice to Port District, then Port District's approval of such Remediation Facilities Notice shall be deemed granted. Developer and Port District acknowledge and agree that neither Developer nor Port District shall be responsible to the other for any incidental costs or expenses (e.g., security, overtime, inspection, or management-related expenses) incurred by the other Party arising from or related to providing Site access to Rohr and its authorized contractors and agents for the sampling, operation, maintenance, relocation, replacement, removal and closure of the groundwater monitoring, soil vapor or extraction wells or other Remediation Facilities (as defined in the Relocation Agreement).

Port District shall present to the BPC for its reasonable consideration any reasonable request by Developer in writing for an easement on, over, under or across the Site to others, including, without limitation, any Governmental Authority, for the purpose of constructing, installing, maintaining, repairing, replacing and removing utility systems in connection with the development, construction, use or operation of the Site and the Improvements; provided, however, that, in each case, (A) the term of such easement shall not exceed the Term; (B) Port District shall not be

responsible for any cost or expense relating to such easement, including without limitation, maintenance thereof; (C) Port District shall have the right to terminate such easement at no cost or expense to Port District in the event of an early termination of this Agreement; (D) Port District shall have the right to relocate such easement, at any time, in Port District's sole and absolute discretion, at the grantee's sole cost and expense with respect to the first relocation of such easement and at Port District's sole cost and expense with respect to any subsequent relocation of such easement, unless agreed to otherwise by Port District and the grantee (provided that Port District shall not consider whether the prospective grantee has agreed to bear such costs for any relocation of such easement after the first relocation in determining whether to grant such an easement); (E) Port District shall have the right to approve the location and dimensions of the easement in Port District's reasonable discretion; and (F) at Port District's election, the grantee shall (at the grantee's own cost and expense) remove any utility system constructed or installed pursuant to such easement at the expiration or earlier termination of the Ground Lease. The City and the Authority hereby consent to any such easement granted by the Port District.

No Public Agency shall, without the prior written consent of Developer and, while any Permitted Financing Encumbrance remains outstanding or during any New Lease Period, each Permitted Lender, which consent shall not be unreasonably withheld, conditioned or delayed, encumber the Site or the Improvements during the Term or during any New Lease Period, except for (i) any documents effectuating public financing by the Port District, the City, and the JEPA, including any refinancing thereof, of the Site or the Developer's Phase 1A Infrastructure Improvements that Developer has agreed to prior to the Commencement Date, or the Convention Center that Developer has agreed to prior to the Expansion Date, or that Developer agrees to, in Developer's reasonable discretion, during the Term, except for any such document that may impose any new obligation, limitation or prohibition on Developer, the Site, the Improvements, the Convention Center prior to the Expansion Date, the Developer's Phase 1A Infrastructure Improvements, this Agreement or any Contemporaneous Agreement, in which case Developer's consent shall be in Developer's sole discretion, (ii) the Special Tax District and any modifications thereto that Developer agrees to, in Developer's reasonable discretion, (iii) as permitted under this Section 24.2, or (iv) with respect to Port District only, as required by Laws (provided, that, any such encumbrance under this subsection (iv) shall not result in an encumbrance that is senior in right of priority to that of any Convention Center Lease).

24.3. Cooperation in connection with Condemnation. Each Party shall cooperate in good faith to ensure an award of fair market value is obtained in the event of any taking by eminent domain or condemnation with respect to the Convention Center. Each Party shall use commercially reasonable efforts to perform its respective obligations under the Convention Center Leases related to condemnation and casualty proceeds.

ARTICLE XXV "AS-IS" LEASE AND WAIVERS

25.1. Developer's Acknowledgment. Developer acknowledges that prior to entering into this Agreement and the Sublease, Port District has given Developer sufficient opportunity to consider, inspect and review, to Developer'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) Developer's determination of the feasibility of Developer'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 Developer'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 Agreement or the Sublease, Developer expressly assumes the risk that adverse conditions affecting the Site have not been revealed by Developer's investigations.

25.2. Only Port District's Express Written Agreements Binding. Developer acknowledges and agrees that no Person acting on behalf of Port District is authorized to make, and that except as expressly set forth in this Agreement and the Contemporaneous Agreements, neither Port District nor anyone acting for or on behalf of Port District has made, any representation, warranty, agreement, statement, guaranty or promise to Developer, or to anyone acting for or on behalf of Developer, concerning the Condition of the Site or any other aspect of the Site. Developer 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 Port District which is not expressly set forth in this Agreement and the Contemporaneous Agreements as of the Commencement Date will be valid or binding on Port District. Port District acknowledges and agrees that no representation, warranty, agreement, statement, guaranty or promise, if any, made by any Person for or acting on behalf of Developer which is not expressly set forth in this Agreement and the Contemporaneous Agreements as of the Commencement Date will be valid or binding on Developer.

25.3. As-Is. Developer further acknowledges and agrees that Developer's execution of this Agreement shall constitute Developer's representation, warranty and agreement that the Condition of the Site has been independently verified by Developer to its full satisfaction, and that, except to the extent of the express covenants of the City set forth in the Sublease, Developer will be developing the Site and subleasing the Site based solely upon and in reliance on its own inspections, evaluations, analyses and conclusions, or those of Developer's representatives; and that DEVELOPER IS DEVELOPING THE SITE AND SUBLEASING 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 THE DEVELOPER'S EXECUTION OF THIS AGREEMENT AND THE SUBLEASE, INCLUDING ANY EXISTING IMPROVEMENTS. Without limiting the scope or generality of the foregoing, Developer expressly assumes the risk that the Site does not or will not comply with any Laws now or hereafter in effect.

25.4. Waivers, Disclaimers and Indemnity.

25.4.1. Waiver and Disclaimer. Developer hereby fully and forever waives, and Port District 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.

25.4.2. Port District's Materials. Developer 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 Developer has received or may hereafter receive from Port District Parties (collectively, the "**Port District's Materials**") have been furnished without warranty of any kind (other than that Port District has delivered true and correct copies of each of the items set forth on Exhibit T attached hereto as filed in the Office of the Port District Clerk ("**District Documents**")) and on the express condition that Developer will make its own independent verification of the accuracy, reliability and completeness of such Port District's Materials and that Developer will not rely thereon. Accordingly, subject to terms of Section 25.4.3 below, Developer 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, Port District Parties or any of the Persons that prepared or furnished any of the Port District's Materials as a result of the inaccuracy, unreliability or incompleteness of, or any defect or mistake in, any such Port District's Materials, and Developer hereby fully and forever releases, acquits and discharges Port District Parties and each Person furnishing such Port District's Materials of and from, any such claims, actions, causes of action, proceedings or liability, whether known or unknown (other than in connection with Port District's breach of its representation and warranty set forth in this Section 25.4.2 that Port District has delivered to Developer true and correct copies of each of the District Documents.

25.4.3. Release and Waiver.

25.4.3.1. Release. Except to the extent of Claims (as defined below) against Port District arising from any breach by Port District of its covenants and obligations expressly provided in this Agreement or the Site Lease, or Port District's representation and warranty set forth in Section 22.4.2 of the Ground Lease or Section 18(d)(ii) of the Site Lease, Developer, on behalf of Developer, its successors and assigns, hereby fully and forever releases, acquits and discharges Port District of and from, and hereby fully, and forever waives and agrees not to assert any and all 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 whatsoever (individually and collectively, "**Claims**"), whether known or unknown, direct or indirect, foreseeable or unforeseeable, absolute or contingent, that any Developer Party, Hotel Operator or any of Developer'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 Port District (or any Person acting for or on behalf of Port District or for whose conduct Port District may be liable), whether or not such act be the active, passive or sole negligence of Port District (or any Person acting for or on behalf of Port District or for whose conduct Port District may be liable), in connection with 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 Port District (or any Person acting for or on behalf of Port District or for whose conduct Port District may be liable) or any predecessor(s)-in-interest in the Site of Port District.

25.4.3.2. Waiver of Civil Code Section 1542. With respect to all releases made by Developer under or pursuant to Section 6.12 of the Sublease and this Article XXV, Developer 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.”

Developer: _____

25.5. Survival. The terms of this Article XXV shall survive the expiration or earlier termination of this Agreement.

ARTICLE XXVI MISCELLANEOUS PROVISIONS

26.1. Notices. All notices and demands given pursuant to this Agreement shall be written. They shall be deemed served (i) immediately, upon personal delivery; (ii) the next Business Day, if sent prepaid by recognized overnight service such as FedEx for delivery the next Business Day; or (iii) three (3) Business Days after deposit in the United States mail, certified or registered mail, return receipt requested, first-class postage prepaid.

Each Party to this Agreement shall be provided with a copy of each notice given to any other Party under this Agreement.

Until notice of a change of address is properly given, notice shall be given at the following addresses:

To the Authority:

Chula Vista Bayfront Facilities Financing Authority

[●]

[●]

Attention: [●]

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

With a copy to: City of Chula Vista
276 Fourth Avenue
Chula Vista, California 91910
Attention: Finance Director

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

To the Trustee: [●]
[●]
[●]
Attention: [●]

With a copy to: [●]
[●]
[●]
Attention: [●]

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

With a copy to: 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

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

To RIDA: 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

Notices to the Trustee shall be given initially either telephonically or by written telecommunication or electronic mail and shall then be confirmed in writing delivered by first class mail, postage prepaid. The Authority, the City, the Port District, the Financing District, the Developer, and the Trustee, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

26.2. Captions. Captions in this Agreement are inserted for convenience of reference. They do not define, describe or limit any term of this Agreement.

26.3. No Merger. At any time during the Term, if any of Port District's, Authority's, City's, or Developer's estates in the Site become vested in the same owner, none of the Site Lease, the Facility Lease, or the Sublease shall be terminated by application of the doctrine of merger except at the express consent of all remaining parties to the Convention Center Leases and with the consent of any Permitted Mortgage Lender.

26.4. Recording. Unless the Parties agree otherwise in writing in advance, on or before the Commencement Date, the Parties shall execute a Memorandum of Agreement substantially in the form of Exhibit R attached hereto (the "**Memorandum of Agreement**"). Any Party may cause the Memorandum of Agreement to be recorded at such Party's sole cost and such Party shall be solely responsible for any transfer taxes or fees required to be paid in connection with the recording of the Memorandum of Agreement.

26.5. Port District Transfer. The Authority, the City, and the Developer each acknowledges that, subject to the Port Act and the oversight of the California State Lands Commission, Port District may be required by applicable law to transfer all or any portion of its interest in the Site and in the Site Lease, and the Authority, the City, and the Developer each agrees that in the event of any such transfer and the express assumption of Port District's obligations hereunder and under each of the documents set forth on Exhibit Q attached hereto (a "**Port District Transfer**") by the transferee, Port District shall automatically be released from all liability under the Site Lease and this Agreement for periods after the date of such Port District Transfer, and the Authority, the City, and the Developer each agrees to look solely to such transferee for the performance of Port District's obligations hereunder that arise after the date of such Port District Transfer. Each Person constituting the Lessor under the Site Lease or the Port District under this Agreement shall be liable only for those obligations arising during its period of ownership of the Site and shall be released from further obligations after it completes a Port District Transfer.

26.6. Time of Essence. Time is of the essence with respect to this Agreement and each of its provisions.

26.7. Partial Invalidity. If any term, provision, covenant or condition contained in this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision, covenant or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent possible permitted by Law.

26.8. Entire Agreement. It is understood and acknowledged that there are no oral agreements between the Parties affecting this Agreement and this Agreement 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 Agreement contains all of the terms, covenants, conditions, warranties and agreements of the Parties relating in any manner to the construction of the Convention Center, the Developer's Phase 1A Infrastructure Improvements, and (as between the Port District and the Developer) the Remaining Phase 1A Infrastructure 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; and none of the terms, covenants, conditions or provisions of this Agreement can be modified, deleted or added to except in writing signed by the Parties. 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 Agreement. However, Developer acknowledges and agrees that other documents may restrict Developer's use of the Project Site and the Improvements or impose other obligations not specifically referenced in this Agreement, including, but not limited to, conditions of approval of a CDP or mitigation measures under CEQA.

26.9. Joint and Several. If there is more than one Person constituting Developer (i) the obligations imposed upon such persons or entities under this Agreement shall be joint and several and (ii) the act or signature of, or notice from or to, any one or more of them with respect to this Agreement shall be binding upon each and all of such persons and entities with the same force and effect as if each and all of them had so acted or signed, or given or received such notice.

26.10. Developer's Authority. Developer hereby represents and warrants as of the Effective Date that Developer is a duly formed and existing entity qualified to do business in the state in which the Project Site is located and that Developer has full right and authority to execute and deliver this Agreement and that each Person signing on behalf of Developer is authorized to do so.

26.11. Interaction with Sewer Agreement. The Parties agree that with respect to the sewer improvements specifically described in the Sewer Agreement ("City Sewer Improvements") only, because such City Sewer Improvements are being paid for solely out of City funds, they will be constructed by Developer within City rights of way, and will be accepted, owned, and maintained by the City, the Sewer Agreement shall govern the terms for the construction and reimbursement of such City Sewer Improvements. Notwithstanding the foregoing, Developer acknowledges and agrees that (a) Developer's obligations under Section 3.1 (Term – as it relates to the Developer's Phase 1A Infrastructure Improvements Site), Section 5.1.1.1 (Construction of Project), Section 5.7

(Entitlements), Section 7.2 (Compliance with Laws (except Section 7.2.1)), Section 8.1.2 (Other), Section 8.1.3 (Environment), Section 8.1.4 (Access to Project Site), Section 8.2 (Public Right-of-Way), Article XIV (as to Port District and Authority only), Article XV (as to Port District and Authority only), Article XVIII (as to the Port District and Authority only), Article XX (as to Port District and Authority only), and Article XXI (as to Port District and Authority only), shall govern and control as to the Port District and Authority with respect to the City Sewer Improvements and any portion of the Project Site upon which the City Sewer Improvements shall be constructed and the Port District and Authority shall have all of its rights to enforce such rights herein; (2) the Completion of the City Sewer Improvements shall not be considered in the definition of Developer's Phase 1A Infrastructure Improvements for purposes of determining the Outside Construction Completion Date for purposes of assessing Construction Late Charges; (3) with respect to the City Sewer Improvements only, Developer shall comply with the applicable requirements of the Sewer Agreement to provide payment bonds, performance bonds, and/or warranty bonds; and (4) this provision shall not restrict, modify, or amend, any rights of the Port District pursuant to any easement with the City for any public right of way in which any of the City Sewer Improvements shall be constructed.

26.12. Resolution of Specified Disputes.

26.12.1. Specified Disputes. This Section shall only apply to, and shall be the Parties' exclusive method of dispute resolution for the following specified disputes ("**Specified Disputes**"), defined as:

26.12.1.1. (a) Disputes over amounts that Developer included in a Developer's Phase 1A Payment Request pursuant to Section 9.1.2.1 that Authority (i) did not approve per Section 9.1.2.4, (ii) contested pursuant to Section 9.1.4.3 to the extent the Developer or Authority are unable to agree or settle such dispute within the time period set forth in Section 9.1.4.3(a) or (iii) did not pay within the time set forth in Section 9.1.3, or (b) disputes regarding the Final Accounting or the Authority's Phase 1A Final Review pursuant to Section 9.1.6 and 9.1.6.1.

26.12.1.2. Disputes over the amount of any reduction in the costs payable to Developer as a result of Authority's correction, removal or replacement of Defective Work pursuant to Section 12.2.1 or Section 12.2.2.

26.12.1.3. (a) Disputes over amounts that Developer included in a Convention Center Payment Request pursuant to Section 9.2.1 that Authority (a) did not approve per Section 9.2.2.3, (b) contested pursuant to Section 9.2.4.2 to the extent the Developer or Authority are unable to agree or settle such dispute within the time period set forth in Section 9.2.4.2(a) or (c) did not pay within the time set forth in Section 9.2.3 or (b) disputes regarding the Final Accounting or the Authority's Convention Center Final Review pursuant to Section 9.2.6 and 9.2.6.1.

26.12.1.4. Disputes over any amounts that Authority has paid to Developer that Authority alleges were not properly paid to Developer, except that this Section does not preclude Authority or any other Public Agency from bringing an action in court under the False Claims Act, or for fraud, or for similar actions.

26.12.1.5. Disputes pursuant to Section 26.12.4 as to whether a Demand is subject to arbitration.

26.12.2. Notice. Developer and Authority shall endeavor to reasonably inform the other Party of any Specified Disputes that they respectively believe may be the subject of formal dispute resolution proceedings.

26.12.3. Initiation of Dispute Resolution. Developer or Authority may initiate the dispute resolution process by providing notice and making a written demand to the other Party to initiate formal dispute resolution (“Demand”). The Demand shall include documentation supporting the claimed right to payment, or if the documentation has already been provided, a specific reference to the documents and their location. Upon the filing of a Demand, Developer and Authority shall engage in good faith in executive-level negotiations to attempt to resolve the Specified Dispute. Negotiation shall occur within three (3) Business Days from Developer’s or Authority’s Demand (or, with respect to disputes under Sections 26.12.1.1(b) or 26.12.1.3(b), five (5) Business Days from Developer’s or Authority’s Demand). Developer and Authority may mutually agree to mediation of the Demand in lieu of or in addition to negotiation of a Specified Dispute. The reasonable costs of mediation will be shared evenly between Developer and Authority.

26.12.4. Binding Arbitration. Specified Disputes that remain unresolved within six (6) Business Days after the Demand (the “**Negotiation Deadline**”) shall be submitted to binding arbitration. The arbitration shall be inclusive of all Specified Disputes that have been initiated pursuant to Section 26.12.3 at the time Developer or Authority initiates arbitration, unless the Developer and Authority stipulate otherwise. The complaint in arbitration shall identify all Specified Disputes that are part of the arbitration as well as the amount in controversy. To the extent that the Developer and Authority do not agree in good faith whether a Demand is a Specified Dispute subject to arbitration, the question of whether a Demand is subject to arbitration shall be resolved by the arbitrator. Developer or Authority shall initiate arbitration of a Demand no later than six (6) months after the Cutoff Date.

26.12.5. Selection of Arbitrator. The Parties have approved each of the arbitrators (the “**Approved Arbitrators**”) listed on Exhibit N-1 (the “**Approved Arbitrator List**”). After the Negotiation Deadline, Developer or Authority may contact the Approved Arbitrator that is highest on the Approved Arbitrator List to determine whether he/she is available to serve as the arbitrator. If such Approved Arbitrator responds that he/she is unavailable or does not indicate that he/she is available to serve as the arbitrator within three (3) Business Days after the date on which contacted, then such Approved Arbitrator shall be deemed unavailable. Developer or Authority may then contact the Approved Arbitrator that is next on the Approved Arbitrator List, and such process shall continue on an iterative basis until an Approved Arbitrator has confirmed their availability or until all of Approved Arbitrators on the Approved Arbitrator List are deemed unavailable. If none of the Approved Arbitrators is available, then Developer and Authority shall, within two (2) Business Days after Developer or Authority determines that none of the Approved Arbitrators is available, exchange a list of five preferred arbitrators, each of whom must be experienced in construction law and resolving construction claims, and each of whom shall be a retired judge or an attorney, located in Southern California. The Developer and Authority shall mutually agree on an arbitrator. In the event that an agreement cannot be reached within two (2) Business Days after receipt of such lists, each side shall strike one of the other parties’ arbitrators until only four names remain. Any of the remaining four who are unable to take on the Specified Dispute shall be stricken. If an agreement still cannot be reached, the arbitrator shall be selected by lot from the remaining names.

26.12.6. Selection of Arbitration Rules. The arbitration shall proceed in accordance with the JAMS Expedited Construction Arbitration Rules (the “**JAMS Rules**”). The JAMS Rules

shall apply except to the extent inconsistent with this Section 26.12, and even though the amount of the dispute may be greater than \$100,000. Any arbitration pursuant to this Section 26.12 shall be completed (whether by settlement or the issuance of an award by the arbitrator) within twenty (20) Business Days after the arbitrator is selected.

26.12.7. Arbitrator's Jurisdiction. The arbitrator's jurisdiction shall be limited to determining whether a Demand is subject to arbitration as well as the amount due from one Party to other under this Agreement and ordering the payment of such amounts due from one Party to the other Party by a date certain.

26.12.7.1. For a Specified Dispute arising from a Demand involving a Developer's Phase 1A Payment Request, the arbitrator shall only have jurisdiction to determine whether any amount is owed to Developer in accordance with this Agreement and to order payment to Developer of the amount owed.

26.12.7.2. For a Specified Dispute arising from a Demand involving Defective Work, the arbitrator shall only have jurisdiction to determine the amount of the reduction, if any, in costs payable to Developer and to order payment to allocate such costs.

26.12.7.3. For a Specified Dispute arising from a Demand involving a Convention Center Payment Request, (a) the arbitrator shall only have jurisdiction to determine whether any amount is owed to Developer in accordance with this Agreement and to order payment to Developer of the amount owed, and (b) the arbitrator shall have no power to order the Authority or any other Public Agency to pay any amount to Developer in excess of the sum of the Project Public Investment Amount (not paid to Developer pursuant to this Agreement (other than default interest in accordance with this Agreement)) and the proceeds of Advance Rent (to the extent received by any Public Agency and not paid to Developer pursuant to this Agreement), to order any adjustment to the Project Public Investment Amount, or to order any payment of the Project Public Investment Amount before it is due and payable under this Agreement.

26.12.7.4. For a Specified Dispute arising from a Demand involving an overpayment by Authority, the arbitrator shall only have jurisdiction to determine whether any amount is owed to Authority in accordance with this Agreement and to order payment to Authority of the amount owed.

26.12.7.5. For all Specified Disputes, the costs necessary to retain and commence arbitration shall be shared evenly between Developer and Authority, but the arbitrator may order the non-prevailing party to pay the reasonable attorney's fees and costs of the prevailing party as part of an award.

26.12.7.6. For all Specified Disputes, the arbitrator shall have no authority or power to do any of the following: (i) award payment of any amount that is not consistent with this Agreement or expressly authorized within the terms of this Agreement; (ii) award any consequential, incidental or punitive damages or any amounts relating to lost profits, lost business opportunity or similar damages; (iii) commit errors of law; (iv) decide any matter related to this Agreement that is not specifically identified as a Specified Dispute arising from a Demand; (v) order injunctive relief or (vi) order any Public Agency to perform any discretionary act.

26.12.7.7. For the resolution of Demands arising under all Specified Disputes, the arbitrator shall issue a written determination containing the arbitrator's findings and the basis of the award.

26.12.8. Judgment. Judgment on any award rendered by an arbitrator may be entered in any court having jurisdiction thereof.

26.12.9. Interpretation. This procedure for resolution of Specified Disputes shall not limit the rights of the Public Agencies to initiate a claim against Developer or any other person: (a) arising from latent and/or patent deficiencies in workmanship, equipment or materials; (b) arising from guarantees to repair or warranty obligations; (c) for defense and indemnity pursuant to Article XIV of this Agreement (d) under any security for Developer's performance, including calling a bond per Article XIII of this Agreement or enforcing the Completion Guaranty per Section 5.6; or (e) for any remedy under any other agreement between Developer and any of the Public Agencies.

26.12.10. Resolution of Other Disputes. Any dispute, controversy or claim arising out of or relating to this Agreement or any Convention Center Lease, or the breach hereof or thereof, shall be subject to a non-binding mandatory mediation, other than (i) a Specified Dispute; (ii) any action of a Party to seek emergency, immediate, or preliminary relief; (iii) any action of a Public Agency in its governmental or regulatory capacity; or (iv) any action involving fraud, false claims or similar actions. The mediator shall be a qualified mediator mutually acceptable to the Parties involved in the dispute. The Parties have approved each of the mediators (the "**Approved Mediators**") listed on Exhibit N-2 (the "**Approved Mediator List**"). The Port District and Developer may elect to use the Approved Mediator List for any non-binding mediation elected or required under the Ground Lease. The Parties involved in the dispute shall each pay an equal share of the cost of the mediation and each such Party shall pay its own costs and expenses, including any attorneys' fees, related to the mediation.

26.13. Attorneys' Fees. Should any suit or action be commenced to enforce, protect, or establish any right or remedy of any of the terms and conditions hereof or under the Convention Center Subleases to which a Party hereto is a party or a third party beneficiary, including without limitation a summary action commenced by the Parties under the laws of the state of California relating to the unlawful detention of property, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit, including, without limitation, any and all costs incurred in enforcing, perfecting and executing such judgment.

26.14. Transaction Costs. To the extent Developer requests any approval, consent or other action by Port District, Authority, or the City under this Agreement, or Port District, Authority, or City, need to approve, consent, or perform another action for any of the Port District, Authority, or City, to process an approval, consent, or other action for Developer, Developer shall pay or reimburse Port District, Authority, or City, as applicable, upon written demand therefor, all of Port District's, Authority's, or City's, as applicable, reasonable attorneys' fees and other third party costs incurred by Port District, Authority, or City in connection therewith, together with Port District's, Authority's, and City's, then current processing or cost recovery fee for, Port, Authority, or City similar transactions consistent with any schedule of such fees then utilized by Port District, Authority, or City. Port District, Authority, or City, as applicable, shall provide Developer with a copy of any such fee schedule following written request therefor from Developer. Such costs and fees shall be payable to Port District, Authority, or City, as applicable, whether or not Port District, Authority, or City, as applicable, grants such approval or consent, or undertakes the action requested

by Developer or performed by Port District, Authority, or City, to approve, consent, or perform another action for any of the Port District, Authority, or City, to process such approval, consent, or action for Developer. Notwithstanding anything to the contrary in this Section, (i) Section 19.2 and not this Section 26.14 shall apply to any Tax Claim, (ii) Developer shall have the right to seek reimbursement of any amount paid under this Section 26.14 that qualifies as a Developer's Phase 1A Infrastructure Improvements Costs and the Authority shall process such request in the same manner as any other payment request under Section 9.1, and (iii) Developer shall have no obligation to pay Port District, Authority, or City for any cost that the Port District, Authority, or City has expressly agreed to pay in this Agreement or Contemporaneous Agreement.

26.15. Provisions Regarding Authority Operations. Until the earlier of (a) Full Payment or (b) the earlier termination of the Sublease and this Agreement, the Authority agrees to comply with the following:

26.15.1. The Authority will not engage in any transactions or operations other than (i) issuing the Authority Bonds, and (ii) engaging in the transactions described in this Agreement, the Convention Center Leases and the Indenture.

26.15.2. The Authority will neither incur nor guaranty any indebtedness other than the Authority Bonds.

26.15.3. The Authority will have a mailing address separate from the Public Agencies.

26.15.4. The Authority will maintain financial books and records separate from those of any other Person.

26.16. Replacement Trustees. Until Full Payment or the earlier termination of this Agreement, Authority shall not approve or effect the replacement of the Trustee under the Authority Indenture unless the Developer first provides its written consent, which consent shall not unreasonably withheld, conditioned or delayed, and such approval shall not be required if US Bank National Association or The Bank of New York Mellon Trust Company, N.A., will be the replacement Trustee. Authority will provide Developer with written notice of any proposed replacement of the Trustee under the Authority Indenture promptly after Authority learns of such proposed replacement.

26.17. Effect of Section 365(h)(1) Election. If Port District elects to treat the Site Lease as terminated under Section 365(h)(1) of the Bankruptcy Code, then the Authority shall exercise its right under Section 365(h)(1) of the Bankruptcy Code to remain in possession of the Site under and as defined in the Site Lease. If the Authority elects to treat the Facility Lease as terminated under Section 365(h)(1) of the Bankruptcy Code, then the City shall exercise its right under Section 365(h)(1) of the Bankruptcy Code to remain in possession of the Site and the Improvements, in each case under and as defined in the Facility Lease.

26.18. Financial Information Regarding Continuous Operations. To assist Developer in making any determination described in 6.1(c) of the Sublease, the Authority, the other Public Agencies and the Financing District shall deliver to Developer, within fifteen (15) Business Days after Developer's reasonable request therefor, (i) a written and reasonably detailed forecast of the sources and amounts of Revenues (as defined in the Indenture) that will accrue during the next

twelve (12) month period, (ii) a description of all funds and accounts established pursuant to the Indenture (including the amounts deposited therein) and (iii) such other financial information as Developer shall reasonably request regarding revenues held, paid or to be paid by any Public Agency or the Financing District to the Authority or the Trustee pursuant to the terms of this Agreement, the Convention Center Leases and the Indenture, as applicable. If the Public Agencies or Financing District do not provide information reasonably requested by Developer within such fifteen (15) Business Day period, the Developer will provide written notice to the Public Agency or Financing District, as applicable, describing the information that was not provided and the applicable Public Agency or Financing District shall provide such information to Developer within five (5) Business Days from the date such notice was received (or, with respect to information reasonably requested by Developer under clause (iii) in the immediately preceding sentence, such additional time as may reasonably be required by the Public Agencies or Financing District to compile and provide such information).

26.19. Governing Law. Venue for any legal proceeding shall be in San Diego County, California. This Agreement shall be construed and enforced in accordance with the Laws of the State of California.

26.20. Modification. This Agreement may not be amended, modified, terminated or rescinded, in whole or in part, except by written instrument duly executed and acknowledged by the Parties hereto, their successors or assigns. Neither the Facility Lease nor the Site Lease shall be terminated or rescinded, or amended or otherwise modified in any manner that could reasonably be expected to have an adverse effect on Developer or any Permitted Lender, without Developer's prior written consent and the consent of each Permitted Lender.

26.21. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement.

26.22. Drafting Presumption; Review Standard. The parties acknowledge that this Agreement has been agreed to by each of the Parties, that each of the Parties have consulted with attorneys with respect to the terms of this Agreement and that no presumption shall be created against the drafting Party. Any deletion of language from this Agreement prior to its execution by the Parties 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 Agreement, any approval or consent to be given by Port District, BPC, City, or the City Council, may be given or withheld in Port District's, BPC's, City's, or the City Council's, sole and absolute discretion.

26.23. Administrative Claims. No suit or arbitration (other than arbitration pursuant to Section 26.12) shall be brought arising out of this Agreement against the Authority or the Port District unless a claim has first been presented in writing and filed with the Authority or the Port District, as applicable, and acted upon by the Authority or the Port District, as applicable, in accordance with the procedures set forth in Section 910, et seq., of the California Government Code, as same may from time to time be amended (the provisions of which are incorporated by this reference as if fully set forth herein), and such policies and procedures used by the Authority or the Port District, as applicable, in the implementation of same. No suit or arbitration (other than arbitration pursuant to Section 26.12) shall be brought arising out of this Agreement against the City unless a claim has first been presented in writing and filed with the City and acted upon by the City

in accordance with the procedures set forth in Chapter 1.34 of the CVMC, as same may from time to time be amended (the provisions of which are incorporated by this reference as if fully set forth herein), and such policies and procedures used by the City in the implementation of same. For the avoidance of doubt, this Section 26.22 shall not apply to prevent or delay the initiation of mediation or arbitration as permitted by Section 26.12.

26.24. Non-liability of Public Agency Officials and Employees. No officer, director, member, official, employee, consultant, or member of the governing board of any Public Agency shall be personally liable to Developer in the event of any default or breach by such Public Agency, or for any amount which may become due to Developer, or on any obligations under the terms of this Agreement.

26.25. Authority Executive Director; Authority Approvals and Actions. Authority shall maintain authority of this Agreement and the authority to implement this Agreement on behalf of Authority through Authority's Executive Director (or his/her duly authorized representative). The Executive Director and his/her duly authorized representative(s) shall have the authority to make approvals, issue interpretations, waive provisions, request issuance of warrants and make payments authorized hereunder, make and execute further agreements and/or enter into amendments of this Agreement on behalf of Authority so long as such actions do not materially or substantially change or modify the uses or development permitted on the Project Site, or materially or substantially add to the costs, responsibilities, or liabilities incurred or to be incurred by Authority as specified herein, and such interpretations, waivers and/or amendments may include extensions of time to perform. All material and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the Authority Board. Further, the Executive Director shall maintain the right to submit to the Authority Board for consideration and action any non-material or non-substantive interpretation, waiver or amendment, if in his/her reasonable judgment he/she desires to do so.]

26.26. Further Assurances. From time to time upon the request of a Party, the other Parties shall, at the requesting Party's expense, promptly execute, acknowledge and deliver such further documentation and do such other acts and things as the requesting Party may reasonably request in order to effect fully the purposes of this Agreement in such a manner that is consistent with and does not contradict, modify, or amend this Agreement.

CONTRACTOR'S LICENSE NOTICE. CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS STATE LICENSE BOARD, WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN 4 YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN 10 YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CA 95826.

[End of page. Signature page follows this page.]

IN WITNESS WHEREOF, this Project Implementation Agreement is executed as of the day and year first set forth above.

CITY

CITY OF CHULA VISTA, a California charter city and municipal corporation

DEVELOPER

RIDA CHULA VISTA, LLC, a Delaware limited liability company

California Contractor License Number: 1039979

By: _____
Maria Kachadoorian, City Manager

By: _____ *

ATTEST:

By: _____
Kerry Bigelow, City Clerk

APPROVED AS TO FORM:

By: _____
Glen R. Googins, City Attorney

[Signatures continue on following page]

[Signatures continue from previous page.]

PORT DISTRICT

AUTHORITY

SAN DIEGO UNIFIED PORT DISTRICT,
a public corporation

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

By: _____

By: _____

APPROVED AS TO FORM AND LEGALITY:

APPROVED AS TO FORM AND LEGALITY:

By: _____
Thomas A. Russell, General Counsel

By: _____
Co-Counsel, Thomas A. Russell, General
Counsel of the San Diego Unified Port
District

By: _____
Co-Counsel, Glen Googins, City Attorney
of the City of Chula Vista

**FINANCING DISTRICT BAYFRONT
PROJECT SPECIAL TAX FINANCING
DISTRICT**

By: _____

* Signatories to provide signature authority for signatory

[Definitions Addendum to be inserted.]

Definitions Addendum

This Definitions Addendum constitutes a part of that certain Project Implementation Agreement (the “Agreement”) entered into as of _____, 20__ by and among the City, acting on its behalf and for and on behalf the Financing District, the Port District, the Authority, and Developer and by reference to the same in the Agreement, the following definitions are incorporated into and constitute a part of the Agreement.

DEFINITIONS ADDENDUM

- 2010 TITLE 24: the Building Energy Efficiency Standards, Title 24, Part 6, of the California Code of Regulations in effect as of May 4, 2010.
- 2021A CONSTRUCTION ACCOUNT: the 2021A Account of the Construction Fund maintained by the Trustee pursuant to the Authority Indenture.
- 2021B BOND PROCEEDS SUBACCOUNT: the 2021B Bond Proceeds Subaccount established within the 2021B Construction Account and maintained by the Trustee pursuant to the Indenture.
- 2021B CONSTRUCTION ACCOUNT: 2021B Account of the Construction Fund maintained by the Trustee pursuant to the Authority Indenture.
- 50% ENERGY STANDARD: the requirement in Section 15 of the Settlement Agreement that requires all Developments within the Proposed Project (as defined in the Settlement Agreement) area achieve, in the aggregate, a fifty percent (50%) reduction in annual energy compared to that allowed under 2010 Title 24.
- 75% COMPLETION: the date on which Developer’s Phase 1A Infrastructure Improvements (other than Harbor Park) are seventy-five percent (75%) Complete, as reasonably determined by the Developer.
- ACCEPT / ACCEPTANCE / ACCEPTED: With respect to the Developer’s Phase 1A Infrastructure Improvements or any component thereof, acceptance of the Developer’s Phase 1A Infrastructure Improvements or such component by the City and the Port District, as applicable, which shall occur pursuant to Section 10.1 of the Agreement.
- With respect to the Convention Center, acceptance of the Convention Center by the Authority, which shall occur pursuant to Section 10.2 of the Agreement and shall be evidenced by a certificate of the Authority confirming the Authority’s Acceptance of the Convention Center.
- ACCEPTANCE NOTICE: defined in Section 10.2.1.
- 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 ENERGY SAVINGS MEASURES: energy savings measures, programs or credits available to achieve the 50% Energy Standard. Such Additional Energy Savings Measures may include, without limitation, Developer’s participation in renewable or “time of use” energy purchase programs, and/or other measures identified in Section 15.2 of the Settlement Agreement.

ADEQUATE INSURANCE: insurance that using standards customary in the insurance industry provides adequate protection for the Site and Improvements (other than the Existing Improvements) and for the Port District Parties and/or members of the public using the Site or Improvements (other than the Existing Improvements) or using services connected with the use, operation or occupancy of the Site and Improvements (other than the Existing Improvements) by Developer Parties and Hotel Operator.

ADVANCE RENT: the rent payable by RIDA pursuant to Section 3.4 of the Sublease to the extent the right to such payment has been assigned by the City to the Authority under the Facility Lease.

ADVANCE RENT SIDE LETTER: the letter agreement, dated as of the Effective Date, by and among the Parties.

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.

AGREEMENT: this Project Implementation Agreement between the Authority, the City, the Financing District, the Port District and the Developer. The term “Agreement” shall include any amendment to the Agreement properly approved and executed pursuant to the terms of the Agreement.

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.

ANTICIPATED ASSISTANCE COSTS: with respect to any assistance that Developer requests that Port District provide to Developer, the total amount of Assistance Costs that Port District reasonably anticipates to incur in connection with such assistance.

APPROVED AGREEMENTS: defined in Section 24.1.

APPROVED DRAWINGS AND SPECIFICATIONS:	with respect to the Developer’s Phase 1A Infrastructure Improvements means the drawings and specifications for the Developer’s Phase 1A Infrastructure Improvements attached as Exhibit X-1, as amended or otherwise modified from time to time in accordance with Section 2.1.6 of the Agreement; and (b) with respect to the Remaining Phase 1A Infrastructure Improvements means the drawings and specifications for the Remaining Phase 1A Infrastructure Improvements attached as Exhibit X-2, as revised by the Port District from time to time before Developer exercises a Sweetwater Park Option.
ARCHITECT:	HKS Inc. d/b/a HKS Architects Inc. or any other architect or engineer selected by Developer and approved by Authority (such approval not to be unreasonably withheld, conditioned or delayed).
ARCHITECT’S CERTIFICATE:	a certification from Architect in the form of the Certificate of Architect attached as Exhibit 1 to the Developer Phase 1A Payment Request or the Convention Center Payment Request, as applicable.
ASSIGNMENT:	any disposition, assignment, sale, conveyance, exchange or other transfer of all or any portion of Developer’s interest in the 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 Sublease (as defined in the Sublease).
ASSIGNMENT PARTICIPATION FEE:	defined in Section 22.1.
ASSIGNMENT PROCEEDS:	defined in Section 22.1.
ASSISTANCE COSTS:	with respect to any assistance that Developer requests that Port District provide to Developer, the amount of costs and expenses reasonably incurred or to be incurred by Port District in providing such assistance.
AUTHORITY:	defined in the preamble to the Agreement.
AUTHORITY ACCOUNT:	defined in Section 9.1.1.3(b).
AUTHORITY BOARD:	the Board of Directors of the Chula Vista Bayfront Facilities Financing Authority.
AUTHORITY BONDS:	the Authority Tax-Exempt Bonds and the Authority Taxable Bonds.
AUTHORITY BYLAWS:	the Bylaws of the Chula Vista Bayfront Facilities Financing Authority adopted by the Authority Board on July 25, 2019.
AUTHORITY COUNSEL:	the Port District General Counsel and the City Attorney acting as co-counsel to the Authority.

AUTHORITY EMAIL ADDRESSES: **[Insert initial Authority Email Addresses for Payment Request notices/links]**, and such other electronic mail addresses as shall be provided or substituted by Authority from time to time by written notice to Developer.

AUTHORITY EVENT OF DEFAULT: defined in Section 21.5.

AUTHORITY INDENTURE: the Indenture of Trust, dated as of _____, 2021, by and between the Authority and _____.

AUTHORITY PARTIES: the Authority and the officers, directors, members of the Authority Board, employees, partners, affiliates, agents, contractors, successors and assigns of the Authority, City employees and agents, and Port District employees and agents, in each case, when acting only in the capacity of an Authority Party.

AUTHORITY PROCUREMENT POLICY: the “Chula Vista Bayfront Facilities Financing Authority Procurement Policy for Developer-Performed Public Works” ratified by the Authority Board by the adoption of Authority Resolution 2020-002.

AUTHORITY RESOLUTION 2020-002: the final form of such resolution as ratified by Authority Resolution 2020-007.

AUTHORITY SURPLUS FUND: defined in the Authority Indenture.

AUTHORITY TAXABLE BONDS: the \$ _____ Chula Vista Bayfront Facilities Financing Authority Revenue Bonds (Chula Vista Bayfront Convention Center) Series 2021A (Federally Taxable) issued to finance a portion of the Project Costs.

AUTHORITY TAX-EXEMPT BONDS: the \$ _____ Chula Vista Bayfront Facilities Financing Authority Revenue Bonds (Chula Vista Bayfront Convention Center) Series 2021B (Tax-Exempt) issued to finance a portion of the Developer’s Phase 1A Infrastructure Improvements Costs and a portion of the Remaining Phase 1A Infrastructure Improvements.

AUTHORITY’S CONVENTION CENTER FINAL REVIEW: defined in Section 9.2.6.1.

AUTHORITY’S PHASE 1A FINAL REVIEW: defined in Section 9.1.6.1.

BANKRUPTCY CODE: the United States Bankruptcy Code (11 U.S.C. § 101, et seq.), as amended, and any successor statute.

BANKRUPTCY EVENT:	the occurrence with respect to Developer, any Completion Guarantor(s) or any other Person liable for Developer’s obligations hereunder (including without limitation any member or manager of Developer) of any of the following: (a) appointment of a receiver or custodian for any property of such Person; (b) filing by such Person of a voluntary petition under the provisions of the Bankruptcy Code; or (c) such Person making or consenting to an assignment for the benefit of creditors or a composition of creditors.
BFDIF / BFDIF PROGRAM:	the Bayfront Transportation Development Impact Fee program, as authorized by Chula Vista Municipal Code Chapter 3.54.
BMP:	defined in Section 8.1.3.
BPC:	Board of Port Commissioners of the San Diego Unified Port District.
BUSINESS DAY(S):	Monday through Friday, excluding Holidays.
CASUALTY PROCEEDS:	defined in Section 5.2(a) of the Sublease.
CCC:	defined in Section 7.2.2.
CDP:	defined in Section 7.2.2.
CEQA:	defined in Section 7.2.2.
CERTIFICATES:	defined in Section 15.3.1.
CHULA VISTA BUILDING CODE:	Chula Vista Building Standards Code (Title 15 of the Chula Vista Municipal Code), as amended, and any successor statute.
CHULA VISTA STANDARD SPECIAL PROVISIONS	Section 1-2 of Part 1, Part 2, Part 3, and Part 4 of the City of Chula Vista Standard Special Provisions.
CITY:	the City of Chula Vista, a charter city and municipal corporation. Unless specifically provided otherwise, whenever the Agreement requires an action or approval by City, that action or approval shall be performed by the City representative designated by the Agreement.
CITY ATTORNEY:	the City Attorney of the City or that person’s duly authorized deputy set forth in Schedule 1 of the Authority Bylaws.
CITY COUNCIL:	The City Council of the City of Chula Vista.
CITY MANAGER:	the City Manager of City or his or her designee.

CITY PARTIES:	the 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:	defined in Section 25.4.3.1.
CODE:	the Internal Revenue Code of 1986, as amended.
COMMENCEMENT DATE:	the date on which the term of the Site Lease commences.
COMPLETE AND COMPLETION:	<p>(a) with respect to the Convention Center, means that the Developer has obtained and delivered to Authority a certificate of occupancy or temporary certificate of occupancy for the Convention Center from the City,</p> <p>(b) with respect to the Developer's Phase 1A Infrastructure Improvements, means that the Developer's Phase 1A Infrastructure Improvements are sufficiently complete in accordance with the Contract Documents (excluding, for the avoidance of doubt, punch list items) so that the Developer's Phase 1A Infrastructure Improvements can be utilized for their intended use,</p> <p>(c) with respect to the Remaining Phase 1A Infrastructure Improvements, means that the Remaining Phase 1A Infrastructure Improvements are sufficiently complete in accordance with the Contract Documents (excluding, for the avoidance of doubt, punch list items) so that the Remaining Phase 1A Infrastructure Improvements can be utilized for their intended use; and</p> <p>(d) with respect to the Resort Hotel, as defined in the Ground Lease.</p>
COMPLETION GUARANTOR(S):	defined in each Completion Guaranty.
COMPLETION GUARANTY:	defined in Section 5.6.
CONDEMNATION AND CONDEMNED:	defined in Section 5.1 of the Sublease.
CONDITION OF THE SITE:	defined in Section 25.1.
CONSTRUCTION LATE CHARGES:	defined in Section 5.1.2.
CONSTRUCTION FUND:	defined in the Authority Indenture.

CONSTRUCTION PERIOD: the period between the Commencement Date and the date when the Project is Complete.

CONSTRUCTION REQUIREMENTS: those requirements, conditions and procedures regulating the installation, construction, modification and repair of applicable Improvements and Alterations as described in Exhibit “E” attached to the Agreement.

CONSULTANT SERVICES: defined in Section 5.7.1.

CONTEMPORANEOUS AGREEMENTS: Agreements executed on or around the date hereof by the Parties or their Affiliates with respect to the Development, including but not limited to the Ground Lease, the Convention Center Leases, the Completion Guaranty, the Port Support Agreement and [the Offsite Parking Right of Use Agreement].

CONTRACT DOCUMENTS: the following to the extent applicable to the construction of the Project: the prime construction contract(s), prime construction contract(s) exhibits and addenda, subcontract(s), subcontract(s) exhibits and addenda, and any of the following: notice inviting bids, instructions to bidders, bid (including documentation accompanying bid and any post-bid documentation submitted prior to notice of award), the bonds, the general conditions, permits from the Authority, City and/or, the Port District, as applicable, or other agencies, the special provisions, the plans, standard plans, standard specifications and reference specifications that are incorporated into such prime contract(s) or subcontract(s), the Approved Drawings and Specifications, and all modifications issued after the execution of the subcontract(s), in each case, in connection with the Project or the Remaining Phase 1A Infrastructure Improvements, as applicable.

CONTROL, 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: defined in Recital B.

CONVENTION CENTER BUDGET: a budget for all anticipated Convention Center Costs, including a contingency reserve, broken down by line item, as amended from time to time.

CONVENTION CENTER CONTESTED CHARGES: defined in Section 9.2.4.2.

CONVENTION CENTER CONTRACT SUM:	the sum of (i) the Convention Center Costs, plus (ii) the Total Convention Center Development Fee, plus (iii) the Stipulated Convention Center Overhead Amount.
CONVENTION CENTER COSTS:	the direct and indirect costs (excluding overhead costs) incurred with respect to the development, design, construction, maintenance and permitting of the Convention Center; provided, that Convention Center Costs shall not include Non-Project Costs.
CONVENTION CENTER FINAL AMOUNT:	defined in Section 9.2.6.1.
CONVENTION CENTER LEASES:	defined in Recital D.
CONVENTION CENTER PAYMENT REQUEST:	the Convention Center Payment Request in the form set forth in Exhibit K-2.
CONVENTION CENTER PLANS:	the plans and specifications described in Exhibit F-1 attached to the Agreement, as amended or otherwise modified from time to time in accordance with Section 5.1 of the Agreement.
COUNTY:	the County of San Diego.
COUNTY FUNDED BAYFRONT IMPROVEMENTS SUBACCOUNT:	the County Funded Bayfront Improvements Subaccount established within the 2021B Construction Account and maintained by the Trustee pursuant to the Indenture.
COUNTY FUNDED DEVELOPER'S PHASE 1A SUBACCOUNT:	the County Funded Developer's Phase 1A Subaccount established within the 2021B Construction Account and maintained by the Trustee pursuant to the Indenture.
COUNTY FUNDING AGREEMENT:	defined in Recital F.
COUNTY FUNDS:	the amount actually paid by the County to the Authority pursuant to the County Funding Agreement.
COUNTY FUNDS RELEASE DATE:	the latest to occur of (i) the Cutoff Date; (ii) the date on which all claims with respect to Developer's Phase 1A Infrastructure Improvements Costs have been finally resolved; and (iii) the date on which all amounts that are owing to Developer in respect of the Developer's Phase 1A Infrastructure Improvements Costs have been paid to Developer.
COUNTY SWEETWATER PARK FUNDS:	defined in Section 9.1.1.3(a) of this Agreement.

CPM: defined in Section 5.4.2.

CUTOFF DATE: with respect to each of the Developer’s Phase 1A Infrastructure Improvements, two (2) years from the date of Completion, and with respect to the Convention Center, two (2) years from the date of Completion.

CVBMP: defined in Recital J.

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 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); and (viii) Mitigation Monitoring and Reporting Program for the Chula Vista Bayfront Master Plan (District Clerk No. 56555).

CVMC: the Chula Vista Municipal Code.

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 Port District and Developer 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.

DEFECTIVE WORK: all work, material, or equipment that does not substantially conform to the Contract Documents.

DESIGN AND CONSTRUCTION STANDARDS: the edition of the Design and Construction Standards adopted by the City for public works projects that is in effect when the Approved Drawings and Specifications are approved by the City for purposes of the bids and which is available in the City’s Department of Engineering and Capital Projects, acting on behalf of the Authority, and on the City’s website.

DEVELOPER: RIDA Chula Vista, LLC, a Delaware limited liability company.

DEVELOPER ART INVESTMENT: \$4,774,400.

DEVELOPER FUNDING: defined in Section 19.4.

DEVELOPER MEMBER / DEVELOPER MEMBERS:	defined in Section 20.3.
DEVELOPER PARTY:	RIDA, and the agents, employees, representatives, contractors, subcontractors, suppliers, materialmen, workmen, licensees, concessionaires, Affiliates and successors and assigns of RIDA, and Subtenants, and the agents, employees, representatives, contractors, subcontractors, suppliers, materialmen, workmen, concessionaires, licensees, Affiliates and successors and assigns of each of such Subtenants, in each case, when acting only in the capacity of a Developer Party.
DEVELOPER'S PHASE 1A CONTESTED CHARGES:	defined in Section 9.1.4.3.
DEVELOPER'S PHASE 1A CONTRACT SUM:	the sum of (i) the Developer's Phase 1A Infrastructure Improvements Costs, plus (ii) the Stipulated Developer's Phase 1A Infrastructure Improvements Overhead Costs. Amounts available to be reimbursed to Developer under the Sewer Agreement or credited to Developer under the BFDIF Program are excluded from the Developer's Phase 1A Contract Sum.
DEVELOPER'S PHASE 1A FINAL AMOUNT	defined in Section 9.1.6.1.
DEVELOPER'S PHASE 1A INFRASTRUCTURE IMPROVEMENTS:	the public improvements set forth in Exhibit C attached hereto.
DEVELOPER'S PHASE 1A INFRASTRUCTURE IMPROVEMENTS BUDGET:	a budget for all anticipated Developer's Phase 1A Infrastructure Improvements Costs, including a contingency reserve, broken down by line item, as amended or otherwise modified from time to time.
DEVELOPER'S PHASE 1A INFRASTRUCTURE IMPROVEMENTS COSTS:	(a) the direct and indirect costs (excluding overhead costs) incurred with respect to the development, design, construction, maintenance and permitting of Developer's Phase 1A Infrastructure Improvements and (b) the Early Work Costs; provided, that Developer's Phase 1A Infrastructure Improvements Costs shall include neither Non-Project Costs nor Excluded Costs.
DEVELOPER'S PHASE 1A INFRASTRUCTURE IMPROVEMENTS SITE:	the location of the Developer's Phase 1A Infrastructure Improvements for purposes of pre-construction services and construction.
DEVELOPER'S PHASE 1A PAYMENT REQUEST:	the Developer Phase 1A Payment Request in the form set forth in Exhibit K-1.

DEVELOPER’S PHASE 1A PROJECT ADMINISTRATION FEE:	Five percent (5%) of the Developer’s Phase 1A Project Administration Fee Eligible Costs actually incurred by Developer.
DEVELOPER’S PHASE 1A PROJECT ADMINISTRATION FEE ELIGIBLE COSTS:	hard costs of constructing the components of the Developer’s Phase 1A Infrastructure Improvements that are eligible for reimbursement under the Sewer Agreement and improvements referenced in the Bayfront Transportation Development Impact Fee Nexus Study dated October 2014, which is on file in the office of the City Clerk.
DEVELOPMENT:	Developer’s development of, collectively, the Parking Improvements, the Resort Hotel, the Convention Center and Developer’s Phase 1A Infrastructure Improvements.
DIR:	defined in Section 7.2.3.1(d)(ii).
DISCRETIONARY ENTITLEMENT:	defined in Section 5.7.1.
DISCRETIONARY PROJECT:	defined in Section 5.7.1.
DISTRICT DOCUMENTS:	defined in Section 25.4.2.
DISTRICT SUPPORT PAYMENT / DSP:	defined in Section 5.1.2.
EARLY WORK AGREEMENT:	defined in Recital O.
EARLY WORK COSTS:	the Work Reimbursement Costs (as defined in the Early Work Agreement).
EFFECTIVE DATE:	the Closing Date, as defined in the Authority Indenture.
EIR:	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.
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:	all applicable Laws and other requirements in effect during the Term, including, without limitation, Laws and requirements that regulate Hazardous Materials or otherwise relate to public health and safety or the protection of the environment.
EVENT OF DEFAULT:	defined in Section 21.1.
EQUITY COLLATERAL ENFORCEMENT ACTION:	defined in Section 9.2 of the Sublease.
ESTIMATED CONVENTION CENTER COSTS:	solely as to the Convention Center, the total cost of development and construction of the Convention Center, as shown in Section 4.2.1.
EXCLUDED COSTS:	(a) costs incurred by the Developer in connection with the design, architectural work, and engineering work for the Developer's Phase 1A Infrastructure Improvements for which the Developer has been reimbursed by the City pursuant to the Reimbursement Agreement and (b) costs incurred by the Developer in connection with the construction of specified sewer improvements included in the Developer's Phase 1A Infrastructure Improvements for which the Developer has been reimbursed, or is eligible to be reimbursed, by the City pursuant to the Sewer Agreement.
EXCLUDED MECHANICS LIEN WAIVERS:	statutory lien/stop payment notice conditional waivers and releases that are or would be from any contractor, mechanic, subcontractor, materialman or other Person if: (a) if the expected aggregate amount to be paid to such Person in connection with the Project is less than \$200,000 individually; (b) Authority has received a bond or other security that is reasonably satisfactory to the Authority with respect to mechanics lien claims and stop payment notices by such Person or (c) because of the nature of work, services, materials or supplies to be provided by such Person in connection with the Project, such Person is not, under California law, entitled to record a mechanics lien or deliver a stop payment notice in connection with the Project.
EXECUTIVE DIRECTOR:	the Executive Director of the Authority or his or her designees. The Executive Director, or his or her designees, may delegate the authority granted in Authority Resolution 2020-002 to two or more members of the staff of the Authority, provided that such delegation is made to a contingent comprised of an equal number of City and Port District staff members respectively. In making such a delegation, the Executive Director or his or her designees, shall provide notice of such delegation to the Parties hereto pursuant to Section 26.1 hereto.
EXISTING FUNDS / EF:	defined in Section 5.1.2 of the Agreement.

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 District, a prior tenant or another third party.
EXPANDED SOFT COST COVERAGE:	defined in Section 15.2.2.
EXPANSION:	defined in Section 1.2 of the Ground Lease.
EXPANSION DATE:	defined in Section 1.2 of the Ground Lease.
EXPIRATION DATE:	defined in Section 1.1.2 of the Ground Lease.
EXTENDED CONSTRUCTION PERIOD DEADLINE:	defined in Section 5.1.2.
FACILITY:	defined in Recital B.
FACILITY LEASE:	that certain Facility Lease, dated as of _____, 2021 by and between the Authority, as sublessor, and the City as sublessee, as amended from time to time.
FACILITY LEASE ADVANCE RENT NOTICE:	defined in the Facility Lease.
FINAL ACCOUNTING:	(a) with respect to the Developer's Phase 1A Infrastructure Improvements, the final accounting of costs prepared in accordance with Section 9.1.6, and (b) with respect to the Convention Center the final accounting of costs prepared in accordance with Section 9.2.6.
FINANCING DISTRICT:	the Chula Vista Bayfront Project Special Tax Financing District.
FINANCING TRANSACTION:	defined in Section 9.1 of the Sublease.
FIRST DEVELOPER COMPLETION NOTICE:	defined in Section 2.3.2.1.
FIRST SWEETWATER PARK END DATE:	defined in Section 2.3.2.
FIRST SWEETWATER PARK OPTION:	defined in Section 2.3.2.
FISCAL YEAR:	a fiscal year of the City ending on June 30 of each calendar year.

FORCE MAJEURE EVENT: defined in Section 5.5(a).

FORCE MAJEURE NOTICE: defined in Section 5.5(e).

FORCE MAJEURE PARTY: defined in Section 5.5(a).

FORCE MAJEURE RESPONSE: defined in Section 5.4(e).

FORECLOSURE PURCHASER: defined in Section 9.3(c)(iv) of the Sublease.

FULL PAYMENT: shall be deemed to have occurred when the following conditions are satisfied: (a) the Port District, the City and the Authority shall have confirmed in writing to RIDA that the Completion Guaranty has terminated and (b) Developer shall have confirmed in writing to Authority that Developer has received payment of (i) the Project Public Investment Amount, (ii) the Developer's Phase 1A Contract Sum, (iii) and all interest due to Developer pursuant to Sections 9.2.3 and 9.2.4.2(b) of the Agreement, and (iv) the Payment and Performance Bond Reimbursement Amount. For the avoidance of doubt, the occurrence of "Full Payment" does not require completion of the Final Accounting with respect to the Convention Center or the Developer's Phase 1A Infrastructure Improvements.

GENERAL CONTRACT: each of the construction contract between the Developer and the General Contractor for the Developer's Phase 1A Infrastructure Improvements and the construction contract between the Developer and the General Contractor for the Convention Center.

GENERAL CONTRACTOR: with respect to Developer, a party or parties under any contract with the Developer to perform the work or provide supplies for the Developer's Phase 1A Infrastructure Improvements and/or the Convention Center.

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 Exhibit B 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.

GREENBOOK: the 2012 edition of the Standard Specifications for Public Works Construction.

GROUND LEASE: defined in Recital E.

GROUND LEASE PROPERTY: defined in Recital E.

GROUND LEASE TERM: means the Term (as defined in the Ground Lease).

GUARANTEED MAXIMUM PRICE: The Guaranteed Maximum Price under the General Contract.

HARBOR PARK: a park contemplated to be constructed pursuant the Approved Drawings and Specifications with respect to the Developer’s Phase 1A Infrastructure Improvements as of the Effective Date.

HARBOR PARK BUDGET: defined in Section 5.4.4.

HARBOR PARK PLANS: defined in Section 5.4.4.

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, transportation, use, storage, emission, release, or disposal of any Hazardous Material, or products or materials which include any hazardous substance as a component by any Developer Party.

HOLIDAY: the City-observed holidays listed below (if any holiday listed falls on a Saturday, then the Saturday and the preceding Friday are both legal holidays. If the holiday should fall on a Sunday, then the Sunday and the following Monday are both legal holidays):

Holiday	Observed On
New Year's Day	January 1
Martin Luther King, Jr. Day	Third Monday in January
Caesar Chavez Day	March 31
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Thanksgiving Day Friday	Friday after Thanksgiving
Christmas Day	December 25

HOTEL MANAGEMENT AGREEMENT:	management agreement for the Resort Hotel the Convention Center and the Parking Improvements between Developer and the Hotel Operator.
HOTEL OPERATOR:	Marriott or its successor in accordance with the Sublease and the Ground Lease.
ILLEGAL DISCHARGE:	defined in Section 14.4.
IMPROVEMENTS:	those buildings, structures and other improvements (including vaults, utilities and other underground improvements) now or hereafter located on, in, over or under the Site.
INDENTURE FUNDS:	defined in Section 21.7.
INITIAL DEVELOPMENT FEE PAYMENT:	an amount equal to ten percent (10%) of the Total Convention Center Development Fee based on all anticipated Convention Center Costs as set forth in the Convention Center Budget.
INITIAL FORCE MAJEURE NOTICE:	defined in Section 5.5(e).
INITIAL PROJECT IMPROVEMENTS:	the Improvements that are located on the Site and are initially developed by Developer and described by the Convention Center Plans referred to in Exhibit F to the Agreement.
INSURANCE AND CONDEMNATION PROCEEDS FUND:	defined in the Authority Indenture.
JEPA:	defined in the preamble to the Agreement

LAWS: all of the following to the extent (i) applicable to the Project Site, the Phase 1A Infrastructure Improvements, the Convention Center, or any activity under the Agreement, (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 Code; the PMP; the policies of the BPC; the Chula Vista Municipal Code and any applicable ordinances of the City, including the building code thereof, and any permits and approvals by any Governmental Authority and the Port District, including, without limitation, any California Coastal Development Permit, applicable to the Project Site and Sweetwater Park or the use or development thereof.

LEASE PAYMENTS: the lease payments paid by the City pursuant to the terms of the Facility Lease.

LEASE YEAR: defined in the Sublease.

LOAN: the loan made by the Authority to the Financing District pursuant to the terms of the Loan Agreement.

LOAN AGREEMENT: the Loan Agreement dated as of [dated date] made and entered into by the Financing District and the Authority, as amended from time to time.

MARRIOTT: Marriott Hotel Services, Inc. and any of its Affiliates.

MATERIAL EXACERBATION: any material increase in the cost or amount of investigation, removal or remediation action required.

MAXIMUM CONVENTION CENTER AMOUNT: the sum of the Project Public Investment Amount plus the amount of Advance Rent paid or deemed to be paid, plus all interest due to Developer pursuant to Sections 9.2.3 and 9.2.4.2(b) of the Agreement.

MEET & CONFER PERIOD:	defined in Section 5.5(e).
MINIMUM ENERGY EFFICIENCY DESIGN STANDARD:	the requirement that each building operate at an energy consumption level equal to or better than the more stringent of the following two standards: (i) fifteen percent (15%) less than the amount of energy that each building would otherwise be permitted to consume under 2010 Title 24; or (ii) the minimum energy efficiency performance standard adopted by the City at the time a building permit application is submitted for each building.
MMJV:	Mortenson/McCarthy Chula Vista Resort, A Joint Venture comprised of M.A. Mortenson Company and McCarthy Building Companies, Inc.
NEGOTIATION DEADLINE:	defined in Section 26.12.4.
NEW LEASE PERIOD:	defined in Section 9.3(b)(iv) of the Sublease.
NET PROCEEDS:	defined in the Authority Indenture.
NON-PROJECT COSTS:	as to the Project Costs, the following costs that shall not be eligible for payment as part of the Project Costs under this Agreement: (i) salaries and other compensation of the Developer's personnel; (ii) bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to General Contractor or any Subcontractor or vendor, unless the Authority has provided prior approval; (iii) overhead and general expenses; (iv) Developer's capital expenses, including interest on the Developer's capital employed for the Project (provided, that for the avoidance of doubt, this clause (iv) shall not restrict payment of interest to the Developer at the Specified Default Rate as and when required by the Agreement); (v) costs due to the gross negligence of, or willful misconduct by, the Developer, its General Contractor or Subcontractors, or any of their respective subcontractors, material suppliers, equipment providers, employees, or agents and (vi) any costs incurred by Developer, the General Contractor, Subcontractors or their respective agents to remedy Defective Work, unless the Contract Documents require the Developer to reimburse for such costs (except to the extent such costs have been recovered from an alternate source (e.g. insurance or bond)).
NOTICE OF COMPLETION:	the standard document recorded by the City upon completion of a public works project in accordance with standard and customary practices of the City as adopted by the Authority.
OFAC:	defined in Section 20.3.
ORIGINAL MEMBER:	defined in Section 22.1.

ORIGINAL OUTSIDE
CONSTRUCTION
COMPLETION DATE:

the latest of (a) forty-eight (48) months after the Outside Construction Commencement Date, as such date may be extended by one day for each day that (x) a Force Majeure Event delays (i) Completion of the Project pursuant to the terms of the Agreement or (ii) the Sufficient Completion of the Remaining Phase 1A Infrastructure Improvements pursuant to the terms of the Agreement (if Developer exercises the Sweetwater Park Option) or (y) a breach by JEPA, City, Financing District, or Port District under the Agreement (except for a breach of the Port District's obligations that are set forth in Section 2.3, which is governed by Section 21.3), a breach by City under the Sublease, a breach by the City or the JEPA under the Facility Lease, a breach by Port District or the JEPA under the Site Lease, or a breach by Port District under the Ground Lease, in each case, delays Completion of the Project pursuant to the terms of the Agreement, (b) the Sufficient Completion of the Remaining Phase 1A Infrastructure Improvements pursuant to the terms of the Agreement (if Developer does not exercise the Sweetwater Park Option) only if Developer has already Completed the Resort Hotel, the Convention Center, the Parking and Improvements and Developer's Phase 1A Infrastructure Improvements, or (c) the Resort Hotel and Parking Improvements Outside Construction Completion Date (as such date is defined in the Ground Lease) as such date may be extended by one day for each day that a Force Majeure Event (as defined in the Ground Lease) delays Completion (as defined in the Ground Lease) of the Resort Hotel and/or the Parking Improvements.

OTHER GROUND
LEASES:

defined in Section 5.1.2.

OUTSIDE
CONSTRUCTION
COMMENCEMENT DATE:

ten (10) days after the Commencement Date.

OUTSIDE
CONSTRUCTION
COMPLETION DATE:

the latest of (a) forty-eight (48) months after the Outside Construction Commencement Date, as such date may be extended by one day for each day that (x) a Force Majeure Event delays (i) Completion of the Project pursuant to the terms of the Agreement or (ii) the Sufficient Completion of the Remaining Phase 1A Infrastructure Improvements pursuant to the terms of the Agreement (if Developer exercises the Sweetwater Park Option) or (y) a breach by JEPA, City, Financing District, or Port District under the Agreement (except for a breach of the Port District's obligations that are set forth in Section 2.3, which is governed by Section 21.3), a breach by City under the Sublease, a breach by the City or the JEPA under the Facility Lease, a breach by Port District or the JEPA under the Site Lease, or a breach by Port District under the Ground Lease, in each case, delays Completion of the Project pursuant to the terms of the Agreement, (b) the Sufficient Completion of the Remaining Phase 1A Infrastructure Improvements pursuant to the terms of the Agreement (if Developer does not exercise the Sweetwater Park Option) only if Developer has already Completed the Resort Hotel, the Convention Center, the Parking and Improvements and Developer's Phase 1A Infrastructure Improvements, (c) if a Foreclosure Purchaser acquires the subleasehold interest under Section 9.6 of the Sublease the New Convention Center Outside Construction Completion Date, as such date is defined in the Sublease) as such date may be extended by one day for each day that a Force Majeure Event (as defined in the Sublease) delays Completion (as defined in the Sublease) of the Project, (d) the Resort Hotel and Parking Improvements Outside Construction Completion Date (as such date is defined in the Ground Lease) as such date may be extended by one day for each day that a Force Majeure Event (as defined in the Ground Lease) delays Completion (as defined in the Ground Lease) of the Resort Hotel and/or the Parking Improvements, or (e) if a Foreclosure Purchaser acquires the leasehold interest under Section 10.6.2 of the Ground Lease, the New Resort Hotel and Parking Improvements Outside Construction Completion Date (as defined in the Ground Lease), as such date may be extended by one day for each day that a Force Majeure Event (as defined in the Ground Lease) delays Completion (as defined in the Ground Lease) of the Resort Hotel and/or the Parking Improvements.

PARKING
IMPROVEMENTS:

defined in Section 1.3 of the Ground Lease.

PARTY; PARTIES:

defined in the preamble to the Agreement.

PAYMENT AND
PERFORMANCE BOND
REIMBURSEMENT
AMOUNT:

the lesser of (a) the actual incurred by the Developer in procuring any payment bond(s) and any performance bond(s) with respect to the Convention Center pursuant to Section 13.1 of the Agreement and (b) One Million Dollars (\$1,000,000).

PAYMENT DATE:	ten (10) days following the date on which Developer submits a complete Developer's Phase 1A Payment Request or a complete Construction Costs Payment Request (in each case, as reasonably determined by the Executive Director).
PERMITTED ENCUMBRANCE:	defined in Section 9.2 of the Sublease.
PERMITTED FINANCING ENCUMBRANCE:	defined in Section 10.2 of the Ground Lease.
PERMITTED MEZZANINE LENDER:	(a) any Person that is approved by Port District (including pursuant to Section 10.1.3) 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 Developer's payment and performance in connection with any Financing Transaction and (b) from and after the date that is the later of (i) the date when the Resort Hotel is Complete and (ii) the date when the Parking Improvements are 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 approved by Port District.
PERMITTED MORTGAGE LENDER:	defined in Section 9.2 of the Sublease.
PERMITTED LENDER:	defined in Section 9.2 of the Sublease.
PERMITTED USE:	defined in Section 6.1(a) of the Sublease.
PERSON/PERSONS:	any individual, partnership, firm, joint venture, association, corporation, limited liability company, government agency or any other form of business entity.
PHASE 1A INFRASTRUCTURE IMPROVEMENTS:	(a) the Developer's Phase 1A Infrastructure Improvements and (b) the Remaining Phase 1A Infrastructure Improvements.
PLAN SUBMISSION DATE:	[●]
PLANNED COMPLETION DATE:	defined in Section 5.4.1.
PMPA:	defined in Section 5.7.1.
PMP:	the Port Master Plan.

PORT DISTRICT:	the San Diego Unified Port District, a district formed pursuant to California Harbors and Navigation Code APPENDIX I, Section 1 et seq. and a public corporation. Unless specifically provided otherwise, whenever the Agreement requires an action or approval by the Port District, that action or approval shall be performed by the Port District representative designated by the Agreement.
PORT DISTRICT GENERAL COUNSEL:	the General Counsel to the Port District or such person's duly authorized deputy set forth in Schedule 1 of the Authority Bylaws.
PORT DISTRICT PARTIES:	Port District and the officers, directors, members of the BPC, employees, partners, affiliates, agents, contractors, architects, successors and assigns of Port District, in each case, when acting only in the capacity of a Port District Party.
PORT DISTRICT TRANSFER:	defined in Section 26.5.
PORT DISTRICT'S MATERIALS:	defined in Section 25.4.2.
PRE-EXISTING HAZARDOUS MATERIAL:	any Hazardous Material located on or under the Project Site prior to the Effective Date, whether known or unknown, or any Hazardous Material located outside the Project Site (including any premises owned by the City and/or the Port District) prior to the Effective Date that migrates to the Project Site thereafter.
PORT SUPPORT AGREEMENT:	the Support Agreement between the Authority and the Port District dated as of _____, as amended from time to time.
PRIOR AGREEMENTS:	the agreements listed on Exhibit U.
PROHIBITED PERSON / PROHIBITED PERSONS:	defined in Section 20.3.
PROJECT:	the Developer's Phase 1A Infrastructure Improvements and the Convention Center.
PROJECT COSTS:	the Convention Center Costs and the Developer's Phase 1A Infrastructure Improvements Costs.
PROJECT PUBLIC INVESTMENT AMOUNT:	Two Hundred Sixty-Five Million Dollars (\$265,000,000).
PROJECT SITE:	the location of the Project for purposes of pre-construction services and construction.
PROPERTY TAX CONTEST:	defined in the Sublease or Ground Lease, as the context may require.

PROPERTY TAX EXPENSES:	property taxes with respect to the Site and the Initial Project Improvements (including, without limitation, real estate taxes, possessory interest taxes, general and special assessments, leasehold taxes or taxes based upon Developer's receipt of rent, but excluding all taxes imposed upon net income or gain).
PUBLIC AGENCY/PUBLIC AGENCIES:	individually or collectively, for purposes of the Agreement, the Authority, the City and the Port District.
PUBLIC AGENCY PARTIES:	collectively, the Authority Parties, the City Parties and the Port District Parties
PUBLIC AGENCY'S ESTIMATED DEVELOPER'S PHASE 1A INFRASTRUCTURE IMPROVEMENTS COST:	the total cost of development and construction of the Developer's Phase 1A Infrastructure Improvements, as shown in Exhibit C-1-A attached to the Agreement.
PUBLIC DEBT SERVICE OBLIGATION / PDSO:	defined in Section 5.1.2.
PWL:	defined in Section 7.2.3.1.
REIMBURSEMENT AGREEMENT:	defined in the Recital P.
REIMBURSEMENT PROCEDURE:	defined in Section 3.5(d) of the Sublease or Section 5.8 of the Ground Lease.
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.
RELOCATION AGREEMENT:	that certain Relocation Agreement, dated as of July 13, 1999, by and among the City, Redevelopment Agency of the City of Chula Vista, Port District, and Rohr, as amended by the Amendment to Relocation Agreement, dated as of November 1, 1999, the Second Amendment to Relocation Agreement, dated as of February 2, 2010, and the Third Amendment to Relocation Agreement, dated as of September 10, 2013.

REMAINING CONVENTION CENTER DEVELOPMENT FEE:	two and seven-tenths percent (2.7%) of the Convention Center Costs. The Remaining Convention Center Development Fee will accrue on the last day of each month beginning with the month in which the Commencement Date occurs in the amount of \$[●] per month until Total Convention Center Development Fee based on all anticipated Convention Center Costs as set forth in the Convention Center Budget has accrued.
REMAINING PHASE 1A INFRASTRUCTURE IMPROVEMENTS:	Sweetwater Park.
REMAINING PHASE 1A INFRASTRUCTURE IMPROVEMENTS COSTS:	the direct and indirect costs (excluding overhead costs) incurred with respect to the development, design, construction and permitting of the Remaining Phase 1A Infrastructure Improvements.
REMAINING PHASE 1A INFRASTRUCTURE IMPROVEMENTS SITE:	the location of the Remaining Phase 1A Infrastructure Improvements for purposes of pre-construction services and construction.
RENT:	defined in Section 3.5 of the Sublease.
REPAIR/RESTORATION COSTS:	the direct and indirect costs incurred with respect to the repair, restoration, reconstruction or redevelopment of the Convention Center or any portion thereof in connection with a casualty or condemnation event pursuant to Article V of the Sublease.
RESORT HOTEL:	a single-branded resort hotel with at least 1,570 Rooms but not more than 1,600 Rooms on the Hotel Land generally as shown on Exhibit “B-1” attached hereto, with an Acceptable Brand.
RIDA:	RIDA Chula Vista, LLC, a Delaware limited liability company.
ROHR:	defined in Section 24.2.
RFPF:	defined in Section 5.1.2.
RV PARK LEASE:	defined in Section 5.1.2.
RV PARK LESSEE:	defined in Section 5.1.2.
RV PARK TUOP:	defined in Section 5.1.2.
SDRWQCB:	San Diego Regional Water Quality Control Board.
SECOND DEVELOPER COMPLETION NOTICE:	defined in Section 2.3.3.1.

SECOND SWEETWATER PARK END DATE:	the date that is twenty-two (22) months after the Outside Construction Commencement Date; provided, that the Sweetwater Park End Date shall not be extended due to any Force Majeure Event except to the extent that such Force Majeure Event causes an extension of the Outside Construction Completion Date.
SECOND SWEETWATER PARK OPTION:	defined in Section 2.3.3.
SETTLEMENT AGREEMENT:	Chula Vista Bayfront Master Plan Settlement Agreement, dated May 4, 2010, among the Bayfront Coalition Member Organizations identified therein, Port, the City of Chula Vista and the Redevelopment Agency of the City of Chula Vista (District Clerk No. 56523).
SEWER AGREEMENT:	defined in the Recital O.
SITE:	defined in Recital B.
SITE LEASE:	defined in Recital B.
SPE LENDER AFFILIATE:	defined in Section 9.3(c)(iv) of the Sublease.
SPECIFIED DEFAULT RATE:	(a) prior to Completion (defined in the Ground Lease) of the Resort Hotel and Parking Improvements and Completion of the Convention Center and Developer's Phase 1A Infrastructure Improvements, an annual rate equal to ten percent (10%) per annum and (b) commencing upon Completion (defined in the Ground Lease) of the Resort Hotel and Parking Improvements and Completion of the Convention Center and Developer's Phase 1A Infrastructure Improvements, an annual rate equal to fifteen percent (15%) per annum.
SPECIFIED DISPUTE:	defined in Section 26.12.1.
STAFFING AND PROCESSING AGREEMENT:	RIDA Hotel and Convention Center Project Staffing and Processing Agreement between City and RIDA dated effective June 3, 2020.
STANDARD SPECIFICATIONS:	the Greenbook and the local standard special provisions referenced in the Approved Drawings and Specifications, in each case, as in effect on the Plan Submission Date, and any amendments thereto that are approved by the Developer, the City, the District and the Authority.
STIPULATED CONVENTION CENTER OVERHEAD AMOUNT:	[\$ [●]]. The Stipulated Convention Center Overhead Amount will accrue on the last day of each month beginning with the month in which the Commencement Date occurs in the amount of \$[●] per month until \$[●] has accrued.

STIPULATED DEVELOPER'S PHASE 1A INFRASTRUCTURE IMPROVEMENTS OVERHEAD AMOUNT: \$3,000,000. The Stipulated Developer's Phase 1A Infrastructure Improvements Overhead Amount will accrue on the last day of each month beginning with the month in which the Commencement Date occurs in the amount of \$[●] per month until \$3,000,000 has accrued.

SUBCONTRACTOR: a party or parties under any subcontract with the General Contractor to perform the work or provide supplies for the Developer's Phase 1A Infrastructure Improvements and/or the Convention Center, as applicable.

SUBLEASE: defined in Recital D.

SUBLEASE ADVANCE RENT NOTICE: defined in the Facility Lease.

SUBLEASE TERM: the Term (as defined in the Sublease).

SUBSTANTIALLY ALL: at least eighty percent (80%) of rentable square footage.

SUBTENANT: any subtenant (or sub-subtenant or other level of subtenant), occupant, franchisee, licensee, or concessionaire under any Sub-Sublease; provided, however, that "Subtenant" shall exclude the Hotel Operator.

SWEETWATER PARK: the improvements described in Exhibit D, attached to the Agreement.

SWEETWATER PARK CONTRACTS: collectively, the Sweetwater Park Design Contracts and the Sweetwater Park Construction Contracts.

SWEETWATER PARK CONSTRUCTION CONTRACT: the construction agreement with respect to Sweetwater Park to which Port District is a party, as amended, restated, supplemented, modified or replaced from time to time.

SWEETWATER PARK DESIGN CONTRACT: the design services agreement, including services for administration of the design during construction, with respect to Sweetwater Park to which Port District is a party, as amended, restated, supplemented, modified or replaced from time to time; provided, however, "Sweetwater Park Design Contract" shall apply to each such design services agreement if more than one but shall exclude the Sweetwater Park Construction Contract.

SWEETWATER PARK MATERIALS: from time-to-time, the Sweetwater Park Contracts and the permits, entitlements, approvals, plans, drawings, and specifications for the Remaining Phase 1A Infrastructure Improvements that are reasonably necessary for the Developer to Sufficiently Complete Sweetwater Park.

SWEETWATER PARK SUBACCOUNT: the Sweetwater Park Subaccount established within the 2021B Construction Account and maintained by the Trustee pursuant to the Indenture.

SWPPP: defined in Section 8.1.3.

TAX CLAIM: defined in Section 19.2.

TAX EXPENSES:

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 Developer's receipt of rent, including gross receipts or sales taxes applicable to Developer'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 Developer in connection with the Project Site and the Improvements) and any taxes and assessments relating to the business or other activities of Developer upon or in connection with the Project Site and the Improvements. Tax Expenses also shall include, without limitation:

(i) Any tax on a Public Agency's receipt of Rent (as defined herein or under the Ground Lease), right to Rent (as defined herein or under the Ground Lease) or other revenue from the Project Site and the Improvements other than any tax on the income of a Public Agency;

(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 the Parties 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; and

(iii) Any assessment, tax, fee, levy, or charge, which is levied or assessed based upon the area of the Project Site or the Improvements 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 Developer of the Project Site, the Improvements, or any portion thereof.

Notwithstanding anything to the contrary, Tax Expenses shall not include any income taxes imposed upon Developer, the Public Agencies, the direct or indirect owners of Developer, Hotel Operator or the Affiliates of Hotel Operator, whether based upon the taxable income generated by Developer, the Public Agencies, Hotel Operator or otherwise.

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 Developer, Developer Party, or Hotel Operator or generated by any of the same.

TERM: defined in Section 3.1.

TOT: defined in Section 5.1.2.

TOTAL CONVENTION CENTER DEVELOPMENT FEE: three percent (3%) of the Convention Center Costs.

TRANSFER: defined in Section 10.7(a) of the Sublease.

TRANSFeree: defined in Section 10.7(b) and 10.7(e) of the Sublease, as applicable.

USA PATRIOT ACT: defined in Section 20.3.

WARRANTY PERIOD: defined in Section 11.2.

Exhibit A-1

Legal Description of the Site

EXHIBIT "A"

CONVENTION CENTER LEASE PARCEL

BEGINNING AT STATION 102.207 ON THE BRAN NICH FINE LINE ON THE EAST SIDE OF SAID ROAD AS SHOWN ON THE PLAT THEREIN, SAID BRAN NICH FINE LINE BEING MAP NO. 211, FILED IN THE RECORDER'S OFFICE OF THE COUNTY OF SAN DIEGO THROUGH ALTON SAUD MORGENTHAU (18° SOUTH 52° 33' EAST 100.00 FEET SOUTH 56° 20' EAST, 200.00 FEET TO THE INTERSECTION WITH THE RIGHT-OF-WAY OF MARINA PARKWAY, FOLLOWS BY MARINA PARKWAY AS INDICATED FOR EQUIPMENT STORAGE COURSE, COURSE SOUTH 11° 30' EAST, A RADIAL UNIT TO SAID CURVE BEARS NORTH 85° 13' 50" WEST THENCE ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 48° 04' 34" A DISTANCE OF 87.13 FEET TO THE TRAIL POINT OF BEGINNING, THENCE CONTINUING SOUTHERLY ALONG SAID CURVE AND RIGHT-OF-WAY OF MARINA PARKWAY THROUGH A CENTRAL ANGLE OF 22° 12' 12" A DISTANCE OF 237.22 FEET; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY THE FOLLOWING THREE COURSES: 1) SOUTH 14° 22' 45" EAST, 369.72 FEET TO THE BEGINNING OF A TANGENT CURVE COURSE EASTERLY HAVING A RADIUS OF 4,000.00 FEET; 2) THENCE ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 60° 30' 00" A DISTANCE OF 296.46 FEET; 3) THENCE SOUTH 17° 54' 50" EAST, 708.00 FEET; THENCE LEAVING SAID RIGHT-OF-WAY SOUTH 82° 12' 12" WEST, 14.07 FEET;
 THENCE SOUTH 67° 42' 12" WEST, 82.80 FEET;
 THENCE SOUTH 72° 12' 12" WEST, 22.20 FEET;
 THENCE NORTH 86° 23' 12" WEST, 23.18 FEET;
 THENCE NORTH 88° 32' 00" WEST, 22.87 FEET;
 THENCE NORTH 74° 08' 30" WEST, 21.24 FEET;
 THENCE NORTH 70° 23' 00" WEST, 27.78 FEET;
 THENCE NORTH 62° 11' 00" WEST, 29.88 FEET;
 THENCE NORTH 63° 20' 30" EAST, 22.00 FEET;
 THENCE NORTH 67° 00' 18" WEST, 23.29 FEET;
 THENCE NORTH 68° 14' 58" WEST, 21.24 FEET;
 THENCE NORTH 69° 23' 48" WEST, 22.40 FEET;
 THENCE SOUTH 60° 23' 59" WEST, 24.07 FEET;
 THENCE SOUTH 68° 25' 54" WEST, 32.25 FEET;
 THENCE NORTH 57° 33' 31" WEST, 5.80 FEET;
 THENCE NORTH 56° 17' 05" WEST, 8.85 FEET;
 THENCE NORTH 76° 03' 00" WEST, 12.90 FEET;
 THENCE NORTH 68° 10' 30" WEST, 20.00 FEET;
 THENCE NORTH 64° 34' 34" WEST, 18.27 FEET;
 THENCE NORTH 60° 49' 28" WEST, 17.90 FEET;
 THENCE NORTH 72° 42' 50" WEST, 19.41 FEET;
 THENCE NORTH 62° 36' 05" WEST, 24.53 FEET;
 THENCE NORTH 62° 24' 30" WEST, 68.58 FEET;
 THENCE NORTH 70° 41' 58" WEST, 17.06 FEET;
 THENCE SOUTH 84° 38' 38" WEST, 14.79 FEET;
 THENCE SOUTH 83° 48' 33" WEST, 11.39 FEET;
 THENCE SOUTH 74° 30' 08" WEST, 20.28 FEET;
 THENCE NORTH 17° 54' 08" WEST, 22.85 FEET;
 THENCE NORTH 72° 32' 33" EAST, 24.25 FEET;
 THENCE NORTH 17° 34' 06" WEST, 246.24 FEET;

THENCE SOUTH 72°45'10" WEST, 45.60 FEET;
THENCE NORTH 62°34'06" WEST, 33.81 FEET;
THENCE NORTH 17°47'38" WEST, 193.43 FEET;
THENCE SOUTH 72°26'06" WEST, 121.66 FEET;
THENCE NORTH 17°34'06" WEST, 1.81 FEET;
THENCE SOUTH 72°25'54" WEST, 118.07 FEET;
THENCE NORTH 17°34'06" WEST, 100.27 FEET;
THENCE NORTH 72°25'54" EAST, 84.95 FEET;
THENCE NORTH 17°47'46" WEST, 372.75 FEET;
THENCE NORTH 63°11'58" EAST, 366.02 FEET;
THENCE SOUTH 26°48'02" EAST, 11.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE
SOUTHERLY HAVING A RADIUS OF 83.00 FEET, A RADIAL LINE TO SAID CURVE BEARS NORTH 26°48'02"
WEST; THENCE ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 39°43'43" A DISTANCE
OF 57.55 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE NORTHERLY HAVING A RADIUS OF
77.00 FEET, A RADIAL LINE TO SAID CURVE BEARS SOUTH 12°55'41" WEST; THENCE ALONG THE ARC OF
SAID CURVE THROUGH A CENTRAL ANGLE OF 25°46'25" A DISTANCE OF 34.64 FEET; THENCE SOUTH
17°34'06" EAST, 279.27 FEET; THENCE NORTH 72°25'54" EAST, 305.50 FEET; THENCE NORTH 17°34'06"
WEST, 237.50 FEET; THENCE NORTH 72°19'26" EAST, 54.89 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING AREA = 756,920 SQUARE FEET OR 17.377 ACRES, MORE OR LESS.



D.K. NASLAND LS 5562

Exhibit A-2

Legal Description of the Ground Lease Property

[To come prior to Closing.]

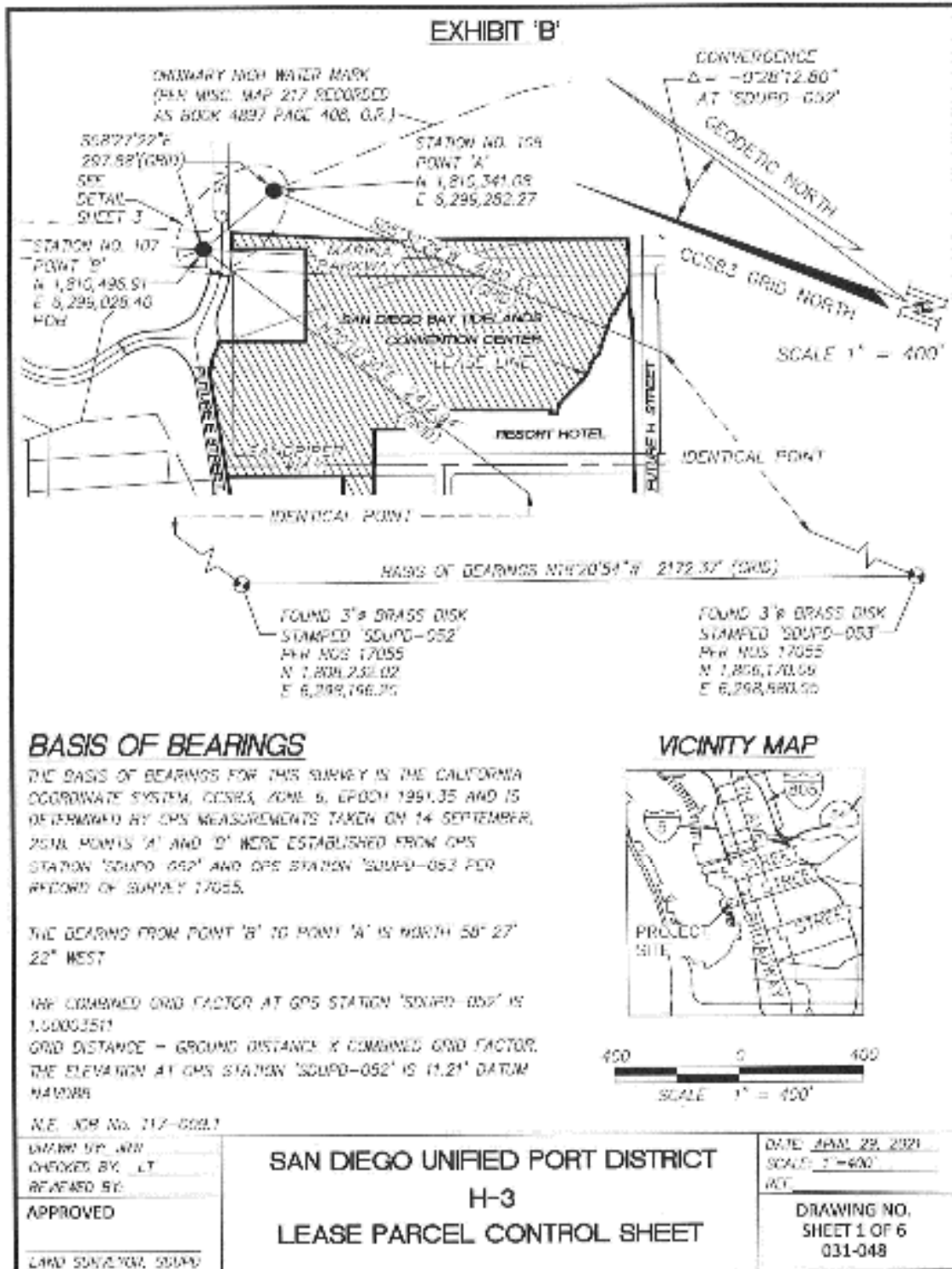
Exhibit A-3

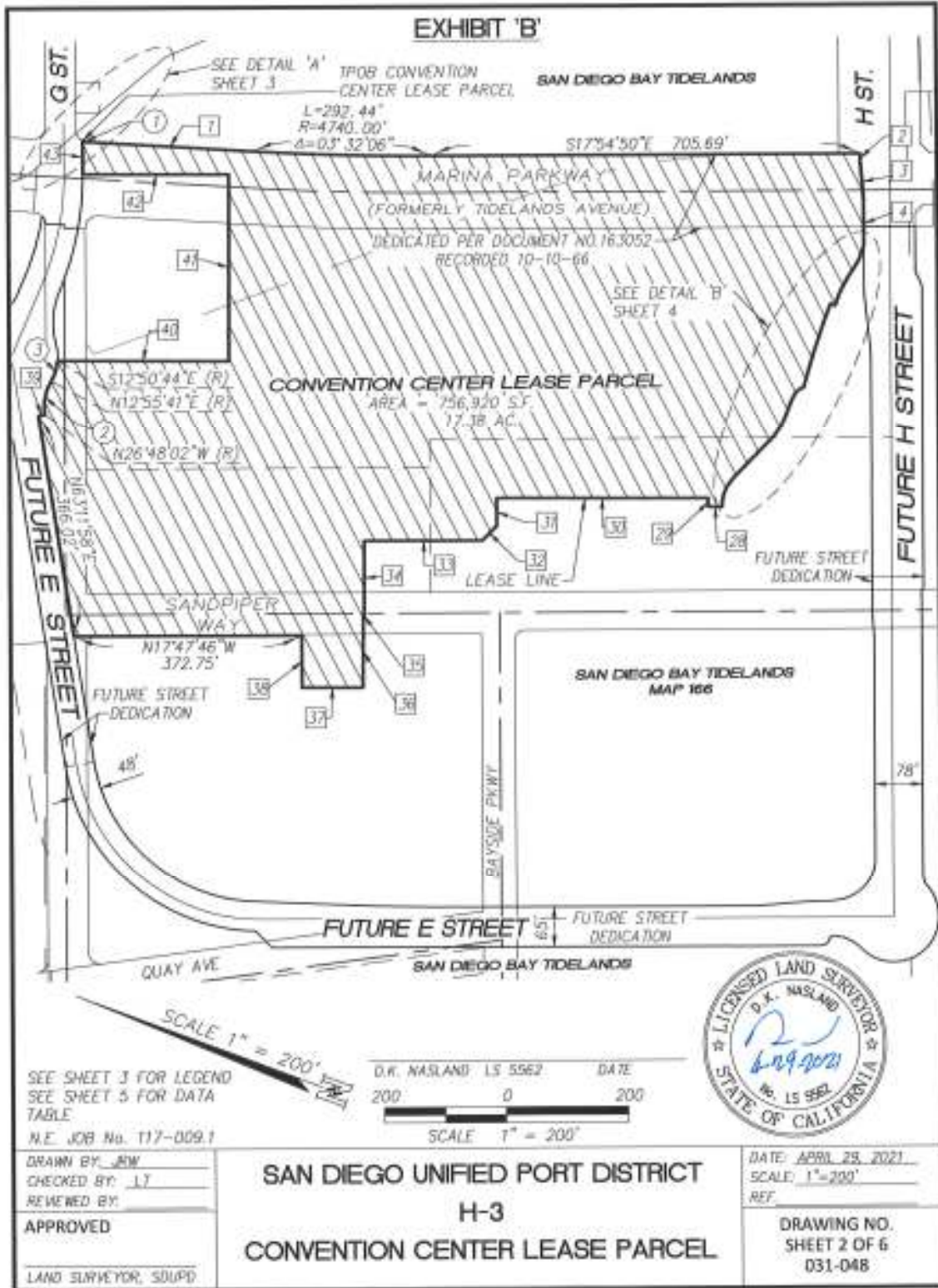
Legal Description of Developer's Phase 1A Site

[To come prior to Closing.]

Exhibit B-1

Depiction of the Site





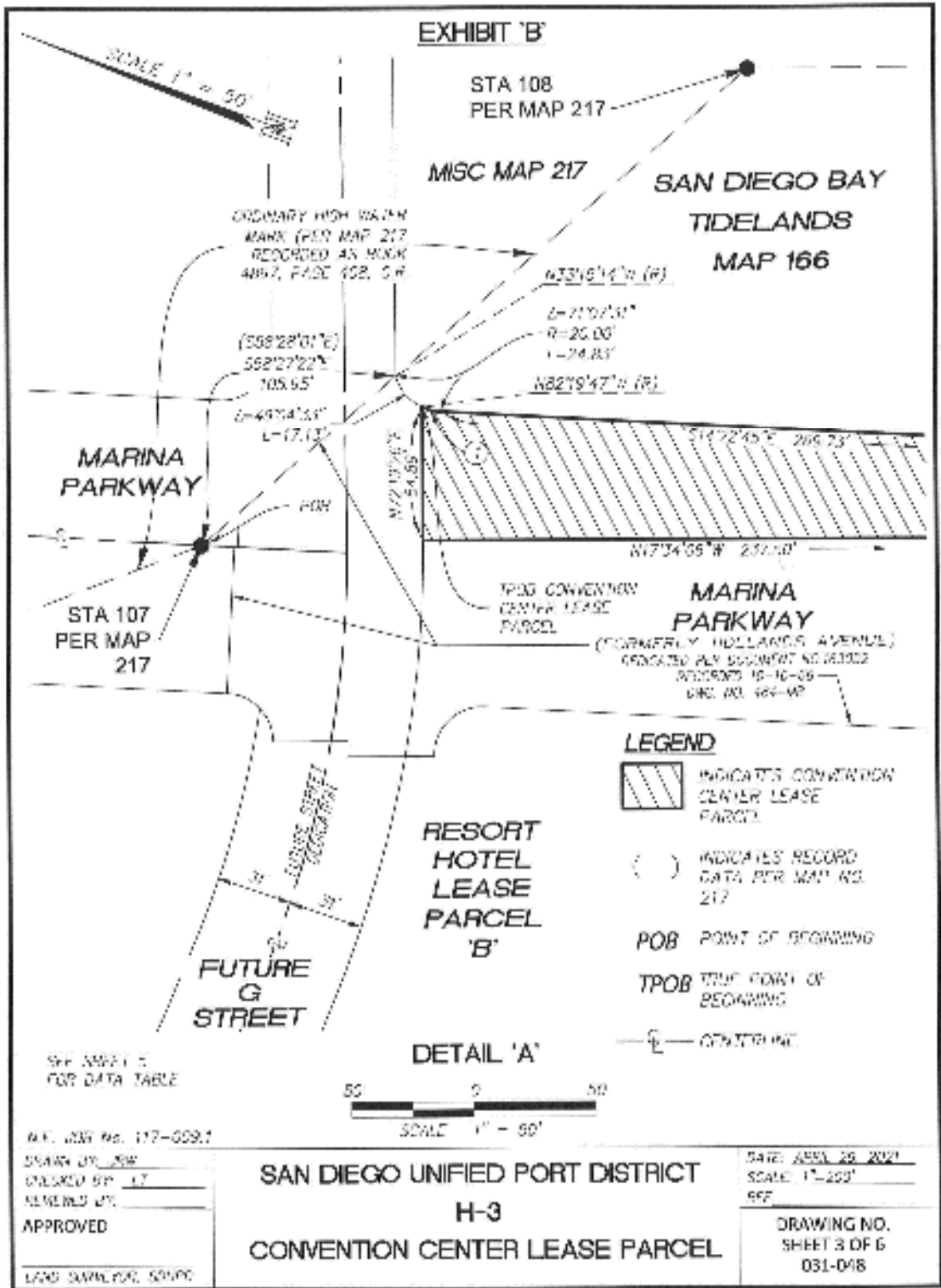


EXHIBIT 'B'

SEE SHEET 2

CONVENTION CENTER
LEASE PARCEL

LINE DATA TABLE

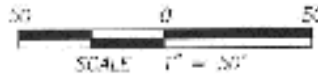
NO.	BEARING	LENGTH
5	N 82°19'10" W	23.16'
6	N 70°01'39" W	13.37'
7	N 74°08'34" W	21.14'
8	N 79°25'38" W	27.73'
9	N 87°11'05" W	23.00'
10	N 03°28'36" E	6.00'
11	N 87°10'15" W	23.79'
12	N 88°14'32" W	11.74'
13	N 89°22'13" W	32.40'
14	S 89°15'50" W	24.07'
15	S 88°15'34" W	32.20'
16	N 17°33'31" W	5.65'
17	N 66°17'05" W	6.85'
18	N 78°31'40" W	12.98'
19	N 48°11'59" W	16.09'
20	N 55°35'34" W	18.77'
21	N 60°35'22" W	17.56'
22	N 72°42'50" W	10.41'
23	N 82°34'08" W	24.93'
24	N 87°01'58" W	17.05'
25	N 84°58'52" W	14.76'
26	S 85°45'23" W	11.10'
27	S 74°10'09" W	3.39'

RESORT
HOTEL
LEASE
PARCEL
'A'

SAN DIEGO BAY
TIDELANDS
MAP 166

FUTURE H STREET
CITY OF SAN DIEGO

DETAIL 'B'



SEE SHEET 2

N.E. JOB No. 117-009.1

DRAWN BY: JMW

CHECKED BY: LT

REVIEWED BY:

APPROVED

LAND SURVEYOR 50095

SAN DIEGO UNIFIED PORT DISTRICT
H-3
CONVENTION CENTER LEASE PARCEL

DATE: 08/28/2021

SCALE: 1"=200'

552

DRAWING NO.

SHEET 4 OF 6

D31-D48

EXHIBIT 'B'

CURVE DATA TABLE		
NO.	BEARING	LENGTH
1	S 14°22'49" E	265.23'
2	S 72°12'12" W	14.57'
3	S 57°46'00" W	84.58'
4	S 72°12'12" W	72.25'
25	N 17°34'05" W	22.05'
26	N 72°52'32" E	14.20'
30	N 17°34'05" W	346.24'
31	S 72°40'10" W	41.80'
32	N 82°34'05" W	33.81'
33	N 17°47'38" W	193.43'
34	S 72°26'05" W	121.56'
35	N 17°34'05" W	1.51'
36	S 72°20'54" W	118.07'
37	N 17°34'05" W	100.27'
38	N 72°20'54" E	84.55'
39	S 25°48'02" E	11.00'
40	S 17°34'05" E	279.27'
41	N 72°20'54" E	105.50'
42	N 17°34'05" W	237.50'
43	N 72°16'29" E	51.89'

CURVE DATA TABLE			
NO.	CHORD	RADIUS	LENGTH
1	22°52'56"	20.00'	1.70'
2	36°42'43"	83.00'	57.55'
3	25°46'25"	77.00'	54.54'

N.E. JOB No. 177-009.1

DRAWN BY: LSW

CHECKED BY: LT

PLANNED BY: _____

APPROVED _____

LAND SURVEYOR 50055

**SAN DIEGO UNIFIED PORT DISTRICT
H-3
CONVENTION CENTER LEASE PARCEL**

DATE: APR. 29, 2021

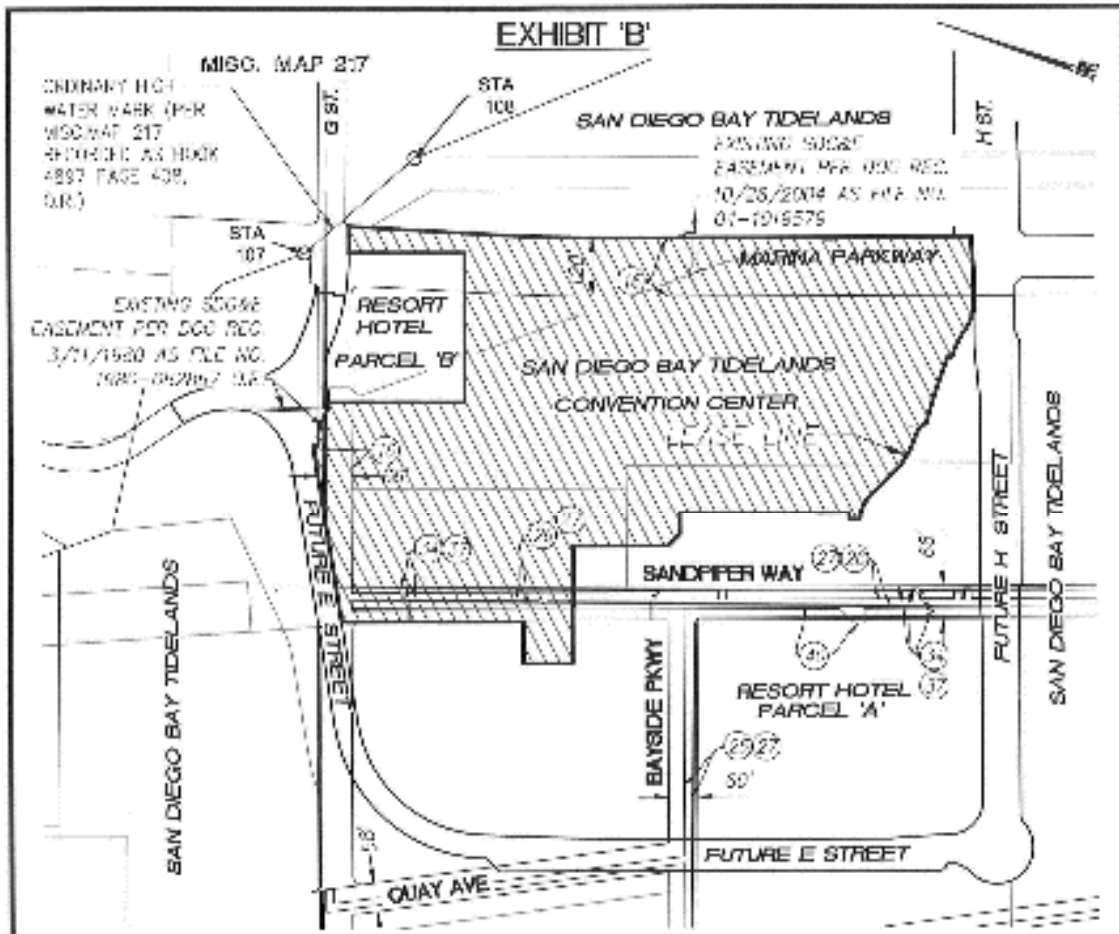
SCALE: 1"=200'

BY: _____

DRAWING NO.

SHEET 5 OF 6

031-04B



ENCINO EASEMENTS PER PDR ORDER NO. 00084417-393-512-050, DATED DEC 11, 2020

PAR #	BOOK #	GRANTEE	TYPE	WIDTH	ACQUIRED DATE
15	161552	CITY OF GALA WEST	STREET DEC	PARKS	11/11/1908
21	81-294452	SWEETWATER	U.T. RIGHTS	75'	9/15/1981
22	81-307302	SWEETWATER	U.T. RIGHTS	75'	9/28/1981
34	83-080370	SWAN	UTILITIES	10'	1/14/1983
35	83-119550	SWAN	UTILITIES	10'	4/17/1983
41	83-267659	CITY OF GALA WEST	SEWER	12'	8/2/1983

NON-PLOTTABLE EASEMENTS PER PDR ORDER NO. 00084417-393-512-050, DATED DEC 11, 2020

36	1081-404074	SD&C	UTILITIES	N/A	10/22/1981
37	1081-115718	SD&C	UTILITIES	N/A	1/12/1983
38	1081-182070	SD&C	UTILITIES	N/A	7/7/1983

N.P. STR No. 117-0021

DRAWN BY:
 CHECKED BY:
 RECEIVED BY:
 APPROVED:
 LINDY SANDERSON, SD&P

SAN DIEGO UNIFIED PORT DISTRICT
H-3
CONVENTION CENTER LEASE PARCEL

DATE: APRIL 23, 2021
 SCALE: 1"=330'
 ALI:
 DRAWING NO.
 SHEET 6 OF 6
 031-048

Exhibit B-2

Depiction of the Ground Lease Property

[To come prior to Closing.]

Exhibit B-3

Depiction of the Developer's Phase 1A Infrastructure Improvements Site

[To come prior to Closing.]

Exhibit C-1-A

Public Agency's Estimated Developer's Phase 1A Infrastructure Improvements Cost

[To be provided by Developer prior to Closing.]

Note: Amounts available to be reimbursed to Developer under the Sewer Agreement or credited to Developer under the BFDIF Program are excluded from the Developer's Phase 1A Contract Sum.

Exhibit C-1-B

Sources for Developer's Phase 1A Infrastructure Improvements Cost

[Amounts to be filled in prior to Closing.]

<u>Source</u>	<u>Amount</u>
2021B Bond Proceeds	\$
County Funds	
BFDIF Program Credit	
Sewer Agreement Reimbursement	
Total	\$

Exhibit C-2

Developer's Phase 1A Infrastructure Improvements Budget

[To be provided by Developer prior to Closing.]

Exhibit D

Remaining Phase 1A Infrastructure Improvements (Sweetwater Park)

Sweetwater Park

[A 21-acre signature park on Parcel S-2 (defined in the PMP) with passive use, meadow-type open space with amenities such as: landscaping, lighting, restrooms, drinking fountains, bicycle racks, children play areas, picnic areas, benches, trash receptacles, interpretive signage, landscaped berms, public art, decomposed granite paving, and parking. The park is to be passive in nature, be low-impact and contain minimal structures. Allowed structures include restrooms, picnic tables, shade structures and overlooks, and are limited to single-story heights. No athletic field amenities or unattended food vending will be allowed. The park will utilize low water-use ground cover alternatives where possible and trails will not be paved. Due to the immediate adjacency to sensitive habitat areas, amplified sound equipment and issuance of park use permits for group events will be prohibited. Development of the park also includes the development within the Transition Buffer Areas and Limited Use zones of parcel SP-1 and the fencing of the No Touch Buffer Area of parcel SP-1, all as described in the certified PMP.]

Exhibit E

Construction Requirements

1. GENERALLY. DEVELOPER SHALL COMPLY WITH THE PROVISIONS OF THIS EXHIBIT E AS FOR THE CONVENTION CENTER AND DEVELOPER'S PHASE 1A INFRASTRUCTURE IMPROVEMENTS (AS APPLICABLE), THOSE CERTAIN CONDITIONS OF PROJECT APPROVAL FOR THE CONVENTION CENTER AND DEVELOPER'S PHASE 1A INFRASTRUCTURE IMPROVEMENTS (AS APPLICABLE) (District Clerk No. [●]) (AS APPLICABLE), AND THE PROVISIONS OF THE PROJECT IMPLEMENTATION AGREEMENT IN CONNECTION WITH ALL CONSTRUCTION OR DEMOLITION WORK FOR THE CONVENTION CENTER AND DEVELOPER'S PHASE 1A INFRASTRUCTURE IMPROVEMENTS (AS APPLICABLE) (“**CONSTRUCTION WORK**”).
2. Contractors. Authority shall have the right to approve the general contractor for Construction Work, 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. Reserved.
5. Construction Barricades. Developer shall install a construction barricade around the area of Construction Work, and erect such other protective measures as may be reasonably required by Authority.
6. Dust and Trash Control. Developer 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. Performance Bond and Payment Bond. Article XIII of the Agreement shall govern requirements relating to Performance and Payment Bonds for the Convention Center and Developer's Phase 1A Infrastructure Improvements.
8. Financial Assurances. At least ten (10) days prior to commencing any Construction Work, Developer shall deliver to Authority evidence reasonably demonstrating to Authority that Developer has obtained or retains financial resources and capabilities in an amount sufficient to complete the Construction Work.
9. Construction Schedule. The Agreement governs provisions relating to the schedule for the Construction Work.
10. Contractor Insurance. Developer 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 Authority 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 either the City or the Port District determines, in its sole and reasonable discretion, that Developer 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, Developer 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 Developer through an owner-controlled insurance program instead of by a contractor and/or a subcontractor. Public Agency 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 Agreement, nor shall it be allowed to expire, without at least thirty (30) days prior written notice to Authority. The foregoing insurance shall include a waiver of subrogation in favor of Public Agency Parties.

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

12. Copy of Record Set of Plans and Certificate of Completion. Following the conclusion of any Construction Work, deliver to Authority (i) with respect to the Convention Center, a set of “as-built drawings” and (ii) a copy of the certificate of completion issued by the applicable government agency, if any such certificate of completion must be issued.

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

Exhibit F

Convention Center Plans

[List of Convention Center Plans to be provided by Developer prior to Closing.]

Exhibit G-1

Approved Subcontractor Bid and Award Process

I. GENERAL CONTRACTOR

RIDA has selected as the general contractor for the construction of the Developer's Phase 1A Infrastructure Improvements a joint venture ("MMJV") comprising M.A Mortenson Company ("Mortenson") and McCarthy Building Companies, Inc. ("McCarthy"). Mortenson, a leader in the industry with a wealth of experience in similar large scale projects, was a natural fit for the construction of Gaylord Rockies Resort and Convention Center (the "Rockies Project"), a project developed by RIDA's affiliate ("RIDA Rockies"). Throughout the construction of the Gaylord Rockies Project, RIDA Rockies gained extensive experience with Mortenson. When possible, RIDA's development process involves bringing forward the general contractor who constructed a prior similar project (with the experience gained), and teaming them up with a general contractor that has a strong local presence. McCarthy's presence is strong locally, as well as within the subcontractor community. In addition to McCarthy's local presence and positive reputation, McCarthy's resume of large scale developments make MMJV an ideal partner for the Project.

II. SUBCONTRACTORS

A brief description of the process to be followed for the selection of subcontractors follows:

Initial Invitation to Propose

- MMJV conducts research on potentially qualified subcontractors. This includes review of both Mortenson and McCarthy relationships and databases for local and regional subcontractors. For larger packages this may include major national subcontractors.
- Consultants that are retained by RIDA and/or MMJV to assist in the preparation of bids or contract documents (including, without limitation, preliminary / concept designs), or to assist in the solicitation, may submit a bid for or be awarded a subcontract, subject to the satisfaction of the other criteria set forth in this Exhibit G-1.
- RIDA may designate specific persons or entities from whom MMJV will obtain bids or competitive proposals, subject to those persons or entities entering into written subcontracts acceptable to MMJV and RIDA.
- Direct contact is made with identified potential subcontractors to gauge their interest and brief them on the opportunity. In many cases this is a continuation of on-going discussions related to subcontractor input for budget estimates based on earlier design packages.

RFQ stage

- Identified potential subcontractors (typically minimum of five for each package) are invited to submit qualifications data. This includes information regarding past relevant / similar project experience, customer feedback from those projects, current backlog, available trades personnel resources, proposed supervisory / management personnel, financial capability, and design capabilities (for design-build subcontracts).
- MMJV and RIDA review RFQ responses to identify those subs to be invited to RFP stage.

RFP stage

- Where practical, MMJV will obtain a minimum of three bids/competitive proposals from all subcontractors and from suppliers of materials or equipment directly to MMJV, for subcontracts or purchase orders in excess of \$75,000, and a minimum of two bids from the subcontractors, and from suppliers of materials or equipment (but only materials and equipment which will be incorporated into the work) for the work, for such subcontracts or purchase orders having a value less than \$75,000.00, and will deliver such bids to RIDA.
- Subcontractors deemed qualified are invited to submit detailed proposals including –
 - Qualitative factors
 - Supervisory personnel commitments and organization chart
 - Schedule management plan
 - Quality management plan
 - Plan for providing adequate qualified trades personnel
 - Pre-construction / design phase services approach and staffing (for “early-engagement” subs)
 - Quantitative factors
 - Pricing for the detailed subcontract package scope of work description as provided by MMJV. This includes further breakdown as directed by MMJV to allow for detailed pricing evaluation.
 - Estimated trades work-hours
 - Schedule detail and projected trades crew size graphs
 - Proposed rates for labor, equipment, insurance etc. (for use in future change order negotiations, or for billing purposes in the case of cost-plus/GMP subcontracts)
 - Contract terms – Subcontractors are required to identify any exceptions to the subcontract documents and project manual provided by MMJV, as well as any clarifications or exceptions to the scope of work definition provided.
- Proposals are evaluated jointly by MMJV and RIDA. In general, quantitative factors are given the most weight, but significant differences in evaluation of qualitative factors could overcome a difference in pricing. MMJV and RIDA may also consider other factors such as the maintenance of labor peace.
- The highest rated proposers (typically target three each) are invited for in-depth interviews.

Interview & BAFO stage

- In-depth interviews are conducted with the short-listed subcontractors. The interviews are focused on proposed supervisory personnel qualifications, the subcontractors’ project plan, and insuring there is a complete understanding of the required scope and schedule for the subject package as well as regulatory requirements (i.e. prevailing wage, DDA and Coastal Development Permit constraints, etc.).
- Following interviews, subcontractors are provided with a list of MMJV and RIDA comments or questions to be addressed, feedback on any proposed exceptions to the contract documents, and are invited to provide a “best and final offer” price proposal.

Final selection & award process

- MMJV and RIDA jointly review updated, final proposals and make tentative selection for award based on their determination of the overall value for the Project.
- Selected subcontractor is informed of their status, and any additional conditions for award by MMJV, in consultation with RIDA.
- After confirmation of the selected subcontractor's acceptance of any additional conditions, unsuccessful subcontractors are notified and provided a debrief regarding evaluation of their proposal.
- No subcontract will be awarded if either MMJV (in its reasonable determination) or RIDA objects thereto.
- MMJV will provide to RIDA, prior to commencement of the work and updated as changes may occur, a listing of all subcontractors and suppliers who MMJV has retained to complete the work.
- From time to time after any subcontracts have been awarded, RIDA will deliver a notice to the Authority with a list of such subcontracts and a confirmation that the subcontractors have been selected in accordance with the procedure set forth in this Exhibit G-1. If any subcontractor is not expected to be selected in accordance with the procedure set forth in this Exhibit G-1, then, prior to awarding the relevant subcontract, RIDA will deliver a request to the Authority for the Authority to waive the relevant provisions of the Authority Procurement Policy with respect to the selection of such subcontractor in accordance with the waiver process set forth in the Authority Procurement Policy.

Clarifications and exceptions to the subcontractor selection process:

- The portions of the work that will be identified on an exhibit to the construction contract and the contract amount for which will not, in the aggregate, exceed \$12 million, will not be required to be bid to others.
- MMJV will not be required to obtain bids for work that contractors customarily self-perform (which is traditionally referred to as "General Conditions", "General Requirements" or "Site Support Service" work), such as management, quality assurance, scheduling, security, traffic control, safety, supervision and accounting, etc.
- Except for subcontracts and work that are covered by another exception, if bids are received from Mortenson, McCarthy or any company affiliated with any of them, all bids for the portion of the work involved, including bids from Mortenson, McCarthy or such affiliated company, will be sealed bids which are to be opened in the presence of RIDA. Whenever with RIDA's prior written consent MMJV plans to self-perform any aspect of the work without using the sealed bid procedure stated in the preceding sentence, including a sealed bid from Mortenson, McCarthy or an affiliated company, then MMJV, as a condition precedent, will provide RIDA a detailed cost and fee estimate for such planned self-performed work together with two bids from subcontractors, or an independent estimate from a third-party cost estimating firm as selected by RIDA. In advance of any such self-performed work, and within sufficient time so as not to create schedule delays, MMJV will review all such pricing with RIDA and obtain RIDA's informed written consent for such self-performed work.

- MMJV may self-perform minor or incidental portions of the work without bidding such work to other subcontractors so long as MMJV only charges MMJV's cost of such work and no additional fee, overhead or general conditions for such self-performed work.
- Other work self-performed by MMJV will be treated as lump sum subcontracted work under the contract documents for the purposes of bidding, award and payment except as mutually agreed by MMJV and RIDA. If the parties agree that such self-performed work is to be completed on a "cost plus a fee" basis, the applicable fee percentage will be 15%.

Exhibit G-2

Subcontractor Bids Awarded Prior To Effective Date

[To be provided by Developer prior to Closing.]

Exhibit G-3

Approved Construction Contracts

[To be provided by Developer prior to Closing.]

Exhibit H

Form of Completion Guaranty

THIS COMPLETION GUARANTY (“**Guaranty**”), is made as of _____, by _____ (“**Guarantor**”), to and for the benefit of the San Diego Unified Port District, a public corporation (“**Port District**”), the Chula Vista Bayfront Facilities Financing Authority, a joint exercise of powers authority (“**Authority**”), and the City of Chula Vista, a chartered municipal corporation (the “**City**,” and, together with the Port District and the Authority, the “**Public Entities**”).

RECITALS

A. RIDA Chula Vista, LLC, a Delaware limited liability company (together with any successors and assigns, “**RIDA**”), is party to that certain ground lease, dated as of the date hereof, by and between Port District and RIDA (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Hotel Ground Lease**”).

B. The Hotel Ground Lease requires RIDA to develop and construct the “Resort Hotel” (as defined in the Hotel Ground Lease) and the “Parking Improvements” (as defined in the Hotel Ground Lease) in accordance with the Hotel Ground Lease.

C. RIDA is a party to that certain Sublease Agreement (Chula Vista Bayfront Convention Center), dated as of the date hereof, by and between the City and RIDA (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Convention Center Sublease**”).

D. RIDA is a party to that certain Project Implementation Agreement, dated as of the date hereof, by and among Authority, City, Port District and RIDA (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**PIA**” and, collectively with the Hotel Ground Lease and the Convention Center Sublease, the “**Project Documents**” and each, a “**Project Document**”).

E. The PIA requires RIDA to develop and construct (i) the “Convention Center” (as defined in the PIA) in accordance with the PIA and (ii) “Developer’s Phase 1A Infrastructure Improvements” (as defined in the PIA, and collectively with the Resort Hotel, the Parking Improvements and the Convention Center, the “**Project**”) in accordance with the PIA, for the benefit of the Public Entities.

F. Guarantor is [an affiliate of RIDA] and thus will benefit from the development of the Project in accordance with the terms of the Project Documents.

G. Each Public Entity has relied on the statements and agreements contained herein in agreeing to enter into the Project Documents to which it is a party.

GUARANTY

NOW, THEREFORE, intending to be legally bound, Guarantor in consideration of the matters described in the foregoing Recitals, which Recitals are incorporated herein and made a part

hereof, hereby covenants and agrees for the benefit of the Public Entities and their successors and assigns as follows:

1.1 **Guaranty**. Guarantor hereby warrants and guarantees to the Public Entities RIDA's obligation to:

(a) Complete (as defined in the Hotel Ground Lease) the Resort Hotel and the Parking Improvements, and procure and install furniture, fixtures and equipment and operating supplies and equipment that is generally necessary to open the Resort Hotel and the Parking Improvements for business (i) within the corresponding time allowed by the Hotel Ground Lease, including any time extensions authorized thereunder; (ii) in accordance with the terms and conditions of the Hotel Ground Lease that are applicable to the construction of the Resort Hotel and the Parking Improvements, including without limitation the procurement of a certificate of occupancy for the Resort Hotel and the Parking Improvements and delivery and acceptance by the Port District; (iii) substantially in accordance, in all material respects, with the Plans (as defined in and revised in accordance with the Hotel Ground Lease) with respect to the Resort Hotel and the Parking Improvement Plans (as defined in and revised in accordance with the Hotel Ground Lease); and (iv) free of any mechanics' liens and materialmen's' liens with respect to the Resort Hotel and the Parking Improvements;

(b) Complete (as defined in the PIA) the Convention Center and procure and install furniture, fixtures and equipment and operating supplies and equipment that is generally necessary to open the Convention Center for business (i) within the corresponding time allowed by the PIA, including any time extensions authorized thereunder; (ii) in accordance with the terms and conditions of the PIA that are applicable to the construction of the Convention Center, including without limitation the procurement of a certificate of occupancy for the Convention Center and delivery and acceptance by the applicable Public Entities; (iii) substantially in accordance, in all material respects, with the Convention Center Plans (as defined in and revised in accordance with the PIA); and (iv) free of any mechanics' liens and materialmen's' liens with respect to the Convention Center;

(c) Complete (as defined in the PIA) the Developer's Phase 1A Infrastructure Improvements and procure acceptance of the Developer's Phase 1A Infrastructure Improvements by the applicable Public Entity (i) within the corresponding time allowed by the PIA, including any time extensions authorized thereunder; (ii) in accordance with the terms and conditions of the PIA that are applicable to the construction of the Developer's Phase 1A Infrastructure Improvements, including without limitation delivery and acceptance by the applicable Public Entities; (iii) substantially in accordance, in all material respects, with the Contract Documents (as defined in and revised in accordance with the PIA); and (iv) free of any mechanics' liens and materialmen's' liens with respect to Developer's Phase 1A Infrastructure Improvements; and

(d) Pay any amounts owed by RIDA in connection with its "Election to Terminate" pursuant to the terms set forth in Sections [●] of the Convention Center Sublease (collectively, the "**Guaranteed Obligations**"). RIDA's satisfaction of Section 1.1(a) – (d) shall constitute "**Completion of the Project**".

1.2 **Consideration**. Guarantor acknowledges that it has made this Guaranty to induce each Public Entity to enter into the Project Documents to which it is a party and contribute to the Project, either directly or indirectly through one of the other Public Entities, a portion of the

development costs of the Convention Center and Developer's Phase 1A Infrastructure Improvements as set forth in the PIA (the "**Project Public Investment**"), and each Public Entity is entering into such Project Documents and contributing directly or indirectly to the Project Public Investment in reliance upon this Guaranty, and the Public Entities would not have agreed to enter into such Project Documents and would not have agreed to contribute the Project Public Investment without the Guarantor's execution and delivery of this Guaranty.

1.3 **Obligations of Guarantor Upon Default.** In the event RIDA fails to perform any part of the Guaranteed Obligations when due, after any cure period applicable to RIDA and the first priority Permitted Mortgage Lender (as defined in the Hotel Ground Lease) has expired, or the Foreclosure Purchaser that assumes the Project Documents elects not to complete the Resort Hotel, Parking Improvements, Convention Center, or Phase 1A Infrastructure Improvements, Guarantor shall, upon demand of the Port District, as it relates to the Resort Hotel and the Parking Improvements, and the Authority, as it relates to the Convention Center and Developer's Phase 1A Infrastructure Improvements, and the City and Port District as it relates to the proposed ownership of each in Developer's Phase 1A Infrastructure Improvements: (i) promptly cure such failure to perform the applicable part of the Guaranteed Obligations by performing or causing the performance of such obligation; and (ii) pay to the Public Entities (A) all reasonable costs and expenses, including reasonable attorneys' fees and expenses, they incur in enforcing the performance of the Guaranteed Obligations, and (B) any amounts owing under Section 5.1.2 of the PIA. In the event RIDA defaults in the performance of its obligations under any Project Document, provided Guarantor undertakes to cure such defaults, each Public Entity agrees to accept the performance by Guarantor of such obligations under such Project Document, and accord Guarantor all of the rights and benefits due to RIDA under such Project Document to the extent necessary for the Guarantor to fully satisfy its obligations hereunder.

1.4 **RIDA Acknowledgment.** RIDA hereby acknowledges that any payment made by any Public Entity to Guarantor of any amount that such Public Entity owes to RIDA shall satisfy such Public Entity's obligation to pay such amount to RIDA.

2. CHARACTER OF GUARANTY.

2.1 **Guarantee of Performance.** This Guaranty is not a guarantee of collection, but rather of performance. Guarantor hereby covenants and agrees that Guarantor is liable for the Guaranteed Obligations as primary obligor. Any Guaranteed Obligation may be enforced by any Public Entity that is entitled to enforce such Guaranteed Obligation separately without enforcing compliance with any other Guaranteed Obligation to which such Public Entity is entitled to enforce and without waiving its right or the right of any other of the Public Entities to subsequently enforce or concurrently enforce any other Guaranteed Obligation hereunder.

2.2 **Other Guaranties; Joint and Several Obligations.** For purposes of this Guaranty, "**Net Worth**" shall mean, with respect to any Person, such Person's total assets less the amount of such Person's total liabilities, determined in accordance with the Guarantor's standard accounting principles, as presented in the form attached hereto as Exhibit A. For purposes of this Guaranty, "**Liquidity**" shall mean, with respect to any Person, such Person's (a) assets that are specified in clauses (1) through (10) of the definition of Permitted Investments set forth in the Indenture of Trust dated as the date hereof between the Authority and Wilmington Trust, National Association, without giving effect to the introductory clause of such definition and (b) without duplication of (a), publicly traded securities. The Guarantor and each of the Public Entities

acknowledge and agree that a guaranty of the Guaranteed Obligations (an “**Other Guaranty**”) may be provided to the Public Entities by any other guarantor (“**Other Guarantors**”) in accordance with the terms of this Guaranty. If at any time the Guarantor (which may include an Other Guarantor) has a Net Worth (“**Guarantor Net Worth**”), when taken together with the Net Worth of each Other Guarantor at such time (collectively, “**Other Guarantor Net Worth**”), of less than \$200,000,000 or the Guarantor has a Liquidity (“**Guarantor Liquidity**”), when taken together with the Liquidity of each Other Guarantor at such time (collectively, “**Other Guarantor Liquidity**”), of less than \$40,000,000, then the Guarantor shall promptly notify the Public Entities thereof and shall do one or more of the following to achieve a Minimum Net Worth and Minimum Liquidity for the Guarantor, no later than 60 days, or 10 Business Days if there is an ongoing Event of Default (under and as defined in the Hotel Ground Lease or the PIA, as applicable), after the date that the Guarantor notifies the Public Entities thereof, (a) (i) increase the Guarantor Net Worth so that the increased Guarantor Net Worth, when taken together with the Other Guarantor Net Worth at such time, shall be equal to or be greater than \$200,000,000 (the “**Minimum Net Worth**”) and/or (ii) increase the Guarantor Liquidity so that the increased Guarantor Liquidity, when taken together with the Other Guarantor Liquidity at such time, shall be equal to or be greater than \$40,000,000 (the “**Minimum Liquidity**”), or (b) cause a Qualified Guarantor to execute an Other Guaranty substantially and materially in the form of this Guaranty; provided, however, that there shall be no more than three Other Guaranties outstanding at any time. Should any Other Guaranty be provided to the Public Entities by any Other Guarantor, Guarantor and the Other Guarantors agree that the liability of the Guarantor and Other Guarantors hereunder shall be joint and several and that each provision hereof shall apply to the Guarantor and each Other Guarantor individually and to Guarantor and all Other Guarantors collectively, and the Public Entities may seek to enforce this Guaranty against Guarantor or the Other Guarantors (and less than all of the Guarantor and Other Guarantors) without impairing the rights of the Public Entities against Guarantor or any of the Other Guarantors.

2.3 **Continuing Guaranty.** This is a continuing guaranty, and shall apply to all of the Guaranteed Obligations and all renewals and extensions thereof, and the fact that at any time, and from time to time, such Guaranteed Obligations may be performed in full or RIDA shall no longer be party to one or more of the Project Documents, shall not affect the obligations of the Guarantor hereunder which arise thereafter. In the event that RIDA is no longer a party to one or more of the Project Documents, the term “RIDA” herein shall be automatically interpreted to mean the person or entity that has succeeded RIDA under such Project Document(s), or if RIDA is still a party to one or more of the Project Documents, the term “RIDA” herein shall mean RIDA and the new entity that has succeeded RIDA under the Project Documents, without any further action of the Public Entities or Guarantor.

2.4 **Independent Obligation.** The obligations of Guarantor hereunder are independent of the obligations of RIDA, and Other Guarantor(s) or any other Person (as hereinafter defined), and each of the Public Entities may enforce any of their rights hereunder independently of any other right or remedy that such Public Entity may at any time hold with respect to the Guaranteed Obligations, independently or collectively with the other Public Entities.

2.5 **Unsecured Obligation.** Except as otherwise provided in this Guaranty, this Guaranty is not secured.

3. RELATIONSHIP OF PARTIES. Guarantor hereby represents and warrants as of the date hereof that: (a) this Guaranty is executed at the request of the Public Entities; (b) Guarantor has reviewed all the terms and provisions of the Plans (as defined in the Hotel Ground Lease) for the

Resort Hotel, the Preliminary Parking Improvement Plans (as defined in the Hotel Ground Lease) for the Parking Improvements, the Convention Center Plans (as defined in the PIA) for the Convention Center, and the Contract Documents (as defined in the PIA) for Developer's Phase 1A Infrastructure Improvements, in each case as revised in accordance with the applicable Project Document (collectively, the "**Project Plans**"), and the Project Documents; (c) the Public Entities have made no representations to Guarantor with regard to the Project Plans or the Project Documents; and (d) Guarantor has established adequate means of obtaining from RIDA and from other sources, on a continuing basis, financial and other information pertaining to RIDA's financial condition, the progress of construction of the Project and the status of RIDA's performance of its obligations under the Project Documents. Guarantor hereby covenants for the term of this Guaranty that: (i) Guarantor is and shall continue to be a Person which is not a Prohibited Person (as defined below), which, in the aggregate with the Other Guarantor Net Worth, has a Guarantor Net Worth of at least the Minimum Net Worth and which, in the aggregate with the Other Guarantor Liquidity, has a Guarantor Liquidity of at least the Minimum Liquidity ("**Qualified Guarantor**"); and (ii) Guarantor has not and will not, without the prior written consent of all of the Public Entities in each of their sole and absolute discretion, sell, lease, assign, encumber, hypothecate, transfer or otherwise dispose of any of Guarantor's assets, whether in one transaction or a series of transactions, which will result in Guarantor having a Guarantor Net Worth, together with the Other Guarantor Net Worth, of less than the Minimum Net Worth or Guarantor having a Guarantor Liquidity, together with the Other Guarantor Liquidity, of less than the Minimum Liquidity. For purposes of this Guaranty, "**Prohibited Person**" shall have the same meaning as the Hotel Ground Lease.

4. CERTAIN AGREEMENTS AND WAIVERS BY GUARANTOR.

4.1 Subject to Section 4.2, Guarantor agrees that neither the rights or remedies of the Public Entities nor any of Guarantor's obligations under the terms of this Guaranty, including without limitation, the Guaranteed Obligations, shall be released, diminished, impaired, reduced or affected by any one or more of the following events, actions, facts, or circumstances; Guarantor waives any rights, claims or defenses arising from any such events, actions, facts, or circumstances; and the liability of Guarantor under this Guaranty shall be absolute, unconditional and irrevocable irrespective of:

(a) any limitation on the liability of, or recourse against, any other person or entity (collectively, "**Person**") under the Project Documents or arising under any Laws (as defined in the Hotel Ground Lease), except for the limitations on liability set forth in Section 5.1.2 of the PIA as it applies to delay damages only; provided, that the limitations in Section 5.1.2 shall not apply to any amounts payable under Section 1.3(ii) above;

(b) any claim or defense that this Guaranty was made without consideration or is not supported by adequate consideration or that the obligations of Guarantor hereunder exceed or are more burdensome than those of RIDA under the Project Documents;

(c) the release or taking or accepting of any other security or guaranty for, or right of recourse with respect to, any or all of the Guaranteed Obligations;

(d) the operation of any statutes of limitations (unless each of the Public Entities had written notice of a claim and failed to pursue their remedies in the legally prescribed time periods) or other Laws regarding the limitation of actions, all of which are hereby waived as a

defense to any action or proceeding brought by any of the Public Entities against Guarantor, to the fullest extent permitted by Laws;

(e) any homestead exemption or any other exemption under any Laws;

(f) any release, surrender, abandonment, exchange, alteration, sale or other disposition, subordination, deterioration, waste, failure to protect or preserve, impairment, or loss of, or any failure to create or perfect any lien or security interest with respect to, or any other dealings with, any collateral or security at any time existing or purported, believed or expected to exist in connection with any or all of the Guaranteed Obligations, or any impairment of Guarantor's recourse against any Person or collateral;

(g) whether express or by operation of Laws, any partial release of the liability of Guarantor hereunder (except to the extent expressly so released) or any complete or partial release of RIDA or any other Person liable, directly or indirectly, for the performance of any or all of the Guaranteed Obligations;

(h) the death, insolvency, bankruptcy, disability, incapacity, dissolution, liquidation, termination, receivership, reorganization, merger, consolidation, change of form, structure or ownership, sale of all assets, or lack of corporate, partnership or other power of RIDA or any other Person at any time liable for the performance of any or all of the Guaranteed Obligations;

(i) either with or without notice to or consent of Guarantor, any renewal, extension, modification, supplement, subordination or rearrangement of the terms of any or all of the Guaranteed Obligations and/or the Project Documents, including material alterations of the terms of payment or performance (including changes with respect to the construction of the Project) or any other terms thereof, or any waiver, termination, or release of, or consent to departure from any of the Project Documents or any other guaranty of any or all of the Guaranteed Obligations, or any adjustment, indulgence, forbearance, or compromise that may be granted from time to time by any of the Public Entities to RIDA or any other Person at any time liable for the performance of any or all of the Guaranteed Obligations;

(j) any neglect, lack of diligence, delay, omission, failure, or refusal of any of the Public Entities to take or prosecute (or in taking or prosecuting) any action for the collection or enforcement of any of the Guaranteed Obligations, or to exercise (or in exercising) any other right or power with respect to any security therefor, or to take or prosecute (or in taking or prosecuting) any action in connection with the Project Documents, or any failure to sell or otherwise dispose of in a commercially reasonable manner any collateral securing any or all of the Guaranteed Obligations;

(k) any failure of any of the Public Entities to notify Guarantor of any creation, renewal, extension, rearrangement, modification, supplement, subordination, or assignment of the Guaranteed Obligations or any part thereof, or of any Project Document, or of any release of or change in any security, or of the occurrence or existence of any default or event of default under any Project Document (each, an “**Event of Default**”), or of any other action taken or refrained from being taken by any of the Public Entities against RIDA or any security or other recourse, or of any new agreement between any of the Public Entities and RIDA, it being understood that none of the Public Entities shall be required to give Guarantor any notice of any kind under any circumstances with respect to or in connection with the Guaranteed Obligations, any and all rights to notice

Guarantor may have otherwise had being hereby waived by Guarantor, and Guarantor shall be responsible for obtaining for itself information regarding RIDA and any collateral, including any changes in the business or financial condition of RIDA or any collateral, and Guarantor acknowledges and agrees that the Public Entities shall have no duty to notify Guarantor of any information which the Public Entities may have concerning RIDA, the Project, the Project Documents, or any collateral;

(l) the existence of any claim, counterclaim, setoff or other right that Guarantor may at any time have against RIDA, any of the Public Entities, or any other Person, whether or not arising in connection with this Guaranty or any Project Document;

(m) any order, ruling or plan of reorganization emanating from proceedings under Title 11 of the United States Code with respect to RIDA or any other Person, including any extension, reduction, composition, or other alteration of the Guaranteed Obligations, whether or not consented to by any of the Public Entities, or any action taken or omitted by any of the Public Entities in any such proceedings, including any election to have any of the Public Entities' claim allowed as being secured, partially secured or unsecured, any extension of credit by any of the Public Entities in any such proceedings or the taking and holding by any of the Public Entities of any security for any such extension of credit;

(n) any other condition, event, omission, action or inaction that would in the absence of this Section 4.1(n) result in the release or discharge of Guarantor from the performance or observance of any obligation, covenant or agreement contained in this Guaranty or any other agreement; or

(o) enforcement or forbearance by any of the Public Entities from enforcement of the Guaranteed Obligations on a net or gross basis.

4.2 Notwithstanding anything to the contrary in this Guaranty, with respect to the Public Entities obligations to Guarantor under Section 1.3 hereof under the Project Documents:

(a) To the extent any of the Public Entities fails to perform any of their respective obligations under any of the Project Documents for Guarantor and such failure to perform any of their respective obligations under any of the Project Documents materially and adversely interferes with or prevents Guarantor's performance of any of the Guaranteed Obligations (a "**Material Failure to Perform**"), then Guarantor's time to perform with respect to the impacted Guaranteed Obligation(s) shall be extended by one day for each day that such Material Failure to Perform delays Guarantor's performance of such Guaranteed Obligation(s), if: such Material Failure to Perform is notified by Guarantor to the Public Entities within sixty (60) days of such Failure to Perform. A Material Failure to Perform shall include any alleged failure by the Public Entities under Section 1.3 to make payments to Guarantor of amounts owed under the Project Documents, but shall not include any alleged failure by the Public Entities to make payments to RIDA of amounts owed under the Project Documents. The parties agree upon the written request of either party to submit any dispute regarding whether or not a Material Failure to Perform exists permitting a Guarantor delay under this Section 4.2(a) to mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure. Such mediation shall be held within San Diego County within thirty (30) days after delivery of written notice requesting same. Each party shall bear its own costs in such mediation and shall split 50/50 the costs of the mediator.

(b) If a court of competent jurisdiction determines that a breach under the applicable Project Document(s) was a Material Failure to Perform and that such Material Failure to Perform was not the result of the breach of a Tenant Party or the Guarantor under the Project Documents or any material and adverse interference by the Hotel Operator (a “**Material Failure to Perform Determination**”), and the underlying Material Failure to Perform continues for at least ninety (90) days from the date of the applicable Material Failure to Perform Determination (the “**Cure Period**”), then, from and after the date that the applicable Cure Period expires unless (i) any Public Entity files an action to appeal the Material Failure to Perform Determination no later than forty five (45) days from the date of the applicable Material Failure to Perform Determination and diligently prosecutes such action, in which case, from and after the date that is the later of (x) the date that the applicable Cure Period expires and (y) thirty (30) days after the date that the applicable appellate court of competent jurisdiction awards such Public Entity(ies) relief; or (ii) the Material Failure to Perform is reasonably capable of cure and the Public Entities have either (x) cured the Material Failure to Perform, or (y) if the Material Failure to Perform is not capable of cure within the Cure Period, have commenced taking appropriate steps to cure such failure and are diligently prosecuting same to completion, then the liability of the Guarantor in respect of the Guaranteed Obligation(s) with respect to which such Material Failure to Perform Determination was made shall automatically terminate, the Guarantor shall be automatically released from its obligations under this Guaranty with respect to such Guaranteed Obligation(s), except for any obligations that have accrued and have not been discharged prior to such date, and this Guaranty shall automatically terminate.

(c) If RIDA terminates the Hotel Ground Lease due to a Condemnation (as defined in the Hotel Ground Lease) or any damage to or destruction of the Resort Hotel or any part thereof, as permitted in the Hotel Ground Lease and in accordance with the terms thereof (the “**Hotel Ground Lease Termination**”), then, from and after the date that the Hotel Ground Lease Termination occurs (the “**Hotel Ground Lease Termination Date**”), the liability of the Guarantor in respect of the Guaranteed Obligations with respect to the Resort Hotel shall automatically terminate and the Guarantor shall be automatically released from its obligations under this Guaranty with respect to the Resort Hotel, except for any obligations that have accrued and have not been discharged prior to the Hotel Ground Lease Termination Date. If RIDA terminates the Convention Center Sublease due to a Condemnation (as defined in the Convention Center Sublease) or any damage to or destruction of the Convention Center or any part thereof, in each case, as permitted in the Convention Center Sublease and in accordance with the terms thereof (the “**Convention Center Sublease Termination**”), then, from and after the date that the Convention Center Sublease Termination occurs (the “**Convention Center Sublease Termination Date**”), the liability of the Guarantor in respect of the Guaranteed Obligations with respect to the Convention Center shall automatically terminate and the Guarantor shall be automatically released from its obligations under this Guaranty with respect to the Convention Center, except for any obligations that have accrued and have not been discharged prior to the Convention Center Sublease Termination Date. If the Hotel Ground Lease Termination occurs, and the Convention Center Sublease Termination occurs, and Guarantor does not have any amounts owing to the Public Entities under this Guaranty (“**Outstanding Payments**”), then, from and after the date that is the later of (x) the Hotel Ground Lease Termination Date, (y) the Convention Center Sublease Termination Date and (z) the payment to the Public Entities of any Outstanding Payments, the liability of the Guarantor in respect of the Guaranteed Obligations shall automatically terminate, the Guarantor shall be automatically released from its obligations under this Guaranty, except for any obligations that have accrued and have not been discharged prior to the Hotel Ground Lease Termination Date or the Convention Center Sublease Termination Date, whichever is later, and this Guaranty shall automatically terminate.

4.3 In the event any payment by RIDA or any other Person to any of the Public Entities that is made to satisfy any of the Guaranteed Obligations is held to constitute a preference, fraudulent transfer or other voidable payment under any bankruptcy, insolvency or similar Law, or if for any other reason any of the Public Entities are required to refund such payment or pay the amount thereof to any other party, such payment by RIDA or any other party to the Public Entities shall not constitute a release of Guarantor from any liability hereunder, and this Guaranty shall continue to be effective or shall be reinstated (notwithstanding any prior release, surrender or discharge by the Public Entities of this Guaranty or of Guarantor), as the case may be, with respect to, and this Guaranty shall apply to, any and all amounts that were so paid by RIDA or any other Person to satisfy any of the Guaranteed Obligations and so refunded by the Public Entities or paid by the Public Entities to another Person (which amounts shall constitute part of the Guaranteed Obligations), and any interest paid by the Public Entities and any attorneys' fees, costs and expenses paid or incurred by the Public Entities in connection with any such event.

4.4 It is the intent of Guarantor and the Public Entities that the obligations and liabilities of Guarantor hereunder are absolute, irrevocable and unconditional under any and all circumstances and that until the Guaranteed Obligations are fully and finally paid and performed, and not subject to refund or disgorgement, but except as set forth in Section 4.9, the obligations and liabilities of Guarantor hereunder shall not be discharged or released in whole or in part, by any act or occurrence that might, but for the provisions of this Guaranty, be deemed a legal or equitable discharge or release of a guarantor.

4.5 [Reserved.]

4.6 Guarantor waives notice of acceptance of this Guaranty, any rights, defenses and benefits that may be derived from Sections 2787 to 2855, inclusive, of the California Civil Code or comparable provisions of the Laws of any other jurisdiction, and all other suretyship defenses Guarantor would otherwise have under the Laws of California or any other jurisdiction.

4.7 No provision or waiver in this Guaranty shall be construed as limiting the generality of any other provision or waiver contained in this Guaranty. All of the waivers contained herein are irrevocable and unconditional and are intentionally and freely made by Guarantor.

4.8 This Guaranty may be replaced by a guaranty that is substantially and materially in the same form as this Guaranty, covers all of the same terms and Guaranteed Obligations as this Guaranty whether arising prior to, on or after the date it becomes effective, does not affect the public financing of the Convention Center and Developer's Phase 1A Infrastructure Improvements, and is executed by a Person (such Person, a "**Replacement Guarantor**") that (a) holds, directly or indirectly, not less than ten percent (10%) of the membership interests in RIDA, (b) when taken together with (i) each Other Guarantor under an Other Guaranty that is not being replaced and (ii) each new Other Guarantor under a new Other Guaranty, has a Guarantor Net Worth of at least the Minimum Net Worth, (c) when taken together with (i) each Other Guarantor under an Other Guaranty that is not being replaced and (ii) each new Other Guarantor under a new Other Guaranty, has a Guarantor Liquidity of at least the Minimum Liquidity, (d) is not a Prohibited Person, (e) assumes any liabilities that exist or may exist under the Guaranty (including without limitation those arising under Sections 1.3 and 6, unless such liabilities are discharged prior to the effectiveness of the Replacement Guaranty), and (f) is acceptable to each of the Public Entities in their reasonable discretion (collectively, the "**Replacement Guaranty**"). If (x) all of the conditions and requirements set forth in this Section 4.8, including without limitation, clauses (a) through (f)

above are satisfied to the reasonable satisfaction of each of the Public Entities, and (y) the proposed replacement Guarantor 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 reputation for, either discriminatory employment practices which violate any Laws or non-compliance with applicable Environmental Laws (as defined in the Hotel Ground Lease), then each of the Public Entities shall administratively grant consent to any such proposed Replacement Guarantor. If Guarantor requests in writing that the Public Entities consent to a Replacement Guarantor, and after receipt of all information set forth in this Section 4.8, all of the Public Entities do not within forty-five (45) days after such request provide a response consenting to the request, then such consent will be deemed rejected and upon request, the Public Entities shall provide a reasonably detailed explanation of the reason for rejecting such request. Guarantor’s request to the Public Entities to consent to a Replacement Guaranty shall include financial statements with respect to such prospective Replacement Guarantor and a certification by such prospective Replacement Guarantor (with any supporting documentation reasonably requested by the Public Entities) that: (1) such proposed Replacement Guarantor holds, directly or indirectly, not less than ten percent (10%) of the membership interests in RIDA, (2) such proposed Replacement Guarantor, when taken together with (i) each Other Guarantor under an Other Guaranty, if any, that is not being replaced and (ii) each new Other Guarantor, if any, under a new Other Guaranty, has a Guarantor Net Worth of at least the Minimum Net Worth, (3) such proposed Replacement Guarantor, when taken together with (i) each Other Guarantor under an Other Guaranty, if any, that is not being replaced and (ii) each new Other Guarantor, if any, under a new Other Guaranty, has a Guarantor Liquidity of at least the Minimum Liquidity and (4) such proposed Replacement Guarantor is not a Prohibited Person.

4.9 Provided that there are no Outstanding Payments, the liability of Guarantor in respect of the Guaranteed Obligations shall automatically terminate and Guarantor shall be automatically released from its obligations under this Guaranty and this Guaranty shall automatically terminate upon the earliest of the following dates: (i) the date that is six (6) months after the Completion of the Project (as defined in Section 1.1), (ii) the effective date of a Replacement Guaranty pursuant to and in accordance with Section 4.8 hereof where the Replacement Guarantor has replaced the Guarantor and assumed all of Guaranteed Obligations, and (iii) the date on which all of the following has occurred: (a) Hotel Ground Lease Termination Date and (b) the Convention Center Sublease Termination Date. Provided that the necessary conditions under this Section 4.9 have been satisfied, each Public Entity shall execute an acknowledgement that this Guaranty has terminated promptly after the receipt by the Public Entities of a written request therefore from Guarantor.

5. REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants to the Public Entities that:

5.1 **Authority; Execution, Delivery and Performance of Guaranty.** Guarantor has all requisite power and authority to execute, deliver and perform all of its obligations under this Guaranty. The execution, delivery and performance by Guarantor of all of the obligations under this Guaranty has been duly authorized by all necessary action and do not and will not:

(a) result in or require the creation or imposition of any lien, right of others, or other encumbrance of any nature (other than under this Guaranty) upon or with respect to any property now owned or leased or hereafter acquired by the Guarantor; or

- (b) violate any provision of any Laws; or
- (c) result in a breach of, constitute a default under, or cause or permit the acceleration of any obligation owed under any agreement or instrument to which Guarantor is a party or by which Guarantor or any of its property is bound or affected; or
- (d) require any consent or approval not heretofore obtained; or
- (e) violate any provision of, or require any consent under, any operating agreement, certificate of formation, partnership agreement, articles of incorporation, by-laws or any other governing document or charter applicable to Guarantor.

5.3 **Enforceability**. This Guaranty, when executed and delivered, shall constitute the valid and binding obligation of Guarantor, enforceable in accordance with its terms, subject to bankruptcy laws and other Laws and equitable principles affecting creditors rights generally if applicable to Guarantor.

5.4 **Financial Information**². The statement of financial condition made available to the Public Entities for review with respect to the Guarantor in connection with the Project Documents and this Guaranty, and to demonstrate that Guarantor is a Qualified Guarantor to the Public Entities, is a true, complete, and correct copy of such statement, such statement has been prepared in accordance with the Guarantor's standard accounting principles, and fairly and accurately represents the financial condition of the Guarantor in accordance with such accounting principles, as of the date it was delivered to the Public Entities.

5.5 **No Default**. To the best of Guarantor's knowledge, there is no condition, event, act or omission that exists which, with the giving of notice or the passage of time, or both, would be an Event of Default under the Project Documents.

6. REMEDIES. If Guarantor shall fail to perform or satisfactorily commence performance of its obligations hereunder within fourteen (14) days of a demand by any of the Public Entities for performance thereof, the Public Entities shall have the following remedies, in addition to and cumulative of any other remedies it may have hereunder, under the Project Documents or at law or in equity:

- (a) [reserved;]
- (b) at its option and without any obligation to do so, complete all or any portion of the Project either before or after the termination of the Project Documents or before or after exercising any other remedy against RIDA or Guarantor, with such changes or modifications in the Project Plans as are necessary for completion of the Project. The amount of any and all expenditures made by the Public Entities for the foregoing purposes shall be immediately due and payable to the Public Entities by Guarantor; and
- (c) from time to time and without first requiring performance on the part of RIDA and without being required to exhaust any or all security held by the Public Entities, to look to

² NTD: Guarantor to provide updated financial information prior to close of escrow.

and require performance by Guarantor of any obligation on the part of Guarantor to be performed pursuant to the terms of this Guaranty by action at law or in equity, or both.

7. NOTICE OF CERTAIN EVENTS. Guarantor shall give written notice to each of the Public Entities promptly (and in any event within five (5) days) after Guarantor learns of any of the following:

(a) the institution of any litigation or legal or administrative proceeding or investigation which has a reasonable probability of being adjudicated adversely to RIDA, Guarantor, the Project or any of RIDA's or Guarantor's properties and which would reasonably be expected, if so adjudicated, to materially and adversely affect RIDA, Guarantor or the Project, or cause Guarantor to no longer be a Qualified Guarantor; and

(b) the occurrence of any Event of Default or event or condition which, with the giving of notice or the passage of time, or both, would be an Event of Default under the Project Documents.

8. REASONABLENESS AND EFFECT OF WAIVERS. Guarantor warrants and agrees that each of the waivers set forth in this Guaranty is made with full knowledge of its significance and consequences and that, under the circumstances, the waivers are reasonable and not contrary to public policy or Laws. If any of such waivers are determined to be contrary to any applicable Laws or public policy, such waivers shall be effective only to the maximum extent permitted by Laws.

9. MISCELLANEOUS PROVISIONS.

9.1 **Costs of Enforcement.** The prevailing party in any legal proceedings concerning the enforcement of this Guaranty shall be entitled to recovery of its costs and attorneys' fees from the party that did not prevail.

9.2 **Binding Effect.** This Guaranty and all the terms, provisions and conditions hereof shall be binding upon the Guarantor and its heirs, legal representatives, successors and assigns, and this Guaranty shall inure to the benefit of the Public Entities and their successors and assigns and all subsequent holders of the Guaranteed Obligations.

9.3 **Financial Information.** Guarantor shall deliver to the Public Entities, as soon as available, but in no event later than one hundred twenty (120) days after the end of Guarantor's fiscal year-end, a copy of Guarantor's statement of financial condition, in the form attached hereto as Exhibit A, as of the end of such calendar year, together with a certification that such statement (1) is complete and correct to the best of Guarantor's knowledge, (2) presents the financial condition of the entity, (3) presents all liabilities that are required to be reflected, and those liabilities are presented at historical cost, and (4) is prepared in accordance with the Guarantor's standard accounting principles. Additionally, Guarantor shall make available for inspection (but not copying) by any of the Public Entities such other information regarding Guarantor's assets, liabilities and financial condition generally as (a) the Public Entities may from time to time reasonably request so that the Public Entities can verify the veracity of the certifications set forth in the preceding sentence and (b) exists (unless generation of such financial information will not result in any material additional expense to the Guarantor, in which case the Guarantor will request that such financial information be generated and provided to the Public Entities), at the Project, RIDA's main business

office, any of Hotel Operator's (as defined in the Hotel Ground Lease) business offices in San Diego County, California or at such other location in San Diego County, California as is reasonably acceptable to the Public Entities, upon such Public Entity's written notice, which shall specify in reasonable detail the financial information the Public Entities are requesting be made available for inspection and the date when such inspection will take place, which date shall not be less than ten business days after the date of such notice. Notwithstanding the foregoing, if any of the Public Entities are required to include any of the financial information shared by Guarantor in connection with its respective board or council meetings, Guarantor agrees to provide the Public Entities with a redacted version of such financial information at no cost to the Public Entities and a certification that, except for such redactions, such redacted version of financial information is a true, correct, and complete copy of the unredacted version of the financial information reviewed by the Public Entities.

9.4 **Governing Law.** This Guaranty shall be governed by, and construed in accordance with, the laws of the State of California.

9.5 **Notices.** All notices demands, approvals and other communications provided for herein shall be in writing and shall be delivered by overnight air courier, personal delivery or registered or certified U.S. mail with return receipt requested, postage prepaid, to the appropriate party at its address as follows:

If to Port District:

Executive Director
San Diego Unified Port District
Administration Building
3165 Pacific Highway
San Diego, California 92101-1128
(Mailing Address: P.O. Box 120488
San Diego, California 92112-0488)
With copy to:

Director, Real Estate
San Diego Unified Port District
Administration Building
3165 Pacific Highway
San Diego, California 92101-1128
(Mailing Address: P.O. Box 120488
San Diego, California 92112-0488)

With a copy to:

Port Attorney
San Diego Unified Port District
3165 Pacific Highway
San Diego, California 92101-1128
(Mailing Address: P.O. Box 120488
San Diego, California 92112-0488)

If to City:

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

With a copy to:

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

If to the Authority:

To the City:

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

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

To the Port District:

Executive Director
San Diego Unified Port District
Administration Building
3165 Pacific Highway
San Diego, California 92101-1128
(Mailing Address: P.O. Box 120488
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Administration Building
3165 Pacific Highway
San Diego, California 92101-1128
(Mailing Address: P.O. Box 120488
San Diego, California 92112-0488)

With a copy to:

Port Attorney
San Diego Unified Port District
3165 Pacific Highway
San Diego, California 92101-1128
(Mailing Address: P.O. Box 120488
San Diego, California 92112-0488)

If to Guarantor:

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

Addresses for notice may be changed from time to time by written notice to all other parties. Any communication given by mail will be effective upon the earlier of (a) three (3) business days following deposit in a post office or other official depository under the care and custody of the United States Postal Service or (b) actual receipt, as indicated by the return receipt; if given by telephonic facsimile, when sent; and if given by personal delivery or by overnight air courier, when delivered to the appropriate address set forth above.

9.6 **No Waiver.** Any failure by the Public Entities to insist, or any election by the Public Entities not to insist, upon strict performance by Guarantor of any of the terms, provisions or conditions of this Guaranty shall not be deemed to be a waiver of the same or of any other terms, provisions or conditions thereof.

9.7 **Severability.** If any provision of this Guaranty or the application thereof to any Person or circumstance shall be invalid or unenforceable, then, neither the remainder of this instrument nor the application of such provision to other persons or circumstances shall be affected thereby, but rather shall be enforced to the greatest extent permitted by Laws.

9.8 **Entire Agreement and Modification.** This Guaranty contains the entire agreement between the Guarantor and the Public Entities relating to the subject matter hereof, except for the Project Plans and the Project Documents. This Guaranty may not be amended, revised,

waived, discharged, released or terminated orally, but only by a written amendment, revision, waiver, discharge, release or termination. Any alleged amendment, revision, waiver, discharge, release or termination which is not so documented shall not be effective as to any party to this Guaranty.

9.9 **Further Assurances.** Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as the other party may reasonably request in order to carry out the intent and accomplish the purposes of this Guaranty and the consummation of the transactions contemplated hereby.

[Signature Page Follows.]

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first written above.

GUARANTOR

Print Name:

Print Title:

Accepted and agreed by:

SAN DIEGO UNIFIED PORT DISTRICT APPROVED AS TO FORM AND LEGALITY:

Print Name:
Print Title:

Thomas A. Russell, General Counsel

**CHULA VISTA BAYFRONT FACILITIES APPROVED AS TO FORM AND LEGALITY:
FINANCING AUTHORITY**

Print Name:
Print Title:

Thomas A. Russell, Co-Counsel, General Counsel
San Diego Unified Port District

Glen R. Googins, Co-Counsel, City Attorney
City of Chula Vista

CITY OF CHULA VISTA

Print Name:
Print Title:

RIDA CHULA VISTA, LLC

Print Name:
Print Title:

EXHIBIT A

FORM OF STATEMENT OF FINANCIAL CONDITION

(to be attached prior to execution.)

Exhibit I

Other Ground Leases

1. Amended, Restated and Combined Lease between the San Diego Unified Port District (the “District”) and The Marine Group LLC for property at the North Side of G Street at the terminus of both Quay Avenues and Sandpiper Way in Chula Vista, which lease is on file in the Office of the District Clerk as Document No. 54509, as amended and may be amended from time to time.

2. Lease between the District and Chula Vista Marina, LP, dba Chula Vista Marina, for property located at 550 Marina Parkway in Chula Vista which lease is on file in the Office of the District Clerk as Document No. 14244, as amended and may be amended from time to time.

3. Lease between the District and California Yacht Marina-Chula Vista, LLC, for property located at 640 Marina Parkway in Chula Vista which lease is on file in the Office of the District Clerk as Document No. 23924, as amended and may be amended from time to time.

4. Lease between the District and Sun Chula Vista Bayfront RV LLC for property located at 825 E Street in Chula Vista which lease is on file in the Office of the District Clerk as Document No. 70407, as amended and may be amended from time to time (“RV Park Lease”).

EXHIBIT J

Public Debt Service Obligation (PDSO)

[To be provided by Bond Counsel prior to Closing.]

Exhibit K-1

Form of Developer’s Phase 1A Payment Request

[____], 202[]

Chula Vista Bayfront Facilities Financing Authority
c/o City of Chula Vista
276 Fourth Avenue
Chula Vista, California 91910
Attention: City Manager

Re: Developer’s Phase 1A Payment Request No. [] under Project Implementation Agreement (the “**Agreement**”), dated as of [●], 2021, by and among the City of Chula Vista, a chartered municipal corporation (“**City**”), acting on its behalf and for and on behalf of the Bayfront Project Special Tax Financing District, a financing district established and existing pursuant to Chula Vista Municipal Code Chapter 3.61 Bayfront Project Special Tax Financing District Procedural Ordinance, the San Diego Unified Port District, a public corporation (the “**Port District**”), the Chula Vista Bayfront Facilities Financing Authority (the “**Authority**” and also sometimes referred to herein as the “**JEPA**”), a joint exercise of powers entity created by the City and the Port District pursuant to Joint Exercise of Powers Act (defined in the Agreement), and RIDA Chula Vista, LLC, a Delaware limited liability company (“**Developer**” or “**RIDA**”).

Payment Request of \$[_____]

Requested Payment Date: [____], 20[]³

Ladies and Gentlemen:

The Developer submits this Developer’s Phase 1A Payment Request No. [] (the “**Payment Request**”) pursuant to Section 9.1.2 of the Agreement with respect to the Developer’s Phase 1A Infrastructure Improvements. Capitalized terms used herein without definition shall have the meanings assigned in the Agreement.

The Developer hereby requests that the Authority, on the requested payment date set forth above (the “Requested Payment Date”), direct the Trustee to transfer \$ [] (the “Requested Payment Amount”) from the [Account] to the [Account]. The Requested Payment Amount is calculated as set forth on Schedule 1.

In connection with the requested payment, the Developer hereby represents, warrants and certifies as of the date hereof as follows:

(a) Schedule 2 accurately lists each Person to whom any of the Developer’s Phase 1A Infrastructure Improvements Costs have been or will be paid and, for each line item in such schedule

³ To be not less than 10 business days after the date of the Developer’s Phase 1A Payment Request.

and for each such Person, the following: (i) the name of the payee paid or to be paid, (ii) the amount that Developer has paid to such Person, (iii) the amount that Developer intends to pay to such Person during the next 30 days, (iv) a description of the purpose of such payment, specifying the line item relating to each such payment, (v) amounts withheld as retainage pursuant to applicable requirements of applicable contracts or subcontracts, (vi) amounts eligible for reimbursement under the Sewer Agreement, and (vii) amounts eligible for credit under the BFDIF Program. The amounts listed in Schedule 2 do not include any Non-Project Costs or Excluded Costs. The information set forth in Schedule 2 as noted above is true, correct and complete in all material respects.

(b) The Developer has delivered or caused to be delivered to the Authority:

(i) copies of true and complete invoices that have been tendered for all Developer's Phase 1A Infrastructure Improvements Costs pursuant to any Payment Request, and

(ii) statutory lien/stop payment notice conditional waivers and releases associated with all work performed, or supplies provided, for the Developer's Phase 1A Infrastructure Improvements and for which payment is requested in the appropriate statutory form, other than Excluded Mechanics Lien Waivers, and

(iii) copies of all change orders executed prior to the date of this Payment Request.

(c) To Developer's actual knowledge, after inquiring with Developer's architect or engineer who has a representative at the Project Site, the construction performed for the Developer's Phase 1A Infrastructure Improvements as of the date hereof has been performed substantially in accordance in all material respects with the Approved Drawings and Specifications with respect to the Developer's Phase 1A Infrastructure Improvements, or to the extent any such construction has not been performed substantially in accordance in all material respects with the Approved Drawings and Specifications, the amount to be disbursed under this payment request has been reduced by \$[_____] pursuant to the Architect's Certificate (as defined below) to reflect the reasonably estimated cost of causing such construction to be performed substantially in accordance in all material respects with the Approved Drawings and Specifications with respect to the Developer's Phase 1A Infrastructure Improvements.

(d) To the actual knowledge of Developer (after enquiring with Developer's General Contractor), except as described in (c) above, no work or component of work has been rejected or disapproved by an inspector or other authorized representative of the City's building or public works departments or a stormwater inspector representing the Port District.

(e) The amount of the Payment Request reflects a reduction of \$[_____] being the amount for which the Developer does not intend to pay any General Contractor or any Subcontractor.

(f) The Developer's Phase 1A Infrastructure Improvements Budget presently in effect is dated [_____] [and has not been amended] [and includes all amendments through Developer's Phase 1A Infrastructure Improvements Budget Amendment No. [____]]. Said budget (i) is based on reasonable assumptions as to all legal and factual matters material to the estimates set forth therein, (ii) has been prepared in good faith and with due care, (iii) accurately sets forth, for each line item in the Developer's Phase 1A Infrastructure Improvements Budget, the total costs anticipated to be

incurred to achieve Completion, and (iv) fairly represents in all material respects the Developer's reasonable expectation as to the matters covered thereby as of its date.

(g) As of the date hereof, no Event of Default exists.

(h) All proceeds of all previous Payment Requests, except for \$[_____] and amounts paid in respect of the Stipulated Developer's Phase 1A Infrastructure Improvements Overhead Amount, have been expended and have been applied to pay Developer's Phase 1A Infrastructure Improvements Costs in accordance with Contract Documents and the Agreement (or, with respect to the Early Work Costs, in accordance with the Early Work Agreement). Schedule 3 accurately lists the foregoing costs that have been paid since the last Requested Payment Date, in each case, segregated by line item. The information set forth on Schedule 3 is true, correct and complete.

(i) As of the date hereof, Developer has complied with all applicable provisions of Section 7.2.3.1 of the Agreement.

Attached to this Payment Request as Exhibit 1 is a certificate from the Architect (the "Architect's Certificate").

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned has executed this Developer's Phase 1A Payment Request as of this [] day of [], 202[].

DEVELOPER

RIDA CHULA VISTA, LLC, a Delaware limited liability company

By: _____ *

Schedule 1 to Developer's Phase 1A Payment Request

Line #	Description	Amount
1	The Developer's Phase 1A Infrastructure Improvements Costs incurred or to be incurred by Developer and for which Developer has made or intends to make actual payment prior to the next Developer's Phase 1A Payment Request:	\$
2	The Stipulated Developer's Phase 1A Infrastructure Improvements Overhead Amount that has accrued as of the date of the Developer's Phase 1A Payment Request:	\$
3	Total of Lines 1 and 2:	\$
4	Amount withheld pursuant to clause (b) of Architect's Certificate:	\$
5	Amounts previously paid by the Authority in respect of the Developer's Phase 1A Contract Sum:	\$
6	Amounts that Developer does not intend to pay General Contractor or any Subcontractor (except to the extent the applicable work has been performed by others the Developer intends to pay):	\$
7	Total of Lines 4, 5 and 6:	\$
8	Requested Payment Amount (Line 3 minus Line 7):	\$

Schedule 2 to Developer's Phase 1A Payment Request

(i) Payee	(ii) Amount Paid	(iii) Amount Intended to be Paid within 30 days	(iv) Description of Purpose of Expense	(v) Retainage Withheld
<i>Line Item:</i>				
<i>Total for Line Item</i>				

The foregoing payment / credit is requested from: (circle one) Bond Proceeds Sewer Agreement BFDIF

Schedule 3 to Developer's Phase 1A Payment Request

(i) Payee	(ii) Amount Paid since last Requested Payment Date	(iii) Description of Purpose of Expense
<i>Line Item:</i>		
<i>Total for Line Item</i>		

EXHIBIT 1

Certificate of Architect

[____], 20[__]

Chula Vista Bayfront Facilities Financing Authority
c/o City of Chula Vista
276 Fourth Avenue
Chula Vista, California 91910
Attention: City Manager

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

Re: Developer’s Phase 1A Payment Request No. [____] under Project Implementation Agreement (the “**Agreement**”), dated as of [●], 2021, by and among the City of Chula Vista, a chartered municipal corporation (“**City**”), acting on its behalf and for and on behalf of the Bayfront Project Special Tax Financing District, a financing district established and existing pursuant to Chula Vista Municipal Code Chapter 3.61 Bayfront Project Special Tax Financing District Procedural Ordinance, the San Diego Unified Port District, a public corporation (the “**Port District**”), the Chula Vista Bayfront Facilities Financing Authority (the “**Authority**” and also sometimes referred to herein as the “**JEPA**”), a joint exercise of powers entity created by the City and the Port District pursuant to Joint Exercise of Powers Act (defined in the Agreement), and RIDA Chula Vista, LLC, a Delaware limited liability company (“**Developer**” or “**RIDA**”).

Payment Request of \$[_____]

Requested Payment Date: [____], 20[__]

Ladies and Gentlemen:

Capitalized terms used herein without definition shall have the meanings assigned to them in the Agreement.

[●] (the “**Architect**”) hereby certifies as follows:

(a) The Architect has reviewed the above referenced Developer’s Phase 1A Payment Request No. [____] (the “**Payment Request**”) and the Agreement, to the extent necessary to understand the defined terms contained herein and in the Payment Request that are incorporated by reference from the Agreement and to provide the certification contained herein.

(b) The Architect hereby certifies and confirms that, pursuant to the observation of the work as required by the [describe Architect Agreement] and in accordance with applicable professional standards, the construction performed for the Developer’s Phase 1A Infrastructure Improvements as of the date hereof has been performed substantially in accordance in all material

respects with the Approved Drawings and Specifications with respect to the Developer's Phase 1A Infrastructure Improvements, or to the extent any such construction has not been performed substantially in accordance in all material respects with the Approved Drawings and Specifications with respect to the Developer's Phase 1A Infrastructure Improvements, the amount to be disbursed under this payment request has been reduced by \$[_____] to reflect the reasonably estimated cost of causing such construction to be performed substantially in accordance in all material respects with Approved Drawings and Specifications with respect to the Developer's Phase 1A Infrastructure Improvements. The foregoing certification is subject to an evaluation of the Developer's Phase 1A Infrastructure Improvements for conformance with the Approved Drawings and Specifications with respect to the Developer's Phase 1A Infrastructure Improvements upon Completion, to results of subsequent tests and inspections, and to correction of minor deviations from the Approved Drawings and Specifications with respect to the Developer's Phase 1A Infrastructure Improvements prior to Completion. This certificate is not a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers, or (4) made examination to ascertain how or for what purpose the Developer has used money previously paid on account of the Developer's Phase 1A Contract Sum.

(c) Except as described in (b) above, no work or component of work has been rejected or disapproved by an inspector or other authorized representative of the City's building or public works departments or a stormwater inspector representing the Port District.

(d) Any representations or certifications by the Architect herein shall mean an expression of the Architect's professional opinion to the best of its information, knowledge and belief, and does not constitute a warranty or guarantee by the Architect.

The Authority is entitled to rely on the foregoing representations, warranties and certifications in authorizing and making the disbursement requested in the Payment Request.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Architect as of this [] day of [], 201[].

[●]

By: _____

Name:

Title:

Exhibit K-2

Form of Convention Center Payment Request

[____], 202[]

Chula Vista Bayfront Facilities Financing Authority
c/o City of Chula Vista
276 Fourth Avenue
Chula Vista, California 91910
Attention: City Manager

Re: Convention Center Payment Request No. [] under Project Implementation Agreement (the “**Agreement**”), dated as of [●], 2021, by and among the City of Chula Vista, a chartered municipal corporation (“**City**”), acting on its behalf and for and on behalf of the Bayfront Project Special Tax Financing District, a financing district established and existing pursuant to Chula Vista Municipal Code Chapter 3.61 Bayfront Project Special Tax Financing District Procedural Ordinance, the San Diego Unified Port District, a public corporation (the “**Port District**”), the Chula Vista Bayfront Facilities Financing Authority (the “**Authority**” and also sometimes referred to herein as the “**JEPA**”), a joint exercise of powers entity created by the City and the Port District pursuant to Joint Exercise of Powers Act (defined in the Agreement), and RIDA Chula Vista, LLC, a Delaware limited liability company (“**Developer**” or “**RIDA**”).

Payment Request of \$[_____]

Requested Payment Date: [____], 20[]⁴

Ladies and Gentlemen:

The Developer submits this Convention Center Payment Request (the “**Payment Request**”) pursuant to Section 9.2.2 of the Agreement with respect to the Convention Center. Capitalized terms used herein without definition shall have the meanings assigned in the Agreement.

The Developer hereby requests that the Authority, on the requested payment date set forth above (the “Requested Payment Date”), direct the Trustee to transfer \$ [] (the “Requested Payment Amount”) from the [Account] to the [Account]. The Requested Payment Amount is calculated as set forth on Schedule 1.

In connection with the requested payment, the Developer hereby represents, warrants and certifies as of the date hereof as follows:

(a) Schedule 2 accurately lists each Person to whom any of the Convention Center Costs have been or will be paid and, for each line item in such schedule and for each such Person, the following: (i) the name of the payee paid or to be paid, and, (ii) amount that Developer has paid to

⁴ NTD: To be not less than 10 business days after the date of the Convention Center Payment Request.

such Person, (iii) the amount that Developer intends to pay to such Person during the next 30 days, (iv) a description of the purpose of such payment, specifying the line item relating to each such payment, and (v) amounts withheld as retainage pursuant to the applicable contract or subcontract. The amounts listed on Schedule 2 do not include any Non-Project Costs. The information set forth in Schedule 2 as noted above is true, correct and complete in all material respects.

(b) The Developer has delivered or caused to be delivered to the Authority:

(i) copies of true and complete invoices that have been tendered for all Convention Center Costs pursuant to any Payment Request, and

(ii) statutory lien/stop payment notice conditional waivers and releases associated with all work performed, or supplies provided, for the Convention Center and for which payment is requested in the appropriate statutory form, other than Excluded Mechanics Lien Waivers, and

(iii) copies of all change orders executed prior to the date of the Payment Request.

(c) To Developer's actual knowledge, after inquiring with Developer's architect or engineer who has a representative at the Project Site, the construction performed for the Convention Center as of the date hereof has been performed substantially in accordance in all material respects with the Convention Center Plans, or to the extent any such construction has not been performed substantially in accordance in all material respects with the Approved Drawings and Specifications, the amount to be disbursed under this payment request has been reduced by \$[_____] pursuant to the Architect's Certificate (as defined below) to reflect the reasonably estimated cost of causing such construction to be performed substantially in accordance in all material respects with the Convention Center Plans.

(d) [Reserved].

(e) The amount of the Payment Request reflects a reduction of \$[_____], being the amount for which the Developer does not intend to pay General Contractor or any Subcontractor (except to the extent the applicable work has been performed by others the Developer intends to pay).

(f) The Convention Center Budget presently in effect is dated [_____] [and has not been amended] [and includes all amendments through Convention Center Budget Amendment No. [____]]. Said budget (i) is based on reasonable assumptions as to all legal and factual matters material to the estimates set forth therein, (ii) has been prepared in good faith and with due care, (iii) accurately sets forth, for each line item in the Convention Center Budget, the total costs anticipated to be incurred to achieve Completion, and (iv) fairly represents in all material respects the Developer's reasonable expectation as to the matters covered thereby as of its date.

(g) As of the date hereof, no Event of Default exists.

(h) All proceeds of all previous Payment Requests, except for \$[_____] and amounts paid in respect of the Development Fees and Stipulated Convention Center Overhead Amount, have been expended and have been applied to pay Convention Center Costs in accordance with Contract Documents and the Agreement. Schedule 3 accurately lists the foregoing costs that have been paid since the last Requested Payment Date, in each case, segregated by line item. The information set forth on Schedule 3 is true, correct and complete.

(i) As of the date hereof, Developer has complied with all applicable provisions of Section 7.2.3.1 of the Agreement.

Attached to this Payment Request as Exhibit 1 is a certificate from the Architect (the “Architect’s Certificate”).

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned has executed this Convention Center Payment Request as of this [] day of [], 202[].

DEVELOPER

RIDA CHULA VISTA, LLC, a Delaware limited liability company

By: _____ *

Schedule 1 to Convention Center Payment Request

Line #	Description	Amount
1	The Convention Center Costs incurred or to be incurred by Developer and for which Developer has made or intends to make actual payment prior to the next Convention Center Payment Request:	\$
2	The Initial Convention Center Development Fee:	\$
3	The Remaining Convention Center Development Fee that has accrued as of the date of the Convention Center Payment Request:	\$
4	The Stipulated Convention Center Overhead Amount that has accrued as of the date of the Convention Center Payment Request:	\$
5	Total of Lines 1, 2, 3 and 4:	\$
6	Amount withheld pursuant to clause (b) of Architect's Certificate:	\$
7	Amounts previously paid in respect of the Convention Center Contract Sum:	\$
8	Amounts that Developer does not intend to pay General Contractor or any Subcontractor (except to the extent the applicable work has been performed by others the Developer intends to pay):	\$
9	Total of Lines 6, 7 and 8:	\$
10	Requested Payment Amount (Line 5 minus Line 9):	\$

Schedule 2 to Convention Center Payment Request

(i) Payee	(ii) Amount Paid	(iii) Amount Intended to be Paid within 30 days	(iv) Description of Purpose of Expense	(v) Retainage Withheld
<i>Line Item:</i>				
<i>Total for Line Item</i>				

Schedule 3 to Convention Center Payment Request

(i) Payee	(ii) Amount Paid since last Requested Payment Date	(iii) Description of Purpose of Expense
<i>Line Item:</i>		
<i>Total for Line Item</i>		

EXHIBIT 1

Certificate of Architect

[____], 20[__]

Chula Vista Bayfront Facilities Financing Authority
c/o City of Chula Vista
276 Fourth Avenue
Chula Vista, California 91910
Attention: City Manager

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

Re: Convention Center Payment Request No. [__] under Project Implementation Agreement (the “**Agreement**”), dated as of [●], 2021, by and among the City of Chula Vista, a chartered municipal corporation (“**City**”), acting on its behalf and for and on behalf of the Bayfront Project Special Tax Financing District, a financing district established and existing pursuant to Chula Vista Municipal Code Chapter 3.61 Bayfront Project Special Tax Financing District Procedural Ordinance, the San Diego Unified Port District, a public corporation (the “**Port District**”), the Chula Vista Bayfront Facilities Financing Authority (the “**Authority**” and also sometimes referred to herein as the “**JEPA**”), a joint exercise of powers entity created by the City and the Port District pursuant to Joint Exercise of Powers Act (defined in the Agreement), and RIDA Chula Vista, LLC, a Delaware limited liability company (“**Developer**” or “**RIDA**”).

Payment Request of \$[_____]

Requested Payment Date: [____], 20[__]

Ladies and Gentlemen:

Capitalized terms used herein without definition shall have the meanings assigned to them in the Agreement.

[●] (the “**Architect**”) hereby certifies as follows:

(a) The Architect has reviewed the above referenced Convention Center Payment Request No. [__] (the “**Payment Request**”) and the Agreement, to the extent necessary to understand the defined terms contained herein and in the Payment Request that are incorporated by reference from the Agreement and to provide the certification contained herein.

(b) The Architect hereby certifies and confirms that, pursuant to the observation of the work as required by the [describe Architect Agreement] and in accordance with applicable professional standards, the construction performed for the Convention Center as of the date hereof has been performed substantially in accordance in all material respects with the Convention Center

Plans, or to the extent any such construction has not been performed substantially in accordance in all material respects with Convention Center Plans, the amount to be disbursed under this payment request has been reduced by \$[_____] to reflect the reasonably estimated cost of causing such construction to be performed substantially in accordance in all material respects with Convention Center Plans. The foregoing certification is subject to an evaluation of the Convention Center for conformance with the Convention Center Plans upon Completion, to results of subsequent tests and inspections, and to correction of minor deviations from the Convention Center Plans prior to Completion. This certificate is not a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers, or (4) made examination to ascertain how or for what purpose the Developer has used money previously paid on account of the Convention Center Contract Sum.

(c) [Reserved]

(d) Any representations or certifications by the Architect herein shall mean an expression of the Architect's professional opinion to the best of its information, knowledge and belief, and does not constitute a warranty or guarantee by the Architect.

The Authority is entitled to rely on the foregoing representations, warranties and certifications in authorizing and making the disbursement requested in the Payment Request.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Architect as of this [] day of [], 201[].

[●]

By: _____

Name:

Title:

Exhibit L

Sole Source Subcontract Award Approval (Developer's Phase 1A Infrastructure Improvements)

Request No. ____

Reference is made to that certain Project Implementation Agreement (the "Agreement"), dated as of [•], 2021, by and among the City of Chula Vista, a chartered municipal corporation ("City"), acting on its behalf and for and on behalf of the Bayfront Project Special Tax Financing District, a financing district established and existing pursuant to Chula Vista Municipal Code Chapter 3.61 Bayfront Project Special Tax Financing District Procedural Ordinance, the San Diego Unified Port District, a public corporation (the "Port District"), the Chula Vista Bayfront Facilities Financing Authority, a joint exercise of powers entity created by the City and the Port District pursuant to Joint Exercise of Powers Act (defined in the Agreement), and RIDA Chula Vista, LLC, a Delaware limited liability company ("Developer"). Capitalized terms used herein without definition shall have the meanings assigned in the Agreement.

The Developer hereby provides notice of intent to award a sole-source subcontract to [insert dba] for Developer's Phase 1A Infrastructure Improvements. A draft of such subcontract is attached as Exhibit 1 hereto. In connection with this Sole Source Subcontract Award Approval Request, the undersigned hereby certifies, represents and warrants to the Authority, in each case, solely in his or her capacity as [insert title] of Developer and not in his or her individual capacity, as follows:

- A. He (she) is a duly authorized representative or signatory of Developer, qualified to execute this Sole Source Subcontract Award Approval Request on behalf of Developer and is knowledgeable as to the matters set forth herein.
- B. The proposed subcontractor is as follows:
 - a. [Corporate Name]
 - b. [dba]
 - c. [Mailing Address]
 - d. [Contact Phone Number]
 - e. [Contact Email]
 - f. [California Contractor License Number]
 - g. [City of Chula Vista Business License Number]
- C. The proposed subcontract includes the following scope of work: [insert scope]
- D. The proposed sole source subcontract is in the amount of \$.
- E. The Developer recommends a sole source contract.
- F. The proposed sole source subcontract has been awarded in accordance with the Agreement, including Exhibit G-1, and the Authority Procurement Policy.
- G. The subject commodity or service is reasonably available in a manner consistent with the timely completion of the Developer's Phase 1A Infrastructure Improvements in accordance with the

Agreement from only one known source as the result of unique performance capabilities, manufacturing processes, compatibility requirements or market conditions.

By the Authority's execution of this Sole Source Subcontract Award Approval Request, the Authority hereby waives the provisions of the Authority Procurement Policy to the extent necessary to enable the sole source subcontract described in this Sole Source Subcontract Award Approval Request by Developer's General Contractor.

[Signature Pages Follow]

I hereby declare, solely in my capacity set forth below and not in my individual capacity, that the above representations are true and correct.

DEVELOPER:

RIDA CHULA VISTA, LLC, a Delaware limited liability company

California Contractor License Number:
1039979

By: _____
[Name], [Title]

Dated: _____

By the Authority's execution of this Sole Source Subcontract Award Approval Request, and in reliance upon the Developer's representations and certifications set forth in the above request for approval of Sole Source Subcontract Award, the Authority hereby approves such award.

APPROVED:

AUTHORITY:

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

By: _____
[Name], [Title]

Dated: _____

Exhibit 1

Draft Subcontract

[See attached]

Exhibit M

Best Qualified Contractor Subcontract Award Approval
(Developer’s Phase 1A Infrastructure Improvements)

Request No. ____

Reference is made to that certain Project Implementation Agreement (the “Agreement”), dated as of [•], 2021, by and among the City of Chula Vista, a chartered municipal corporation (“City”), acting on its behalf and for and on behalf of the Bayfront Project Special Tax Financing District, a financing district established and existing pursuant to Chula Vista Municipal Code Chapter 3.61 Bayfront Project Special Tax Financing District Procedural Ordinance, the San Diego Unified Port District, a public corporation (the “Port District”), the Chula Vista Bayfront Facilities Financing Authority, a joint exercise of powers entity created by the City and the Port District pursuant to Joint Exercise of Powers Act (defined in the Agreement), and RIDA Chula Vista, LLC, a Delaware limited liability company (“Developer”). Capitalized terms used herein without definition shall have the meanings assigned in the Agreement.

The Developer hereby provides notice of intent to award a subcontract to [insert dba] as a “best qualified” contractor (as described in the Authority Procurement Policy). A draft of such subcontract is attached as Exhibit 1 hereto. In connection with this Best Qualified Contractor Subcontract Award Approval Request, the undersigned hereby certifies, represents and warrants to the Authority, in each case, solely in his or her capacity as [insert title] of Developer and not in his or her individual capacity, as follows:

A. He (she) is a duly authorized representative or signatory of Developer, qualified to execute this Subcontract Award Approval Request on behalf of Developer and is knowledgeable as to the matters set forth herein.

B. The proposed subcontractor is as follows:

- a. [Corporate Name]
- b. [dba]
- c. [Mailing Address]
- d. [Contact Phone Number]
- e. [Contact Email]
- f. [California Contractor License Number]
- g. [City of Chula Vista Business License Number]

C. The proposed subcontract includes the following scope of work: [insert scope]

D. The proposed subcontract is in the amount of \$ _____.

E. The Developer or its General Contractor conducted a qualification process that considered, among other things, any or all of the following: past relevant/similar project experience, construction experience and capability, labor relations, customer feedback from those projects, current backlog, available trades personnel resources, proposed supervisory/management personnel, financial capability, and design capabilities (for design-build subcontracts).

F. (select 1 option, delete the other options)

For work estimated to be equal to or in excess of \$75,000, [the Developer or its General Contractor solicited three competitive proposals from the pre-qualified list of subcontractors] OR [the Developer determined that soliciting proposals for such work was not practical under the circumstances].

OR

For work estimated to be less than \$75,000, [the Developer or its General Contractor solicited two competitive proposals from the pre-qualified list of subcontractors] OR [the Developer determined that soliciting proposals for such work was not practical under the circumstances].

G. The Developer or its General Contractor considered, among other things, any or all of the following: qualitative factors (i.e. personnel, schedule management, construction experience and capability, labor relations, experience, expertise and business practices and policies that increase the likelihood that the Project will be completed without disruption, and quality management) and quantitative factors (i.e. price, schedule details, and rate for labor, equipment, and insurance).

H. The Developer conducted a pre-selection in-depth interview with potential “best qualified” subcontractors.

I. [The Developer offered a pre-selection process for potential subcontractors to present a “best and final offer”.] **[Insert if applicable]**

J. The Developer determined that the proposed subcontractor provided the best value for the Project.

K. The proposed subcontract has been awarded in accordance with the Agreement, including Exhibit G-1, and the Authority Procurement Policy.

[The Developer hereby requests a waiver pursuant to Section 2(d)(ii) of the Authority Procurement Policy with respect to the proposed subcontractor, and by the Authority’s execution of this Best Qualified Contractor Subcontract Award Approval Request, the Authority hereby grants such waiver.] [NTD: Include if the proposed subcontractor is not the lowest responsive and responsible bidder for a unit of work and the proposed subcontractor’s bid exceeds the engineer’s estimate or other approved estimate for the work by more than ten percent.]

[Signature Pages Follow]

I hereby declare, solely in my capacity set forth below and not in my individual capacity, that the above representations are true and correct.

DEVELOPER:

RIDA CHULA VISTA, LLC, a Delaware limited liability company

California Contractor License Number:
1039979

By: _____
[Name], [Title]

Dated: _____

By the Authority's execution of this Best Qualified Contractor Subcontract Award Approval Request, and in reliance upon the Developer's representations and certifications set forth in the above request for approval of Best Qualified Contractor Subcontract Award, the Authority hereby approves such award.

APPROVED:

AUTHORITY:

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

By: _____
[Name], [Title]

Dated: _____

Exhibit 1

Draft Subcontract

[See attached]

Exhibit N-1

List of Approved Arbitrators

[To be agreed upon by Developer, Port District, and City prior to Closing.]

Exhibit N-2

List of Approved Mediators

[To be agreed upon by Developer, Port District, and City prior to Closing.]

Exhibit O

Energy Requirements

The Parties acknowledge that Section 15 of the Settlement Agreement requires that all “**Developments**” within the Proposed Project (as defined in the Settlement Agreement) area achieve, in the aggregate, a fifty percent (50%) reduction in annual energy use (the “**50% Energy Standard**”) compared to that allowed under the Building Energy Efficiency Standards, Title 24, Part 6, of the California Code of Regulations in effect as of May 4, 2010 (“**2010 Title 24**”). To implement Section 15 of the Settlement Agreement with respect to the Project, the Parties agree as follows:

(a) Developer represents and warrants that it has prepared the Plans (as defined in the Ground Lease) and the Convention Center Plans (collectively, the “**Energy Requirement Plans**”) in such a manner that each building will operate at an energy consumption level equal to or better than the more stringent of the following two standards, which shall be referred to herein as, the “**Minimum Energy Efficiency Design Standard**”: (i) fifteen percent (15%) less than the amount of energy that each building would otherwise be permitted to consume under 2010 Title 24; or (ii) the minimum energy efficiency performance standard adopted by the City at the time a building permit application is submitted for each building.

(b) No later than thirty (30) days prior to the date when the first building in the Project is open for business, Developer shall deliver to Authority for Authority’s approval, a measurement and verification plan for energy efficiency for the Project based on the Energy Requirement Plans (as approved by Authority in accordance with this Agreement or the Port District in accordance with the Ground Lease, as applicable) (the “**M&V Plan**”). Developer shall also provide a courtesy copy of the M&V Plan to the City and Port District concurrently with its delivery to Authority.

(c) Developer shall implement and maintain the M&V Plan throughout the Term.

(d) Developer shall cause the performance of, and deliver to Port District and City, an energy consumption audit for each of the buildings in the Project no less frequently than every three (3) years after the Completion of the Resort Hotel and the Completion of the Parking Improvements, as applicable, as more particularly set forth in Section 15.2.2.4 of the Settlement Agreement (the “**Required Energy Audits**”).

(e) If the City and Port District ultimately determine that the Energy Requirement Plans do not achieve the 50% Energy Standard as applied to the Project (as defined in the Ground Lease), Developer, the City and Port District shall work together to identify additional energy savings measures, programs or credits (collectively, “**Additional Energy Savings Measures**”) available to achieve the 50% Energy Standard. Such Additional Energy Savings Measures may include, without limitation, Developer’s participation in renewable or “time of use” energy purchase programs, and/or other measures identified in Section 15.2 of the Settlement Agreement. Developer agrees to participate in and/or implement the Additional Energy Savings Measures so identified at Developer’s cost, to the extent “commercially reasonable” (as defined below), in order to maximize energy use reduction at the Project (as defined in the Ground Lease), in the aggregate, up to the 50% Energy Standard. If, despite Developer’s efforts, Developer cannot reduce the energy use standard at the Project (as defined in the Ground Lease) to achieve the 50% Energy Standard, either because it is

not commercially reasonable to do so, or Developer's participation in and/or implementation of the Additional Energy Savings Measures identified by the City and Port District do not result in the 50% Energy Standard, the City and Port District agree to identify additional energy savings measures or credits that the City and Port District could implement (at a cost to be shared equally by the City and Port District) or cause third parties to implement (without a public subsidy or rent reduction), throughout the Proposed Project (as defined in the Settlement Agreement) area, to achieve the 50% Energy Standard for the Project (as defined in the Ground Lease). For purposes of this Exhibit O, "**commercially reasonable**" Additional Energy Savings Measures are the Additional Energy Savings Measures that Developer reasonably determines can be implemented practicably and cost-effectively at the Project (as defined in the Ground Lease) and that the implementation of which will not interfere with the operation of any portion of the Project. Developer shall cooperate with the City and Port District in good faith to identify locations for the commercially reasonable Additional Energy Savings Measures on the Premises and shall enter into any agreements with Port District and/or the City, as reasonably required, to effectuate the construction of such commercially reasonable Additional Energy Savings Measures on the Premises.

(f) Developer shall indemnify and defend the Authority, the City, and the Port District, at Developer's sole cost and expense and with counsel reasonably selected by the Public Agencies and reasonably approved by Developer, and hold harmless the Authority, the City, and the Port District for any and all claims (including claims under negligence and strict liability), 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 any breach by Developer of its obligations under this Exhibit O, except for claims or litigation arising through the sole gross negligence or willful misconduct of any Public Agency Party (but subject to Section 15.4 of this Agreement); provided, that the sole gross negligence or willful misconduct of one Public Agency Party with respect to any Public Agency shall not be attributed to or affect the rights of any Public Agency Party with respect to any other Public Agency under this clause (f). If a Public Agency determines in its reasonable discretion that there is a conflict of interest with Developer's counsel representing such Public Agency and Developer, or that there is a conflict of interest with counsel representing such Public Agency and the other Public Agencies, then such Public Agency, at its election, may conduct its own defense with its own counsel that is reasonably selected by the Public Agency, reasonably approved by Developer, and independent from Developer's counsel (and in that event Developer will select its own counsel) and the reasonable costs incurred by the applicable Public Agency 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 clause (f) shall survive the expiration or earlier termination of this Agreement. Nothing in this Exhibit O shall limit Developer's obligations to indemnify Port District and the City with regard to the Convention Center Plans, the Improvements, or other Developer's Phase 1A Infrastructure Improvements if and to the extent required under this Agreement.

(g) For purposes of the Settlement Agreement, Developer's obligations to comply with Section 15 of the Settlement Agreement are limited to the requirements set forth herein. So long as Developer has complied with its obligations under this Exhibit O and Section 4.10, Developer will not be in default and will not be in breach under this Lease or the Settlement Agreement based upon any alleged failure to comply with the terms of Section 15 of the Settlement Agreement in the design of the Project.

(h) For purposes of this Exhibit O, "Project" shall mean Project as defined in the Ground Lease.

Exhibit P

Form of Developer's Convention Center Budget

[To be provided by Developer prior to Closing.]

Exhibit Q

Port District Transfer Documents

Ground Lease

Site Lease

Project Implementation Agreement

Support Agreement

CVBMP Documents [parties to determine which CVBMP documents will be transferred prior to execution of lease.]

[Insert any other documents that qualify as Port District Transfer Documents prior to Closing.]

Exhibit R

Form of Memorandum Agreement

RECORDING REQUESTED BY:

(Above Space for Recorder’s Use Only)

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement, hereinafter “**Memorandum**,” is dated _____, 20__, among the City of Chula Vista, a chartered municipal corporation (“**City**”), acting on its behalf and for and on behalf of the Bayfront Project Special Tax Financing District, a financing district established and existing pursuant to Chula Vista Municipal Code Chapter 3.61 Bayfront Project Special Tax Financing District Procedural Ordinance (the “**Financing District**”), the San Diego Unified Port District, a public corporation (the “**Port District**”), the Chula Vista Bayfront Facilities Financing Authority (the “**Authority**”), a joint exercise of powers entity created by the City and the Port District pursuant to the Joint Exercise of Powers Act (defined herein below), and RIDA Chula Vista, LLC, a Delaware limited liability company (“**Developer**”) (collectively, together with their successors and assigns, the “**Parties**” and, individually, a “**Party**”), concerning that certain real property described in Exhibits “A-1”, “A-2” and “A-3” and depicted in Exhibits “B-1”, “B-2” and “B-3”, attached hereto and by this reference made a part hereof.

The Parties have entered into that certain Project Implementation Agreement of even date herewith (the “**Agreement**”), which contains various covenants, obligations and rights of the Parties, all as more specifically set forth in said Agreement (including, without limitation, the provisions set forth in Annex “I” attached hereto and by this reference made a part hereof). The Agreement is incorporated in this Memorandum by this reference.

The term of the Agreement begins _____, 20__ and ends _____, 20__, as set forth in Section 3.1 of the Agreement. In no event shall the Term extend beyond sixty-six (66) years from the Effective Date.

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

[Signature Pages Follows]

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Agreement as of the date first set forth above.

CITY

CITY OF CHULA VISTA, a California charter city and municipal corporation

By: _____
Maria V. Kachadoorian, City Manager

DEVELOPER

RIDA CHULA VISTA, LLC, a Delaware limited liability company

California Contractor License Number: 1039979

By: _____ *

ATTEST:

By: _____
Kerry Bigelow, City Clerk

APPROVED AS TO FORM:

By: _____
Glen R. Googins, City Attorney

PORT DISTRICT

SAN DIEGO UNIFIED PORT DISTRICT,
a public corporation

By: _____

APPROVED AS TO FORM AND LEGALITY:

By: _____
Thomas A. Russell, General Counsel

AUTHORITY

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

By: _____

APPROVED AS TO FORM AND LEGALITY:

By: _____
Co-Counsel, Thomas A. Russell, General
Counsel of the San Diego Unified Port
District

By: _____
Co-Counsel, Glen Googins, City Attorney
of the City of Chula Vista

FINANCING DISTRICT

BAYFRONT PROJECT SPECIAL TAX
FINANCING DISTRICT

By: _____

* Signatories to provide signature authority for signatory

EXHIBIT A-1 TO MEMORANDUM OF AGREEMENT

LEGAL DESCRIPTION OF SITE

(to be attached prior to execution.)

EXHIBIT A-2 TO MEMORANDUM OF AGREEMENT
LEGAL DESCRIPTION OF GROUND LEASE PROPERTY

(to be attached prior to execution.)

EXHIBIT A-3 TO MEMORANDUM OF AGREEMENT
LEGAL DESCRIPTION OF DEVELOPER'S PHASE 1A
INFRASTRUCTURE IMPROVEMENTS SITE

(to be attached prior to execution.)

EXHIBIT B-1 TO MEMORANDUM OF AGREEMENT

DEPICTION OF SITE

(to be attached prior to execution.)

EXHIBIT B-2 TO MEMORANDUM OF AGREEMENT

DEPICTION OF GROUND LEASE PROPERTY

(to be attached prior to execution.)

EXHIBIT B-3 TO MEMORANDUM OF AGREEMENT

DEPICTION OF DEVELOPER'S PHASE 1A
INFRASTRUCTURE IMPROVEMENTS SITE

(to be attached prior to execution.)

ANNEX I TO MEMORANDUM OF AGREEMENT

NONDISTURBANCE PROVISIONS

1. Port District Nondisturbance of Lessee and Sublessee Rights under the Convention Center Leases. In the event the Site Lease terminates prior to the expiration of the Sublease Term (and the Sublease has not terminated in accordance with its terms as a result of an Event of Default by the Developer thereunder), the Port District shall recognize the Facility Lease as, and the Facility Lease shall be deemed to be, a direct lease between the Port District, as lessor, and the City, as lessee, and the Port District shall not disturb the City's leasehold interest or possession of the Site (as defined in the Facility Lease) or the Convention Center under, and on the terms and conditions set forth in, the Facility Lease, and the Port District shall continue to recognize and treat the Sublease as a sublease between the City, as sublessor, and the Developer, as sublessee, and the City shall attorn to and recognize the Port District as the City's lessor under, and on the terms and conditions set forth in, the Facility Lease. In the event the Facility Lease terminates prior to the expiration of the Sublease Term (and the Sublease has not terminated in accordance with its terms as a result of an Event of Default by the Developer thereunder), the Port District shall recognize the Sublease as, and the Sublease shall be deemed to be, a direct lease between the Authority, as lessor, and the Developer, as lessee, and the Developer shall attorn to and recognize the Authority as the Developer's lessor under, and on the terms and conditions set forth in, the Sublease. In the event both the Site Lease and the Facility Lease terminate prior to the expiration of the Sublease Term (and the Sublease has not terminated in accordance with its terms as a result of an Event of Default by the Developer thereunder), (i) the Port District shall recognize the Sublease as, and the Sublease shall be deemed to be, a direct lease between the Port District, as lessor, and the Developer, as lessee, and the Port District shall not disturb the Developer's leasehold interest or possession of the Site (as defined in the Sublease) or the Convention Center under, and on the terms and conditions set forth in, the Sublease, and the Developer shall attorn to and recognize the Port District as the Developer's lessor under, and on the terms and conditions set forth in, the Sublease. Each Permitted Lender is an express third party beneficiary of this Section 1 and is entitled to enforce this Section 1.

2. Authority Nondisturbance of Lessee and Sublessee Rights under the Convention Center Leases. In the event the Facility Lease terminates prior to the expiration of the Sublease Term (and the Sublease has not terminated in accordance with its terms as a result of an Event of Default by the Developer thereunder), the Authority shall recognize the Sublease as, and the Sublease shall be deemed to be, a direct lease between the Authority, as lessor, and the Developer, as lessee, and the Authority shall not disturb the Developer's leasehold interest or possession of the Site (as defined in the Sublease) or the Convention Center under, and on the terms and conditions set forth in, the Sublease, and the Developer shall attorn to and recognize the Authority as the Developer's lessor under, and on the terms and conditions set forth in, the Sublease. Each Permitted Lender is an express third party beneficiary of this Section 2 and is entitled to enforce this Section 2.

3. Defined Terms. Capitalized terms used but not defined in this Annex I shall have the meanings set forth in the Agreement.

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,

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(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

Exhibit S

Approved Agreements

CVBMP Documents

Approved Title Exceptions

Convention Center Plans

Plans

Early Work Agreement

Reimbursement Agreement

Sewer Agreement

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

(to be revised / completed prior to execution.)

Exhibit T

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).]

[To come prior to Closing.]

Exhibit U

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 Lease.]

[To be attached prior to execution.]

Exhibit V-1

Approved Drawings and Specifications for
Developer's Phase 1A Infrastructure Improvements

[To come prior to Closing.]

Exhibit V-2

Approved Drawings and Specifications for
Remaining Phase 1A Infrastructure Improvements

[To come prior to Closing.]

Exhibit W

Form of Equal Opportunity Employment Certification

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

The bidder _____, proposed subcontractor _____, hereby certifies that he has ____, has not ____, participated in a previous contract or subcontract subject to the equal opportunity clauses, as required by Executive Orders 10925, 11114, or 11246, and that, where required, he has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b) (1)), and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b) (1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

By: [BIDDER / CONTRACTOR]

Its: _____

Printed Name: _____

Exhibit X-1

Form of Early Work Agreement

[To come prior to Closing.]

Exhibit X-2

Reimbursement Agreement

[To be attached prior to execution.]

Exhibit X-3

Sewer Agreement

[To be attached prior to execution.]

Exhibit Y

Hotel Operator Non-Disturbance Agreement

[To be attached prior to execution.]